

received  
4/16/10

LIMSM  
DIY/Mortgage Fraud

ENTERED  
4/19/10

**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:

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)

(b)(6)  
Name: John Badami

Title: Controller / CFO

Date: 1-12-2010

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.

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

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

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

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

Gary G. Wade  
(b)(6)

\_\_\_\_\_

Printed Name: Gary Wade

Date: 2-4-10

Premier Mortgage Services LLC

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

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

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

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

Thomas McNeill

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

Printed Name: Thomas McNeill

Date: 1/12/10

TMAC Annraisers Inc.

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

(b)(6)

Name: Thomas McNeill

Title: President

Date: 1/12/10

Premier Mortgage Services LLC

(b)(6)

By:

Name: Chris Ottenstraer

Title: President

Date: 1/22/10

Thomas McNeill

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

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

TMAC Appraisers, Inc.

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

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

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

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

DIP/Mortgage Fraud

LIMS:



ENTERED  
10/26/10

**MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

This Agreement is made and entered into, on the date of the last signature below of the parties, between FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as Receiver for INDYMAC BANK (hereinafter referred to as "FDIC") and HARVEY HOCHAUSER and MARCIE HOCHAUSER (collectively hereinafter "HOCHAUSER") and is made with reference to the following facts:

WHEREAS, FDIC has the right to any monies received in payment in connection with that certain Judgment against James Bert Coker ("Coker"), Exhibit "A" hereto; and

WHEREAS, Coker and Carol Zhang ("Zhang") were previously husband and wife; and

WHEREAS, Coker and/or Zhang, prior to the entry of the Judgment (Exhibit "A" hereto), owned in partnership with Hochäuser certain real properties commonly known as:

- a. 2114 Mandarin Way, Antioch, California 94509,
- b. 4637 Goldcrest Way, Antioch, California 94531,
- c. 2214 Manzanita Way, Antioch, California 94509,
- d. 1311 Louis Drive, Antioch, California 94509; and

WHEREAS, prior to the entry of the Judgment (Exhibit "A" hereto) Coker and/or Zhang conveyed to Hochäuser some or all of their interests in the certain real properties commonly known as:

- a. 2114 Mandarin Way, Antioch, California 94509,
- b. 4637 Goldcrest Way, Antioch, California 94531,
- c. 2214 Manzanita Way, Antioch, California 94509,
- d. 1311 Louis Drive, Antioch, California 94509; and

WHEREAS, a dispute has existed between FDIC and Zhang and Hochäuser with respect to, among other matters, fraudulent conveyances effected to hinder and delay the FDIC; and

WHEREAS, FDIC and Hochäuser desire to compromise, terminate and settle the subject civil action described below as between themselves and settle all claims and demands that arise out of or are in any way related to the claims made by each of the parties in the matter entitled *Federal Deposit Insurance Corporation, in its capacity as Receiver for Indymac Bank v. James Bert Coker, et al.*, United States District Court, Northern District of California, Case No.

CV 09-3732 WHA (hereinafter the "subject civil action").

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and concurrently with the execution hereof, the parties hereto, agree as follows:

1. The recitals set forth herein above are incorporated herein, hereat, verbatim as material terms of this Agreement.
2. Hochauser shall, within thirty (30) days of execution of this Agreement, execute a listing agreement in a form and substance reasonably satisfactory to FDIC consistent with this Agreement and custom and practice to list that certain real property at 2214 Manzanita Way, Antioch, California 94509 (the "Manzanita Property"), for sale with a licensed real estate broker of FDIC's choice engaged in the business of selling real property ("Broker") until the Manzanita Property is sold or until July 1, 2012, whichever date is earlier ("Term").
3. Simultaneously with the execution of this Agreement, Hochauser shall deliver from Sandi Klein a notarized Quitclaim Deed in the form attached hereto marked Exhibit "B" in favor of Hochauser in and to the Manzanita Property.
4. During the Term of this Agreement, title to the Manzanita Property shall be held in the name of Hochauser.
5. Notwithstanding any provision of this Agreement to the contrary, FDIC does not release Hochauser from any claims for indemnity or reimbursement, whether contractual, implied or otherwise related to the management, sale and maintenance of the Manzanita Property from and after the date of this Agreement and nothing contained in this Agreement shall be deemed to include a release of Coker or Zhang or a compromise or partial satisfaction of the Judgment, Exhibit "A" hereto, or of any claim or indebtedness acquired by the FDIC in connection with loans extended to Hochauser whether related to the Manzanita Property or otherwise ("Excluded Claims").
6. Hochauser agrees to pay all costs for preserving, maintaining, and repairing the Manzanita Property until the expiration of the Term; provided, that if the cost of any single repair, replacement, or maintenance item (or group of related items) exceeds Three Thousand Dollars (\$3,000.00) and the gross proceeds from income from the Manzanita Property after payment of loans secured by the Manzanita Property are insufficient to cover the repair, replacement or maintenance item then, with the written consent of the FDIC, the cost of all

repairs, replacements or maintenance items shall be advanced by Hochauser and repaid to Hochauser exclusively out of the net sales proceeds of the Manzanita Property, or in such other manner as the parties shall mutually agree. The above notwithstanding, in the case of damage caused by Hochauser or by Hochausers' failure to perform routine maintenance (collectively, the "Hochauser's Damage"), as opposed to damage caused by ordinary wear and tear or by third parties, Hochauser shall pay all costs for repairing such damage regardless of the amount.

7. Hochauser shall pay for all improvements to the Manzanita Property costing One Thousand Dollars (\$1,000.00) or less during the Term. Any work on the Manzanita Property with a cost in excess of One Thousand Dollars (\$1,000.00) shall be paid out of the gross proceeds from the income from the Manzanita Property after payment of loans secured by the Manzanita Property and shall require the prior written approval of FDIC, provided that FDIC shall not unreasonably withhold its consent. All improvement costs over and above the gross proceeds from the income from the Manzanita Property after payment of loans secured by the Manzanita Property shall be advanced by Hochauser and be repaid exclusively out of sales proceeds from the Manzanita Property. Unless agreed otherwise in writing by the parties, any such work shall be performed by a licensed contractor. Before such work is commenced, Hochauser shall obtain bids from at least two contractors. The choice of the contractor to perform such work shall require the prior written approval of FDIC not to be unreasonably withheld.

8. In the event Hochauser shall fail to pay when due any tax or assessment on the Manzanita Property during the Term, any payment on a loan secured by the Manzanita Property, any premiums for insurance required by paragraph 9 below, any homeowner's fees, or any amounts owing for work performed pursuant to paragraphs 6 and 7 above, FDIC may at its sole option and discretion make such payments in order to prevent repossession or other detriment to the Manzanita Property. In that event, such payment by FDIC shall be deemed to be a loan to Hochauser. The loan shall be a demand loan bearing ten percent (10%) interest.

9. Hochauser agrees during the Term to also pay all utilities and perform ordinary and customary duties of a property owner having rented property to third party tenants, Peter Gogue and Anthony Boisson, with respect to the Manzanita Property and keep the Manzanita Property in good condition and repair without cost to FDIC nor compensation from FDIC except as otherwise set forth herein. Hochauser also agrees to maintain full replacement value

insurance on the Manzanita Property and liability insurance in the amount of \$500,000.00 with FDIC named as an additional insured and to provide proof of same simultaneously with the execution of this Agreement. Hochauser also shall have sole responsibility for mortgage payments, payments for property taxes and assessments, and any homeowner's fees during the Term. It is further agreed that during the Term Hochauser shall cause the insurance companies identified on Exhibit "C" hereto to give notice to FDIC in advance of the cancellation of any of the policies of insurance, Exhibit "D" hereto.

10. Hochauser shall be entitled to deduct for State and Federal income tax purposes all payments made by Hochauser to the extent authorized by law.

11. Hochauser shall be and remain the Manager of the Manzanita Property during the Term. Manager is empowered to bring and prosecute all proper actions for the protection of the Manzanita Property or to recover possession thereof. Hochauser agrees to not use or permit the use of the Manzanita Property in any manner that would tend to create waste or a nuisance or that would be in violation of law. Hochauser shall assume direction of routine maintenance and operation of the Manzanita Property and assume full responsibility for routine maintenance and operations of the Manzanita Property, subject to the provisions of this Agreement.

12. Hochauser shall maintain books and records of the operation of the Manzanita Property which FDIC shall be entitled to review upon ten (10) days written request and copies of all books and records of the operation shall be forwarded quarterly to the FDIC in care of Maurice Wainer at 270 North Canon Drive, Penthouse, Beverly Hills, California 90210. FDIC may inspect the Manzanita Property or otherwise enter upon the Manzanita Property for any reasonable purpose upon forty-eight (48) hours advance written notice to Hochauser, except that no advance notice shall be required in the case of emergencies.

13. Except as otherwise provided herein during the Term, the following shall be done only with the prior written consent of FDIC:

- a. Transferring, hypothecating, compromising, or releasing any claim relating to the Manzanita Property except upon payment in full of all obligations due under this Agreement;
- b. Selling or entering into a contract to sell any of the Manzanita Property;
- c. Encumbering or otherwise hypothecating the Manzanita Property or entering into any contract for such purpose;

d. Knowingly suffering or causing anything to be done whereby the Manzanita Property may be seized or attached or taken in execution, or its ownership or possession otherwise endangered;

e. Renting all or a part of the Manzanita Property to any person other than to those persons identified on Exhibit "B" hereto;

f. Creating, continuing or allowing any lien, mortgage, easement, or other encumbrance on the Manzanita Property, other than the original financing currently existing on the Manzanita Property;

g. Any use of the Manzanita Property other than as permitted by law;

h. Renewing or extending any existing leases on the Manzanita Property other than as required by law; or

i. Filing a legal action in connection with or related to the Manzanita Property.

14. The parties agree that in the event the Manzanita Property is rented to a third party under the provisions of this Agreement, any rents paid by such party shall be applied to the payment of any expenses or obligations of Hochhauser under this Agreement.

15. Upon sale or other disposition of the Manzanita Property, the net cash proceeds (after payment of closing costs or related expenses including, but not limited to, realtor commissions incurred in connection with the sale) shall be paid to the FDIC without objection from Hochhauser and Hochhauser agrees to deliver to the escrow company of FDIC's choosing an irrevocable and unconditional instruction for the immediate release of the net cash proceeds from the sale of the Manzanita Property per the terms of this Agreement directly to the FDIC and payable to the FDIC.

16. The Manzanita Property shall be sold as follows:

a. The Manzanita Property shall be listed by a duly licensed real estate broker as the FDIC shall select, and placed on the multiple listing service in FDIC's exclusive discretion.

b. The Manzanita Property shall be listed for not less than the net sums due to third party lenders which sum is \$239,500.00. Any offer which is received by the FDIC with a purchase price equal to \$500,000.00 and whose remaining terms are commercially reasonable under the facts and circumstances then existing in the county where the Manzanita Property is

located, shall be accepted by the FDIC unless both parties agree to decline such offer. Any other offer may be accepted by FDIC in its sole discretion. Hochauser shall thereafter convey the Manzanita Property under the terms and conditions of the offer so accepted by the FDIC.

c. Upon close of escrow, the net proceeds of sale shall be remitted to the FDIC per the terms of this Agreement.

d. Should the Manzanita Property not sell as aforesaid prior to July 1, 2012, any rights thereto as created hereby in favor of FDIC are forfeited.

17. Hochauser shall cooperate fully with FDIC in the sale of the Manzanita Property.

18. Hochauser agrees that the rights of FDIC to receive monies on account of the sale of the Manzanita Property, whether now existing or hereafter created, shall be superior to any claim that Hochauser may now have or hereafter acquire relative to the Manzanita Property except as provided for explicitly herein. Hochauser hereby expressly subordinates any claim Hochauser may have against the Manzanita Property, upon any account whatsoever, to any claim that FDIC may now or hereafter have. Hochauser does hereby assign to FDIC all claims which they may have or acquire against the Manzanita Property or against any assignee or trustee of any person or entity; provided however, that such assignment shall be effective only for the purpose of assuring to FDIC the right to the net proceeds from the sale of the Manzanita Property. If FDIC so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Hochauser relative to the Manzanita Property shall be marked with a legend that the same are subject to this Agreement and shall be delivered to FDIC. Hochauser agrees, and FDIC is hereby authorized, in the name of Hochauser, from time to time to file deeds, financing statements and continuation statements and to execute documents and to take such other actions as FDIC deems necessary or appropriate to perfect, preserve and enforce its rights under this Agreement.

19. Hochauser shall be responsible for paying all sums due Zhang, Sandi Klein or any persons related by blood or marriage to Hochauser, Zhang or Coker or Sandi Klein (collectively "Insider"), if any, or any entity owned or controlled by Insider in connection with or related to the Manzanita Property.

20. Broker and prospective buyers shall be given complete and unhindered access to the Manzanita Property, shall be provided with keys for the Manzanita Property, shall be given contact information for the tenants at the Manzanita Property, and Hochauser shall do all of those

things commonly done and performed by sellers of real property without objection and without compensation and without commission of any kind.

21. The following items at the Manzanita Property, if any, are to be included in the sale of the Manzanita Property free of liens or claims of Hochauer and Insiders: any built-in appliances, light fixtures, ceiling fans, attached floor coverings, blinds, shades, drapery rods and curtain rods, brackets and all related hardware, window and door screens, storm windows, combination doors, awnings, antennas, satellite dishes and receivers, burglar/fire/smoke alarms, pool and spa equipment, solar energy systems, attached fireplace screens, gas logs, fireplace inserts, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), storage sheds, mailboxes, wall and/or door mirrors, and any other items attached or affixed to the Manzanita Property and shall be sold with the Manzanita Property (except as may be owned by the persons listed on Exhibit "E" hereto).

22. The following personal property at the Manzanita Property is included in the listing price: refrigerator, microwave/convection, range/oven, dishwasher, and washer/dryer (except as may be owned by the persons listed on Exhibit "E" hereto).

23. Each party to this Agreement shall bear all its costs, expenses and attorney's fees incurred in connection with the subject civil action. No party shall have the right to seek reimbursement for any such costs, attorney's fees or expenses from any other party hereto.

24. This Agreement shall be assignable by FDIC and shall inure to the benefit of FDIC, its successors in interest and assigns but the Hochauer rights and obligations herein are not assignable except upon the prior written consent of the FDIC.

25. This Agreement is made only for the benefit of the parties hereto and FDIC's valid successors and assigns, and is not intended to confer any rights or benefits whatsoever upon persons or entities who are not parties to this Agreement and does not confer any rights or benefits whatsoever to Coker or Zhang.

26. Hochauer hereby expressly and fully releases, acquits and forever discharges FDIC, together with FDIC's agents, employees, affiliates, officers, directors and shareholders, attorneys, insurance companies, servants, assigns, predecessors, successors, heirs, executors and administrators (all of the foregoing persons and entities hereinafter collectively referred to as the "Hochauer Releasees") of and from any and all claims, debts, liabilities, liens, actions, causes of action, demands, rights, damages, costs, losses of services, expenses, attorney's fees and

compensation of every nature, character and description which each party now holds or has or at any time held or may hereafter hold against the Hochauser Releasees on account of or in any way arising out of any or all known or unknown, foreseen and unforeseen, injuries, damages, lost profits and consequences thereof resulting from or in any way arising out of any and all subject matter including but not limited to the allegations of the Complaint in the subject civil action.

27. Except for the Excluded Claims and the obligations of Hochauser under this Agreement, FDIC hereby expressly and fully releases, acquits and forever discharges Hochauser, together with Hochauser's agents, employees, affiliates, officers, directors and shareholders, attorneys, insurance companies, servants, assigns, predecessors, successors, heirs, executors and administrators (all of the foregoing persons and entities hereinafter collectively referred to as the "FDIC Releasees" but excluding Coker and Zhang) of and from any and all claims, debts, liabilities, liens, actions, causes of action, demands, rights, damages, costs, losses of services, expenses, attorney's fees and compensation of every nature, character and description which each party now holds or has or at any time held or may hereafter hold against the FDIC Releasees on account of or in any way arising out of any or all known or unknown, foreseen and unforeseen, injuries, damages, lost profits and consequences thereof resulting from or in any way arising out of the allegations of the Complaint in the subject civil action.

28. This Agreement constitutes a compromise and settlement of claims which are denied and contested and nothing in the Settlement, this Settlement Agreement, or any document referred to herein, nor any act (including, but not limited to, the execution of this Settlement Agreement and/or the payment of the consideration for this Settlement Agreement) of any party hereto, nor any transaction occurring between any parties hereto prior to the date hereof, is or shall be treated, construed or deemed as an admission by any party hereto of any liability, fault, responsibility or guilt of any kind to any other party hereto or to any person, as to any allegation or claim in the subject civil action or otherwise, for any purpose whatsoever, all such liability, fault, responsibility and guilt of any kind being expressly denied by the parties.

29. Each party hereto represents and warrants to the other parties that none of them have heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim, demand, damage, debt, liability, obligation, account, reckoning, cost, expense, lien, action or cause of action, or any part or portion thereof which in any way relates or pertains to the subject civil action. Each party hereto does jointly and severally agree to indemnify and hold

harmless all of the other parties hereto against any claim, demand, debt, liability, account, reckoning, obligation, cost, damage, expense, lien, action or actions (including the payment of attorneys' fees and costs actually incurred, whether or not litigation be commenced), based on or arising out of or in connection with any such transfer or assignment or purported or claimed transfer or assignment.

30. Neither this Agreement nor any provision of this Agreement can be modified or waived in any way, except by an Agreement in writing signed by each of the parties hereto, consenting to such modification or waiver.

31. Any written notice to either party required or permitted under this Agreement shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, prepaid, and addressed to the addressee at the address stated opposite the party's name at the end of this Agreement, or at the most recent address, specified by written notice, given to the sender by the addressee under this provision.

32. All parties hereto do hereby acknowledge and agree that they have been represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Agreement, and that they have executed this Agreement with the consent and upon the advice of said independent counsel.

33. This Agreement may be pleaded as a full and complete defense to, and the parties hereby consent that it may be used as the basis for an injunction against any action, suit or other proceeding based on claims released by this Agreement.

34. Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and including the feminine and neuter, and the singular to refer to and include the plural; and vice versa.

35. The individuals signing this Agreement hereby personally warrant and represent that they have the power, ability, and authority to enter into this Agreement on behalf of the party or parties on whose behalf they are purporting to act, and that they have the power, ability, and authority to bind the party or parties on whose behalf they are purporting to act to the terms of this Agreement.

36. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signature

by facsimile is acceptable, and by transmitting such facsimile signatures, the parties each represent and warrant thereby that they will promptly, upon request, transmit the original to the other party by mail, messenger or overnight courier to the other party provided, however, that failure to do so will not affect the enforceability of this Agreement.

37. This Agreement constitutes the entire agreement between the parties hereto and the terms of this Agreement are contractual and are not mere recitals. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

38. All questions with respect to the construction or interpretation of this Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of California. This Agreement shall be deemed to have been executed in San Francisco County, in the State of California. In the event of any dispute or claim in law or equity arising between the parties regarding this Agreement or any resulting transaction, the parties agree that venue for such action will be in the United States District Court, County of San Francisco.

39. In the event that any action, motion, or other proceeding is brought to enforce the terms of this Agreement, the prevailing party shall recover its costs and reasonable attorney fees.

40. Contemporaneously with the execution of this Agreement, the parties shall execute a Memorandum Agreement evidencing the provisions of this Agreement. Such Memorandum shall be recorded in the Official Records of the County in which the Property is located.

41. This Agreement is fully and completely enforceable pursuant to Code of Civil Procedure §664.6 and is subject to the Court's approval of a good faith settlement pursuant to Code of Civil Procedure §877.6 as submitted by FDIC for Court approval.

DATED: January 14, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as Receiver for INDYMAC BANK

Signature

Richard S. Gittel, Counsel  
Print Name and Title

(b)(6)

c/o Maurice Wainer  
Snipper, Wainer & Markoff  
270 North Canon Drive, Penthouse  
Beverly Hills, California 90210

(b)(6) DATED: 1-11-, 2010

HARVEY HOCHAUSER

[Redacted Signature]

Signature

1930 Whitecliff Way

Print Address

W.C., CA. 94596

City, State and Zip Code

(b)(6) DATED: 1-11, 2010

MARCIE HOCHAUSER

[Redacted Signature]

Signature

1930 Whitecliff Way

Print Address

Whitecliff CA 94596

City, State and Zip Code

APPROVED AS TO FORM AND CONTENT:

(b)(6) DATE: January 5, 2010

SNIPPER, WAINER & MARKOFF

[Redacted Signature]

BY

MAURICE WAINER

Attorneys for  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its capacity as Receiver  
for INDIUMAC BANK

DATED: JAN 13,, 2010

LAW OFFICES OF J. TIMOTHY LANE

BY:

J. TIMOTHY LANE

Attorneys for Defendants  
HARVEY HOCHAUSER and  
MARCIE HOCHAUSER

received  
10/20/10

LIMS M  
DIF/Mortgage fraud

ENTERED  
10/21/10

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:

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.

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

(b)(6)  
Name: John Badami

Title: Controller / CFO

Date: 1-12-2010

Gary G. Wade

\_\_\_\_\_

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

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

Premier Mortgage Services LLC

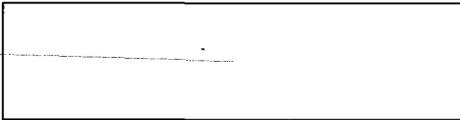
By: \_\_\_\_\_

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

received  
4/16/10

LIMS Mr (b)(2)  
D & B Mortgage Fraud

ENTERED  
4/19/10

AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

(hereinafter, the "Agreement") is made and entered into by and between FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as Receiver for IndyMac Bank, F.S.B. ("IndyMac") (collectively herein "FDIC"), and STEWART TITLE OF SACRAMENTO, a California corporation ("STS"). FDIC and the STS may be referred to herein individually as "Party" and collectively as the "Parties."

(b)(2)

RECITALS

This Agreement is made with reference to the following facts:

A. On or about May 26, 2009, FDIC filed a complaint for money damages against STS as well as against non-settling defendant Goang Yul Bae, an individual doing business as Investor Choice Financial, and Does 1 through 10, inclusive, alleging causes of action against STS for breach of contract (closing instructions) and professional negligence, among other causes of action against non-settling defendants (the "Complaint"), in connection with two mortgage loan funded by IndyMac in the total principal amount of \$530,000 made to a borrower named Ratnesh Prasad (the "Loans") and which was secured by a residential property located at 2797 Screech Owl Way, Sacramento, California 95834 (the "Property"). The pending action which the Complaint initiated is entitled Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. v. Stewart Title, a California corporation, et al., is currently pending in the United States District Court for the Central District of California, Western Division (the "Court"), Case No. CV 09-3711 SVE (JWJx) (the "Action").

B. On or about August 31, 2009, STS answered the Complaint, generally

denying its allegations and asserting numerous affirmative defenses, after its Default, which had been entered on or about July 2, 2009, was set aside by Stipulation and Order thereon entered on or about August 26, 2009.

C. STS has defended and denied, and continue to deny, the validity of FDIC's claims asserted in the Complaint.

D. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation. By this Agreement, the Parties intend to memorialize the terms of their compromise and settlement of the Action.

**AGREEMENT AND MUTUAL RELEASE**

NOW, THEREFORE, in consideration of the undertakings contained in this Agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Settlement Payment to FDIC. No later than ten business (10) days following full execution of this Agreement, STS shall deliver to FDIC's counsel of record in the Action a cashier's or certified check made payable to "Kralik & Jacobs Client Trust Account f/b/o Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B." in the amount of One Hundred Forty-Nine Thousand Five Hundred Dollars and No Cents (\$149,500.00) (the "Settlement Payment"). STS shall cause this check to be delivered as follows:

Kralik & Jacobs LLP  
Attn: Lois Moonitz Jacobs  
35 North Lake Avenue, Suite 620  
Pasadena, California 91101.

---

FDIC and STS agree that timely receipt of the Settlement Payment is an essential term of

this Agreement, and a condition to the effectiveness of this Agreement.

2. Dismissal of the Action. Together with the execution of this Agreement, counsel for each Party shall execute a Stipulation of Dismissal of the Action as to STS only with prejudice in the form attached hereto as Exhibit A. Upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by the FDIC, counsel for the FDIC shall file the executed Stipulation of Dismissal with the Court.

3. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this Agreement to the fullest extent permitted by law.

4. Release by FDIC. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, and effective upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by the FDIC, and except as provided in Paragraph 6, below, the FDIC, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 STS and its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 (the "STS

Releasees”), past or present, 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 the FDIC has, may have or might have against STS, the STS Releasees or any of them, pertaining to the Loans, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided, however, that this release is not a general release but is expressly and specifically limited to the Loans, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys’ fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that the FDIC may have or might have against STS or the STS Releasees, or any of them, including without limitation any other claims, demands or actions regarding any other matters.

5. Release by STS. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, and effective simultaneously with the release granted in Paragraph 4, above, STS, on behalf of itself individually and

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for each and every one of its respective current and former officers, directors, joint

venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 release, acquit and discharge the FDIC and its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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, 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 Settling Defendants or any of them have, may have or might have against the FDIC pertaining to the Loans, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided, however, that this release is not a general release but is expressly and specifically limited to the Loans, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees,

penalties, compensation, right to indemnity and/or demands as to any other loans or matters that the Settling Defendants, or any of them, may have or might have against the FDIC, including without limitation any other claims, demands or actions regarding any other matter.

6. Express Reservations from Releases by FDIC. Notwithstanding any other provision contained herein, by this Agreement, the 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 (i) the Loans, (ii) the Property, or (iii) any and all facts, occurrences and transactions alleged in the Action, and (b) any action taken by or any claims that may be asserted by any other federal agency as to any matters, including without limitation any matters that may be based upon or arise out of the acts alleged in the Action. In addition, this Agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the State of California, Central District, or any other federal judicial district, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et seq.

7. No Admission of Liability. The FDIC acknowledges that this Agreement does not constitute an admission by STS as to the merits of any claim that the FDIC or its predecessors in interest, including IndyMac, has asserted, or could have asserted, in the Action and that STS has denied and continue to deny that STS has any liability to the FDIC as alleged in the Action. Likewise, STS acknowledges that this Agreement does not constitute an admission by the FDIC that any asserted claim is or was in any way lacking in merit, and STS also acknowledges that this Agreement does not constitute an

admission by the FDIC as to the merits of any claim that STS has asserted, or could have asserted, in the Action. Nevertheless, the FDIC and STS have concluded that continued litigation would be expensive and protracted and that it is desirable that the Action be settled fully and finally as between the FDIC and STS in the manner and upon the terms and conditions set forth in this Agreement.

8. Waiver under Section 1542 of California Civil Code. Subject to the limitations contained therein and in paragraph 6, above, the releases as set forth in paragraphs 4 and 5 are intended by the Parties to be read and interpreted as broadly as possible to affect the releases set forth therein regardless of whether the claims are presently known or unknown to the Parties. This Agreement is made by the FDIC and STS freely and with independent legal advice and counsel, and the FDIC and STS 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 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.”**

However, this is a limited release and not a general release and is only intended to release those claims specifically identified in paragraphs 4 and 5 of the Agreement and is specifically limited by the limitations contained in those paragraphs and in paragraph 6 of this Agreement. Nevertheless, to the extent Civil Code section 1542 (as well as any other or successor law of similar effect) applies to the Agreement, the FDIC and the STS waive

any rights, benefits and protections they may have under section Civil Code 1542 to the extent necessary to effectuate the Releases set forth herein in Paragraphs 4 through 6, inclusive, herein.

9. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. The FDIC and STS 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. The FDIC and STS 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.

10. 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 any Party may, from time to time, designate in a written notice given to the others. Notices shall be deemed served three (3) days after the date of mailing thereof or upon personal delivery.
- b. The designated notice addresses for STS and the FDIC are as follows:

To STS:

George J. Hernandez, Esq.  
Robert M. Pine, Esq.  
Ericksen Arbuthnot  
835 Wilshire Boulevard, Suite 500  
Los Angeles, CA 90017

To the FDIC:

Lois M. Jacobs  
Anastasia E. Bessey  
Kralik & Jacobs LLP  
35 North Lake Ave., Suite 620  
Pasadena, CA 91101

11. 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.

12. 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.

13. 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.

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

15. 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 and that he or she is acting in the scope of such agency and authority. 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.

16. Attorneys' Fees and Costs. The FDIC and STS each 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.

17. 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: January 13, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

(b)(6)

(b)(6)

By:

Jack Duncan

Its: Counsel, Professional Liability & Financial Crimes Section

Dated: \_\_\_\_\_, 2010

STEWART TITLE OF SACRAMENTO, A CALIFORNIA CORPORATION

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

Its: \_\_\_\_\_

16. Attorneys' Fees and Costs. The FDIC and STS each 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.

17. 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: \_\_\_\_\_, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

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

Its: \_\_\_\_\_

Dated: 1/13/2010, ~~2009~~

STEWART TITLE OF SACRAMENTO, A CALIFORNIA CORPORATION

By: 

Its: CPD

- 11 -

APPROVED AS TO FORM:

Dated: Jan. 15, 2010

(b)(6)

KRALIK & JACOBS LLP

By: 

Lois Moonitz Jacobs  
Attorneys for the Federal Deposit  
Insurance Corporation, as Receiver for  
IndyMac Bank, F.S.B.

Dated: \_\_\_\_\_, 2010

ERICKSEN ARBUTHNOT

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

George J. Hernandez  
Attorneys for Stewart Title of Sacramento, a  
California corporation

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2009

KRALIK & JACOBS LLP

By: \_\_\_\_\_  
Lois Moonitz Jacobs  
Attorneys for the Federal Deposit  
Insurance Corporation, as Receiver for  
IndyMac Bank, F.S.B.

Dated: 01/06 <sup>2010</sup> ~~2009~~

BRICKENBARTHNOT  
[Redacted Signature Box]

B: [Redacted]  
George J. Hernandez  
Attorneys for Stewart Title of Sacramento, a  
California corporation

(b)(6)

(b)(6)

LIMS N- [redacted]

(b)(2)

received  
9/27/10

ENTERED  
9/30/10

**RELEASE AND SETTLEMENT AGREEMENT**

(b)(2)  
[redacted]

This Release and Settlement Agreement ("*Agreement*") is entered into by and between Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB ("*FDIC*") and Ticor Title Insurance Company of Florida ("*Ticor*") with respect to the claims made in the case captioned *Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB v. Great Lakes Broker Funding, LLC, et al.*, Genesee County Circuit Court Case No. 06-83931-CZ (the "*Litigation*"). The *Agreement* is effective on the date that all parties have executed the *Agreement* (the "*Effective Date*").

**RECITALS**

WHEREAS, IndyMac Bank, F.S.B ("*IndyMac*") funded mortgage loans to individual borrowers Douglas Anderson, Dale Burke, Paul and Rebecca Coulson, Charles D. Craft, Colin Kukavica, Marco Maniaci, Kevin Murray, Gregory Pelc, Johnnie B. Rogers, Ronald Todd, Michael Washington, and Richard M. Willibey to finance the acquisition of vacant single-family residential lots (the "*Subject Loans*");

WHEREAS, Title Michigan Agency, Inc. closed the mortgage loan transactions for the *Subject Loans* (the "*Subject Closings*");

WHEREAS, *Ticor* issued Closing Protection Letters covering the *Subject Closings* and Loan Policies of Title Insurance insuring *IndyMac's* mortgages securing the *Subject Loans*;

WHEREAS, *IndyMac* asserted claims in the *Litigation* against *Ticor* based on the *Subject Closings* and the Loan Policies of Title Insurance insuring *IndyMac's* mortgages securing the *Subject Loans*;

WHEREAS, *FDIC* is entitled to pursue the claims asserted in the *Litigation* by *IndyMac* and collect any recovery based on such claims;

WHEREAS, *Ticor* expressly denies 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 and Release.** *FDIC* and *Ticor*, through counsel, shall execute a dismissal with prejudice and without any costs or attorney's fees to any party regarding all claims in the *Litigation* between *Ticor* and *FDIC*.

For and in consideration of the total payment of \$220,000 (Two Hundred Twenty Thousand Dollars) by *Ticor*, paid by a check drawn on the Trust Account of Barnes & Thornburg LLP, payable to "The Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB," within fifteen (15) days of the *Effective Date*, and in consideration of the terms and conditions of this *Agreement*, *FDIC*, its officers, directors, shareholders, employees, agents, affiliates, successors and assigns, jointly and severally do absolutely and unconditionally release *Ticor*, and *Ticor's* officers, directors, shareholders, members, insurers, employees, owners, agents, affiliates, successors, 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 *Ticor*, arising

out of the events and transactions which were or are the subject matter of the *Litigation*, or otherwise relating to the *Subject Loans* or *Subject Closings*.

3. **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*, including but not limited to any other party in the *Litigation*.

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 held by *FDIC*, existing currently or arising in the future, against Lawyers Title Insurance Corporation that arise from or relate to the facts and circumstances alleged in the *Litigation*, or (b) 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.

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

5. **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.

6. **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.

7. **Governing Law.** This *Agreement* shall be governed by and construed in accordance with Michigan 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.

8. **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.

9. **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 have proceeded with the advice of an attorney of their own choice, that they have read the terms of this *Agreement*, that the terms of this *Agreement* have been completely read and explained to the parties by their attorney, and that those terms are fully understood and voluntarily accepted by the parties.

10. **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.

11. **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:

Name: Richard S. Gill

Title: Counsel

Date: 2-17-2010

Ticor Title Insurance Company of Florida

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

Name: Susan E. Woods

Title: Senior Vice President and Associate General Counsel

Date: February \_\_, 2010

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

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

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

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

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

Ticor Title Insurance Company of Florida

(b)(6)

By:

Name: Susan E. Woods

Title: Senior Vice President and Associate General Counsel

Date: February 8, 2010

received  
9/17/10

LIMS



ENTERED  
9/17/10

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE** ("Settlement Agreement") is entered into and made effective as of the 24<sup>th</sup> day of February, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver of IndyMac Bank, FSB ("FDIC") and Southport Bank ("SOUTHPORT BANK"). The FDIC and SOUTHPORT BANK may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

**1.1** SOUTHPORT BANK sold and/or delivered mortgage loans to IndyMac Bank, FSB, pursuant to various written agreements covering the period from October 8, 2004 to December 31, 2008. A dispute has arisen between the Parties with respect to outstanding demands for repurchase and/or indemnity. Specifically, IndyMac Bank, FSB made demands to SOUTHPORT BANK for repurchase and/or indemnification based upon SOUTHPORT BANK'S breach of the representations and warranties as set forth in the written agreements.

**1.2** Without admitting liability, the Parties desire to and have agreed to settle all repurchase and indemnification claims relating to the mortgage loans previously sold directly by SOUTHPORT BANK to IndyMac Bank, FSB from October 8, 2004 to December 31, 2008 (the "LOANS") upon the terms and conditions hereinafter set forth.

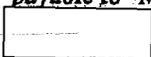
**AGREEMENT**

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

**1.3** **Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**1.4** **Payment of the Settlement Agreement.** SOUTHPORT BANK shall pay the total sum of \$250,000 (two hundred fifty thousand dollars) (the "Settlement Funds") by no later than March 1, 2010. The payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number:

(b)(4)



Routing Number:



Reference: Southport Bank Settlement.

(b)(4)

## RELEASE

**1.5 Unknown Claims.** Each Party acknowledges and agrees that this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which each Party may have against the other Party arising from the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

**1.6** Each Party certifies that it has read and understands the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

"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."

**1.7** Each Party understands, acknowledges and agrees that the significance and consequence of its waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising out of the LOANS, the claims and causes of action that were or could have been asserted relating to the LOANS, or any facts or circumstances related to the repurchase of and/or indemnification of losses associated with the LOANS, that Party will not be able to make any claim for those damages. Furthermore, each Party acknowledges and agrees that they consciously intend these consequences will even apply to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**1.8** Each Party hereby fully, finally, and forever release and discharge the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, and/or employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and

agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.15 Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.16 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**1.17 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**1.18 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.19 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**1.20 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.21 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a

continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.22 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.23 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**1.24 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

**For: The FDIC as Receiver of  
IndyMac Bank, FSB**

**For: Southport Bank**

(b)(6)

By:

By:

Name: Richard S. Gill

Name: Jerry L. Schwallier

Title: Counsel

Title: President

Date: 2-24-2010

Date: February 22, 2010

(b)(6)

(b)(2)

LIMS Mr



**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** ("Settlement Agreement") is entered into and made effective as of the 5<sup>th</sup> day of March 2010 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC FEDERAL BANK, F.S.B. ("FDIC/INDYMAC"), INVESTORS REALTY & MORTGAGE ("INVESTORS REALTY") and MIRWAIS AZADZOY. FDIC/INDYMAC, INVESTOR'S REALTY and MIRWAIS AZADZOY may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

(b)(2)



**1. RECITALS**

**1.1** FDIC/INDYMAC's predecessor, INDYMAC BANK, F.S.B. ("INDYMAC") and INVESTOR'S REALTY entered into a business relationship governed by a Customer Contract and e-MITS User Agreement (hereinafter "Agreement").

**1.2** INVESTOR'S REALTY submitted to INDYMAC for funding the following six (6) loans identified by borrower name, loan number(s), principal amount(s) and address:

(b)(6)

(a) **ANSARI LOANS** – The loans to [redacted] in the principal amounts of \$360,000 and \$45,000, secured by real property located at [redacted] Fremont, California (Loan Nos. [redacted] and [redacted] and which were submitted to INDYMAC on or about December 8, 2005. (b)(6)

(b)(6)

(b) **CORTEZ LOAN** – The loan to [redacted] in the principal amount of \$203,000, secured by real property located at [redacted] Modesto, California (Loan No. [redacted] and which was submitted to INDYMAC on or about January 23, 2006. (b)(6)

(b)(6)

(c) **DYSON LOAN** – The loan to [redacted] in the principal amount of \$560,000, secured by real property located at [redacted] Tracy, California (Loan No. [redacted] and which was submitted to INDYMAC on or about August 16, 2005. (b)(6)

(b)(6)

(d) **SANDLES LOANS** – The loans to [redacted] in the principal amounts of \$352,000 and \$88,000, secured by real property located at [redacted] Henderson, Nevada (Loan Nos. [redacted] and which was submitted to FDIC/INDYMAC on or about July 21, 2005. (b)(6)

**1.3** The six (6) loans described in paragraph 1.2 above are collectively referred to herein as the "SUBJECT LOANS".

784512.183936.183211.1

1.4 FDIC/INDYMAC claims that the SUBJECT LOANS contained misrepresentations in breach of the representations and warranties in the Agreement.

1.5 INVESTOR'S REALTY and MIRWAIS AZADZOY dispute FDIC/INDYMAC's claims relating to the SUBJECT LOANS and reject all and any allegation made against them.

1.6 On or about October 15, 2007, INDYMAC filed a lawsuit entitled *INDYMAC BANK, F.S.B., as successor-in-interest to INDYMAC, INC. vs. MIRWAIS AZADZOY, an individual; MIRWAIS AZADZOY, d.b.a. INVESTORS REALTY & MORTGAGE; INVESTORS REALTY & MORTGAGE, a California entity, form unknown; ZARMINA AZADZOY, an individual; WASIL A. GUDUS, an individual; DOES 1 through 100, inclusive*, in the Los Angeles County Superior Court, Case No. BC379093 (hereinafter "Action") seeking damages arising out of the SUBJECT LOANS.

1.7 INDYMAC filed an Ex Parte application for a Writ of Attachment. The hearing on Writ of Attachment came on for hearing on November 29, 2007 before the Hon. Victor Greenberg. After reviewing the moving, opposing and reply papers, and hearing oral argument, the court granted INDYMAC's motion and issued a right to attach order.

1.8 The Parties subsequently entered into a stipulation to deposit the total sum of Six Hundred Sixty-Seven Thousand Two Hundred Forty One Dollars and 50/100 (\$667,241.50) into a blocked interest bearing account at Wells Fargo Bank, 4850 Barranca Parkway, Irvine, California 92604 and stipulated that said account at Wells Fargo Bank be frozen, with no withdrawals made from said account except pursuant to Court order.

1.9 Pursuant to the Parties' stipulation and Court order thereon entered January 29, 2008, said funds were deposited to Wells Fargo Bank account number 5560126772. As of February 28, 2010, the account balance was \$684,887.41.

1.10 The Parties desire and have agreed to settle all claims relating to the SUBJECT LOANS and the Action.

## 2. AGREEMENT

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

2.1 **Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**2.2 Payment to FDIC/INDYMAC.** Payment of Two Hundred Five Thousand Dollars and no/cents (\$205,000.00) (the "Settlement Funds") shall be paid on behalf of INVESTOR'S REALTY to FDIC/INDYMAC. Pursuant to the Stipulation of the Parties and order of the Court thereon, the Settlement Funds shall be paid to FDIC/INDYMAC directly from the funds on deposit with Wells Fargo Bank, account number 5560126772 . The funds in Wells Fargo Bank account number 5560126772 in the sum of Two Hundred Five Thousand Dollars and no cents (\$205,000.00) shall be delivered by Wells Fargo Bank by certified funds to Anderson, McPharlin & Conners LLP Trust Account c/o Anderson, McPharlin & Conners, LLP at 444 S. Flower Street, 31<sup>st</sup> Floor, Los Angeles, California, 90071, Attn: Vanessa H. Widener. The remainder of the funds in Wells Fargo Bank account number 5560126772 shall be returned by Wells Fargo Bank to INVESTOR'S REALTY by certified funds made payable to MIRWAIS AZADZOY and Wasil Qudus c/o Law offices of Christopher K. Jafari, 1 Park Plaza, Suite 600, Irvine, CA 92614, Phone

(b)(4),(b)(6)

**2.3** Within five (5) business days of FDIC/INDYMAC's counsel 's receipt of the Settlement Funds, FDIC/INDYMAC shall file a request for dismissal of the Complaint with prejudice against all parties in this action except the Cross Complaint.

**2.4** Each Party agrees that Section 664.6 of the Code of Civil Procedure of the State of California shall apply to this Settlement Agreement and requests that the court retain jurisdiction over the Parties to enforce this Settlement Agreement.

**2.5** The Parties shall bear their own costs and attorneys' fees incurred in the Action.

### **3. RELEASE**

**3.1 Unknown Claims.** FDIC/INDYMAC and INVESTOR'S REALTY acknowledge and agree that the release they give to each other upon executing this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which they may have against each other arising from or in conjunction with the Action, the SUBJECT LOANS or arising from or in conjunction with any loans submitted by INVESTOR'S REALTY to INDYMAC pursuant to the Agreement.

**3.2** The Parties hereby expressly waive application of *California Civil Code §1542*. The Parties certify that they have read and understand the following provisions of *California Civil Code §1542* which states in pertinent part as follows:

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.

**3.3** The Parties understand and acknowledge that the significance and consequence of its waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising from or in conjunction with the Action, the SUBJECT LOANS or the Agreement or any facts or circumstances related to the Action, the SUBJECT LOANS or the Agreement, that Party will not be able to make any claim for those damages. Furthermore, each Party acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release relating to the Action, the SUBJECT LOANS or the Agreement, but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**3.4** Except for the rights, duties, and obligations set forth in this Settlement Agreement, the Parties each hereby fully, finally, and forever release and discharge the other Party, and any and all of its respective, employees, brokers, investors, members, partners, joint venturers, independent contractors, attorneys, insurers, agents, investors, representatives, officers, directors, shareholders, independent contractors, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees and/or agents, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, employees and/or agents of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the Action, the SUBJECT LOANS or the Agreement.

**3.5 Express Reservation from Releases by FDIC.** Notwithstanding any other provision, by this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, (a) any claims or causes of action that do not arise from or relate to the Action, the SUBJECT LOANS or the Agreement, or the defense of the same, or (b) any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office in any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

**4. MISCELLANEOUS**

**4.1 Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

**4.2 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

**4.3 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties

**4.4 Governing Law.** The Parties agree to submit any dispute arising out of this Settlement Agreement, or related thereto, to the Courts of the City and County of Los Angeles, California or the United States District Court, Central District of California, consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**4.5 Attorneys Fees and Costs.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**4.6 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**4.7 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**4.8 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understood the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they

believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**4.9 Approval, Authority, and Nonassignment.** The Parties represent and warrant to one another that the approval of this Settlement Agreement has been undertaken in a proper and lawful manner and that they have the requisite power and authority to enter into and to perform their obligations under this Settlement Agreement.

**4.10 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**4.11 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile or e-mail shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**4.12 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**4.13 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**4.14 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**4.15 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: March 12, 2010  
APPROVED AS TO FORM

LAW OFFICES OF CHRISTOPHER K. JAFARI

(b)(6)

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

CHRISTOPHER K. JAFARI

Attorneys for Defendants,  
MIRWAIS AZADZOY and INVESTORS REALTY &  
MORTGAGE

DATED: March 23, 2010

INVESTORS REALTY & MORTGAGE

(b)(6)

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

MIRWAIS AZADZOY  
President of INVESTORS REALTY &  
MORTGAGE

DATED: March 23, 2010

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

MIRWAIS AZADZOY

(b)(6)

(b)(6)

DATED: March    , 2010  
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

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

VANESSA H. WIDENER

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

DATED: <sup>April</sup> March 5, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR INDYMAC FEDERAL BANK,  
F.S.B.

By:  (b)(6)

*RICHARD S. GILL*  
*Counsel, FEDERAL DEPOSIT INSURANCE*  
*CORPORATION*

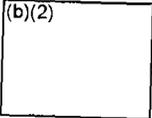
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ENTERED  
9/17/10

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**



**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE** ("Settlement Agreement") is entered into and made effective as of the 9th day of March, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver of IndyMac Bank, FSB ("FDIC") and Hometrust Mortgage Company ("HOMETRUST"). The FDIC and HOMETRUST may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

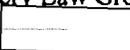
**1.1** HOMETRUST sold and/or delivered mortgage loans to IndyMac Bank, FSB, pursuant to various written agreements. A dispute has arisen between the Parties with respect to outstanding demands for repurchase and/or indemnity. Specifically, IndyMac Bank, FSB made demands to HOMETRUST for repurchase and/or indemnification based upon findings of breach of the representations and warranties as set forth in the written agreements.

**1.2** Without admitting liability, the Parties desire to and have agreed to settle any and all repurchase and/or indemnification claims arising out of, or related in any manner to, any mortgage loan sold directly by HOMETRUST to IndyMac Bank, FSB (the "LOANS"), upon the terms and conditions hereinafter set forth.

**AGREEMENT**

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

**1.3 Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**1.4 Payment of the Settlement Agreement.** HOMETRUST shall pay the total sum of \$30,000 (thirty thousand dollars) (the "Settlement Funds") by no later than March 15, 2010. The payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number:  Routing Number:  Reference: Hometrust Settlement.

(b)(4)

(b)(4)

**RELEASE**

**1.5 Unknown Claims.** Each Party acknowledges and agrees that this

Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which each Party may have against the other Party arising from the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

1.6 Each Party certifies that it has read and understands the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

"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."

1.7 Each Party understands, acknowledges and agrees that the significance and consequence of its waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising out of the LOANS, the claims and causes of action that were or could have been asserted relating to the LOANS, or any facts or circumstances related to the repurchase of and/or indemnification of losses associated with the LOANS, that Party will not be able to make any claim for those damages. Furthermore, each Party acknowledges and agrees that they consciously intend these consequences will apply to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

1.8 Each Party hereby fully, finally, and forever releases and discharges the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, and/or employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the LOANS, the claims and causes of action that were or could have been asserted relating to the LOANS, or any facts or circumstances related to the repurchase of and/or indemnification of losses associated

with the LOANS.

**1.9** Notwithstanding any other provision in this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

**1.10 Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

**1.11 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

**1.12 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

**1.13 Governing Law.** The Parties agree to submit to the Courts of the City and County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.14 Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.15 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**1.16 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives.

successors, and assigns.

**1.17 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.18 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**1.19 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.20 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.21 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.22 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**1.23 Entire Agreement.** The Parties hereto further agree and promise that this

Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

For: **The FDIC as Receiver of  
IndyMac Bank, FSB**

For: **Hometrust Mortgage Company**

(b)(6)

(b)(6)

By:

[Redacted Signature]

By:

[Redacted Signature]

Name: Richard S. Geik

Name: Patricia A. Gustafson

Title: Counsel

Title: Sr. Vice President

Date: 3-15-2010

Date: 3/9/2010

(b)(2)

04/09/2010 15 01 FAX

received  
4/9/10

LIMS Mr [redacted]  
DIF / Mortgage Fraud

002/011

ENTERED  
4/12/10

**SETTLEMENT AND RELEASE AGREEMENT**

10007

This Settlement and Release Agreement (hereinafter referred to as the "Agreement") is entered into by and between the Federal Deposit Insurance Corporation, in its capacity as Receiver and successor of IndyMac Bank, F.S.B. ("IndyMac"), including, without limitation, as assignee of IndyMac's claims and causes of action (hereinafter individually and collectively referred to as the "FDIC"), and those Underwriters at Lloyd's, London severally subscribing to Mortgage Bankers Bond Insurance policy number [redacted] with policy period from March 1, 2007 to March 1, 2008 (Lloyd's Underwriter Syndicate [redacted]) (hereinafter referred to as "Underwriters") (collectively referred to hereinafter as the "Parties").

(b)(4)

(b)(4)

(b)(4)

**WHEREAS:**

A. Underwriters issued, to IndyMac Bancorp, Inc. and its subsidiaries as Assureds, Mortgage Bankers Bond Insurance policy number [redacted] with policy period from March 1, 2007 to March 1, 2008 and an Aggregate Limit of Indemnity of \$20,000,000 subject to an applicable deductible of \$500,000 each and every loss ("the Bond"). IndyMac is an Assured under the Bond.

(b)(4)

B. IndyMac submitted to Underwriters a Proof of Loss on April 30, 2008 (the "Proof of Loss") seeking to recover under the Bond for at least three categories of losses arising from the misappropriation of IndyMac loans funds by National Settlement Agency, Inc. ("NSA") and its president, Steven M. Leff ("Leff"). NSA was at all times relevant hereto in the business of conducting home loan refinancing closings in the capacity of settlement/closing agent for various mortgage companies and/or banks, including IndyMac. At all times relevant hereto, NSA received loan funds via wire transfer from IndyMac, which funds were to be utilized by NSA for

disbursal to borrowers and other designated payees at mortgage closings.

C. The first category of loss alleged in the Proof of Loss in the amount of \$2,841,536.57 arises from the following. IndyMac wire transferred loan funds into two NSA escrow accounts for seven residential loan transactions. NSA and/or Leff then misappropriated loan funds from the accounts, resulting in NSA checks to pay off existing mortgages and other obligations to be rejected for insufficient funds. The loss amount for the first category of loss is composed of the amounts IndyMac paid to satisfy the obligations on the seven loan transactions that NSA failed to pay. The second category of loss alleged in the Proof of Loss is approximately \$127,000 in attorneys' fees and costs incurred by IndyMac in the Polanco litigation, a lawsuit filed against IndyMac by one of the sets of borrowers. The third category of loss is at least \$318,278.42 in attorneys' fees and costs incurred by IndyMac in pursuing recovery efforts against various parties, including any future such attorneys' fees and costs. (The allegations in the Proof of Loss, including the three categories of loss described above, are referred to as the "Claim"). In the Proof of Loss, IndyMac stated that July 25, 2007 was the date of discovery of loss with respect to the Claim, and that it had or would suffer losses which it believed would be covered by the Bond.

D. On July 11, 2008, IndyMac was closed by the Office of Thrift Supervision, and the FDIC was appointed as its Receiver. The FDIC, in its capacity as Receiver and successor of IndyMac, has been assigned all rights, titles, powers, and privileges of IndyMac in accordance with 12 U.S.C. § 1821(d), including those with respect to the Claim.

E. IndyMac has pursued certain recovery efforts against NSA, Leff and other parties. The FDIC has advised Underwriters that it has recovered only part of the first category of loss through such recovery efforts, after deducting recovery fees and costs.

F. Underwriters have conducted an investigation of the Claim and the Parties have engaged in settlement discussions concerning the Claim. The Parties wish to resolve amicably the Claim and all disputes between them directly or indirectly arising out of, concerning, involving or related in any way or manner whatsoever to coverage under the Bond for the Claim so as to avoid the uncertainty, trouble, and expense of litigation.

G. The Parties understand and agree that by executing this Agreement, neither is admitting any facts nor conceding any arguments whatsoever concerning the Claim or the Bond. This Agreement constitutes the settlement and compromise of disputed claims, and this Agreement is not an admission or evidence of liability by either of the Parties regarding any claim or matter between them, or otherwise. This Agreement and the settlement that led to it is entirely without prejudice to the future interpretation by Underwriters and the FDIC of the terms and conditions of any bond or insurance policy issued by Underwriters.

NOW THEREFORE, in consideration of the mutual covenants, promises, undertakings, payments, and releases set forth and contained herein, the sufficiency and receipt of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby covenant and agree as follows.

1. **Incorporation of Recitals.** The Recitals to this Agreement are incorporated and made a part hereof.

2. **Settlement Payment.** On or before April 15, 2010, Underwriters shall wire transfer the sum of One Million Seven Hundred Ninety-Three Thousand Seven Hundred Fifteen Dollars and Zero Cents (\$1,793,715.00) in United States dollars (the "Settlement Payment") to the FDIC, as follows.

Bank: Federal Home Loan Bank of New York

(b)(2),(b)(4)

Routing #:

For Credit to: FDIC National Liquidation Account

(b)(2),(b)(4)

Account #

Other Beneficiary Information:

(b)(2)

1. Fund code

2. Account officer to be notified and phone number:

Steve Hall, telephone (972) 761-8508

3. IndyMac Settlement with Lloyd's Underwriters

**3. FDIC Release.** For and in consideration of the full Settlement Payment, the FDIC, on its own behalf and on behalf of IndyMac and each of their respective past, present and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, direct and indirect affiliates of any form, subsidiaries, divisions, joint venturers, predecessors-in-interest, successors, beneficiaries, grantees, vendees, transferees and assigns, and all other persons or entities acting on their behalf with respect to the events, transactions, or occurrences that are the subject of this Agreement, does hereby irrevocably release, acquit and forever discharge Underwriters and each of their past, present and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, direct and indirect affiliates of any form, subsidiaries, divisions, joint venturers, predecessors-in-interest, successors, beneficiaries, grantees, vendees, transferees and assigns, and all other persons or entities acting on their behalf with respect to the events, transactions, or occurrences that are the subject of this Agreement, from any and all known and unknown, suspected or unsuspected, fixed or contingent, actions, arbitrations, causes of action, suits, debts, liabilities, obligations, dues, sums of money, accounts,

reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, at law or in equity, that it shall or may have for or had for, upon, or by reason of any matter, cause or thing whatsoever directly or indirectly arising out of, concerning, involving or related in any way or manner whatsoever to the Claim and/or the defalcations of NSA and Leff, whether acting alone or in collusion with others, including all matters referred to in Recitals B through G of this Agreement, as well as any claims directly or indirectly arising out of, concerning, involving or related in any way whatsoever to the manner in which Underwriters investigated, handled, considered and settled the Claim under the Bond, whether based in contract or tort, including, but not limited to, any claim 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 against Underwriters in the payment, investigation, handling, consideration and settlement of the Claim, and any claim for interest and/or attorneys' fees and costs, whether pursuant to statute, under the common law, or otherwise.

4. **Underwriters' Release.** For and in consideration of this Agreement, Underwriters, on their own behalf and on behalf of their respective past, present and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, direct and indirect affiliates of any form, subsidiaries, divisions, joint venturers, predecessors-in-interest, successors, beneficiaries, grantees, vendees, transferees and assigns, and all other persons or entities acting on their behalf with respect to the events, transactions, or occurrences that are the subject of this Agreement, do hereby irrevocably release, acquit and forever discharge the FDIC and each of its past, present

and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, direct and indirect affiliates of any form, subsidiaries, divisions, joint venturers, predecessors-in-interest, successors, beneficiaries, grantees, vendees, transferees and assigns, and all other persons or entities acting on their behalf with respect to the events, transactions, or occurrences that are the subject of this Agreement, from any and all known and unknown, suspected or unsuspected, fixed or contingent, actions, arbitrations, causes of action, suits, debts, liabilities, obligations, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, at law or in equity, that it shall or may have for or had for, upon, or by reason of any matter, cause or thing whatsoever directly or indirectly arising out of, concerning, involving or related in any way or manner whatsoever to the Claim and/or the defalcations of NSA and Leff, whether acting alone or in collusion with others.

5. **Agreement Not Released.** The foregoing releases are not intended to, and shall not extend to, or otherwise release or discharge any rights, privileges, benefits, duties or other obligations of either of the Parties under this Agreement. Nothing in this Agreement prevents any Party from enforcing this Agreement.

