

AGREEMENT OF SETTLEMENT AND RELEASE

THIS AGREEMENT OF SETTLEMENT AND RELEASE (hereinafter, the "Agreement") is made and entered into by and between INDYMAC FEDERAL BANK, FSB, which was formerly known as IndyMac Bank, F.S.B. and also did business as IndyMac Bank Home Construction Lending, ("IndyMac"), a federally chartered savings bank with its principal place of business in Pasadena, California, and LENDERS CHOICE NETWORK, INC. ("LCN"), a California Corporation with its principal place of business in Arroyo Grande, California.

RECITALS

This Agreement is made with reference to the following facts:

A. On or about October 25, 2001, IndyMac and LCN entered into a written Master Services Agreement Concerning Property Reports (the "Contract") which governed the relationship of IndyMac and LCN in connection with the transactions described herein that are the subject of this Agreement.

B. In or about August 2001, IndyMac agreed to fund a construction-to-permanent loan to borrowers [redacted] regarding residential construction at a property located at [redacted] Marble Falls, TX 78654 (the "Marble Falls Property"). Pursuant to the Contract, LCN prepared Property Inspection Reports, as defined by the Contract, in connection with construction at the Marble Falls Property between approximately October 2001 and March 2003.

C. In or about March 2005, IndyMac agreed to fund construction loans to borrower [redacted] regarding residential construction at two

properties located at [redacted] West Richland, Washington 99353 and [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] West Richland, Washington 99353 (the "[redacted] Property" and (b)(4),(b)(6)

(b)(4),(b)(6) "[redacted] Property," respectively, and the "Washington Properties,"

collectively). Pursuant to the Contract, LCN prepared Property Inspection Reports, as defined by the Contract, in connection with construction at the Washington Properties between approximately August 2005 and March 2006.

D. On or about October 19, 2007, in accordance with the Contract, IndyMac submitted a Demand for Arbitration pursuant to the American Arbitration Association's Commercial Arbitration Rules and thereby commenced the current arbitration proceeding, IndyMac Bank Home Construction Lending v. Lenders Choice Network, Inc., AAA Case No. 72-148-Y-001077-07 (the "Action"). IndyMac alleged that LCN owed it compensatory damages of \$519,000.00 for harm IndyMac had suffered as a result of negligent inspections by LCN related to the Marble Falls, [redacted]

(b)(4),(b)(6) [redacted] Properties. (b)(4),(b)(6)

E. LCN has defended and denied, and continues to deny, the validity of IndyMac's claims as described in Paragraph D, above.

F. IndyMac and LCN have agreed fully, finally and forever to settle and compromise the claims and causes of action asserted in the Action, claims and causes arising therefrom, or any other claims and causes of action that might have been brought in this action. By this Agreement, IndyMac and LCN intend to memorialize the terms of such compromise and settlement. This Agreement is not intended by IndyMac or LCN to release or discharge any claims that IndyMac or LCN may have against any party other than the signatories to this Agreement.

AGREEMENT AND MUTUAL RELEASE

In consideration of the mutual undertakings contained in this Agreement, and

other good, valuable and sufficient consideration, the parties hereto agree as follows:

1. No Admission of Liability. IndyMac acknowledges that this Agreement does not constitute an admission by LCN as to the merits of any claim that IndyMac has asserted, or could have asserted, in the Action and that LCN has denied, and continues to deny, that LCN has any liability to IndyMac as alleged in the Action. Likewise, LCN acknowledges that this Agreement does not constitute an admission by IndyMac that any asserted claim is or was in any way lacking in merit, and LCN also acknowledges that this Agreement does not constitute an admission by IndyMac as to the merits of any claim that LCN has asserted, or could have asserted, in the Action. Nevertheless, IndyMac and LCN have concluded that continued arbitration would be expensive and protracted and that it is desirable that the Action be settled fully and finally as between IndyMac and LCN in the manner and upon the terms and conditions set forth in this Agreement.

2. Settlement Payment. No later than fifteen (15) days following full execution of this Agreement, LCN shall deliver to IndyMac's counsel of record in the Action a check made payable to "IndyMac Federal Bank, FSB" in the amount of Twenty Thousand Dollars and No Cents (\$20,000.00) (the "Settlement Payment"). LCN shall cause this check to be delivered as follows:

Kralik & Jacobs LLP

301 North Lake Avenue, Suite 202

Pasadena, California 91101.

IndyMac and LCN agree that timely receipt of the Settlement Payment is an essential term of this Agreement, and a condition to the enforcement of this Agreement.

