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LIMS M  
DIF/Mortgage fraud

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RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("*Agreement*") is effective on the date that all parties have executed the *Agreement* (the "*Effective Date*"), and is entered into by and between the Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB ("*FDIC*"), Thomas McNeill ("*McNeill*"), TMAC Appraisers, Inc. ("*TMAC*"), Gary G. Wade ("*Wade*"), First Interstate Financial Corp. ("*First Interstate*"), and Premier Mortgage Services LLC ("*Premier Mortgage*") (*McNeill, TMAC, Wade, First Interstate, and Premier Mortgage* shall hereinafter be referred to collectively as the "*Defending Parties*" where appropriate) with respect to the claims made in the case captioned *Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB v. TMAC Appraisers, Inc., et al.*, United States District Court for the District of New Jersey, Case No. 08-cv-03364 (the "*Litigation*").

(b)(2)

RECITALS

WHEREAS, Leslie Scotland ("*Scotland*") applied for mortgage loan financing to purchase the real property located at 67A Gautier Avenue, Jersey City, New Jersey (the "*Property*");

WHEREAS, *Premier Mortgage* processed *Scotland's* loan application and originated a primary and secondary mortgage loan secured by the *Property* (the "*Subject Loans*");

WHEREAS, *McNeill* performed an appraisal of the *Property* in the name of *TMAC* to support the *Subject Loans* (the "*Appraisal*");

WHEREAS, *Wade* acted as the supervisory appraiser for the *Appraisal*;

WHEREAS, *First Interstate* underwrote the *Subject Loans*, and sold the *Subject Loans* to IndyMac Bank, F.S.B. ("*IndyMac*") post-closing pursuant to the terms and conditions of the Seller Contract and e-MITS User Agreement, as amended, entered into between *First Interstate*

and *IndyMac* (the "*Contract*"), which incorporated the *IndyMac* Lending Guide, as amended, supplemented, or otherwise modified from time to time (the "*Guide*");

WHEREAS, *First Interstate's* sale of the *Subject Loans* to *IndyMac* failed to meet the terms and conditions contained in the *Contract* and *Guide*, and as a result *First Interstate* entered into an indemnification agreement with *IndyMac* in which *First Interstate* agreed to hold *IndyMac* harmless against all actual losses on the *Subject Loans* (the "*Indemnification Agreement*");

WHEREAS, *IndyMac* asserted claims in the *Litigation* against *McNeill*, *TMAC*, and *Wade* based on the *Appraisal*;

WHEREAS, *Wade* asserted claims in the *Litigation* against *Scotland*, *Premier Mortgage*, and *First Interstate* relating to the *Subject Loans*;

WHEREAS, *McNeill* and *TMAC* asserted claims against *Wade* and intended to assert claims against *Wade's* insurance carrier *General Star* for costs and counsel fees;

WHEREAS, *First Interstate* asserted claims in the *Litigation* against *Scotland*, *Premier Mortgage*, *McNeill*, *TMAC*, and *Wade* relating to the *Subject Loans* and/or the *Appraisal*;

WHEREAS, the *Defending Parties* expressly deny any liability relating to the asserted claims in the *Litigation*; and

WHEREAS, to avoid any further expense of litigation, the parties voluntarily enter into this *Agreement*.

In consideration of the above and for such other good and valuable consideration, the sum and sufficiency of which is hereby acknowledged and based on the mutual promises and conditions contained herein, the parties agree as follows:

1. **Recitals.** The above Recitals are incorporated herein by reference and made a part of this *Agreement*.

2. **Dismissal of Claims.** The parties to this *Agreement* shall stipulate to the entry of an Order dismissing with prejudice all claims asserted in the *Litigation* against all parties (the "*Order*"). The *Order* shall specifically provide that the dismissal is without costs or attorney's fees to any party. The *Order* shall further specifically provide that the terms of this *Agreement* are incorporated within the *Order* by reference, and that the Court shall retain jurisdiction over this *Agreement* to enforce its terms.

