

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** ("Settlement Agreement") is entered into and made effective as of the 15th day of January, 2009 ("Effective Date"), by and between the Federal Deposit Insurance Corporation, as conservator of IndyMac Federal Bank, F.S.B.<sup>1</sup> (hereinafter "INDYMAC") and Weststar Mortgage, Inc. (hereinafter "WESTSTAR"). INDYMAC and WESTSTAR may hereinafter be referred to individually as a "Party" or collectively as the "Parties").

**1. RECITALS**

**1.1** On or about September 14, 2005, INDYMAC and WESTSTAR entered into a business relationship governed by a written Mortgage and Loan Purchase and Interim Servicing Agreement (hereinafter collectively "Purchase Agreement").

**1.2** On or about February 13, 2008, INDYMAC filed a lawsuit entitled *INDYMAC BANK, FSB v. WESTSTAR MORTGAGE, INC.*, Case No. CV-08-00748 GPS (FMOx) (hereinafter "Action") arising out of WESTSTAR's alleged breach of the Purchase Agreement arising out of the following loans which WESTSTAR sold to INDYMAC:

(b)(4),(b)	[redacted]	amount: \$151,200.00	[redacted]	(b)(4),(b)
(b)(4),(b)	Chesapeake, VA 23324, Loan No.	[redacted]		(6)
(6)	[redacted]	amount: \$348,000.00	[redacted]	(b)(4),(b)
(b)(4),(b)	33126, Loan No.	[redacted]	Miami, FL	(6)
(6)	[redacted]	amount: \$332,000.00	[redacted]	(b)(4),(b)
(b)(4),(b)	Springfield, VA 22152, Loan No.	[redacted]		(6)
(6)	[redacted]	amount: \$485,600.00	[redacted]	(b)(4),(b)
(b)(4),(b)	D.C. 20001, Loan No.	[redacted]	Washington,	(6)
(6)	[redacted]			

<sup>1</sup> On July 11, 2008, pursuant to Order No. 2008-24, issued by the Office of Thrift Supervision plaintiff INDYMAC BANK, F.S.B., of Pasadena, California ("OLD INDYMAC") was closed and the FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") was appointed as receiver. The Office of Thrift Supervision, in conjunction with the closing of OLD INDYMAC, approved the organization of a newly chartered full-service FDIC-insured institution known as INDYMAC FEDERAL BANK, F.S.B. ("NEW INDYMAC"). The FDIC was appointed as conservator for NEW INDYMAC pursuant to 12 U.S.C. § 1821(d)(2)(B). The FDIC was appointed as conservator for NEW INDYMAC pursuant to 12 U.S.C. § 1821(d)(2)(B) and substantially all of the assets of OLD INDYMAC were transferred to NEW INDYMAC. As conservator, the FDIC now stands in the shoes of NEW INDYMAC to perform functions of the institution in the name of the institution, including but not limited to, this action.

(b)(4),(b) [redacted] amount: \$273,600.00 -- [redacted] Odenton, MD (b)(4),(b)  
 (6) 21113, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$208,000.00 -- [redacted] Davenport, FL (b)(4),(b)  
 (6) 33837, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$448,000.00 -- [redacted] Culpeper, (b)(4),(b)  
 (6) VA 22701, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$480,000.00 -- [redacted] Reston, VA (b)(4),(b)  
 (6) 20191, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$220,640.00 -- [redacted] (b)(4),(b)  
 (6) Dumfries, VA 22026, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$391,920.00 -- [redacted] Yorktown, VA (b)(4),(b)  
 (6) 23693, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: 299,200.00 -- [redacted] Arlington, TX (b)(4),(b)  
 (6) 76016, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$208,900.00 -- [redacted] Chesapeake, VA (b)(4),(b)  
 (6) 23320, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$196,000.00 -- [redacted] Houston, TX (b)(4),(b)  
 (6) 77084, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$111,120.00 -- [redacted] Altamonte (b)(4),(b)  
 (6) Springs, FL 32701, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$284,000.00 -- [redacted] Woodbridge, (b)(4),(b)  
 (6) VA 22192, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$248,000.00 -- [redacted] Manassas, VA (b)(4),(b)  
 (6) 20109, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$109,520.00 -- [redacted] Williamston, (b)(4),(b)  
 (6) SC 29697, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$167,120.00 -- [redacted] Monroe, NC (b)(4),(b)  
 (6) 28110, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$428,000.00 -- [redacted] Centreville, VA (b)(4),(b)  
 (6) 20120, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$546,900.00 -- [redacted] Williamsburg, (b)(4),(b)  
 (6) VA 23185, Loan No. [redacted] (6)

