

LIMS Nr [redacted]
DIT / Mortgage & Fraud

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AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE (agreement) is made and entered into by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Bank, FSB (IndyMac) (collectively, Plaintiff), A+ TITLE SERVICE CORP. (A+ Title), and COMMONWEALTH LAND TITLE INSURANCE COMPANY (Commonwealth) (collectively, the Defendants). Plaintiff, A+ Title and Commonwealth may be referred to herein individually as "Party" and collectively as the "Parties."

(b)(2)

RECITALS

This agreement is made with reference to the following facts:

A. On or about February 24, 2010, Plaintiff filed a complaint for money damages against the Defendants, alleging causes of action against A+ Title for fraudulent inducement, negligent misrepresentation, breach of fiduciary duty, and breach of contract, and against Commonwealth for breach of contract (the Complaint), in connection with two mortgage loans funded by IndyMac made to a borrower named Betsy Sanchez-Khouzami and/or Joseph E. Khouzami (the Loans) and which were secured by a real property located at 12560 SW 75th Street, Miami, Florida 33183 (the Property). The pending action which the Complaint initiated is entitled *Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB v. A+ Title Service Corp., et al.*, is currently pending in the United States District Court for the Southern District of Florida, Miami Division (the Court), Case No. 1:10-cv-20571-DLG (the Action).

B. On or about April 16, 2010, Commonwealth answered the Complaint, generally denying its allegations and asserting affirmative defenses. A+ Title answered and asserted affirmative defenses to Plaintiff's complaint on or about May 5, 2010.

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

D. 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, along with the attached exhibit, are integral parts of this agreement.

2. Settlement Payment to Plaintiff. Defendant A+ Title, by and through its insurance carrier, shall pay Plaintiff a total sum of \$225,000 on behalf of A+ Title and Commonwealth. No later than twenty business (20) days following full execution of this agreement, Defendants shall deliver to Plaintiff's counsel of record in the Action a check made payable to Akerman Senterfitt & Eidson, P.A.'s Trust Account in the amount of Two Hundred Twenty Five Thousand Hundred Dollars and No Cents (\$225,000.00) (the **Settlement Payment**). The Defendants shall cause this check to be delivered as follows:

Akerman Senterfitt & Eidson, PA

Attn: William P. Heller, Esq.

350 E. Las Olas Boulevard, Suite 1600

Fort Lauderdale, Florida 33301

3. Dismissal of the Action. Together with the execution of this agreement, counsel for Plaintiff shall execute a Stipulation of Dismissal of the Action with prejudice in the form attached hereto as **EXHIBIT A**. 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.

4. 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.

5. Release by Plaintiff. Subject to full performance of the obligations and representations and warranties set forth in this agreement, and effective 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, and except as provided in paragraph 7, below, Plaintiff, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers and representatives, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present, fully and forever releases, acquits and discharges the Defendants and their respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them (the **Defendant Releasees**), past or present, jointly and severally, from and against any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations, damages, costs, fees (including, without limitation, those of

attorneys), expenses, actions and/or causes of action of every nature, character and description, or causes of liability, rights and offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, including without limitation injunctive or equitable relief, any award of actual, consequential, incidental, liquidated, or other types or categories of damages, any award of punitive or exemplary damages, any claims for attorneys' fees, costs or expenses of litigation and any other type of relief which Plaintiff has against Defendants, the Defendant Releasees or any of them, pertaining to the Loans, the Property and the Complaint, specifically including, without limitation, the alleged priority or lien of the National City Bank Mortgage asserted in the Complaint, provided, however, that this release is not a general release but is expressly and specifically limited to the Loans, the Property and the Complaint, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that Plaintiff may have or might have against the Defendants or the Defendant Releasees, or any of them, including without limitation any other claims, demands or actions regarding any other matters.

6. Release by the Defendants. Subject to full performance of the obligations and representations and warranties set forth in this agreement, and effective simultaneously with the release granted in paragraph 5, above, the Defendants, on behalf of themselves individually and for each and every one of its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in

concert with them, past or present, fully and forever release, acquit and discharge Plaintiff and its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers and representatives, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present, jointly and severally, from and against any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations, damages, costs, fees (including, without limitation, those of attorneys), expenses, actions and/or causes of action of every nature, character and description, or causes of liability, rights and offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, including without limitation injunctive or equitable relief, any award of actual, consequential, incidental, liquidated, or other types or categories of damages, any award of punitive or exemplary damages, any claims for attorneys' fees, costs or expenses of litigation and any other type of relief which the Defendants or any of them have, may have or might have against Plaintiff pertaining to the Loans, the Property and the Complaint, provided, however, that this release is not a general release but is expressly and specifically limited to the Loans, the Property and the Complaint, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that the Defendants, or any of them, may have or might have against Plaintiff, including without limitation any other claims, demands or actions regarding any other matter.

7. Express Reservations from Releases 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 (a) any claims or causes

of action that do not arise from or relate to (i) the Loans, (ii) the Property, or (iii) any and all facts, occurrences and transactions alleged in the Action, and (b) claims arising from the closing of the Loans against any other transaction participant concerning the Loans, including but not limited to Betsy Sanchez-Khouzami and/or Joseph E. Khouzami. Additionally, 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 and the National City Bank Mortgage asserted in the Complaint.

