

SETTLEMENT AGREEMENT AND OPTION FOR RELEASE

THIS SETTLEMENT AGREEMENT AND OPTION FOR RELEASE ("Settlement Agreement") is entered into and made effective as of the 30th day of November, 2011 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC-R") and Security Mortgage Funding Corporation ("SECURITY"). The FDIC-R and SECURITY may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

RECITALS

1.1 **WHEREAS**, on or about December 28, 2010, the FDIC-R filed a lawsuit against SECURITY entitled *FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, F.S.B. v. SECURITY MORTGAGE FUNDING CORPORATION*, in the United States District Court, Central District of California, Western Division, Case No. SA CV 10-01969. (hereinafter the "Action").

1.2 **WHEREAS**, SECURITY has denied the FDIC-R's allegations in the Action.

1.3 **WHEREAS**, without admitting liability, the Parties desire to and have agreed to enter into this Settlement Agreement relating to the Action upon the terms and conditions hereinafter set forth.

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:

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

1.5 **Payment of the Settlement Funds.** SECURITY shall pay the total sum of Ninety Thousand Dollars (\$90,000) (the "Settlement Funds"). Payment of the Settlement Funds shall be according to the payment schedule set forth in paragraph 1.8 below. The Settlement Funds shall constitute the first \$90,000 of payments due under the payment schedule.

1.6 **SECURITY's Release Option.** SECURITY has the opportunity, but not the obligation, to obtain from the FDIC-R a release of any claims arising out of any

loans which it ever originated and were sold to IndyMac Bank, F.S.B. by SECURITY (the "LOANS") (the "Release Option").

a. If SECURITY elects to invoke the Release Option, then SECURITY must notify the FDIC-R, in writing, no later than November 30, 2013, of its exercise of the Release Option. Timely notice shall be given via mail, facsimile or electronic mail to: Michael H. Delbick, Esq., Mortgage Recovery Law Group, LLP, 700 North Brand Boulevard, Suite 830, Glendale, CA 91203; facsimile: [REDACTED] electronic mail: [REDACTED]

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b. If SECURITY elects to invoke the Release Option, then SECURITY shall pay to the FDIC-R an additional One Hundred Ten Thousand Dollars (\$110,000) (the "Release Settlement Payment"). The Release Settlement Payment shall be in addition to the amount of the Settlement Funds and shall bring the total amount payable by SECURITY to the FDIC-R under this Settlement Agreement to Two Hundred Thousand Dollars (\$200,000). Payment of the Release Settlement Payment shall be according to the payment schedule set forth in paragraph 1.8, below.

c. If SECURITY gives (1) timely notice of SECURITY's intent to exercise the Release Option as set forth herein, and (2) pays the Settlement Funds, then and only then shall the release of claims provisions set forth below become effective.

d. If SECURITY elects not to invoke the Release Option, then SECURITY does not need to provide any further notice to the FDIC-R. If SECURITY has not effectively exercised the Release Option on or before November 30, 2013, then effective December 1, 2013, the Release Option is automatically deemed rejected.

e. If SECURITY does not timely invoke the Release Option, then the FDIC-R is free to pursue any claims against SECURITY, including (but not limited to) the claims set forth in the Action, this Settlement Agreement and any other claims arising out of the LOANS. Should the FDIC-R pursue any claims against SECURITY, the payments made by SECURITY under this Settlement Agreement will be offset against any future obligation or judgment.

1.7 Payment Schedule. Payment to the FDIC-R by SECURITY of the Settlement Funds and, if applicable, the Release Option, shall be made according to the following schedule:

For payment of the Settlement Funds:

On or before January 30, 2012, SECURITY shall make a payment of Fifteen Thousand Dollars (\$15,000).

On or before April 1, 2012, SECURITY shall make an additional payment of Eleven Thousand Dollars (\$11,000).

