

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of May 25, 2011, by and between the following undersigned parties: The Federal Deposit Insurance Corporation, as Receiver of IndyMac Bank, F.S.B ("FDIC-R"), and Richard H. Wohl. The FDIC-R and Richard H. Wohl may be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

This Agreement is entered into in reference to the following:

1. Prior to July 11, 2008, IndyMac Bank, F.S.B. (the "Bank") was a federally chartered bank operating throughout the United States of America with its principal place of business in the State of California.

2. On July 11, 2008, the Office of Thrift Supervision closed the Bank, and the FDIC-R was appointed receiver of the Bank pursuant to 12 U.S.C. § 1821(c). 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 the Bank's assets. Among the assets to which the FDIC-R succeeded were any and all claims, demands, and causes of actions against the Bank's former directors, officers and employees arising from the performance, nonperformance and/or manner of performance of their respective functions, duties and acts as directors, officers and/or employees of the Bank.

3. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation. Among other things, the Parties have agreed that this Agreement shall be a settlement and release of all claims held by the FDIC-R, including its agents, successors and assigns, for all claims now or hereafter held by the FDIC-R against Richard H. Wohl that arise from or relate to the performance, non-performance or manner of performance of Richard H. Wohl's functions, duties and/or actions as an employee, officer

and/or director of the Bank, as more specifically set forth below.

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

Section I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, Richard H. Wohl shall pay to the FDIC-R the sum of One Million Four Hundred Thousand And No/100 Dollars (\$1,400,000.00) of which One Million Two Hundred And Fifty Thousand and No/100 Dollars (\$1,250,000.00) may be paid directly by appropriate insurance carrier(s) (hereinafter referred to as the "Contributing Carrier(s)") and One Hundred And Fifty Thousand and No/100 Dollars (\$150,000.00) shall be paid by Richard H. Wohl from his personal funds. The settlement payment of One Million Four Hundred Thousand And No/100 Dollars (\$1,400,000.00) by Richard H. Wohl is referred to herein as the "Settlement Funds."

B. With respect to the One Hundred And Fifty Thousand and No/100 Dollars (\$150,000) to be paid by Richard H. Wohl to the Settlement Funds, Richard H. Wohl shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy.

C. That portion of the Settlement Funds to be paid by the Contributing Carrier(s) shall be wired to:

(b)(2),(b)(4) BANK: Federal Home Loan Bank [redacted]

(b)(2),(b)(4) ROUTING # [redacted]

FOR CREDIT TO: FDIC National Liquidation Account

(b)(2),(b)(4) ACCOUNT #: [redacted]

FDIC CONTACT PERSON: Richard S. Gill, Tel. 703 562 2425

Any payment by Chartis may be made by check payable to the Federal Deposit Insurance Corporation and delivered to the Federal Deposit Insurance

Corporation, Attention Richard Gill, 3501 Fairfax Drive, Room B-7020, Arlington, Virginia 22226-3500.

D. That portion of the Settlement Funds to be paid by the Contributing Carrier(s) shall be delivered to FDIC-R by direct wire transfer or, for Chartis, check as described in Paragraph C of this Section I, as follows:

The Contributing Carrier(s) shall pay the remainder of the Settlement Funds, in the amount of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000) within eleven (11) business days of the later of (1) the date the Contributing Carrier(s) are notified that the United States Bankruptcy Court for the Central District of California has entered an approval order that has become final as required by Section II of this Agreement; or (2) the date that Federal Insurance Company makes the payment(s) contemplated by paragraph 1 of the Stipulation re Compromise to Permit Advancement of Specified Costs, Charges and Expenses to be filed contemporaneously with the stipulation seeking the order discussed in Section II of this Agreement. The parties hereto, by and through their respective legal counsel, may agree in writing one or more times to extend this eleven day period for any additional period(s); such writing may be simply evidenced by an unsigned exchange of e-mail communications evidencing the parties' agreement to any such extension. Service of notice under this subsection shall be effective upon the date of transmittal by Federal Express or other overnight means of delivery to the following:

Allison Rose, Esq., Chubb & Son, a division of Federal Ins. Co., 555 South Flower Street, 4th Floor, Los Angeles, California 90071

Sarah C. Rosell, Chartis, 175 Water Street, New York, New York 10038

Notice shall also be provided by electronic mail to Allison Rose at

(b)(4),(b)(6)

(b)(4),(b)(6)

[redacted] Sarah Rosell at [redacted], and Mary Jo

(b)(4),(b)(6)

Barry at [redacted]

