

# SETTLEMENT AND RELEASE AGREEMENT

## RECITALS

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS (Agreement) is made and entered into on May \_\_, 2008, by the Borrower, XXXXXXXXX (Borrower), and the secured creditor, Wilshire Credit Corporation as servicer for South Point, Inc. (Wilshire), for the purpose of resolving by compromise settlement, all claims, liabilities, and disputes between them.

WHEREAS on May 12, 2006, the Borrower executed and delivered to Mortgage Lenders Network USA, Inc. by and through its nominee Mortgage Electronic Registrations Systems, Inc. (Bank) a note in the original amount of \$280,000.00 and simultaneously therewith, as security for the obligations under the Note, the Borrower executed and delivered to the Bank a mortgage on the property located at 70 Franklin Street, Lee, Massachusetts 01238 (Property) and a second mortgage and note in the original amount of \$70,000.00, both mortgages hereinafter referred to as "Mortgage" and both notes hereinafter referred to as "Notes";

WHEREAS South Point, Inc. is the assignee of the Note and Mortgage;

WHEREAS on August 2, 2007, the Borrower filed a bankruptcy petition in the District of Massachusetts entitled *In re: Xxx Xxx Xxx*, case no. 07-4XXXX-HJB (Bankruptcy Petition);

WHEREAS on September 29, 2007, Wilshire filed the *Motion of Wilshire Credit Corporation as servicer for South Point, Inc. for Relief from Automatic Stay* (Motion for Relief) seeking relief from the automatic stay for the Borrower's alleged failure to make certain pre- and post-petition monthly mortgage payments;

WHEREAS on October 8, 2007, the Borrower filed an opposition to Wilshire's Motion for Relief;

WHEREAS both the Borrower and Wilshire (collectively, Parties) to this Agreement are fully apprised of the facts set forth in these recitals, and in all other aspects of the dispute between or among the Parties, and possibilities of each action and matter described herein;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, in full settlement of the issues and claims among them, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## AGREEMENT

The Parties to this Agreement, for and in consideration of the mutual covenants,

promises, and conditions set forth herein and subject to the terms and provisions hereof, agree to the following terms:

1. **Recitals:**

The Parties hereby acknowledge the above-recitals to be true and accurate.

2. **Discounted Payoff of Loan**

**Total Amount Due:** Wilshire alleges that as of February 29, 2008, the total amount due on the Borrower's obligations pursuant to the first Note and Mortgage is Three Hundred Forty-One Thousand, Two Hundred Eighty-Nine and 75/100 Dollars (\$341,289.75). The borrowers obligations on the second of the two notes executed is in excess of \$75,000.00 (collectively, the Loans)

**Discounted Sale Price of Loans:** In full and final settlement of this matter, Wilshire has agreed to accept the discounted amount of Two Hundred, Twenty-Five Thousand and 00/100 dollars (\$225,000.00) as consideration in full for the sale and assignment of the Loans. It is this discount that constitutes consideration for the release contained herein. On the Borrower's behalf, Franklin Street Nominee Real Estate Trust ("Trust") shall pay in certified funds or cashier's check, payable to Wilshire, the sum of Two Hundred, Twenty-Five Thousand and 00/100 dollars (\$225,000.00) to Wilshire with respect to the above-referenced Loan. The Borrower and the Trust have reached an accord, favorable to both parties which grants Borrower certain rights of tenancy in the Property. This payment must be received by Wilshire no later than May \_\_\_\_, 2008. There shall be no extensions of time in which to make said payment.

**Conditions of Acceptance by Defendant:** This discounted payoff amount will only be accepted by Wilshire if the following conditions are met:

Wilshire receives discounted payoff no later than 11:59 p.m. EST on May \_\_\_\_\_, 2008;

This Settlement and Release Agreement has been signed by the Borrower and provided to Wilshire's counsel prior Wilshire's receipt of the discounted payoff. If Wilshire receives the discounted payoff amount but does not receive the original signed

Settlement and Release Agreement, then Wilshire shall have the right to return the monies received and demand the total amount due on the Loan.

**Trustee Abandonment:** Within fourteen (14) of Wilshire accepting the discounted payoff amount, the Borrower shall request in writing that the Chapter 7 Bankruptcy Trustee abandon her interest in the Property. If the Chapter 7 Bankruptcy Trustee refuses to abandon her interest in the Property, or objects to the discounted payoff, Wilshire shall return the monies received and demand the total amount due on the Loan.

**Assignment of Loan:** Within fourteen (14) days of Wilshire accepting the discounted payoff amount, Wilshire will file and record an assignment of note and mortgage to the Property (Assignment).

3. **Attorneys' Fees:**

Each Party shall bear their own attorneys' fees and costs incurred. If any Party hereto commences any action arising out of this Agreement, including, without limitation, any action to enforce or interpret this Agreement, the prevailing party or parties in such action shall be entitled to recover its reasonable attorney's fees and other expenses incurred in such action. Any award of attorney's fees hereunder shall not be computed according to any court schedule, but, instead, shall be in such amount as to fully reimburse all reasonable attorney's fees actually incurred in good faith, regardless of the size of the judgment, since it is the intention of all Parties to compensate fully the prevailing party for all attorney's fees paid or incurred in good faith.

