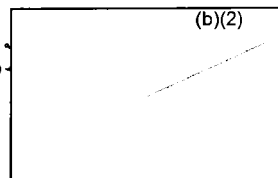


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## SETTLEMENT AND MUTUAL RELEASE AGREEMENT

**THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT** ("the Agreement") is made and entered into as of May 18, 2010, by and between Chicago Title Company and Chicago Title Insurance Company on the one hand (hereinafter jointly referred to as "CHICAGO TITLE") and Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada, successor by merger with First National Bank of Arizona (hereinafter referred to as the "FDIC") with reference to the following facts and circumstances:

### RECITALS

A. WHEREAS, Delorna Daniels purchased a subleasehold estate in a Residential Condominium unit commonly known as 4314 Marina City Drive, #230, Marina Del Rey, California 90292 (hereinafter referred to as "Subject Property") in March 2007 for \$875,000.00; and

B. WHEREAS the full purchase price was funded by two loans made by First National Bank of Arizona, secured by what was intended to be a 1<sup>st</sup> and 2<sup>nd</sup> Deed of Trust on the Subject Property which Deeds of Trust were the subject of title insurance policies issued by Chicago Title Insurance Company at the request of its agent, Chicago Title Company, and which Deeds of Trust were also the subject of a Closing Protection Letter issued by Chicago Title Insurance Company to First National Bank of Arizona; and

C. WHEREAS title was at the time of the purchase by Daniels subject to a Deed of Trust held by the Homeowners' Association ("the H.O.A. Deed of Trust") which secured payments due it under the leasehold, which Deed of Trust was in default; and

D. WHEREAS the H.O.A. Deed of Trust was foreclosed upon after First National Bank of Arizona made its loans to Daniels and title to the Subject Property was conveyed to a third party purchaser; and

E. WHEREAS the foreclosure of the H.O.A. Deed of Trust eliminated the interests of Delorna Daniels and of First National Bank of Arizona in the Subject Property; and

F. WHEREAS First National Bank of Arizona filed a claim with Chicago Title Insurance Company under its title insurance policies; and

G. WHEREAS said foreclosure sale generated a surplus of funds which the trustee under the H.O.A. Deed of Trust interpleaded with the court in another action; and

H. WHEREAS that interpleader was resolved with the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada, successor by merger with First National Bank of Arizona being paid the sum of \$238,028.17; and

I. WHEREAS First National Bank of Arizona and First National Bank of Nevada (now the FDIC as Receiver for First National Bank of Nevada, successor by merger with First National Bank of Arizona) filed suit on February 14, 2008 in Los Angeles Superior Court, Case Number BC385477 and subsequently filed an Amended Complaint and a 2<sup>nd</sup> Amended Complaint against, among others, CHICAGO TITLE, seeking damages for breach of contract and negligence (hereinafter "the Action") in excess of \$875,000.00; and

J. WHEREAS, the parties agreed to settle this matter at a Mediation which took place on May 18, 2010.

### **TERMS OF AGREEMENT**

In consideration of the mutual covenants, the promises herein contained, and the foregoing recitals, FDIC and CHICAGO TITLE agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein by reference.

2. **Settlement of Action.**

A. Chicago Title Ins. Co. will pay \$499,900 to FDIC. Payment shall be made within 14 days after execution of this agreement by wire transfer to the FDIC as receiver for First National Bank of Nevada pursuant to wire transfer instructions to be provided

B. Within 5 business days of the receipt of the above payment by Law Offices of Alan I. White, attorneys for FDIC, the FDIC will file a request for dismissal with prejudice of the action as to both Chicago Title Company and Chicago Title Insurance Company, and a dismissal without prejudice as to the remaining parties in the action.