Beginning on or before May 1, 2012, SECURITY shall make an additional payment of Three Thousand Dollars (\$3,000) each month for twelve (12) months, due on or before the first day of each given month, with the first such payment due on or before May 1, 2012, and the last such payment due on or before April 1, 2013;

Beginning on or before May 1, 2013, SECURITY shall make an additional payment of Four Thousand Dollars (\$4,000) each month for twelve (12) months, due on or before the first day of each given month, with the first such payment due on or before May 1, 2013, and the last such payment due on or before April 1, 2014;

If SECURITY exercises the Release Option, then for payment of the Release Settlement Payment:

Beginning on or before May 1, 2014, SECURITY shall make an additional payment of Five Thousand Dollars (\$5,000) each month for eighteen (18) months, due on or before the first day of each given month, with the first such payment due on or before May 1, 2014, and the last such payment due on or before October 1, 2015;

1.8 Payments shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number: [REDACTED] Routing Number: [REDACTED] Reference: Security Mortgage Settlement. Should the due date for any payment set forth above fall on a weekend or holiday, the payment shall be due no later than the next business day.

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1.9 Payments of the Settlement Funds and, if applicable, the Release Settlement Payment are interest free if timely paid. If SECURITY defaults on any of its payment obligations under this Settlement Agreement and thereafter fails to cure the default as provided in Section 1.15 below, thereafter an additional 10% interest will begin to accrue and be added to and due on any unpaid sums.

1.10 **Financial Documents.** SECURITY has provided to the FDIC-R a current balance sheet and income statement (Financial Documents) for November 2010 through July 31, 2011. SECURITY represents and warrants that all of the information set forth in SECURITY's Financial Documents provided, including the information in the Financial Documents and Tax Returns provided for previous years are true and correct. If the information in the Financial Documents or Tax Returns is not true and correct and/or if SECURITY otherwise breaches this representation and warranty, then

the FDIC-R is free to pursue any claims against SECURITY, including (but not limited to) the claims set forth in the Action, this Settlement Agreement, and any other claims arising out of the LOANS. Should the FDIC-R pursue any claims against SECURITY, the payments made by SECURITY under this Settlement Agreement will be offset against any future obligation or judgment.

1.11 Ownership of Claims. The FDIC-R represents and warrants that none of the loans identified in the Action have been sold or otherwise transferred to a collateralized loan pool or other third party with the exception of IndyMac Federal Bank, OneWest, or one of their affiliates. The FDIC-R further represents and warrants that it has not assigned any rights it may have or may have had with respect to repurchase and indemnification rights associated with the LOANS, to any other person or entity, including, without limitation, IndyMac Federal Bank, OneWest Bank, or any of their affiliates. This representation and warranty is a material inducement for SECURITY entering into this Settlement Agreement and shall survive the execution and delivery of the Settlement Agreement. Should a claim (1) be asserted against Security based on a claim of ownership of one of the loans identified in the Action or (2) be made by IndyMac Federal Bank, FSB, OneWest Bank or any of their affiliates against SECURITY with respect to repurchase and indemnification rights associated with the LOANS, SECURITY shall notify the FDIC-R of such claim, in writing, in the manner set forth in Paragraph 1.7 above. Upon proper notification of such claim by SECURITY to the FDIC-R, SECURITY shall be relieved of any further payment obligation under this Settlement Agreement until such claim is withdrawn against SECURITY. Once such claim has been withdrawn against SECURITY, SECURITY shall resume all payment obligations under this Settlement Agreement when due, including payment of any amount then due under the Payment Schedule set forth in Paragraph 1.8 above no later than sixty (60) days after SECURITY's receipt of written notice to the persons and in the manner identified in Paragraph 1.14 that such claim has been withdrawn.

1.12 Dismissal of Actions. The FDIC-R shall cause its attorneys, with cooperation as necessary from SECURITY's attorneys, to execute and file requests for dismissal of the Action, without prejudice. Dismissal of the Action without prejudice is a material term of the settlement.

1.13 Notice of Default. In the event SECURITY defaults by failing to make a timely payment to the FDIC-R as set forth in this Settlement Agreement, the FDIC-R shall give written notice of the default to SECURITY via mail, facsimile or electronic mail to: John Tate, Esq., Davis Wright Tremaine, LLP, 865 S. Figueroa St., Suite 2400, Los Angeles, CA 90017, T: [redacted] F: [redacted] email: [redacted]

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1.14 Time to Cure. SECURITY shall have ten (10) business days from receipt of the notice of default to cure the default. If SECURITY fails to cure a default on the payment of the Settlement Funds within ten (10) business days, the FDIC-R shall retain all consideration it received, and it may, in its sole discretion, pursue all legal and non-legal remedies to recover any portions of the Settlement Funds that have not been paid, and/or is free to pursue any claims against SECURITY, including (but not limited to) the claims set forth in the Action, this Settlement Agreement, and any other claims arising out of the LOANS. If SECURITY fails to cure a default on the payment of the Release Settlement Payment within ten (10) days, the FDIC-R shall retain all consideration it received, and it may, in its sole discretion, pursue all legal and non-legal remedies to recover any portions of the Release Settlement Payment that have not been paid. Should the FDIC-R pursue any claims against SECURITY, the payments made by SECURITY under this Settlement Agreement will be offset against any future obligation or judgment.