3. **Releases.** The parties shall release each other as follows:

(a) For and in consideration of the payment of \$275,000 (Two Hundred Seventy-Five Thousand Dollars), and in consideration of the terms and conditions of this *Agreement*, *FDIC* does absolutely and unconditionally release *First Interstate* and *First Interstate's* officers, directors, shareholders, employees, agents, affiliates, successors, and assigns, jointly and severally, from any and all claims, demands, actions or causes of action, of whatever nature or description, known or unknown, now existing or hereafter acquired, and whether or not asserted in the *Litigation*, which *FDIC* had, has, claims to have, or may hereafter acquire against *First Interstate*, arising out of the *Indemnification Agreement* and/or the facts and circumstances alleged in the *Litigation*. Provided, however, that, in the event the payment set forth above must be set aside, refunded, or otherwise reduced in amount by operation of law, including, but not limited to, as a result of any bankruptcy filing or adjudication that such payment constitutes a fraudulent transfer, the release provided by *FDIC* herein shall be deemed null and void and *FDIC* shall be allowed to pursue any and all claims it had prior to this release.

*First Intestate* shall make payment of \$275,000 (Two Hundred Seventy-Five Thousand Dollars) to "RJ Landau Partners PLLC, as Attorneys for Federal Deposit Insurance Corporation," in one initial installment of \$25,000 (Twenty-Five Thousand Dollars) and five monthly installments of \$50,000 (Fifty Thousand Dollars) pursuant to the following schedule:

- \$25,000 to be payable immediately upon the *Effective Date*;
- \$50,000 to be payable on the last day of the month in the first month succeeding the *Effective Date* (for example, if the *Effective Date* is November 23, 2009, the first \$50,000 payment would be due December 31, 2009);
- \$50,000 to be payable on the last day of the month in the second month succeeding the *Effective Date* (for example, if the *Effective Date* is November 23, 2009, the second \$50,000 payment would be due January 31, 2010);
- \$50,000 to be payable on the last day of the month in the third month succeeding the *Effective Date* (for example, if the *Effective Date* is November 23, 2009, the third \$50,000 payment would be due February 28, 2010);
- \$50,000 to be payable on the last day of the month in the fourth month succeeding the *Effective Date* (for example, if the *Effective Date* is November 23, 2009, the fourth \$50,000 payment would be due March 31, 2010);
- \$50,000 to be payable on the last day of the month in the fifth month succeeding the *Effective Date* (for example, if the *Effective Date* is November 23, 2009, the fifth \$50,000 payment would be due April 30, 2010).

Payments shall be made in a manner to ensure delivery on or before the due date for each payment.

If *First Interstate* fails to make any payments on or before the due date set forth above, *First Interstate's* failure to pay shall be considered an event of default. Upon receiving notice of an event of default, *First Interstate* shall have no more than 10 (ten) days from the date of such notice to cure by making the required payment. Notice of default shall be deemed adequate if served by U.S. Mail and electronic mail to *First Interstate's* current counsel of record, Richard B. Gelfond, Levy & Watkinson, P.C., 90 Woodbridge Center Drive, Suite 210, Woodbridge, New Jersey 07095. *First Interstate* hereby agrees that if the default is not cured within this period, *First Interstate* shall stipulate to the filing of an amended complaint in the *Litigation* for the purpose of adding a claim by *FDIC* against *First Interstate* based on the *Indemnification Agreement*. Upon filing of the amended complaint, *FDIC* may file with the Court a consent judgment in favor of *FDIC* and against *First Interstate* for an amount equal to the balance of the monies owed to *FDIC* pursuant to this *Agreement* plus all fees, costs, or expenses (including reasonable attorney's fees) incurred by *FDIC* in connection with enforcing this *Agreement*. *First Interstate* expressly consents to entry of the consent judgment as set forth above without notice of presentment, objections to form waived, provided solely that *FDIC* accurately records in the consent judgment the amount of the unpaid installments and fees, costs, or expenses (including reasonable attorney's fees) as set forth above.