6. **Unknown Claims.** This Agreement shall be deemed to have fully and finally settled any and all known and unknown claims directly or indirectly arising out of, concerning, involving or related in any way or manner whatsoever to the Claim and/or the defalcations of NSA or Leff, whether acting alone or in collusion with others, without regard to the subsequent discovery or determination by either of the Parties hereto of different or additional facts, claims, events or law.

7. **Section 1542 Waiver.** Each Party acknowledges familiarity with Section 1542 of the California Civil Code, which 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."

Each of the Parties hereby waives and releases every right or benefit under Section 1542 which it has or may have relating to their releases, to the full extent permitted by law.

8. **Subrogation/Salvage.** Underwriters reserve any right of subrogation or any other claim that they may be entitled to under the Bond or applicable law by reason of and to the extent of the Settlement Payment hereunder, and the FDIC hereby assigns to Underwriters any claim it may have, up to the amount of the Settlement Payment, against any individual and/or entity responsible for the loss forming the basis for the Claim, regardless of whether FDIC has collected or will collect on such claim. The FDIC shall not further pursue salvage efforts to recover for the losses resulting from the Claim, and Underwriters may take over such efforts to the extent they may wish to do so by written request to the FDIC. Upon written request by Underwriters, the FDIC shall permit Underwriters to inspect and copy the files for the FDIC's salvage and recovery efforts for the Claim, and Underwriters may contact the FDIC's recovery counsel to do so. The FDIC represents and warrants that as of the date of this Agreement, no recovery has yet been obtained from Fidelity National Title Insurance Company in the "Polanco" litigation. Nothing in this Agreement shall be construed as creating any obligation that

Underwriters actually pursue any salvage efforts described in this Paragraph. Rather, Underwriters have the sole discretion to decide whether to pursue such salvage efforts and, if pursued, when to cease pursuing such salvage efforts.

9. **Defense and Hold Harmless.** The FDIC expressly represents and warrants that the FDIC is the owner and real party in interest that is exclusively entitled to assert and recover under the Bond with respect to losses resulting from the Claim. In the event of any other claim against Underwriters by any other purported owner or real party in interest with respect to the Claim under the Bond with respect to the Claim, such as the Trustee in Bankruptcy of IndyMac Bancorp, Inc., (hereinafter "Other Claims"), Underwriters shall immediately notify the FDIC and provide the FDIC with all available information about Other Claims. The FDIC shall defend and hold Underwriters harmless from any liability for Other Claims. Because the FDIC shall defend Underwriters from Other Claims, and because the FDIC shall exclusively control such defense, Underwriters shall not be entitled to any payment or reimbursement from the FDIC for any defense fees or costs in connection with Other Claims. Underwriters shall cooperate with the FDIC in the defense of the Other Claims, for example, by supporting the dismissal of Underwriters from Other Claims and the participation of the FDIC as the real party in interest in the Other Claims. The Parties agree that the FDIC shall exclusively handle Other Claims, and Underwriters shall play no role in Other Claims, to the maximum extent possible.

10. **Formation of Agreement.** The Parties acknowledge that they were represented by experienced counsel and had a full and fair opportunity to review the terms of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their intent, and no rule of construction for or against any of them shall apply to any term or condition of this Agreement. The Parties and their respective counsel

acknowledge that neither they nor any of their representatives have made any representations or promises other than as set forth in this Agreement.

**11. Authority.** The Parties signing this Agreement represent and warrant to each other that they have authority and capacity to enter into and perform fully their respective obligations under this Agreement.

**12. No Assignment.** Each of the Parties represents and warrants that as of and prior to this Agreement, it has not assigned, transferred, or purported to assign or transfer its interest in any of the consideration to be exchanged under this Agreement, including any matters to be released herein.

**13. Integration Clause.** This Agreement constitutes the complete understanding between the Parties hereto and may not be changed, modified, amended or waived except by a writing signed by a duly authorized representative of each of the Parties. This Agreement supersedes any prior or contemporaneous oral or written releases, negotiations and discussions with respect to the subject matter of this Agreement.

**14. No Third Parties.** This Agreement is binding upon and shall inure to the benefit of the Parties, and their respective successors and assigns. This Agreement is not made for the benefit of, and may not be enforced by, any third party.

**15. 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.

**16. Severability** In the event any portion of this Agreement shall be deemed void, voidable or unenforceable, the remaining portion shall remain in full force and effect.

**17. Choice of Law.** This Agreement shall be interpreted, construed and enforced

according to applicable federal law, or in its absence, the laws of the State of California.

18. **Cooperation.** The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photocopies or electrostatic copies of this Agreement or of execution signatures on this Agreement, or copies made by comparable means (including copies made by facsimile machines) shall be equivalent to originals.

IN WITNESS WHEREOF, the Parties have executed this Agreement or caused it to be executed by their duly authorized officers or representatives.

**FEDERAL DEPOSIT INSURANCE CORPORATION  
In its Capacity as Receiver of IndyMac Bank, F.S.B.**

(b)(6)

Date: April 9<sup>th</sup> 2010

BY:

[Redacted Signature Box]

TITLE:

Counsel

Print Name:

Richard S. Gill

**THOSE CERTAIN UNDERWRITERS AT LLOYD'S,  
LONDON SEVERALLY SUBSCRIBING TO MORTGAGE  
BANKERS BOND INSURANCE POLICY NO. 509/QA006707**

(b)(6)

Date: April 9, 2010

BY:

[Redacted Signature Box]

TITLE:

Press Authorized Agent

Print Name:

Edward T. Stork

12-APR-2010 11:18AM FROM  
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8/23/10

LIMS Mn



(b)(2)

T-389 P.002/016 F-166

ENTERED  
8/26/10

AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

(hereinafter, the "Agreement") is made and entered into by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Bank, F.S.B. ("IndyMac") (FEDERAL DEPOSIT INSURANCE CORPORATION in its capacity as Receiver for IndyMac is referred to herein "FDIC"), and MARC WILLIAMS, individually and doing business as M&M APPRAISALS ("M&M"). FDIC and M&M may be referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

This Agreement is made with reference to the following facts:

A. On or about May 22, 2009, FDIC filed a complaint (the "Complaint") for money damages against M&M as well as against non-settling defendants (collectively, the "Non-Settling Defendants") Justice Appraisals, B&G Appraisal Services, A Blakeley Appraisal Services, Michael Dalton, Jessica Stater, Anthony Blakely, Burnadette Coffman, Laura L. Straaberg, and Does 1 through 10, inclusive. The Complaint alleged causes of action against M&M for negligent misrepresentation and breach of contract / third party beneficiary, in connection with appraisals by M&M (the "M&M Appraisals") of properties (the "Properties") located at 468 Idora Ave., Vallejo, CA 94591 and 1920 El Dorado, Vallejo, CA 94590. The Complaint alleged that IndyMac relied on the M&M Appraisals in deciding to fund loans (the "Loans") secured by the Properties and that the M&M Appraisals had been negligently prepared and contained material misrepresentations. The pending action which the Complaint initiated is entitled Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. v. M&M

Appraisals, a California entity form unknown, et al., and is currently pending in the United States District Court for the Central District of California, Western Division (the "Court"), Case No. CV 09-3678 JFW (AGR~~x~~) (the "Action").

B. On or about July 15, 2009, M&M answered the Complaint, generally denying its allegations and asserting numerous affirmative defenses.

C. M&M has defended and denied, and continues to deny, the validity of FDIC's claims asserted in the Complaint.

D. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation. By this Agreement, the Parties intend to memorialize the terms of their compromise and settlement of the Action.

#### AGREEMENT AND MUTUAL RELEASE

NOW, THEREFORE, in consideration of the undertakings contained in this Agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Settlement Payment to FDIC. No later than thirty (30) days following full execution of this Agreement, or within ten (10) days of the Court's order granting M&M's motion for good faith settlement determination as set forth in Paragraph 10, below, which ever is later, M&M shall deliver to FDIC's counsel of record in the Action a cashier's or certified check made payable to "Mortgage Recovery Law Group Client Trust Account, f/b/o Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B." in the amount of Two Hundred Thirty Thousand Dollars and No Cents (\$230,000.00) (the "Settlement Payment"). M&M shall cause this check to be delivered as follows:

Kralik & Jacobs LLP

Attn: Lois Moonitz Jacobs  
35 North Lake Avenue, Suite 620  
Pasadena, California 91101.

FDIC and M&M agree that timely receipt of the Settlement Payment is an essential term of this Agreement, and a condition to the effectiveness of this Agreement.

2. Dismissal of the Action. Together with the execution of this Agreement, counsel for each Party shall execute a Stipulation of Dismissal of the Action as to M&M only with prejudice in the form attached hereto as Exhibit A. Within three days after the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by the FDIC, counsel for the FDIC shall file the executed Stipulation of Dismissal with the Court.

3. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this Agreement to the fullest extent permitted by law.

4. Release by FDIC. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, and effective upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by the FDIC, and except as provided in Paragraph 6, below, the FDIC, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors (including IndyMac Bank, F.S.B.), successors, subsidiaries, parents, affiliates, attorneys, insurers, 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

M&M and its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 (the "M&M Releasees"), past or present, 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 the FDIC has, may have or might have against M&M, the M&M Releasees or any of them, pertaining to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided however, that this release is not a general release but is expressly and specifically limited to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses, damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that the FDIC may have or might have against M&M or the M&M Releasees, or any of them, including without limitation any other claims, demands or actions regarding any other matters. This release shall not be

deemed to release any claims, demands, causes of action, debts, obligations, losses, damages, liabilities, costs, expenses, attorney's fees, penalties, compensation, right to indemnity and/or demands that the FDIC has against any of the Non-Settling Defendants.

5. Release by M&M. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, and effective simultaneously with the release granted in Paragraph 4, above, M&M, on behalf of itself individually and for each and every one of its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 release, acquit and discharge the FDIC and its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 (the "FDIC Releasees"), past or present, 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 M&M may have or might have against the FDIC or the FDIC Releasees pertaining to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided, however, that this release is not a general release but is expressly and specifically limited to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that M&M may have or might have against the FDIC, including without limitation any other claims, demands or actions regarding any other matter. This release shall not be deemed to release any claims, demands, causes of action, debts, obligations, losses, damages, liabilities, costs, expenses, attorney's fees, penalties, compensation, right to indemnity and/or demands that Non-Settling Defendant Michael Dalton may have against FDIC.

6. Express Reservations from Releases by FDIC. Notwithstanding any other provision contained herein, by this Agreement, the 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 (i) the Loans, (ii) the Properties, or (iii) any and all facts, occurrences and transactions alleged in the Action, and (b) any action taken by or any claims that may be asserted by any other federal agency as to any matters, including without limitation any matters that may be based upon or arise out of the acts alleged in the Action. In addition, this Agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's

Office for the State of California, Central District, or any other federal judicial district, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et seq.

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

8. Waiver under Section 1542 of California Civil Code. Subject to the limitations contained therein and in paragraph 6, above, the releases as set forth in paragraphs 4 and 5 are intended by the Parties to be read and interpreted as broadly as possible to affect the releases set forth therein regardless of whether the claims are presently known or unknown to the Parties. This Agreement is made by the FDIC and M&M freely and with independent legal advice and counsel, and the FDIC and M&M 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 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."**

However, this is a limited release and not a general release and is only intended to release those claims specifically identified in paragraphs 4 and 5 of the Agreement and is specifically limited by the limitations contained in those paragraphs and in paragraph 6 of this Agreement. Nevertheless, to the extent Civil Code section 1542 (as well as any other or successor law of similar effect) applies to the Agreement, the FDIC and the M&M waive any rights, benefits and protections they may have under section Civil Code 1542 to the extent necessary to effectuate the Releases set forth herein in Paragraphs 4 through 6, inclusive, herein.

9. Covenant Not to File New Administrative Claim or Grievance. FDIC hereby warrants that it will not initiate or cause to be initiated any action or proceeding against M&M which arises out of or relates, in whole or in part, to any Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action. FDIC further agrees not to file any grievance against M&M and its respective agents and employees with the Better Business Bureau, Department of Real Estate, Department of Corporations, or the Department of Consumer Affairs with regard to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action. However, this paragraph shall not be construed to restrict the rights of FDIC against any of the Non-Settling Defendants and shall not

abrogate any duty or obligation that FDIC may have to respond to any complaint, grievance or inquiry that might be instituted by any other party with any governmental agency.

10. Court Determination of Settlement In Good Faith. The Settlement Payment set forth in Paragraph 1 above shall be subject to a good faith settlement determination upon the application or motion of M&M filed with the Court pursuant to California Code of Civil Procedure Sections 877 and 877.6 (the "Motion"). The Motion shall be filed within ten (10) days of the Parties' execution of this Agreement. If M&M does so, FDIC will join in M&M's Motion. If M&M fails to do so within this time period, this condition shall be deemed waived and the Settlement Payment shall be due and payable as otherwise set forth in Paragraph 1, above.

11. Non-Disclosure. To the extent permitted by law, including but not limited to 18 U.S.C. § 1821(s), the Parties to this Agreement hereby agree that the terms and conditions of this Agreement shall not be revealed to any third party by FDIC or M&M, or their officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, representatives and assigns, conservators and/or receivers, except as required in connection with the good faith settlement motion contemplated herein, as required by court order, in connection with any action to enforce or interpret the terms of this Agreement, or as otherwise required by law. Notwithstanding the foregoing, the terms and conditions of this Agreement may be disclosed pursuant to Paragraph 10, above, and for purposes of legal advice, tax returns, audits, or accounting, or upon the written consent of the Parties to this Agreement.

12. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. The FDIC and M&M 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. The FDIC and M&M 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.

13. 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 any Party may, from time to time, designate in a written notice given to the others. Notices shall be deemed served three (3) days after the date of mailing thereof or upon personal delivery.
- b. The designated notice addresses for M&M and the FDIC are as follows:

To M&M:

Spile, Siegal, Leff & Goor, LLP  
Ari L. Markow, Esq.  
16501 Ventura Boulevard, Suite 610  
Encino, California 91436

To the FDIC:

Kralik & Jacobs LLP  
Lois M. Jacobs  
Anastasia E. Bessey  
35 North Lake Avenue, Suite 620  
Pasadena, California 91101

14. 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.

15. 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.

16. 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.

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

18. 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 and that he or she is acting in the scope of such agency and authority. 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.

19. Attorneys' Fees and Costs. The FDIC and M&M each 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.

20. 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: 4/20, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

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

(b)(6)

Its: Counsel

Dated: \_\_\_\_\_, 2010

MARC WILLIAMS, individually and doing business as M&M Appraisals

\_\_\_\_\_

(b)(6)

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2010

KRALIK & JACOBS LLP

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

Lois Moonitz Jacobs  
Attorneys for the Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B.

proceeding, including any and all appeals or petitions therefrom.

20. 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: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2010

MARC WILLIAMS, individually and doing business as M&M Appraisals

[Redacted Signature Box]

(b)(6)

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2010

KRALIK & JACOBS LLP

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

Lois Moonitz Jacobs  
Attorneys for the Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B.

(b)(6)

[Redacted]

Dated: 4/12, 2010

~~SPICE, SIEGAL, LEEF & COOR, LLP~~

(b)(6)

[Redacted]

B

Ari L. Markow  
Attorneys for Mark Williams dba  
M&M Appraisals

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AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

(hereinafter, the "Agreement") is made and entered into by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Bank, F.S.B. ("IndyMac") (FEDERAL DEPOSIT INSURANCE CORPORATION in its capacity as Receiver for IndyMac is referred to herein "FDIC"), and MARC WILLIAMS, individually and doing business as M&M APPRAISALS ("M&M"). FDIC and M&M may be referred to herein individually as "Party" and collectively as the "Parties."



(b)(2)

RECITALS

This Agreement is made with reference to the following facts:

A. On or about May 22, 2009, FDIC filed a complaint (the "Complaint") for money damages against M&M as well as against non-settling defendants (collectively, the "Non-Settling Defendants") Justice Appraisals, B&G Appraisal Services, A Blakeley Appraisal Services, Michael Dalton, Jessica Stater, Anthony Blakely, Burnadette Coffman, Laura L. Straaberg, and Does 1 through 10, inclusive. The Complaint alleged causes of action against M&M for negligent misrepresentation and breach of contract / third party beneficiary, in connection with appraisals by M&M (the "M&M Appraisals") of properties (the "Properties") located at 468 Idora Ave., Vallejo, CA 94591 and 1920 El Dorado, Vallejo, CA 94590. The Complaint alleged that IndyMac relied on the M&M Appraisals in deciding to fund loans (the "Loans") secured by the Properties and that the M&M Appraisals had been negligently prepared and contained material misrepresentations. The pending action which the Complaint initiated is entitled Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. v. M&M

Appraisals, a California entity form unknown, et al., and is currently pending in the United States District Court for the Central District of California, Western Division (the "Court"), Case No. CV 09-3678 JFW (AGR~~x~~) (the "Action").

B. On or about July 15, 2009, M&M answered the Complaint, generally denying its allegations and asserting numerous affirmative defenses.

C. M&M has defended and denied, and continues to deny, the validity of FDIC's claims asserted in the Complaint.

D. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation. By this Agreement, the Parties intend to memorialize the terms of their compromise and settlement of the Action.

#### AGREEMENT AND MUTUAL RELEASE

NOW, THEREFORE, in consideration of the undertakings contained in this Agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Settlement Payment to FDIC. No later than thirty (30) days following full execution of this Agreement, or within ten (10) days of the Court's order granting M&M's motion for good faith settlement determination as set forth in Paragraph 10, below, which ever is later, M&M shall deliver to FDIC's counsel of record in the Action a cashier's or certified check made payable to "Mortgage Recovery Law Group Client Trust Account, f/b/o Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B." in the amount of Two Hundred Thirty Thousand Dollars and No Cents (\$230,000.00) (the "Settlement Payment"). M&M shall cause this check to be delivered as follows:

Kralik & Jacobs LLP

Attn: Lois Moonitz Jacobs  
35 North Lake Avenue, Suite 620  
Pasadena, California 91101.

FDIC and M&M agree that timely receipt of the Settlement Payment is an essential term of this Agreement, and a condition to the effectiveness of this Agreement.

2. Dismissal of the Action. Together with the execution of this Agreement, counsel for each Party shall execute a Stipulation of Dismissal of the Action as to M&M only with prejudice in the form attached hereto as Exhibit A. Within three days after the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by the FDIC, counsel for the FDIC shall file the executed Stipulation of Dismissal with the Court.

3. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this Agreement to the fullest extent permitted by law.

4. Release by FDIC. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, and effective upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by the FDIC, and except as provided in Paragraph 6, below, the FDIC, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors (including IndyMac Bank, F.S.B.), successors, subsidiaries, parents, affiliates, attorneys, insurers, 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

M&M and its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 (the "M&M Releasees"), past or present, 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 the FDIC has, may have or might have against M&M, the M&M Releasees or any of them, pertaining to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided however, that this release is not a general release but is expressly and specifically limited to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses, damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that the FDIC may have or might have against M&M or the M&M Releasees, or any of them, including without limitation any other claims, demands or actions regarding any other matters. This release shall not be

deemed to release any claims, demands, causes of action, debts, obligations, losses, damages, liabilities, costs, expenses, attorney's fees, penalties, compensation, right to indemnity and/or demands that the FDIC has against any of the Non-Settling Defendants.

5. Release by M&M. Subject to full performance of the obligations and representations and warranties set forth in this Agreement, and effective simultaneously with the release granted in Paragraph 4, above, M&M, on behalf of itself individually and for each and every one of its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 release, acquit and discharge the FDIC and its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 (the "FDIC Releasees"), past or present, 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 M&M may have or might have against the FDIC or the FDIC Releasees pertaining to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided, however, that this release is not a general release but is expressly and specifically limited to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that M&M may have or might have against the FDIC, including without limitation any other claims, demands or actions regarding any other matter. This release shall not be deemed to release any claims, demands, causes of action, debts, obligations, losses, damages, liabilities, costs, expenses, attorney's fees, penalties, compensation, right to indemnity and/or demands that Non-Settling Defendant Michael Dalton may have against FDIC.

6. Express Reservations from Releases by FDIC. Notwithstanding any other provision contained herein, by this Agreement, the 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 (i) the Loans, (ii) the Properties, or (iii) any and all facts, occurrences and transactions alleged in the Action, and (b) any action taken by or any claims that may be asserted by any other federal agency as to any matters, including without limitation any matters that may be based upon or arise out of the acts alleged in the Action. In addition, this Agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's

Office for the State of California, Central District, or any other federal judicial district, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et seq.

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

8. Waiver under Section 1542 of California Civil Code. Subject to the limitations contained therein and in paragraph 6, above, the releases as set forth in paragraphs 4 and 5 are intended by the Parties to be read and interpreted as broadly as possible to affect the releases set forth therein regardless of whether the claims are presently known or unknown to the Parties. This Agreement is made by the FDIC and M&M freely and with independent legal advice and counsel, and the FDIC and M&M 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 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."**

However, this is a limited release and not a general release and is only intended to release those claims specifically identified in paragraphs 4 and 5 of the Agreement and is specifically limited by the limitations contained in those paragraphs and in paragraph 6 of this Agreement. Nevertheless, to the extent Civil Code section 1542 (as well as any other or successor law of similar effect) applies to the Agreement, the FDIC and the M&M waive any rights, benefits and protections they may have under section Civil Code 1542 to the extent necessary to effectuate the Releases set forth herein in Paragraphs 4 through 6, inclusive, herein.

9. Covenant Not to File New Administrative Claim or Grievance. FDIC hereby warrants that it will not initiate or cause to be initiated any action or proceeding against M&M which arises out of or relates, in whole or in part, to any Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action. FDIC further agrees not to file any grievance against M&M and its respective agents and employees with the Better Business Bureau, Department of Real Estate, Department of Corporations, or the Department of Consumer Affairs with regard to the Loans, the Properties, the Complaint, and any and all facts, occurrences and transactions alleged in the Action. However, this paragraph shall not be construed to restrict the rights of FDIC against any of the Non-Settling Defendants and shall not

abrogate any duty or obligation that FDIC may have to respond to any complaint, grievance or inquiry that might be instituted by any other party with any governmental agency.

10. Court Determination of Settlement In Good Faith. The Settlement Payment set forth in Paragraph 1 above shall be subject to a good faith settlement determination upon the application or motion of M&M filed with the Court pursuant to California Code of Civil Procedure Sections 877 and 877.6 (the "Motion"). The Motion shall be filed within ten (10) days of the Parties' execution of this Agreement. If M&M does so, FDIC will join in M&M's Motion. If M&M fails to do so within this time period, this condition shall be deemed waived and the Settlement Payment shall be due and payable as otherwise set forth in Paragraph 1, above.

11. Non-Disclosure. To the extent permitted by law, including but not limited to 18 U.S.C. § 1821(s), the Parties to this Agreement hereby agree that the terms and conditions of this Agreement shall not be revealed to any third party by FDIC or M&M, or their officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, representatives and assigns, conservators and/or receivers, except as required in connection with the good faith settlement motion contemplated herein, as required by court order, in connection with any action to enforce or interpret the terms of this Agreement, or as otherwise required by law. Notwithstanding the foregoing, the terms and conditions of this Agreement may be disclosed pursuant to Paragraph 10, above, and for purposes of legal advice, tax returns, audits, or accounting, or upon the written consent of the Parties to this Agreement.

12. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. The FDIC and M&M 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. The FDIC and M&M 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.

13. 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 any Party may, from time to time, designate in a written notice given to the others. Notices shall be deemed served three (3) days after the date of mailing thereof or upon personal delivery.
- b. The designated notice addresses for M&M and the FDIC are as follows:

To M&M:

Spile, Siegal, Leff & Goor, LLP  
Ari L. Markow, Esq.  
16501 Ventura Boulevard, Suite 610  
Encino, California 91436

To the FDIC:

Kralik & Jacobs LLP  
Lois M. Jacobs  
Anastasia E. Bessey  
35 North Lake Avenue, Suite 620  
Pasadena, California 91101

- 14. 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.

15. 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.

16. 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.

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

18. 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 and that he or she is acting in the scope of such agency and authority. 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.

19. Attorneys' Fees and Costs. The FDIC and M&M each 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.

20. 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 herein have executed this Agreement on the dates set forth below.

Dated: 4/20, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

By:

(b)(6)

Its: Counsel

Dated: \_\_\_\_\_, 2010

MARC WILLIAMS, individually and doing business as M&M Appraisals

(b)(6)

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2010

KRALIK & JACOBS LLP

By: Lois Moonitz Jacobs  
Attorneys for the Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B.

proceeding, including any and all appeals or petitions therefrom.

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Dated: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2010

MARC WILLIAMS, individually and doing business as M&M Appraisals



(b)(6)

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2010

KRALIK & JACOBS LLP

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

Lois Moonitz Jacobs  
Attorneys for the Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B.

(b)(6)

Dated: 4/12, 2010

~~SPICE, SIEGAL, LEFF & COOR, LLP~~

(b)(6)

By

[Redacted Signature]

Ari L. Markow  
Attorneys for Mark Williams dba  
M&M Appraisals

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is made and entered into as of April \_\_, 2010, by and between the following parties (hereinafter collectively the "Parties"): Cross-Complainants and Cross-Defendants Countrywide Home Loans, Inc. and Countrywide Document Custody Services, a Division of Treasury Bank, N.A. (collectively, "Countrywide"); Federal Deposit Insurance Corporation as receiver for Cross-Complainant and Cross-Defendant IndyMac Bank, F.S.B.<sup>1</sup> ("IndyMac"); Cross-Defendant Access Lending Corporation now known as XWarehouse Lending Corporation ("Access"); Cross-Complainant and Cross-Defendant JWI Investment Corporation ("JWI"); and Cross-Defendant Martin Esparza ("Esparza"). This Agreement is made in reference to the following facts:

### RECITALS

A. Complaint: On or about February 8, 2006, HSBC Mortgage Services, Inc. ("HSBC"), the original plaintiff in this case, filed a Verified Complaint in the Contra Costa County Superior Court, Case No. C06-00290, entitled HSBC Mortgage Services, Inc. v. CHL Mortgage Group, et al. (hereinafter, the "Action"), against Countrywide, IndyMac, Access, Esparza, and JWI, among others (sometimes referred to herein as "Defendants"). On or about July 5, 2006, HSBC filed a Verified First Amended Complaint in the Action. In the First Amended Complaint, HSBC alleged purported causes of action for Judicial Foreclosure, Declaratory Relief, Setting Aside Trustee's Sale, and Cancellation of Instruments and sought to enforce its alleged first priority deed of trust against the real property located at 9788 Davona Drive, San Ramon, California ("Subject Property").

B. Answers and Cross-Complaints: With the exception of Access and IndyMac<sup>1</sup>—who were each dismissed from the First Amended Complaint following the sustaining of their successful demurrers—each of the above-named Parties filed an Answer to HSBC's Complaint and/or First Amended Complaint in the Action, denying all material allegations, and alleging several affirmative defenses. In addition, as discussed below, Countrywide, IndyMac, and JWI each filed a cross-complaint in the Action.

1) JWI Cross-Complaint: On or about March 16, 2006, JWI filed a verified cross-complaint ("JWI Cross-Complaint") in the Action against HSBC, Countrywide, IndyMac, Access, Esparza and others. In the JWI Cross-Complaint, JWI alleged causes of action for Setting Aside Trustee's Sale, Restitution of Bid Price, and Fraud against Access, and for Declaratory Relief, against all parties. By way of the JWI Cross-Complaint, JWI sought to set aside the Access foreclosure sale or, in the alternative, to quiet title against all adverse

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<sup>1</sup> On July 11, 2008, IndyMac Bank, F.S.B. was closed by the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as receiver. The FDIC is the real party in interest with respect to all rights or claims regarding the Subject Property that were formerly held by IndyMac Bank, F.S.B. The FDIC did not formally substitute into the Action, however, choosing instead to continue the Action in the name of IndyMac Bank, F.S.B., as permitted by law.

claims to the Subject Property. Ultimately, JWI voluntarily dismissed its fraud claims.

2) Countrywide Cross-Complaint: On or about July 14, 2006, Countrywide filed a verified cross-complaint ("Countrywide Cross-Complaint") in the Action against HSBC, JWI, IndyMac, Esparza, Access and others. In the Countrywide Cross-Complaint, Countrywide alleged causes of action for Judicial Foreclosure, Quiet Title, and Declaratory Relief. By way of the Countrywide Cross-Complaint, Countrywide alleged that the loan it purchased from CHL Mortgage Group, Inc. ("CHL") was secured by a first priority deed of trust against the Subject Property.

