

ENTERED

12/19/09

LIMS Mr [redacted]
DIP/Mortgage Fraud

12/19/09

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into by and between IndyMac Bancorp, Inc., on its own behalf and on behalf of all of its subsidiaries including IndyMac Bank (collectively referred to as "IndyMac"), on the one hand, and Those Certain Underwriters at Lloyd's, London severally subscribing to Mortgage Bankers Bond Insurance Policy No. 509/QA 009005 (collectively referred to as "Underwriters"), on the other hand.

RECITALS

(b)(4)

A. Underwriters issued Mortgage Bankers Bond Insurance Policy No. [redacted] ("the Bond") to IndyMac. As set forth in the Schedule of the Bond, the Bond Period is from March 1, 2005 to March 1, 2006. The Limit of Indemnity under Insuring Clause A1 [Dishonesty] of Section A [Fidelity/Crime] of the Bond is \$20,000,000 any one loss and in the aggregate, with a \$500,000 deductible each and every loss.

(b)(4)

B. By email dated August 24, 2005, Marsh Los Angeles provided notice to Marsh London that IndyMac was investigating wrongdoing on the part of a closing agent who closed several loans but did not disburse the loan funds. After Underwriters granted several extensions of time to IndyMac to submit a proof of loss, by letter dated July 6, 2006 to counsel for Underwriters, IndyMac submitted a Proof of Loss alleging coverage under Insuring Clause A1(c) [Dishonesty] of Section A [Fidelity/Crime] of the Bond for loss caused by LaMattina & Associates ("LMA"). Joseph LaMattina and other employees, officers and directors of LaMattina & Associates with respect to six loan transactions. LMA purported to be a law firm with offices in Nassau County, New York providing settlement and closing agent services to lenders for residential real estate loan transactions. Pursuant to information provided by LMA, IndyMac wire-transferred loan funds for the six loan transactions into an LMA bank account at Victory State Bank ("the LMA account"). The loss, in the total amount of \$1,817,041.32, arose from misappropriations of IndyMac loan funds for the six loans from the LMA account. On or about September 12, 2006, IndyMac received a return of funds of \$172,697.16, making the total loss amount claimed by IndyMac to be \$1,644,344.16. (The above-noted Proof of Loss and all documents and information submitted by IndyMac in support of the loss claimed are collectively referred to as "the Bond Claim" and are hereby incorporated by reference as though fully set forth herein.)

C. On or about August 25, 2005, IndyMac filed a recovery action in New York state court against LMA and others to recover for its loss relating to the six loan transactions ("the recovery action"). IndyMac has obtained liens on several pieces of property in which one or more of the defendants have an ownership interest, as well as cash from a bank account of Prelude Abstract, one of the companies used by the defendants to launder funds stolen from IndyMac. IndyMac has incurred attorneys' fees, costs and expenses in the recovery action.

D. Underwriters have conducted an investigation of the Bond Claim and the parties have engaged in settlement discussions concerning the Bond Claim. IndyMac and Underwriters

desire to settle and resolve the disputes and differences which exist or may exist between them that are based upon the Bond Claim, as set forth herein.

NOW, THEREFORE, in consideration of the mutual undertakings contained in this Agreement and other good and sufficient consideration, the parties hereto agree as follows:

1. Incorporation of Recitals.

The Recitals to this Agreement are incorporated and made a part hereof.

2. Payment.

Within ten (10) days after the execution of this Agreement by IndyMac, Underwriters will pay to IndyMac the total sum of \$1,144,344.16 (One Million One Hundred Forty-Four Thousand Three Hundred Forty-Four Dollars and Sixteen Cents) by check made payable to "IndyMac Bancorp, Inc." or by wire transfer to an account designated in writing by IndyMac.