8. No Admission of Liability. Plaintiff acknowledges that this agreement does not constitute an admission by the 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 the Defendants have denied and continue to deny that the Defendants have any liability to Plaintiff as alleged in the Action. Likewise, the 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 the Defendants also acknowledge that this agreement does not constitute an admission by Plaintiff as to the merits of any claim that the Defendants have asserted, or could have asserted, in the Action. Nevertheless, Plaintiff and the 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 the Defendants in the manner and upon the terms and conditions set forth in this agreement.

9. Waiver under Section 1542 of California Civil Code. Subject to the limitations contained therein and in paragraph 7, above, the releases as set forth in paragraphs 5 and 6 are intended by the Parties to be read and interpreted as broadly as possible to affect the releases set forth therein regardless of whether the claims are presently known or unknown to the Parties.

This agreement is made by the Plaintiff and Defendants freely and with independent legal advice and counsel, and Plaintiff and the Defendants are fully aware of the provisions of Section 1542 of the Civil Code of the State of California, which reads 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."

However, this is a limited release and not a general release and is only intended to release those claims specifically identified in paragraphs 5 and 6 of the agreement and is specifically limited by the limitations contained in those paragraphs and in paragraph 7 of this agreement. Nevertheless, to the extent Civil Code section 1542 (as well as any other or successor law of similar effect) applies to the agreement, Plaintiff and the Defendants waive any rights, benefits and protections they may have under section Civil Code 1542 to the extent necessary to effectuate the Releases set forth herein in paragraphs 5 through 7, inclusive, herein.

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

- a. The Plaintiff and the 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

Plaintiff and Defendants hereto. There are no agreements or understandings between the Plaintiff and Defendants 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 Plaintiff and Defendants 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 the 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.

11. 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.

12. 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.

13. 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.

14. Applicable Law. This agreement has been negotiated and exchanged in the State of Florida. As such, this agreement and all matters relating thereto shall be governed by the laws of the State of Florida 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 Southern District of Florida (but only if such court has subject matter jurisdiction over the disputes).

15. 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. Transmittal of a counterpart signature page signed by a Party (or by his or its attorney-in-fact pursuant to a duly executed power of attorney authorizing the same) via facsimile or e-mail shall be one way in which this agreement may be transmitted and formed, but in that event, the Party so transmitting it shall also forward the

original, signed counterpart to the other via overnight delivery. All counterparts shall be construed together as the agreement.

16. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa. This agreement is the product of negotiation between parties and as such, shall not be construed as though all or any part of it was drafted by any particular Party.

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 the Defendants each agree to pay their own costs, attorneys' fees and expenses incurred in connection with the Action. In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this agreement, arising out of a breach of this agreement, involving claims within the scope of the release contained in this agreement or pertaining to a declaration of rights under this agreement, the prevailing Party shall recover its reasonable attorneys' fees incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

20. 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.

21. 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.

22. 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
To A+ Title	
With a copy to	<p>Dale Lyn Friedman Conroy, Simberg, Ganon, Krevans, Abel, Lurvey, Morrow, & Schefer, P.A. 3440 Hollywood Boulevard 2nd Floor Hollywood, FL 33021 Telephone: [REDACTED] (b)(4),(b)(6) Facsimile: [REDACTED] Email: [REDACTED] (b)(4),(b)(6)</p>
To Commonwealth	<p><u>John D. Waters</u> <u>Senior Vice President</u> <u>Senior Major Claims Counsel</u> <u>Commonwealth Land Title Ins Co</u> <u>601 Riverside Avenue</u> <u>Building 5, Fourth Floor</u> <u>Jacksonville, FL 32204</u> Direct Telephone [REDACTED] (b)(4),(b)(6) Email [REDACTED] (b)(4),(b)(6)</p>
With a copy to	<p>Christopher W. Smart Carlton Fields, P.A. 4221 West Boy Scout Blvd. Suite 1000 Tampa, Florida 33607 Tel. No.: [REDACTED] (b)(4),(b)(6) Fax No.: [REDACTED] Email: [REDACTED] (b)(4),(b)(6)</p>
To Plaintiff	<p>Paul A. Levin Mortgage Recovery Law Group 700 N. Brand Blvd, Suite 830 Glendale, CA 92103 Tel. No.: [REDACTED] (b)(4),(b)(6)</p>

Person To Receive Notice	Notification Information		
	Fax No.:		(b)(4),(b)(6)
	Email:		(b)(4),(b)(6)
With a copy to	William Heller Akerman Senterfitt Las Olas Centre II 350 East Las Olas Boulevard Suite 1600 Ft. Lauderdale, FL 33301-2229 Tel. No: [redacted] Fax No: [redacted] Email: [redacted]		(b)(4),(b)(6)
	Email:		(b)(4),(b)(6)

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 22, 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.

23. 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.

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

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

26. 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.

27. 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.

28. 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.

29. 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.

[SIGNATURES CONTAINED ON NEXT PAGE]

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

Dated: August 16, 2010

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

(b)(6)

By: 

Its: Richard S. Gail
Counsel

Dated: August 16, 2010

COMMONWEALTH LAND TITLE INSURANCE COMPANY

(b)(6)

By: 

Its: John D. Puentes
Senior Vice President

Dated: August 16, 2010

TITLE SERVICES CORP.

(b)(6)

By: 

Its: John H. Davis
President

APPROVED AS TO FORM: