

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into and made effective as of the 16 day of October 2011 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, F.S.B. ("FDIC") and MILESTONE MORTGAGE AND REALTY GROUP, INC. ("MILESTONE"); LA HACIENDA REALTY, INC. dba CENTURY 21 LA HACIENDA ("LA HACIENDA") and ELBA EYZAGUIRRE SCHNAIDER (SCHNAIDER) (collectively "DEFENDANTS"). The FDIC and DEFENDANTS may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

1. RECITALS

1.1 On or about September 22, 2010, the FDIC filed a lawsuit entitled FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B. v. MILESTONE MORTGAGE AND REALTY GROUP, INC., a California corporation; LA HACIENDA REALTY, INC. dba CENTURY 21 LA HACIENDA, a California corporation; ELBA EYZAGUIRRE SCHNAIDER, an individual, United States District Court Case No. CV10-7080-PSG (hereinafter "Action"). The FDIC sought damages from DEFENDANTS arising out of a mortgage loan it made Raul Munar. The Complaint included a claims for breach of contract, negligence, negligent hiring and supervision and negligent misrepresentation. In their answer, DEFENDANTS denied they were liable to the FDIC for damages.

1.2 On or about April 7, 2006, IndyMac Bank, F.S.B. ("IndyMac") and MILESTONE entered into a business relationship governed by a written Customer Contract and e-MITS User Agreement (the "Agreement"). SCHNAIDER was the broker of record for MILESTONE and executed the Agreement on its behalf. The FDIC contends the Agreement incorporates the Lending Guide and sets forth the terms by which IndyMac would purchase and/or fund residential loans secured by real property which were processed, packaged and submitted by MILESTONE.

1.3 The FDIC contends in December 2007, DEFENDANTS solicited Mr. Munar to enter into a foreclosure rescue scam in which Mr. Munar would act as a straw borrower to delay foreclosure on the subject property. LA HACIENDA listed the property for the seller, Alvaro A. Pirir Barillas. SCHNAIDER was the broker of record for LA HACIENDA. On or about December 13, 2007, IndyMac funded a loan in the amount of \$540,000 for the purchase of real property located at 20301 Leadwell Street, Winnetka, California by Raul Munar ("MUNAR LOAN"). In furtherance of DEFENDANTS' agreement with Mr. Munar, LA HACIENDA and SCHNAIDER prepared and MILESTONE submitted a purchase contract to IndyMac as part of the loan documentation which negligently misrepresented the true nature of the transaction. The FDIC alleges the documents prepared by DEFENDANTS and submitted in support of the mortgage loan transaction contained misrepresentations regarding the transaction and failed to comply with the terms and conditions of the Agreement and the Guide.

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1.4 DEFENDANTS deny the FDIC's claims. Specifically, and without limitation, DEFENDANTS deny that (1) they breached the representations and warranties provisions of the Agreement and the Lending Guide; (2) they breached any duty owed to IndyMac or the FDIC; (3) the loan documentation prepared and submitted by DEFENDANTS contained any misrepresentations; or (4) the FDIC and/or IndyMac suffered or will suffer any loss, damage, or cost related in any way to the MUNAR LOAN.

1.5 The Parties desire and have agreed to settle all claims between the FDIC and DEFENDANTS relating the MUNAR LOAN. By entering into this Settlement Agreement, the parties are not admitting the allegations as set forth in the Complaint.

2. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

2.1 **Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

2.2 **Payment to the FDIC.** Payment of Thirty-Four Thousand Dollars and no/cents (\$34,000.00) (the "Settlement Funds") shall be paid on behalf of DEFENDANTS to the FDIC as follows:

(a) Of the Settlement Funds, the initial payment (the "Initial Payment") shall be for **Ten Thousand Dollars and no cents (\$10,000.00) and shall be paid within ten (10) days of DEFENDANTS' execution of this Settlement Agreement.** DEFENDANTS shall deliver the Initial Payment to the FDIC c/o Anderson, McPharlin & Conners, LLP at 444 S. Flower Street, 31st Floor, Los Angeles, California, 90071, Attn: Vanessa H. Widener and Jennifer S. Muse. The Initial Payment shall be paid by certified funds made payable to: **Anderson, McPharlin & Conners Trust Account.**

(b) **Within six (6) months of the execution of this Settlement Agreement by DEFENDANTS, DEFENDANTS shall make a payment of Twenty-Four Thousand Dollars and no/cents (\$24,000.00) ("Final Payment").** The Final Payments shall be made by sending certified funds made payable to **Anderson, McPharlin & Conner's Trust Account** to the FDIC c/o Anderson, McPharlin & Conners, LLP at 444 S. Flower Street, 31st Floor, Los Angeles, California, 90071, Attn: Vanessa H. Widener and Jennifer S. Muse.