4. **Release by the Borrower:**

In consideration of the recitals, covenants and agreements set forth in this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, upon the effective date of this Agreement, the Borrower hereby forever and fully releases, acquits, and forever discharges Wilshire and its/their predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders, directors, agents, representatives employees, clients, administrators, executors, personal representatives, the beneficiary and investor in the subject loan and their predecessors, heirs or successors in interest and assigns, and each of them, of and from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of

any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, interest, costs, expenses and fees (including reasonable or actual attorneys' fees) which were or could have been raised in, arise out of, relate to, or in any way, directly or indirectly, involve the Bankruptcy Petition or the Note or the Mortgage existing on the effective date of this Agreement.

**5. Change of Circumstances:**

The Borrower agrees that if any facts, claims or circumstances relating to or with respect to the action of which this Agreement is executed are at any time later found, suspected, or claimed to be other than or different from the facts, claims and circumstances now believed by the Borrower to be true, that the Borrower expressly accepts and assumes the risk of such possible differences of facts, claims and circumstances and agree that the releases set forth herein shall be and remain effective notwithstanding any such differences in any facts, claims or circumstances.

In addition, the Borrower acknowledges the risk and the possibility that other claims not known may develop or be discovered or consequences or results of claims may develop or be discovered in the future. The Borrower expressly acknowledges the risk that there may be claims released herein, which they may not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known would affect his decision to enter into this Agreement.

**6. Warranties and Representations:**

The Borrower hereto warrants and represents that (a) he is the sole owner of all rights, claims, damages, actions, causes of action, suits and defenses, as the case may be, at law or in equity, he has or may have or that were asserted or could have been asserted in the Bankruptcy Petition, and (b) he has not assigned, transferred, conveyed, or purported to assign, transfer, or convey to any person or entity any right, claim, action, cause of action, suit (at law or in equity), defense, demand, debt, liability, account, or obligation herein released, or any part thereof, or which would, absent such assignment, transfer or conveyance, be subject to the releases set forth in this Agreement.

**7. Acknowledgments:**

Each of the Parties acknowledge and agree that:

This Agreement is entered into and executed voluntarily by each of the Parties hereto and without any duress or undue influence on the part

of, or on behalf of, any such Party;

Each of the Parties hereto has been represented by counsel of its/their own choice, or has had the opportunity to be represented by counsel and to seek advice in connection with the negotiations for, and in the preparation of, this Agreement and that he, she, or it has read this Agreement and that he, she or it is fully aware of its contents and legal effects; and

The drafting and negotiation of this Agreement has been undertaken by all Parties hereto and their respective counsel. For all purposes, this Agreement shall be deemed to have been drafted jointly by all of the Parties hereto with no presumption in favor of one party over another in the event of any ambiguity.

**8. Compromise of Disputed Claims:**

It is understood and agreed that this Agreement is the compromise of disputed claims, and that the terms of settlement contained herein and the releases executed are not intended to be and shall not be construed as admissions of any liability or responsibility whatsoever and each released Party expressly denies any liability or responsibility whatsoever.

**9. Severability:**

If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.

**10. Binding Effect:**

This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective administrators, representatives, successors, and assigns.

**11. Governing Law:**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and any question arising hereunder shall be construed or determined according to such law.

**12. Representation of Parties:**

The Parties each represent and warrant that the attorney signing this Agreement as his, her, or its attorney is the chosen attorney employed to represent his, her or it with respect to this Agreement and all matters covered by this Agreement, including the general release contained herein; and that he, she or it has been fully advised by said attorney with respect to his, her or its rights with respect to the execution of this Agreement and the general release contained herein. **All Parties who are representing themselves are warned to obtain the advice of an attorney before signing this Agreement.**

**13. Further Assurances:**

The Parties agree to do all acts and things and to make, execute, acknowledge and deliver such written documents, instructions and/or instruments in such form as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement, including but not limited to, the execution, filing or recording of any reporting documents, affidavits, deeds or agreements. The Parties further agree to give reasonable cooperation and assistance to any other party or parties hereto in order to enable such other Party or Parties to secure the intended benefits of this Agreement.

**14. Counterparts:**

This Agreement may be executed by the Parties in any number of counterparts, including by way of facsimile, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.

**15. Confidentiality:**

The terms and conditions of this Agreement and the facts of this settlement shall be confidential. Except as provided above or required by law, court order, the enforcement of the provisions hereof, or as may be reasonably required by creditors, beneficiaries, bureaus, auditors, accountants or tax consultants of the respective Parties, or any regulatory or governmental agency, the Parties and their counsel shall maintain in strict confidence and shall not disclose the substance or contents of this Agreement to any third party without the written consent of the Parties herein.

**16. Integration Clause:**

This Agreement contains the entire agreement between and among the Parties hereto, and supercedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the parties.

**17. Time Is Of The Essence:**

Time is of the essence with respect to the performance of any and all provisions of this Agreement.

**18. Effective Date:**

This Agreement shall be deemed to be effective on the Date that it is signed by all Parties hereto.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement on the date set forth opposite his, her or its name below. **The undersigned hereby certify that they have read and fully understand all of the terms, provisions, and conditions of this Agreement and have executed this Agreement voluntarily.**

Dated: May \_\_, 2008

\_\_\_\_\_

XXXXXXXXXXXXX  
Borrower

Dated: May \_\_, 2008

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative of  
**Wilshire Credit Corporation**