E. Richard H. Wohl shall pay his portion of the Settlement Funds, namely, One

Hundred and Fifty Thousand and No/100 Dollars (\$150,000), from his personal funds on or before June 1, 2011. Richard H. Wohl may make the payment of this sum by delivering a check to payable to the Federal Deposit Insurance Corporation and delivered to the Federal Deposit Insurance Corporation, Attention Richard Gill, 3501 Fairfax Drive, Room B-7020, Arlington, Virginia 22226-3500 on or before June 1, 2011. Richard Gill shall negotiate this check only upon receiving the sum of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000) from the Contributing Carrier(s). In the event the Contributing Carrier(s) fail to make payment of said sum within the time provided in this Agreement, or any extension(s) thereof, Richard Gill shall forthwith return the check of Richard H. Wohl to his legal counsel Williams & Connolly, Washington, D.C., Attn: John K. Villa or Stephen D. Andrews. The releases of claims contained in Section III herein are expressly conditioned on the payment of the Settlement Funds and the actual receipt of funds via checks by Richard H. Wohl and the Contributing Carrier(s).

Section II: Conditions

A. The FDIC-R and Richard H. Wohl shall seek from the Bankruptcy Court in the proceedings captioned *In re IndyMac Bancorp*, United States Bankruptcy Court, Central District of California, Case No. 2:08-bk-21752-BB the entry of a Bankruptcy Court order (hereinafter the "Order"), in a form to be drafted by the Parties and approved by the Contributing Carrier(s), which approval shall not be unreasonably withheld. Notice of the requested relief and Order shall be given to all of the Assureds who were parties to the Stipulation that was approved by the December 15, 2008 Order, and any amended orders thereto, of the United States Bankruptcy Court, Central District of California entitled "Order Approving Stipulation Resolving Motions of Current and/or Former IndyMac Directors and Officers for Determination that Certain Insurance Proceeds Are Not Subject to the Automatic Stay and/or Relief from the Automatic Stay under 11 U.S.C. § 362," Indymac MBS, the FDIC, and all claimants who have commenced litigation against one or more Assureds.

B. The Order shall (i) permit the Contributing Carrier(s) to pay the \$1,250,000 referenced

in paragraph I.A. and I.D above notwithstanding the effect, if any, of the automatic stay; (ii) deem the \$1,250,000 authorized to be paid by the Contributing Carrier(s) as a Loss (as that term is defined in the Lloyd's Policy and the excess policies issued by the Contributing Carrier(s)) which reduces the limits of liability available under the Contributing Carrier(s)' excess policies; and (iii) effective upon payment of the \$1,250,000, discharge the Contributing Carrier(s) from any liability specifically related to such payment to any Assureds (as defined in the Lloyd's Policy and the excess policies issued by the Contributing Carrier(s)) or other claimants, including but not limited to IndyMac MBS.

C. The Order shall not become final unless and until the Order, including the provisions of Section II.B. hereto, is approved by the Bankruptcy Court, or higher court of competent jurisdiction, as to which the time for filing a notice of appeal has expired with no notice of appeal having been filed, or if a notice of appeal has been timely filed, as to which such appeal has been fully and finally resolved.

D. Concurrently with the execution of this Agreement, the Parties shall enter into the Tolling Agreement in the form and substance of Exhibit "A" attached hereto and incorporated herein by this reference.

Section III: Releases

A. **Release of Richard H. Wohl by FDIC-R** Effective upon payment of the Settlement Funds pursuant to Section I, above, the FDIC-R, for itself and its agents, successors and assigns, hereby releases and discharges Richard H. Wohl, his immediate family members, heirs, executors, administrators, successors, assigns, attorneys, legal representatives, insurers, re-insurers, and agents of each of them from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to the FDIC-R, that are based upon, arise from or relate to: (1) the performance, nonperformance, or manner of performance of Richard H. Wohl's functions, duties and actions as an employee, officer and/or director of the Bank and/or Indymac Bancorp, Inc.; and/or (2) the

fact that Richard H. Wohl was an officer, director, or employee of the Bank and/or Indymac Bancorp, Inc.

B. Release of FDIC-R by Richard H. Wohl Effective simultaneously with the release granted in Paragraph A of this Section III, Richard H. Wohl, on behalf of himself and his heirs, executors, administrators, agents, representatives, successors and assigns, hereby releases and discharges FDIC-R, and its employees, officers, directors, attorneys, agents, representatives, successors and assigns, from any and all known and unknown claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, or to the performance, nonperformance, or manner of performance of Richard H. Wohl's functions, duties and actions as an employee, officer and/or director of the Bank and/or Indymac Bancorp, Inc.

C. Express Reservations From Release by FDIC-R

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

a. against Richard H. Wohl, in a capacity other than an employee, officer and/or director of the Bank and/or IndyMac Bancorp, Inc. for liability, if any, as the maker, endorser or guarantor of any promissory note or other evidence of indebtedness payable or owed by him to FDIC-R, other financial institutions, or any other person or entity, including without limitation, any claims acquired by Federal Deposit Insurance Corporation in its corporate capacity or as successor in interest to the Bank; and

b. against any person or entity not expressly released in this Agreement.

c. Nothing in this release releases, or intends to release, Michael Perry, his immediate family members, heirs, executors, administrators, successors, assigns, attorneys, legal representatives, insurers, re-insurers, and agents in any way for anything related to any conduct or omissions of Michael Perry.