3. Release.

A. Claim Release by IndyMac.

In consideration of the payment described in Paragraph 2 of this Agreement, and conditioned upon the receipt of such payment by IndyMac, and except for any obligations expressly created by this Agreement, IndyMac, on behalf of itself and its directors, officers, agents, predecessors, successors, assignees, subsidiaries, attorneys, and affiliates, hereby releases and absolutely discharges Underwriters and their directors, officers, agents, predecessors, successors, assignees, insurers, attorneys, employees, subsidiaries, affiliates, and each of them, from any and all claims, demands, damages, debts, losses, liabilities, attorneys' fees, costs, expenses, and all other claims for relief of whatever kind or nature, known and unknown, suspected and unsuspected, whether in the past, present or future, and whether based upon the Bond, any other insurance policy or bond issued by Underwriters, or any contract, tort, statute or other legal or equitable theory of recovery, based upon, arising out of or related to:

- (a) the losses and circumstances alleged in the Bond Claim and all matters referred to in Recitals B through D of this Agreement;
- (b) any obligation to pay any amounts of loss incurred by IndyMac as a result of the Bond Claim and all matters referred to in Recitals B through D of this Agreement;
- (c) the investigation, handling or any other conduct by or on behalf of Underwriters arising out of or related to the Bond Claim and the settlement described in this Agreement, including any negotiations leading to such settlement;
- (d) interest of any sort with respect to any amounts of loss incurred by IndyMac as a result of the Bond Claim and all matters referred to in Recitals B through D of this Agreement;

- (e) attorneys' fees, costs and expenses of any sort incurred by IndyMac in pursuing coverage under the Bond for the losses claimed in the Bond Claim and all matters referred to in Recitals B through D of this Agreement;
- (f) any and all claims under any state or federal statute, regulation or common law for unfair claims handling practices, fraud, breach of an implied covenant of good faith and fair dealing, punitive damages, any type of insurance "bad faith" and any form of equitable relief with respect to: (i) any losses claimed by IndyMac in the Bond Claim, the settlement described in this Agreement and all matters referred to in Recitals B through D of this Agreement; and (ii) the investigation, handling or any other conduct by or on behalf of Underwriters arising out of or related to the Bond Claim and the settlement described in this Agreement, including all negotiations between the parties concerning the Bond Claim, the settlement described in this Agreement, and the matters referred to in Recitals B through D of this Agreement; and
- (g) to the extent not described in subparagraphs (a) through (f) of this Paragraph 3, all matters referred to in Recitals B through D of this Agreement.

B. Claim Release by Underwriters.

In consideration of the payment described in Paragraph 2 of this Agreement, and conditioned upon the receipt of such payment by IndyMac, and except for any obligations expressly created by this Agreement, Underwriters, on behalf of themselves and their directors, officers, agents, predecessors, successors, assignees, subsidiaries, attorneys, and affiliates, hereby release and absolutely discharge IndyMac and its directors, officers, agents, predecessors, successors, assignees, insurers, attorneys, employees, subsidiaries, affiliates, and each of them, from any and all claims, demands, damages, debts, losses, liabilities, attorneys' fees, costs, expenses, and all other claims for relief of whatever kind or nature, known and unknown, suspected and unsuspected, whether in the past, present or future, and whether based upon the Bond, any other insurance policy or bond issued by Underwriters, or any contract, tort, statute or other legal or equitable theory of recovery, based upon, arising out of or related to the Bond Claim.

4. Waiver of Unknown Claims.

Each party to this Agreement acknowledges that it has been given the opportunity to be informed by legal counsel of its choice and is aware of the provisions of California Civil Code Section 1542 and does expressly waive and relinquish all rights and benefits which it has or may have had under said section and any other statute or common law principle of similar effect with respect to the matters released in Paragraph 3 of this Agreement. Section 1542 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.

Each party has had the opportunity to be advised by legal counsel of its choice as to this waiver and further understands and acknowledges the significance and consequences of specific waiver of Section 1542 and hereby assumes full responsibility for any damages or losses sustained by it of any sort or nature that might otherwise have been or be assertable as claims with respect to the matters released in Paragraph 3 of this Agreement. Each party acknowledges that it is aware that it may later discover facts in addition to or different from those which it now has or believes to be true with respect to the Bond Claim, but that it intends hereby fully, finally and forever to settle and release all released matters, known or unknown, suspected or unsuspected, which now exist, may exist or previously existed between IndyMac and Underwriters with respect to the matters released in Paragraph 3 of this Agreement. In furtherance of such intention, the releases given in Paragraph 3 of this Agreement shall be, and shall remain, in effect as full and complete releases to the extent of their provisions, notwithstanding the discovery or existence of any such additional or different facts.

