

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is entered into and made effective as of the 15th day of August, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation ("FDIC") and Residential Mortgage Capital, a California corporation ("RMC"). The FDIC and RMC may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

1.1 At times prior to the Effective Date, RMC brokered, processed, sold and/or delivered mortgage loans ("Loans"), sometimes pursuant to written agreements, to or in connection with various FDIC-insured banks and savings institutions which were closed and placed under Receivership with the FDIC on or before August 15, 2010 ("Closed Institutions"), including IndyMac Bank, FSB ("IndyMac"), Downey Savings and Loan Association, FA ("Downey Savings") and Washington Mutual Bank, NA ("WaMu").

1.2 A dispute has arisen between the Parties with respect to outstanding demands for repurchase and/or indemnity made by Closed Institutions. Specifically, IndyMac and Downey Savings made demands to RMC for repurchase and/or indemnification based upon a finding of a breach of the representations and warranties as set forth in their respective written agreements, or otherwise in connection with Loans brokered, processed, sold and/or delivered between RMC and the Closed Institutions. Repurchase, indemnification, breach of representation or warranty and/or negligence claims of the FDIC related to Loans brokered, processed, sold and/or delivered between RMC and the Closed Institutions, including such claims of IndyMac and Downey Savings, are referred to in this Settlement Agreement as the "RMC Claims".

1.3 The claims asserted by the FDIC include claims that employees, officers directors and shareholders of RMC and/or employees, officers, directors and shareholders of Pinnacle Capital Mortgage Corporation, or others acting in connection with them, are obligated to the FDIC for claims arising out of, related to, or in connection with acts or omissions performed or not performed at any time prior to the Effective Date in connection with RMC, including conduct related to distributions authorized or paid to them or others, preparation or approval of financial statements, and other decisions made by them or actions or omissions by them in connection with RMC only, (whether in their capacities as employees, officers, directors, shareholders or otherwise, collectively, the "Director Claims").

1.4 Without admitting liability, the Parties desire to and have agreed to settle any and all FDIC claims arising out of, related to, or in connection with (i) the Director Claims and (ii) the RMC Claims (all such Director Claims and RMC Claims collectively, the "Claims") 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:

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

1.6 Payment of the Settlement Agreement. RMC shall pay or cause the payment of the total sum of \$913,000 (Nine Hundred Thirteen Thousand Dollars) (the "Settlement Funds") by no later than September 3, 2010. Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account." Account Number: Routing Number:
Reference: RMC Settlement.

(b)(4)

(b)(4)

RELEASE

1.7 Unknown Claims. 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 that Party may have against the other Party arising out of, related to, or in connection with the Claims, including 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 of any jurisdiction.

1.8 Each Party certifies that it has read and understood the following provision 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."

1.9 Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of, related to, or in connection with the Claims, including 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 Claims, including the obligation to the repurchase and/or indemnify for losses associated with the Loans, or any facts or circumstances related to the Claims, including the obligation to repurchase and/or indemnify for losses associated with the Loans, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each acknowledges that it consciously intends these consequences even as to claims for

damages that may exist as of the date of this release 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.

1.10 The FDIC hereby fully, finally, and forever releases and discharges RMC and any and all of its respective past, present and future employees, officers, directors, shareholders, members, partners, joint venturers, independent contractors, attorneys, accountants, insurers, investors and their respective predecessors, successors, assigns and representatives (including Thomas Halbach, James Chapman, David Martinez, Mary Alger, Robert Boliard, Boliard Takaguchi & McBride, LLP, and their respective past present and future employees, officers, directors, shareholders, members, partners, joint venturers, independent contractors, attorneys, accountants, insurers, investors and their respective predecessors, successors and assigns), Pinnacle Capital Mortgage Corporation and its employees, officers, directors and shareholders, 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, in connection with or resulting from, or relating to, in any manner, the Claims, including 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 Claims, including the obligation to repurchase and/or indemnify for losses associated with the Loans, or any facts or circumstances related to the Claims, including the obligation to repurchase and/or indemnify for losses associated with the Loans.

1.11 Notwithstanding any other provision in 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 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 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.

1.12 RMC hereby fully, finally, and forever releases and discharges the FDIC, and any and all of its respective past, present, and future 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, in connection with, or relating to, in any manner, the obligations of the FDIC to repurchase and/or indemnify for losses associated with the Loans or the Claims, including 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.

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

1.14 No Admission. It is agreed that no Party hereto, nor any of the persons (including entities) released by any Party under this Agreement, admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims. This Settlement Agreement shall not be construed as any admission of liability or wrongdoing of any nature, nor offered as evidence of such an admission in any court or legal proceeding.

1.15 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.

1.16 Governing Law. The Parties agree to submit to the Courts of the 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 by the internal law of California without regard to conflict of law principles.

1.17 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.

1.18 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.

1.19 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, as well as the persons (including entities) released by any Party under this Agreement.

1.20 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.

1.21 Approval and Authority. The Parties represent and warrant to one another that the approval of this Settlement Agreement has been undertaken in a proper and lawful manner and that they have the requisite power and authority to enter into and to perform their obligations under this Settlement Agreement. The FDIC represents and warrants for the benefit of RMC and the persons released by the FDIC under this Agreement that it is signing this Agreement in its capacity as receiver of any and all Closed Institutions.

1.22 Number. Whenever applicable, the singular shall include the plural, and the plural shall include the singular. Terms of inclusion are not limiting, so that "including" means including but not limited to.

1.23 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.

1.24 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.

1.25 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.

1.26 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.

1.27 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.

For: The Federal Deposit Insurance Corporation

**For: Residential Mortgage Capital,
A California corporation**

By:

By:

Name: Richard S. Wolf

Name: TIMOTHY J. JORSTAD

Title: Counsel

Title: DIRECTOR

Date: 8-27-2010

Date: 8/21/10

By: _____

Name: _____

Title: _____

Date: _____

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For: The Federal Deposit Insurance Corporation

**For: Residential Mortgage Capital,
A California corporation**

By:

By:

Name: Richard S. Coil

Name: LARRY KLAUSTERMEIER

Title: Counsel

Title: DIRECTOR & AUTHORIZED REPRESENTATIVE

Date: 8-27-2010

Date: August 31, 2010

By: _____

Name: _____

Title: _____

Date: _____