If for any reason a separate action is required to enforce the terms of this *Agreement*, *FDIC* may file with the Court in the separate action a consent judgment in favor of *FDIC* and against *First Interstate* for an amount equal to the balance of the monies owed to *FDIC* pursuant to this *Agreement* plus all fees, costs, or expenses (including reasonable attorney's fees) incurred by *FDIC* in connection with enforcing this *Agreement*. *First Interstate* expressly consents to entry of the consent judgment as set forth above without notice of presentment, objections to

form waived, provided solely that *FDIC* accurately records in the consent judgment the amount of the unpaid installments and fees, costs, or expenses (including reasonable attorney's fees) as set forth above. This *Agreement* is binding upon *First Interstate's* successors and assigns, and inures to the benefit of *FDIC's* successors and assigns.

(b) For and in consideration of the payment of \$75,000 (Seventy-Five Thousand Dollars) payable to "RJ Landau Partners PLLC, as Attorneys for Federal Deposit Insurance Corporation" within 30 (thirty) days of the *Effective Date*, and in consideration of the terms and conditions of this *Agreement*, *FDIC* does absolutely and unconditionally release *Wade* and *Wade's* officers, directors, shareholders, employees, agents, affiliates, successors, estates, heirs, fiduciaries, assigns, and insurers, specifically including General Star Management Company, jointly and severally, from any and all claims, demands, actions or causes of action, of whatever nature or description, known or unknown, now existing or hereafter acquired, and whether or not asserted in the *Litigation*, which *FDIC* had, has, claims to have, or may hereafter acquire against *Wade*, arising out of the facts and circumstances alleged in the *Litigation*. Provided, however, that, in the event the payment set forth above must be set aside, refunded, or otherwise reduced in amount by operation of law, including, but not limited to, as a result of any bankruptcy filing or adjudication that such payment constitutes a fraudulent transfer, the release provided by *FDIC* herein shall be deemed null and void and *FDIC* shall be allowed to pursue any and all claims it had prior to this release.

(c) For and in consideration of the terms and conditions of this *Agreement*, *FDIC* does absolutely and unconditionally release *McNeill*, *TMAC*, and *Premier Mortgage*, and their officers, directors, shareholders, employees, agents, affiliates, successors, estates, heirs, fiduciaries, and assigns, jointly and severally, from any and all claims, demands, actions or

causes of action, of whatever nature or description, known or unknown, now existing or hereafter acquired, and whether or not asserted in the *Litigation*, which *FDIC* had, has, claims to have, or may hereafter acquire against *McNeill*, *TMAC*, and/or *Premier Mortgage*, arising out of the facts and circumstances alleged in the *Litigation*.

(d) For and in consideration of the payment of \$1,500 (One Thousand Five Hundred Dollars) payable to "Levy & Watkinson Attorney Trust Account" immediately upon the *Effective Date*, and in consideration of the terms and conditions of this *Agreement*, *First Interstate* does absolutely and unconditionally release *Premier Mortgage*, its officers, directors, shareholders, employees, agents, affiliates, successors, and assigns, jointly and severally, from any and all claims, demands, actions or causes of action, of whatever nature or description, known or unknown, now existing or hereafter acquired, and whether or not asserted in the *Litigation*, which *First Interstate* had, has, claims to have, or may hereafter acquire against *Premier Mortgage*, arising out of the facts and circumstances alleged in the *Litigation*.

(e) For and in consideration of the terms and conditions of this *Agreement*, the *Defending Parties*, their officers, directors, shareholders, insurers, employees, owners, agents, affiliates, successors, estates, heirs, fiduciaries, assigns, and insurers, specifically including General Star Management Company, jointly and severally, do mutually agree to absolutely and unconditionally release each other from any and all claims, demands, actions or causes of action, of whatever nature or description, known or unknown, now existing or hereafter acquired, and whether or not asserted in the *Litigation*, which the *Defending Parties* had, have, claim to have, or may hereafter acquire against each other arising out of the facts and circumstances alleged in the *Litigation*.

