

CAUSE NO. 2007-47757

FEDERAL DEPOSIT INSURANCE CORPORATION AS CONSERVATOR FOR INDYMAC BANK, FSB	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
AMERITRUST TITLE COMPANY; CHARLENE HARMON; KEISHA M. SMITH; SHOULANDA NASH; K&D PROPERTY MANAGEMENT; FAST HOMES & FAST LOANS, LLC; VICKI NELSEN; AND JOHN PASSERO, SR.	§	127TH JUDICIAL DISTRICT

**SETTLEMENT AGREEMENT AND RELEASE**

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is entered into on its date of execution by:

"Claimant": FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC FEDERAL BANK, FSB AND AS CONSERVATOR FOR INDYMAC BANK, FSB

"Defendant": JOHN PASSERO, SR.

**RECITALS**

A. Claimant and Defendant (Claimant and Defendant are hereafter referred to singularly as "Party" or collectively as the "Parties") have agreed to a settlement of the claims and causes of action asserted, or that could have been asserted against Defendant, in the above-entitled and numbered cause ("the Litigation").

B. This Settlement Agreement is in full settlement and discharge of all matters asserted in or related to the Litigation, and all unasserted but potential matters of controversy that could have been brought in the Litigation by Claimant against Defendant.

C. Claimant and Defendant desire to enter into this Settlement Agreement in

order to provide for the agreed-upon payment in full settlement and discharge of all claims by Claimant against Defendant which are, or might have been, the subject of the Litigation, upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### AGREEMENT

#### 1. PLAINTIFF'S RELEASE AND DISCHARGE

1.1 In consideration of the payment called for herein, the Claimant for itself, its predecessors, successors, assigns, agents, representatives, beneficiaries, employees, associates, affiliates, partners, partnerships, limited partnerships, limited liability partnerships, corporations, professional corporations, companies, limited liability companies, firms, entities, insurers, and/or attorneys (hereinafter collectively referred to as "Releasers") hereby completely releases and forever discharges Defendant, JOHN PASSERO, SR., and his agents, officers, shareholders, directors, representatives, insurers, employees, and General Star Management Company (hereinafter collectively referred to as "Releasees") from any and all past, present or future claims, demands, damages, expenses, obligations, actions, causes of action, rights, liens, subrogation interests, and compensation of any nature whatsoever, whether based on tort, contract, statute, or other theory of recovery, which Claimant now has, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of, or

which is the subject of the Litigation. By this Settlement Agreement, Claimant does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, any claims or causes of action that do not arise from or relate to the Litigation. The term "Releasor" includes, but is not limited to, the FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC FEDERAL BANK, FSB AND AS CONSERVATOR FOR INDYMAC BANK, FSB.

1.2 In further consideration of the payment called for herein Releasors agree not to communicate, make, file or submit any derogatory information regarding Defendant to any cooperative risk-management database service regarding appraisers including, but not limited to, the Mortgage Asset Research Institute, the Mortgage Industry Data Exchange or any other federal, public or private database contributed to and/or shared by Mortgage Asset Research Institute subscribers.

1.3 Claimant, Defendant and their attorneys agree that they shall not reveal to anyone, unless compelled to do so by a court of competent jurisdiction or as may be mutually agreed to in writing, any of the terms of this Settlement Agreement, or any of the amounts, parties, numbers or terms and conditions of any sums payable to Claimant. Claimant and Defendant may disclose that they have settled their claim, but may not disclose the terms of the Settlement Agreement. This confidentiality provisions does not prohibit the Claimant from complying with its mandatory reporting requirements. Accordingly, Claimant is expressly permitted to make such disclosures as required pursuant to applicable law, including, but not limited to the Financial Institutions Reform Recovery and Enforcement Act of 1989.

1.4 Releasors acknowledge and agree that the release and discharge set forth above is a general release. Releasors expressly waive and assume the risk of any and all claims for damages which exist as of this date related to the Litigation, but of which the Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Releasors' decisions to enter into this Settlement Agreement. The Releasors further agree that Releasors have accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact related to the Litigation. Releasors assume the risk that the facts or law may be other than Releasors believe. It is understood and agreed to by the Parties that this Settlement Agreement is a compromise of a doubtful and disputed claim, and the payment is not to be construed as an admission of liability on the part of Defendant, by whom liability is expressly denied.