5. Recovery Efforts.

(a) As further consideration for the payment by Underwriters described in Paragraph 2 of this Agreement, IndyMac hereby assigns to Underwriters all of its rights, title and interest and causes of action against any person or entity on account of the matters described in Recitals B through D of this Agreement but only to the extent of the payment set forth in Paragraph 2 of this Agreement, including without limitation all rights and causes of action in connection with the recovery efforts currently being pursued by IndyMac as described in Recital C to this Agreement and the recovery action.

(b) IndyMac and Underwriters agree to cooperate in the pursuit of such recovery efforts, including joint retention of the counsel currently retained by IndyMac at the current hourly rates to pursue such recovery efforts, and to cooperate with regard to IndyMac's defense to any counterclaims asserted against it in the recovery action, such as the counterclaims filed by Vincent Ancona and Victory State Bank. While Underwriters participate in such recovery efforts, they shall be responsible for paying the reasonable attorneys' fees, costs and expenses of such recovery efforts, including the defense of counterclaims, incurred following the payment described in Paragraph 2 of this Agreement.

(c) IndyMac will provide to Underwriters' counsel, or cause to be provided, copies of the invoices for attorneys' fees, costs and expenses incurred in the recovery action.

(d) Underwriters retain the right, to be exercised in their sole discretion, to withdraw from the pursuit of any recovery efforts at any time and upon such withdrawal, Underwriters shall not be responsible for payment of any further attorneys' fees, costs and expenses of recovery efforts.

(e) In the event of any actual recoveries, IndyMac shall first be entitled to reimbursement of those reasonable attorneys' fees, costs, and expenses incurred in the recovery action (excluding, however, IndyMac's own employee costs) up to the time Underwriters' began

paying such fees, costs and expenses pursuant to Paragraph 5(b). Underwriters shall then be entitled to reimbursement of the reasonable attorneys fees, costs and expenses (excluding, however, IndyMac's own employee costs) incurred in the recovery effort which Underwriters paid.

(f) The remaining amount of the recovery, net of the expense of such recovery efforts as described in Paragraph 5(e), will be applied first to reimburse Underwriters up to the amount paid under paragraph 2 of this Agreement, and, thereafter, to reimburse IndyMac for its deductible in the amount of \$500,000.

6. Confidentiality.

The parties to this Agreement agree that, except as provided in this paragraph, they shall not disclose the terms of this Agreement, including but not limited to the amount of payment under Paragraph 2 of this Agreement, to any person not a party to this Agreement, except:

- (a) as reasonably necessary or appropriate in a communication to the parties released in this Agreement;
- (b) as reasonably necessary or appropriate in a communication to an accountant, auditor, consultant, attorney, insurance broker, reinsurer, insurer, prospective insurer or any employee, officer or director of the parties;
- (c) upon the written consent of the parties to this Agreement;
- (d) if required by court order or if required in response to a subpoena or other discovery request in a lawsuit;
- (e) as reasonably necessary or appropriate in a communication to any insurance regulatory agency or authority;
- (f) as reasonably necessary or appropriate in connection with the pursuit of recovery; or
- (g) as reasonably necessary to the Internal Revenue Service or any other taxing agency or entity.

7. Representations and Warranties.

The parties hereto represent and warrant to and agree with each other as follows:

- (a) Each party has received independent legal advice from attorneys of their own choice with respect to the advisability of making the settlement and the releases provided herein and with respect to the advisability of executing this Agreement.
- (b) The recited considerations of this Agreement are the sole and only considerations of this Agreement, and no representations, promises, warranties, or other inducements have been made by the parties other than as appear in this

instrument. Furthermore, this instrument represents the full and final integrated agreement between the parties hereto, and supersedes any and all prior oral or written agreements or memoranda, express or implied, or positions as to coverage that exist or may exist between the parties with respect to the matters described and released herein.

