

SETTLEMENT AND RELEASE AGREEMENT

FOR AND IN CONSIDERATION OF the payment of One Hundred Twenty-five Thousand Dollars and no/cents (\$125,000.00), the receipt of which is hereby acknowledged, the undersigned, FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, F.S.B., (“Releasor”), does hereby release and discharge, and by this release does for itself, its heirs, executors, administrators, agents and assigns, hereby forever release, acquit and discharge JSA APPRAISAL SERVICE, STEPHEN SCHWARTZ, and any and all of their agents, employees, assigns, successors in interests, and all other persons, firms or corporations with whom the above-named parties have been, are now, or may hereafter be affiliated (“Releasees”) from any and all claims, demands, obligations, and causes of action of every kind and nature, known and unknown, existing, claimed to exist or which can hereafter ever arise out of or result from or in connection with the conduct of Releasees relating to or pertaining to any appraisal(s) of the real property located at [REDACTED] California, the facts of which, in part, are set forth in that certain lawsuit filed in the United States District Court, Northern District of California, Case Number C10-02077-LHK (PVT), entitled “FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, F.S.B., Plaintiff, vs. JSA APPRAISAL SERVICE, type of entity unknown; and STEPHEN SCHWARTZ, an Individual, Defendants.

(b)(4);(b)(6)

1. Releasor agrees as further consideration and inducement for this Settlement and Release Agreement that this Agreement shall apply to all unknown and unanticipated damages resulting from said occurrences, as well as those now disclosed. The provisions of Section 1542 of the Civil Code of the State of California are hereby expressly waived, and Releasor understands that said section provides:

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.

2. Releasor has been fully advised and understands that the losses claimed to have been sustained by it are of such a character that the full extent and type of losses are not known at the date hereof, and it is fully understood that said losses, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result thereof further damages may be sustained by Releasor. Nevertheless, Releasor desires by this release to forever and fully release and discharge the parties herein released and discharged, and understands that by execution of this instrument no further claims may ever be asserted by Releasor pertaining to the matters referenced in this document.

3. The liability for all claims referenced in this release is denied by the Releasees and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

4. Each party hereto declares that its decision in executing this Settlement and Release Agreement is not predicated on, or influenced by, any declaration or representation of any other party, but solely on the conditions, covenants, and agreements contained in this Settlement and Release Agreement.

5. Releasor warrants and represents that it has the right and authority to execute this Settlement and Release Agreement and receive the sums specified in it as to the claims, demands, obligations, or causes of action referred to in this release; and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement and Release Agreement, and will not do so concurrently with the execution of this Settlement and Release Agreement, or after its

execution.

6. This Settlement and Release Agreement shall inure to the benefit not only of the parties hereto, but also to each and every one of their respective agents, representatives, employees, attorneys and insurers, whether primary or excess, and also to the respective assigns and successors in interest of each party hereto.

7. Each party will bear its own costs and expenses, including attorney's fees, incurred in connection with the litigation specifically identified herein, and no party will make any claim against any other for such costs and expenses.

8. Releasor and Releasees hereby represent that they have carefully read each term of this Settlement and Release Agreement and understands the contents hereof and has executed this Settlement and Release Agreement voluntarily and has not been influenced by any person, persons, or attorney acting on behalf of any party and understands that, after signing this Settlement and Release Agreement, each party cannot proceed against any other party on account of any of the matters recited herein, and each party covenants and agrees that it will not, at any time hereafter, attempt to assert any claim or commence, maintain or prosecute any action at law, in equity, or otherwise against the parties to this Settlement and Release Agreement, or any of them, or any of the parties to which this Settlement and Release Agreement inures, upon or on account of any loss, damage, claim, demand, action or cause of action of any kind or nature, whether known or unknown, arising out of or in any manner connected with the subject matter of this Settlement and Release Agreement.

9. This Settlement and Release Agreement contains the entire agreement between the parties hereto and its terms are contractual and not merely a recital.

10. It is expressly understood and agreed that there have been no promises or representations expressed except as expressly provided herein.

11. Releasor hereby declares and represents that it is effecting this Settlement and Release Agreement after having received full legal advice as to its rights from an attorney.

12. If litigation is instituted to enforce any aspect of this release, the prevailing party shall be entitled to its attorney's fees and costs.

13. Deleted

14. Releasors have agreed amongst themselves as to the appropriate division, if any, of settlement monies to be paid to Releasors. Any disputes that may arise as to the proper division of the settlement monies herein shall not affect the validity of this Settlement and Release Agreement.

15. Each party hereto understands that if the facts with respect to which the Settlement and Release Agreement is executed and the dismissals herein provided are made, are found hereafter to be other than or different from the facts now believed by them to be true, the parties hereto expressly accept and assume the risk of such possible differences in facts and agree that this Settlement and Release Agreement shall be and remain effective notwithstanding such difference in facts.

16. Deleted.

17. Releasor hereby authorizes and directs its attorney of record to forthwith dismiss with prejudice the aforementioned lawsuit against the parties being released herein. The dismissal shall be filed immediately after receipt of the settlement funds by Releasor.

18. Releasor hereby authorizes and directs that the payment of settlement monies referenced herein shall be made by check, draft or wire transfer payable both to Releasor and to the attorney of record for Releasor, and if check or draft shall be delivered to said attorney.

19. Releasor shall provide Releasees with the exact name(s) of the payee(s) on the settlement draft and shall provide a properly completed and signed W-9 for the payee(s).

Payment shall be made within 30 days after counsel for defendants is notified that the FDIC has obtained formal approval of this Agreement as set forth in paragraph 23 below.

20. A facsimile copy of the signature of any party herein shall be as valid as an original signature and shall have the same legal effect as an original signature.

21. This agreement may be signed in counterparts and shall have the same legal effect as a single signed document.

22. The parties hereto intend this agreement to be binding upon all parties and enforceable under the terms of California Code of Civil Procedure section 664.6.


23. This Settlement and Release Agreement is subject to the formal approval of the FDIC. It is estimated that said approval will be within 30 days of this Agreement.

24. This Agreement is intended to be and shall be the final agreement of parties and shall supersede all other agreements.

IN WITNESS WHEREOF, THE UNDERSIGNED HAVE HEREUNTO SET THEIR HANDS THIS 3 DAY OF June, 2011.

FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, F.S.B.

(b)(6)

By:  _____
/Its Counsel

JSA APPRAISAL SERVICE

By: _____
Its _____

STEPHEN SCHWARTZ