

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and between Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB ("FDIC"), Fidelity National Title Insurance Corporation ("Fidelity"), and Brendan Gowing, on behalf of himself and Brendan Gowing, Inc. (both referred to as "Gowing"), (each a "Party"; collectively, the "Parties") effective as of the date all Parties have executed the Agreement.

### WITNESSETH:

**WHEREAS**, IndyMac Bank, F.S.B. ("IndyMac") filed an action against Fidelity and others in the 129th Judicial District Court, Cause No. 2008-22322; *Federal Deposit Insurance Corporation v. First American Title Insurance Company, et al.*, (the "Lawsuit") and Fidelity filed a third-party petition against Gowing in the Lawsuit; and

**WHEREAS**, Gowing closed mortgage loans funded by IndyMac and secured by properties located in (1) 2400 McCue Condominiums, 2400 McCue Road, Houston, Texas ("2400 McCue"); (2) Braeswood Park Condominiums, 2255 Braeswood Park Drive, Houston, Texas ("2255 Braeswood Park"); and (3) Reata at River Oaks Condominiums, 3231 Allen Parkway, Houston, Texas ("Reata at River Oaks") (the "Loans"); and

**WHEREAS**, IndyMac has asserted claims, which were continued by FDIC, against Fidelity, and others, in the Lawsuit arising out of the Loans; and

**WHEREAS**, IndyMac sold some of the Loans to certain investors in the secondary market ("Investors"); and

**WHEREAS**, Fidelity and Gowing, including Brendan Gowing, Inc., denied the allegations made against them in the Lawsuit; and

**WHEREAS**, the Parties, in order to avoid the expense, inconvenience, and uncertainties of litigation, and without the admission of liability on the part of any Party, the same being expressly denied, desire to settle and resolve certain claims that are the subject of or could have been asserted in the Lawsuit.

**NOW, THEREFORE**, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, it is hereby **AGREED** as follows:

1. **Payment**. Gowing, on behalf of himself, Brendan Gowing, Inc., and Fidelity, shall pay to FDIC the total sum of FIFTY THOUSAND and NO/100 DOLLARS (\$50,000.00) (the "Settlement Amount"). As requested by FDIC, the payment shall each be made by check payable to "RJ Landau Partners PLLC, as Attorneys for Federal Deposit Insurance Corporation," Tax I.D. #  (the "Settlement Check"). The Settlement Amount is accepted by FDIC in full settlement of all claims against Fidelity and Gowing, including Brendan Gowing, Inc., regarding the Loans. Fidelity shall deliver the Settlement Check to FDIC in care of its attorney, Richard Landau, RJ Landau Partners PLLC, 5340 Plymouth Road, Suite 200, Ann Arbor, Michigan 48105.

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2. **Release by FDIC**. FDIC, for IndyMac, itself, its legal representatives, attorneys, agents, successors, and assigns, RELEASES, ACQUITS, AND FOREVER DISCHARGES Fidelity and Gowing, including Brendan Gowing, Inc., and their past and

present parent companies, subsidiaries, affiliates, predecessors, successors, reinsurers, shareholders, officers, directors, employees, agents, representatives, attorneys, consultants; and assigns from any and all claims, rights, demands, debts, liabilities, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature whatsoever arising out of or relating to (1) the Loans; (2) any closing protection letters or mortgagee policies of title insurance issued in connection with the Loans; (3) any asserted or unasserted claims or causes of action in the Lawsuit pertaining to the Loans, including, but not limited to, claims in contract or in tort, under statutory or common law, for actual, multiple, or punitive damages, interest, attorneys' fees, or court costs; and (4) any act, transaction, or occurrence prior to the date of this Agreement pertaining to the Loans.

3. **Release Between Fidelity and Gowing.** Fidelity and Gowing, including Brendan Gowing, Inc., for themselves, their legal representatives, attorneys, agents, successors, and assigns RELEASE, ACQUIT, AND FOREVER DISCHARGE each other, and their past and present parent companies, subsidiaries, affiliates, predecessors, successors, reinsurers, shareholders, officers, directors, employees, agents, representatives, attorneys, consultants, and assigns from any and all claims, rights, demands, debts, liabilities, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature whatsoever arising out of or relating to (1) the Loans; (2) any and all asserted or unasserted claims or causes of action in the Lawsuit including, but not limited to, claims in contract or in tort, under statutory or common law, for actual, multiple, or punitive

damages, interest, attorneys' fees, or court costs; and (3) all claims released by FDIC in this Agreement. Fidelity and Gowing, including Brendan Gowing, Inc., do not release any claim in connection with any other transactions.

