SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for BankUnited, F.S.B. ("FDIC-R") and Pacific Mortgage Consultants, Inc. ("Defendant") (individually, the FDIC-R and Defendant may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to May 21, 2009, BankUnited, F.S.B. ("Bank") was a depository institution organized and existing under the laws of the United States.

On May 21, 2009, the Office of Thrift Supervision closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were certain of the Bank's claims, demands, and causes of action against mortgage brokers and loan sellers.

Defendant and the Bank entered into a written agreement (the "Contract"). Pursuant to the terms of the Contract, Defendant originated, sold, and/or assigned to the Bank various residential mortgage loans.

On May 18, 2015, the FDIC-R filed a complaint for money damages against Defendant. This claim for damages is now pending in the United States District Court for the Northern District of California in *Federal Deposit Insurance Corporation as Receiver for BankUnited, F.S.B. v. Pacific Mortgage Consultants, Inc.*, Case Number 1:15-cv-02236 ("Action"). Defendant has denied liability in the Action.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, the Defendant agrees to pay the FDIC-R the sum of one hundred and thirty five thousand dollars ($135,000) ("the Settlement Payment"), as follows:

1. Seventy five thousand dollars ($75,000) to be paid on or before August 31, 2016;
2. Sixty thousand dollars ($60,000) to be paid in ten monthly installments of six thousand dollars each on the following dates: September 22, 2016, October 22, 2016, November 22, 2016, December 22, 2016, January 22, 2017, February 22, 2017, March 22, 2017, April 22, 2017, May 22,2017, June 22, 2017.

If the FDIC-R does not receive any of the installments of the Settlement Payment on or before the dates determined by subsections I.A.1 and 1.A.2 above, then the FDIC-R, in its sole discretion, may extend the period of time for any of the installments of the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2);

B. Defendant shall deliver the installments of the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Defendant or by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R and made payable to "Mortgage Recovery Law Group, LLP Trust Account."

C. In the event that any of the installments of the Settlement Payment are not delivered to the FDIC-R (or its counsel) by the due dates set forth in Section I.A, above, Defendant shall have the opportunity to cure the missed payment if, within ten (10) days of the date written notice of non-payment is sent by the FDIC-R to the Defendant, which notice is to be

sent by the FDIC-R to Defendant's counsel via U.S. Mail and electronic mail, the Defendant makes the full missed payment ("cure period").

D. In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) as required by subsection A and is not satisfied after proper notice and the expiration of the cure period provided in subsection C, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date that payment was required by subsection A until the date of payment.

E. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsections A and C above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Enforce this Agreement, in which event the Defendant agrees to jurisdiction in United States District Court in the Northern District of California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement, less credit for any payments of the Settlement Payment already made; or

2. Terminate the Agreement, move to vacate any dismissal order, to which the Defendant agrees to consent, and re-institute an action on the FDIC-R's claims. Any such action would reference credit for any payments of the Settlement Payment already made. The Defendant further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

3. Enforce the Stipulation for Entry of Judgment. The Parties agree Plaintiff shall be entitled to reinstate the Action for the purpose of moving the Court for the entry of the Stipulation for Entry of Judgment without objection by Defendant to such motion, except as to whether a default has been timely cured in accordance with subsection C above. Plaintiff shall provide Defendant one (1) day (24 hour) notice of its motion for entry of the Stipulation for

Entry of Judgment. Defendant and Plaintiff agree the Court shall retain jurisdiction over the Action and the Parties for the purpose of adjudicating any request by Plaintiff for the entry of the Stipulation for Entry of Judgment and enforcing the related terms and conditions relating thereto as more fully described herein. The amount of any judgment entered would be less credit for any payments of the Settlement Payment already made

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.E.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.E.2 or I.E.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after the full execution of this Agreement by all of the Parties, the Parties agree to execute the Stipulation for Entry of Judgment. If Defendant defaults on any installment payment and fails to cure as provided in Section I, Plaintiff may seek to enforce the Judgment in the United States District Court for the Northern District of California, subject to the terms of this Agreement, the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of California.

Within ten business days after the: (1) full execution of this Agreement and the Stipulation for Entry of Judgment by all of the Parties, and (2) receipt of the initial $75,000 payment towards the Settlement Payment, the FDIC-R shall file a stipulation of dismissal with prejudice in the Action, whereby the Court shall retain jurisdiction to hear and determine all matters related to the action and to enforce this Agreement, executed by the attorneys for all Parties hereto.

SECTION III: Releases

A. <u>The FDIC-R's Releases.</u>

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the

Defendant and its trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to the causes of action alleged in the Action.

B. The Defendant's Release.

Effective simultaneously with the release granted in Section III.A. above, the Defendant, on behalf of itself individually, and its trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the causes of action alleged in the Action.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against the Defendant or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative

enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

SECTION IV: California Civil Code § 1542

Each Party acknowledges that this 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 another Party arising from the Action. Each Party hereby expressly waives application of California Civil Code § 1542 and any other similar statute or rule.

Each Party certifies that it has 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.**

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 the Action, the claims and causes of action that were or could have been

asserted relating to the Action, or any facts or circumstances related to the Action, that Party will not be able to make any claim against the other Party for damages. Furthermore, each Party 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.

SECTION V: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his, her or its counsel.

C. Financial Disclosure Representation. Defendant has submitted financial information to the FDIC-R, including compiled, not audited, balance sheets and income statements, for 2015 and 2016, and herein affirms that its financial information is true and accurate as of the date of this agreement. Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Defendant. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to

the FDIC-R the lesser of (1) the value of Defendant's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against Defendant.

SECTION VI: Reasonable Cooperation

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

SECTION VII: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of California.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

Michael H. Delbick, Esq.
Mortgage Recovery Law Group, LLP
700 North Brand Boulevard, Suite 830
Glendale, California 91203
Telephone: (818) 630-7905
(b)(6) Email: [redacted]

If to the Defendant:

Joshua A. Rosenthal, Esq.
Medlin & Hargrave, PC
Fountaingrove Executive Center
3562 Round Barn Circle, Suite 212
Santa Rosa, CA 95403
Telephone: (707) 570-2200
(b)(6) Email: [redacted]

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

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

Date: 8/30/16

BY: [redacted] (b)(6)

TITLE: Counsel - PLU

PRINT NAME: Michael Jesse Canter

PACIFIC MORTGAGE CONSULTANTS, INC.

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

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

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PACIFIC MORTGAGE CONSULTANTS, INC.

(b)(6)

Date: 2-30-16

BY: [redacted]

TITLE: President

PRINT NAME: Michael O'Reilly