3) IndyMac Cross-Complaint: On or about November 13, 2007, IndyMac filed a verified cross-complaint ("IndyMac Cross-Complaint") in the Action against Countrywide, JWI, Esparza, Access, and others. In the IndyMac Cross-Complaint, IndyMac alleged causes of action for Judicial Foreclosure, Quiet Title, and Declaratory Relief in connection with the Subject Property. By way of the IndyMac Cross-Complaint, IndyMac alleged that the loan it purchased from CHL is secured by a first priority deed of trust against the Subject Property.

Except for those cross-defendants who may have been dismissed or whose defaults may have been taken, all of the cross-defendants have either filed a disclaimer of interest or an Answer to the respective cross-complaints in the Action.

C. Disclaimers of Interest: In or about September 2006, Esparza filed a declaration, whereby he disclaimed all right, title and interest in the Subject Property and was dismissed from HSBC's First Amended Complaint. In or about May 2008, HSBC also filed a Disclaimer of Right, Title and Interest with respect to the Subject Property. In or about that same month, upon stipulation, HSBC dismissed with prejudice its entire First Amended Complaint, and certain cross-complainants dismissed their respective cross-complaints with prejudice as to HSBC.

D. Proceeds from the CHL Bankruptcy Estate (Held in Account of Bankruptcy Trustee): On or about April 21, 2009, counsel for the Chapter 7 Bankruptcy Trustee, John T. Kendall, approved a joint deficiency proof of claim ("Joint Proof of Claim") filed on behalf of Countrywide, Access, and IndyMac as to the Subject Property in the sum of \$880,978.00 in the related bankruptcy case of In re CHL Mortgage Group, Inc. (United States Bankruptcy Court Northern District of California, Case No. 05-40438). In or about that same month, the Bankruptcy Court and the U.S. Trustee's office approved the Bankruptcy Trustee's recommendation as to the amount of the Joint Proof of Claim. The Bankruptcy Trustee thereafter informed certain of the Parties that it was holding approximately \$87,124.49 in a trust account for the purpose of making an interim distribution in connection with the Joint Proof of Claim ("Bankruptcy Distribution"). On March 8, 2010, the Bankruptcy Trustee, IndyMac, Countrywide and Access agreed to amend the Joint Proof of Claim such that any and all distributions on the Joint Proof of Claim would be directed to "Reed Smith LLP Client Trust Account" to the attention of Terence N. Hawley, counsel for IndyMac. The Bankruptcy Trustee has since forwarded a check in the amount of \$87,124.49 to Reed Smith and said funds have

been deposited in a trust account. The Parties agree that all distributions on the Joint Proof of Claim directed to that trust account will be held in trust and distributed as provided in this Agreement or in accordance with a final judgment in the Action.

E. Proceeds from Sale of Property (Held in Account of Litigation Trust): On or about May 27, 2009, the Subject Property was sold to a third party pursuant to a joint agreement by the Parties in the Action to liquidate the Subject Property and hold the proceeds in trust. The net proceeds from the sale of the Subject Property totaled \$372,131.60. To allow the sale to close, all of the Parties quit-claimed their respective interests in the Subject Property to a trust created by the Parties referred to as the "9788 Davona Drive Litigation Trust" ("Litigation Trust"). Pursuant to the agreement of the Parties, the net proceeds from the sale of the Subject Property are presently being held for the benefit of the Parties in a non-interest-bearing trust account of JWI, the designated trustee of the Litigation Trust, to be allocated and distributed to one or more of the Parties either by settlement or final judgment in the Action. The Parties' June 27, 2007 Agreement re Disposition of 9788 Davona Drive, San Ramon, California and the related Declaration of Trust are attached hereto as Exhibits A and B and are incorporated by reference. To the extent any conflict arises between the terms of Exhibits A and B and this Agreement, the terms of this Agreement shall control.

F. Mediation: On or about January 12, 2010, the Parties participated in a mediation with mediator David J. Meadows (the "Mediation"). As the result of the negotiations that occurred during and following the Mediation, and in order to buy their peace and avoid continuing costs and expenses of litigation, and without admitting any liability, the Parties have agreed to compromise and settle fully and completely the Action as between themselves, and all claims, demands, and causes of action asserted therein, or which could have been so asserted therein, whether in the Complaint, the respective Cross-Complaints, or otherwise, and desire to document their settlement by this Agreement.

NOW THEREFORE, in consideration of the foregoing facts, and the mutual promises set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties mutually agree and covenant as follows:

## AGREEMENTS

### 1. Payment to JWI, Countrywide and IndyMac

Within ten (10) days of execution of this Agreement by all of the Parties, the following monies shall be paid and/or distributed to JWI, Countrywide, and IndyMac:

A) JWI shall be paid the total sum of \$101,662.50 in the following manner: (1) \$35,000.00 directly from Access; (2) an amount equal to one-third from the proceeds of the Bankruptcy Distribution, or approximately \$29,041.49 (1/3 of approximately \$87,124.49); and (3) the remaining balance (approximately \$37,621.01) of the net proceeds from the sale of the Subject Property now held in the trust account of JWI, as trustee of the Litigation Trust, after Countrywide and IndyMac receive their respective distributions from the Litigation Trust.

B) Countrywide and IndyMac shall split evenly (50-50) the remainder of the proceeds from the Bankruptcy Distribution, so that Countrywide and IndyMac shall each receive approximately \$29,041.50 (1/2 of approximately \$58,083.00). In addition, Countrywide and IndyMac shall be exclusively entitled to share equally (50-50) any and all future distributions from the CHL Bankruptcy Estate with respect to the Subject Property, with no other Party to participate in any such distribution. In that regard, JWI, Access and Esparza expressly agree that they are and shall be excluded from any and all future distributions from the CHL Bankruptcy Estate with respect to the Subject Property.

C) After reimbursement of \$1,500 to IndyMac for property maintenance expenses, Countrywide and IndyMac shall also split evenly (50-50) the remainder of the funds on deposit held by JWI, as trustee of the Litigation Trust, resulting from the sale of the Subject Property, so that Countrywide will receive approximately \$166,505.29 (1/2 of approximately \$333,010.59) and IndyMac shall each receive approximately \$168,005.29 (1/2 of approximately \$333,010.59 plus \$1,500). Neither Access nor Esparza shall receive any distribution from the funds on deposit held by JWI, as trustee of the Litigation Trust.

D) All payments to JWI pursuant to this Agreement will be made by draft payable to "JWI Investment Corporation." All payments to Countrywide pursuant to this Agreement will be made by draft payable to "Countrywide Home Loans, Inc." All payments to IndyMac pursuant to this Agreement will be made by draft payable to "Federal Deposit Insurance Corporation as receiver for IndyMac Bank, F.S.B."

## 2. Dismissal with Prejudice.

Within twenty (20) days of distribution of all funds as described in paragraph 1 (excluding any future distributions from the CHL Bankruptcy Estate with respect to the Subject Property), each Party shall execute and file a request for dismissal with prejudice of its respective cross-complaint in this Action.

## 3. Mutual Releases.

Except for the obligations, covenants, representations, conditions, exceptions, qualifications and limitations set forth herein, the Parties, and each of them, do absolutely, fully and forever release and discharge each other, and each of their respective associates, spouses, owners, stockholders, officers, directors, employees, insurers, affiliates, subsidiaries, agents, predecessors, successors, heirs, trustees, representatives, lawyers, and assigns, of and from the following, which are hereinafter referred to as the "Released Claims":

Any and all actions, causes of action, arbitrations, requests for proceedings, debts, guarantees, warranties, express or implied, balances, liabilities, demands, claims, obligations, costs, expenses, damages, and liens of any and every kind whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, which each of the Parties now has, or may hereafter have, against

the others, arising out of or based upon the Action, or the subject matter thereof, including the filing and prosecution of same and all cross-complaints filed or required by law to be filed therein.

4. **Waiver of Civil Code Section 1542 Protections.**

In making and executing this Agreement, each of the Parties understands and expressly represents and warrants to each of the others that he or it does not rely, and has not relied, upon any representation or statement, oral or written, that is not contained herein, whether made by any of the Parties hereto, or any agent, attorney, or representative of any of the Parties, with respect to the matters contained herein or the advisability of entering into or executing this Agreement. Each of the Parties expressly assumes the risk of any mistake of fact or law, and the risk that the facts may turn out to be other than, or different from, those now known or believed to exist. Each of the Parties understands and expressly agrees that the Released Claims may extend to matters which have not yet been discovered, and that the possibility that such matters may exist has been explicitly taken into account in determining the consideration to be given for this Agreement. In this regard, each of the Parties also acknowledges that the releases contained herein are intended to be "general releases" of the Released Claims, as the term "general release" is used in Civil Code section 1542, that said Parties, and each of them, are aware of the rights provided by Civil Code section 1542, and that each of the Parties signing this Agreement thereby expressly waives all of the rights granted to creditors by Civil Code section 1542, which 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."

5. **Warranty of Non-Assignment.**

The Parties hereto, and each of them, represent and warrant that there has been no assignment or transfer of any interest in any of the Released Claims which any of the Parties may have against the other.

6. **Agreement Not to be Construed as Admission.**

This Agreement is entered into by the Parties solely for the purposes set forth in the Recitals. It does not constitute, nor shall it be construed as, an admission by any of the Parties hereto of the truth or validity of, or liability for, any of the Released Claims.

7. **Reservation of Rights Against Insurance Carriers.**

Each of the Parties expressly reserves all rights it may have, if any, as against any of its own insurance carriers, including, without limitation, any insurance carriers that issued title policies regarding the Subject Property, for or with respect to any claim it may now or hereafter have with respect to the Subject Property or the subject matter of the Action or arising therefrom.

8. **Binding on Successors.**

All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective agents, employees, officers, directors, attorneys, representatives, predecessors, divisions, subsidiaries, affiliates, shareholders, assigns, heirs, administrators, executors and successors in interest.

9. **No Third Party Beneficiaries.**

Except to the extent provided in the previous paragraph, this Agreement shall not constitute, nor be construed in any manner to constitute, a contract for the benefit of any other or "third" party, or any prior creditor of any of the Parties.

10. **Authority.**

Each individual and/or entity executing this Agreement in a representative capacity warrants and represents that s/he or it is authorized to enter into and execute this Agreement on behalf of his, her or its respective principal, and that the appropriate corporate resolutions or other consents have been passed and/or obtained, granting such authority.

11. **Interpretation.**

The Parties acknowledge and agree that each has been given the opportunity to review this Agreement independently with legal counsel, and that each of the Parties has cooperated in the drafting of this Agreement such that any construction to be made of this Agreement shall not be made based on any rule providing for interpretation against the Party who causes uncertainty to exist, or against the draftsman.

12. **Attorneys Fees.**

Each of the Parties shall bear his or its own attorneys fees and costs incurred in connection with the Action. In the event that any Party hereto shall commence legal proceedings against any other Party to enforce the terms hereof, or to declare rights hereunder, the prevailing Party in any such proceeding shall be entitled to recover said Party's costs of suit in said proceedings, including reasonable attorneys fees, as may be fixed by the Court.

**13. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and, upon execution by all Parties, supersedes all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties in connection with the subject matter hereof, except as specifically set forth herein. No supplements, modifications, waivers or terminations of this Agreement shall be binding unless executed in writing by the Parties to be bound thereby. No waiver of any provisions of this Agreement shall constitute or be deemed to constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver, unless otherwise expressly provided.

**14. Execution of Additional Documents.**

The Parties, and each of them, agree to execute and deliver such other and additional documents or instruments, and to take such further actions as may reasonably be necessary, to carry out fully the intent and purposes of this Agreement.

**15. Headings.**

The headings contained in this Agreement have been inserted for convenience only and in no way should define or limit the scope or interpretation of this Agreement.

**16. Governing Law.**

This Agreement has been entered into and executed in the State of California and shall be interpreted in accordance with the laws of said state. Should any dispute arise regarding this Agreement, the Superior Court for the State of California, Contra Costa County, shall have exclusive jurisdiction to determine the same, except to the extent such jurisdiction would conflict with applicable federal law regarding matters concerning the FDIC.

**17. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. The Agreement shall not be binding, however, until all Parties have signed. An electronically transmitted, executed signature page for the Agreement shall be deemed to be an original.

**18. Severability.**

If any part of this Agreement is void or otherwise invalid and hence, unenforceable, such invalid or void portion shall be deemed to be separate and severable from the balance of this Agreement, and shall be given full force and effect as though the void or invalid provision had never been a part of this Agreement.

**19. Notices.**

Any notice, communication or payment required under this Agreement shall be sent via U.S. Mail or prepaid express delivery service, such as Federal Express, to the appropriate Party's counsel at the address listed below:

For Countrywide:	Michael R. Pfeifer Pfeifer & De La Mora 765 The City Drive, Suite 380 Orange, CA 92868
For IndyMac:	Terence N. Hawley Reed Smith LLP 101 Second Street, Suite 1800 San Francisco, CA 94105-3659
For Access:	Kimberly D. Howatt Gordon & Rees LLP 101 West Broadway, Suite 1600 San Diego, CA 92101
For JWI:	Kevin S. Eikenberry 1470 Maria Lane, # 440 Walnut Creek, CA 94596
For Martin Esparza:	Alan E. Ramos Nevin, Ramos & Steele 700 Ygnacio Valley Road, Suite 300 Walnut Creek, CA 94596

**20. Counting.**

For purposes of this Agreement, the term "days" is intended to indicate calendar days unless the calendar day for performance under the Agreement falls on a Saturday, Sunday or state or federal holiday, in which case the time for performance under the Agreement shall be the next following business day.

*(The remainder of this page is intentionally left blank)*

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth below:

DATED: Dec 1 2010, 2010

COUNTRYWIDE HOME LOANS, INC. and  
COUNTRYWIDE DOCUMENT CUSTODY  
SERVICES, A DIVISION OF TREASURY  
BANK, N.A.

(b)(6)

By:   
Name: MARK CRUZ  
Title: Assistant General Counsel

DATED: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
INDYMAC BANK, F.S.B.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

ACCESS LENDING CORPORATION (now  
known as XWAREHOUSE LENDING  
CORPORATION)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

JWI INVESTMENT CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

\_\_\_\_\_  
MARTIN ESPARZA

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth below:

DATED: \_\_\_\_\_, 2010

COUNTRYWIDE HOME LOANS, INC. and  
COUNTRYWIDE DOCUMENT CUSTODY  
SERVICES, A DIVISION OF TREASURY  
BANK, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: 7/21, 2010

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
INDYMAC BANK, F.S.B.

(b)(6)

By:   
Name: Toni Durazo  
Title: Control

DATED: \_\_\_\_\_, 2010

ACCESS LENDING CORPORATION (now  
known as XWAREHOUSE LENDING  
CORPORATION)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

JWI INVESTMENT CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

\_\_\_\_\_  
MARTIN ESPARZA

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth below:

DATED: \_\_\_\_\_, 2010

COUNTRYWIDE HOME LOANS, INC. and  
COUNTRYWIDE DOCUMENT CUSTODY  
SERVICES, A DIVISION OF TREASURY  
BANK, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
INDYMAC BANK, F.S.B.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: 4/20/10, 2010

ACCESS LENDING CORPORATION (now  
known as XWAREHOUSE LENDING  
CORPORATION)

(b)(6)

By:   
Name: J. Patrick Corbridge  
Title: President

DATED: \_\_\_\_\_, 2010

JWI INVESTMENT CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

\_\_\_\_\_  
MARTIN ESPARZA

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth below:

DATED: \_\_\_\_\_, 2010

COUNTRYWIDE HOME LOANS, INC. and  
COUNTRYWIDE DOCUMENT CUSTODY  
SERVICES, A DIVISION OF TREASURY  
BANK, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
INDYMAC BANK, F.S.B.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

ACCESS LENDING CORPORATION (now  
known as XWAREHOUSE LENDING  
CORPORATION)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: April 19, 2010

IWI INVESTMENT CORPORATION

By:   
Name: WILSON YOUNG  
Title: PRESIDENT

(b)(6)

DATED: \_\_\_\_\_, 2010

MARTIN ESPARZA

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the day and year set forth below:

DATED: \_\_\_\_\_, 2010

COUNTRYWIDE HOME LOANS, INC. and  
COUNTRYWIDE DOCUMENT CUSTODY  
SERVICES, A DIVISION OF TREASURY  
BANK, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
INDYMAC BANK, F.S.B.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

ACCESS LENDING CORPORATION (now  
known as XWAREHOUSE LENDING  
CORPORATION)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2010

JWI INVESTMENT CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: April 20, 2010

\_\_\_\_\_

MARTIN ESPARZA

\_\_\_\_\_

(b)(6)

(b)(6)

APPROVED AS TO FORM AND CONTENT:

DATED: July 19, 2010

PFEIFER & DE LA MORA, LLP

(b)(6)

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

Michael R. Pfeifer, Esq.

Attorneys for Cross-Complainants and Cross-Defendants COUNTRYWIDE HOME LOANS, INC. and COUNTRYWIDE DOCUMENT CUSTODY SERVICES, A DIVISION OF TREASURY BANK, N.A.

DATED: \_\_\_\_\_, 2010

REED SMITH LLP

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

Terence N. Hawley, Esq.

Attorneys for FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B.

DATED: \_\_\_\_\_, 2010

GORDON & REES LLP

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

Kimberly D. Howatt, Esq.

Attorneys for Cross-Defendant ACCESS LENDING CORPORATION (now known as XWAREHOUSE LENDING CORPORATION)

DATED: \_\_\_\_\_, 2010

LAW OFFICES OF KEVIN S. EIKENBERRY

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

Kevin S. Elkenberry, Esq.

Attorneys for Cross-Complainant and Cross-Defendant JWI INVESTMENT CORPORATION

DATED: \_\_\_\_\_, 2010

NEVEN, RAMOS & STEELE

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

Alan E. Ramos, Esq.

Attorneys for Cross-Defendant MARTIN ESPARZA

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_, 2010

PFEIFER & DE LA MORA, LLP

By: \_\_\_\_\_  
Michael R. Pfeifer, Esq.

Attorneys for Cross-Complainants and Cross-Defendants COUNTRYWIDE HOME LOANS, INC. and COUNTRYWIDE DOCUMENT CUSTODY SERVICES, A DIVISION OF TREASURY BANK, N.A.

DATED: April 26, 2010

REED SMITH LLP

(b)(6)

By: \_\_\_\_\_  
Terence N. Hawley, Esq.

Attorneys for FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B.

DATED: \_\_\_\_\_, 2010

GORDON & REES LLP

By: \_\_\_\_\_  
Kimberly D. Howatt, Esq.

Attorneys for Cross-Defendant ACCESS LENDING CORPORATION (now known as XWAREHOUSE LENDING CORPORATION)

DATED: \_\_\_\_\_, 2010

LAW OFFICES OF KEVIN S. EIKENBERRY

By: \_\_\_\_\_  
Kevin S. Eikenberry, Esq.

Attorneys for Cross-Complainant and Cross-Defendant JWI INVESTMENT CORPORATION

DATED: \_\_\_\_\_, 2010

NEVEN, RAMOS & STEELE

By: \_\_\_\_\_  
Alan E. Ramos, Esq.

Attorneys for Cross-Defendant MARTIN ESPARZA

**APPROVED AS TO FORM AND CONTENT:**

DATED: \_\_\_\_\_, 2010

PFEIFER & DE LA MORA, LLP

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

Michael R. Pfeifer, Esq.  
Attorneys for Cross-Complainants and Cross-Defendants COUNTRYWIDE HOME LOANS, INC. and COUNTRYWIDE DOCUMENT CUSTODY SERVICES, A DIVISION OF TREASURY BANK, N.A.

DATED: \_\_\_\_\_, 2010

REED SMITH LLP

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

Terence N. Hawley, Esq.  
Attorneys for FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B.

DATED: April 23, 2010

GORDON & REES LLP

(b)(6)

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

Kimberly D. Howatt, Esq.  
Attorneys for Cross-Defendant ACCESS LENDING CORPORATION (now known as XWAREHOUSE LENDING CORPORATION)

DATED: \_\_\_\_\_, 2010

LAW OFFICES OF KEVIN S. EIKENBERRY

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

Kevin S. Eikenberry, Esq.  
Attorneys for Cross-Complainant and Cross-Defendant JWI INVESTMENT CORPORATION

DATED: \_\_\_\_\_, 2010

NEVEN, RAMOS & STEELE

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

Alan E. Ramos, Esq.  
Attorneys for Cross-Defendant MARTIN ESPARZA

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_, 2010

PFEIFER & DE LA MORA, LLP

By: \_\_\_\_\_  
Michael R. Pfeifer, Esq.

Attorneys for Cross-Complainants and Cross-Defendants COUNTRYWIDE HOME LOANS, INC. and COUNTRYWIDE DOCUMENT CUSTODY SERVICES, A DIVISION OF TREASURY BANK, N.A.

DATED: \_\_\_\_\_, 2010

REED SMITH LLP

By: \_\_\_\_\_  
Terence N. Hawley, Esq.

Attorneys for FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B.

DATED: \_\_\_\_\_, 2010

GORDON & REES LLP

By: \_\_\_\_\_  
Kimberly D. Howatt, Esq.

Attorneys for Cross-Defendant ACCESS LENDING CORPORATION (now known as XWAREHOUSE LENDING CORPORATION)

DATED: 4-19, 2010

LAW OFFICES OF KEVIN S. BIKENBERRY

By: \_\_\_\_\_  
Kevin S. Bikenberry, Esq.

Attorneys for Cross-Complainant and Cross-Defendant JWI INVESTMENT CORPORATION

(b)(6)

DATED: \_\_\_\_\_, 2010

NEVEN, RAMOS & STEELE

By: \_\_\_\_\_  
Alan E. Ramos, Esq.

Attorneys for Cross-Defendant MARTIN ESPARZA

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_, 2010

PFEIFER & DE LA MORA, LLP

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

Michael R. Pfeifer, Esq.  
Attorneys for Cross-Complainants and Cross-Defendants COUNTRYWIDE HOME LOANS, INC. and COUNTRYWIDE DOCUMENT CUSTODY SERVICES, A DIVISION OF TREASURY BANK, N.A.

DATED: \_\_\_\_\_, 2010

REED SMITH LLP

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

Terence N. Hawley, Esq.  
Attorneys for FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC BANK, F.S.B.

DATED: \_\_\_\_\_, 2010

GORDON & REES LLP

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

Kimberly D. Howatt, Esq.  
Attorneys for Cross-Defendant ACCESS LENDING CORPORATION (now known as XWAREHOUSE LENDING CORPORATION)

DATED: \_\_\_\_\_, 2010

LAW OFFICES OF KEVIN S. EIKENBERRY

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

Kevin S. Eikenberry, Esq.  
Attorneys for Cross-Complainant and Cross-Defendant JWI INVESTMENT CORPORATION

DATED: April 20, 2010

NEVEN RAMOS & STEELE

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

Alan E. Ramos, Esq.  
Attorneys for Cross-Defendant MARTIN ESPARZA

(b)(6)

received  
4/23/10

ENTERED  
4/29/10

No. 2007-55704

INDYMAC BANK, FSB AND INDYMAC §  
BANK, FSB d/b/a CONSTRUCTION §  
LENDING CORPORATION OF §  
AMERICA. §

IN THE DISTRICT COURT OF §  
LIMS M (b)(2) §  
DIF/Mortgage Fraud §

V

SOUTHERN TITLE INSURANCE CORP.; §  
RELIABLE TITLE COMPANY, §  
INTERNATIONAL KELLEY GROUP, §  
LLC d/b/a KG MORTGAGE, PAC §  
APPRAISAL INC., MYRICK BEASLEY, §  
MARY ANN SOLIZ, KRYSTAL SOLIZ, §  
JESSICA MARTINEZ, KENDRICK DEAL §

HARRIS COUNTY, TEXAS  
  
215<sup>TH</sup> JUDICIAL DISTRICT

STATE OF TEXAS §  
COUNTY OF HARRIS §

SETTLEMENT AGREEMENT AND RELEASE

The parties to this Settlement Agreement and Release are The Federal Deposit Insurance Corporation as Receiver for IndyMac Federal Bank, FSB ("IndyMac"), on the one hand, and Southern Title Insurance Corporation ("Southern Title"), on the other hand.

Whereas, IndyMac brought suit in the above-styled cause against Southern Title, and asserted causes of action arising from a closing protection letter dated October 17, 2005, issued by Southern Title.

Whereas, IndyMac also asserted causes of action arising from alleged irregularities in the closing, which occurred at Escrow Associates of Texas, d/b/a Reliable Title Company on October 28, 2005.

(b)(2)

Whereas, IndyMac also asserted causes of action based upon various tort theories, arising from the closing on October 28, 2005.

Whereas, Southern Title denied the allegations of IndyMac, and asserted various affirmative defenses.

Whereas, the parties desire to settle and compromise the disputes listed above, as well as all other controversies underlying the above-styled cause.

For and in consideration of the mutual promises and undertakings set forth herein, the parties agree as follows:

1. Southern Title will pay \$15,000.00 to the Locke Lord Bissell & Liddell, LLP Trust Account.
2. IndyMac will dismiss with prejudice its action against Southern Title in the above-styled cause.

For and in consideration of the payment of \$15,000.00, and the other promises and undertakings of Southern Title, the receipt and sufficiency of which are hereby acknowledged, IndyMac, Plaintiff in the above-styled cause, does hereby fully and forever release, discharge, and acquit Southern Title, Defendant in the above-styled cause, together with its officers, directors, employees, agents, representatives, successors, and assigns, of, from, and against any and all claims and causes of action of whatsoever nature, known or unknown, contingent or absolute, direct or indirect, past, present, or future, heretofore or hereafter arising or accruing in any manner out of or in connection with the matters made the basis of the above-styled cause, and out of or in connection with the issuance of the October 17, 2005 closing protection letter related to Myrick Beasley, and out of or in connection with the closing at Reliable Title Company on

October 28, 2005, which actions arose on or before the date of execution of this Settlement Agreement and Release.

For and in consideration of the promises and undertakings of IndyMac, the receipt and sufficiency of which are hereby acknowledged, Southern Title, Defendant in the above-styled cause, does hereby fully and forever release, discharge, and acquit IndyMac, Plaintiff in the above-styled cause, together with its officers, directors, shareholders, employees, agents, representatives, successors, and assigns, of, from, and against any and all claims and causes of action of whatsoever nature, known or unknown, contingent or absolute, direct or indirect, past, present, or future, heretofore or hereafter arising or accruing in any manner out of or in connection with the matters made the basis of the above-styled cause, and out of or in connection with the issuance of the October 17, 2005 closing protection letter related to Myrick Beasley, and out of or in connection with the closing at Reliable Title Company on October 28, 2005, which transactions arose on or before the date of execution of this Settlement Agreement and Release.

For and in the same consideration, IndyMac and Southern Title agree that they will file an Agreed Partial Take-Nothing Judgment in the above-styled cause, substantially in the form attached hereto as Exhibit "A", and incorporated herein.

The parties agree that this Settlement Agreement and Release covers all claims and causes of action, which were asserted in the above-styled cause, as wells as all claims and causes of action, which in the exercise of diligence, might have been asserted, arising from the facts underlying the above-styled cause.

The persons signing this Settlement Agreement and Release specifically  
~~represented to all other parties that they have authority to sign on behalf of their~~

respective parties, and they acknowledge that all other parties are reliable on such representations.

This agreement is governed by the laws of the state of Texas, and is performable in Harris County, Texas.

IT IS EXPRESSLY AGREED by the parties that the execution and delivery of this instrument, and the payment of the consideration hereunder, are in no way an admission of liability or fault by any of the parties, but are a Settlement Agreement and Release of all claims made by the parties hereto against each other, by which such parties are forever buying their peace.

SIGNED on the dates indicated.

---

[Redacted]

(b)(6)

By

Date: December 22, 2009

**Derrick B. Carson**

State Bar No. [Redacted]

(b)(6)

**LOCKE LORD BISSELL & LIDDELL  
LLP**

600 Travis, Suite 3400

Houston, Texas 77002

[Redacted] (Telephone)

[Redacted] (Telecopy)

(b)(4),(b)(6)

**Robert T. Mowrey**

State Bar No. [Redacted]

(b)(6)

**Jason L. Sanders**

State Bar No. [Redacted]

(b)(6)

**Johnathan E. Collins**

State Bar No. [Redacted]

(b)(6)

**LOCKE LORD BISSELL & LIDDELL  
LLP**

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201

[Redacted] (Telephone)

[Redacted] (Telecopy)

(b)(4),(b)(6)

ATTORNEYS FOR THE FEDERAL  
DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR INDYMAC  
FEDERAL BANK, FSB, PLAINTIFF

**MCCORMICK HANCOCK & NEWTON**

[Redacted]

(b)(6)

By:

Date: December 1, 2009

**Larry E. Meyer**

SBN [Redacted]

(b)(6)

1900 West Loop South, Suite 700

Houston, Texas 77027

Tel [Redacted]

(b)(4),(b)(6)

Fax [Redacted]

ATTORNEYS FOR SOUTHERN TITLE  
INSURANCE CORPORATION,  
DEFENDANT



LIMS Nr (b)(2)  
DEF/Mortgage Fraud



**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made and entered into as of May 19, 2010, by and between Impac Funding Corporation ("Impac") and the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. ("FDIC")

**I. RECITALS**

A. Impac and IndyMac Bank, F.S.B. ("IndyMac") entered into written settlement agreement on March 21, 2008 ("IndyMac Settlement Agreement") relating to certain mortgage loan repurchase and indemnification demands made by IndyMac upon Impac. Thereafter, IndyMac was placed in receivership by the Federal Deposit Insurance Corporation.

