

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into and made effective as of the 23rd day of November 2011 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, F.S.B. ("FDIC") and CHARTER CAPITAL CORPORATION dba FIRST CAPITAL GROUP, INC. ("CHARTER CAPITAL"). The FDIC and CHARTER CAPITAL may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

1. RECITALS

1.1 On or about January 5, 2011, the FDIC filed a lawsuit entitled FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B. v. CHARTER CAPITAL CORPORATION dba FIRST CAPITAL GROUP, INC., a California corporation, United States District Court for the Central District of California Case No. CV11-00107-MAN (hereinafter "Action"). The FDIC sought damages from CHARTER CAPITAL arising out of mortgage loans it made to Lynn and Aldridge Vida and Patrick and Tiffany Naeole. The Complaint included claims for breach of contract and negligence. In its answer, CHARTER CAPITAL denied they were liable to the FDIC for damages.

1.2 On or about May 4, 2006, IndyMac Bank, F.S.B. ("IndyMac") and CHARTER CAPITAL entered into a business relationship governed by a written Seller Contract and e-MITS User Agreement (the "Agreement"). The FDIC contends the Agreement incorporates the Lending Guide and sets forth the terms by which IndyMac would purchase and/or fund residential loans secured by real property which were processed, packaged and submitted by CHARTER CAPITAL.

1.3 The FDIC contends on June 18, 2007, CHARTER CAPITAL sold to IndyMac the loans to Patrick and Tiffany Naeole which were secured by the real property located at 91-740 Oneula Place, Ewa Beach, HI ("Naeole Loans"). The Naeole Loans failed to comply with the terms of the Agreement in that the borrower's income was misrepresented, the borrower's credit obligations were misrepresented, and the borrower's intent to occupy the property was misrepresented. The FDIC also contends on October 17, 2007, CHARTER CAPITAL sold to IndyMac the loans to Lynn and Aldridge Vida which were secured by the real property located at 211 Kahana Ridge Dr., Lahaina, HI ("Vida Loans"). The Vida Loans failed to comply with the terms of the Agreement in that the borrower's income was misrepresented. Due to these breaches, the FDIC sought indemnification of its losses on the loans as called for in the Agreement.

1.4 CHARTER CAPITAL denies the FDIC's claims. Specifically, and without limitation, CHARTER CAPITAL denies that (1) it breached the representations and warranties provisions of the Agreement and the Lending Guide; (2) it breached any duty owed to IndyMac or the FDIC; (3) the loan documentation prepared and submitted

by CHARTER CAPITAL contained any misrepresentations; or (4) the FDIC and/or IndyMac suffered or will suffer any loss, damage, or cost related in any way to the Naeole Loans and the Vida Loans.

1.5 The Parties desire and have agreed to settle all claims between the FDIC and CHARTER CAPITAL relating the Naeole Loans and the Vida Loans. By entering into this Settlement Agreement, the parties are not admitting the allegations as set forth in the 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.** Payment of Three Hundred Thousand Dollars and no/cents (\$300,000.00) (the "Settlement Funds") shall be paid on behalf of CHARTER CAPITAL to the FDIC. The initial payment (the "Initial Payment") shall be for Two Hundred Thousand Dollars and no/cents (\$200,000.00) and shall be paid within fifteen (15) days of CHARTER CAPITAL's execution of this Settlement Agreement. CHARTER CAPITAL shall deliver the Initial Payment, and all payments to the FDIC c/o Mortgage Recovery Law Group, LLP at 700 N. Brand Blvd, Suite 830, Glendale CA 91203, Attn: Paul A. Levin and Andrew P. Baeza. The Initial Payment shall be paid by certified funds made payable to: Mortgage Recovery Law Group Trust Account. Then, CHARTER CAPITAL shall make payments on the first of each month as follows:

- a. December 15, 2011 - \$8,333.33;
- b. January 1, 2012 - \$8,333.33;
- c. February 1, 2012 - \$8,333.33;
- d. March 1, 2012 - \$8,333.33;
- e. April 1, 2012 - \$8,333.33;
- f. May 1, 2012 - \$8,333.33;
- g. June 1, 2012 - \$8,333.33;
- h. July 1, 2012 - \$8,333.33;

- i. **August 1, 2012 – \$8,333.33;**
- j. **September 1, 2012 – \$8,333.33;**
- k. **October 1, 2012 – \$8,333.33;**
- l. **November 1, 2012 - \$8,333.37;**

2.3 Concurrently with the signing and delivery of this Settlement Agreement, CHARTER CAPITAL shall execute a Stipulation for Judgment in the form attached hereto as Exhibit A. The Stipulation for Judgment shall be held in trust by the FDIC's attorneys of record and shall not be filed unless CHARTER CAPITAL breaches paragraph 2.2 above and fails to timely cure said breach after receiving written notice of default as provided in paragraph 2.4 below. Judgment shall not be entered so long as CHARTER CAPITAL performs under the terms of this Settlement Agreement with respect to making the Payments required by paragraph 2.2 above.

