

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE

("Settlement Agreement") is entered into and made effective as of the ____ day of April, 2009 ("Effective Date"), by and between The FDIC as Conservator for IndyMac Federal Bank, FSB fka IndyMac Bank, FSB ("IndyMac") and Pacific Horizon Bancorp, Inc. ("Pacific Horizon"), Houry Aposhian ("Houry"), and Pattyl Kasparian ("Pattyl") (Collectively hereafter "Defendants"). IndyMac and Defendants may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

1. RECITALS

1.1 IndyMac claims that on or about October 28, 1994, IndyMac and Pacific Horizon entered into a written Customer Contract and e-mits User Agreement (hereinafter "Agreement").

1.2 IndyMac also claims that, pursuant to the Agreement, Pacific Horizon sold to IndyMac five (5) loans with borrowers Pinedo, Cabrera, and Gonzalez ("Borrowers") (hereinafter "Loans") further identified by IndyMac's internal loan numbers as follows:

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

1.3 On or about January 28, 2008, IndyMac filed a lawsuit against Pacific Horizon, Houry, and Pattyl entitled *IndyMac Bank, F.S.B. v. Pacific Horizon Bancorp, Inc., a California corporation, Houry Aposhian, an individual, and Pattyl Kasparian, an individual*, Los Angeles Superior Court Case No. BC384488, including causes of action for breach of contract, express indemnity, specific performance, negligent misrepresentation, negligent hiring and negligent supervision arising out of the Loans. A First Amended Complaint was subsequently filed.

1.4 Defendants filed an Answer to IndyMac's First Amended Complaint on or about September 12, 2008, and in good faith dispute IndyMac's allegations in the Action. The Complaint, First Amended Complaint and Answer are collectively referred to herein as the "Action".

1.5 In order to eliminate the costs of further litigation, and to fully compromise and resolve the disputes which are the subject matter of the Action, the Parties desire and have agreed to settle all claims between them relating to the above-referenced Loans and the Action in their entirety upon the terms and conditions hereinafter set forth.

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 IndyMac. Defendant Pacific Horizon shall pay to IndyMac the total sum of \$240,774.60 (two hundred forty thousand seven hundred seventy-four dollars and sixty cents) (the "Settlement Funds"). The payment of \$150,000.00 (one hundred fifty thousand dollars) ("First Payment") shall be made upon execution of this Agreement and payments of \$5,000.00 (five thousand dollars) shall be made each month thereafter, beginning on the 1st of the first month following execution of this Agreement, until the sum of \$90,774.60 is paid in full. 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.

2.3 Within 15 business days of receipt of the fully executed Settlement Agreement and First Payment of the Settlement Funds by its counsel, IndyMac shall take all appropriate action as may be necessary to cause the Action to be dismissed with prejudice as to all defendants.

2.4 Concurrently with the signing and delivery of this Settlement Agreement and First Payment, Defendant Pacific Horizon shall execute a Stipulation for Entry of Judgment 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 made a part of this Settlement Agreement. The Stipulation shall be entered immediately upon execution of this Settlement Agreement.

The Judgment (Pursuant to Stipulation) shall not be entered so long as Defendant Pacific Horizon performs under the terms of this Settlement Agreement.

2.5 In the event Defendant Pacific Horizon default by failing to make a timely payment to IndyMac as set forth in this Settlement Agreement, IndyMac shall give written notice via mail of the default and notice of intent to enter Judgment (Pursuant to Stipulation) to Defendants at: Pacific Horizon Bancorp, Inc., 2529 Foothill Blvd., #104, La Crescenta, CA. 91214.

2.6 Defendant Pacific Horizon shall have five (5) business days from receipt of the notice of intent to enter Judgment to cure the default. If Defendant Pacific Horizon fail to cure the default within five (5) business days, IndyMac shall retain all consideration it received, and it may, in its sole discretion, seek to enter the Judgment (Pursuant to Stipulation) and enforce said Judgment against Defendant Pacific Horizon less any consideration already received by IndyMac pursuant to the settlement. Judgment may be entered by noticed motion and timely written notice given to Defendant Pacific Horizon as required by law. The amount actually received by IndyMac shall be deducted from the amount of the Judgment (Pursuant to Stipulation).

2.7 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.

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

3. RELEASE

3.1 Unknown Claims. Each Party acknowledges that this executed settlement and release 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 the Loans, the claims and causes of action that were or could have been asserted in the Action related to the Loans, and/or any facts or circumstances related to the repurchase of and/or indemnification of losses associated with the Loans, and each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

3.2 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.”

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 Loans, the claims and causes of action that were or could have been asserted in the Action related to the Loans, or any facts or circumstances related to the repurchase of and/or indemnification of losses associated with the Loans, 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.

3.4 Except for the rights, duties, and obligations set forth in this Settlement Agreement and the Parties obligations arising out of any loans other than the Loans specified in this Action, each party hereby fully, finally, and forever release and discharge the other Parties, 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, the Loans, the claims and causes of action that were or could have been asserted in the Action related to the Loans, and/or any facts or circumstances related to the repurchase and/or indemnification of losses associated with the Loans.