## 2. DEFENDANT'S RELEASE AND DISCHARGE

2.1 In consideration of the release and dismissal of Claimant's claims herein, Defendant for himself, his predecessors, successors, assigns, agents, representatives, beneficiaries, employees, associates, affiliates, partners, partnerships, limited partnerships, limited liability partnerships, corporations, professional corporations, companies, limited liability companies, firms, entities, insurers, and/or attorneys (hereinafter collectively referred to as "Defendant Releasor") hereby completely releases and forever discharges IndyMac Bank, FSB, IndyMac Federal Bank, FSB, Federal Deposit Insurance Corporation as Receiver for IndyMac Federal Bank, FSB and as Conservator for IndyMac Bank, FSB, and their agents, officers, shareholders, directors, representatives, insurers, and employees (hereinafter collectively referred to as

"Defendant Releasees") from any and all past, present or future claims, demands, damages, expenses, obligations, actions, causes of action, rights, liens, subrogation interests, and compensation of any nature whatsoever, whether based on tort, contract, statute, or other theory of recovery, which the Defendant now has, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of, or which are the subject of the Litigation. The term "Defendant Releasor" includes, but is not limited to, John Passero, Sr.

3. PAYMENT

In consideration of the Release set forth above, it is agreed that General Star Management Corporation, on behalf of Defendant, JOHN PASSERO, SR., shall cause to be made a cash payment in the total amount of Sixty Thousand and No/100 Dollars (\$60,000.00) made payable to the FDIC as receiver for IndyMac Bank.

4. ATTORNEY'S FEES

Each Party hereto shall bear all attorney's fees arising from the actions of its own counsel in connection with the Litigation, this Settlement Agreement and the matters and documents referred to herein, and all related matters.

5. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

Claimant represents and warrants that no other person or entity has any interest in the claims, demands, obligations or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; and that the Claimant has the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Claimant 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 Agreement.

6. ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST

This Settlement Agreement contains the entire agreement between the Parties with regard to the matters set forth herein and shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

7. REPRESENTATION OF COMPREHENSION OF DOCUMENT

In entering into this Settlement Agreement, Claimant represents that it has completely read the terms of this Settlement Agreement, that it has been fully explained to them by their attorneys, and that all terms of this Agreement are fully understood and voluntarily accepted by it.

8. GOVERNING LAW

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

9. ADDITIONAL DOCUMENTS

9.1 All the Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect of the basic terms and intent of this Settlement Agreement.

9.2 None of the Parties released have made any representations concerning, nor shall they be responsible in any manner for, the income tax consequences to the Claimant by reason of the Claimant's execution of this Settlement Agreement, or any payment made pursuant to this Settlement Agreement.

10. EFFECTIVENESS

This Settlement Agreement shall become effective following execution by the Parties herein.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

**CAUTION: READ THIS BEFORE SIGNING**

(b)(6)

[Redacted Signature]

Jock Duncan, Senior Attorney  
Federal Deposit Insurance Corporation as  
Receiver for IndyMac Federal Bank, FSB and  
as Conservator for IndyMac Bank, FSB

THE STATE OF CALIFORNIA §  
  §  
COUNTY OF ORANGE                   §

Before me, the undersigned authority, on this day personally appeared JOCK DUNCAN, SENIOR ATTORNEY of Federal Deposit Insurance Corporation as Receiver for IndyMac Federal Bank, FSB and as Conservator for IndyMac Bank, FSB, known to me to be the person whose name is subscribed to the foregoing document and, after having been duly sworn, stated on his/her oath that he/she has read the foregoing document and acknowledged to me that he/she executed same in the capacity therein stated and for the purposes and consideration therein expressed.

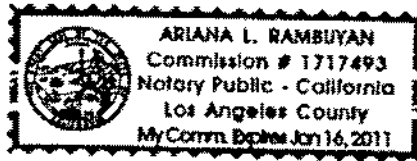
Subscribed and sworn to before me this 12 day of AUGUST, 2009.

(b)(6)

[Redacted Signature]

Notary Public in and for the State of CALIFORNIA  
ARIANA L. RAMBUYAN

My commission expires: JANUARY 16, 2011





JOHN PASSERO, SR.

(b)(6)

John Passero, Sr.

Date: August 25, 2009

STATE OF TEXAS

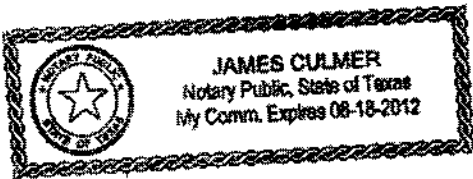
COUNTY OF Montgomery

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Before me, the undersigned authority, on this day personally appeared John Passero, Sr. known to me to be the person whose name is subscribed to the foregoing instrument through a current identification card issued by the federal government or any state government that contains the photograph and signature of the acknowledging person, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 25 day of AUGUST, 2009.

(b)(6)



NOTARY PUBLIC STATE OF TEXAS

JAMES CULMER  
Printed Name of Notary Public

My commission expires: 08-18-2012