C. Except as otherwise provided for herein, both sides will bear their own attorney's fees and costs.

3. Excepting only their respective rights to enforce the terms of this Agreement, and subject only to the conditions stated in Paragraph 2 hereof, FDIC and CHICAGO TITLE fully and forever release and discharge each other, and their respective assignees, subsidiaries, transferees, predecessor and successors in interest, employees, servants, agents, representatives, officers, directors, and parent corporations, from and against all actions, proceedings, causes of action, claims for relief, bad faith, demands, rights, titles, interests, damages, losses, costs, expenses, disbursements (including attorneys' fees), obligations, liabilities and other claims of every nature whatsoever (collectively "Claims") arising from or otherwise relating in any way to (a) the Action, including all matters alleged in any complaints, cross-claims, counterclaims and any other pleadings therein, and/or the conduct of the litigation or any proceedings occurring therein, and/or (b) any claims made or asserted, known or suspected as of the date of this Agreement, by, to or involving any of the

undersigned parties relating to any or all of the foregoing, whether delineated therein or not, at issue in the Action.

4. Binding Effect. The releases in this Agreement shall be binding upon, extend to and inure to the benefit of the undersigned parties, and any and all of their respective past, present, and future agents, employees, relatives, officers, directors, shareholders, servants, heirs, beneficiaries, devisees, independent contractors, partners, successors, predecessors, assignors, assignees, transferors, transferees, guarantors, sureties, insurers, attorneys' investigators, accountants, joint venturers and other representatives, and any and all other persons and entities acting or purporting to act on their respective behalves, and any and all firms, corporations, associations, partnerships and other entities affiliated with, controlled by or otherwise related to any of the undersigned parties.

5. Parties in Interest. Except as expressly stated in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer third-party beneficiary status or to confer otherwise any rights or remedies on any person or entity (hereinafter collectively "third party"), other than the undersigned parties and their predecessors, successors, assigns, affiliates and representatives as described in Paragraph 4 hereof. Nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any undersigned party to this Agreement. Nor shall any provision hereof afford any third party any right of subrogation, indemnity, contribution, set-off or action over against any party to this Agreement.

6. No Other Proceedings. The undersigned parties hereby represent and warrant to each other that other than the Action specified herein, none of the undersigned parties will or has initiated, or will be or has been a party to or has any knowledge of any actions, investigations or proceedings, whether judicial, governmental or administrative, involving the subject matter of this Agreement.

7. Compromise. This Agreement is a compromise of disputed claims and shall not be construed or deemed to be an admission of liability or wrongdoing by any party to any other party. The undersigned parties further expressly agree that nothing in this Agreement shall be construed as an admission or acceptance of the validity of any of the claims, causes of action or contentions made by any party in the course of the referenced Action, including those set forth in any pleadings in said litigation. This settlement has been made to avoid the expense, inconvenience and burden of trial and of further litigation proceedings, and so that the parties can resolve their disputes and business relations in a mutually agreeable manner rather than through court adjudication.

8. Full Authority. Each of the parties to this Agreement hereby represents, covenants and warrants that said party, and the signatory of said party, has the full right, power and authority to execute this Agreement on behalf of said party, and to execute any and all documents as may be necessary to effectuate the terms of this Agreement, and that neither party, nor any signatory for said party has sold, assigned, transferred, conveyed, hypothecated, encumbered or otherwise disposed of any rights, titles, interests, causes of action or other claims which said party may have or have had in relation to the transactions or other matters described in this Agreement or which are related in any way to the Action.

9. Informed Consent. Each undersigned party hereby declares that said party has received sufficient information, either through said party's own legal counsel or other sources of said party's own selection, so as to be able to make an intelligent and informed judgment whether to enter into this Agreement. Each undersigned party further states that each has read this Agreement in its entirety prior to executing this document, and that each has executed this Agreement voluntarily, with competence and capacity to contract and with knowledge of the terms, significance and legal effect of this Agreement. By executing this Agreement, it is understood by each party that substantial rights may be compromised and/or waived in their entirety.

10. Attorneys' Fees. If any action, motion or proceeding at law or in equity is instituted to enforce or interpret the terms of this Agreement, the undersigned parties agree that the prevailing party or parties therein shall be entitled to an award of reasonable attorneys' fees, costs, and necessary disbursements, as determined by a court of competent jurisdiction, in addition to any other relief to which said party or parties may be entitled.

