SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 5th day of November ~~October~~, ______ 2013, by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation, as receiver of Colonial ("FDIC-R"), and Defendants Traditional Escrow, Inc. ("Traditional") and Kent J. Wenzel dba Wenzel Appraisal Services ("Wenzel") (collectively the "Settling Defendants") (individually, the FDIC-R and the Settling Defendants may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to August 14, 2009, Colonial Bank ("Bank") was a depository institution organized and existing under the laws of the State of Alabama.

On August 14, 2009, the Bank was closed by the Alabama State Banking Department 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.

On August 10, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendants. Those claims for damages are now pending in the United States District Court for the Central District of California in *Federal Deposit Insurance Corporation as Receiver for Colonial Bank v. Traditional Escrow Inc. and Kent J. Wenzel dba Wenzel Appraisal Services*, Case No. 12-cv-01302-BRO (RNBx) (the "Action"), alleging that the Settling Defendants caused damages to the FDIC-R.

A dispute has arisen between the Parties with respect to the claims by the FDIC-R related to the Settling Defendants' actions as alleged in the Action (hereinafter any all claims by the FDIC-R against the Settling Defendants related to the allegations made in the Action are referred to as "Claims"). The Settling Defendants deny the Claims made in the Action against the

Settling Defendants. The Parties engaged in settlement negotiations as a result of the Claims. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation.

The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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 Settling Defendants agree to pay the FDIC-R the total sum of One Hundred Eighty-Two Thousand Five Hundred Dollars ($182,500) ("the Settlement Funds"), Traditional is to pay Eighty-Seven Thousand Five Hundred Dollars ($87,500) and Wenzel is to pay Ninety-Five Thousand Dollars ($95,000), to the Mortgage Recovery Law Group LLP's Trust Account within forty-five (45) days of the FDIC-R's execution of the Agreement.

B. In addition, and without waiving any other rights that the FDIC-R may have, in the event that Settlement Funds are not received by the FDIC-R on or before the expiration of the thirty days, then, with respect to the Settling Defendants, that fail to deliver the Settlement Funds only, the FDIC-R, 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 against the Settling Defendants, failing to deliver their share of the Settlement Funds, in which event the non-delivering Settling Defendants, agree to jurisdiction in Federal District Court in California and agree to pay all of the FDIC-R's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-R 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 with respect to the non-delivering Settling Defendants, at any time prior to receipt of all Settlement Funds or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement by the non-delivering Settling Defendants. In no event shall the FDIC-R declare this Agreement null and void with respect to any Settling Defendant that has delivered its share of the Settlement Funds on or before the expiration of the thirty day period. The failure of one Settling Defendant to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Settling Defendant that has delivered its share of the Settlement Funds.

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by each of the undersigned Parties and receipt of the Settlement Funds the FDIC-R shall dismiss the Action. The undersigned Parties agree to enter stipulation(s) providing that the dismissal(s) set forth above shall be with prejudice, with each party to bear its own costs as these were originally incurred.

SECTION III: Releases

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 Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

Each Party certifies that they have 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 Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those 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.

A. <u>Release of Individual Settling Defendants by FDIC-R.</u>

Effective upon receipt in full of the settlement funds and dismissal described in SECTION(S) I and II above, and except as provided in PARAGRAPH(S) III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, 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 performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions including without limitation the causes of action alleged in the Action.

B. <u>Release of FDIC-R by the Settling Defendants.</u>

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC-R, and its employees, officers, directors, 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, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions that arise from or relate to the Action.

C. Express Reservations From Releases By FDIC.

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

a. against the Settling Defendants 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 claims acquired by Federal Deposit Insurance Corporation as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraphs III.A. above.

2. Notwithstanding any other provision, 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 proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this 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, the United States Attorney's Office for the Central District of California or any other federal judicial district. In addition, the FDIC-R 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.

SECTION IV: Notices.

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

If to the FDIC-R:

Andrew P. Baeza
Mortgage Recovery Law Group
700 North Brand Boulevard, Suite 830
Glendale, California 91203
(818) 630-7900
(b)(6) [redacted]

If to Traditional:

Paul S. Sienski
Law Office of Paul S. Sienski
711 South Brea Boulevard
Brea, California 92821
(714) 990-5521
(b)(6) [redacted]

If to Wenzel:

Mark D. Licker
Ericksen Arbuthnot
835 Wilshire Boulevard, Suite 500
Los Angeles, California 90017
(213) 489-4411
(b)(6) [redacted]

SECTION IV: Representations and Acknowledgements

A. <u>No Admission of Liability</u>. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. <u>Execution in Counterparts</u>. This Agreement may be executed in counterparts by one or more of the parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto;

and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this Agreement.

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a party 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, administrators, representatives, successors and assigns.

D. 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.

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. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Advice of Counsel. Each party hereby acknowledges that 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 or her counsel.

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.

DATE:

APPROVED AS TO FORM

LAW OFFICE OF PAUL S. SIENSKI

By: ______________________________
PAUL S. SIENSKI
Attorney for Defendant TRADITIONAL ESCROW, INC.

DATE:

TRADITIONAL ESCROW, INC., a California corporation

By: ______________________________
Signature

____
Print Name and Title

DATE: 11/5/13

(b)(6)

APPROVED AS TO FORM

ERICKSEN ARBUTHNOT

By: [redacted]
MARK D. LICKER
Attorney for Defendant KENT J. WENZEL dba WENZEL APPRAISAL SERVICES

DATE: X
11-5-13

KENT J. WENZEL dba WENZEL APPRAISAL SERVICES

By: X [redacted]
Signature

(b)(6)

DATE:

APPROVED AS TO FORM

MORTGAGE RECOVERY LAW GROUP LLP [redacted] (b)(6)

By:

ANDREW P. BAEZA
Attorney for Plaintiff FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for COLONIAL BANK

DATE: 11/6/13

FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for COLONIAL BANK

(b)(6)

By: [redacted]
Signature

THOMAS J. O'BRIEN, COUNSEL FDIC
Print Name and Title

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.

DATE:

LAW OFFICE OF PAUL S. SIENSKI

(b)(6)

APPROVED AS TO FORM

By: [redacted]

PAUL S. SIENSKI
Attorney for Defendant TRADITIONAL ESCROW, INC.

DATE:

TRADITIONAL ESCROW, INC., a California corporation

By: ______________________________
Signature

____
Print Name and Title

DATE:

ERICKSEN ARBUTHNOT

APPROVED AS TO FORM

By: ______________________________
MARK D. LICKER
Attorney for Defendant KENT J. WENZEL dba WENZEL APPRAISAL SERVICES

DATE:

KENT J. WENZEL dba WENZEL APPRAISAL SERVICES

By: ______________________________
Signature

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.

DATE: LAW OFFICE OF PAUL S. SIENSKI

APPROVED AS TO FORM

By: ______________________________
PAUL S. SIENSKI
Attorney for Defendant TRADITIONAL ESCROW, INC.

DATE: TRADITIONAL ESCROW, INC., a California corporation

(b)(6)

By: [redacted]
Signature

ANNETTE SCHEFFER-COSWELL, PRESIDENT
Print Name and Title

DATE: ERICKSEN ARBUTHNOT

APPROVED AS TO FORM

By: ______________________________
MARK D. LICKER
Attorney for Defendant KENT J. WENZEL dba WENZEL APPRAISAL SERVICES

DATE: KENT J. WENZEL dba WENZEL APPRAISAL SERVICES

By: ______________________________
Signature