B. On September 24, 2009, the FDIC filed an action entitled Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, F.S.B. v. Impac Funding Corporation in the United States District Court for the Central District of California, Case No. CV09-6965 (hereafter the "Action"). The FDIC contends in the Action that there is a remaining balance of approximately Two Million One Hundred Thousand Dollars (\$2,100,000) owed by Impac under the IndyMac Settlement Agreement.

C. Impac sold mortgage loans to IndyMac. The FDIC further contends, independent of the Action, that Impac is obligated to repurchase additional mortgage loans or indemnify for losses sustained on mortgage loans sold by Impac to IndyMac.

D. Impac contends that IndyMac breached the warranties and representations in the IndyMac Settlement Agreement, thus entitling Impac to a set off of the entire sum in dispute under the IndyMac Settlement Agreement. Impac further disputes IndyMac's additional repurchase and indemnification demands.

In view of the foregoing, and without any admission of liability or fault, it is the mutual intention of the parties hereto to fully and finally settle any and all claims with respect to the Action, the matters set forth in the Recitals above, and any other claim which exists or may exist between them, as set forth below.

**II. AGREEMENT**

1. **Settlement Amount.** The total amount of the settlement between the FDIC and Impac is Four Million Five Hundred Thousand Dollars (\$4,500,000) ("Settlement Amount"). However, the FDIC will accept the sum of Three Million Six Hundred Thousand Dollars (\$3,600,000) in full satisfaction of the Settlement Amount if timely payments are made by Impac pursuant to the payment plan set forth below.

2. **Payment Plan.** Impac shall pay to the FDIC the total sum of Three Million Six Hundred Thousand Dollars (\$3,600,000) ("Settlement Funds") on the following payment schedule:

- a. \$1,500,000 on or before May 28, 2010;
- b. \$116,666.67 per month for 17 months, commencing on June 28, 2010, and on the 28th day of each month thereafter;
- c. \$116,666.61 on November 28, 2011.

See, Payment Schedule, attached hereto as Exhibit A.

Payments shall be made by wire transfer to the following account:

	Bank Name:	Wells Fargo Bank, N.A.
	Address:	535 N. Brand Blvd.
	City, State, Zip:	Glendale, CA 91203
(b)(4)	ABA Number:	[redacted]
(b)(4)	Account Name:	Mortgage Recovery Law Group Trust Account
	Account Number:	[redacted]
	Contact:	Shannon Mazepink
	Reference:	Impac Settlement

3. **Notice of Default.** In the event Impac defaults by failing to make a timely payment as set forth in this Agreement, the FDIC shall give written notice via email or fax of the default to Impac Funding Corporation, c/o Stephen C. Wichmann, Vice President/Associate General Counsel, 19500 Jamboree Road, Irvine, CA 92612.

(b)(4),(b)(6)

[redacted] ph. no. [redacted] fax no. [redacted]

(b)(4),(b)(6)

(b)(4),(b)(6)

4. **Time to Cure.** Impac shall have five (5) business days from date of the notice to cure the default. In the event that Impac fails to cure the default within five (5) business days, the entire Settlement Amount of Four Million Five Hundred Thousand (\$4,500,000) (less any payments made by Impac pursuant to the terms of this Agreement) will be immediately due and payable, and the FDIC may pursue the immediate payment in full of all sums remaining due without further demand and may invoke all remedies permitted by applicable law. The FDIC shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, attorneys' fees and costs incurred in collecting all sums owing.

5. **Dismissal of Action.** The parties agree that they will enter into a Stipulation for Dismissal (With Prejudice). Within ten (10) calendar days of full execution of this Agreement and receipt of the first payment due, the FDIC will file the Stipulation for Dismissal (With Prejudice).

6. **Mutual General Release**

Except for the obligations set forth herein, Impac, on the one hand, and the FDIC, on the other hand, for themselves, and for each and all of their respective predecessors, successors, related entities, assigns, partners, administrators, agents, trustees, beneficiaries, heirs, spouses, issue, executors, attorneys and all those claiming by, through, under or in concert with them, or any of them (hereinafter collectively referred to as the "Releasors"), hereby releases and discharges the other, and all of their respective predecessors, successors, related entities, assigns,

partners, administrators, agents, trustees, beneficiaries, heirs, spouses, issue, executors, attorneys and all those claiming by, through, under or in concert with them, or any of them (hereinafter collectively referred to as the "Releasees"), from any and all claims, causes of action, debts, obligations, losses, damages, liabilities, costs or demands of whatever nature, whether anticipated or unanticipated, whether known or unknown, and whether suspected or unsuspected, which each Releasor has, or which it may have, may claim to have, or own or hold against the Releasees, or against any of them, with respect to any matter whatsoever, whether known or unknown, arising out of (1) the subject matter of the Action, (2) the IndyMac Settlement Agreement, (3) all repurchase and indemnification demands by IndyMac pursuant to any Mortgage Loan Purchase and Interim Servicing Agreements entered into between Impac and IndyMac, and/or (4) any loans sold directly from Impac to IndyMac.

**A. Waiver of Civil Code Section 1542.**

Releasors acknowledge that they may hereafter discover claims or facts now unknown or unsuspected, or in addition to, or different from, those which he now knows or believes to be true with respect to this Release. Releasors intend by this Release to release fully, finally, and forever all known and unknown claims notwithstanding the discovery or existence of any such additional or different claims or facts before or after execution of this Agreement, and that the Release set forth above constitutes a waiver of all rights which the Releasors may have by virtue of the provisions of California Civil Code Section 1542, which 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."**

Releasors acknowledge that they have consulted with counsel concerning the effect and import of this provision, and they agree to waive such provision.

7. **IndyMac Only.** Notwithstanding any other provision in this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed any claims against Impac arising out of existing or failed financial institutions other than IndyMac.

8. **FDIC Only.** Notwithstanding any other provision in this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed any action taken by any other federal agency. In addition, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district.

9. **Enforcement of Agreement.** The parties hereby submit to the jurisdiction of, and waive any venue objections against, the United States District Court, Central District of California, County of Orange, in any litigation arising out of this Agreement. The prevailing party in any such action shall recover all fees and costs incurred in the action as well as its attorney's fees.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to conflict of laws principles.
11. **Severability.** If any provision of this Agreement is prohibited by or invalid under any statute or regulation, such provision shall be ineffective and deemed deleted herefrom to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.
12. **Amendment and Termination.** No amendment, modification, termination or cancellation of this Agreement shall be effective unless in writing signed by both parties hereto.
13. **Merger and Integration.** This Agreement expressly supersedes all prior and contemporaneous written and oral agreements and understandings between the parties and is intended to be the sole and only agreement by and between the parties with respect to the subject matter herein set forth. There are no representations or warranties made by any party to induce any other party to execute this Agreement not set forth herein.
14. **Waiver and Modification.** No provisions hereof may be waived unless in writing and signed by the party benefited by the waiver. Waiver of any one provision herein shall not be deemed to be a waiver of any other provisions herein. This Agreement may be modified or amended only by written agreement executed by all of the parties.
15. **Consultation of Counsel.** Each of the parties to this Agreement warrants and represents and affirmatively states that it has carefully read and understands the terms of this Agreement and that it has not relied upon the representations or advice of any other party hereto or attorney not its own. This Agreement and the terms and conditions thereof were determined by arms-length negotiations by, between and among the parties to this Agreement, and all the parties hereto acknowledge that they have been fully advised by their respective counsel.
16. **Power to Execute.** All parties represent and warrant that they have complete authority, right and power to enter into and execute this Agreement executed in connection herewith.
17. **Counterparts.** This Agreement may be executed in any number of counterparts, and/or transmitted by facsimile or email, and each such counterpart shall be deemed to be an original.
18. **Binding Effect On Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.
19. **Claim Rights.** The parties represent and warrant that they own, have retained and/or have the rights to settle and release the claims herein.

**SIGNATURES ON THE FOLLOWING PAGE**

IN WITNESS WHEREOF, the FDIC and Impac have caused this Agreement to be duly executed as of the date first above written.

**FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR INDYMAC BANK, F.S.B.**

(b)(6)

By:

[Redacted Signature Box]

(Signature)

Richard S. Gill

(Typed Name)

Title: Counsel

**IMPAC FUNDING CORPORATION**

(b)(4),(b)(6)

By:

[Redacted Signature Box]

Stephen Wichmann

(Typed Name)

Title: Assoc. Gen Counsel

**EXHIBIT A  
PAYMENT SCHEDULE**

<b>PAYMENT DUE DATE</b>	<b>AMOUNT</b>
May 28, 2010	\$1,500,000.00
June 28, 2010	\$116,666.67
July 28, 2010	\$116,666.67
August 28, 2010	\$116,666.67
September 28, 2010	\$116,666.67
October 28, 2010	\$116,666.67
November 28, 2010	\$116,666.67
December 28, 2010	\$116,666.67
January 28, 2011	\$116,666.67
February 28, 2011	\$116,666.67
March 28, 2011	\$116,666.67
April 28, 2011	\$116,666.67
May 28, 2011	\$116,666.67
June 28, 2011	\$116,666.67
July 28, 2011	\$116,666.67
August 28, 2011	\$116,666.67
September 28, 2011	\$116,666.67
October 28, 2011	\$116,666.67
November 28, 2011	\$116,666.61

received  
7/7/10

LIMS No. [redacted]  
DIP/Mortgage Fraud

ENTERED  
7/8/10

Execution

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

("Settlement Agreement") is entered into and made effective as of the 17th day of June, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC") and American Mortgage Network, Inc. and its affiliates as set forth in Exhibit "A" attached hereto and incorporated herein. American Mortgage Network, LLC, successor in interest to American Mortgage Network, Inc. and its affiliates as set forth in Exhibit "A" are hereinafter collectively referred to as "AmNet". The FDIC and AmNet may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

(b)(2)

**RECITALS**

1.1 AmNet from time to time had sold and/or delivered mortgage loans to IndyMac Bank, FSB, or its affiliates (hereinafter collectively referred to as "IndyMac Bank, FSB") pursuant to various written agreements, including but not limited to Broker Agreements, Mortgage Loan Purchase Agreements, Correspondent Agreements, and Sellers Warranties and Servicing Agreements ("Agreements"). A dispute has arisen between the Parties with respect to outstanding demands for repurchase and/or indemnity pursuant to the Agreements. Specifically, IndyMac Bank, FSB made demands to AmNet for repurchase and/or indemnification based upon a finding of a breach of the representations and warranties or an "Early Payment Default" as set forth in the Agreements.

1.2 Without admitting liability, the Parties desire to and have agreed to settle all repurchase and indemnification claims relating to the mortgage loans pursuant to the Agreements which were sold directly by AmNet to IndyMac Bank, FSB (the "LOANS"), upon the terms and conditions hereinafter set forth.

**AGREEMENT**

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

1.3 **Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

1.4 **Payment of the Settlement Agreement.** AmNet shall pay the total sum of \$12,000,000 (Twelve Million Dollars) (the "Settlement Funds") by no later than June 21,

2010. Payments shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number: [redacted] Routing Number: [redacted] Reference: AmNet Settlement.

(b)(4)

(b)(4)

**RELEASE**

**1.5 Unknown Claims.** Each Party acknowledges that this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against the other Party arising from the obligation to repurchase and/or indemnify for losses associated with the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule with respect to the LOANS.

**1.6** Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

"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."

**1.7** Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to the repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**1.8** The FDIC hereby fully, finally, and forever releases and discharges AmNet and any and all of their respective past, present, and future employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, independent

contractors, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS.

1.9 Notwithstanding any other provision in this Agreement, neither Party releases, and expressly preserves fully and to the same extent as if the Agreement had not been executed any claims against the other Party arising out of existing or failed financial institutions other than IndyMac Bank, FSB.

1.10 Notwithstanding any other provision in this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

1.11 AmNet hereby fully, finally, and forever releases and discharges the FDIC, and any and all of its respective past, present, and future employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature

whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS.

**1.12 Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

**1.13 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims with respect to the LOANS.

**1.14 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

**1.15 Governing Law.** The Parties agree to submit to the Courts of the County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.16 Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.17 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**1.18 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**1.19 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each Party has consulted with legal counsel concerning this Settlement Agreement and

has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.20 Approval and Authority.** The Parties represent and warrant to one another that the approval of this Settlement Agreement has been undertaken in a proper and lawful manner and that they have the requisite power and authority to enter into and to perform their obligations under this Settlement Agreement.

**1.21 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**1.22 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.23 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.24 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.25 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**1.26 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties

Execution

with respect to the alleged breaches in connection with the LOANS, and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

For: **The Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC")**

For: **American Mortgage Network, LLC, successor in interest to American Mortgage Network, Inc., and its affiliates listed on Exhibit "A" ("AmNet")**

(b)(6)

By:

Name: Richard S. Gill

Title: Counsel

Date: 6-30-10

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

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

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

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

Execution

with respect to the alleged breaches in connection with the LOANS, and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

**For: The Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC")**

**For: American Mortgage Network, LLC, successor in interest to American Mortgage Network, Inc., and its affiliates listed on Exhibit "A" ("AmNet")**

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

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

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

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

By:

[Redacted Signature Box]

(b)(6)

Name: Kelly Huusma

Title: Vice President

Date: 6-30-2010

**EXHIBIT "A"**

The affiliates of American Mortgage Network, LLC, successor in interest to American Mortgage Network, Inc. that are subject to the attached Settlement Agreement and Mutual Release are as follows:

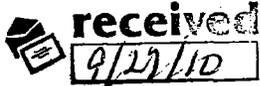
1. Advantage Mortgage Partners, LLC
2. Alpha Home Loans, LLC
3. AmNet Mortgage, LLC
4. American Priority Mortgage, LLC
5. American Southern Mortgage, LLC
6. Arizona Community Mortgage, LLC
7. Ashton Woods Mortgage, LLC
8. Avenue Financial Services, LLC
9. Bankers Funding Company, LLC
10. BHS Home Loans, LLC
11. Builders Mortgage Company, LLC
12. Capital Pacific Home Loans, LP
13. Centennial Home Mortgage, LLC
14. Certified Home Loans, LLC
15. Choice Home Financing, LLC
16. Citylife Lending Group, LLC
17. Colorado Mortgage Alliance, LLC
18. Colorado Professionals Mortgage, LLC
19. Deluca Home Mortgage
20. DH Financial, LLC
21. Discovery Home Loans, LLC
22. Eastern Mortgage Authority, LLC
23. Ennis Home Mortgage, LP
24. Five Star Lending, LLC
25. Florida Home Finance Group, LLC (fka WCI Mortgage, LLC)
26. Fulton Home Mortgage, LLC
27. Generation Homes Mortgage
28. Global General Mortgage, LLC
29. Gold Coast Home Mortgage, GP
30. Gold Coast Mortgage
31. Greater Atlanta Financial Services, LLC
32. Griffin Financial Services, LLC
33. Guarantee Pacific Mortgage, LLC
34. Hearthside Funding, a California LP
35. Hillsborough Lending, LLC
36. Home Loan Express, LLC

37. Home Loans, LLC
38. Homeland Mortgage, LLC
39. Homeservices Lending, LLC, including the following Series of HSL, LLC:
  - a. SERIES A DBA HUFF REALTYMORTGAGE
  - b. SERIES A DBA MIDAMERICAN HOME SERVICES MORTGAGE
  - c. SERIES A DBA HOMESERVICES LENDING
  - d. SERIES A DBA RECTOR-HAYDEN MORTGAGE
  - e. SERIES A DBA PLAZA MORTGAGE SERVICES
  - f. SERIES A DBA CBSHOME MORTGAGE
  - g. SERIES A DBA MORTGAGE SOUTH
  - h. SERIES A DBA EDINA REALTY MORTGAGE
  - i. SERIES A DBA TRINITY MORTGAGE AFFILIATES
40. Illumina Mortgage
41. John Laing Mortgage, LP
42. JTS Financial, LLC
43. KH Mortgage, LLC
44. Laurel Hills Mortgage, LLC
45. Linear Financial, a California LP
46. Marben Mortgage, LLC
47. Meridian Home Mortgage, a California LP
48. Morrison Financial Services, LLC
49. MSC Mortgage, LLC
50. Norwest Mortgage, Inc.
51. Pacific Coast Home Mortgage, LLC
52. Pageantry Mortgage, LLC
53. Personal Mortgage Group, LLC
54. PHMCWF, LLC
55. Pinnacle Mortgage Of Nevada, LLC
56. Playground Financial Services, LLC
57. Precedent Mortgage, LLC
58. Premier Home Mortgage
59. Private Mortgage Advisors, LLC
60. Properties Mortgage, LLC
61. Prosperity Mortgage Company
62. Quadrant
63. Rainier Mortgage, LLC
64. Real Estate Financial
65. Real Estate Lenders
66. Real Living Mortgage, LLC
67. Realtec Financial Services, LLC
68. Related Financial, LLC
69. Re/Max Home Traditions
70. Re/Max Consultants

71. Re/Max Specialists
72. Re/Max Executives
73. Residential Community Mortgage Co, LLC
74. Resort Trust
75. Resourtquest Mortgage, LLC
76. River City Group, LLC
77. Roddel Mortgage Company, a California LP
78. Russ Lyon Mortgage, LLC
79. Select Lending Services, LLC
80. Signature
81. Smith Family Mortgage, LLC
82. South County Mortgage
83. Steinbeck Advantage Mortgage, LLC
84. Touchstone Home Mortgage, LLC
85. Triple Diamond Mortgage & Financial, LLC
86. United Mortgage Group
87. Village Mortgage, LLC
88. Washington Mortgage, LLC
89. Waterways Home Mortgage, LLC
90. WCI Mortgage, LLC
91. Wells Fargo Bank, N.A.
92. Westfield Home Mortgage, LLC
93. WF/TW Mortgage Venture, LLC
94. Windward Home Mortgage, LLC
95. Young Homes

(b)(2)

LIMS Nr

received  
9/29/10

ENTERED  
9/30/10

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is entered into by and among:

(b)(2)



- (a) Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB;
- (b) Fifth Third Bank and Fifth Third Mortgage-MI, LLC;
- (c) Mercantile Bank Mortgage Co. LLC;
- (d) Raji Zaher, Zaher Investment Group, LLC and Woodfield Developments, Inc.; and
- (e) Lawyers Title Insurance Corporation.

**A. Recitals**

The facts which underlie this Agreement are as follows:

**1. Description of Property**

Rivershyre No. 5 is a proposed subdivision which was to have been platted under the Land Division Act, MCL 560.101, et seq., and was to have consisted of 20 lots ("Lots" or "Rivershyre No. 5 lots"). The subdivision has not been platted as of the date of this Agreement. The tract of land upon which the proposed subdivision was to have been platted is located in Davison Township, Genesee County, Michigan, and is described more particularly as follows:

Part of the Northeast 1/4 of Section 28, Town 7 North, Range 8 East, Township of Davison, Genesee County, Michigan, more particularly described as follows:  
Commencing at the East 1/4 corner of said Section 28, said point also being the Southeast corner of Lot 61 of the Plat of RIVERSHYRE NO. 4, according to the recorded plat thereof, as recorded in Instrument No. 200212040136264, Genesee County Records; thence North 88 degrees 51 minutes 34 seconds West, along the East-West 1/4 line of said Section 28 and the South line of said Rivershyre No. 4 to the Southeast corner of the Southwest 1/4 of the Northeast 1/4 of said Section 28, a distance of 1,270.26

feet; thence North 01 degrees 40 minutes 12 East, along the West line of said Rivershyre No. 4, a distance of 264.13 feet; to the point of beginning; thence North 88 degrees 51 minutes 38 seconds West, a distance of 769.01 feet; thence North 01 degrees 56 minutes 18 seconds East, a distance of 297.23 feet; thence North 88 degrees 17 minutes 30 seconds West, a distance of 150.00 feet, to the Southeast corner of Out lot B of ATHERTON ESTATES, according to the recorded plat thereof, as recorded in Liber 25, Page 47, Genesee County Records; thence around said Out lot B the following three courses and distances, North 88 degrees 17 minutes 30 seconds West, 300.00 feet, North 01 degrees 55 minutes 51 seconds East, 60.00 feet, and South 88 degrees 17 minutes 30 seconds East, 300.00 feet to the Northeast corner of said Out lot B; thence North 01 degrees 55 minutes 51 seconds East, along the East line of said Atherton Estates, a distance of 156.00 feet; thence South 88 degrees 17 minutes 30 seconds East, a distance of 228.10 feet; thence South 54 degrees 12 minutes 56 seconds East, a distance of 110.98 feet; thence South 69 degrees 33 minutes 38 seconds East, a distance of 100.91 feet; thence South 88 degrees 51 minutes 38 seconds East, a distance of 365.00 feet; thence North 72 degrees 28 minutes 04 seconds East, a distance of 100.31 feet; thence North 49 degrees 39 minutes 25 seconds East, a distance of 101.98 feet to the Northwesterly corner of Lot 78 of said Rivershyre No. 4; thence along said Rivershyre No. 4 the following five courses and distances: South 29 degrees 01 minutes 59 seconds East, 170.00 feet; South 33 degrees 21 minutes 55 seconds East, 66.19 feet; South 29 degrees 01 minutes 59 seconds East, 152.73 feet; South 60 degrees 58 minutes 01 seconds West, 258.03 feet and South 17 degrees 56 minutes 09 seconds West, 54.73 feet to the point of beginning.

**2. Description of Sales of Lots from the Rivershyre No. 5**

In 2005, Zaher Investment Group LLC , as seller, entered into purchase agreements with Great Lakes Broker Funding LLC ("Great Lakes"), as purchaser for proposed Rivershyre No. 5 lot Nos. 97-104 and 107-116. Zaher Investment Group LLC executed and deposited deeds for those proposed lots in escrow with Lawyers Title Insurance Corporation ("Lawyers Title"); and Great Lakes deposited the respective

(b)(4) purchase prices for those proposed lots in escrow with Lawyers Title. The escrow account for the funds deposited by Great Lakes was maintained by Lawyers Title in Republic Bank, Account No. [REDACTED] Contemporaneously with the above-described transactions, Great Lakes resold the Lots to various individuals who obtained purchase money mortgages (the "Purchase Money Mortgages").

### 3. Description of the Lawsuits

There are currently pending the following two state court lawsuits ("Lawsuits") in which claims have been asserted against Lawyers Title Insurance Corporation ("Lawyers Title") by Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB (hereinafter referred to as "FDIC"), Fifth Third Bank and Fifth Third Mortgage-MI LLC (hereinafter referred collectively as "Fifth Third"), and Mercantile Bank Mortgage Co. LLC (hereinafter referred to as "Mercantile") (hereinafter, FDIC, Fifth Third and Mercantile are collectively referred to as "Lenders") which provided the Purchase Money Mortgages. The FDIC Lawsuit, identified below, also asserts claims against Lawyers Title in connection with a purchase money mortgage given to Darryl Bocage for the purchase of a lot in Rivershyre No. 4, Lot 27 ("Bocage Loan").

First, there is the action in Genesee County, Michigan Circuit Court titled *Federal Deposit Insurance Corporation v. Great Lakes, et al*, Case No. 06-83931-CZ (the "FDIC Lawsuit"). That action alleges various theories of recovery against Lawyers Title with respect to the closing of lot sales, purchase money mortgage loans and/or insuring title for lots located in Rivershyre No. 5 and elsewhere. IndyMac Bank ("IndyMac"), funded certain purchase money mortgage loans to Ronald M. Falconer, Samuel Willis, Jonathan & Patricia Butcher, Adam Willibey and Robert Field for the purchase from Great Lakes

of Rivershyre No. 5 lot Nos. 98, 103, 109, 112, and 114, respectively. IndyMac also funded the Bocage Loan.

After IndyMac commenced this lawsuit, the FDIC seized IndyMac. The FDIC presently asserts the claims as receiver for IndyMac Federal Bank, which was created after the IndyMac seizure.

Second, there is the action in Genesee County, Michigan Circuit Court titled *Lawyers Title v. Kenneth Deboer, et al*, Case No. 06-84682 (the "Lawyers Title Lawsuit"). In the Lawyers Title Lawsuit, Lawyers Title sought to obtain the cooperation of the parties, which held an interest in the Rivershyre No. 5 lots, in completing the platting of the Rivershyre No.5 subdivision pursuant to state law. Lawyers Title alternatively sought the return of certain monies paid out of the escrow account to or for Zaher Investment Group Inc, pending the platting of Rivershyre No. 5.

In the Lawyers Title Lawsuit, Mercantile asserted a counter claim with various theories of recovery against Lawyers Title for the closing of and/or insuring title to certain Rivershyre No. 5 lots. Mercantile provided purchase money mortgage loans to Kenneth DeBoer, Cheryl & Kevin Murray (2 loans), Tiffany Baker, Gregory Sims, Antonio Harris and Daryl Newman for the purchase of Rivershyre No. 5 lot Nos. 97, 99, 100, 104, 107, 110, 111, respectively.

Fifth Third also asserted a counter claim in the Lawyers Title Lawsuit with various theories of recovery against Lawyers Title for the closing of and/or insuring title to certain Rivershyre No. 5 lots. Fifth Third provided purchase money mortgage loans to Jon Etheridge, Kelly McCrillis, Cynthia Flowers, Adam Willibey, and Kerry Williams for the purchase of Rivershyre No. 5 lot Nos. 101, 102, 113, 115 and 116, respectively.

The purchase money mortgage loans identified above are collectively referred to in this Agreement as "the Loans."

Lawyers Title has denied and vigorously defended all of the claims asserted against it in the state court Lawsuits.

Summary disposition in favor of Fifth Third against Lawyers Title was granted in this matter and Lawyers Title filed an application for leave to appeal in the Michigan Court of Appeals, docket no. 297102.

Lawyers Title, FDIC, Fifth Third, and Mercantile also contemplated claims against Zaher Investment Group, Inc., Raji J. Zaher and Woodfield Developments Inc (sometimes collectively referred to as the "Zaher Entities") arising out of the above-described transaction.

In addition to the two state court Lawsuits, there is a forfeiture action in the United States District Court for the Eastern District of Michigan titled *United States of America v. Seven Hundred Sixteen Thousand Five Hundred Two Dollars and Forty Four cents in United States Currency (\$716,502.44)*, Case No. 08-11475 (the "Forfeiture"). The United States of America claims, pursuant to federal civil forfeiture statutes, the \$716,502.44, which the FBI seized from Lawyers Title's escrow account described above (hereinafter referred to as "Escrow Funds"). Lawyers Title filed an answer in the Forfeiture. IndyMac (now FDIC), Fifth Third, and Mercantile filed petitions of remission pursuant to the forfeiture statutes for recovery of the Escrow Funds in the event that the United States prevails in the Forfeiture. None of the Zaher Entities is involved or has an interest in the Forfeiture; none of the Zaher Entities has made or has any claims in

the Forfeiture; and none of the Zaher Entities has asked any party to represent any of its interests in the Forfeiture.

#### **4. The Settlement**

The parties have engaged in vigorously contested litigation for years, including the production of thousands of documents, numerous sets of interrogatories, depositions, motions, and briefs. In addition, counsel for the parties have engaged in extensive arms-length settlement negotiations, including Court ordered facilitation, which resulted in this Agreement.

#### **B. Agreement**

The parties, in order to avoid the expense, inconvenience, and uncertainties of further litigation, and without the admission of liability on the part of any party, the same being expressly denied, desire to settle and resolve the controversies between them, as follows.