2. Notwithstanding any other provision hereof, this 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 for any federal judicial district.

3. The FDIC-R represents and warrants that, as of the date of this Agreement, it has not transferred any claim, cause of action or other right that would be released hereunder if such claim, cause or action or right had not been previously transferred by the FDIC-R prior to the date of this Agreement, and to that end, the Parties agree that the release by the FDIC-R set forth in Paragraph A of Section III is a full and complete release of all such claims, causes of action and rights.

D. Civil Code Section 1542 Waiver There is a risk that subsequent to the execution of this Agreement the parties hereto will discover, incur or suffer loss, damages or injuries which are in some way related to the matters released, but which are unknown or unanticipated at the time that this Agreement is executed. The parties herein hereby assume this risk and understand that this Agreement shall apply to all unknown or unanticipated results of, or related to, the matters released above, as well as those known and anticipated. The parties hereby expressly acknowledge that they are familiar with Section 1542 of the California Civil Code which provides:

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.

The parties understand and acknowledge the significance and consequence of this specific waiver of Section 1542. Having been advised and encouraged to consult with an attorney of their choice concerning their rights and this Agreement and having either thoroughly discussed all aspects of their rights and this Agreement with an attorney to the full extent that they wanted prior to signing this Agreement or voluntarily chosen not to do so, the parties herein

expressly waive and relinquish any and all rights and benefits which they may have under Section 1542 of the Civil Code (to the extent it is otherwise applicable) to the full extent that such rights and benefits may be lawfully waived and relinquished pertaining to the subject matter of this Agreement.

Section IV: Representations and Acknowledgements

A. No Admission of Liability The Parties acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. Execution in Counterparts This Agreement may be executed in counterparts by the Parties and their legal counsel and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties and counsel; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party subscribed thereto upon the execution by all Parties to this Agreement. Photocopied signatures, signatures exchanged by facsimile machine and signatures exchanged by e-mail PDF shall be as effective as an original signature.

C. Binding Effect Each of the undersigned signatories for the Parties represents and warrants that they are a Party hereto or are authorized to sign this Agreement on behalf of the respective Party for which they are signing, 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, administrators, representatives, successors and assigns.

D. Specific Representations and Warranties Richard H. Wohl swears and affirms that all financial information in the affidavits and financial statements prepared by him and provided to the FDIC-R was true and accurate at the time of his submission.

E. Reasonable Cooperation The undersigned Parties agree to cooperate in good

faith to effectuate all the terms and conditions of this Agreement.

F. **Choice of Law** This Agreement shall be interpreted, construed and enforced according to the applicable laws of the State of California.

G. **Entire Agreement and Amendments** This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s). This Agreement is an integrated agreement.

H. **Advice of Counsel** The Parties hereby acknowledge that they have consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to each Party by his or its counsel.

I. **Enforcement of Agreement** In the event that any Party brings suit to enforce the terms of this Agreement, or based on an alleged breach of the terms hereof, the Parties agree to exclusive venue in the United States District Court for the Central District of California, or in the event that the said federal court does not have jurisdiction, the Superior Court of the State of California, County of Los Angeles. In such event, the prevailing Party shall be entitled to recover all costs incurred from the non-prevailing Party, including reasonable attorneys' fees.

J. **Time is of the Essence** Time is of the essence in this Agreement, including specifically, payment of the Settlement Funds to FDIC-R as set forth in Section I of this Agreement.

READ CAREFULLY BEFORE SIGNING

IN WITNESS WHEREOF, this AGREEMENT is executed and effective on the date first above written.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver of
IndyMac Bank, F.S.B

(b)(6)

By:

[Redacted Signature]

Counsel

Approved as to form:

NOSSAMAN LLP
STEPHEN P. WIMAN

By:

STEPHEN P. WIMAN

Attorneys for FEDERAL DEPOSIT
INSURANCE CORPORATION, as
Receiver of IndyMac Bank, F.S.B.

RICHARD H. WOHL

WILLIAMS & CONNOLLY LLP
JOHN K. VILLA

By:

JOHN K. VILLA

Attorneys for RICHARD H. WOHL

TOLLING AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THIS TOLLING AGREEMENT is made and entered into by and between the Federal Deposit Insurance Corporation, acting in its capacity as Receiver of IndyMac Bank, F.S.B., Pasadena, California (hereinafter, the "Bank") (hereinafter the "FDIC-R"), and Richard H. Wohl (hereinafter "Wohl") to be effective as of May __, 2011, as follows:

1. The period commencing July 1, 2011, and ending at 5:00 p.m. Pacific Standard Time ("PST") on December 31, 2011, shall hereinafter be referred to as the "Tolling Period."