(b)(4),(b) [redacted] amount: \$288,000.00 [redacted] Woodbridge, VA 22191, Loan No. [redacted] (b)(4),(b)  
(6)  
(b)(4),(b) [redacted] amount: \$328,000 [redacted] Manassas, VA 20109, (b)(4),(b)  
(6) Loan No. [redacted] and  
(b)(4),(b) [redacted] amount: \$388,000.00 [redacted] Stafford, VA 22554, (b)(4),(b)  
(6) Loan No. [redacted] (6)

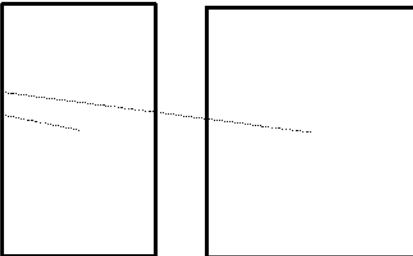
**1.3** INDYMAC claims that WESTSTAR breached its duty owed to INDYMAC and breached certain representations and warranties contained in the Purchase Agreement with respect to the above-referenced loans hereinafter referred to as the "LOANS".

**1.4** WESTSTAR disputes INDYMAC's claims relating to the LOANS.

**1.5** The Parties desire and have agreed to the following disposition of existing and potential claims arising from or related to the loans sold by WESTSTAR to INDYMAC:

(a) The RELEASED LOANS: Claims related to the following loans are to be released pursuant to the provisions of paragraph 3 hereinbelow: (1) the LOANS at issue in the Action, (2) all loans sold by WESTSTAR to INDYMAC on or before November 15, 2006, and (3) the loans listed below:

(b)(4),(b) [redacted] (6)



(b) The REMAINING LOANS: While all claims relating to loans sold by WESTSTAR to INDYMAC after November 15, 2006, are not being released, certain types of claims relating to early payment defaults are being waived pursuant to paragraph 3.5 hereinbelow and certain representations are being made by INDYMAC regarding its knowledge of potential claims as set forth in paragraph 3.6 hereinbelow.

## **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.** Payment of Two Hundred Seventy Five Thousand Dollars and no cents (\$275,000.00) shall be paid by WESTSTAR to INDYMAC. The settlement payment shall be paid as follows: \$11,458.33 per month commencing **March 5, 2009**, and continuing on the fifth of each month until paid in full. The monthly payments shall be made by wire transfer to INDYMAC FEDERAL BANK, FSB, as set forth herein.

IndyMac Bank FSB

Legal Settlement

(b)(4) \_\_\_\_\_ ABA/Routing:

(b)(4) \_\_\_\_\_ Account Number:

Reference: Weststar

**2.3** Concurrently with the signing and delivery of this Settlement Agreement, WESTSTAR shall provide INDYMAC with its current financial statement.

**2.4** Concurrently with the signing and delivery of this Settlement Agreement, WESTSTAR shall execute a Stipulation for the court to retain jurisdiction to enforce the Settlement Agreement and Stipulation for Entry of Judgment (discussed below).