11. Further Assurances. The undersigned parties each agree to execute all documents and perform all acts necessary or appropriate to effectuate the performance of the terms of this Agreement.

12. Severability and Gender. It is intended that each paragraph of this Agreement shall be treated as separate and divisible, and in the event that any paragraphs are deemed unenforceable the remainder shall continue to be in full force and effect so long as the primary purpose of this Agreement is unaffected. The masculine, as used herein, includes the neuter and feminine. The plural includes the singular, including the references to "*parties*". The term "*parties*" used herein encompasses each and all persons and entities described herein.

13. Complete Instrument. This Agreement contains the complete understanding made between or among the parties with respect to the Action and any other claims being settled and released by this Agreement. This Agreement cannot be amended or modified in any manner except by a writing executed by each of the undersigned parties or by their valid successor(s). All undersigned parties agree and acknowledge that no representations, warranties, covenants, assurances or other promises not specifically set forth in this Agreement have been made by any party in connection with the subject matter of this Agreement. Nor is any party relying on any such conduct in entering into this Agreement. Any negotiations or other communications between the parties relating to the subject matter of this Agreement are superseded by this document and of no force or effect. This Agreement has been negotiated and prepared by and for all undersigned parties equally and shall not be construed as having been drafted by any particular party or parties.

14. Counterparts. This Agreement may be signed in counterparts, and each counterpart shall have the same force and effect as though the signatures were contained in a single document.

15. Applicable Law. This Agreement is made under and shall be interpreted and enforced by the laws of the State of California.

16. Waiver of Civil Code Section 1542. To the extent of and with respect to the foregoing releases of claims, the undersigned parties, and each of them, expressly waive and relinquish any and all rights and benefits conferred on them by California Civil Code Section 1542 and any similar enactment of, or other such rights afforded by, the State of California, the United States or any other state territory of the United States. Section 1542 of the California Civil Code states:

*"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."*

The undersigned parties, and each of them, hereby further acknowledge that the effect and import of California Civil Code Section 1542, and their foregoing waiver and relinquishment of rights, are understood by them and made voluntarily. The undersigned parties each further acknowledge that if they, or any of them, hereafter discover facts different than or in addition to those that they, or any of them, now know or believe to be true, that said release shall be given full force and effect according to each and all of their express terms and conditions, notwithstanding such different or additional facts. The discovery of such different facts shall not in any way alter or affect the releases contained herein.

17. This paragraph has been intentionally omitted.

18. Facsimile. A facsimile of this Agreement may be signed and shall have the same force and effect as though the signatures were contained on the original document.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement effective as of the date and year first above written.

Federal Deposit Insurance Corporation as Receiver for  
First National Bank of Nevada, successor by merger  
with First National Bank of Arizona

By: *Resolutions & Claims Dept*

Chicago Title Insurance Company

By: \_\_\_\_\_

Chicago Title Company

By: \_\_\_\_\_

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Michael J. Gilligan  
Attorney for Chicago Title Insurance Company and  
Chicago Title Company

Law Offices of Alan I. White

By: \_\_\_\_\_  
Alan I White  
Attorney for Federal Deposit Insurance Corporation as Receiver for First National Bank of  
Nevada, successor by merger with First National Bank of Arizona

Chicago Title Insurance Company

[Redacted signature box]

By: DANIEL K. HAMPTON, SR. LITIGATION COUNSEL

Chicago Title Company

[Redacted signature box]

By: DANIEL K. HAMPTON, SR. LITIGATION COUNSEL

APPROVED AS TO FORM AND CONTENT:

[Redacted signature box]

Michael J. Gilligan  
Attorney for Chicago Title Insurance Company and  
Chicago Title Company

Law Offices of Alan I. White

By: \_\_\_\_\_  
Alan I. White  
Attorney for Federal Deposit Insurance Corporation, as  
Receiver for First National Bank of Arizona