

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("*Agreement*") is effective as of October 11, 2011, regardless of the date that the parties have executed the *Agreement*, and is entered into by and between the Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B. ("*FDIC*") and Priority Title, Inc. ("*Priority Title*"), with respect to the claims made in the case captioned *Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B. v. Priority Title, Inc., et al.*, United States District Court for the District of Minnesota, Case No. 10-CV-02387-SRN/AJB (the "*Litigation*").

RECITALS

WHEREAS, IndyMac Bank, F.S.B ("*IndyMac*") financed the purchase of (b)(6)

(b)(6) Woodbury, Minnesota with a primary and secondary mortgage loan (the "*Subject Transaction*");

WHEREAS, *Priority Title* performed title, escrow, and closing services in connection with the *Subject Transaction* (the "*Closing Services*");

WHEREAS, *FDIC* has asserted claims against *Priority Title* in the *Litigation* based on the *Closing Services*;

WHEREAS, *Priority Title* expressly denies any liability relating to the asserted claims in the *Litigation*; and

WHEREAS, to avoid any further expense of litigation, *FDIC* and *Priority Title* voluntarily enter into this *Agreement*.

In consideration of the above and for such other good and valuable consideration, the sum and sufficiency of which is hereby acknowledged and based on the mutual promises and conditions contained herein, *FDIC* and *Priority Title* agree as follows:

1. **Recitals.** The above Recitals are incorporated herein by reference and made a part of this *Agreement*.

2. **Dismissal.** *FDIC*, through counsel, shall execute a Dismissal with Prejudice and without costs or attorney's fees to any party regarding all claims asserted by *FDIC* against *Priority Title* in the *Litigation*. *Priority Title*, through counsel, shall execute a Dismissal with Prejudice and without costs or attorney's fees to any party regarding all cross-claims asserted by *Priority Title* in the *Litigation*.

3. **Release of *FDIC*.** For and in consideration of the terms and conditions of this *Agreement*, *Priority Title* and its officers, directors, shareholders, insurers, employees, owners, agents, affiliates, successors, insurance carriers, fiduciaries, and assigns, jointly and severally, do absolutely and unconditionally release *FDIC* and IndyMac Bank, F.S.B. ("IndyMac") from any and all claims, demands, actions or causes of action, of whatever nature or description, known or unknown, now existing or hereafter acquired, and whether or not asserted in the *Litigation*, which *Priority Title* had, has, claims to have, or may hereafter acquire against *FDIC* and/or *IndyMac* arising out of the facts and circumstances alleged in the *Litigation*.

4. **Pierringer Release of *Priority Title*.** (a) For and in consideration of the payment of \$87,500 (Eighty Seven Thousand Five Hundred Dollars) to be payable to "RJ Landau Partners PLLC, Attorneys for *FDIC*" within fifteen (15) business days of the execution of this *Agreement* by *FDIC* and *Priority Title* and *FDIC*'s counsel's provision of a completed and fully-executed W-9 form to *Priority Title*'s counsel, and in consideration of the terms and conditions of this *Agreement*, *FDIC* and IndyMac, by and through *FDIC* as its receiver, do absolutely and unconditionally release and forever discharge *Priority Title* and its officers, directors, shareholders, attorneys, insurers, past and present employees, owners, agents, affiliates,

successors, insurance carriers, fiduciaries, and assigns (the "*Parties Hereby Released*") from any and all past, present, and future claims, demands, obligations, actions, and causes of action, at law or in equity, fixed or contingent, whether arising by statute, common law, or otherwise, of whatsoever kind or nature (including, without limitation, claims for negligence, compensatory or punitive damages, attorney's fees, indemnity and/or contribution, lien, subrogation or other derivative claims, costs and expenses) arising out of, or in any way related to, the *Closing Services*, including, but without limiting in any way the breadth or generality of the foregoing, any and all claims which were, or might have been, asserted in the *Litigation*. Each and all of the claims described above are hereinafter referred to collectively as "*Claim*" or "*Claims*."

(b) *FDIC and IndyMac, by and through FDIC as its receiver*, specifically and expressly contemplates that this release covers known and unknown claims for unknown as well as known injuries and/or damages, claims for anticipated and unanticipated injuries and/or damages, and claims for expected and unexpected consequences of injuries and/or damages, arising out of the *Claims* described above in subparagraph (a), including, but not limited to, claims for negligence, compensatory or punitive damages, attorney's fees, indemnity and/or contribution, lien, subrogation or other derivative claims, costs and expenses.

(c) *FDIC and IndyMac, by and through FDIC as its receiver*, hereby release, discharge and satisfy that portion, fraction, and percentage of their total *Claim* for injuries and/or damages against all persons, firms, corporations, governmental entities and other entities that may hereafter be allocated by lawsuit or otherwise to any matter or thing done, omitted, or suffered to be done or omitted by any of the *Parties Hereby Released* up to the date of this *Agreement*, and hereby release and discharge any *Claim* for which any other person, firm, corporation,

governmental entity, or other entity may have or claim to have a right of subrogation, indemnity and/or contribution from the *Parties Hereby Released*.

