

AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE (the “Agreement”) is made and entered into by and between Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, FSB (“FDIC” or “Plaintiff”), Mac5 Mortgage, Inc. (“Mac5”) and Capital Title LLC (“Capital Title”). Mac5 and Capital Title may be referred to collectively as “Defendants” and the Plaintiff and Defendants may be referred to herein as the “Parties.”

RECITALS

This agreement is made with reference to the following facts:

A. On or about August 5, 2010, Plaintiff filed a complaint for money damages against Mac5, Capital Title and others (the “Complaint”), alleging causes of action against both Mac5 and Capital Title for breach of contract, negligence and negligent misrepresentation, and a separate cause of action against Capital Title for breach of fiduciary duty, in connection with two mortgage loans funded by IndyMac Bank, F.S.B. (“IndyMac”) to a borrower named [REDACTED] [REDACTED] [REDACTED] totaling \$1,170,000, secured by a residential property located at [REDACTED] [REDACTED] Colorado [REDACTED] (the “Loans”). Plaintiff represents and warrants that it, and not One West Bank, FSB, has the sole right to bring this action. The action the Complaint initiated is entitled *Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB v. Mac5 Mortgage, Inc. et al.*, is currently pending in the United States District Court for the District of Colorado, Case No. 10-cv-01870 (CMA)(MEH) (the “Action”).

B. On or about October 1, 2010, Capital Title answered the Complaint, generally denying its allegations and asserting affirmative defenses.

C. On or about October 4, 2010, Mac5 answered the Complaint, generally denying its allegations and asserting affirmative defenses.

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D. Defendants have defended and denied, and continue to deny, the validity of Plaintiff's claims asserted in the Complaint.

E. The Parties deem it in their best interests to enter into this agreement to avoid the uncertainty, trouble, and expense of further litigation. By this agreement, the Parties intend to memorialize the terms of their compromise and settlement of the Action.

AGREEMENT AND MUTUAL RELEASE

NOW, THEREFORE, in consideration of the undertakings contained in this agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble, Recitals and Exhibits. The foregoing preamble and recitals are true and correct and are integral parts of this agreement.

2. Settlement Payment by Mac5 to Plaintiff. No later than thirty (30) business days following full execution of this Agreement, Defendant Mac5 shall pay Plaintiff the amount of One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00). This settlement payment shall be made by wiring the funds to "Mortgage Recovery Law Group Client Trust Account,"

[redacted] [redacted] Reference: Mac5 Escrow Settlement. The Parties agree that timely receipt of the Settlement Payment is an essential term of this agreement, and a condition to the effectiveness of this agreement.

3. Settlement Payment by Capital Title to Plaintiff. No later than thirty (30) business days following full execution of this Agreement, Defendant Capital Title shall pay Plaintiff the amount of One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00). This settlement payment shall be made by wiring the funds to "Mortgage Recovery Law Group Client

Trust Account," [redacted] [redacted]

Reference: Capital Title Escrow Settlement. The Parties agree that timely receipt of the settlement payment is an essential term of this agreement, and a condition to the effectiveness of this agreement.

4. Dismissal of the Action. Together with the execution of this agreement, counsel for Plaintiff and Defendants shall execute a Stipulation of Dismissal of the Action, with prejudice. Upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, counsel for Plaintiff shall file the executed Stipulation of Dismissal with the Court.

5. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this agreement to the fullest extent permitted by law.

6. Release by Plaintiff. The FDIC hereby releases and forever discharges Mac5 and its current and former officers, directors, employees, agents, sureties, bonding companies, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of the claims or causes of action set forth in the Action or the facts, occurrences and transactions alleged therein, the Loans, and the Properties, except as expressly reserved in Paragraph 7, below.

The FDIC hereby releases and forever discharges Capital Title and its current and former officers, directors, employees, agents, sureties, bonding companies, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns and

affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of the claims or causes of action set forth in the Action or the facts, occurrences and transactions alleged therein, the Loans, and the Properties, except as expressly reserved in Paragraph 7, below.