##### **1. Payment by Lawyers Title**

In return for full settlement of all claims against Lawyers Title arising from or relating to the Lawsuits, the Forfeiture, the Rivershyre No. 5 lots and escrow money, Lawyers Title agrees to the following:

- (A) Pay \$250,000 to FDIC within thirty (30) days of the execution of this Agreement, including the mutual releases contained in paragraph 4 hereof; and
- (B) Pay \$200,000 to Fifth Third, through Fifth Third Mortgage-MI LLC, within thirty (30) days of the execution of this Agreement, including the mutual releases contained in paragraph 4 hereof;

**2. Consent Judgment in Forfeiture Action**

Lawyers Title, through counsel, shall enter into a consent judgment in the Forfeiture, in a form attached as Exhibit A, relinquishing its claim to the Escrow Funds and consenting to the Escrow Funds being forfeited to the United States. Lawyers Title further agrees to reasonably cooperate with Lenders as to the Forfeiture, and the distribution of the Escrow Funds, including, but not limited to, executing and delivering documents requested by the Asset Forfeiture and Money Laundering Section, Department of Justice, or any other agency of the United States, and performing any additional acts that are reasonably necessary or advisable to facilitate the Escrow Funds being distributed to the Lenders.

The Zaher Entities disclaim any and all interest in the Escrow Funds and the Forfeiture and shall not be required to take any action or execute any documents related to the Escrow Funds or the Forfeiture.

**3. Acceptance of Lots "As Is"**

FDIC, Mercantile, and Fifth Third agree, as a part of this Agreement, that their interests in the Lots are accepted "as is." No party to this Agreement shall have any obligation to plat the Lots or otherwise render the Lots marketable. Further, no party to this Agreement shall have any obligation to quiet or clear title to the Lots. Finally, no party to this Agreement shall have any claim against any other party to this Agreement with respect to the condition, title, marketability of title, or other characteristic or feature of any of the Lots or the parcel of land described in Paragraph 1 of this Agreement, all of which claims and potential claims are hereby released and waived.

#### **4. Mutual Releases**

For valuable consideration, the sufficiency of which is hereby acknowledged, FDIC, Mercantile, Fifth Third, the Zaher Entities, and Lawyers Title (the "Released Parties") their successors in interest, representatives, receivers, members, partners, attorneys, agents, employees, officers, directors, shareholders, predecessors, parent companies, subsidiaries, affiliates, and assigns, **MUTUALLY RELEASE, ACQUIT, AND FOREVER DISCHARGE** each other and their past and present parent companies, subsidiaries, affiliates, predecessors, successors, reinsurers, receivers, members, partners, shareholders, officers, directors, employees, agents, attorneys, and assigns from any and all claims, rights, demands, debts, liabilities, damages, punitive damages, exemplary damages, costs, interest, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature whatsoever arising out of or relating to (1) the Loans; (2) Closing Protection Letters ("CPLs") as they relate to the Loans; (3) title commitments or policies as they relate to the Loans; (4) the Escrow Funds; (5) the Lots; (6) the sales, transfers and conveyances of the Lots and attempted sales, transfers and conveyances of the Lots; (7) any and all claims asserted or which could have been asserted by the Released Parties in the Lawsuits that arise out of or relate to Paragraph B.4.(1)-(6) or the facts or claims alleged in the Lawsuits or the Forfeiture, including, but not limited to, claims in contract or in tort, under statutory or common law, for actual, multiple, exemplary or punitive damages, interest, attorney fees, or costs; and (8) any act, transaction, or occurrence prior to the date of this Agreement pertaining to the subject matter of this Agreement. It is expressly understood that nothing herein shall constitute a release of claims that are unrelated to the subject matter of this

Agreement. The parties acknowledge that the subject matter of this Agreement includes the claims made, claims that could have been made, and the facts alleged in the Lawsuits. It is further expressly understood that nothing herein shall constitute a release of claims that the Released Parties have or may have against any other party to the Lawsuits or person who is not specifically released in this Agreement.

#### **5. Third-Party Borrower Claims**

Lenders shall make a good faith effort to secure assignments or releases of any claims held by any borrower of the Loans who is not a party to this Agreement ("Third Party Borrower") against Lawyers Title, its past and present parent companies, subsidiaries, affiliates, predecessors, successors, reinsurers, receivers, members, partners, shareholders, officers, directors, employees, agents, attorneys, and assigns from any and all claims, rights, demands, debts, liabilities, damages, punitive damages, exemplary damages, costs, interest, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature relating to the Loans and Lots. The release granted by Lenders in this Agreement shall expressly include these assigned claims, if any, whether the assignments are obtained before or after the execution of this Agreement.

Further, with respect to Mercantile, if its borrower, Daryl Newman, obtains a final judgment, after trial or summary disposition hearing and exhaustion of all appeals, against Lawyers Title, relating to lot 111 of Rivershyre No. 5, Mercantile shall assign to Lawyers Title the amount, if any, then remaining due and owing from Newman to Mercantile pursuant to the Judgment entered in Case No. 09-00822 CK in the Wayne County Circuit Court. In the event Mercantile compromises the Judgment amount in

~~Case No. 09-00822 CK with Mr. Newman, it shall obtain a release from Mr. Newman of~~

any claim he may have against Lawyers Title, its past and present parent companies, subsidiaries, affiliates, predecessors, successors, reinsurers, receivers, members, partners, shareholders, officers, directors, employees, agents, attorneys, and assigns from any and all claims, rights, demands, debts, liabilities, damages, punitive damages, exemplary damages, , costs, interest, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature pertaining to lot 111.

**6. Ownership of Claims**

Each of the Released Parties represents and warrants that it owns and has not sold, assigned, conveyed, or otherwise transferred any rights, benefits, or claims released in paragraph 4 above including, without limitation, to any purchaser or insurer of the Loans.

**7. Dismissal of the Lawsuits**

Upon the full execution and delivery of this Agreement, FDIC, Fifth Third, Mercantile, the Zaher Entities, and Lawyers Title shall dismiss the Lawsuits with prejudice , each party bearing it own costs and attorneys' fees All parties bear their own expense and waive all claims, including claims for expert fees. Lawyers Title, through counsel, shall also voluntarily dismiss with prejudice the appeals entitled: *The Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB v. Lawyers Title Insurance Corporation*, Michigan Court of Appeals Case No. 296970; and *Lawyers Title Insurance Corporation v. DeBoer, et al.*, Michigan Court of Appeals Case No. 297102.

**8. Careful Review and Understanding of Agreement**

The Released Parties represent to each other that they have carefully read this Agreement and understand its terms and conditions, and that they have had ample opportunity to consult with legal counsel of their choice and have not relied on any representations or statements of each other or each other's counsel.

**9. Binding Effect**

It is understood and agreed that this Agreement shall be binding upon and inure to the benefit of the Released Parties, their successors, predecessors, affiliates, legal representatives, attorneys, agents, and assigns.

**10. No Admission**

It is fully understood by the Released Parties that this Agreement constitutes a settlement of disputed claims in order to avoid further litigation and expense, and that nothing herein shall constitute or imply an admission of liability of any kind or character by the Released Parties, which such liability is expressly denied.

**11. Severability**

If any portion or portions of this Agreement is held by a court of competent jurisdiction to conflict with any federal, state, or local law, and as a result, such portion or portions are declared to be invalid and of no force and effect in such jurisdiction, all remaining provisions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions had not been included herein.

**12. Choice of Law**

The Released Parties agree that this Agreement shall be construed and enforced under the laws of the State of Michigan.

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### **13. No Other Agreements**

It is understood and agreed that this Agreement contains the entire agreement between the Released Parties and supersedes any and all prior agreements, arrangements, or understandings between them. This Agreement cannot be changed or terminated orally. All representations and promises made by any party to another, whether in writing or orally, are understood by the Released Parties to be merged into this Agreement. Further, this Agreement and the Mutual Releases contained herein are not contingent on any receipt and/or distribution of the Escrow Funds, by and between the Lenders. Also, this Agreement does not alter or change the terms of the settlement agreement reached between Mercantile and Lawyers Title wherein the claims asserted in *Mercantile Bank Mortgage Co., LLC v. Kurt W. Heintz, et al.*, Genesee County, Michigan Circuit Court, Case No. 06-83393-CZ, were previously settled.

### **14. Execution**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of the Agreement or in enforcing its provisions to produce or account for more than one such counterpart.

**IN WITNESS WHEREOF**, the Released Parties have executed this Agreement on the dates acknowledged below.

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Federal Bank, FSB

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FIFTH THIRD BANK

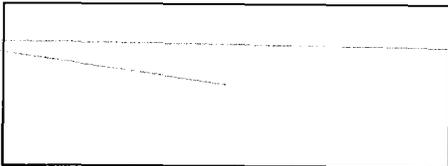
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FIFTH THIRD MORTGAGE-MI, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

MERCANTILE BANK MORTGAGE CO. LLC

(b)(6)



By: \_\_\_\_\_  
Its: <sup>(b)(6)</sup> *Senior Vice President*  
Date: *7/6/10*

RAJI J. ZAHER

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

ZAHER INVESTMENT GROUP, LLC

A Michigan limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Federal Bank, FSB

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FIFTH THIRD BANK

By: \_\_\_\_\_  
Its: *SVP & Asst. Gen. Counsel*  
Date: *7-2-2010*

FIFTH THIRD MORTGAGE-ML LLC

By: \_\_\_\_\_  
Its: *SVP & Asst. Gen. Counsel*  
Date: *7-2-2010*

MERCANTILE BANK MORTGAGE CO. LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

RAJI J. ZAHER

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

ZAHER INVESTMENT GROUP, LLC

A Michigan limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for IndyMac Federal  
Bank, FSB

(b)(6)

By:   
Its: Counsel  
Date: 7-29-2010

FIFTH THIRD BANK

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FIFTH THIRD MORTGAGE-MI, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

MERCANTILE BANK MORTGAGE CO. LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

RAJI J. ZAHER  
Date: \_\_\_\_\_

ZAHER INVESTMENT GROUP, LLC  
A Michigan limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Federal Bank, FSB

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FIFTH THIRD BANK

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

FIFTH THIRD MORTGAGE-MI, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

MERCANTILE BANK MORTGAGE CO. LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

(b)(6)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RAJI J. ZAHER (b)(6)  
Date: \_\_\_\_\_

ZAHER INVESTMENT GROUP, LLC  
A Michigan limited liability company

(b)(6)

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

(b)(6)

WOODFIELD DEVELOPMENTS, INC.

A Michigan Corporation

(b)(6)

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

Its: \_\_\_\_\_

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

LAWYERS TITLE INSURANCE  
CORPORATION

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

Its: \_\_\_\_\_

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

(b)(6)

WOODFIELD DEVELOPMENTS, INC.

A Michigan corporation

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

Its: \_\_\_\_\_

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

LAWYERS TITLE INSURANCE  
CORPORATION

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

Its: Senior Vice President

Date: July 12, 2010

(b)(6)

July 12, 2010

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made and entered into by and between The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B., (the "FDIC"), on the one hand and Reed Robertson, an individual, on the other hand. (The FDIC and Robertson are referred to collectively as the "Parties.")

- A. WHEREAS, the FDIC filed a Complaint against Robertson entitled *Federal Deposit Insurance Corporation v. Alliance Title Co., Inc. et al.* in United States District Court, Central District of California, Case No. cv09-2342 ("Civil Action").
- B. WHEREAS, Robertson denies all liability for the claims alleged in the Civil Action;
- C. WHEREAS, without admitting liability, the Parties desire to resolve the FDIC's claims, including, but not limited to, all issues raised or could have been raised in the Civil Action, and agree as follows:

**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND PROMISES AND AGREEMENTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:**

- 1. Payment to the FDIC. Payment of seventy thousand dollars (\$70,000) (the "Settlement Funds") shall be paid by or on behalf of Robertson to the FDIC as Receiver for IndyMac Bank, F.S.B.
  - a. The Settlement Funds shall be paid in four equal payments, as follows:
    - i. \$10,000 due on or before July 1, 2010;
    - ii. \$15,000 due on or before September 15, 2010;
    - iii. \$15,000 due on or before December 1, 2010; and
    - iv. \$30,000 due on or before February 15, 2011.

Each of the four payments shall be made by wiring the funds to "Mortgage Recovery Law Group Trust Account," Account Number:  Routing Number:  Reference: Reed Robertson Settlement.

(b)(4)

(b)(4)

- b. Robertson shall have a grace period of no more than five (5) days for each of the foregoing installment payments.
- 2. Concurrently with the signing and delivery of this Settlement Agreement, Robertson shall execute a Stipulation for Entry of Judgment (the "Stipulation") in the amount of One Hundred Fifty Thousand Dollars (\$150,000) attached hereto as Exhibit 1. The Stipulation for Entry of Judgment incorporates by reference the Judgment (Pursuant to Stipulation), attached to the Stipulation as Exhibit A (the

"Judgment"). Both the Stipulation and Judgment are incorporated by reference herein and their terms are made a part of this Settlement Agreement. The Stipulation and Judgment shall be held in trust by the FDIC's attorneys of record and shall not be filed unless Robertson breaches paragraph 1(a), above, and fails to timely cure said breach pursuant to paragraph 2(b) after receiving the FDIC's notice of default as provided in paragraph 2(a). The Judgment shall not be entered so long as Robertson performs under the terms of this Settlement Agreement with respect to making the payments required by paragraph 1(a), above. Entry of Judgment in accordance with the terms of the Stipulation, and enforcement of said Judgment, shall be the FDIC's sole recourse in the event of a default by Robertson in making the payments called for herein. The FDIC's attorneys of record shall return the original Stipulation (without the same having been filed with the Court) to Robertson's attorneys of record, c/o Jeffrey W. Allen, Esq., Van De Poel, Levy & Allen, LLP, 1600 South Main Plaza, Suite 325, Walnut Creek, California 94596, within five business days of the FDIC's receipt of the final payment required by paragraph 1(a), above.

a. In the event Robertson defaults by failing to make a timely payment to the FDIC as set forth in paragraph 1(a) above, the FDIC shall give written notice of the default and notice of its intent to enter the Judgment to Robertson's attorneys of record, c/o Jeffrey W. Allen, Esq., Van De Poel, Levy & Allen, LLP, 1600 South Main Plaza, Suite 325, Walnut Creek, California 94596, via mail and facsimile to [redacted] attention Jeffrey W. Allen, Esq. The FDIC shall also provide written notice of default and notice of intent to enter judgment directly to Reed Robertson via facsimile at [redacted]

(b)(4),(b)  
(6)

(b)(4),(b)  
(6)

b. Robertson shall have five (5) business days from receipt of the notice of default to cure the default. If Robertson fails to cure the default within five (5) business days, the FDIC shall retain all consideration it received, and it may, in its sole discretion, seek to enter the Judgment in an amount equal to One Hundred Fifty Thousand Dollars (\$150,000), less any amount received by the FDIC pursuant to paragraph 1(a) above, and enforce said Judgment against Robertson. Judgment may be entered by *ex parte* application (without testimony or trial and Robertson further waives the right to a court and/or jury trial) with notice given to Robertson and Jeffrey W. Allen, Esq. by facsimile and telephone at the facsimile and phone numbers listed above and in accordance with the California Rules of Court

3. Within five (5) business days of the FDIC's counsel's receipt of the fully executed Settlement Agreement and Stipulation for Entry of Judgment, the FDIC's counsel shall file a request for dismissal of the entire Action with prejudice.

4. Except as set forth herein, the Parties agree to waive costs and to bear their respective attorney's fees incurred in connection with the Civil Action.
5. Release by the FDIC. The FDIC, as the Releasing Party, hereby releases and forever discharges Robertson from any and all claims, and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorney's fees and costs, past, present and future, arising out of the claims set forth in the Civil Action.
6. Release by Robertson. Robertson hereby releases and forever discharges the FDIC and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns, and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorney's fees and costs, past, present and future, arising out of the claims set forth in the Civil Action.
7. Release of Unknown Claims. It is understood and agreed that this is a full, complete and final general release of any and all claims described as aforesaid, and the Releasing Parties agree that it shall apply to all unknown, unanticipated, unsuspected and undisclosed claims, demands, liabilities, actions or causes of action, as well as those which are now known, anticipated, suspected or disclosed, as described in Paragraphs 4 and 5 above. The Releasing Parties are aware of the contents of Section 1542 of the Civil Code of the State of California, and understand and agree that this section and the benefits thereof are hereby expressly waived. The provisions of Civil Code Section 1542 which reads as follows:

**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.**

8. Express Reservation of Rights by the FDIC. Notwithstanding any other provision, by this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, any action taken by any other federal agency.

9. All Parties to this Agreement are advised and acknowledge that they have the right, prior to executing this document, to consult with attorneys of their choice as to this settlement, including the release of claims released herein, and as to the subject matter and other terms of this Agreement, including independent attorneys other than the attorneys for the Parties herein. The Parties hereto agree that they have each read and understand this Agreement, that they have had sufficient opportunity to consult with attorneys of their choice, including independent attorneys, prior to executing this Agreement and that they enter into this Agreement voluntarily with full knowledge of its significance as a final and binding settlement release of the claims described herein.
10. This Agreement shall not be construed as an admission by any party as to the truth or merit of any contention made regarding Robertson's liability for the FDIC's damages as stated and alleged in the Civil Action, and is executed solely to avoid the cost of litigation and as a compromise of disputed liabilities.
11. This Agreement contains the entire agreement between the Parties hereto and constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. The Parties have carefully read this Agreement, have been advised of its meaning and consequences by their respective attorneys, and sign the same of their own free will and without fraud, duress, or undue influence.
12. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of California.
13. The Parties agree to submit to the jurisdiction and venue of the United States District Court for the Central District of California, Western Division, to resolve any disputes regarding this Agreement.
14. This Agreement shall be binding upon the parties and upon their respective representatives, attorneys, successors, and assignees, and shall inure to the benefit of all Parties, as well as to their administrators, representatives, executors, successors and assignees. The Parties warrant that the individuals who shall execute this Agreement on their behalf are duly authorized to do so.
15. This Agreement was jointly drafted by the parties and the language of all parts of this Agreement shall in all cases be construed as a whole according to their meaning and not strictly for or against any of the parties. This Agreement may be

executed in counterparts, each of which shall be deemed an original, but all of which the other shall constitute the same instrument.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be signed as of the date set forth by their signature.

Dated: July \_\_\_\_\_, 2010

By: \_\_\_\_\_  
REED ROBERTSON

(b)(6)

Dated: July 19, 2010

By: \_\_\_\_\_  
CK DUNCAN

Authorized on behalf of The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B.

**APPROVED AS TO FORM:**

MORTGAGE RECOVERY GROUP LAW GROUP

(b)(6)

Dated: July 23, 2010

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

MICHAEL H. DELBICK, attorney  
for Plaintiff The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B.

VAN DE POEL, LEVY & ALLEN, LLP

Dated: July \_\_\_\_\_, 2010

By: \_\_\_\_\_  
JEFFREY W. ALLEN, attorney  
for Defendant Reed Robertson

(b)(4)



executed in counterparts, each of which shall be deemed an original, but all of which the other shall constitute the same instrument.

(b)(6)

IN WITNESS WHEREOF, the undersigned have caused this document to be signed as of the date set forth by their signature.

*RM*  
Dated: August 15<sup>th</sup>, 2010

REED ROBERTSON

(b)(6)

Dated: July 19, 2010

By:

JACK DUNCAN  
Authorized on behalf of The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B.

APPROVED AS TO FORM:

MORTGAGE RECOVERY GROUP LAW GROUP

(b)(6)

Dated: July 23, 2010

By:

MICHAEL H. DELBICK, attorney  
for Plaintiff The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B.

VAN DE POEL, LEVY & ALLEN, LLP

Dated: August 10, 2010

By:   
JEFFREY W. ALLEN, attorney  
for Defendant Reed Robertson

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made and entered into by and between The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B., (the "FDIC"), on the one hand and Alliance Title Company, Inc. ("Alliance") on the other hand. (The FDIC and Alliance are referred to collectively as the "Parties.")

- A. WHEREAS, the FDIC filed a Complaint against Alliance entitled *Federal Deposit Insurance Corporation v. Alliance Title Co., Inc. et al.* in United States District Court, Central District of California, Case No. cv09-2342 ("Civil Action").
- B. WHEREAS, Alliance denies all liability for the claims alleged in the Civil Action;
- C. WHEREAS, without admitting liability, the Parties desire to resolve the FDIC's claims, including, but not limited to, all issues raised or could have been raised in the Civil Action, and agree as follows:

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND PROMISES AND AGREEMENTS CONTAINED HEREIN,

IT IS AGREED AS FOLLOWS:

- 1. Within twenty (20) days after approval by the bankruptcy court and the execution of this Agreement, Alliance shall pay the sum of two hundred fifteen thousand dollars (\$215,000.00) by check made payable to the FDIC, in full settlement and compromise of the Civil Action, and in release and discharge of any and all claims and causes of action arising out of the six loans at issue in the Civil Action. This settlement is expressly conditioned on approval by the bankruptcy court. Alliance shall submit this matter to the bankruptcy court for approval no later than 30 days after the execution of this Agreement, and shall keep the FDIC apprised of the status of all court proceedings relating to the approval of this Agreement.
- 2. Except as set forth herein, the Parties agree to waive costs and to bear their respective attorney's fees incurred in connection with the Civil Action.
- 3. Within five (5) days after receipt of payment, the FDIC shall file a Request for Dismissal with Prejudice of the Complaint against Alliance.
- 4. Release by the FDIC. The FDIC, as the Releasing Party, hereby releases and forever discharges Alliance and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns, and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity, or

otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorney's fees and costs, past, present and future, arising out of or in any way related to the claims set forth or would have been made in the Civil Action.

5. Release of Unknown Claims. It is understood and agreed that this is a full, complete and final general release of any and all claims described as aforesaid, and the Releasing Parties agree that it shall apply to all unknown, unanticipated, unsuspected and undisclosed claims, demands, liabilities, actions or causes of action, as well as those which are now known, anticipated, suspected or disclosed, as described in Paragraphs 4 and 5 above. The Releasing Parties are aware of the contents of Section 1542 of the Civil Code of the State of California, and understand and agree that this section and the benefits thereof are hereby expressly waived. The provisions of Civil Code Section 1542 which reads as follows:

**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.**

6. All Parties to this Agreement are advised and acknowledge that they have the right, prior to executing this document, to consult with attorneys of their choice as to this settlement, including the release of claims released herein, and as to the subject matter and other terms of this Agreement, including independent attorneys other than the attorneys for the Parties herein. The Parties hereto agree that they have each read and understand this Agreement, that they have had sufficient opportunity to consult with attorneys of their choice, including independent attorneys, prior to executing this Agreement and that they enter into this Agreement voluntarily with full knowledge of its significance as a final and binding settlement release of the claims described herein.
7. This Agreement shall not be construed as an admission by any party as to the truth or merit of any contention made regarding Alliance's liability for the FDIC's damages as stated and alleged in the Civil Action, and is executed solely to avoid the cost of litigation and as a compromise of disputed liabilities.
8. The FDIC represents and warrants that it is the owner of the claims at issue as Receiver for IndyMac Bank, F.S.B., and has not assigned or otherwise transferred any interest in any claims which are the subject matter hereof.
9. This Agreement contains the entire agreement between the Parties hereto and constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. This Agreement is executed without reliance upon any

promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. The Parties have carefully read this Agreement, have been advised of its meaning and consequences by their respective attorneys, and sign the same of their own free will and without fraud, duress, or undue influence.

10. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of California.
11. The Parties agree to submit to the jurisdiction and venue of the United States District Court for the Central District of California, Western Division, to resolve any disputes regarding this Agreement. In the event that either party is required to bring a legal action to enforce any provisions of this Settlement Agreement and Release, the prevailing party shall be entitled to his reasonable attorney's fees and costs in pursuing such action.
12. This Agreement shall be binding upon the parties and upon their respective representatives, attorneys, successors, and assignees, and shall inure to the benefit of all Parties, as well as to their administrators, representatives, executors, successors and assignees. The Parties warrant that the individuals who shall execute this Agreement on their behalf are dully authorized to do so.
13. This Agreement was jointly drafted by the parties and the language of all parts of this Agreement shall in all cases be construed as a whole according to their meaning and not strictly for or against any of the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which the other shall constitute the same instrument.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be signed as of the date set forth by their signature.

(b)(6)

Dated: July 22, 2010

By:

[Redacted Signature Box]

JOCK S. DUNCAN  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for IndyMac  
Bank, F.S.B.

APPROVED AS TO FORM:

MORTGAGE RECOVERY GROUP LAW GROUP

Dated: July 26, 2010

By:

[Redacted Signature]

(b)(6)

MICHAEL H. DELBICK, attorney  
for Plaintiff The Federal Deposit Insurance  
Corporation, as receiver for IndyMac Bank, F.S.B.

HAYES SCOTT BONINO ELLINGSON  
& MCLAY, LLP

(b)(6)

Dated: <sup>August</sup> July 26, 2010

By:

[Redacted Signature]

STEPHEN A. SCOTT, attorney  
for Defendant ALLIANCE TITLE COMPANY,  
INC.

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made and entered into by and between The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B., (the "FDIC"), on the one hand and Alliance Title Company, Inc. ("Alliance") on the other hand. (The FDIC and Alliance are referred to collectively as the "Parties.")

- A. WHEREAS, the FDIC filed a Complaint against Alliance entitled *Federal Deposit Insurance Corporation v. Alliance Title Co., Inc. et al.* in United States District Court, Central District of California, Case No. cv09-2342 ("Civil Action").
- B. WHEREAS, Alliance denies all liability for the claims alleged in the Civil Action;
- C. WHEREAS, without admitting liability, the Parties desire to resolve the FDIC's claims, including, but not limited to, all issues raised or could have been raised in the Civil Action, and agree as follows:

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND PROMISES AND AGREEMENTS CONTAINED HEREIN,

IT IS AGREED AS FOLLOWS:

- 1. Within twenty (20) days after approval by the bankruptcy court and the execution of this Agreement, Alliance shall pay the sum of two hundred fifteen thousand dollars (\$215,000.00) by check made payable to the FDIC, in full settlement and compromise of the Civil Action, and in release and discharge of any and all claims and causes of action arising out of the six loans at issue in the Civil Action. This settlement is expressly conditioned on approval by the bankruptcy court. Alliance shall submit this matter to the bankruptcy court for approval no later than 30 days after the execution of this Agreement, and shall keep the FDIC apprised of the status of all court proceedings relating to the approval of this Agreement.
- 2. Except as set forth herein, the Parties agree to waive costs and to bear their respective attorney's fees incurred in connection with the Civil Action.
- 3. Within five (5) days after receipt of payment, the FDIC shall file a Request for Dismissal with Prejudice of the Complaint against Alliance.
- 4. Release by the FDIC. The FDIC, as the Releasing Party, hereby releases and forever discharges Alliance and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns, and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity, or

otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorney's fees and costs, past, present and future, arising out of or in any way related to the claims set forth or would have been made in the Civil Action.

5. Release of Unknown Claims. It is understood and agreed that this is a full, complete and final general release of any and all claims described as aforesaid, and the Releasing Parties agree that it shall apply to all unknown, unanticipated, unsuspected and undisclosed claims, demands, liabilities, actions or causes of action, as well as those which are now known, anticipated, suspected or disclosed, as described in Paragraphs 4 and 5 above. The Releasing Parties are aware of the contents of Section 1542 of the Civil Code of the State of California, and understand and agree that this section and the benefits thereof are hereby expressly waived. The provisions of Civil Code Section 1542 which reads as follows:

**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.**

6. All Parties to this Agreement are advised and acknowledge that they have the right, prior to executing this document, to consult with attorneys of their choice as to this settlement, including the release of claims released herein, and as to the subject matter and other terms of this Agreement, including independent attorneys other than the attorneys for the Parties herein. The Parties hereto agree that they have each read and understand this Agreement, that they have had sufficient opportunity to consult with attorneys of their choice, including independent attorneys, prior to executing this Agreement and that they enter into this Agreement voluntarily with full knowledge of its significance as a final and binding settlement release of the claims described herein.
7. This Agreement shall not be construed as an admission by any party as to the truth or merit of any contention made regarding Alliance's liability for the FDIC's damages as stated and alleged in the Civil Action, and is executed solely to avoid the cost of litigation and as a compromise of disputed liabilities.
8. The FDIC represents and warrants that it is the owner of the claims at issue as Receiver for IndyMac Bank, F.S.B., and has not assigned or otherwise transferred any interest in any claims which are the subject matter hereof.
9. This Agreement contains the entire agreement between the Parties hereto and constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. This Agreement is executed without reliance upon any

promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. The Parties have carefully read this Agreement, have been advised of its meaning and consequences by their respective attorneys, and sign the same of their own free will and without fraud, duress, or undue influence.

10. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of California.
11. The Parties agree to submit to the jurisdiction and venue of the United States District Court for the Central District of California, Western Division, to resolve any disputes regarding this Agreement. In the event that either party is required to bring a legal action to enforce any provisions of this Settlement Agreement and Release, the prevailing party shall be entitled to his reasonable attorney's fees and costs in pursuing such action.
12. This Agreement shall be binding upon the parties and upon their respective representatives, attorneys, successors, and assignees, and shall inure to the benefit of all Parties, as well as to their administrators, representatives, executors, successors and assignees. The Parties warrant that the individuals who shall execute this Agreement on their behalf are dully authorized to do so.
13. This Agreement was jointly drafted by the parties and the language of all parts of this Agreement shall in all cases be construed as a whole according to their meaning and not strictly for or against any of the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which the other shall constitute the same instrument.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be signed as of the date set forth by their signature.

(b)(6)

Dated: July 22, 2010

By:

[Redacted Signature Box]

JOCK S. DUNCAN  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for IndyMac  
Bank, F.S.B.

APPROVED AS TO FORM:

MORTGAGE RECOVERY GROUP LAW GROUP

Dated: July 26, 2010

By:

[Redacted Signature]

(b)(6)

MICHAEL H. DELBICK, attorney  
for Plaintiff The Federal Deposit Insurance  
Corporation, as receiver for IndyMac Bank, F.S.B.

HAYES SCOTT BONINO ELLINGSON  
& MCLAY, LLP

(b)(6)

Dated: <sup>August</sup> July 26, 2010

By:

[Redacted Signature]

STEPHEN A. SCOTT, attorney  
for Defendant ALLIANCE TITLE COMPANY,  
INC.

LIMS Nr

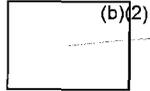


received  
10/2/10

ENTERED

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made and entered into by and between The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B., (the "FDIC"), on the one hand and Financial Title Company, Inc. ("Financial") on the other hand. The FDIC and Financial are referred to collectively as the "Parties."



- A. WHEREAS, the FDIC filed a Complaint against Financial entitled *Federal Deposit Insurance Corporation as Receiver of IndyMac Bank, F.S.B. v. Financial Title Co.* in United States District Court, Central District of California, Case No. cv09-3128 ("Civil Action").
- B. WHEREAS, Financial denies all liability for the claims alleged in the Civil Action;
- C. WHEREAS, without admitting liability, the Parties desire to resolve the FDIC's claims, including, but not limited to, all issues raised in the Civil Action, and agree as follows:

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND PROMISES AND AGREEMENTS CONTAINED HEREIN,

IT IS AGREED AS FOLLOWS:

- 1. Within twenty (20) days after approval by the bankruptcy court and the execution of this Agreement, Financial shall pay the sum of six hundred eighty one thousand two-hundred sixty five dollars (\$681,265.00) by check made payable to the FDIC, in full settlement and compromise of the Civil Action, and in release and discharge of any and all claims and causes of action arising out of the ten loans at issue in the Civil Action. This settlement is expressly conditioned on approval by the bankruptcy court. Financial shall submit this matter to the bankruptcy court for approval no later than 30 days after the execution of this Agreement, and shall keep the FDIC apprised of the status of all court proceedings relating to the approval of this Agreement.
- 2. Except as set forth herein, the Parties agree to waive costs and to bear their respective attorney's fees incurred in connection with the Civil Action.
- 3. Within five (5) days after receipt of payment, the FDIC shall file a Request for Dismissal with Prejudice of the Complaint against Financial.
- 4. Release by the FDIC. The FDIC, as the Releasing Party, hereby releases and forever discharges Financial and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns, and affiliates, of and from any

and all claims, and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorney's fees and costs, past, present and future, arising out of or in any way related to the claims set forth or would have been made in the Civil Action. The FDIC's pending claim against Financial arising out of the Sadiki escrow no. [redacted] is expressly excluded from this release.

(b)(4)

5. Release of Unknown Claims. It is understood and agreed that this is a full, complete and final general release of any and all claims described as aforesaid, and the Releasing Parties agree that it shall apply to all unknown, unanticipated, unsuspected and undisclosed claims, demands, liabilities, actions or causes of action, as well as those which are now known, anticipated, suspected or disclosed, as described in Paragraphs 4 and 5 above. The Releasing Parties are aware of the contents of Section 1542 of the Civil Code of the State of California, and understand and agree that this section and the benefits thereof are hereby expressly waived. The provisions of Civil Code Section 1542 which reads as follows:

**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.**

6. All Parties to this Agreement are advised and acknowledge that they have the right, prior to executing this document, to consult with attorneys of their choice as to this settlement, including the release of claims released herein, and as to the subject matter and other terms of this Agreement, including independent attorneys other than the attorneys for the Parties herein. The Parties hereto agree that they have each read and understand this Agreement, that they have had sufficient opportunity to consult with attorneys of their choice, including independent attorneys, prior to executing this Agreement and that they enter into this Agreement voluntarily with full knowledge of its significance as a final and binding settlement release of the claims described herein.
7. This Agreement shall not be construed as an admission by any party as to the truth or merit of any contention made regarding Financial's liability for the FDIC's damages as stated and alleged in the Civil Action, and is executed solely to avoid the cost of litigation and as a compromise of disputed liabilities.
8. The FDIC represents and warrants that it is the owner of the claims at issue as Receiver for IndyMac, F.S.B., and has not assigned or otherwise transferred any interest in any claims which are the subject matter hereof.

9. This Agreement contains the entire agreement between the Parties hereto and constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. The Parties have carefully read this Agreement, have been advised of its meaning and consequences by their respective attorneys, and sign the same of their own free will and without fraud, duress, or undue influence.
10. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of California.
11. The Parties agree to submit to the jurisdiction and venue of the United States District Court for the Central District of California, Western Division, to resolve any disputes regarding this Agreement. In the event that either party is required to bring a legal action to enforce any provisions of this Settlement Agreement and Release, the prevailing party shall be entitled to his reasonable attorney's fees and costs in pursuing such action.
12. This Agreement shall be binding upon the parties and upon their respective representatives, attorneys, successors, and assignees, and shall inure to the benefit of all Parties, as well as to their administrators, representatives, executors, successors and assignees. The Parties warrant that the individuals who shall execute this Agreement on their behalf are dully authorized to do so.
13. This Agreement was jointly drafted by the parties and the language of all parts of this Agreement shall in all cases be construed as a whole according to their meaning and not strictly for or against any of the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which the other shall constitute the same instrument.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be signed as of the date set forth by their signature.

(b)(6)

Dated: July 22, 2010

By:

[Redacted Signature Box]

**JOCK DUNCAN**  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for IndyMac  
Bank, F.S.B.

**APPROVED AS TO FORM:**

**MORTGAGE RECOVERY GROUP LAW GROUP**

(b)(6)

Dated: July 26, 2010

By

  
MICHAEL H. DELBICK, attorney  
for Plaintiff The Federal Deposit Insurance  
Corporation, as receiver for IndyMac Bank, F.S.B.

**HAYES SCOTT BONINO ELLINGSON  
& MCLAY, LLP**

(b)(6)

Dated: <sup>August</sup> July 26, 2010

By

  
STEPHEN A. SCOTT, attorney  
for Defendant FINANCIAL TITLE COMPANY,  
INC.

(b)(2)

received  
8/23/10

LIMS Mr [redacted]  
DIF/Mortgage Fraud

ENTERED  
8/26/10

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

("Settlement Agreement") is entered into and made effective as of the 18<sup>th</sup> day of August, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC") and M&T Bank, as successor by merger to M&T Mortgage Corporation ("M&T"). The FDIC and M&T may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

(b)(2)



**RECITALS**

1.1 M&T sold and/or delivered mortgage loans to IndyMac Bank, FSB, pursuant to one or more loan purchase agreements (collectively, the "Purchase Agreement"). A dispute has arisen between the Parties with respect to outstanding demands for repurchase and/or indemnity. Specifically, IndyMac Bank, FSB made demands to M&T for repurchase and/or indemnification based upon a finding of a breach of the representations and warranties as set forth in the Purchase Agreement.

1.2 Without admitting liability, the Parties desire to and have agreed to settle all repurchase and indemnification claims by IndyMac Bank, FSB relating to the mortgage loans which were sold directly by M&T to IndyMac Bank, FSB (collectively, the "LOANS") upon the terms and conditions hereinafter set forth.

**AGREEMENT**

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

1.3 **Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

1.4 **Payment of the Settlement Funds.** By no later than August 20, 2010, M&T shall pay the total sum of Eight Hundred Fifty Thousand Dollars (\$850,000.00) (the "Settlement Funds"). Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number: [redacted] Routing Number: [redacted] Reference: M&T Settlement.

(b)(4)

(b)(4)

**RELEASE**

1.5 **Unknown Claims.** Each Party acknowledges that this Settlement

Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against the other Party arising from the obligation to repurchase and/or indemnify for losses associated with the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule with respect to the LOANS.

1.6 Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

"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."

1.7 Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to the repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

1.8 Each Party hereby fully, finally, and forever releases and discharges the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes

of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS.

**1.9** Notwithstanding any other provision in this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any claims against M&T unrelated to the LOANS arising out of existing or failed financial institutions other than IndyMac Bank, FSB.

**1.10 Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

**1.11 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

**1.12 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

**1.13 Governing Law.** The Parties agree to submit to the State or Federal Courts located in the County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.14 Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing Party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.15 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**1.16 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**1.17 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each Party has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.18 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**1.19 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.20 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.21 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.22 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created

by this Settlement Agreement.

**1.23 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties with respect to the repurchase and/or indemnification obligations in connection with the LOANS, and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

**For: Federal Deposit Insurance  
Corporation as Receiver for  
IndyMac Bank, FSB**

**For: M&T Bank**

(b)(6)

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

Name: Richard S. Gill Name: \_\_\_\_\_

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

Date: 8-18-2010 Date: \_\_\_\_\_

by this Settlement Agreement.

**1.23 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties with respect to the repurchase and/or indemnification obligations in connection with the LOANS, and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

For: **Federal Deposit Insurance**  
as Receiver for  
IndyMac Bank, FSB

For: **M&T Bank - Corporation**

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

By



(b)(6)

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

Name:

*Paul M Westby*

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

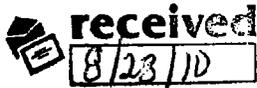
Title:

*Group Vice President*

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

Date:

*8-19-10*

 received  
8/23/10

LIMS M [redacted]  
DJF/Mortgage Fund

(b)(2)  
 ENTERED  
8/23/10

**AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE**

(b)(2) [redacted]

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE (**agreement**) is made and entered into by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Bank, FSB (**IndyMac**) (collectively, **Plaintiff**), FLORIDA ELITE TITLE AND ESCROW LLC (**Florida Elite**), and STEWART TITLE GUARANTY COMPANY, (**Stewart Title**) (collectively, the **Defendants**). Plaintiff, Florida Elite, and Stewart Title may be referred to herein individually as "Party" and collectively as the "Parties."

**RECITALS**

This agreement is made with reference to the following facts:

A. On or about July 17, 2009, Plaintiff filed a complaint for money damages against the Defendants, alleging causes of action against Florida Elite for fraudulent inducement, negligent misrepresentation, breach of fiduciary duty, and breach of contract, and against Stewart Title for breach of contract (the **Complaint**), in connection with a mortgage loan funded by IndyMac in the principal amount of \$731,000 made to a borrower named Michel-Ange Chevy-Renaud (the **Loan**) and which was secured by a residential condominium located at Unit 4001 in The Club at Brickell Bay at 1200 Brickell Bay Drive, Miami, FL 33131 (the **Property**). The pending action which the Complaint initiated is entitled *Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB v. Florida Elite Title & Escrow LLC, et al.*, is currently pending in the United States District Court for the Southern District of Florida, Miami Division (the **Court**), Case No. 9-22096-CIV-GOLD/McALILEY (the **Action**).

B. On or about August 20, 2009, Stewart Title answered the Complaint, generally denying its allegations and asserting affirmative defenses. Florida Elite answered and asserted affirmative defenses to Plaintiff's complaint on or about September 10, 2009.

C. Defendants have defended and denied, and continue to deny, the validity of Plaintiff's claims asserted in the Complaint.

D. The Parties deem it in their best interests to enter into this agreement to avoid the uncertainty, trouble, and expense of further litigation. By this agreement, the Parties intend to memorialize the terms of their compromise and settlement of the Action.

**AGREEMENT AND MUTUAL RELEASE**

NOW, THEREFORE, in consideration of the undertakings contained in this agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble, Recitals and Exhibits. The foregoing preamble and recitals are true and correct and, along with the attached exhibit, are integral parts of this agreement.

2. Settlement Payment to Plaintiff. The Defendants shall pay Plaintiff a total sum of \$250,000. No later than ten business (10) days following full execution of this agreement, Defendants shall deliver to Plaintiff's counsel of record in the Action a cashier's or certified check made payable to Akerman Senterfitt & Eidson, PA in the amount of Two Hundred Fifty Thousand Hundred Dollars and No Cents (\$250,000.00) (the **Settlement Payment**). The Defendants shall cause this check to be delivered as follows:

Akerman Senterfitt & Eidson, PA

Attn: William P. Heller, Esq.

350 E. Las Olas Boulevard, Suite 1600

Fort Lauderdale, Florida 33301

Alternatively, the Settlement Payment may be made by wire transfer to the following account:

Wachovia Bank, N.A., 214 N. Hogan Street, Jacksonville, Florida 32202, ABA#



(b)(4)

(b)(4)

Account [REDACTED] The Parties agree that timely receipt of the Settlement Payment is an essential term of this agreement, and a condition to the effectiveness of this agreement.

(a) Default on Payments. Should Defendants fail to make their payment when due, Plaintiff shall send written notice of non-payment via U.S. mail to the Defendants' counsel, Marty J. Solomon, Esq., Carlton Fields, P.A., P.O. Box 3239, Tampa, Florida 33601, for Stewart Title, and Omar Ortega, Esq., Dorta & Ortega, P.A., Douglas Entrance, 800 S. Douglas Road, Suite 149, Coral Gables, Florida 33134, for Florida Elite.

3. Dismissal of the Action. Together with the execution of this agreement, counsel for Plaintiff shall execute a Stipulation of Dismissal of the Action with prejudice in the form attached hereto as **EXHIBIT A**. Upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, counsel for Plaintiff shall file the executed Stipulation of Dismissal with the Court.

4. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this agreement to the fullest extent permitted by law.

5. Release by Plaintiff. Subject to full performance of the obligations and representations and warranties set forth in this agreement, and effective upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, and except as provided in paragraph 7, below, Plaintiff, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 the Defendants and their respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 (the **Defendant Releasees**), past or present, 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 Plaintiff has, may have or might have against Defendants, the Defendant Releasees or any of them, pertaining to the Loans, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided, however, that this release is not a general release but is expressly and specifically limited to the Loan, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that Plaintiff may have or might have against the Defendants or the Defendant Releasees, or any of them, including without

limitation any other claims, demands or actions regarding any other matters.

6. Release by the Defendants. Subject to full performance of the obligations and representations and warranties set forth in this agreement, and effective simultaneously with the release granted in paragraph 5, above, the Defendants, on behalf of themselves individually and for each and every one of its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 release, acquit and discharge Plaintiff and its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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, 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 the Defendants or any of them have, may have or might have against Plaintiff pertaining to the Loan, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, provided,

however, that this release is not a general release but is expressly and specifically limited to the Loan, the Property, the Complaint, and any and all facts, occurrences and transactions alleged in the Action, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that the Defendants, or any of them, may have or might have against Plaintiff, including without limitation any other claims, demands or actions regarding any other matter.

7. Express Reservations from Releases by Plaintiff. Notwithstanding any other provision contained herein, by this agreement, Plaintiff 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 (i) the Loan, (ii) the Property, or (iii) any and all facts, occurrences and transactions alleged in the Action, and (b) claims arising from the closing of the Loan against any other transaction participant concerning the Loan, including but not limited to Michel-Ange Chevy-Renaud, David Coviello, Ronald Landires, Carmen Camacho, Juan Gonzalo Ramirez, Vesta Home Loans, Mega Financials and Investment LLC, Vistas International Realty, LLC, Ginzo & Associates, Inc., or Pierre Petion. Additionally, this agreement does not waive or release any claim Plaintiff may have relating to or arising from any loan other than the Loan at issue in the Action. In addition, this agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the State of California, Central District, or any other federal judicial district, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*

8. No Admission of Liability. Plaintiff acknowledges that this agreement does not constitute an admission by the Defendants as to the merits of any claim that the FDIC or its predecessors in interest, including IndyMac, has asserted, or could have asserted, in the Action and that the Defendants have denied and continue to deny that the Defendants have any liability to Plaintiff as alleged in the Action. Likewise, the Defendants acknowledge that this agreement does not constitute an admission by Plaintiff that any asserted claim is or was in any way lacking in merit, and the Defendants also acknowledge that this agreement does not constitute an admission by Plaintiff as to the merits of any claim that the Defendants have asserted, or could have asserted, in the Action. Nevertheless, Plaintiff and the Defendants have concluded that continued litigation would be expensive and protracted and that it is desirable that the Action be settled fully and finally as between Plaintiff and the Defendants in the manner and upon the terms and conditions set forth in this agreement.

9. Waiver under Section 1542 of California Civil Code. Subject to the limitations contained therein and in paragraph 7, above, the releases as set forth in paragraphs 5 and 6 are intended by the Parties to be read and interpreted as broadly as possible to affect the releases set forth therein regardless of whether the claims are presently known or unknown to the Parties. This agreement is made by the Plaintiff and Defendants freely and with independent legal advice and counsel, and Plaintiff and the Defendants 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 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."**

**However**, this is a limited release and not a general release and is only intended to release those claims specifically identified in paragraphs 5 and 6 of the agreement and is specifically limited by the limitations contained in those paragraphs and in paragraph 7 of this agreement. Nevertheless, to the extent Civil Code section 1542 (as well as any other or successor law of similar effect) applies to the agreement, Plaintiff and the Defendants waive any rights, benefits and protections they may have under section Civil Code 1542 to the extent necessary to effectuate the Releases set forth herein in paragraphs 5 through 7, inclusive, herein.

10. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. The Plaintiff and the Defendants 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. With the exception of a separate, written, confidential agreement between Stewart Title and Florida Elite concerning the allocation of amounts owed toward the Settlement Payment, 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. Plaintiff and Defendants 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.

11. Consideration. The consideration received in connection with this agreement is fair, adequate and substantial and consists only of the terms set forth in this agreement.

12. 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.

13. Agreement Binding on Successors and Assigns. 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.

14. Applicable Law. This agreement has been negotiated and exchanged in the State of Florida. As such, this agreement and all matters relating thereto shall be governed by the laws of the State of Florida without regard to its principles of conflicts of law. In addition, in the event of any disputes arising between the Parties out of this agreement, the parties agree that the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the Southern District of Florida (but only if such court has subject matter jurisdiction over the disputes).

15. Execution and Delivery Required – Effective Date. This instrument shall not be considered to be the agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the **Effective Date**). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the agreement and shall become a binding and enforceable contract. Transmittal of a counterpart signature page signed by a Party (or by his or its attorney-in-fact pursuant to a duly executed power of attorney authorizing the same) via facsimile or e-mail shall be one way in which this agreement may be transmitted and formed, but in that event, the Party so transmitting it shall also forward the original, signed counterpart to the other via overnight delivery. All counterparts shall be construed together as the agreement.

16. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa. This agreement is the product of

negotiation between parties and as such, shall not be construed as though all or any part of it was drafted by any particular Party.

17. 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.

18. 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 and that he or she is acting in the scope of such agency and authority. 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.

19. Attorneys' Fees and Costs. Plaintiff and the Defendants each 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.

20. 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.

21. Captions and Headings. The captions, paragraph numbers and paragraph headings appearing in this agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this agreement, nor in any way affect this agreement.

22. Notices. Any notice required under this agreement shall be in writing and shall be sent via both e-mail and either by (i) hand delivery or certified or registered mail, postage prepaid, with return receipt requested, or (ii) fax, with a conformed copy by US Mail, postage prepaid, and with such writing to be addressed to the Parties as follows:

Person To Receive Notice	Notification Information
To Florida Elite	Florida Elite Title & Escrow LLC 8053 NW 155th Street Miami Lakes, FL 33016
With a copy to	Dorta & Ortega, P.A. Douglas Entrance 800 S. Douglas Road, Suite 149 Coral Gables, Florida 33134 Tel. No. [REDACTED] (b)(4),(b)(6) Fax No. [REDACTED] (b)(4),(b)(6) Email [REDACTED] (b)(4),(b)(6)
To Stewart Title	Alan C. Parrish Regional Claims Counsel Stewart Title Guaranty Company 3402 West Cypress Street Tampa, FL 33607 Tel. No.: [REDACTED] (b)(4),(b)(6) Fax No.: [REDACTED] (b)(4),(b)(6) Email: [REDACTED] (b)(4),(b)(6)
With a copy to	Marty J. Solomon Carlton Fields, P.A. 4221 West Boy Scout Blvd. Suite 1000 Tampa, Florida 33607 Tel. No. [REDACTED] (b)(4),(b)(6) Fax No. [REDACTED] (b)(4),(b)(6) Email: [REDACTED] (b)(4),(b)(6)
To Plaintiff	Paul A. Levin Mortgage Recovery Law Group 700 N. Brand. Blvd, Suite 830 Glendale, CA 92103 Tel. No. [REDACTED] (b)(4),(b)(6) Fax No. [REDACTED] (b)(4),(b)(6) Email: [REDACTED] (b)(4),(b)(6)
With a copy to	William Heller Akerman Senterfitt Las Olas Centre II 350 East Las Olas Boulevard Suite 1600 Ft. Lauderdale, FL 33301-2229 Tel. No. [REDACTED] (b)(4),(b)(6) Fax No. [REDACTED] (b)(4),(b)(6) Email: [REDACTED] (b)(4),(b)(6)

The above addresses may be changed by any Party as to such Party by providing the other Parties notice of any address change in the same manner as is provided above, and which change

shall be effective as to any Party upon receipt of written notice from the other Party. In the event that written notice, demand, or request is made as provided in this paragraph 22, that writing shall be deemed to have been received by the Party to whom it was addressed on the earliest of (i) the date that the notice was hand delivered, (ii) the date the notice was sent via facsimile (so long as a facsimile transmittal confirmation sheet is contemporaneously generated by the facsimile machine from which the transmission occurred), or (iii) three days after properly addressed notice was deposited with the U.S. Postal Service, applicable postage prepaid.

23. Remedies. All Parties shall be entitled to all remedies available at law or in equity for any violation of this agreement, including, but not limited to the remedy of specific performance.

24. Further Assurances. The Parties shall execute such other documents as may be reasonably necessary to carry out the terms and conditions of this agreement.

25. Survival. All warranties, representations, covenants, and agreements set forth herein shall survive the Effective Date.

26. Compliance Dates. In the event that any date specified in this agreement shall be on a Saturday, Sunday, or a nationally-declared holiday, then the date so specified shall be deemed to be the next business day following such date, and compliance by such business day hereunder shall not be deemed a default by either of the Parties under this agreement.

27. Waiver. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not

constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.

28. Jury Trial Waiver. The Parties hereby waive any and all rights that they may otherwise have to a trial by jury in any action, proceeding, claim, counterclaim or third party complaint, whether in contract or tort, at law or in equity, arising out of or in any way related to this agreement.

29. Entire Agreement. With the exception of a separate, written, confidential agreement between Stewart Title and Florida Elite concerning the allocation of amounts owed toward the Settlement Payment, this agreement contains the complete agreement of the Parties concerning the subjects of this agreement and supersedes all prior drafts of this agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning that subject of this agreement, whether in connection with the negotiation of this agreement or otherwise. This agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language ultimately agreed to in this agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this agreement, the fact that other words may have been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this agreement. This agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a

writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

Dated: July 20, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

(b)(6)

By:

Richard S. Cull

Its: Counsel

Dated: \_\_\_\_\_, 2010

STEWART TITLE GUARANTY COMPANY

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2010

FLORIDA ELITE TITLE & ESCROW LLC

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

Its: \_\_\_\_\_

APPROVED AS TO FORM:

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

Dated: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2010

STEWART TITLE GUARANTY COMPANY

By:

Its: *Honorable Butler D. Brian*  
*VP Sr Litigation Counsel*

Dated: \_\_\_\_\_, 2010

FLORIDA ELITE TITLE & ESCROW LLC

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

Its: \_\_\_\_\_

APPROVED AS TO FORM:

(b)(6)

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

Dated: \_\_\_\_\_, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2010

STEWART TITLE GUARANTY COMPANY

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

Its: \_\_\_\_\_

(b)(6)

Dated: \_\_\_\_\_, 2010

FLORIDA ELITE TITLE & ESCROW LLC

[Redacted Signature Box]

*Mitchell Cabrera*

Its: Owner

APPROVED AS TO FORM:

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

### **THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

("Settlement Agreement") is entered into and made effective as of the \_\_\_ day of August, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC") and imortgage.com, Inc. ("imortgage.com"). The FDIC and imortgage.com may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

### RECITALS

1.1 On or about March 6, 2003, IndyMac Bank, F.S.B. ("INDYMAC") and imortgage.com entered into a business relationship governed by a Seller Contract and e-MITS™ User Agreement (hereinafter "Contract").

1.2 Pursuant to the terms of the Contract, imortgage.com sold to INDYMAC the mortgage loans that are identified on Exhibit "A" attached to this Settlement Agreement. The mortgage loans identified in Exhibit "A" as well as all other mortgage loans sold and/or delivered directly by imortgage.com to INDYMAC are collectively referred to herein as the "LOANS".

1.3 The FDIC claims that imortgage.com breached the Contract by refusing to repurchase and/or indemnify for losses sustained on certain loans after receiving demands to do so. imortgage.com disputes the claims relating to those certain loans.

1.4 On or about January 7, 2010, the FDIC filed a lawsuit entitled *FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, FSB v. iMORTGAGE.COM, INC., a Delaware Corporation* in the United States District Court, Central District of California, Case No. CV10-0114 (hereinafter "Action") seeking damages arising from the repurchase and/or indemnification obligations of imortgage.com.

1.5 Without admitting liability, the Parties desire to and have agreed to settle all repurchase and indemnification claims relating to the LOANS upon the terms and conditions hereinafter set forth.

### AGREEMENT

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

**1.6 Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**1.7 Payment of the Settlement Funds.** imortgage.com shall pay to the FDIC the total sum of Six Hundred Fifteen Thousand Dollars (\$615,000.00) (the "Settlement Funds"). Payment of the Settlement Funds shall be made as follows:

By no later than September 7, 2010, imortgage.com shall make a payment of One Hundred Seventy Thousand Dollars (\$170,000).

By no later than October 7, 2010, imortgage.com shall make a payment of One Hundred Seventy Thousand Dollars (\$170,000).

Beginning on November 15, 2010, and on the fifteenth calendar day of each month thereafter, the sum of Twenty-Five Thousand Dollars (\$25,000) shall be made until the balance of the Settlement Funds is paid in full.

Payments shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number: [REDACTED] Routing Number: [REDACTED] (b)(6)  
[REDACTED] Reference: imortgage.com Settlement. (b)(6)

**1.8** Concurrently with the signing and delivery of this Settlement Agreement, imortgage.com shall execute a Stipulation for Judgment in the amount of Six Hundred Fifteen Thousand (\$615,000) in the form attached hereto as Exhibit 1. The Stipulation for Judgment incorporates by reference a proposed form of Judgment as Exhibit A to the Stipulation for Judgment. Both the Stipulation for Judgment and the proposed form of Judgment are incorporated by reference herein and their terms are made a part of this Settlement Agreement.

**1.9** In the event imortgage.com defaults by failing to make a timely payment to the FDIC as set forth in this Settlement Agreement, the FDIC shall give written notice of the default and notice of the FDIC's intent to have Judgment entered. The notice of default shall be given via mail and facsimile addressed to: (1) John Tate, Esq., Davis Wright Tremaine, LLP, 865 S. Figueroa St., Suite 2400, Los Angeles, CA 90017, fax number [REDACTED] and (2) Jay Johnson, at imortgage.com, Inc., 4800 N. Scottsdale Road, Suite 3800, Scottsdale, AZ 85251. (b)(4),(b)(6)

**1.10** imortgage.com shall have seven (7) business days from receipt of the notice of default to cure the default. If imortgage.com fails to cure the default within seven (7) business days, the FDIC shall retain all consideration it has received, and it may, in its sole discretion, seek entry of Judgment against imortgage.com, and enforce any Judgment entered against imortgage.com. Judgment may be entered by ex parte application (without testimony or trial and imortgage.com waives the right to a court

and/or jury trial) after notice is given to imortgage.com as provided for in paragraph 1.9 of this Settlement Agreement.