2.3 Concurrently with the signing and delivery of this Settlement Agreement, DEFENDANTS shall execute a Stipulation for Entry of Judgment in the amount of Three Hundred Twenty-Eight Thousand Eight Hundred and Twenty-Two Dollars and Twenty-Two cents (\$328, 22.22), against DEFENDANTS in the form attached hereto as Exhibit

1. The Stipulation for Entry of Judgment incorporates by reference the Judgment (Pursuant to Stipulation), attached to the Stipulation as Exhibit A. Both the Stipulation and Judgment are incorporated by reference herein and their terms are made a part of this Settlement Agreement. The Stipulation and Judgment shall be held in trust by the FDIC's attorneys of record and shall not be filed unless DEFENDANTS breach paragraphs 2.2 above and fail to timely cure said breach after receiving written notice of default as provided in paragraph 2.4 below. The Judgment (Pursuant to Stipulation) shall not be entered so long as DEFENDANTS perform under the terms of this Settlement Agreement with respect to making the Payments required by paragraph 2.2 above.

2.4 In the event DEFENDANTS default by failing to make a timely payment to the FDIC as set forth in paragraphs 2.2 above, the FDIC shall give written notice of the default and notice of its intent to enter Judgment (Pursuant to Stipulation) to DEFENDANTS via e-mail and overnight mail to their attorney of record as follows: David Glaubiger, esq., 2100 Devonshire St., Ste 112, Chatsworth, CA 91311; telephone (b)(4),(b)(6) [redacted] facsimile (b)(4),(b)(6) [redacted] e-mail (b)(4),(b)(6) [redacted]. In the event there are any changes to Mr. Glaubiger's e-mail address, mailing address or telephone number, DEFENDANTS agree to provide written notice of the change to the FDIC c/o Anderson, McPharlin & Connors, LLP, 444 S. Flower Street, 31st Floor, Los Angeles, California, 90071; Attn: Vanessa H. Widener and Jennifer S. Muse. DEFENDANTS shall have ten (10) business days after written notice of default is sent to Mr. Glaubiger to cure the default. If DEFENDANTS fail to cure the default within ten (10) business days, the FDIC shall cause Judgment (Pursuant to Stipulation) to be entered as set forth in Paragraph 2.3 above.

2.5 Within ten (10) business days of the FDIC's receipt of the Initial Payment as set forth in paragraph 2.2(a), the FDIC's counsel shall file a request for dismissal of the entire Action with prejudice.

2.6 Each Party agrees that Section 664.6 of the Code of Civil Procedure of the State of California shall apply to this Settlement Agreement and requests that the court retain jurisdiction over the Parties to enforce this Settlement Agreement and, if necessary, the Judgment (Pursuant to Stipulation).

2.7 The Parties shall bear their own costs and attorneys' fees incurred in the Action.

3. **RELEASE**

3.1 **Known and Unknown Claims.** The FDIC and DEFENDANTS acknowledge and agree that the release they give to each other upon executing this Settlement 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) arising from or in conjunction with or related to the facts and circumstances giving rise to the Action.

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3.2 The Parties hereby expressly waive application of *California Civil Code §1542* as it relates to the Action. The Parties certify 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.

3.3 The Parties understand and acknowledge that the significance and consequence of its waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising from or in conjunction with the Action or any facts or circumstances related to the Action, that Party will not be able to make any claim against any other Party for those damages. Furthermore, each Party acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release relating to the Action, 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.

