

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into and made effective as of the 11 day of August 2009 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC FEDERAL BANK, F.S.B. (hereinafter "INDYMAC") and PREMIUM CAPITAL FUNDING, LLC, d/b/a TOPDOT MORTGAGE, a New York limited liability corporation ("PREMIUM CAPITAL"). INDYMAC and PREMIUM CAPITAL may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

1. RECITALS

1.1 On or about September 5, 2003, INDYMAC and PREMIUM CAPITAL entered into a business relationship governed by a Customer Agreement and e-Mits User Agreement (hereinafter "Agreement").

1.2 Pursuant to the terms of the Agreement, PREMIUM CAPITAL submitted to INDYMAC the following loans which are the subject of this Action:

(b)(4),(b) a. Loan made to [redacted] (loan no. [redacted]) in the (b)(4),(b)
(6) principal amount of \$112,000 secured by property located at [redacted] (b)(4),(b)
(6) Brooklyn, NY 11207.

(b)(4),(b) b. Two loans to [redacted] (loan nos. (b)(4),(b)
(6) [redacted] in the principal amounts of \$295,200 and \$73,800,
(b)(4),(b) respectively, secured by property located at [redacted] Central Islip, NY
(6) 11722.

(b)(4),(b) (6) c. Loan to [redacted] (loan no. [redacted]) in the principal amount of \$51,000 secured by property located at [redacted] Alsip, IL 60803. (b)(4),(b) (6)

(b)(4),(b) (6) d. Loan to [redacted] (loan no. [redacted]) in the principal amount of \$259,560 secured by property located at [redacted] Pikesville, MD 21208. (b)(4),(b) (6)

(b)(4),(b) (6) e. Two loans to [redacted] (loan nos. [redacted]) in the principal amounts of \$140,800 and \$35,200, respectively, secured by property located at [redacted] Coconut Creek, FL 33073. (b)(4),(b) (6)

(b)(4),(b) (6) f. Loan to [redacted] (loan no. [redacted]) in the principal amount of \$54,600 secured by property located at [redacted] Lancaster, CA 93535. (b)(4),(b) (6)

1.3 The loans described in paragraph 1.2 above are collectively referred to herein as the "SUBJECT LOANS."

1.4 INDYMAC claims that the SUBJECT LOANS contained misrepresentations in breach of certain representations and warranties contained in the Agreement. INDYMAC contends it demanded PREMIUM CAPITAL repurchase and/or indemnify INDYMAC for losses it sustained as a result of the SUBJECT LOANS but PREMIUM CAPITAL refused.

1.5 PREMIUM CAPITAL disputes INDYMAC's claims relating to the SUBJECT LOANS. Specifically, and without limitation, PREMIUM CAPITAL denies that it breached the representations and warranties provisions of the Agreement; that it

breached any duty owed to INDYMAC; or that it refused to repurchase and/or indemnify INDYMAC for losses it contends it sustained as a result of the SUBJECT LOANS.

1.6 On or about May 22, 2008, INDYMAC filed a lawsuit entitled INDYMAC BANK, FSB v. PREMIUM CAPITAL FUNDING, LLC dba TOPDOT MORTGAGE, a New York limited liability corporation; and DOES 1 through 50, Inclusive; Case No. 2:08-cv-04595 ABC ("Action"). The Complaint in the Action included ten separate causes of action, eight for breach of contract, one for specific performance and one for negligence.

1.7 Pursuant to its Complaint in the Action, INDYMAC sought damages arising out of the SUBJECT LOANS as well as the following additional loans:

(b)(4),(b) (6) (1) loan to [redacted] (loan no. [redacted]) in the principal amount of \$477,900 (b)(4),(b) (6) secured by property located at [redacted] Elkton, MD, 21921, (2) loan to (b)(4),(b) (6) [redacted] (loan no. [redacted]) in the principal amount of \$322,200 secured by (b)(4),(b) (6) property located at [redacted] MA 02301, (3) loan to [redacted] (b)(4),(b) (6) (loan no. [redacted]) in the principal amount of \$448,000 secured by property located at (b)(4),(b) (6) [redacted] Brooklyn, NY 11207, (4) loan to [redacted] (loan no. [redacted]) (b)(4),(b) (6) [redacted] in the principal amount of \$204,000 secured by property located at [redacted] (b)(4),(b) (6) [redacted] Alsip, IL 60803, (5) a loan to [redacted] (loan nos. [redacted]) in (b)(4),(b) (6) the principal amount of \$377,600 secured by property located at [redacted] Los (b)(4),(b) (6) Angeles, CA 90011.