7. Express Reservations from Release by Plaintiff. Notwithstanding any other provision contained herein, by this agreement, Plaintiff does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed any claims brought by the FDIC as receiver on behalf of any other failed institution or governmental entity, or any claims arising from the closing of the Loans against any other transaction participant concerning the

Loans, including, but not limited to, [REDACTED]

[REDACTED] This agreement does not waive or release any claim Plaintiff may have relating to or arising from any loan other than the Loans at issue in the Action. In addition, this agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office, or any other federal department or agency, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq*

8. No Admission of Liability. Plaintiff acknowledges that this agreement does not constitute an admission by Defendants as to the merits of any claim that the FDIC or its predecessors in interest, including IndyMac, has asserted, or could have asserted, in the Action and that Defendants have denied and continue to deny that Defendants have any liability to

Plaintiff as alleged in the Action. Likewise, Defendants acknowledge that this agreement does not constitute an admission by Plaintiff that any asserted claim is or was in any way lacking in merit, and Defendants also acknowledge that this agreement does not constitute an admission by Plaintiff as to the merits of any claim that Defendants have asserted, or could have asserted, in the Action. Nevertheless, Plaintiff and Defendants have concluded that continued litigation would be expensive and protracted and that it is desirable that the Action be settled fully and finally as between Plaintiff and Defendants in the manner and upon the terms and conditions set forth in this agreement.

9. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. Plaintiff and Defendants have received independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement and of giving the releases provided herein.
- b. In connection with the execution of this Agreement and the making of the settlement provided for herein, no Party to this Agreement has relied upon any statement, representation or promise of any other Party not expressly contained herein.
- c. This Agreement is fully integrated and contains the entire agreement of the Parties hereto. There are no agreements or understandings between the Parties hereto relating to the matters and releases referred to in this Agreement other than as set forth in this Agreement, and this Agreement supersedes and replaces any and all prior negotiations and agreements between the Parties hereto, whether written or oral.

- d. Plaintiff and Defendants have made such investigation of the facts pertaining to the releases contained herein as they deem necessary.
- e. The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the role of the Party in drafting and preparation of the Agreement shall not be referred to in order to construe the Agreement against that Party, and that canon of contractual interpretation shall not be applied.
- f. This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This Agreement is signed freely by each Party executing it.
- g. The Parties have not assigned or transferred any of their claims being released herein.
- h. Plaintiff warrants and represents that the FDIC, as receiver for IndyMac Bank, FSB is the only entity with the legal right to bring this lawsuit

10. Consideration. The consideration received in connection with this Agreement is fair, adequate and substantial and consists only of the terms set forth in this Agreement.

11. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the Parties to be charged with such modification.

12. Agreement Binding on Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective officers, directors, joint venturers, partners, employees, agents, servants, heirs, administrators, executors,

successors, representatives and assigns.

13. Applicable Law. This Agreement has been negotiated and exchanged in the State of Colorado. As such, this Agreement and all matters relating thereto shall be governed by the laws of the State of Colorado without regard to its principles of conflicts of law. In addition, in the event of any disputes arising between the Parties out of this Agreement, the Parties agree that the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the District of Colorado.

14. Execution and Delivery Required – Effective Date. This instrument shall not be considered to be the Agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the “Effective Date”). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the Agreement and shall become a binding and enforceable contract.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. Signatures on this Agreement, or any counterpart of this Agreement, transmitted by facsimile machine or electronic mail in pdf format shall have the same force and effect as original signatures.

16. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa.

17. Severability. In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect.

18. Warranty of Authority. Each Party or attorney whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed and that he or she is acting in the scope of such agency and authority. Each Party specifically represents and warrants that no signatures other than those made on this Agreement are necessary to bind the Parties to all of the obligations imposed by the Agreement.

19. Attorneys' Fees and Costs. Plaintiff and Defendants each agree to pay their own costs, attorneys' fees and expenses incurred in connection with the Action.

20. Captions and Headings. The captions, paragraph numbers and paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this agreement, nor in any way affect this Agreement.

21. Notices. Any notice required under this Agreement shall be in writing and shall be sent via both e-mail and either by (i) hand delivery or certified or registered mail, postage prepaid, with return receipt requested, or (ii) fax, with a conformed copy by US Mail, postage prepaid, and with such writing to be addressed to the Parties as follows:

| Person To Receive Notice | Notification Information |
|---------------------------------|---|
| Defendant Mac5: | Brad Wyatt 225 Union Blvd, Ste 350 Lakewood, Colorado 80228 Telephone: (720) 407-6338 Fax: (720) 407-6343 |

