

DIF/Mortgage Fraud

LIMS:



ENTERED  
10/26/10

**MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

This Agreement is made and entered into, on the date of the last signature below of the parties, between FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as Receiver for INDYMAC BANK (hereinafter referred to as "FDIC") and HARVEY HOCHAUSER and MARCIE HOCHAUSER (collectively hereinafter "HOCHAUSER") and is made with reference to the following facts:

WHEREAS, FDIC has the right to any monies received in payment in connection with that certain Judgment against James Bert Coker ("Coker"), Exhibit "A" hereto; and

WHEREAS, Coker and Carol Zhang ("Zhang") were previously husband and wife; and

WHEREAS, Coker and/or Zhang, prior to the entry of the Judgment (Exhibit "A" hereto), owned in partnership with Hochäuser certain real properties commonly known as:

- a. 2114 Mandarin Way, Antioch, California 94509,
- b. 4637 Goldcrest Way, Antioch, California 94531,
- c. 2214 Manzanita Way, Antioch, California 94509,
- d. 1311 Louis Drive, Antioch, California 94509; and

WHEREAS, prior to the entry of the Judgment (Exhibit "A" hereto) Coker and/or Zhang conveyed to Hochäuser some or all of their interests in the certain real properties commonly known as:

- a. 2114 Mandarin Way, Antioch, California 94509,
- b. 4637 Goldcrest Way, Antioch, California 94531,
- c. 2214 Manzanita Way, Antioch, California 94509,
- d. 1311 Louis Drive, Antioch, California 94509; and

WHEREAS, a dispute has existed between FDIC and Zhang and Hochäuser with respect to, among other matters, fraudulent conveyances effected to hinder and delay the FDIC; and

WHEREAS, FDIC and Hochäuser desire to compromise, terminate and settle the subject civil action described below as between themselves and settle all claims and demands that arise out of or are in any way related to the claims made by each of the parties in the matter entitled *Federal Deposit Insurance Corporation, in its capacity as Receiver for Indymac Bank v. James Bert Coker, et al.*, United States District Court, Northern District of California, Case No.

CV 09-3732 WHA (hereinafter the "subject civil action").

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and concurrently with the execution hereof, the parties hereto, agree as follows:

1. The recitals set forth herein above are incorporated herein, hereat, verbatim as material terms of this Agreement.
2. Hochauser shall, within thirty (30) days of execution of this Agreement, execute a listing agreement in a form and substance reasonably satisfactory to FDIC consistent with this Agreement and custom and practice to list that certain real property at 2214 Manzanita Way, Antioch, California 94509 (the "Manzanita Property"), for sale with a licensed real estate broker of FDIC's choice engaged in the business of selling real property ("Broker") until the Manzanita Property is sold or until July 1, 2012, whichever date is earlier ("Term").
3. Simultaneously with the execution of this Agreement, Hochauser shall deliver from Sandi Klein a notarized Quitclaim Deed in the form attached hereto marked Exhibit "B" in favor of Hochauser in and to the Manzanita Property.
4. During the Term of this Agreement, title to the Manzanita Property shall be held in the name of Hochauser.
5. Notwithstanding any provision of this Agreement to the contrary, FDIC does not release Hochauser from any claims for indemnity or reimbursement, whether contractual, implied or otherwise related to the management, sale and maintenance of the Manzanita Property from and after the date of this Agreement and nothing contained in this Agreement shall be deemed to include a release of Coker or Zhang or a compromise or partial satisfaction of the Judgment, Exhibit "A" hereto, or of any claim or indebtedness acquired by the FDIC in connection with loans extended to Hochauser whether related to the Manzanita Property or otherwise ("Excluded Claims").
6. Hochauser agrees to pay all costs for preserving, maintaining, and repairing the Manzanita Property until the expiration of the Term; provided, that if the cost of any single repair, replacement, or maintenance item (or group of related items) exceeds Three Thousand Dollars (\$3,000.00) and the gross proceeds from income from the Manzanita Property after payment of loans secured by the Manzanita Property are insufficient to cover the repair, replacement or maintenance item then, with the written consent of the FDIC, the cost of all

repairs, replacements or maintenance items shall be advanced by Hochauser and repaid to Hochauser exclusively out of the net sales proceeds of the Manzanita Property, or in such other manner as the parties shall mutually agree. The above notwithstanding, in the case of damage caused by Hochauser or by Hochausers' failure to perform routine maintenance (collectively, the "Hochauser's Damage"), as opposed to damage caused by ordinary wear and tear or by third parties, Hochauser shall pay all costs for repairing such damage regardless of the amount.

