

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is entered into and made effective as of the 21 day of June, 2009 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") AS RECEIVER AND CONSERVATOR FOR INDYMAC FEDERAL BANK, F.S.B., F/K/A INDYMAC BANK, F.S.B. ("IndyMac"), and NORTHPOINT MORTGAGE CORPORATION ("Northpoint"). The FDIC, and Northpoint may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

RECITALS

1.1 On or about October 30, 2001, IndyMac and Northpoint, entered into a written Customer Agreement and e-Mits User Agreement (hereinafter "Agreement") and incorporated IndyMac Seller Guide ("Guide").

1.2 Pursuant to the Agreement, Northpoint submitted to IndyMac the following eleven (11) loans (hereinafter "Loans"):

<u>Name</u>	<u>Loan No.</u>
(b)(4),(b)(6)	



1.3 IndyMac claims that Northpoint breached certain representations and warranties contained in the Agreement and Guide in submitting the Loans to IndyMac. IndyMac demanded Northpoint repurchase the Loans and/or indemnify IndyMac for its losses. Northpoint failed to do so.

1.4 On or about January 28, 2008, IndyMac filed its original complaint in a lawsuit against Northpoint entitled *IndyMac Bank, F.S.B. v. Northpoint Mortgage, Inc., et al.*, Case No. BC384431, including causes of action for breach of contract, express indemnity, specific performance, negligent misrepresentation, negligent hiring, and negligent supervision arising out of the Loans ("Action."). IndyMac filed first and second amended complaints on February 6, 2008, and May 8, 2008, respectively.

1.5 The Parties desire and have agreed to settle all claims relating to the repurchase and/or indemnification obligations on all loans submitted by Northpoint to IndyMac pursuant to the Agreement, including the Loans that are the subject of the Action, in their entirety upon the terms and conditions hereinafter set forth.

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:

1.6 **Payment to IndyMac.** Northpoint shall pay to the FDIC the total sum of \$22,500.00 (twenty-two thousand and five hundred dollars) (the "Settlement Funds"). Payment of the Settlement Funds shall be made upon execution of this Settlement Agreement. Payments shall be made by check or draft made payable to IndyMac Federal Bank, FSB and sent to Wright, Finlay & Zak, L.L.P., 4665 MacArthur Court, Suite 280, Newport Beach, CA 92660.

1.7 Within five (5) business days of the FDIC's counsel's receipt of the payment of the Settlement Funds, the FDIC's counsel shall file a request for dismissal with prejudice.

1.8 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 the court shall retain jurisdiction over the parties to enforce this Settlement Agreement.

1.9 The parties shall bear their own costs and attorneys' fees.

RELEASE

1.10 **Unknown Claims.** Each Party acknowledges and agrees that the release they give to the other Party 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 that Party may have against the other Party arising from or in conjunction with all loans submitted by Northpoint to IndyMac pursuant to the Agreement, including the Loans that are the subject of the Action, and each Party hereby expressly waives application of any applicable state statute, including but not limited to *California Civil Code §1542*.

1.11 Each Party certifies 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."

1.12 Each Party understands and acknowledges 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 out of loans submitted by Northpoint to IndyMac pursuant to the Agreement, including the Loans that are the subject of the Action, that Party will not be able to make any claim for those damages. Furthermore, each acknowledges that they consciously intend 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.

1.13 Except for the rights, duties, and obligations set forth in this Settlement Agreement the FDIC and Northpoint each hereby fully, finally, and forever release and discharge the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, agents, investors, successors, assigns, representatives, officers, directors, shareholders, agents, 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, 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, any and all loans submitted by Northpoint to IndyMac pursuant to the Agreement, including the Loans that are the subject of the Action, except that the FDIC retains any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature against Third Parties (closing agents, settlement agents, title companies, insurance companies, appraisers, appraisal companies, third party originators, or insurance companies for any of the foregoing as collectively referred to as "Third Parties") arising out of or related to the Loans.

1.14 Notwithstanding any other provision in this Settlement Agreement, Northpoint immediately, exclusively, and irrevocably assigns to the FDIC any and 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 Northpoint has or may have against any and all Third Parties arising out of or related to the Loans.

1.15 **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 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.

1.16 **Confidentiality.** Except as authorized in this Settlement Agreement, the Parties agree that neither they nor anyone acting on their behalf, including their respective attorneys, will disclose to anyone any information relating to, in any way, the contents or terms of this Settlement Agreement, the fact of this settlement, or any matters pertaining to this settlement, including its negotiation, unless such disclosure is: (1) lawfully required by any governmental agency; (2) otherwise required by law (including legally required financial reporting or other disclosures); or (3) necessary in any legal proceeding to enforce any provision of this Settlement Agreement. The Parties may disclose the terms of this Settlement Agreement to their respective auditors, accountants, tax advisors, and legal counsel, but only to the extent required for professional advice from those sources and only after securing a commitment from those professionals to

maintain the confidentiality of this Settlement Agreement, as required above, to the greatest extent possible considering the purpose for which the terms of the Settlement Agreement are needed by those professionals.

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

1.18 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.

1.19 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.

1.20 Governing Law. The Parties agree to submit to the Courts of the County of Orange, 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.

1.21 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.

1.22 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.

1.23 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.

1.24 Review and Understanding. The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding 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.

1.25 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, and further warrant and represent that they have not sold, assigned, granted or transferred to any other person, corporate or natural, or to any entity, any claim, action, demand, or cause of action released by this Settlement Agreement.

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

1.27 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 shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

1.28 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.

1.29 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.

1.30 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.

1.31 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 pertaining to the Loans and/or Action. This 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.

For: Federal Deposit Insurance Corporation

By: _____
Name: _____
Title: _____
Date: _____

For: Northpoint Mortgage Corporation

By: (b)(6)
Name: ATTIQUE REHMAN
Title: PRESIDENT
Date: 6/30/2009

Approved as to Form and Content:

Wright, Finlay & Zak, LLP

By: (b)(6)
Robert F. Finlay, Esq.
Attorneys for Federal Deposit Insurance Corporation

American Mortgage Law Group, P.C.

By: (b)(6)
Ryan F. Thomas, Esq.
Attorneys for Northpoint Mortgage Corporation

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For: Federal Deposit Insurance Corporation

By:

[Redacted Signature]

Name: Jack S. Duncan

Title: Senior Attorney, PL-FCS

Date: July 7, 2009

Approved as to Form and Content:

Wright, Finlay & Zak, LLP

By:

Robert F. Finlay, Esq.
Attorneys for Federal Deposit Insurance Corporation

For: Northpoint Mortgage Corporation

By:

[Redacted Signature]

Name: ATRIQUE KENMAN

Title: PRESIDENT

Date: 6/30/2009

American Mortgage Law Group, P.C.

By:

[Redacted Signature]

Ryan F. Thomas, Esq.
Attorneys for Northpoint Mortgage Corporation