3. Dismissal of the Action. In order to effectuate the dismissal of the Action

that is contemplated by this Agreement, IndyMac and LCN agree as follows:

a. That IndyMac and LCN, through their respective counsel, will execute a letter in the form attached hereto as Exhibit A, and addressed to [redacted] (b)(6)

(b)(6) [redacted] Supervisor, American Arbitration Association, 6795 North Palm Ave, 2nd Floor, Fresno, CA 93704, requesting that the Action case file be closed by reason of settlement (the "Dismissal Letter");

b. That LCN will deliver an executed copy of the Dismissal Letter to IndyMac's counsel at the address provided in Paragraph 8.b., below, within the time period provided for making the Settlement Payment described in Paragraph 2, above; and

c. That, promptly upon receipt of the Settlement Payment and the executed Dismissal Letter from LCN, IndyMac will transmit the fully executed

(b)(6) Dismissal Letter to [redacted] via electronic mail

(b)(6) [redacted] and U.S. Mail at the address given in Paragraph 3.a., above.

4. Release by IndyMac of LCN. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, IndyMac, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, servants, spouses, heirs, administrators, executors, predecessors, successors, subsidiaries, parents, attorneys, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present, fully and forever releases, acquits and discharges LCN and its current and former officers, directors, joint venturers, partners, employees, servants, spouses, heirs, administrators, executors, predecessors, successors,

subsidiaries, parents, attorneys, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present, (such past and present parties, being hereinafter referred to collectively as "LCN Releasees"), jointly and severally, from and against any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations, damages, costs, fees (including, without limitation, those of attorneys), expenses, actions and/or causes of action of every nature, character and description, or causes of liability, rights and offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, including without limitation injunctive or equitable relief, any award of actual, consequential, incidental, liquidated, or other types or categories of damages, any award of punitive or exemplary damages, any claims for attorneys' fees, costs or expenses of litigation and any other type of relief which any of them have or may have arising out of, or in any way connected with or related to, the Action, LCN's inspections and any other services related to the Marble Falls Property,

(b)(4),(b) the [redacted] Property and/or the [redacted] Property, or IndyMac's
(6)
(b)(4),(b) losses concerning the Marble Falls Property, the [redacted] Property and/or the
(6)
(b)(4),(b) [redacted] Property.
(6)

5. Release by LCN. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, LCN, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, servants, spouses, heirs, administrators, executors, predecessors, successors, subsidiaries, parents, attorneys, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present, fully and forever releases, acquits and discharges

IndyMac and its current and former officers, directors, joint venturers, partners, employees, servants, spouses, heirs, administrators, executors, predecessors, successors, subsidiaries, parents, attorneys, representatives and assigns, conservators and/or receivers, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present; (such past and present parties, being hereinafter referred to collectively as "IndyMac Releasees"), jointly and severally, from and against any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations, damages, costs, fees (including, without limitation, those of attorneys), expenses, actions and/or causes of action of every nature, character and description, or causes of liability, rights and offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, including without limitation injunctive or equitable relief, any award of actual, consequential, incidental, liquidated, or other types or categories of damages, any award of punitive or exemplary damages, any claims for attorneys' fees, costs or expenses of litigation and any other type of relief which any of them have or may have arising out of, or in any way connected with or related to, the Action, LCN's inspections and any other services related to the Marble Falls Property,

(b)(4),(b)(6) the [redacted] Property and/or the [redacted] Property, and/or IndyMac's losses concerning the Marble Falls Property, the [redacted] Property and/or the [redacted] Property. (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] Property.

6. Waiver Under Section 1542 of California Civil Code. This Agreement is made by IndyMac and LCN freely and with independent legal advice and counsel, and IndyMac and LCN are fully aware of the provisions of Section 1542 of the Civil Code of the State of California, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

To the extent necessary to effectuate the Releases set forth herein, IndyMac and LCN expressly waive the benefits and protection of Section 1542 of the California Civil Code.

7. Representations and Warranties. The parties represent and warrant to and agree with each other as follows:

- a. IndyMac and LCN have received independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement and of giving the releases provided herein.
- b. In connection with the execution of this Agreement and the making of the settlement provided for herein, no party to this Agreement has relied upon any statement, representation or promise of any other party not expressly contained herein.
- c. This Agreement is fully integrated and contains the entire agreement of the parties hereto. There are no agreements or understandings between the parties hereto relating to the matters and releases referred to in this Agreement other than as set forth in this Agreement, and this Agreement supersedes and replaces any and all prior negotiations and agreements between the Parties hereto, whether written or oral.
- d. IndyMac and LCN have made such investigation of the facts pertaining to

the releases contained herein as they deem necessary.

