

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** ("Settlement Agreement") is entered into and made effective as of the 7<sup>th</sup> day of November, 2012 ("Effective Date"), by and between Plaintiff, FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B. ("FDIC-R"), and Defendant, PGP TITLE, INC., A NEVADA CORPORATION, DOING BUSINESS AS SUN TITLE AGENCY CO., AND FORMERLY KNOWN AS COMMERCE LAND TITLE, INC., DOING BUSINESS AS COMMERCE TITLE COMPANY ("Commerce Title"). The FDIC-R and Commerce Title may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

**1. RECITALS**

**1.1** In or about December, 2007, an escrow, [REDACTED] (the "Escrow"), was opened with Commerce Title, for the purchase by [REDACTED] of the real property located at [REDACTED] Nevada [REDACTED] (the "Subject Property"), from [REDACTED].

**1.2** In connection with the sale of the Subject Property, and the Escrow, it is alleged that [REDACTED] made a loan (the "Loan") to [REDACTED] in the amount of \$650,000, secured by a deed of trust (the "Deed of Trust") against the Subject Property.

**1.3** At the close of Escrow, a HUD-1 Settlement Statement (the HUD-1 Statement) was prepared by Commerce Title.

**1.4** After Escrow closed, [REDACTED] subsequently sold the Loan and Deed of Trust to Indymac Bank, F.S.B. ("IndyMac").

**1.5** On June 29, 2011, FDIC-R filed an action in the United States District Court-Central District of California-Western Division, Case No. CV-11-05418 GHK (JEMx) (the "Action"), against, among others, Commerce Title.

**1.6** The FDIC-R's Complaint (the "Complaint") filed in connection with the Action asserted two Claims for Relief against Commerce Title, i.e., the Second Claim For Relief for Negligence and the Third Claim For Relief for Negligent Misrepresentation. The Complaint alleged that the HUD-1 Statement prepared by Commerce Title contained numerous misrepresentations concerning the distribution of funds deposited into Escrow. The Complaint further alleged that IndyMac relied on the misrepresentations contained in the HUD-1 Statement in deciding to acquire the Loan and Deed of Trust from [REDACTED] and that as a result of its acquisition of the Loan and Deed of Trust, it had sustained damages.

**1.7** On February 10, 2012, the Court issued an order (the "Order") granting, without leave to amend, Commerce Title's Motion to Dismiss the Second Claim For Relief for Negligence and Third Claim For Relief for Negligent Misrepresentation in the FDIC-R's Complaint, and the Court dismissed Commerce Title, with prejudice, from the Action.

**1.8** Shortly thereafter, the FDIC-R filed a Motion For Reconsideration (the "Motion For Reconsideration"), in which it requested that the Court reconsider its Order granting Commerce Title's Motion to Dismiss as to the FDIC-R's Third Claim For Relief for Negligent Misrepresentation. On April 6, 2012, the Court issued an order granting the FDIC-R's Motion For Reconsideration, and thereafter, on April 18, 2012, the FDIC-R filed its current operative complaint, the First Amended Complaint (the "First Amended Complaint"). In its First Amended Complaint, the FDIC-R alleges the First Claim For Relief for Negligent Misrepresentation against Commerce Title.

**1.9** On August 10, 2012, the Court issued an order denying Commerce Title's Motion to Dismiss the FDIC-R's First Amended Complaint, and thereafter, on August 24, 2012, Commerce Title filed an Answer to the FDIC-R's First Amended Complaint, denying the material allegations therein.

**1.10** The Action remains pending in Courtroom 650 of the United States District Court-Central Division-Western District, before the Honorable George H. King.

**1.11** The Parties desire and have agreed to settle all claims between them relating to the allegations and transactions asserted in the Action. By entering into this Settlement Agreement, the Parties are not admitting the allegations as set forth in the FDIC-R's Complaint and/or its First Amended Complaint.

## **2. AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

**2.1 Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**2.2 Payment to the FDIC-R.** Payment in the amount of Seventy-Five Thousand Dollars (the "Settlement Payment") shall be paid on behalf of Commerce Title to the FDIC-R. The Settlement Payment shall be made via check, made payable to the "Mortgage Law Recovery Group Client Trust Account", and shall be due no later than thirty (30) days after execution of this Settlement Agreement by all Parties hereto. Commerce Title shall deliver the Settlement Payment to the FDIC-R, c/o Mortgage Recovery Law Group, LLP, 700 North Brand Blvd., Ste. 830, Glendale CA 91203.

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**2.3** In the event Commerce Title defaults by failing to make a timely payment to the FDIC-R as set forth in paragraph 2.2 above (the "Settlement Payment Due Date"), the FDIC-R, in its sole discretion, shall have the right to:

- a. Extend the time for payment, including interest accruing from the Settlement Payment Due Date through the date of payment, at a rate calculated in accordance with 26 U.S.C. § 6621 (b)(3); or
- b. Enforce this Settlement Agreement and, in such event, Commerce Title agrees (i) to jurisdiction in the United States District Court-Central Division-Western District; and (ii) to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Settlement Agreement; or
- c. Declare this Settlement Agreement null and void, move to vacate any dismissal order previously entered by the Court, with the exception of the Court's February 10, 2012, Order, and to re-institute the FDIC-R's Action against Commerce Title ; and/or
- d. Seek any other relief available to it in law or equity.

Any extension of time for delivery of the Settlement Payment shall not prejudice the FDIC-R's right to take other action or seek any relief after such period of extension, including the right to bring an action to enforce the Settlement Agreement, or to declare the Settlement Agreement null and void.

**2.4** Within ten (10) business days of the FDIC-R's receipt of the Settlement Payment as set forth in paragraph 2.2 above, the FDIC's counsel shall file a Request For Dismissal, with prejudice, of Commerce Title from the Action.

**2.5** Each Party agrees that Section 664.6 of the Code of Civil Procedure of the State of California shall apply to this Settlement Agreement and the Court where the Action is currently pending shall retain jurisdiction over the Parties to enforce this Settlement Agreement.

**2.6** The Parties shall bear their own costs and attorneys' fees incurred in the Action and the preparation of this Settlement Agreement.

### **3. RELEASES**

**3.1 Known and Unknown Claims.** The FDIC-R and Commerce Title acknowledge and agree that the release they give to each other upon executing this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) arising from or in conjunction with or related to the facts, circumstances, and transactions alleged in the Action, including, but not limited to, the

FDIC-R's Second Claim For Relief for Negligence and the Claims For Relief alleged against Commerce Title in the First Amended Complaint.

**3.2** The Parties hereby expressly waive application of California Civil Code §1542 as it relates to the Action. The Parties certify that they have read and understood the following provisions of California Civil Code §1542 which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

**3.3** The Parties understand and acknowledge that the significance and consequence of its waiver of California Civil Code §1542 is that even if either Party should eventually suffer additional damages arising from or in conjunction with the Action, or any facts, circumstances, or transactions related to the Action, that Party will not be able to make any claim against any other Party to this Settlement Agreement for those damages. Furthermore, each Party acknowledges that they consciously intend these consequences even as to claims for damages and/or losses that may exist as of the date of this release relating to the Action, but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**3.4** Except for the rights, duties, and obligations set forth in this Settlement Agreement, the Parties to this Settlement Agreement each hereby fully, finally, and forever release and discharge the other Parties to this Settlement Agreement, and any and all of its respective, employees, brokers, investors, members, partners, joint venturers, independent contractors, attorneys, accountants, insurers, agents, investors, representatives, officers, directors, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees and/or agents, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, employees and/or agents of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, to any damages, loss, or liability arising from, in conjunction with, or related to the Action.

(b)(4);(b)(6)

3.5 Notwithstanding any other provision of this Settlement Agreement, the Parties do not release, and expressly preserve fully and to the same extent as if the Settlement Agreement had not been executed, any claims against all other non-parties to this Settlement Agreement, including, but not limited to, Defendants and Cross-Defendants, [REDACTED] and claims arising out of existing or failed financial institutions other than IndyMac.