7. Hochauser shall pay for all improvements to the Manzanita Property costing One Thousand Dollars (\$1,000.00) or less during the Term. Any work on the Manzanita Property with a cost in excess of One Thousand Dollars (\$1,000.00) shall be paid out of the gross proceeds from the income from the Manzanita Property after payment of loans secured by the Manzanita Property and shall require the prior written approval of FDIC, provided that FDIC shall not unreasonably withhold its consent. All improvement costs over and above the gross proceeds from the income from the Manzanita Property after payment of loans secured by the Manzanita Property shall be advanced by Hochauser and be repaid exclusively out of sales proceeds from the Manzanita Property. Unless agreed otherwise in writing by the parties, any such work shall be performed by a licensed contractor. Before such work is commenced, Hochauser shall obtain bids from at least two contractors. The choice of the contractor to perform such work shall require the prior written approval of FDIC not to be unreasonably withheld.

8. In the event Hochauser shall fail to pay when due any tax or assessment on the Manzanita Property during the Term, any payment on a loan secured by the Manzanita Property, any premiums for insurance required by paragraph 9 below, any homeowner's fees, or any amounts owing for work performed pursuant to paragraphs 6 and 7 above, FDIC may at its sole option and discretion make such payments in order to prevent repossession or other detriment to the Manzanita Property. In that event, such payment by FDIC shall be deemed to be a loan to Hochauser. The loan shall be a demand loan bearing ten percent (10%) interest.

9. Hochauser agrees during the Term to also pay all utilities and perform ordinary and customary duties of a property owner having rented property to third party tenants, Peter Gogue and Anthony Boisson, with respect to the Manzanita Property and keep the Manzanita Property in good condition and repair without cost to FDIC nor compensation from FDIC except as otherwise set forth herein. Hochauser also agrees to maintain full replacement value

insurance on the Manzanita Property and liability insurance in the amount of \$500,000.00 with FDIC named as an additional insured and to provide proof of same simultaneously with the execution of this Agreement. Hochauser also shall have sole responsibility for mortgage payments, payments for property taxes and assessments, and any homeowner's fees during the Term. It is further agreed that during the Term Hochauser shall cause the insurance companies identified on Exhibit "C" hereto to give notice to FDIC in advance of the cancellation of any of the policies of insurance, Exhibit "D" hereto.

10. Hochauser shall be entitled to deduct for State and Federal income tax purposes all payments made by Hochauser to the extent authorized by law.

11. Hochauser shall be and remain the Manager of the Manzanita Property during the Term. Manager is empowered to bring and prosecute all proper actions for the protection of the Manzanita Property or to recover possession thereof. Hochauser agrees to not use or permit the use of the Manzanita Property in any manner that would tend to create waste or a nuisance or that would be in violation of law. Hochauser shall assume direction of routine maintenance and operation of the Manzanita Property and assume full responsibility for routine maintenance and operations of the Manzanita Property, subject to the provisions of this Agreement.

12. Hochauser shall maintain books and records of the operation of the Manzanita Property which FDIC shall be entitled to review upon ten (10) days written request and copies of all books and records of the operation shall be forwarded quarterly to the FDIC in care of Maurice Wainer at 270 North Canon Drive, Penthouse, Beverly Hills, California 90210. FDIC may inspect the Manzanita Property or otherwise enter upon the Manzanita Property for any reasonable purpose upon forty-eight (48) hours advance written notice to Hochauser, except that no advance notice shall be required in the case of emergencies.