2.4 In the event CHARTER CAPITAL defaults by failing to make a timely payment to the FDIC as set forth in paragraph 2.2 above, the FDIC shall give written notice of the default and notice of its intent to enter Judgment on the Stipulation for Judgment to CHARTER CAPITAL via e-mail and overnight mail to their attorney of record as follows: Eric Schiffer, Esq., 4675 MacArthur Court, Suite 590, Newport Beach, CA 92660; telephone [REDACTED] facsimile [REDACTED] e-mail [REDACTED]

(b)(4),(b)(6)

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[REDACTED] CHARTER CAPITAL shall have ten (10) business days after written notice of default is sent to Mr. Schiffer to cure the default. If CHARTER CAPITAL fails to cure the default within ten (10) business days, the FDIC shall cause Judgment (to be entered as set forth in Paragraph 2.3 above.

2.5 Within ten (10) business days of the FDIC's receipt of the Initial Payment as set forth in paragraph 2.2, the FDIC's counsel shall file a request for dismissal of the entire Action with prejudice.

2.6 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 Stipulation for Judgment and requests that the court retain jurisdiction over the Parties to enforce this Settlement Agreement and, if necessary, the Stipulation for Judgment.

2.7 The Parties shall bear their own costs and attorneys' fees incurred in the Action.

3. RELEASE

3.1 Known and Unknown Claims. The FDIC and CHARTER CAPITAL 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 and circumstances giving rise to the Action, along with any and all loans sold, brokered, or otherwise delivered by CHARTER CAPITAL to IndyMac or any other legal matters arising from any and all agreements between CHARTER CAPITAL and IndyMac including, but not limited to, the Agreement and Lending Guide, as defined in paragraph 1.2 above, (the "Non-Action Matters").

3.2 The Parties hereby expressly waive application of *California Civil Code §1542* as it relates to the Action and the Non-Action Matters. 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 Non-Action Matters or any facts or circumstances related to the Action or Non-Action Matters, that Party will not be able to make any claim against any other Party for those damages. Furthermore, each Party acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release relating to the Action or Non-Action Matters, 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 each hereby fully, finally, and forever release and discharge the other Parties, 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 or any facts or circumstances related to the Action.

3.5 Notwithstanding any other provision of this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any claims against CHARTER CAPITAL arising out of existing or failed financial institutions other than IndyMac. The FDIC represents that it retains the rights to pursue any claims arising out of or related to the Naeole Loans and the Vida Loans against third parties other than CHARTER CAPITAL and any and all of its officers, directors, employees .

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 Courts of the City and County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts 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, interpret, or 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.

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 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.

4.13 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.

4.14 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 __, 2011
APPROVED AS TO FORM

SCHIFFER & BUUS APC

By: _____
Eric M. Schiffer
Attorneys for Defendant CHARTER CAPITAL CORPORATION dba FIRST CAPITAL GROUP, INC.

DATED: November __, 2011

CHARTER CAPITAL GROUP dba FIRST CAPITAL GROUP, INC.

By: _____
Signature

Type/Print Name and Title

DATED: November __, 2011
APPROVED AS TO FORM

SNIPPER WAINER & MARKOFF

By: _____
Maurice Wainer
Attorneys for Plaintiff FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, F.S.B.

DATED: November 28, 2011

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

By: (b)(6)

Jack S. Dunbar, Counsel
Type/Print Name and Title

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 28, 2011
APPROVED AS TO FORM

SCHIFFER & BUUS APC

By:

[Redacted Signature]

(b)(6)

Eric M. Schiffer (b)(6)

Attorneys for Defendant CHARTER CAPITAL CORPORATION dba FIRST CAPITAL GROUP, INC.

DATED: November 25, 2011

CHARTER CAPITAL GROUP dba FIRST CAPITAL GROUP, INC.

By:

[Redacted Signature]

(b)(6)

Mark E. Lachtman, President
Type/Print Name and Title

DATED: November __, 2011
APPROVED AS TO FORM

SNIPPER WAINER & MARKOFF

By:

Maurice Wainer

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

DATED: November __, 2011

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

By:

Signature

Type/Print Name and Title