3.6 Notwithstanding any other provision, by this Settlement Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office in any federal judicial district.

#### 4. MISCELLANEOUS

4.1 **Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

4.2 **No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

4.3 **Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

4.4 **Governing Law.** The Parties agree to submit to the United States District Court-Central Division-Western District for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Court, and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

4.5 **Attorneys Fees and Costs.** Should any action be commenced to enforce or interpret this Settlement Agreement, or to seek damages, injunctive relief or specific performance for violation of this Settlement Agreement, the prevailing Party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal, from the non-prevailing Party.

4.6 **Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or

invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**4.7 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**4.8 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understood the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**4.9 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**4.10 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile or e-mail shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**4.11 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**4.12 Warranties.** The Parties to this Settlement Agreement warrant and represent that none of the claims, defenses, claims for relief, costs, or demands herein released have been assigned to any person or entity and that the persons executing the Settlement Agreement have the authority and ability to give a valid and enforceable release.

**4.13 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**4.14 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**4.15 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement:

DATED: November 7<sup>th</sup>, 2012

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, F.S.B.

(b)(6)

By: \_\_\_\_\_

*Signature*

Richard S. Gill, Counsel  
*Type/Print Name and Title*

DATED: November \_\_, 2012

PGP TITLE, INC., A NEVADA CORPORATION, DOING BUSINESS AS SUN TITLE AGENCY CO., AND FORMERLY KNOWN AS COMMERCE LAND TITLE, INC., DOING BUSINESS AS COMMERCE TITLE COMPANY

By: \_\_\_\_\_

*Signature*

\_\_\_\_\_  
*Type/Print Name and Title*

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or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**4.15 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: October \_\_, 2012

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, F.S.B.


By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Type/Print Name and Title*

DATED: October 31, 2012

PGP TITLE, INC., A NEVADA CORPORATION, DOING BUSINESS AS SUN TITLE AGENCY CO., AND FORMERLY KNOWN AS COMMERCE LAND TITLE, INC., DOING BUSINESS AS COMMERCE/TITLE COMPANY

(b)(6)

By:  \_\_\_\_\_  
*Signature*

*Michael K. Sullivan, SVP, General Counsel*  
\_\_\_\_\_  
*Type/Print Name and Title*

[signatures continue]



[signatures continue]

**APPROVED AS TO FORM:**

DATED: November 12, 2012

MORTGAGE RECOVERY LAW GROUP

(b)(6)

By: \_\_\_\_\_

PAUL A. LEVIN  
Attorneys for Plaintiff  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for INDYMAC  
BANK, F.S.B.

DATED: November \_\_, 2012

MARCUS, WATANABE & DAVE, LLP

By: \_\_\_\_\_

DANIEL J. ENOWITZ  
Attorneys for Defendant,  
PGP TITLE, INC., A NEVADA CORPORATION,  
DOING BUSINESS AS SUN TITLE AGENCY  
CO., AND FORMERLY KNOWN AS  
COMMERCE LAND TITLE, INC., DOING  
BUSINESS AS COMMERCE TITLE COMPANY

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[signatures continue]

**APPROVED AS TO FORM:**

DATED: November \_\_, 2012

MORTGAGE RECOVERY LAW GROUP

By: \_\_\_\_\_  
PAUL A. LEVIN  
Attorneys for Plaintiff  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for INDYMAC  
BANK, F.S.B.

DATED: November 13, 2012

MARCUS, WATANABE & DAVE, LLP

By: \_\_\_\_\_  
[Redacted Signature] (b)(6)  
DANIEL J. ENOWITZ  
Attorneys for Defendant,  
PGP TITLE, INC., A NEVADA CORPORATION,  
DOING BUSINESS AS SUN TITLE AGENCY  
CO., AND FORMERLY KNOWN AS  
COMMERCE LAND TITLE, INC., DOING  
BUSINESS AS COMMERCE TITLE COMPANY

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