

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into and made effective as of the 26th day of January 2011 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, F.S.B. ("FDIC") and SKYLINE FINANCIAL CORP. ("SKYLINE"). The FDIC and SKYLINE may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

1. RECITALS

1.1 On or about March 10, 2010, the FDIC filed a lawsuit entitled *FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B. v. RPM MORTGAGE, a California corporation dba PLATINUM CAPITAL GROUP, a California corporation; PLATINUM CAPITAL GROUP, a California corporation; SKYLINE FINANCIAL CORP., a California corporation; SKYLINE FINANCIAL CORP. dba STRATFORD, business entity unknown and STEPHANIE GREEN, an individual*; Case No. CV10-01758-ODW (hereinafter "Action"). The FDIC filed its First Amended Complaint on March 19, 2010. Through the First Amended Complaint, the FDIC sought damages from SKYLINE arising out of the [redacted] LOAN (as hereinafter defined). The First Amended Complaint included two claims for relief against SKYLINE for breach of contract and professional negligence. In its answer, SKYLINE denied it was liable to the FDIC for damages.

(b)(6)

1.2 On May 3, 2010, SKYLINE filed a Cross-Claim for Breach of Contract, Negligence, and Indemnity against STEPHANIE GREEN ("GREEN"), PLATINUM CAPITAL GROUP, KEVIN DAUM and STRATFORD FINANCIAL SERVICES. GREEN filed a response to the Cross-Claim on July 30, 2010 denying the allegations. KEVIN DAUM filed for bankruptcy and has not appeared in the case. PLATINUM CAPITAL GROUP and STRATFORD FINANCIAL SERVICES failed to respond to the Cross-Claim and their defaults were entered on August 3, 2010.

1.3 The FDIC alleged in its First Amended Complaint that on or about October 1, 1996, INDYMAC BANK, F.S.B. ("INDYMAC") and SKYLINE entered into a business relationship governed by a Seller Contract (hereinafter "Seller Agreement"). The FDIC alleged that the Seller Agreement was amended, supplemented or otherwise modified from time to time. The FDIC has alleged in its First Amended Complaint that the Seller Agreement and INDYMAC's Lending Guide, which was made part of the Seller Agreement by incorporation, allegedly set forth the terms and conditions pursuant to which INDYMAC would purchase and/or fund loans processed, packaged and submitted by SKYLINE.

1.4 The FDIC alleged in its First Amended Complaint in the Action that pursuant to the terms of the Seller Agreement and the Lending Guide, SKYLINE submitted to INDYMAC the Construction to Permanent Residence Loan to [redacted] and [redacted] (Loan No. [redacted] in the principle amount of [redacted])

(b)(6)

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(b)(6) \$2,025,000.00 which loan was secured by a deed of trust encumbering the property located at [REDACTED] Harrison, Idaho ([REDACTED] LOAN"). (b)(6)

(b)(6) 1.5 The FDIC claimed SKYLINE breached certain representations and warranties contained in the Seller Agreement and the Lending Guide with respect to the [REDACTED] LOAN. The FDIC alleges that it demanded SKYLINE repurchase or indemnify the FDIC for losses it sustained by the FDIC on the [REDACTED] LOAN. (b)(6)

1.6 SKYLINE disputes the FDIC's claims relating to the [REDACTED] LOAN. Specifically, and without limitation, SKYLINE denies that it breached the representations and warranties provisions of the Seller Agreement and the Lending Guide or that it breached any duty owed to the FDIC, or that the FDIC and/or INDYMAC suffered or will suffer any loss, damage, or cost related in any way to the [REDACTED] LOAN. (b)(6)

(b)(6) 1.7 SKYLINE alleged that INDYMAC and SKYLINE entered into a contract under which INDYMAC induced SKYLINE to create a construction loan department to be operated under INDYMAC's management discretion for the generation, processing, and making of construction loans (the "INDYMAC Management Agreement"). SKYLINE alleged that the [REDACTED] LOAN was subject to the INDYMAC Management Agreement and that INDYMAC breached the INDYMAC Management Agreement as it relates to the [REDACTED] LOAN. The FDIC disputes SKYLINE's allegations regarding the INDYMAC Management Agreement, and that INDYMAC breached any duty owing SKYLINE related to the [REDACTED] LOAN or any other loan. (b)(6)

(b)(6) 1.8 The Parties desire and have agreed to settle all claims between the FDIC and SKYLINE relating to the [REDACTED] LOAN. (b)(6)

(b)(6) 1.9 For purposes of this Settlement Agreement, the term "Released Claims" shall mean all claims, causes of action, or allegations of loss which either the FDIC or Skyline did or could have made in the Action or any other lawsuit against the other Party to this Settlement Agreement arising from or related to the [REDACTED] Loan. The term "Released Claims" does not include any claims, causes of action, or allegation of loss either of them did or could have made in the Action or in any other lawsuit against GREEN, PLATINUM CAPITAL GROUP, KEVIN DAUM, STRATFORD FINANCIAL SERVICES, and/or [REDACTED] or any of their spouses, officers, directors, agents, successors, employees, or members. (b)(6)

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 Two Hundred Seventeen Thousand Five Hundred Dollars and no/cents (\$217,500.00) (the "Settlement Funds") shall be paid on behalf of SKYLINE to the FDIC within 10 business days of the execution of this Settlement Agreement. SKYLINE shall deliver the Settlement Funds to the FDIC c/o Anderson, McPharlin & Conners, LLP at 444 S. Flower Street, 31st Floor, Los Angeles, California, 90071, Attn: Vanessa H. Widener. The Settlement Funds shall be paid by certified funds made payable to Anderson, McPharlin & Conners Trust Account.

