

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE

("Settlement Agreement") is entered into and made effective as of the 30th day of March, 2011 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC") and UBS Real Estate Securities Inc. ("UBS RESI"). The FDIC, on behalf of IndyMac Bank, FSB together with its predecessors, successors or wholly-owned subsidiaries, and UBS RESI may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

1. RECITALS

1.1 UBS RESI sold and/or delivered mortgage loans to IndyMac Bank, FSB, pursuant to a Mortgage Loan Sale and Interim Servicing Agreement dated as of February 23, 2006 (the "Contract").

1.2 Pursuant to the terms of the Contract, UBS RESI sold to IndyMac Bank, FSB certain residential mortgage loans. A dispute has arisen between the Parties with respect to demands for repurchase and/or indemnity arising from the Contract. Specifically, IndyMac Bank, FSB and the FDIC made demands to UBS RESI for repurchase and/or indemnification based upon a claim of a breach of representations and warranties set forth in the Contract.

1.3 On or about February 18, 2010, the FDIC filed a lawsuit entitled *Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. v. UBS Real Estate Securities, Inc., a Delaware Corporation*; United States District Court Case CV10-1232 JFW(CWx) (C.D. Cal.) (hereinafter "Action") seeking damages arising from alleged breaches of representations and warranties set forth in the Contract.

1.4 Without admitting liability, the Parties desire to and have agreed to settle all claims by IndyMac Bank, FSB or any of its predecessors, successors or wholly-owned subsidiaries relating to all mortgage loans that were sold by UBS RESI or any of its affiliates to IndyMac Bank, FSB or any of its predecessors, successors or wholly-owned subsidiaries, pursuant to the Contract or other written agreement for the sale of loans (collectively, the "LOANS") upon the terms and conditions hereinafter set forth. The affiliates of UBS RESI for purpose of this Settlement Agreement are set forth in Exhibit "1" attached hereto.

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 of the Settlement Funds. By no later than March 31, 2011, UBS RESI shall pay the total sum of Ten Million Dollars (\$10,000,000.00) (the "Settlement Funds"). Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number: Routing Number: Reference: UBS RESI Settlement.

(b)(4)

2.3 Dismissal of Action. Within five (5) business days of the FDIC's counsel's receipt of the fully executed Settlement Agreement and the FDIC's receipt of the Settlement Funds, the FDIC's counsel shall file a Stipulation for Dismissal of the Action With Prejudice in a mutually-agreed upon form.

2.4 Costs and Attorneys Fees. The Parties shall bear their own costs and attorneys' fees incurred in the Action.

3. RELEASE

3.1 Each Party acknowledges that 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 the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

3.2 Each Party certifies that it has 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 Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the LOANS, the claims and causes of action that were or could have been asserted relating to such sale, or any facts or circumstances related to such sale, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it

consciously intends these consequences even as to claims for damages that may exist as of the date of this release 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 Each of (i) the FDIC, on behalf of IndyMac Bank, FSB together with its predecessors, successors or wholly-owned subsidiaries and (ii) UBS RESI and its affiliates 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 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 LOANS.

3.5 Notwithstanding any other provision in this Settlement Agreement, this Settlement Agreement does not release, and the FDIC expressly preserves fully and to the same extent as if the Agreement had not been executed any claims against UBS RESI arising out of existing or failed financial institutions other than IndyMac Bank, FSB and its predecessors, successors or wholly-owned subsidiaries.

3.6 Notwithstanding any other provision in this Settlement Agreement, this Settlement Agreement does not release, and the FDIC expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, any action taken by any other federal agency. In addition, 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 for 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 is free and voluntary.

4.2 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.

4.3 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.

4.4 Governing Law. The Parties agree to submit to the United States District Court for the Central District of California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the exclusive jurisdiction of said Court over any such dispute, and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under federal law or California law, as applicable, without regard to any otherwise applicable principles of conflicts of law or choice of law rules that would result in the application of the substantive or procedural rules or laws of any other jurisdiction.

4.5 Attorneys Fees. 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 attorneys' fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

4.6 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.

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

4.8 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 Party has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as it deems 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 and Authority. 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. The FDIC warrants and represents that it has retained, owns and/or has the rights to settle and release all claims belonging to IndyMac Bank, FSB or any of its predecessors, successors or wholly-owned subsidiaries relating to the LOANS.

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 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 Entire Agreement. The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the

Parties with respect to the claims made by IndyMac Bank, FSB and the FDIC in connection with the alleged breaches of the Contract, in connection with the LOANS, and with respect to UBS RESI's sale of the LOANS, 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. Any Party may plead this Settlement Agreement as a complete defense and bar to any action or demand brought in contravention of this Settlement Agreement.

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.

**For: The FDIC as Receiver for
IndyMac Bank, FSB**

By: _____

Name: _____

Title: _____

Date: _____

For: UBS Real Estate Securities Inc.

By: _____

Name: William W. Chandler

Title: Managing Director

Date: March 30, 2011

For: UBS Real Estate Securities Inc.

By: _____

Name: PER DYRVIK

Title: MANAGING DIRECTOR

Date: March 30, 2011

Parties with respect to the claims made by IndyMac Bank, FSB and the FDIC in connection with the alleged breaches of the Contract, in connection with the LOANS, and with respect to UBS RESI's sale of the LOANS, 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. Any Party may plead this Settlement Agreement as a complete defense and bar to any action or demand brought in contravention of this Settlement Agreement.

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.

For: **The FDIC as Receiver for
IndyMac Bank, FSB**

For: **UBS Real Estate Securities Inc.**

By: _____

By: _____

Name: Richard S. Geik

Name: _____

Title: Counsel

Title: _____

Date: 3-30-2011

Date: _____

For: **UBS Real Estate Securities Inc.**

By: _____

Name: _____

Title: _____

Date: _____

(b)(6)

EXHIBIT "1"
AFFILIATES OF UBS RESI

Act Properties LLC
Mortgage Asset Securitization Transactions, Inc.
UBS AG
UBS Americas Inc.
UBS Real Estate Investments Inc.
UBS Securities LLC