- e. The terms of this Agreement are contractual and are the result of negotiation among the parties. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the role of the party in drafting and preparation of the Agreement shall not be referred to in order to construe the Agreement against that party, and the canon of contractual interpretation shall not be applied.
- f. This Agreement has been carefully read by each of the parties and the contents thereof are known and understood by each of the parties. This Agreement is signed freely by each party executing it.
- g. The parties have not assigned or transferred any of their claims being released herein.

8. Notices.

- a. All notices required or permitted to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery, to the appropriate address indicated below or at such other place or places as either party may, from time to time, designate in a written notice given to the other. Notices shall be deemed served three (3) days after the date of mailing thereof or upon personal delivery.
- b. The designated notice addresses for LCN and IndyMac are as follows:

To LCN:

Roger A. Parkinson
Law Offices of Borton Petrini, LLP

1600 Truxtun Avenue
Bakersfield, California 93301

To IndyMac Bank, F.S.B.:

John J. Kralik
Anastasja E. Bessey
Kralik & Jacobs LLP
301 North Lake Ave., Suite 202
Pasadena, CA 91101

9. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the parties to be charged with such modification.

10. Agreement Binding on Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective officers, directors, joint venturers, partners, employees, agents, servants, heirs, administrators, executors, successors, representatives and assigns.

11. Severability. In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect.

12. Governing Law. This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California.

13. Warranty of Authority. Each party or attorney whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed. Each party specifically represents and warrants that no signatures other than those made on this Agreement are necessary to bind the parties to all of the obligations imposed by the Agreement. In the event that there is a breach of any representation or warranty of authority to execute this Agreement, the breaching party

shall indemnify and hold harmless the non-breaching party from any and all loss or damage, including reasonable attorneys' fees, incurred as a result of the breach of such representation and warranty.

14. Attorneys' Fees and Costs. IndyMac and LCN agree to pay their own costs, attorneys' fees and expenses incurred in connection with the Action. In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this Agreement, arising out of a breach of this Agreement, involving claims within the scope of the release contained in this Agreement or pertaining to a declaration of rights under this Agreement, the prevailing party shall recover its reasonable attorneys' fees incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. Signatures on this agreement, or any counterpart of this Agreement, transmitted by facsimile machine or electronic mail in .pdf format shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

Dated: 12/3, 2008

INDYMAC FEDERAL BANK, FSB

(b)(6)

By: _____

Its: _____

Ignacio Gomez
Vice President

Dated: 1/7, 2008⁹

LENDERS CHOICE NETWORK, INC.

(b)(6)

[Redacted Signature Box]

By:

Its: Sr. Vice President Marketing

APPROVED AS TO FORM:

Dated: 12/3, 2008

KRALIK & JACOBS LLP

(b)(6)

[Redacted Signature Box]

By:

Anastasia E. Bessey

Attorneys for IndyMac Bank, F.S.B.

Dated: January 15, 2008

LAW OFFICES OF BORTON PETRINI, LLP

[Redacted Signature Box]

By:

Roger A. Parkinson

Attorneys for Lenders Choice Network, Inc.

(b)(6)

EXHIBIT A

**Kralik & Jacobs LLP
Law Offices**

301 North Lake Avenue, Suite 202
Pasadena, California 91101

TEL: 626.844.3505

FAX: 626.844.7643

December 3, 2008

Writer's Direct Dial

E-mail

(b)(6)

(b)(6)

By Electronic Mail (NoreenGarcia@adr.org) and U.S. Mail

(b)(6)

Supervisor
American Arbitration Association
6795 North Palm Ave, 2nd Floor
Fresno, CA 93704

Re: IndyMac Bank Home Construction Lending v. Lenders Choice
Network, Inc., AAA Case No. 72-148-Y-001077-07
Request that Action Be Dismissed and Case File Closed

(b)(6)

Dear

This office represents Claimant IndyMac Bank Home Construction
Lending in the above action pending before of the
American Arbitration Association. Respondent Lenders Choice Network,
Inc. is represented by the Law Offices of Borton Petrini, LLP.

(b)(6)

Please note that the above action has been settled. Accordingly, please
close the above case file and refund any unused portion of the fees
remitted by the parties at your earliest convenience.

Thank you for your attention to this matter.

Sincerely,

KRALIK & JACOBS LLP

Agreed:
LAW OFFICES OF BORTON
PETRINI, LLP

(b)(6)

By:

Anastasia E. Bessey

By:

Roger A. Parkinson

(b)(6)

Dated: December 3, 2008

Dated: December 10, 2008

(b)(6)

cc (by electronic mail only):