1.15 Stay and Tolling Agreement. The parties agree that all claims arising from the LOANS between the FDIC-R and SECURITY (including but not limited to the loans identified in the Action, and all rights and defenses) are stayed until December 1, 2013. However, in the event SECURITY breaches this Settlement Agreement in any manner prior to April 1, 2004, FDIC-R has the option to terminate the stay following such breach and immediately pursue any and all claims arising from the LOANS or under this Settlement Agreement. The parties further agree that the applicable statute of limitations for any such claims shall be tolled from the Effective Date of this Settlement Agreement through December 15, 2013.

1.16 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 requests that the court retain jurisdiction over the Parties to enforce this Settlement Agreement.

1.17 The Parties shall bear their own costs and attorneys' fees incurred in the Actions.

1.18 Conditional Release.

a. The FDIC-R's release of any claims arising out of the LOANS is conditioned upon SECURITY's (1) timely exercise of the Release Option and (2) the FDIC-R's receipt of the Settlement Funds. If the conditions herein for a release are met, FDIC-R agrees that the release set forth in Sections 1.20, 1.21, 1.22, 1.23, and 1.24 shall become effective immediately without further action by either party.

b. If the conditions herein for a Release Option are met, then SECURITY agrees that the release set forth in Sections 1.20, 1.21, 1.22, 1.23, and 1.24 shall become effective immediately without further action by either party.

1.19 Unknown Claims. Except for the obligations arising under this Settlement Agreement, each Party acknowledges that 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) which each Party may have against the other Party arising from the obligation to repurchase and/or indemnify for losses associated with the LOANS. Each Party hereby expressly waives application of California Civil Code §1542 and any other similar statute or rule with respect to the LOANS.

1.20 Subject to the terms and conditions set forth in Paragraphs 1.7 and 1.19, above, 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.”

1.21 Subject to the terms and conditions set forth in Paragraphs 1.7 and 1.19, above, the Parties mutually fully, finally, and forever release and discharge each other, and any and all of their respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, 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, 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, and/or employees 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, the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted

relating to the obligation to repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS.

1.22 IndyMac Only. Notwithstanding any other provision in 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 claims against SECURITY arising out of existing or failed financial institutions other than IndyMac Bank.

1.23 FDIC-R Only. Notwithstanding any other provision in 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 for any federal judicial district. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

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

1.25 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.

1.26 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.

1.27 Governing Law. The Parties agree to submit to the Courts of the United States of American, Central District of 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.

1.28 Attorneys' Fees. 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.

1.29 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.

1.30 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.

1.31 Review and Understanding. The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each Party 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.

1.32 Number. Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

1.33 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 shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

1.34 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.

1.35 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.

1.36 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.

1.37 Entire Agreement. The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties with respect to the repurchase and/or indemnification obligations in connection with the LOANS, 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.

For: **Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B.**

For: **Security Mortgage Funding Corporation** (b)

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By

[Redacted Signature Box]

By

[Redacted Signature Box]

Name: Richard S. Gill

Name: LISEN NGUYEN

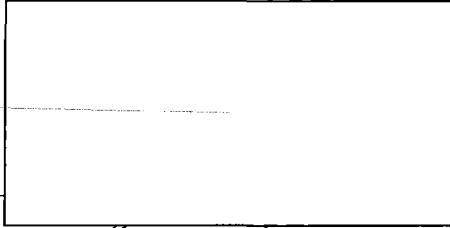
Title: Counsel

Title: PRESIDENT

Date: 1-9-12

Date: JAN 10, 2012

(b)(6)



By: _____

Name: Maurice Wainer

Title: Counsel for Plaintiff, Federal
Deposit Insurance Corporation as
Receiver for IndyMac Bank, F.S.B.

Date: _____

~~Name: John R. Tate~~

Title: Counsel for Defendant Security
Mortgage Funding Corporation

Date: Jan 10, 2012