3.4 Except for the rights, duties, and obligations set forth in this Settlement Agreement, the Parties each hereby fully, finally, and forever release and discharge the other Parties, and any and all of its respective, employees, brokers, investors, members, partners, joint venturers, independent contractors, attorneys, accountants, insurers, agents, investors, representatives, officers, directors, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees and/or agents, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, employees and/or agents of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, to any damages, loss, or liability arising from, in conjunction with, or related to the Action or any facts or circumstances related to the Action.

3.5 Notwithstanding any other provision of this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any claims against DEFENDANTS arising out of existing or failed financial institutions other than INDYMAC.

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4. MISCELLANEOUS

4.1 Conditions of Execution. Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

4.2 No Admission. It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

4.3 Fair Meaning. The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties

4.4 Governing Law. The Parties agree to submit to the Courts of the City and County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

4.5 Attorneys Fees and Costs. Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

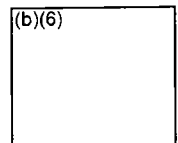
4.6 Severability. The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

4.7 Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

4.8 Approval and Authority. The Parties represent and warrant to one another that the approval of this Settlement Agreement has been undertaken in a proper and lawful manner and that they have the requisite power and authority to enter into and to perform their obligations under this Settlement Agreement.

4.9 Review and Understanding. The Parties enter into this Settlement Agreement voluntarily after having consulted with legal counsel concerning this Settlement Agreement and having conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement.

4.10 Number. Whenever applicable, the singular shall include the plural, and the plural shall include the singular.



4.11 Counterparts/Execution. This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile or e-mail shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

4.12 Waiver. No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

4.13 Headings. The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

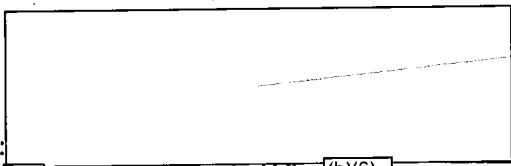
4.14 Subsequent Agreements. The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement.

4.15 Entire Agreement. The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: October 26, 2011
APPROVED AS TO FORM

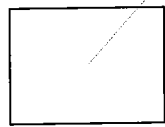
LAW OFFICES OF DAVID J. GLAUBIGER

By: 

(b)(6)

(b)(6) David J. Glaubiger (b)(6)
Attorneys for Defendants MILESTONE MORTGAGE
AND REALTY GROUP, INC.; LA HACIENDA
REALTY, INC. dba CENTURY 21 LA HACIENDA;
ELBA EYZAGUIRRE SCHNAIDER

(b)(6)



DATED: October __, 2011

MILESTONE MORTGAGE AND REALTY GROUP, INC.

By: (b)(6)
Signature

ELBA SCHNAIDER, PRESIDENT
Type/Print Name and Title

DATED: October __, 2011

LA HACIENDA REALTY, INC. dba CENTURY 21
LA HACIENDA

By: (b)(6)
Signature

ELBA SCHNAIDER, PRESIDENT
Type/Print Name and Title

(b)(6)

DATED: October __, 2011

ELBA EYZAGUIRRE SCHNAIDER

DATED: October __, 2011
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By: VANESSA H. WIDENER
JENNIFER S. MUSE
Attorneys for Plaintiff FEDERAL DEPOSIT
INSURANCE CORPORATION, as Receiver for
INDYMAC BANK, F.S.B.

(b)(6)

DATED: October ____, 2011

MILESTONE MORTGAGE AND REALTY GROUP,
INC.

By: _____
Signature

Type/Print Name and Title

DATED: October ____, 2011

LA HACIENDA REALTY, INC. dba CENTURY 21
LA HACIENDA

By: _____
Signature

Type/Print Name and Title

DATED: October ____, 2011

ELBA EYZAGUIRRE SCHNAIDER

DATED: October 21, 2011
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By:

YANESSA H. WIDENER
JENNIFER S. MUSE

Attorneys for Plaintiff FEDERAL DEPOSIT
INSURANCE CORPORATION, as Receiver for
INDYMAC BANK, F.S.B.

(b)(6)

DATED: October 21, 2011

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for INDYMAC
BANK, F.S.B.

By:

[Redacted Signature Box]

(b)(6)

Joel Duncan, Counsel, FDIC
Type/Print Name and Title