**2.5** Concurrently with the signing and delivery of this Settlement Agreement, WESTSTAR shall execute a Stipulation for Entry of Judgment in the amount of \$275,000.00, 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 and Judgment (Pursuant to Stipulation) shall not be filed or entered so long as WESTSTAR performs under the terms of this Settlement Agreement as set forth in paragraph 2.2 above. Entry of the Judgment in accordance with the terms of the Stipulation, and enforcement of said Judgment, shall be INDYMAC's sole recourse in the event of a default by WESTSTAR in making the payments called for herein.

**2.6** In the event WESTSTAR defaults by failing to make a timely payment to INDYMAC as set forth in paragraphs 2.2 above, INDYMAC shall give written notice via mail or facsimile of the default and notice of intent to file the Stipulation and enter Judgment (Pursuant to Stipulation) to WESTSTAR at: John R. Tate, Esq., Davis Wright Tremaine LLP, 865 South Figueroa Street, Suite 2400, Los Angeles, California 90017-2566;  (direct phone); (213) 633-6800 (main phone); (213) 633-6899 (fax);  and Deborah D. Piland, Esq., Deborah D. Piland, PLLC, 602 South King Street, Suite 200, Leesburg, Virginia 20175; (571) 223-0923 (phone); (571) 333-4935 (fax);  (cell);

**2.7** WESTSTAR shall have five (5) business days from the date the notice of intent to file the Stipulation and enter Judgment is served to cure the default. If

WESTSTAR fails 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 file the Stipulation and enter the Judgment (Pursuant to Stipulation) and enforce said Judgment against WESTSTAR less any consideration already received by INDYMAC pursuant to the settlement. The Stipulation may be filed and the judgment may be entered by ex parte application (without testimony or trial and WESTSTAR further waives the right to a court and/or jury trial) with written notice given to WESTSTAR by facsimile or telephonic notice given at the facsimile and phone number listed above. The amount actually received by INDYMAC shall be deducted from the amount of the Judgment (Pursuant to Stipulation).

**2.8** Within ten (10) business days of INDYMAC's counsel's receipt of the fully executed Settlement Agreement and Stipulation for Entry of Judgment and after receipt by INDYMAC of the first payment due, INDYMAC's counsel shall file a request for dismissal of the entire Action, with prejudice, subject to the court specifically agreeing to retain jurisdiction to enforce the Settlement Agreement and enter the Stipulation for Entry of Judgment and Judgment.

**2.9** 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 that the court shall retain jurisdiction over the parties to enforce this Settlement Agreement and the Stipulation for Entry and the Judgment (Pursuant to Stipulation).

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

### **3. RELEASE**

**3.1** Except for the rights, duties, and obligations set forth in this Settlement Agreement, Stipulation for Entry of Judgment and Judgment, the Parties 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, attorneys, insurers, investors, representatives, officers, directors, shareholders, 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, 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 RELEASED LOANS. The Parties further acknowledge and agree that neither 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 the RELEASED LOANS.

**3.2 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 the RELEASED LOANS, and each Party hereby expressly waives application of any applicable state statute, including but not limited to *California Civil Code* section 1542.

**3.3** Each Party certifies that they have read and understood the following provisions of *California Civil Code* section 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."

This release is expressly limited to the RELEASED LOANS. Claims related to any and all loans purchased by INDYMAC on or after November 16, 2006, are not released, except as expressly set forth herein.

**3.4** Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code* section 1542 is that even if either Party should eventually suffer additional damages arising from or in conjunction with the RELEASED LOANS or any facts or circumstances related to the RELEASED 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 relating to the RELEASED LOANS, 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.

**3.5** In addition to the release described above, INDYMAC further expressly waives and releases all claims that might exist as to any loan sold by WESTSTAR to INDYMAC (regardless of the date of sale) on the basis that the loan(s) is an Early Payment Default as defined in the Purchase Agreement.

