

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the "*Agreement*") is effective as of May 31, 2012, regardless of the date that all parties have executed the *Agreement*, and is entered into by and between Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, F.S.B. ("*FDIC*") and Commonwealth Land Title Insurance Company ("*Commonwealth*") with respect to the claims made by the *FDIC* against *Commonwealth* for breach of contract, breach of fiduciary duty, fraud, and civil conspiracy as described herein (the "*Claim*").

RECITALS

WHEREAS, Washington Mutual Bank, F.S.B. ("*WaMu*") financed a real property purchase transaction for the property known as [redacted] Castle Rock, Colorado (the "*Subject Transaction*");

(b)(4),(b)(6)

WHEREAS, *Commonwealth* performed title, escrow, and closing services in connection with the *Subject Transaction* (the "*Closing Services*");

WHEREAS, *FDIC* has asserted the *Claim* based upon allegations of breach of contract, breach of fiduciary duty, fraud and collusion between *Commonwealth*, [redacted] the (b)(6) borrower in the *Subject Transaction*, a company known as Choice Capital Group, which provided secondary financing in the *Subject Transaction*, and others, to obtain loan funds from *WaMu*;

WHEREAS, *Commonwealth* expressly denies any liability relating to the *Claim* asserted by the *FDIC*; and,

WHEREAS, to avoid any further expense of the claims process, including but not limited to the costs of litigation, the parties, having participated in a voluntary, pre-litigation settlement negotiation, voluntarily enter into this *Agreement*.

In consideration of the above, and for such other good and valuable consideration, the sum and sufficiency of which is hereby acknowledged and based on the mutual promises and conditions contained herein, the parties agree as follows:

1. **Recitals.** The above Recitals are incorporated herein by reference and made a part of this *Agreement*.

2. **Payment to FDIC.** As an essential covenant and condition to this *Agreement*, *Commonwealth* agrees to pay *FDIC* the sum of \$305,000 ("the *Settlement Funds*"),

no later than fifteen (15) days following the execution of this *Agreement* by *FDIC* and *Commonwealth*. The *Settlement Funds* shall be delivered to *FDIC* by direct wire transfer into an account designated by *FDIC* or by certified or cashier's check drawn upon a depository institution acceptable to *FDIC*. The *Settlement Funds* shall be made payable to "Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank, F.S.B.," or in the case of a wire transfer, the foregoing payee information shall be included in the beneficiary description.

In the event that all *Settlement Funds* are not received by the *FDIC* within 15 days of the parties' execution of this *Agreement*, then the *FDIC*, in its sole discretion, shall have the right at any time prior to receipt of all *Settlement Funds* to declare this *Agreement* null and void, shall have the right to extend this *Agreement* for any period of time until it receives all *Settlement Funds*, and/or shall have the right to enforce this *Agreement*, in which event *Commonwealth* agrees to jurisdiction in Federal District Court in and for the District of Colorado, and agrees to

pay all of the *FDIC's* reasonable attorney's fees expended in enforcing the terms of this *Agreement*. Any decision by the *FDIC* to extend the terms of this *Agreement* or to accept a portion of the *Settlement Funds* shall not prejudice its rights to declare this *Agreement* null and void at any time prior to receipt of all *Settlement Funds* or to enforce the terms of this *Agreement*; provided however, that in the event the *FDIC* declares this *Agreement* null and void, the *FDIC* will return all amounts paid to it under this *Agreement*.

3. **Mutual Release.** For and in consideration of the total payment of the *Settlement Funds* by *Commonwealth*, and in consideration of the terms and conditions of this *Agreement*, *FDIC* does absolutely and unconditionally release *Commonwealth*, its officers, directors, shareholders, members, employees, owners, parent companies, agents, affiliates, successors, fiduciaries, and assigns (collectively, the "Commonwealth Released Parties"), jointly and severally, from any and all claims, demands, actions or causes of action, known or unknown, now existing or hereafter acquired, and whether or not asserted in the *Claim*, which *FDIC* had, has, claims to have, or may hereafter acquire against *Commonwealth* arising out of the *Subject Transaction*, the *Closing Services*, and/or the facts and circumstances alleged in the *Claim*.