13. Except as otherwise provided herein during the Term, the following shall be done only with the prior written consent of FDIC:

- a. Transferring, hypothecating, compromising, or releasing any claim relating to the Manzanita Property except upon payment in full of all obligations due under this Agreement;
- b. Selling or entering into a contract to sell any of the Manzanita Property;
- c. Encumbering or otherwise hypothecating the Manzanita Property or entering into any contract for such purpose;

d. Knowingly suffering or causing anything to be done whereby the Manzanita Property may be seized or attached or taken in execution, or its ownership or possession otherwise endangered;

e. Renting all or a part of the Manzanita Property to any person other than to those persons identified on Exhibit "B" hereto;

f. Creating, continuing or allowing any lien, mortgage, easement, or other encumbrance on the Manzanita Property, other than the original financing currently existing on the Manzanita Property;

g. Any use of the Manzanita Property other than as permitted by law;

h. Renewing or extending any existing leases on the Manzanita Property other than as required by law; or

i. Filing a legal action in connection with or related to the Manzanita Property.

14. The parties agree that in the event the Manzanita Property is rented to a third party under the provisions of this Agreement, any rents paid by such party shall be applied to the payment of any expenses or obligations of Hochauser under this Agreement.

15. Upon sale or other disposition of the Manzanita Property, the net cash proceeds (after payment of closing costs or related expenses including, but not limited to, realtor commissions incurred in connection with the sale) shall be paid to the FDIC without objection from Hochauser and Hochauser agrees to deliver to the escrow company of FDIC's choosing an irrevocable and unconditional instruction for the immediate release of the net cash proceeds from the sale of the Manzanita Property per the terms of this Agreement directly to the FDIC and payable to the FDIC.

16. The Manzanita Property shall be sold as follows:

a. The Manzanita Property shall be listed by a duly licensed real estate broker as the FDIC shall select, and placed on the multiple listing service in FDIC's exclusive discretion.

b. The Manzanita Property shall be listed for not less than the net sums due to third party lenders which sum is \$239,500.00. Any offer which is received by the FDIC with a purchase price equal to \$500,000.00 and whose remaining terms are commercially reasonable under the facts and circumstances then existing in the county where the Manzanita Property is

located, shall be accepted by the FDIC unless both parties agree to decline such offer. Any other offer may be accepted by FDIC in its sole discretion. Hochauser shall thereafter convey the Manzanita Property under the terms and conditions of the offer so accepted by the FDIC.

c. Upon close of escrow, the net proceeds of sale shall be remitted to the FDIC per the terms of this Agreement.

d. Should the Manzanita Property not sell as aforesaid prior to July 1, 2012, any rights thereto as created hereby in favor of FDIC are forfeited.

17. Hochauser shall cooperate fully with FDIC in the sale of the Manzanita Property.

18. Hochauser agrees that the rights of FDIC to receive monies on account of the sale of the Manzanita Property, whether now existing or hereafter created, shall be superior to any claim that Hochauser may now have or hereafter acquire relative to the Manzanita Property except as provided for explicitly herein. Hochauser hereby expressly subordinates any claim Hochauser may have against the Manzanita Property, upon any account whatsoever, to any claim that FDIC may now or hereafter have. Hochauser does hereby assign to FDIC all claims which they may have or acquire against the Manzanita Property or against any assignee or trustee of any person or entity; provided however, that such assignment shall be effective only for the purpose of assuring to FDIC the right to the net proceeds from the sale of the Manzanita Property. If FDIC so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Hochauser relative to the Manzanita Property shall be marked with a legend that the same are subject to this Agreement and shall be delivered to FDIC. Hochauser agrees, and FDIC is hereby authorized, in the name of Hochauser, from time to time to file deeds, financing statements and continuation statements and to execute documents and to take such other actions as FDIC deems necessary or appropriate to perfect, preserve and enforce its rights under this Agreement.

19. Hochauser shall be responsible for paying all sums due Zhang, Sandi Klein or any persons related by blood or marriage to Hochauser, Zhang or Coker or Sandi Klein (collectively "Insider"), if any, or any entity owned or controlled by Insider in connection with or related to the Manzanita Property.

20. Broker and prospective buyers shall be given complete and unhindered access to the Manzanita Property, shall be provided with keys for the Manzanita Property, shall be given contact information for the tenants at the Manzanita Property, and Hochauser shall do all of those

things commonly done and performed by sellers of real property without objection and without compensation and without commission of any kind.