1.8 The loans described in items (1) through (5) in paragraph 1.7 above are collectively referred to here as the "DISMISSED LOANS".

1.9 On October 10, 2008, INDYMAC filed a First Amended Complaint as to only the SUBJECT LOANS.

1.10 The Parties desire and have agreed to settle all claims relating to the SUBJECT LOANS and DISMISSED LOANS as described in paragraphs 1.2 and 1.7 of this Settlement Agreement.

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 Payment to INDYMAC. Payment of One Hundred Fifty Thousand Dollars and no/cents (\$150,000.00) (the "Settlement Funds") shall be paid on behalf of PREMIUM CAPITAL to INDYMAC.

a. The Settlement Funds shall be paid in three equal payments as follows: \$50,000 on September 15, 2009; \$50,000 on October 15, 2009; and \$50,000 on November 15, 2009. The three monthly payments shall be made by wiring the funds as follows:

	Bank	:	City National Bank
	City	:	Los Angeles
(b)(4)	ABA	:	[REDACTED]
(b)(4)	Account	:	[REDACTED]

2.2 Concurrently with the signing and delivery of this Settlement Agreement, PREMIUM CAPITAL shall execute a Stipulation for Entry of Judgment in

the amount of One Hundred Fifty Thousand Dollars and no cents (\$150,000.00) 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 shall be held in trust by INDYMAC'S attorneys of record and shall not be filed unless PREMIUM CAPITAL breaches paragraph 2.1(a) above and fails to timely cure said breach pursuant to paragraph 2.4 after receiving INDYMAC'S notice of default as provided in paragraph 2.4. The Judgment (Pursuant to Stipulation) shall not be entered so long as PREMIUM CAPITAL performs under the terms of this Settlement Agreement with respect to making the payments required by paragraph 2.1(a) above. Entry of 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 PREMIUM CAPITAL in making the payments called for herein. INDYMAC'S attorneys of record shall return the original Stipulation for Entry of Judgment (without the same having been filed with the Court) to PREMIUM CAPITAL'S attorneys of record, c/o Ryan F. Thomas, Esq., American Mortgage Law Group, PC, 75 Rowland Way, Suite 350, Novato, CA 94945, within five business days of INDYMAC'S receipt of the final payment required by paragraph 2.1(b) above.

2.3 In the event PREMIUM CAPITAL defaults by failing to make a timely payment to INDYMAC as set forth in paragraphs 2.1(a) above, INDYMAC shall give written notice of the default and notice of its intent to enter Judgment (Pursuant to Stipulation) to PREMIUM CAPITAL via mail and facsimile at: (1) Andrew Pennacchia,

Vice President-Legal Affairs, Premium Capital Funding, LLC, 125 Jericho Turnpike, Suite 400, Jericho, New York 11753; Telephone: (516) 870-1133; Facsimile: (516) 870-7133 and (2) Ryan F. Thomas, Esq., American Mortgage Law Group, PC, 75 Rowland Way, Suite 350, Novato, CA 94945; Telephone: (415) 878-0030 x 152; Facsimile: (415) 878-0035.

2.4 PREMIUM CAPITAL shall have five (5) business days from receipt of the notice of default to cure the default. If PREMIUM CAPITAL 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 enter the Judgment (Pursuant to Stipulation) in an amount equal to the Settlement Funds less any amount received by INDYMAC pursuant to paragraph 2.1(a) above and enforce said Judgment against PREMIUM CAPITAL. Judgment may be entered by ex parte application (without testimony or trial and PREMIUM CAPITAL further waives the right to a court and/or jury trial) with notice given to PREMIUM CAPITAL and Ryan F. Thomas, Esq. by facsimile and telephone at the facsimile and phone numbers listed above and in accordance with the California Rules of Court

2.5 Within 5 business days of INDYMAC's counsel's receipt of the fully executed Settlement Agreement and Stipulation for Entry of Judgment, INDYMAC's counsel shall file a request for dismissal of the entire Action with prejudice.

