**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. ("FDIC-R"), and First Option Mortgage, LLC ("Defendant"), (individually, the FDIC-R and Defendant may be referred to herein as "Party" and collectively as the "Parties").

**RECITALS**

WHEREAS:

A. Prior to July 11, 2008, IndyMac Bank, F.S.B. ("Bank") was a depository institution organized and existing under the laws of the United States;

B. On July 11, 2008, the Office of Thrift Supervision closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

C. Defendant and the Bank entered into a Seller Contract and e-MITS User Agreement dated February 4, 2005 ("Contract"). Pursuant to the terms of the Contract, Defendant sold to the Bank various residential mortgage loans ("Loans").

D. On June 26, 2014, the FDIC-R filed a complaint for money damages against Defendant relating to two loans sold by Defendant to the Bank under the Contract (hereinafter any and all present and future claims by Plaintiff to Defendant under the Contract for repurchase or indemnification for losses associated with the Loans are referred to as the "Claims"). This claim for damages is now pending in the United States District Court for the Central District of California in *Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B., v. First Option Mortgage, LLC*, Case Number 2:14-cv-05000-SVW-RZ ("Action"). Defendant has denied liability in the Action.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC-R**

A. As an essential covenant and condition to this Agreement, the Defendant agrees to pay the FDIC-R the sum of two hundred ten thousand dollars ($210,000.00) ("the Settlement Payment"), as follows:

1. Sixty one thousand five hundred dollars ($61,500.00) to be paid no later than ninety (90) days from execution of the Confidential Settlement and Release Agreement; and

2. Thirteen thousand five hundred dollars ($13,500.00) per month, payable on the first business day of each month thereafter for the next eleven (11) months.

B. Defendant shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Defendant or by certified or cashier's check drawn upon a depository institution and made payable to Mortgage Recovery Law Group Client Trust Account.

In the event that any of the installments of the Settlement Payment are not delivered to the FDIC-R (or its counsel) by the due dates set forth in Section I.A, above, interest shall accrue on all unpaid amounts at the rate of 5% per annum from such due date until the date of payment. However, if said Settlement Funds are not timely delivered to the FDIC-R, as a result of the FDIC-R's failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R executes the Agreement.

C. If the FDIC-R or its counsel do not receive the Settlement Payment in full on or before the date determined by subsection A above, FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or

2. Enforce this Agreement, in which event the Defendant agrees to jurisdiction in United States District Court in the Central District of California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement;

3. Terminate the Agreement, move to vacate any dismissal order, to which the Defendant agrees to consent, and re-institute an action on the FDIC-R's claims. The Defendant further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

**SECTION II: Stipulations and Dismissal**

Within ten business days of the execution of this Agreement, the Parties agree to execute a Stipulation for Entry of Judgment for the total Settlement Payment due, less payments already made, which will be filed if First Option defaults and thereafter fails to cure any installment payment. If Defendant defaults and then fails to cure any installment payment, Plaintiff may seek to enforce the Judgment in the United States District Court for the Central District of California on an *ex parte* basis 10 days after the date of any default, subject to the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Central District of California. However, the Parties agree that Defendant shall have a grace period of ten (10) days in which to cure the default and Plaintiff agrees not to file any request until the grace period lapses.

Within ten business days of the execution of this Agreement, FDIC agrees to execute a Dismissal with Prejudice and provide a copy to Defendant. Within five business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the entire Settlement Payment (*i.e.*, receipt of the last installment payment as set forth in Section I(A)(2), above) plus any accrued interest, or as otherwise ordered by the Court, the FDIC-R shall file the stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the Action.

**SECTION III: Releases**

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Defendant and its respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to the causes of action alleged in the Action and/or the Claims.

B. The Defendant's Release.

Effective simultaneously with the release granted in Section III.A. above, the Defendant, on behalf of itself individually, and its respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the causes of action alleged in the Action and/or the Claims.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against the Defendant or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and statutory authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

**SECTION IV: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

**SECTION V: Reasonable Cooperation**

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

**SECTION VI: Other Matters**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of California.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:
Paul A. Levin, Esq.
Mortgage Recovery Law Group
700 N. Brand Blvd., Suite 830
Glendale, California 91203
(818) 630-7901

If to the Defendant:
James W. Brody, Esq.
American Mortgage Law Group, P.C.
75 Rowland Way, Suite 350
Novato, CA 94945
(415) 878-0030 x. 151

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

H. California Civil Code § 1542. Each party acknowledges that this 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 that Party may have against another Party arising from the Claims or the Action. Each Party hereby expressly waives application of California Civil Code § 1542 and any other similar statute or rule.

Each Party certifies that it has 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.**

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 Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for 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 release 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.

I. Severability. If any provision of this Settlement Agreement shall, for any reason or to any extent, be invalid or unenforceable, the remainder of this Settlement Agreement shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

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

(b)(6) Date: 4/27/15

BY: [redacted]

TITLE: Counsel

PRINT NAME: Richard S. Gill

FIRST OPTION MORTGAGE, LLC

(b)(6) [redacted]

Date: 04/24/2015

BY: [redacted]

TITLE: Managing Partner

PRINT NAME: Kurt Nikolai