4. **Dismissal.** The Parties shall dismiss their claims in the Lawsuit with prejudice with each Party to bear its own costs and attorneys' fees.

5. **Warranty of Capacity to Execute Agreement.** FDIC represents and warrants that no other person or entity, including the Investors, has an ownership interest in the claims, demands, obligations or causes of action released in this Agreement, that FDIC has the sole right and exclusive authority to release all claims in connection with the Loans and to execute this Agreement and receive the sums specified in it; and that FDIC has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

6. **Careful Review and Understanding of Agreement.** Each Party represents that it has carefully read this Agreement and understands its terms and conditions, and that it has had ample opportunity to consult with legal counsel of its choice and has not relied on any representations or statements of any other Party or any other Party's counsel.

7. **Binding Effect.** It is understood and agreed that this Agreement shall be binding upon and inure to the benefit of the Parties, their legal representatives, attorneys, agents, and assigns except as otherwise set forth herein.

8. **No Admission.** It is fully understood by FDIC that this Agreement constitutes a settlement of disputed claims in order to avoid litigation and expense, and

that nothing herein shall constitute or imply an admission of liability of any kind or character by Fidelity, Gowing, or Brendan Gowing, Inc., which liability is expressly denied.

9. **Severability.** If any portion of this Agreement is held by a court of competent jurisdiction to conflict with any federal, state, or local law, and, as a result, such portion is declared to be invalid and of no force and effect in such jurisdiction, all remaining provisions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion had not been included herein.

10. **Choice of Law.** The Parties agree that this Agreement shall be construed and enforced under the laws of the State of Texas.

11. **No Other Agreements.** It is understood and agreed that this Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements, arrangements, or understandings between them. This Agreement cannot be changed or terminated orally. All representations and promises made by any Party to another, whether in writing or orally, are understood by the Parties to be merged into this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date acknowledged below.

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC FEDERAL BANK, FSB

(b)(6)

By:



Its:

Counsel

STATE OF CALIFORNIA

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COUNTY OF ORANGE

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BEFORE ME, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_ by \_\_\_\_\_, its \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_ ~~2009~~ 2010.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary

\_\_\_\_\_  
My Commission Expires:

\* See Attached Document

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On 2/8/2010 before me, Ariana L. Rambuyan  
(Here insert name and title of the officer)

personally appeared Jack Stuart Duncan

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies); and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

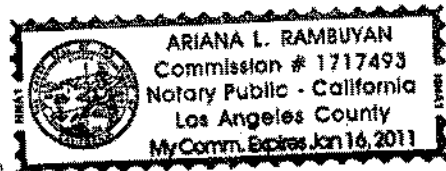
WITNESS my hand and official seal

(b)(6)

Signature of Notary Public

(b)(6)

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Settlement Agreement

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 6 Document Date 2/8/10

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

Counsel  
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ - is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

FIDELITY NATIONAL TITLE INSURANCE  
COMPANY (FNTIC)

(b)(6)

By:

[Redacted Signature Box]

Its: SR VICE PRESIDENT

STATE OF IL

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COUNTY OF COOK

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BEFORE ME, the undersigned Notary Public, on this day personally appeared FNTIC by ELIZABETH MCCORMICK, its SR. V. P., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19 day of FEB. 2010 ~~2009~~.

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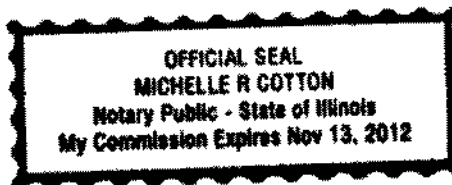
[Redacted Notary Signature Box]

Notary Public, State of \_\_\_\_\_

Printed Name of Notary

My Commission Expires: \_\_\_\_\_

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BRENDAN GOWING AND BRENDAN GOWING, INC.

1/5/10

By:  (b)(6)  
Brendan Gowing, individually and on behalf of Brendan Gowing, Inc.

STATE OF Texas §  
COUNTY OF Dive Oak §  
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BEFORE ME, the undersigned Notary Public, on this day personally appeared Brendan Gowing, the duly authorized agent of Brendan Gowing, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 5<sup>th</sup> day of January 2010 AK

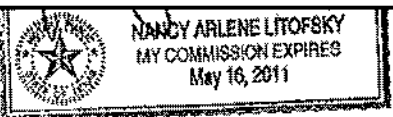
(b)(6) \_\_\_\_\_

Notary Public, State of Texas (b)(6)

Nancy Arlene Litofsky  
Printed Name of Notary

(b)(6) \_\_\_\_\_

My Commission Expires: May 16, 2011



(b)(6)

January 5, 2010