2.6 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

requests that the court retain jurisdiction over the Parties to enforce this Settlement Agreement and, if necessary, the Judgment (Pursuant to Stipulation).

2.7 The Parties shall bear their own costs and attorneys' fees incurred in the Action.

3. RELEASE

3.1 **Unknown Claims.** INDYMAC and PREMIUM CAPITAL acknowledge and agree that the release they give to each other 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 they may have against each other arising from or in conjunction with the SUBJECT LOANS and DISMISSED LOANS described in paragraphs 1.2 and 1.7 of this Settlement Agreement.

3.2 The Parties hereby expressly waive application of *California Civil Code §1542* with respect to the SUBJECT LOANS and DISMISSED LOANS. The Parties certify 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 The Parties understand and acknowledge that the significance and consequence of its waiver of *California Civil Code §1542* with respect to the SUBJECT LOANS and DISMISSED LOANS is that even if either Party should eventually suffer

additional damages arising from or in conjunction with the SUBJECT LOANS or DISMISSED LOANS or any facts or circumstances related to the SUBJECT LOANS or DISMISSED LOANS that Party will not be able to make any claim for those damages. Furthermore, each Party 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 SUBJECT LOANS and DISMISSED 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.

3.4 Except for the rights, duties, and obligations set forth in this Settlement Agreement, Stipulation for Entry of Judgment, the Parties each hereby fully, finally, and forever release and discharge the other Party, and any and all of its respective, employees, brokers, members, partners, joint venturers, independent contractors, attorneys, insurers, agents, investors, representatives, officers, directors, shareholders, independent contractors, 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 the SUBJECT LOANS and DISMISSED LOANS. The Parties further acknowledge and agree that neither Party will take any action, assert any claims or demands, or make any report against the other Party with any federal, state, municipal, or other governmental agency or court, or any third party including, without limitation, the filing of any future MARI report, relating to the SUBJECT LOANS and DISMISSED LOANS.

3.5 Express Reservation from Releases by FDIC. Notwithstanding any other provision, by this Settlement Agreement, the FDIC does not release, and expressly preserves fully any claims or causes of action that do not arise from or relate to the Settlement Agreement, or the defense of the same, or any action taken by any other federal agency.

3.6 As of the date of the execution of this Settlement Agreement, the FDIC is not aware of any outstanding Quality Control Findings (that have not already been sent to PREMIUM CAPITAL) reflecting any outstanding claims or demands for repurchase or indemnity arising from or related to FDIC claims involving IndyMac loans against PREMIUM CAPITAL.

3.7 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.

4. MISCELLANEOUS

4.1 Conditions of Execution. Each Party acknowledges and warrants that its execution of this Settlement Agreement and Stipulation for Entry of Judgment is free and voluntary.

4.2 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); 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.

4.3 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.

4.4 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

4.5 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.

4.6 Attorneys Fees and Costs. 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.

4.7 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.

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

4.9 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 with the exception of the Dismissed Loans, 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.

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

4.11 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 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.

4.12 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.

4.13 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.

4.14 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.

4.15 Construction. The Settlement Agreement was drafted by counsel for both Parties.

4.16 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. 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.

DATED: August 11, 2009
APPROVED AS TO FORM

AMERICAN MORTGAGE LAW GROUP, PC

By: [Redacted] (b)(6)
Ryan F. Thomas, Esq.
Attorneys for Defendant, PREMIUM CAPITAL FUNDING, LLC, d/b/a TOPDOT MORTGAGE

DATED: August 11, 2009

PREMIUM CAPITAL FUNDING, LLC, d/b/a TOPDOT MORTGAGE

(b)(6) By: [Redacted] (b)(6)
Signature: [Redacted] (b)(6)
David Brown Member
Type/Print Name and Title

DATED: August 11, 2009
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

(b)(6) [Redacted]
(b)(6) [Redacted]
VANES H. WIDENER (b)(6)
Attorney for Plaintiff (b)(6)
FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC FEDERAL BANK, F.S.B.

DATED: August 11, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR INDYMAC FEDERAL
BANK, P.S.B

By:

[Redacted Signature Box]

(b)(6)

Jack S. Duncan, Senior Attorney
Type/Print Name and Title