

RECEIVED

LIMS Nr [redacted]
DIF/Mortgage Fraud

ENTERED
1/4/10

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is entered into and made effective as of the 15th day of December 2009 ("Effective Date"), by and among THE FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, FSB ("FDIC"), DB STRUCTURED PRODUCTS, INC. ("DBSP") and MORTGAGEIT, INC. ("MIT"). FDIC, DBSP and MIT may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

(b)(2)

1. RECITALS

1.1 On or about October 6, 1999, IndyMac, Inc., its successors and assigns, and its affiliate IndyMac Mortgage Holdings, Inc. (collectively, "INDYMAC Affiliates") entered into a business relationship with MIT governed by a Seller Contract (the "Seller Contract"). The Seller Contract sets forth the understanding between INDYMAC Affiliates and MIT whereby MIT agreed, among other things, to submit mortgage loans to INDYMAC Affiliates for purchase, and INDYMAC Affiliates agreed to purchase mortgage loans submitted by MIT.

1.2 INDYMAC Affiliates purchased loans from MIT pursuant to the terms of the Seller Contract.

1.3 On or about June 16, 2004, IndyMac Bank, FSB ("INDYMAC") and MIT entered into a business relationship governed by a Mortgage Loan Purchase and Interim Servicing Agreement ("MIT Agreement"). The MIT Agreement sets forth the understanding between INDYMAC and MIT whereby MIT agreed, among other things, to submit mortgage loans to INDYMAC for purchase, and INDYMAC agreed to purchase mortgage loans submitted by MIT.

1.4 INDYMAC purchased loans from MIT pursuant to the terms of the MIT Agreement.

1.5 In early 2007, DBSP acquired MortgageIT Holdings, Inc., the corporate parent of MIT. Subsequent to the acquisition, on or about March 1, 2007, INDYMAC and DBSP entered into a business relationship governed by a Mortgage Loan Purchase and Interim Servicing Agreement ("DBSP Agreement"). The DBSP Agreement sets forth the understanding between INDYMAC and DBSP whereby DBSP agreed, among other things, to submit mortgage loans to INDYMAC for purchase, and INDYMAC agreed to purchase mortgage loans submitted by DBSP.

1.6 INDYMAC purchased loans from DBSP pursuant to the terms of the DBSP Agreement.

1.7 All of the loans purchased by INDYMAC or INDYMAC Affiliates directly from, or brokered through, either MIT or DBSP under the Seller Contract, the MIT Agreement, the DBSP Agreement or any other loan sale agreement are hereinafter referred to as the "Sold Loans" and are subject to the terms of the respective agreements.

1.8 The respective sections 3.02 of the MIT Agreement and DBSP Agreement set forth certain representations and warranties regarding the Sold Loans.

1.9 The respective sections 3.03 of the MIT Agreement and DBSP Agreement require the repurchase of loans or indemnification against losses where there is a breach of any representation and/or warranty.

1.10 The respective sections 3.05 of the MIT Agreement and DBSP Agreement require the repurchase of loans or indemnification against losses where an Early Payment Default, as defined in such agreements, has occurred.

1.11 INDYMAC made demands to MIT and DBSP for repurchase or indemnification as to certain of the Sold Loans based upon an alleged finding of a breach of any representation and/or warranty or Early Payment Default as set forth in the MIT Agreement and/or DBSP Agreement.

1.12 On July 11, 2008, the Office of Thrift Supervision ("OTS") closed INDYMAC. As part of its resolution of the failed thrift, the Federal Deposit Insurance Corporation created a pass-through receivership. The FDIC exclusively retains all rights and claims from INDYMAC under the MIT Agreement and DBSP Agreement that are the subject of this Settlement Agreement.

1.13 The FDIC is seeking repurchase or indemnification pursuant to alleged breaches of either the MIT Agreement or DBSP Agreement with respect to certain of the Sold Loans.

1.14 All rights of repurchase, refund, reimbursement, indemnification, contribution, make-whole, payment, breach, damages, costs, loss, attorney's fees or recourse of any kind and any defense or offset thereto under the Seller Contract, the MIT Agreement, the DBSP Agreement or any other loan sale agreement with respect to any or all of the Sold Loans, whether now known or unknown, are hereinafter referred to as the "Subject Claims."

1.15 A dispute has arisen between the FDIC on the one hand, and MIT and DBSP on the other hand, with respect to the Subject Claims under the MIT Agreement and the DBSP Agreement.

1.16 Without admitting liability, the Parties desire to and have agreed to settle and resolve the Subject Claims. The Parties deem it in their best interests to enter into this Settlement Agreement to avoid the uncertainty, trouble, and expense of any and all

potential litigation concerning the Subject Claims. By this Settlement Agreement, the Parties intend to memorialize the terms of their compromise and settlement of this matter.

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 of Settlement Funds. Payment of Fifty Four Million Dollars and no cents (\$54,000,000.00) (the "Settlement Funds") shall be paid on behalf of MIT and DBSP on or before December 31, 2009. The Settlement Funds shall be paid by wire transfer as follows:

Bank: Wells Fargo Bank, NA
Address: 535 N. Brand Blvd
Glendale, California 91203
Beneficiary/Account Name: Mortgage Recovery Law
Group LLP (FDIC Client
Trust Account)

Routing Number:

Account Number:



(b)(4)

2.3 The Parties agree that timely receipt of the Settlement Funds is an essential term and a condition to the effectiveness of this Settlement Agreement.

2.4 Subject to Section 4.7, the Parties shall be responsible and bear their own costs, expenses and any attorneys' fees incurred in this matter.