(d) Except as provided in subparagraph (c), *FDIC* expressly reserves its rights against any non-settling persons, firms, corporations, governmental entities, or other entities for whatever portion or percentage of the plaintiff's injuries and/or damages is found to be attributable to the wrongful conduct of said non-settling parties. Nothing in this *Agreement* waives any claim, cause of action, or any rights to contribution or other claims held by *FDIC* existing currently or arising in the future, against any other individual or entity not expressly released by this *Agreement*.

(e) *FDIC* specifically represents and warrants that no liens or rights of subrogation exist or are claimed to exist, and represents that no person, firm, corporation, governmental entity, or other entity, other than the *FDIC* or its attorneys, has any right or claims to have a right to share in the consideration paid by or on behalf of the *Parties Hereby Released* or to proceed by way of subrogation or otherwise against the *Parties Hereby Released*.

(f) *FDIC* agrees to indemnify the *Parties Hereby Released* from any liability, loss or damage whatsoever to any other person, firm, corporation, governmental entity, or other entity, arising out of, or in any way related to, the *Closing Services*, including, but without limiting in any way the breadth or generality of the foregoing, any and all claims which were, or might have been, asserted in the *Litigation*, including, again without limitation, liability for claims for negligence, compensatory or punitive damages, attorney's fees, costs and expenses, contribution, indemnity, or other relief by any other person, firm, corporation, governmental entity, or other entity. In addition, *FDIC* agrees to indemnify the *Parties Hereby Released* for any costs, attorney's fees or other damages suffered by any of them because of any claim made by any

person, firm, corporation, governmental entity or other entity from which plaintiff has agreed herein to indemnify the *Parties Hereby Released*.

(g) Paragraph Four of this *Agreement* is intended to be interpreted in accordance with the decision in *Pierringer v. Hoyer*, 21 Wis.2d 182, 124 N.W.2d 106 (1963), as that decision was adopted by the Minnesota Supreme Court in *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978).

5. **Attorney's Fees and Costs.** Each party shall bear its own attorney's fees and costs with respect to the *Litigation*.

6. **No Assignment.** The parties hereto warrant that they have made no other assignment, transfer, conveyance, or other disposition of any claims, demands, causes of action, obligations, damages and/or liabilities described above and that they are fully entitled to give their full and complete release of all such claims and demands.

7. **Assumption of Risk of Material Fact.** The parties expressly assume the risk of any mistake of fact, known or unknown, relating to any of the claims compromised by this *Agreement*.

8. **Amendment.** This *Agreement* may not be amended or modified at any time except by any instrument in writing executed by all of the parties hereto.

9. **Execution.** This *Agreement* may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. The parties agree that *FDIC* will execute this *Agreement* within fifteen (15) business days of receiving a copy of this *Agreement* executed by *Priority Title*. The parties also agree that, without receiving further consideration, they will sign and deliver such documents and do anything else that is reasonably necessary in the future to make the provisions of this *Agreement* effective.

10. **Integrated Agreement.** This *Agreement* sets forth the entire understanding between the parties concerning the subject matter of this *Agreement* and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this *Agreement* other than those set forth herein.

11. **Governing Law.** This *Agreement* shall be governed by and construed in accordance with Minnesota law (excluding any conflict of laws rule or principle that might refer the governance or construction of this *Agreement* to the law of another jurisdiction). Nothing in this *Agreement* shall require any unlawful action or inaction by any party hereto.

12. **Severability.** If any portion of this *Agreement* is found to be unenforceable, the parties desire that all other portions that can be separated from the unenforceable portion or appropriately limited in scope shall remain fully valid and enforceable.

13. **Representation.** No representation or warranty has been made by or on behalf of any party to this *Agreement* (or any officer, director, employee or agent thereof) to induce any other party to enter into this *Agreement* or to abide by or consummate any transactions contemplated by any terms of this *Agreement*, except representations and warranties, if any, expressly set forth herein. In entering into this *Agreement*, the parties hereto represent that they have proceeded with the advice of an attorney of their own choice, that they have read the terms of this *Agreement*, that the terms of this *Agreement* have been completely read and explained to the parties by their attorney, and that those terms are fully understood and voluntarily accepted by the parties.

14. **Titles and Captions.** The section titles and captions contained in this *Agreement* are inserted only for convenience and reference and shall not be construed to define, limit, or extend the scope of this *Agreement* or the intent of any of its provisions.

15. **Authority.** Each person signing this *Agreement* on behalf of any entity warrants or represents that he/she has the full and complete authority to enter into this *Agreement* on behalf of that entity.

IN WITNESS WHEREOF, the parties to this *Agreement* have executed this *Agreement* as of the date indicated by each party's signature.

Federal Deposit Insurance Corporation, as
Receiver for IndyMac Bank, F.S.B.

By:



(b)(6)

Name: Richard S. Gill

Title: Counsel

Date: 2-15-12

Priority Title, Inc.

By:



(b)(6)

Name: Andrew Vlenchik

Title: President

Date: 1-18-12