**3.6** INDYMAC has provided to WESTSTAR a list of the loans sold to it by WESTSTAR after November 15, 2006, setting forth IndyMac's current knowledge regarding the status of these loans. INDYMAC represents to WESTAR that all loans with known claims for repurchase or other relief against WESTSTAR have been included in the RELEASED LOANS. INDYMAC further represents that it is presently unaware of any potential claims for repurchase or other relief against WESTAR in the REMAINING LOANS, however it has not audited all REMAINING LOANS and cannot represent that such claims do not exist.

4. **Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.
  
5. **Confidentiality.** 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, 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 to enforce any provision of this Settlement Agreement; or (4) requested by an investor, insurer, or lender. 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.
  
6. **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.
  
7. **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.
  
8. **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, Stipulation and Judgment, 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.
  
9. **Attorneys Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement and Stipulation and Judgment, 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.

**10. 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.

**11. Binding Effect.** This Settlement Agreement and Stipulation for Entry of Judgment and Judgment (Pursuant to Stipulation) shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**12. 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.

**13. Approval, Authority, and Nonassignment.** The Parties represent and warrant to one another that the approval of this Settlement Agreement and Stipulation for Entry of Judgment 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, including the foregoing release as to all of the RELEASED LOANS and those claims released as to all of the REMAINING LOANS, 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, or that in the event of such sale, assignment, or transfer each retains full authority to compromise the RELEASED AND REMAINING LOANS and claims as provided for herein on behalf of the current owner, assignee, or transferee.

**14. Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**15. Counterparts/Execution.** This Settlement Agreement and Stipulation for Entry of Judgment may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement and Stipulation for Entry Judgment 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.

**16. 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.

**17. 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.

**18. 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 and Stipulation for Entry of Judgment, 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 and Stipulation for Entry of Judgment.

**19. Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement and Stipulation for Entry of Judgment 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 SUBJECT LOANS. This agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement and Stipulation for Entry of Judgment as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: March 5, 2009

WESTSTAR MORTGAGE, INC.

By:  (b)(6)

*Wolfgang James*  
Type/print Name and Title

DATED: March 5, 2009

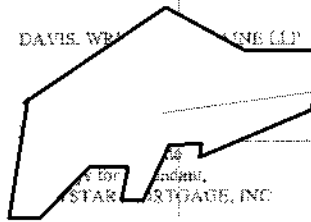
INDYMAC FEDERAL BANK, FSB, FDIC, as conservator

By: \_\_\_\_\_  
Ignacio Gomez  
Vice President

Approved as to form:

DATED: March 5, 2009

DAVIS, WRIGHT & ARNOLD LLP

 (b)(6)

Attorneys for  
WESTSTAR MORTGAGE, INC.

DATED: March 5, 2009

ANDERSON, MCFARLIN & CONNER'S LLP

By: \_\_\_\_\_  
Vanessa L. Widener  
Attorneys for Plaintiff,  
FDIC as conservator for INDYMAC FEDERAL  
BANK, FSB

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement and Stipulation for Entry of Judgment as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: February \_\_\_, 2009

WESTSTAR MORTGAGE, INC.

By: \_\_\_\_\_  
Walter Jones

\_\_\_\_\_  
*Type/Print Name and Title*

DATED: ~~February~~ \_\_\_, 2009

*March 3*

INDYMAC FEDERAL BANK, FSB, FDIC, as conservator

By: \_\_\_\_\_ (b)(6)  
Ignacio Gomez  
Vice President

Approved as to form:

DATED: February \_\_\_, 2009

DAVIS, WRIGHT TREMAINE LLP

By: \_\_\_\_\_  
John R. Tate  
Attorneys for Defendant,  
WESTSTAR MORTGAGE, INC.

*March 16*  
DATED: ~~February~~ \_\_\_, 2009

ANDERSON, McPHARLIN & CONNERS LLP

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\_\_\_\_\_  
Vanessa H. Widener (b)(6)  
Attorneys for Plaintiff,  
FDIC as conservator for INDYMAC FEDERAL  
BANK, FSB