3.5 The Parties further acknowledge and agree that no Party will take any action or assert any claims or demands against the other Party with any federal, state, municipal, or other governmental agency or court relating to any of the foregoing matters which have been released by the Parties’ execution of this Settlement Agreement. The Parties expressly represent that no other action, administrative or adjudicative, has been filed in any other court or tribunal against another Party to this settlement agreement. IndyMac Bank further represents that it has not reported any of the Defendants herein or

anyone acting on their behalf, to any government agencies, including but not limited to the California Department of Real Estate, California Department of Corporations, United States Department of Housing and Urban Development, Mortgage Asset Research Institute (MARI) or any other third party or individual for any reason whatsoever, with the exception of the Federal Deposit Insurance Corporation (FDIC).

3.6 Each Party agrees to refrain from any tortious interference with any future contracts and/or business relationships of the other Party concerning any and all the events and circumstances relating to, arising out of, or resulting from, in any manner, as to any or all facts or circumstances related to the repurchase and/or indemnification of losses associated with the Loans, or in any manner to or in any way connected with the aforementioned lawsuit.

3.7 The Parties acknowledge that the rights, obligations, defenses, and remedies of the Parties with respect to any and all loans sold to IndyMac by Pacific Horizon other than the Loans, shall not be impaired, waived, limited, or otherwise affected by this Settlement Agreement. Accordingly, any and all claims, damages, losses or breaches of representations, covenants, or warranties of any type or nature which either party may be entitled to assert under the Agreement related to any or all loans sold to IndyMac by Pacific Horizon, other than the Loans, and all defenses and/or counter claims related thereto, are reserved by the Parties, and are not released, and shall not be impaired, waived, limited, or otherwise affected by this Settlement Agreement.

3.8 Confidentiality. Except as authorized in this Section 3.5, 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); (3) necessary in any legal proceeding or collection effort initiated by IndyMac to recover all or any portion of the Settlement Funds; or (4) 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.

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

3.10 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.

3.11 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.

3.12 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.

3.13 Attorneys' Fees. 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.

3.14 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.

3.15 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.

3.16 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.

3.17 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.

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

3.19 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.

3.20 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.

3.21 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.

3.22 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.

3.23 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. 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.

For: The FDIC as Conservator for
IndyMac Federal Bank, FSB dba
IndyMac Bank, FSB.

For: Pacific Horizon Bancorp, Inc.

(b)(6)

(b)(6) By: [Redacted]
Name: _____
Title: Ignacio Gomez
Vice President
Date: _____

By: [Redacted]
Name: Houry Aposhian
Title: President
Date: 4-3-09

Approved as to Form and Content:

Wright, Finlay & Zak, LLP

Law Offices of Harman Thordson

(b)(6) By: [Redacted]
T. Robert Finlay, Esq.
Attorneys for The FDIC as
Conservator for IndyMac Federal
Bank, FSB

(b)(6) By: [Redacted]
Andrew Bao, Esq.
Attorneys for Pacific Horizon Bancorp,
Inc., Houry Aposhian, and Patty
Kasparian

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2 T. Robert Finlay, CA State Bar No. 167280
3 Robert B. Norum, CA State Bar No. 240301
4 4665 MacArthur Court, Suite 280
5 Newport Beach, CA 92660 (*Pacific Horizon/Pleadings/Stipulation for Entry of Judgment*)
6 Tel. (949) 477-5050; Fax (949) 477-9200

7
8 Attorneys for Plaintiff, FDIC, AS CONSERVATOR FOR
9 INDYMAC FEDERAL BANK, F.S.B., F/K/A INDYMAC BANK, F.S.B.

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 FDIC, AS CONSERVATOR FOR INDYMAC) Case No.: BC384488
14 FEDERAL BANK, F.S.B., F/K/A INDYMAC)
15 BANK, F.S.B.,)
16) **STIPULATION FOR ENTRY OF**
17) **JUDGMENT**
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11 FDIC, AS CONSERVATOR FOR INDYMAC)
12 FEDERAL BANK, F.S.B., F/K/A INDYMAC)
13 BANK, F.S.B.,)
14) Plaintiffs,)
15 vs.)
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15 PACIFIC HORIZON BANCORP, INC., a)
16 California corporation, HOURY APOSHIAN, an)
17 individual, PATTYL KASPARIAN, an)
18 individual and DOES 1-50,)
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21 IT IS HEREBY STIPULATED between Plaintiff FDIC, AS CONSERVATOR FOR
22 INDYMAC FEDERAL BANK, F.S.B., F/K/A INDYMAC BANK, F.S.B. ("INDYMAC") and
23 Defendants PACIFIC HORIZON BANCORP, INC. ("PACIFIC HORIZON"), HOURY
24 APOSHIAN, and PATTYL KASPARIAN (collectively hereinafter the "Defendants",
25 collectively hereafter with INDYMAC the "Parties"), as follows:

26 1. On or about January 28, 2008, INDYMAC filed a lawsuit entitled *IndyMac Bank*
27 *F.S.B. v. Pacific Horizon Bancorp, Inc., a California corporation, Houry Aposhian, an*
28 *individual, and Pattyl Kasparian, an individual*, Case No. BC384488 (hereinafter "Action"). A

1 First Amended Complaint was subsequently filed.

2 2. The Parties to the Action, wishing to avoid the uncertainty and expense of
3 continued litigation, have entered into a written Settlement Agreement whereby Defendant
4 PACIFIC HORIZON have agreed to pay to INDYMAC the total sum of \$240,774.60 over a
5 period of 20 months.

6 3. In the event that Defendant PACIFIC HORIZON default under the terms of the
7 Settlement Agreement, the Parties stipulate and agree that judgment against Defendant PACIFIC
8 HORIZON in the amount of \$240,774.60, less any amounts received by INDYMAC plus post-
9 judgment interest at the legal rate of 10%, and in favor of INDYMAC pursuant to stipulation be
10 entered in the form attached hereto as Exhibit A ("Judgment").

11 4. Defendants agree that Judgment may be entered against Defendant PACIFIC
12 HORIZON by noticed motion and may be entered without testimony or trial.

13 5. The Parties hereby enter into this Stipulation with the advice of counsel knowing
14 its content and effect after.

15 6. The Parties further stipulate and request that the court is authorized to retain
16 jurisdiction to enforce the Settlement Agreement and Judgment (Pursuant to Stipulation)
17 pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
18 225(c).

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20 DATED: April 3, 2009

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22 By:

[Redacted Signature]

PACIFIC HORIZON BANCORP, INC.

(b)(6)

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24 DATED: April __, 2009

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26 By:

[Redacted Signature]

FDIC, AS CONSERVATOR FOR
INDYMAC FEDERAL BANK, F.S.B.,
P/K/A INDYMAC BANK, F.S.B.

(b)(6)

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1 WRIGHT, FINLAY & ZAK, LLP
2 T. Robert Finlay, CA State Bar No. 167280
3 Robert B. Norum, CA State Bar No. 240301
4 4665 MacArthur Court, Suite 280
Newport Beach, CA 92660 (*Pacific Horizon/Pleadings/Judgment (Pursuant to Stipulation)*)
Tel. (949) 477-5050; Fax (949) 477-9200

5 Attorneys for Plaintiff, FDIC, AS CONSERVATOR FOR
6 INDYMAC FEDERAL BANK, F.S.B., F/K/A INDYMAC BANK, F.S.B.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

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11 FDIC, AS CONSERVATOR FOR INDYMAC) Case No.: BC384488
12 FEDERAL BANK, F.S.B., F/K/A INDYMAC)
13 BANK, F.S.B.,)
14) **JUDGMENT**
Plaintiffs,) **(PURSUANT TO STIPULATION)**
15 vs.)
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20)
PACIFIC HORIZON BANCORP, INC., a)
California corporation, HOURY APOSHIAN, an)
individual, PATTYL KASPARIAN, an)
individual and DOES 1-50,)
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Defendants.)

21 Pursuant to the Stipulation for Judgment Against PACIFIC HORIZON BANCORP, INC.
22 ("PACIFIC HORIZON"), HOURY APOSHIAN, and PATTYL KASPARIAN (collectively
23 hereinafter the "Defendants") filed by the parties hereto, the Court hereby Orders as follows:

24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

- 25 (1) On March __, 2009, the parties stipulated as follows:
26 a. Defendant PACIFIC HORIZON shall pay FDIC, AS CONSERVATOR
27 FOR INDYMAC FEDERAL BANK, F.S.B., F/K/A INDYMAC BANK,
28 F.S.B. ("INDYMAC") the sum of \$240,774.60 over a period of 20

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months.

- b. The payment of \$150,000.00 shall be made upon execution of the Agreement and payments of \$5,000.00 shall be made each month, beginning on the 1st of the first month following execution of the Agreement, until paid in full.
- c. If Defendant PACIFIC HORIZON default under the terms of the Agreement, judgment against Defendant PACIFIC HORIZON and in favor of INDYMAC pursuant to stipulation shall be entered in the amount of \$240,774.60, less any amounts received by INDYMAC, plus post-judgment interest at the legal rate of 10%.

(2) Defendant PACIFIC HORIZON has defaulted under the terms of the Agreement.

(3) Based on this Stipulation, Judgment under the above-referenced matter is hereby entered in favor of Plaintiff INDYMAC and against Defendant PACIFIC HORIZON BANCORP, INC. for the sum of \$240,774.60, less payments made to date, plus post-judgment interest, plus reasonable attorney's fees and costs incurred in enforcing the Agreement to be determined at a prove-up hearing by the Court.

Dated: _____
Judge of the Superior Court