2.5 MIT and DBSP are jointly and severally liable for payment of the Settlement Funds. If any portion of the Settlement Funds is subject to avoidance as a preferential transfer under the United States Bankruptcy Code, then DBSP shall be obligated to pay the FDIC any amounts of the Settlement Funds which are subject to such avoidance.

3. RELEASE

3.1 Unknown Claims. The Parties 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) which they or

their successors may have against each other arising from or relating in any way to the Subject Claims.

3.2 The Parties hereby expressly waive application of *California Civil Code §1542*, and any analogous or similar provision of law in any other jurisdiction, with respect to the Subject Claims. The Parties certify that they have read and understand 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 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 Subject Claims, the claims and causes of action that were or could have been asserted relating to the Subject Claims, or any facts or circumstances related to the repurchase of and/or indemnification of losses associated with the Subject Claims, that Party will not be able to make any claim 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 Settlement Agreement but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this Settlement Agreement, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

3.4 **Release by MIT.** MIT hereby fully, finally, and forever releases and discharges the FDIC, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, 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, and/or employees, 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, and/or employees 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, the Subject Claims.

3.5 Release by DBSP. DBSP hereby fully, finally, and forever releases and discharges the FDIC, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, 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, and/or employees, 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, and/or employees 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, the Subject Claims.

3.6 Release by FDIC. The FDIC, for itself, as receiver for IndyMac and for subsequent purchasers, if any, of the Sold Loans, hereby fully, finally, and forever releases and discharges DBSP and MIT, and each of DBSP's and MIT's respective parent corporations, subsidiaries and affiliates, and any and all of their respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, 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, and/or employees, 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, and/or employees 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, the Subject Claims.

3.7 Express Reservation from Releases by FDIC. Notwithstanding any other provision, by 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 action taken by any other federal agency. In addition, this Settlement 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 or the United States Attorney's Office in any federal judicial district. Further, this Settlement Agreement does not purport to waive, or intend to waive, any defenses to any claim or action brought against the FDIC, as defined, or the Federal Deposit Insurance Corporation in any capacity, except that the reservations in this paragraph shall not apply in any action by DBSP or MIT to enforce the provisions of this settlement against the FDIC. Finally, this

Settlement Agreement does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, any claims against MIT or DBSP arising out of existing or future failed financial institutions other than INDYMAC, except to the extent that any such claims relate to the Sold Loans.

4. MISCELLANEOUS

4.1 No Press Release. The FDIC will not issue a press release regarding the Settlement Agreement or any provision therein, nor will it make any other public statement or public affirmation of the Settlement Agreement or any other provision therein except in response to a specific inquiry or as otherwise required by law.

4.2 Cooperation. The FDIC, INDYMAC and the INDYMAC Affiliates agree they will provide to DBSP or MIT loan level data, files or other information relating to the Sold Loans as reasonably requested by DBSP or MIT.

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

4.4 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.

4.5 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.

4.6 Governing Law. The Parties agree to submit any dispute arising out of this Settlement Agreement, or related thereto, to the Courts of the City and County of Los Angeles, California or the United States District Court, Central District of California, 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.

4.7 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.

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

4.9 Review and Understanding. The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understood the meaning and effect of all of its terms and provisions, and fully understanding its and their costs

and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

4.10 Approval, Authority, and Nonassignment. 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. Except as expressly stated in this Settlement Agreement, each Party represents and warrants that they have not sold, assigned, granted or transferred to any other person, corporate or natural, or to any entity, the Subject Claims released by this Settlement Agreement.

4.11 Drafting. The terms of this Settlement Agreement are contractual and are the result of negotiation among the Parties. Each Party has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction to be made of this Settlement Agreement, the role of the Party in drafting and preparation of the Settlement Agreement shall not be referred to in order to construe the Settlement Agreement against that Party, and the canon of contractual interpretation shall not be applied.

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

4.13 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, photocopy 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.

4.14 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.

4.15 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.

4.16 Modifications. This Settlement 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.

4.17 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, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

4.18 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 with respect to the Subject Claims. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

[Agreement continued on next page]

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: December 19, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, FSB

By:

(b)(6)

Name: Richard S. Gill
Title: Counsel

DATED: December __, 2009

DB STRUCTURED PRODUCTS, INC.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

DATED: December __, 2009

MORTGAGEIT, INC.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

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: December __, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, FSB

By: _____

Name: _____
Title: _____

DATED: December 31, 2009

DB STRUCTURED PRODUCTS, INC.

By:  (b)(6)

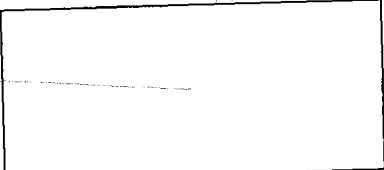
Name: **TIM CROWLEY**
Title: **VICE PRESIDENT**

By:  (b)(6)

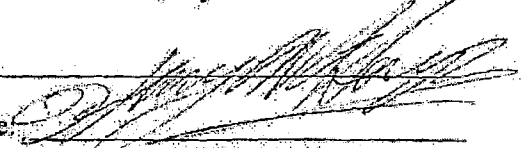
Name: *Patrick McEnery*
Title: *Managing Director*

DATED: December 31, 2009

MORTGAGEIT, INC.

By:  (b)(6)

Name: *Patrick McEnery*
Title: *Managing Director*

By: 

Name: _____
Title: **HENRY HAYSSSEN**
VICE PRESIDENT