- (c) All parties hereto and their counsel have made an investigation of the facts pertaining to the releases contained herein as they deem necessary.
- (d) The terms of this Agreement are contractual, are the result of negotiation among the parties and are not mere recitals.
- (e) This Agreement has been carefully read by each of the parties and the contents thereof are known and understood by each of the parties.
- (f) Each party covenants and agrees not to bring any claim, suit or proceeding against any party hereto, directly or indirectly, regarding or relating to the matters released hereby (except to enforce this Agreement), and further covenant and agree that this Agreement is a bar to any such claim, suit or proceeding.
- (g) IndyMac represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim or other matter which it releases herein, and that it has not heretofore assigned, transferred or purported to assign or transfer, to any person, firm, association, corporation or other entity, any right, title or interest in any such claim or other matter.
- (h) In making and entering into this Agreement, it is understood and agreed that each party relied fully upon his or its judgment, or the persons employed by them, and is not made upon any reliance on any statement or representation of any other party.
- (i) No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver.

8. Modifications.

This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed to by IndyMac and Underwriters or their authorized representatives.

9. Agreement Binding on Successors.

This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective past, present and future heirs, executors, legal representatives, attorneys, subrogees, successors, assigns, predecessors in interest, insurance companies, adjusters, insurance agents and brokers, investigators, appraisers, partners, directors, officers, owners, stockholders, administrators, executives, employees, agents, representatives and all parent, subsidiary, allied or affiliated corporations or survivors by merger.

10. No Admission of Liability.

IndyMac and Underwriters explicitly acknowledge that this Agreement represents a settlement of disputed claims, and that by entering into this Agreement, they do not admit or acknowledge the existence of any liability or wrongdoing. Neither this Agreement, the settlement which led to it, nor the payment of consideration hereunder, is intended to be or shall be construed or treated in any respect as an admission of liability by IndyMac or Underwriters for any purpose. This Agreement and the settlement which led to it is entirely without prejudice to the future interpretation by Underwriters and IndyMac of the terms and conditions of any bond or insurance policy issued by Underwriters.

11. Attorneys' Fees and Costs.

Each party to this Agreement agrees that it will be responsible for all attorneys' fees, costs and expenses incurred by it in connection with the negotiation, execution and performance of this Agreement.

12. Severability.

In the event any portions of this Agreement shall be deemed to be void, voidable or unenforceable, the remaining portions shall remain in full force and effect.

13. Warranty of Authority.

Each person whose signature is affixed hereto in a representative capacity represents and warrants that he is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf the signature is affixed.

14. 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.

15. Facsimile and Electronic Mail Copies.

The parties agree that facsimile and electronic mail copies of the signatures to this Agreement shall be treated as original signatures, are acceptable to each other, and shall bind the parties' respective rights and obligations under this Agreement, to the same extent as if such signatures were original (wet) signatures.

16. Good Faith Settlement

All parties hereto acknowledge that the settlement set forth in this Agreement is entered into in good faith, as a result of arms length negotiations, and to resolve and compromise disputed substantial claims between them.

17. Construction of Agreement

As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates. This Agreement shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared jointly by the parties hereto. The parties hereto agree that any rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor one party against the other.

18. Additional Acts

IndyMac and Underwriters shall, at the reasonable request of the other, execute, acknowledge and deliver whatever additional instruments, and do such other acts, as may be required or convenient to carry out the intent and purpose of this Agreement.

19. Governing Law

This Agreement shall be governed by and construed under and in accordance with the laws of the State of California.

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

(b)(6)

Dated: 6/21/07

INDYMAC BANCORP/INC.

[Redacted Signature]

Name: Scott Waps (b)(6)
Title: CFD

THOSE CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON SEVERALLY SUBSCRIBING TO
MORTGAGE BANKERS BOND INSURANCE NO.

(b)(4)

[Redacted Signature]

Dated: _____

Edward T. Stork, Esq.
Their Authorized Representative