

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (this "Agreement") is effective as of September 29, 2009, between Federal Deposit Insurance Corporation (the "FDIC"), as Conservator for IndyMac Federal Bank, FSB, Successor-in-Interest to IndyMac Bank, FSB ("IndyMac"), and NovaStar Home Mortgage, Inc. ("NovaStar"). The signatories to this Agreement are sometimes singularly referred to herein as "Party," and collectively referred to as the "Parties."

RECITALS

WHEREAS, on or about November 3, 2000, IndyMac and NovaStar entered into a business relationship governed by a Customer Agreement and e-Mits User Agreement (the (b)(4),(b)(6) "Customer Agreement"). Pursuant to the Customer Agreement, NovaStar submitted to IndyMac (b)(4),(b)(6) a loan (loan no. [redacted] which was made to [redacted] in the principal amount of \$317,600 (the "Loan").

WHEREAS, a dispute arose as among IndyMac and NovaStar related to the Loan.

WHEREAS, on November 22, 2006, IndyMac filed an action related to the Loan against NovaStar, United Title Company and United Title Company National Division (collectively "United Title"), TitleSource, Ltd., d/b/a Title Direct d/b/a Go Title Direct ("Title Source"), National Title Source, Inc. and Nations Title Insurance Company (collectively "Nations Title") in the District Court of Caddo County, State of Oklahoma identified as *IndyMac Bank F.S.B. v. NovaStar Home Mortgage, Inc., et al.*, Case No. CS-2006-00377 (the "Caddo County Case"). On July 11, 2008, the FDIC was appointed as Conservator for IndyMac pursuant to section 5(d)(2) of the Home Owners' Loan Act, 12 U.S.C. § 1464(d)(2) and section 11(c)(5) of the FDIA, 12 U.S.C. § 1821(c)(5), and took charge of the assets and affairs of IndyMac. On December 1, 2008, the Caddo County Case was removed from the Caddo County District Court

to the United States District Court for the Western District of Oklahoma, pursuant to 28 U.S.C. § 1446(a), 12 U.S.C. § 1819(b)(2), identified as *Federal Deposit Ins. Corp., et al. v. NovaStar Home Mortgage, Inc., et al.*, U.S. District Court, Western District of Oklahoma, Case No. CIV-08-1309-F (the "Litigation").

WHEREAS, without admitting liability, the Parties have agreed to settle their respective claims which were asserted or which could have been asserted in the Caddo County Case and/or the Litigation for the purpose of resolving this dispute without further cost and disturbance.

AGREEMENT

NOW, THEREFORE, intending to be legally bound hereby and in consideration of the mutual promises and releases made herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The above recitals are hereby incorporated into this Agreement and made a part hereof.

2. **Payment to the FDIC.** NovaStar shall cause to be made a one-time payment to the FDIC in the amount of Seventy Thousand Dollars and 00/100 (\$70,000.00) (the "Settlement Funds"). Payment of the Settlement Funds shall be made within 10 business days of the date of execution of this Agreement by the last party to sign, and shall be made by wire transfer to:

"Mortgage Recovery Law Group Trust Account," 700 North Brand Boulevard, Suite 830,

(b)(4) ~~Glendale, CA, 91230,~~ Account Number: Routing Number: reference (b)(4)

"FDIC v. United Title/Novastar."

3. **Dismissal of the Litigation against NovaStar.** Within five (5) days from receipt of the Settlement Funds by the FDIC, the Parties through their counsel shall prepare,

execute and file a Stipulation Of Dismissal With Prejudice to dismiss all claims asserted in the Caddo County Case and/or the Litigation with prejudice.

4. No Press Release/No Confidentiality. The Parties agree that they will not issue a special press release related to this Agreement. The Parties acknowledge, however, that the law does not allow the FDIC to maintain this Agreement as confidential in any way.

RELEASE

5. Release of Unknown Claims. The FDIC and NovaStar acknowledge and agree that the release they give to each other upon executing 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 they may have against each other arising only from or in conjunction only with the Loan, the Caddo County Case and/or the Litigation.

6. Mutual Release. Each Party hereby fully, finally, and forever releases and discharges the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, 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, 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, and/or employees (collectively the "Released Parties") 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 Loan, the claims and causes of action that were or could have been asserted relating to the Loan, any facts or circumstances related to the repurchase of and/or indemnification of losses associated with the Loan, and any claims and causes of action that were or could have been asserted in the Caddo County Case and/or the Litigation.

7. Covenant Not To Sue And Release Of Third Parties. In consideration of NovaStar's payment of the Settlement Funds, the FDIC covenants not to sue and does hereby release, relieve and discharge United Title, TitleSource and Nations Title (collectively, the "Non-Settling Parties") of and from any and all 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 or resulting from the acts or omissions of NovaStar in connection with the Loan. The purpose and intent of this release of and covenant not to sue the Non-Settling Parties is to eliminate all of the Plaintiffs' claims against them which could form the basis for any contribution and/or indemnity claims against NovaStar. The purpose and intent of this reservation of action is to require any claim of contribution and/or indemnity against NovaStar by the Non-Settling Parties to be made as an affirmative defense and/or set-off of any claim asserted against it by the FDIC and not as a third party claim against NovaStar.

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

9. No Admission. It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Agreement is made as a compromise of disputed claims.

10. Fair Meaning. The Parties hereto further agree that the language of all parts of this 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.

11. Governing Law and Costs in Enforcing this Agreement. The Parties agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Oklahoma, without regard to its choice of law principles. The Parties further agree that should any party be required to enforce any of the terms or provisions of this Agreement, the prevailing party in such action shall be entitled, in addition to any damages occasioned by the breaching party, to an award of costs, including reasonable attorneys' fees from any non-prevailing party.

12. Severability. The Parties hereto agree that if any provision of this 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 Agreement.

13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

14. Review and Understanding. The Parties have entered into this 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 Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Agreement. The Parties enter into this Agreement understand 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.

15. Approval and Authority. The Parties represent and warrant to one another that the approval of this 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 Agreement.

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

17. Counterparts/Execution. This Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this 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.

18. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this 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.

19. 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 Agreement.

20. 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 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.

21. Entire Agreement. The Parties hereto further agree and promise that this 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 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 Agreement as of the date set forth in the opening paragraph of this Agreement.

For: Federal Deposit Insurance Corporation, as Conservator for IndyMac Federal Bank, FSB, Successor-in-Interest to IndyMac Bank, FSB

For: NovaStar Home Mortgage, Inc.

By: _____

By: _____

Name: Richard S. Gill

Name: _____

Title: Counsel

Title: _____

Date: 10-14-09

Date: _____

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

For: NovaStar Home Mortgage, Inc.

By: (b)(6)
Name: Rodney E. Schwatken
SVP, Chief Financial Officer and Secretary
Title: _____
Date: October 14, 2009