4. **Express Reservation from Releases.** Nothing in this *Agreement* waives any claim, cause of action, or any rights to contribution or other claims held by the parties existing currently or arising in the future, against any other individual or entity not expressly released by this *Agreement*.

Notwithstanding any other provision, by this *Agreement*, *FDIC* does not release, and expressly preserves fully and to the same extent as if the *Agreement* had not been executed; (a) any claims or causes of action that do not arise from or relate to the facts and circumstances alleged in the *Litigation*, or the defense of the same, except to the extent they relate to the *Subject Loans, Appraisal, and/or the Indemnification Agreement* or (b) any action taken by any other federal agency.

5. **Attorney's Fees and Costs.** Each party shall bear its own attorney's fees and costs with respect to the *Litigation*.

6. **Amendment.** This *Agreement* may not be amended or modified at any time except by any instrument in writing executed by all of the parties hereto.

7. **Execution.** This *Agreement* may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. The parties also agree that, without receiving further consideration, they will sign and deliver such documents and do anything else that is reasonably necessary in the future to make the provisions of this *Agreement* effective.

8. **Integrated Agreement.** This *Agreement* sets forth the entire understanding between the parties concerning the subject matter of this *Agreement* and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or



understandings, either oral or written, between them relating to the subject matter of this *Agreement* other than those set forth herein.

9. **Governing Law.** This *Agreement* shall be governed by and construed in accordance with New Jersey law (excluding any conflict of laws rule or principle that might refer the governance or construction of this *Agreement* to the law of another jurisdiction). Nothing in this *Agreement* shall require any unlawful action or inaction by any party hereto.

10. **Severability.** If any portion of this *Agreement* is found to be unenforceable, the parties desire that all other portions that can be separated from the unenforceable portion or appropriately limited in scope shall remain fully valid and enforceable.

11. **Representation.** No representation or warranty has been made by or on behalf of any party to this *Agreement* (or any officer, director, employee or agent thereof) to induce any other party to enter into this *Agreement* or to abide by or consummate any transactions contemplated by any terms of this *Agreement*, except representations and warranties, if any, expressly set forth herein. In entering into this *Agreement*, the parties hereto represent that they had the opportunity to proceed with the advice of an attorney of their own choice, that they completely read the terms of this *Agreement*, and that those terms are fully understood and voluntarily accepted by the parties.

12. **Authority.** Each person signing this *Agreement* on behalf of any entity warrants or represents that he/she has the full and complete authority to enter into this *Agreement* on behalf of that entity.

The parties to this *Agreement* have executed this *Agreement* as of the date indicated by each party's signature.

Federal Deposit Insurance Corporation, as  
Receiver for IndyMac Federal Bank, FSB

(b)(6)

By:

[Redacted Signature]

Name:

Richard S. Gill

Title:

Counsel

Date:

1-8-2010

First Interstate Financial Corp.

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

Gary G. Wade

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Date:

\_\_\_\_\_

Federal Deposit Insurance Corporation, as  
Receiver for IndyMac Federal Bank, FSB

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

First Interstate Financial Corp.

\_\_\_\_\_ (b)(6)

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(b)(6)  
Name: John Badami

Title: Controller / CFO

Date: 1-12-2010

Gary G. Wade

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Premier Mortgage Services LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Thomas McNeill



(b)(6)

Printed Name: Thomas McNeill

Date: 1/12/10

TMAC Appraisers, Inc.



(b)(6)

By: \_\_\_\_\_

Name: Thomas McNeill

Title: President

Date: 1/12/10

Premier Mortgage Services LLC

(b)(6)

By:  \_\_\_\_\_

Name: Chris Ottenstaefer

Title: President

Date: 1/22/10

Thomas McNeill

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

TMAC Appraisers, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Deposit Insurance Corporation, as  
Receiver for IndyMac Federal Bank, FSB

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

First Interstate Financial Corp.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Gary G. Wade

\_\_\_\_\_

(b)(6)

Printed Name: Gary Wade

Date: 2-4-10