| Person To Receive Notice | Notification Information |
|--------------------------|--|
| With a copy to: | John Keen, Esq. Gordon & Rees, LLP 555 17 th Street, Ste 3400 Denver, Colorado 80202 Telephone: (303) 534-5160 Fax: (303) 534-5161 [Redacted] |
| Defendant Capital Title: | Joel Shallow 9436 Pinyon Trail Lone Tree, Colorado 80124 [Redacted] |
| With a copy to: | Frederick J. Skillern Montgomery Little & Soran, P.C. 5445 DTC Parkway, Suite 800 Greenwood Village, Colorado 80111 Phone: (303) 773-8100 Fax: (303) 220-0412 [Redacted] |
| Plaintiff: | Paul A. Levin, Esq. Mortgage Recovery Law Group 700 N. Brand Blvd., Suite 830 Glendale, CA 92103 Tel. No.: (818) 630-7900 Fax No.: (818) 630-7920 Email: [Redacted] |
| With a copy to: | Stephen M. DeHoff, Esq. Friesen Lamb, LLP 1675 Larimer Street, Suite 675 Denver, Colorado 80465 Tel. No.: (720) 904-6000 Fax No.: (720) 904-6006 Email: [Redacted] |

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The above addresses may be changed by any Party as to such Party by providing the other Parties notice of any address change in the same manner as is provided above, and which change shall be effective as to any Party upon receipt of written notice from the other Party. In the event that written notice, demand, or request is made as provided in this paragraph, that writing shall

be deemed to have been received by the Party to whom it was addressed on the earliest of (i) the date that the notice was hand delivered, (ii) the date the notice was sent via facsimile (so long as a facsimile transmittal confirmation sheet is contemporaneously generated by the facsimile machine from which the transmission occurred), or (iii) three days after properly addressed notice was deposited with the U.S. Postal Service, applicable postage prepaid.

22. Remedies. All Parties shall be entitled to all remedies available at law or in equity for any violation of this Agreement, including, but not limited to the remedy of specific performance.

23. Further Assurances. The Parties shall execute such other documents as may be reasonably necessary to carry out the terms and conditions of this Agreement.

24. Survival. All warranties, representations, covenants, and agreements set forth herein shall survive the Effective Date.

25. Compliance Dates. In the event that any date specified in this Agreement shall be on a Saturday, Sunday, or a nationally-declared holiday, then the date so specified shall be deemed to be the next business day following such date, and compliance by such business day hereunder shall not be deemed a default by either of the Parties under this Agreement.

26. Waiver. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.

27. Jury Trial Waiver. The Parties hereby waive any and all rights that they may otherwise have to a trial by jury in any action, proceeding, claim, counterclaim or third party complaint, whether in contract or tort, at law or in equity, arising out of or in any way related to this Agreement.

28. Entire Agreement. This Agreement contains the complete agreement of the Parties concerning the subjects of this agreement and supersedes all prior drafts of this Agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning that subject of this agreement, whether in connection with the negotiation of this agreement or otherwise. This agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language ultimately agreed to in this Agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this Agreement, the fact that other words may have been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this Agreement. This Agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior

promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

(b)(6)

Dated: April 29, 2011

By: 

Its: Counsel

MAC5 MORTGAGE, INC.

Dated: March ____, 2011

By: _____

Its: _____

CAPITAL TITLE, LLC

Dated: March ____, 2011

By: _____

Its: _____

APPROVED AS TO FORM:

(b)(6)

MORTGAGE RECOVERY LAW GROUP, LLP

Dated: May 2, 2011

By: 

promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

Dated: March ____, 2011

By: _____

Its: _____

MAC5 MORTGAGE, INC.

Dated: March ____, 2011

By: _____

Its: _____

CAPITAL TITLE, LLC

Dated: March 26th, 2011

By:  _____

Its: *owner* _____

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APPROVED AS TO FORM:

MORTGAGE RECOVERY LAW GROUP, LLP

Dated: March ____, 2011

By: _____

promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.


Dated: March ____, 2011

By: _____

Its: _____

MAC5 MORTGAGE, INC.

APR
Dated: March 27, 2011 *B*

By:  _____

Its: BRAD WYATT CFO/SEC

(b)(6)

CAPITAL TITLE, LLC

Dated: March ____, 2011

By: _____

Its: _____

APPROVED AS TO FORM:

MORTGAGE RECOVERY LAW GROUP, LLP

Dated: March ____, 2011

By: _____

Paul Levin
Attorney for Plaintiff Federal Deposit
Insurance Corporation, as Receiver for
IndyMac Bank, F.S.B.

GORDON & REES, LLP

(b)(6)

Dated: March ____, 2011

By:

[Redacted signature]

John Keen
Attorney for Defendant Mac5 Mortgage, Inc.

(b)(6)

MONTGOMERY LITTLE & SORAN, P.C.

Dated: ~~March~~ 2011

April 3, 2013

By:

[Redacted signature]

Frederick J. Skillern
Attorney for Defendant Capital Title LLC