21. The following items at the Manzanita Property, if any, are to be included in the sale of the Manzanita Property free of liens or claims of Hochauer and Insiders: any built-in appliances, light fixtures, ceiling fans, attached floor coverings, blinds, shades, drapery rods and curtain rods, brackets and all related hardware, window and door screens, storm windows, combination doors, awnings, antennas, satellite dishes and receivers, burglar/fire/smoke alarms, pool and spa equipment, solar energy systems, attached fireplace screens, gas logs, fireplace inserts, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), storage sheds, mailboxes, wall and/or door mirrors, and any other items attached or affixed to the Manzanita Property and shall be sold with the Manzanita Property (except as may be owned by the persons listed on Exhibit "E" hereto).

22. The following personal property at the Manzanita Property is included in the listing price: refrigerator, microwave/convection, range/oven, dishwasher, and washer/dryer (except as may be owned by the persons listed on Exhibit "E" hereto).

23. Each party to this Agreement shall bear all its costs, expenses and attorney's fees incurred in connection with the subject civil action. No party shall have the right to seek reimbursement for any such costs, attorney's fees or expenses from any other party hereto.

24. This Agreement shall be assignable by FDIC and shall inure to the benefit of FDIC, its successors in interest and assigns but the Hochauer rights and obligations herein are not assignable except upon the prior written consent of the FDIC.

25. This Agreement is made only for the benefit of the parties hereto and FDIC's valid successors and assigns, and is not intended to confer any rights or benefits whatsoever upon persons or entities who are not parties to this Agreement and does not confer any rights or benefits whatsoever to Coker or Zhang.

26. Hochauer hereby expressly and fully releases, acquits and forever discharges FDIC, together with FDIC's agents, employees, affiliates, officers, directors and shareholders, attorneys, insurance companies, servants, assigns, predecessors, successors, heirs, executors and administrators (all of the foregoing persons and entities hereinafter collectively referred to as the "Hochauer Releasees") of and from any and all claims, debts, liabilities, liens, actions, causes of action, demands, rights, damages, costs, losses of services, expenses, attorney's fees and

compensation of every nature, character and description which each party now holds or has or at any time held or may hereafter hold against the Hochauser Releasees on account of or in any way arising out of any or all known or unknown, foreseen and unforeseen, injuries, damages, lost profits and consequences thereof resulting from or in any way arising out of any and all subject matter including but not limited to the allegations of the Complaint in the subject civil action.

27. Except for the Excluded Claims and the obligations of Hochauser under this Agreement, FDIC hereby expressly and fully releases, acquits and forever discharges Hochauser, together with Hochauser's agents, employees, affiliates, officers, directors and shareholders, attorneys, insurance companies, servants, assigns, predecessors, successors, heirs, executors and administrators (all of the foregoing persons and entities hereinafter collectively referred to as the "FDIC Releasees" but excluding Coker and Zhang) of and from any and all claims, debts, liabilities, liens, actions, causes of action, demands, rights, damages, costs, losses of services, expenses, attorney's fees and compensation of every nature, character and description which each party now holds or has or at any time held or may hereafter hold against the FDIC Releasees on account of or in any way arising out of any or all known or unknown, foreseen and unforeseen, injuries, damages, lost profits and consequences thereof resulting from or in any way arising out of the allegations of the Complaint in the subject civil action.

28. This Agreement constitutes a compromise and settlement of claims which are denied and contested and nothing in the Settlement, this Settlement Agreement, or any document referred to herein, nor any act (including, but not limited to, the execution of this Settlement Agreement and/or the payment of the consideration for this Settlement Agreement) of any party hereto, nor any transaction occurring between any parties hereto prior to the date hereof, is or shall be treated, construed or deemed as an admission by any party hereto of any liability, fault, responsibility or guilt of any kind to any other party hereto or to any person, as to any allegation or claim in the subject civil action or otherwise, for any purpose whatsoever, all such liability, fault, responsibility and guilt of any kind being expressly denied by the parties.