2.3 Assignment of Claims against Green. SKYLINE hereby assigns to the FDIC the claims SKYLINE asserted against GREEN in the Cross-Claim referenced in paragraph 1.2 above. Within 5 business days of executing this Settlement Agreement, SKYLINE shall file and serve on all parties to the Action, a request for dismissal without prejudice of its Cross-Claim against GREEN. SKYLINE agrees to cooperate with the FDIC in documenting any settlement that may be reached between the FDIC and GREEN arising from the claims asserted in the Action and Cross-Claim.

2.4 Within 10 business days of the FDIC's counsel's receipt of the fully executed Settlement Agreement and the Settlement Funds and the filing of the dismissal of SKYLINE's Cross-Claim against Green, the FDIC's counsel shall file a request for dismissal of the Action with prejudice as to the claims asserted against SKYLINE.

2.5 The Parties specifically acknowledge that this Settlement Agreement is intended to release only the Released Claims, and nothing herein shall be deemed to release any claim either Party now has or may ever have had against GREEN, PLATINUM CAPITAL GROUP, KEVIN DAUM, STRATFORD FINANCIAL SERVICES, and/or [REDACTED] or any other person or entity.

The FDIC specifically acknowledges that SKYLINE intends to pursue other persons and/or entities, including but not limited to PLATINUM, and/or [REDACTED] [REDACTED] for damages, loss, liability, and indemnity relating to the [REDACTED] LOAN.

2.6 At SKYLINE's request, the FDIC shall cooperate with SKYLINE in its pursuit by lawsuit or otherwise of any third party for losses claimed by SKYLINE arising from or related to the [REDACTED] LOAN.

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 SKYLINE 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 may have against each other arising from or in conjunction with the [REDACTED] LOAN as described in paragraph 1.4 of this Settlement Agreement.

3.2 The Parties acknowledge and agree that (i) SKYLINE processed, packaged and/or sold other mortgage loans to INDYMAC which are not described in paragraph 1.4 of this Settlement Agreement; (ii) that SKYLINE claims that INDYMAC was engaged in managing SKYLINE's construction loan department in connection with other mortgage loans not described in paragraph 1.4 of this Settlement Agreement; and (iii) that this Settlement Agreement and the Release does not apply to the release of claims related to mortgage loans other than the [REDACTED] LOAN. Both the FDIC and SKYLINE expressly reserve their rights to pursue any and all claims and causes of action either of them may have in law or equity against the other party arising out of any mortgage loan other than the [REDACTED] LOAN. (b)(6)

3.3 The Parties hereby expressly waive application of *California Civil Code §1542* as it relates to the [REDACTED] LOAN. 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.

3.4 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 [REDACTED] LOAN or any facts or circumstances related to the [REDACTED] LOAN, 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 [REDACTED] LOAN, 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. (b)(6)

3.5 Except for the rights, duties, and obligations set forth in this Settlement Agreement and all claims which SKYLINE may decide to pursue against any person identified in Section 2.5 of 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 [REDACTED] LOAN or [REDACTED] LOAN. (b)(6)

(b)(6) 3.6 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 SKYLINE arising out of existing or failed financial institutions other than INDYMAC.

3.7 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. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

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 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.

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

4.10 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.

4.11 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.

4.12 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.

4.13 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.

4.14 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: January 26, 2011
APPROVED AS TO FORM

THE LAW OFFICES OF HENRY KNEBEL

By: _____

[Redacted Signature Box] (b)(6)

Henry A. Knebel

Attorneys for Defendant SKYLINE
FINANCIAL CORP.

DATED: January 26th, 2011

SKYLINE FINANCIAL CORP.

By: _____

[Redacted Signature Box] (b)(6)

Signature

Chris Weinstock
Chief Legal and Risk Officer

Type/Print Name and Title

DATED: January _____, 2011
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By: _____

VANESSA H. WIDENER

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

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DATED: January _____, 2011
APPROVED AS TO FORM

THE LAW OFFICES OF HENRY KNEBEL

By: _____
Henry A. Knebel
Attorneys for Defendant SKYLINE
FINANCIAL CORP.

DATED: January _____, 2011

SKYLINE FINANCIAL CORP.

By: _____
Signature

Type/Print Name and Title

DATED: January 25, 2011
APPROVED AS TO FORM

ANDERSON McPHARLIN & CONNERS LLP

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

(b)(6)

DATED: January 24, 2011

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

By:

[Redacted Signature Box]

(b)(6)

Signature

Richard S. Gills, Counsel
Type/Print Name and Title