2. During the Tolling Period, any and all federal or state statutes of limitations or any rule of law or equity or any contractual provision of similar import to a federal or state statute of limitations, including, without limitation, waiver, estoppel, or laches, (collectively "Limitations Period(s)") shall be tolled and shall not run and this time period shall not be pleaded, asserted, including in any calculation of time elapsed, or relied upon in any legal argument or proceeding however styled (e.g., by claim, defense, cross-claim, counterclaim, third-party claim, or the like) for purposes of computing the running of any Limitations Period in regard to any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to the FDIC-R, that are based upon, arise from or relate to: (1) the performance, nonperformance, or manner of performance of Wohl's functions, duties and actions as an employee, officer and/or director of the Bank and/or Indymac Bancorp, Inc.; and/or (2) the fact that Wohl was an officer, director, or employee of the Bank and/or Indymac Bancorp, Inc. (hereinafter the "Tolled Claims").

3. Any of the Tolled Claims that are filed during the Tolling Period shall be considered by the parties for purposes of any Limitations Period as having been filed July 1, 2011. Consistent with paragraph 2, above, Wohl shall not claim that any Tolled Claim filed during the Tolling Period is untimely under any Limitations Period if such claim would not have been untimely had it been filed on July 1, 2011.

4. During the Tolling Period, the FDIC-R shall not file any of the Tolled Claims against Wohl without providing Wohl seven (7) days advanced written notice of the FDIC-R's intent to file such claim. Such notice shall be provided to Wohl by overnight mail or its equivalent or by e-mail in either case addressed to John Villa and Stephen Andrews, at Williams & Connolly, 725 Twelfth Street, N.W., Washington, D.C. 20005, [REDACTED]

(b)(4),(b)(6)

5. Notwithstanding the above, this Tolling Agreement shall not apply to, affect, or delay in any way any currently pending or future action(s) arising out of any claim or cause of action governed by Section IIIC1 or IIIC2 of the Settlement Agreement between the parties executed concurrently herewith.

6. Nothing in this Tolling Agreement shall be read as reducing the time within which the FDIC-R may bring any suit for the Tolled Claims, except as required by the notice provisions of paragraph 4, above. Notwithstanding anything in this Tolling Agreement to the contrary, the FDIC-R reserves the right to file any Tolled Claims during the Tolling Period against Richard H. Wohl prior to receipt of full payment of the Settlement Funds pursuant to the terms of the Settlement Agreement between the parties executed herewith. If the FDIC-R files any such Tolled Claims, the Settlement Agreement shall terminate. However, such filing of the Tolled Claims shall in no way terminate or affect this Tolling Agreement or the Tolling Period or their applicability to the Tolled Claims.

7. This Tolling Agreement, the parties' Settlement Agreement entered concurrently herewith, and any Stipulation and Order entered by the FDIC-R and Wohl and others which the parties may file in the United States Bankruptcy Court, Central District of California, related to the Settlement Agreement, constitute the entire agreement between the undersigned parties with respect to the subject matter hereof, and any prior oral or written statements concerning the matters addressed in such agreements are merged in the agreements for all purposes and shall be of no force and effect.

8. This Tolling Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns.

9. This Tolling Agreement may be executed in any number of counterparts with the same effect as if the signatures on each counterpart were upon a single instrument. All counterparts, taken together, shall constitute the Tolling Agreement. PDF e-mail signatures and signatures transmitted and received by facsimile shall be as effective as original signatures.

10. Each of the signatories severally represents and warrants that the signatory has the full power and authority to execute this Tolling Agreement on behalf of the party for whom the signatory has signed.

11. The parties hereto agree that the mutual promises contained herein constitute good and valuable consideration, receipt of which they acknowledge.

12. This Tolling Agreement shall be interpreted under federal law or, in the absence of any applicable such law, under the substantive law of the State of California. This paragraph shall apply only to disputes arising out of this Tolling Agreement and shall not be construed to modify any choice of law provisions or analysis otherwise applicable in any other dispute between the parties and each party reserves the right to assert that other state or federal law may apply to such other potential disputes.

13. This Tolling Agreement shall not be construed as an admission of liability by any party, nor shall it be admitted into evidence except as may be necessary to enforce its terms.

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of IndyMac Bank, F.S.B

(b)(6)

By:

[Redacted Signature]

Counsel

Approved as to form:

NOSSAMAN LLP
STEPHEN P. WIMAN

By: _____
STEPHEN P. WIMAN

Attorneys for FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of IndyMac Bank, F.S.B.

RICHARD H. WOHL

WILLIAMS & CONNOLLY LLP
JOHN K. VILLA

By: _____
JOHN K. VILLA

Attorneys for RICHARD H. WOHL