29. Each party hereto represents and warrants to the other parties that none of them have heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim, demand, damage, debt, liability, obligation, account, reckoning, cost, expense, lien, action or cause of action, or any part or portion thereof which in any way relates or pertains to the subject civil action. Each party hereto does jointly and severally agree to indemnify and hold



harmless all of the other parties hereto against any claim, demand, debt, liability, account, reckoning, obligation, cost, damage, expense, lien, action or actions (including the payment of attorneys' fees and costs actually incurred, whether or not litigation be commenced), based on or arising out of or in connection with any such transfer or assignment or purported or claimed transfer or assignment.

30. Neither this Agreement nor any provision of this Agreement can be modified or waived in any way, except by an Agreement in writing signed by each of the parties hereto, consenting to such modification or waiver.

31. Any written notice to either party required or permitted under this Agreement shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, prepaid, and addressed to the addressee at the address stated opposite the party's name at the end of this Agreement, or at the most recent address, specified by written notice, given to the sender by the addressee under this provision.

32. All parties hereto do hereby acknowledge and agree that they have been represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Agreement, and that they have executed this Agreement with the consent and upon the advice of said independent counsel.

33. This Agreement may be pleaded as a full and complete defense to, and the parties hereby consent that it may be used as the basis for an injunction against any action, suit or other proceeding based on claims released by this Agreement.

34. Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and including the feminine and neuter, and the singular to refer to and include the plural; and vice versa.

35. The individuals signing this Agreement hereby personally warrant and represent that they have the power, ability, and authority to enter into this Agreement on behalf of the party or parties on whose behalf they are purporting to act, and that they have the power, ability, and authority to bind the party or parties on whose behalf they are purporting to act to the terms of this Agreement.

36. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signature

by facsimile is acceptable, and by transmitting such facsimile signatures, the parties each represent and warrant thereby that they will promptly, upon request, transmit the original to the other party by mail, messenger or overnight courier to the other party provided, however, that failure to do so will not affect the enforceability of this Agreement.

37. This Agreement constitutes the entire agreement between the parties hereto and the terms of this Agreement are contractual and are not mere recitals. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

38. All questions with respect to the construction or interpretation of this Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of California. This Agreement shall be deemed to have been executed in San Francisco County, in the State of California. In the event of any dispute or claim in law or equity arising between the parties regarding this Agreement or any resulting transaction, the parties agree that venue for such action will be in the United States District Court, County of San Francisco.

39. In the event that any action, motion, or other proceeding is brought to enforce the terms of this Agreement, the prevailing party shall recover its costs and reasonable attorney fees.

40. Contemporaneously with the execution of this Agreement, the parties shall execute a Memorandum Agreement evidencing the provisions of this Agreement. Such Memorandum shall be recorded in the Official Records of the County in which the Property is located.

41. This Agreement is fully and completely enforceable pursuant to Code of Civil Procedure §664.6 and is subject to the Court's approval of a good faith settlement pursuant to Code of Civil Procedure §877.6 as submitted by FDIC for Court approval.

DATED: January 14, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as Receiver for INDYMAC BANK

[Redacted Signature Box]

Signature

Richard S. Keith, Counsel  
Print Name and Title

(b)(6)

c/o Maurice Wainer  
Snipper, Wainer & Markoff  
270 North Canon Drive, Penthouse  
Beverly Hills, California 90210

DATED: 1-11-, 2010

HARVEY HOCHAUSER

[Redacted Signature]

Signature

1930 Whitecliff Way

Print Address

W.C., CA. 94596

City, State and Zip Code

DATED: 1-11, 2010

MARCIE HOCHAUSER

[Redacted Signature]

Signature

1930 Whitecliff Way

Print Address

Whitecliff CA 94596

City, State and Zip Code

APPROVED AS TO FORM AND CONTENT:

DATE: January 5, 2010

SNIPPER, WAINER & MARKOFF

[Redacted Signature]

BY

MAURICE WAINER

Attorneys for  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its capacity as Receiver  
for INDIUMAC BANK

DATED: JAN 13,, 2010

LAW OFFICES OF J. TIMOTHY LANE

BY:

J. TIMOTHY LANE

Attorneys for Defendants  
HARVEY HOCHAUSER and  
MARCIE HOCHAUSER