Notwithstanding any other provision, by this *Agreement*, *FDIC* does not release, and expressly preserves fully (a)(1) any claims or causes of action that do not arise from or relate to the facts and circumstances asserted in the *Claim*, the *Subject Transaction*, and/or the *Closing Services*, or the defense of the same, (2) any person or entity, other than the Commonwealth Released Parties, or (b) any action taken by any other federal agency.

For and in consideration of the terms and conditions of this *Agreement*, *Commonwealth* does absolutely and unconditionally release *FDIC* and *FDIC's* officers, directors, shareholders, members, employees, owners, agents, affiliates, successors, fiduciaries, and assigns, jointly and

severally, from any and all claims, demands, actions or causes of action, known or unknown, now existing or hereafter acquired, and whether or not asserted in the *Claim*, which the *Commonwealth* had, have, claims to have, or may hereafter acquire against *FDIC* arising out of the *Subject Transaction*, the *Closing Services*, and/or the facts and circumstances alleged in the *Claim*.

4. **No Assignment.** The parties hereto warrant that they have made no other assignment, transfer, conveyance, or other disposition of any claims, demands, causes of action, obligations, damages and/or liabilities described above and that they are fully entitled to give their full and complete release of all such claims and demands.

5. **Denial of Liability.** This *Agreement* constitutes a compromise of disputed claims. This *Agreement* shall not constitute or be construed as an admission of any liability or fault by any party hereto, all such liability being herein expressly denied. This *Agreement* shall not be construed as an admission of the truth or correctness of any claim asserted by the parties.

6. **Assumption of Risk of Material Fact.** The parties expressly assume the risk of any mistake of fact, known or unknown, relating to any of the claims compromised by this *Agreement*.

7. **Attorney's Fees and Costs.** Each party shall bear its own attorney's fees and costs with respect to the *Claim* and this *Agreement*.

8. **Amendment.** This *Agreement* may not be amended or modified at any time except by any instrument in writing executed by all of the parties.

9. **Execution.** This *Agreement* may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. Additionally, signature pages delivered by facsimile or via electronic mail in portable document format (.pdf) shall be deemed originals. The parties further agree that, without receiving further consideration, they will sign and deliver such documents and do anything else that is reasonably necessary in the future to make the provisions of this *Agreement* effective.

10. **Integrated Agreement.** This *Agreement* sets forth the entire understanding between the parties concerning the subject matter of this *Agreement* and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this *Agreement* other than those set forth herein.

11. **Governing Law.** This *Agreement* shall be governed by and construed in accordance with Colorado law (excluding any conflict of laws rule or principle that might refer the governance or construction of this *Agreement* to the law of another jurisdiction). Nothing in this *Agreement* shall require any unlawful action or inaction by any party hereto.

12. **Severability.** If any portion of this *Agreement* is found to be unenforceable, the parties desire that all other portions that can be separated from the unenforceable portion or appropriately limited in scope shall remain fully valid and enforceable.

13. **Representation.** No representation or warranty has been made by or on behalf of any party to this *Agreement* (or any officer, director, employee or agent thereof) to induce any other party to enter into this *Agreement* or to abide by or consummate any transactions

contemplated by any terms of this *Agreement*, except representations and warranties, if any, expressly set forth herein. In entering into this *Agreement*, the parties hereto represent that they have proceeded with the advice of an attorney of their own choice, that they have read the terms of this *Agreement*, that the terms of this *Agreement* have been completely read and explained to the parties by their attorney, and that those terms are fully understood and voluntarily accepted by the parties.

14. **Authority.** Each person signing this *Agreement* on behalf of any entity warrants or represents that he/she has the full and complete authority to enter into this *Agreement* on behalf of that entity.

15. **Titles and Captions.** The section titles and captions contained in this *Agreement* are inserted only for convenience and reference and shall not be construed to define, limit, or extend the scope of this *Agreement* or the intent of any of its provisions.

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IN WITNESS WHEREOF, the parties to this *Agreement* have executed this *Agreement* as of the date indicated by each party's signature.

Federal Deposit Insurance Corporation, as
Receiver for Washington Mutual Bank, F.S.B.

By:

[Redacted Signature]

(b)(6)

Name:

Aaron M. Forest

Title:

Counsel - FDIC

Date:

7/31/12

Commonwealth Land Title Insurance Company

By:

[Redacted Signature]

(b)(6)

Name:

Terry Higginbotham Barrett

Title:

Vice President

Date:

7/31/2012