1.11 Within five (5) business days of the FDIC's counsel's receipt of the fully executed Settlement Agreement and Stipulation for Judgment, the FDIC's counsel shall file a Stipulation and Order Dismissing Action with the Court Retaining Jurisdiction to Enforce the Stipulation for Judgment.

1.12 The Parties shall bear their own costs and attorneys' fees incurred in the Action.

### **RELEASE**

1.13 **Unknown Claims.** Except for the obligations arising under this Settlement Agreement, each Party acknowledges that this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which each Party may have against the other Party arising from the obligation to repurchase and/or indemnify for losses associated with the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule with respect to the LOANS.

1.14 Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

"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."

1.15 Except for the obligations arising under this Settlement Agreement, each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to the repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for

damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**1.16** Except for the obligations arising under this Settlement Agreement, each Party hereby fully, finally, and forever releases and discharges the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS.

**1.17** Notwithstanding any other provision in this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

**1.18 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

**1.19 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

**1.20 Governing Law.** The Parties agree to submit to the Courts of the County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.21 Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.22 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**1.23 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**1.24 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each Party has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.25 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**1.26 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.27 Waiver.** No term or condition of this Settlement Agreement shall be

deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.28 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.29 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**1.30 Enforcement.** If any enforcement of this Settlement Agreement is necessary or if any dispute arises after the entry of the Judgment against imortgage.com, the Parties to this Settlement Agreement agree that the United States District Court, Central District of California, Western Division, shall retain jurisdiction to enforce this Settlement Agreement pursuant to California Code of Civil Procedure §664.6 until performance in full of the terms of this Settlement Agreement.

**1.31** The Parties specifically agree that: (1) this Settlement Agreement is only admissible as evidence and subject to disclosure in enforcement proceedings of any obligations arising under this Settlement Agreement and/or to enforce the releases given, (2) imortgage.com shall not oppose a motion under Code of Civil Procedure §664.6 to enter judgment pursuant to the terms of this Settlement Agreement on the ground that this Settlement Agreement is confidential or otherwise privileged, and (3) imortgage.com specifically waives the confidentiality privilege that may apply to this Settlement Agreement for purposes of its enforcement in a court of law.

**1.32** The FDIC warrants and represents that it has retained, owns and/or has the rights to settle and release all repurchase and indemnification claims relating to the LOANS.

**1.33 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties with respect to the repurchase and/or indemnification obligations in connection with the LOANS, and fully supersedes any and all prior negotiations, agreements or

understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

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

For: Imortgage.com, Inc.

(b)(6) By:

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

Name: Richard S. Giv

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

Title: Counsel

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

Date: 8-31-2018

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

understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

**For: Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB**

**For: imortgage.com, Inc.**

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

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

(b)(6)

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

Name: Jay D. Jankowski

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

Title: C.O.O.

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

Date: Aug. 30, 2010

**EXHIBIT "A"**

IndyMac Loan Number	Borrower Last Name	Address	City	State	Zip
(b)(6)			BEAUMONT	CA	92223
			MODESTO	CA	95356
			RANCHO CUCAMONGA	CA	91739
			CHINO	CA	91710
			CHINO	CA	91710
			CHINO	CA	91710
			LAS VEGAS	NV	89178
			RIPON	CA	95366
			BUCKEYE	AZ	85396
			LAS VEGAS	NV	89178
			LAS VEGAS	NV	89178
			BRENTWOOD	CA	94513
			TEMECULA	CA	92591
			RANCHO CUCAMONGA	CA	91739
			RANCHO CUCAMONGA	CA	91739
			TEMECULA	CA	92591
			ELK GROVE	CA	95624
			BUCKEYE	AZ	85326
			BUCKEYE	AZ	85326
			BUCKEYE	AZ	85326
			ELK GROVE	CA	95624
			ELK GROVE	CA	95624
			TEMECULA	CA	92591
			MESA	AZ	85212
			WEST SACRAMENTO	CA	95691
			QUBEN CREEK	AZ	85242
			CERES	CA	95307
			LATHROP	CA	95330
			SAN JACINTO	CA	92583
			SAN JACINTO	CA	92583
LATHROP	CA	95330			
LATHROP	CA	95330			
SAN JACINTO	CA	92583			

(b)(2)

receive  
9/23/10

LIMS Mr [redacted]  
DIF/Mortgage Fraud

ENTERED  
8/24/10

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

("Settlement Agreement") is entered into and made effective as of the 6th day of August, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC") and 1-800-East-West Mortgage Company ("1-800-EAST-WEST"). The FDIC and 1-800-EAST-WEST may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

(b)(2)

**RECITALS**

1.1 1-800-EAST-WEST sold and/or delivered mortgage loans to IndyMac Bank, FSB, pursuant to various written agreements. A dispute has arisen between the Parties with respect to outstanding demands for repurchase and/or indemnity. Specifically, IndyMac Bank, FSB made demands to 1-800-EAST-WEST for repurchase and/or indemnification based upon 1-800-EAST-WEST's breach of the representations and warranties as set forth in the written agreements.

1.2 Without admitting liability, the Parties desire to and have agreed to settle all repurchase and indemnification claims relating to the mortgage loans sold directly by 1-800-EAST-WEST to IndyMac Bank, FSB (collectively, the "LOANS") upon the terms and conditions hereinafter set forth.

**AGREEMENT**

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

1.3 Recitals. The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

1.4 Payment of the Settlement Agreement. 1-800-EAST-WEST shall pay the total sum of \$142,000 (one hundred forty-two thousand dollars) (the "Settlement Funds") by no later than August 9, 2010. The payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number [redacted] Routing Number: [redacted] Reference: 1-800-East-West Settlement.

(b)(4)  
(b)(4)

(b)(6)

(b)(6)

**RELEASE**

1.5 **Unknown Claims.** Each Party acknowledges and agrees that this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which each Party may have against the other Party arising from the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

1.6 Each Party certifies that it has read and understands the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

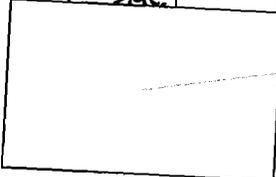
"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

1.7 Each Party understands, acknowledges and agrees that the significance and consequence of its waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising out of the LOANS, the claims and causes of action that were or could have been asserted relating to the LOANS, or any facts or circumstances related to the repurchase of and/or indemnification of losses associated with the LOANS, that Party will not be able to make any claim for those damages. Furthermore, each Party acknowledges and agrees that they consciously intend these consequences will apply to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

1.8 Each Party hereby fully, finally, and forever releases and discharges the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, and/or employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising



(b)(6)



(b)(6)

out of, resulting from, or relating to, in any manner, the LOANS, the claims and causes of action that were or could have been asserted relating to the LOANS, or any facts or circumstances related to the repurchase of and/or indemnification of losses associated with the LOANS.

**1.9** Notwithstanding any other provision in this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

**1.10** **Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

**1.11** **No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

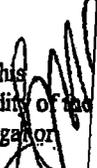
**1.12** **Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party.

**1.13** **Governing Law.** The Parties agree to submit to the Courts of the City and County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.14** **Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.15** **Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

(b)(6)



(b)(6)

**1.16 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**1.17 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each Party has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.18 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**1.19 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.20 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.21 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.22 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the law of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

(b)(6)

(b)(6)

1.23 Entire Agreement. The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

(b)(6)  
(b)(6)  
For: Federal Deposit Insurance  
Corporation as Receiver for  
IndyMac Bank, FSB

For: 1-800-East-West Mortgage  
Company

By: [Redacted]

By: [Redacted]

Name: Richard S. Geil

Name: J. Mark Olsen

Title: Counsel

Title: Executive Vice President

Date: 8-6-2010

Date: 8-6-2010

1.23 **Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

For: **Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB**

For: **1-800-East-West Mortgage Company**

(b)(6)

By:

[Redacted Signature]

Name: Richard S. Gail

Title: Counsel

Date: 8-6-2010

By:

[Redacted Signature] EUP

(b)(6)

Name: J. Mark Olsen

Title: Executive Vice President

Date: 8-6-2010

(b)(2)

 received  
8/31/10

LIMS Nr   
DIK/Mortgage Fraud

 ENTERED  
8/31/10

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

("Settlement Agreement") is entered into and made effective as of the \_\_\_ day of August, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC") and imortgage.com, Inc. ("imortgage.com"). The FDIC and imortgage.com may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

(b)(2) 

**RECITALS**

1.1 On or about March 6, 2003, IndyMac Bank, F.S.B. ("INDYMAC") and imortgage.com entered into a business relationship governed by a Seller Contract and e-MITS™ User Agreement (hereinafter "Contract").

1.2 Pursuant to the terms of the Contract, imortgage.com sold to INDYMAC the mortgage loans that are identified on Exhibit "A" attached to this Settlement Agreement. The mortgage loans identified in Exhibit "A" as well as all other mortgage loans sold and/or delivered directly by imortgage.com to INDYMAC are collectively referred to herein as the "LOANS".

1.3 The FDIC claims that imortgage.com breached the Contract by refusing to repurchase and/or indemnify for losses sustained on certain loans after receiving demands to do so. imortgage.com disputes the claims relating to those certain loans.

1.4 On or about January 7, 2010, the FDIC filed a lawsuit entitled *FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, FSB v. iMORTGAGE.COM, INC., a Delaware Corporation* in the United States District Court, Central District of California, Case No. CV10-0114 (hereinafter "Action") seeking damages arising from the repurchase and/or indemnification obligations of imortgage.com.

1.5 Without admitting liability, the Parties desire to and have agreed to settle all repurchase and indemnification claims relating to the LOANS upon the terms and conditions hereinafter set forth.

**AGREEMENT**

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

**1.6 Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**1.7 Payment of the Settlement Funds.** imortgage.com shall pay to the FDIC the total sum of Six Hundred Fifteen Thousand Dollars (\$615,000.00) (the "Settlement Funds"). Payment of the Settlement Funds shall be made as follows:

By no later than September 7, 2010, imortgage.com shall make a payment of One Hundred Seventy Thousand Dollars (\$170,000).

By no later than October 7, 2010, imortgage.com shall make a payment of One Hundred Seventy Thousand Dollars (\$170,000).

Beginning on November 15, 2010, and on the fifteenth calendar day of each month thereafter, the sum of Twenty-Five Thousand Dollars (\$25,000) shall be made until the balance of the Settlement Funds is paid in full.

Payments shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number: [redacted] Routing Number: [redacted] Reference: imortgage.com Settlement.

(b)(4)

(b)(4)

**1.8** Concurrently with the signing and delivery of this Settlement Agreement, imortgage.com shall execute a Stipulation for Judgment in the amount of Six Hundred Fifteen Thousand (\$615,000) in the form attached hereto as Exhibit 1. The Stipulation for Judgment incorporates by reference a proposed form of Judgment as Exhibit A to the Stipulation for Judgment. Both the Stipulation for Judgment and the proposed form of Judgment are incorporated by reference herein and their terms are made a part of this Settlement Agreement.

**1.9** In the event imortgage.com defaults by failing to make a timely payment to the FDIC as set forth in this Settlement Agreement, the FDIC shall give written notice of the default and notice of the FDIC's intent to have Judgment entered. The notice of default shall be given via mail and facsimile addressed to: (1) John Tate, Esq., Davis Wright Tremaine, LLP, 865 S. Figueroa St., Suite 2400, Los Angeles, CA 90017, fax number [redacted] and (2) Jay Johnson, at imortgage.com, Inc., 4800 N. Scottsdale Road, Suite 3800, Scottsdale, AZ 85251.

(b)(4),(b)(6)

**1.10** imortgage.com shall have seven (7) business days from receipt of the notice of default to cure the default. If imortgage.com fails to cure the default within seven (7) business days, the FDIC shall retain all consideration it has received, and it may, in its sole discretion, seek entry of Judgment against imortgage.com, and enforce any Judgment entered against imortgage.com. Judgment may be entered by ex parte application (without testimony or trial and imortgage.com waives the right to a court

and/or jury trial) after notice is given to imortgage.com as provided for in paragraph 1.9 of this Settlement Agreement.

**1.11** Within five (5) business days of the FDIC's counsel's receipt of the fully executed Settlement Agreement and Stipulation for Judgment, the FDIC's counsel shall file a Stipulation and Order Dismissing Action with the Court Retaining Jurisdiction to Enforce the Stipulation for Judgment.

**1.12** The Parties shall bear their own costs and attorneys' fees incurred in the Action.

### **RELEASE**

**1.13 Unknown Claims.** Except for the obligations arising under this Settlement Agreement, each Party acknowledges that this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which each Party may have against the other Party arising from the obligation to repurchase and/or indemnify for losses associated with the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule with respect to the LOANS.

**1.14** Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

“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.”

**1.15** Except for the obligations arising under this Settlement Agreement, each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to the repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for

damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**1.16** Except for the obligations arising under this Settlement Agreement, each Party hereby fully, finally, and forever releases and discharges the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS.

**1.17** Notwithstanding any other provision in this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

**1.18 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

**1.19 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

**1.20 Governing Law.** The Parties agree to submit to the Courts of the County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.21 Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.22 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**1.23 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**1.24 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each Party has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.25 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**1.26 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.27 Waiver.** No term or condition of this Settlement Agreement shall be

deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.28 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.29 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**1.30 Enforcement.** If any enforcement of this Settlement Agreement is necessary or if any dispute arises after the entry of the Judgment against imortgage.com, the Parties to this Settlement Agreement agree that the United States District Court, Central District of California, Western Division, shall retain jurisdiction to enforce this Settlement Agreement pursuant to California Code of Civil Procedure §664.6 until performance in full of the terms of this Settlement Agreement.

**1.31** The Parties specifically agree that: (1) this Settlement Agreement is only admissible as evidence and subject to disclosure in enforcement proceedings of any obligations arising under this Settlement Agreement and/or to enforce the releases given, (2) imortgage.com shall not oppose a motion under Code of Civil Procedure §664.6 to enter judgment pursuant to the terms of this Settlement Agreement on the ground that this Settlement Agreement is confidential or otherwise privileged, and (3) imortgage.com specifically waives the confidentiality privilege that may apply to this Settlement Agreement for purposes of its enforcement in a court of law.

**1.32** The FDIC warrants and represents that it has retained, owns and/or has the rights to settle and release all repurchase and indemnification claims relating to the LOANS.

**1.33 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties with respect to the repurchase and/or indemnification obligations in connection with the LOANS, and fully supersedes any and all prior negotiations, agreements or

understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

**For: Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB**

**For: imortgage.com, Inc.**

(b)(6)

By:

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

Name: Richard S. Gill

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

Title: Counsel

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

Date: 8-31-2010

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

**EXHIBIT "A"**

(b)(6)

IndyMac Loan Number	Borrower Last Name	Address	City	State	Zip
			BEAUMONT	CA	92223
			MODESTO	CA	95356
			RANCHO CUCAMONGA	CA	91739
			CHINO	CA	91710
			CHINO	CA	91710
			CHINO	CA	91710
			LAS VEGAS	NV	89178
			RIPON	CA	95366
			BUCKEYE	AZ	85396
			LAS VEGAS	NV	89178
			LAS VEGAS	NV	89178
			BRENTWOOD	CA	94513
			TEMECULA	CA	92591
			RANCHO CUCAMONGA	CA	91739
			RANCHO CUCAMONGA	CA	91739
			TEMECULA	CA	92591
			ELK GROVE	CA	95624
			BUCKEYE	AZ	85326
			BUCKEYE	AZ	85326
			BUCKEYE	AZ	85326
			ELK GROVE	CA	95624
			ELK GROVE	CA	95624
			TEMECULA	CA	92591
			MESA	AZ	85212
			WEST SACRAMENTO	CA	95691
			QUEEN CREEK	AZ	85242
			CERES	CA	95307
			LATHROP	CA	95330
			SAN JACINTO	CA	92583
			SAN JACINTO	CA	92583
			LATHROP	CA	95330
			LATHROP	CA	95330
			SAN JACINTO	CA	92583

LIMS Mr [Redacted]  
DIF/Mortgage Fraud

receiv  
9/8/10

ENTERED  
9/8/10

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE** ("Settlement Agreement") is entered into and made effective as of the 31 day of August, 2010 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB ("FDIC") and Pierce Commercial Bank ("PIERCE COMMERCIAL"). The FDIC and PIERCE COMMERCIAL may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

(b)(2)

[Redacted]

**RECITALS**

**1.1** PIERCE COMMERCIAL sold and/or delivered mortgage loans to IndyMac Bank, FSB, pursuant to various written agreements. A dispute has arisen between the Parties with respect to outstanding demands for repurchase and/or indemnity. Specifically, IndyMac Bank, FSB made demands to PIERCE COMMERCIAL for repurchase and/or indemnification based upon PIERCE COMMERCIAL's breach of the representations and warranties as set forth in the written agreements.

**1.2** Without admitting liability, the Parties desire to and have agreed to settle all repurchase and indemnification claims relating to the mortgage loans sold directly by PIERCE COMMERCIAL to IndyMac Bank, FSB (collectively, the "LOANS") upon the terms and conditions hereinafter set forth.

**AGREEMENT**

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

**1.3 Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**1.4 Payment of the Settlement Agreement.** PIERCE COMMERCIAL shall pay the total sum of \$125,000 (one hundred twenty five thousand dollars) (the "Settlement Funds") by no later than September 10, 2010. The payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Trust Account," Account Number: [Redacted] Routing Number: [Redacted], Reference: Pierce Commercial Settlement.

(b)(4)

**RELEASE**

**1.5 Unknown Claims.** Each Party acknowledges and agrees that this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which each Party may have against the other Party arising from the obligation to repurchase and/or indemnify for losses associated with the LOANS. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

**1.6** Each Party certifies that it has read and understands the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

“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.”

**1.7** Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to obligation to the repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**1.8** Each Party hereby fully, finally, and forever releases and discharges the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, and/or employees, or any corporation, partnership or limited liability company

which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the obligation to repurchase and/or indemnify for losses associated with the LOANS, the claims and causes of action that were or could have been asserted relating to the obligation to repurchase and/or indemnify for losses associated with the LOANS, or any facts or circumstances related to the obligation to repurchase and/or indemnify for losses associated with the LOANS.

**1.9** Notwithstanding any other provision in this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any claims against PIERCE COMMERCIAL arising out of existing or failed financial institutions other than IndyMac Bank, FSB.

**1.10** Notwithstanding any other provision in this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

**1.11 Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

**1.12 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

**1.13 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party.

**1.14 Governing Law.** The Parties agree to submit to the Courts of the City and County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.15 Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.16 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**1.17 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**1.18 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each Party has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.19 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**1.20 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.21 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.22 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.23 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**1.24 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

**For: Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB**

**For: Pierce Commercial Bank**

(b)(6)

By:

[Redacted Signature]

Name: Richard S. Gull

Title: Counsel

Date: 8-31-2010

By:

[Redacted Signature]

(b)(6)

Name: GARY T. GAHAN

Title: PRESIDENT & CEO

Date: AUGUST 31, 2010

LIMS Nr [redacted]  
DIT / Mortgage & Fraud

RECEIVED  
9/8/10

ENTERED  
9/8/10

AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE (agreement) is made and entered into by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for IndyMac Bank, FSB (IndyMac) (collectively, Plaintiff), A+ TITLE SERVICE CORP. (A+ Title), and COMMONWEALTH LAND TITLE INSURANCE COMPANY (Commonwealth) (collectively, the Defendants). Plaintiff, A+ Title and Commonwealth may be referred to herein individually as "Party" and collectively as the "Parties."

(b)(2)

RECITALS

This agreement is made with reference to the following facts:

A. On or about February 24, 2010, Plaintiff filed a complaint for money damages against the Defendants, alleging causes of action against A+ Title for fraudulent inducement, negligent misrepresentation, breach of fiduciary duty, and breach of contract, and against Commonwealth for breach of contract (the Complaint), in connection with two mortgage loans funded by IndyMac made to a borrower named Betsy Sanchez-Khouzami and/or Joseph E. Khouzami (the Loans) and which were secured by a real property located at 12560 SW 75th Street, Miami, Florida 33183 (the Property). The pending action which the Complaint initiated is entitled *Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB v. A+ Title Service Corp., et al.*, is currently pending in the United States District Court for the Southern District of Florida, Miami Division (the Court), Case No. 1:10-cv-20571-DLG (the Action).

B. On or about April 16, 2010, Commonwealth answered the Complaint, generally denying its allegations and asserting affirmative defenses. A+ Title answered and asserted affirmative defenses to Plaintiff's complaint on or about May 5, 2010.

C. Defendants have defended and denied, and continue to deny, the validity of Plaintiff's claims asserted in the Complaint.

D. The Parties deem it in their best interests to enter into this agreement to avoid the uncertainty, trouble, and expense of further litigation. By this agreement, the Parties intend to memorialize the terms of their compromise and settlement of the Action.

#### AGREEMENT AND MUTUAL RELEASE

NOW, THEREFORE, in consideration of the undertakings contained in this agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble, Recitals and Exhibits. The foregoing preamble and recitals are true and correct and, along with the attached exhibit, are integral parts of this agreement.

2. Settlement Payment to Plaintiff. Defendant A+ Title, by and through its insurance carrier, shall pay Plaintiff a total sum of \$225,000 on behalf of A+ Title and Commonwealth. No later than twenty business (20) days following full execution of this agreement, Defendants shall deliver to Plaintiff's counsel of record in the Action a check made payable to Akerman Senterfitt & Eidson, P.A.'s Trust Account in the amount of Two Hundred Twenty Five Thousand Hundred Dollars and No Cents (\$225,000.00) (the **Settlement Payment**). The Defendants shall cause this check to be delivered as follows:

Akerman Senterfitt & Eidson, PA

Attn: William P. Heller, Esq.

350 E. Las Olas Boulevard, Suite 1600

Fort Lauderdale, Florida 33301

3. Dismissal of the Action. Together with the execution of this agreement, counsel for Plaintiff shall execute a Stipulation of Dismissal of the Action with prejudice in the form attached hereto as **EXHIBIT A**. Upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, counsel for Plaintiff shall file the executed Stipulation of Dismissal with the Court.

4. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this agreement to the fullest extent permitted by law.

5. Release by Plaintiff. Subject to full performance of the obligations and representations and warranties set forth in this agreement, and effective upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, and except as provided in paragraph 7, below, Plaintiff, for itself and for each and every one of its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers and representatives, 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 the Defendants and their respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 (the **Defendant Releasees**), past or present, 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 Plaintiff has against Defendants, the Defendant Releasees or any of them, pertaining to the Loans, the Property and the Complaint, specifically including, without limitation, the alleged priority or lien of the National City Bank Mortgage asserted in the Complaint, provided, however, that this release is not a general release but is expressly and specifically limited to the Loans, the Property and the Complaint, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that Plaintiff may have or might have against the Defendants or the Defendant Releasees, or any of them, including without limitation any other claims, demands or actions regarding any other matters.

6. Release by the Defendants. Subject to full performance of the obligations and representations and warranties set forth in this agreement, and effective simultaneously with the release granted in paragraph 5, above, the Defendants, on behalf of themselves individually and for each and every one of its respective current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers, 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 release, acquit and discharge Plaintiff and its current and former officers, directors, joint venturers, partners, employees, agents, servants, administrators, executors, predecessors, successors, subsidiaries, parents, affiliates, attorneys, insurers and representatives, and all persons or entities acting by, through, under, for, on behalf of, or in concert with them, past or present, 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 the Defendants or any of them have, may have or might have against Plaintiff pertaining to the Loans, the Property and the Complaint, provided, however, that this release is not a general release but is expressly and specifically limited to the Loans, the Property and the Complaint, and is not intended nor shall it be deemed to release any other claims, demands, causes of actions, debts, obligations, losses damages, liabilities, costs, expenses, attorneys' fees, penalties, compensation, right to indemnity and/or demands as to any other loans or matters that the Defendants, or any of them, may have or might have against Plaintiff, including without limitation any other claims, demands or actions regarding any other matter.

7. Express Reservations from Releases by Plaintiff. Notwithstanding any other provision contained herein, by this agreement, Plaintiff 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 (i) the Loans, (ii) the Property, or (iii) any and all facts, occurrences and transactions alleged in the Action, and (b) claims arising from the closing of the Loans against any other transaction participant concerning the Loans, including but not limited to Betsy Sanchez-Khouzami and/or Joseph E. Khouzami. Additionally, this agreement does not waive or release any claim Plaintiff may have relating to or arising from any loan other than the Loans at issue in the Action and the National City Bank Mortgage asserted in the Complaint.

8. No Admission of Liability. Plaintiff acknowledges that this agreement does not constitute an admission by the Defendants as to the merits of any claim that the FDIC or its predecessors in interest, including IndyMac, has asserted, or could have asserted, in the Action and that the Defendants have denied and continue to deny that the Defendants have any liability to Plaintiff as alleged in the Action. Likewise, the Defendants acknowledge that this agreement does not constitute an admission by Plaintiff that any asserted claim is or was in any way lacking in merit, and the Defendants also acknowledge that this agreement does not constitute an admission by Plaintiff as to the merits of any claim that the Defendants have asserted, or could have asserted, in the Action. Nevertheless, Plaintiff and the Defendants have concluded that continued litigation would be expensive and protracted and that it is desirable that the Action be settled fully and finally as between Plaintiff and the Defendants in the manner and upon the terms and conditions set forth in this agreement.

9. Waiver under Section 1542 of California Civil Code. Subject to the limitations contained therein and in paragraph 7, above, the releases as set forth in paragraphs 5 and 6 are intended by the Parties to be read and interpreted as broadly as possible to affect the releases set forth therein regardless of whether the claims are presently known or unknown to the Parties.

This agreement is made by the Plaintiff and Defendants freely and with independent legal advice and counsel, and Plaintiff and the Defendants 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 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."**

However, this is a limited release and not a general release and is only intended to release those claims specifically identified in paragraphs 5 and 6 of the agreement and is specifically limited by the limitations contained in those paragraphs and in paragraph 7 of this agreement. Nevertheless, to the extent Civil Code section 1542 (as well as any other or successor law of similar effect) applies to the agreement, Plaintiff and the Defendants waive any rights, benefits and protections they may have under section Civil Code 1542 to the extent necessary to effectuate the Releases set forth herein in paragraphs 5 through 7, inclusive, herein.

10. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. The Plaintiff and the Defendants 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

Plaintiff and Defendants hereto. There are no agreements or understandings between the Plaintiff and Defendants 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 Plaintiff and Defendants hereto, whether written or oral.

- d. Plaintiff and Defendants 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.

11. Consideration. The consideration received in connection with this agreement is fair, adequate and substantial and consists only of the terms set forth in this agreement.

12. 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.

13. Agreement Binding on Successors and Assigns. 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.

14. Applicable Law. This agreement has been negotiated and exchanged in the State of Florida. As such, this agreement and all matters relating thereto shall be governed by the laws of the State of Florida without regard to its principles of conflicts of law. In addition, in the event of any disputes arising between the Parties out of this agreement, the parties agree that the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the Southern District of Florida (but only if such court has subject matter jurisdiction over the disputes).

15. Execution and Delivery Required – Effective Date. This instrument shall not be considered to be the agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the **Effective Date**). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the agreement and shall become a binding and enforceable contract. Transmittal of a counterpart signature page signed by a Party (or by his or its attorney-in-fact pursuant to a duly executed power of attorney authorizing the same) via facsimile or e-mail shall be one way in which this agreement may be transmitted and formed, but in that event, the Party so transmitting it shall also forward the

original, signed counterpart to the other via overnight delivery. All counterparts shall be construed together as the agreement.

16. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa. This agreement is the product of negotiation between parties and as such, shall not be construed as though all or any part of it was drafted by any particular Party.

17. 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.

18. 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 and that he or she is acting in the scope of such agency and authority. 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.

19. Attorneys' Fees and Costs. Plaintiff and the Defendants each 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.

20. 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.

21. Captions and Headings. The captions, paragraph numbers and paragraph headings appearing in this agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this agreement, nor in any way affect this agreement.

22. Notices. Any notice required under this agreement shall be in writing and shall be sent via both e-mail and either by (i) hand delivery or certified or registered mail, postage prepaid, with return receipt requested, or (ii) fax, with a conformed copy by US Mail, postage prepaid, and with such writing to be addressed to the Parties as follows:

Person To Receive Notice	Notification Information
To A+ Title	
With a copy to	<p>Dale Lyn Friedman  Conroy, Simberg, Ganon, Krevans, Abel,  Lurvey, Morrow, &amp; Schefer, P.A.  3440 Hollywood Boulevard  2nd Floor  Hollywood, FL 33021  Telephone: [REDACTED] (b)(4),(b)(6)  Facsimile: [REDACTED]  Email: [REDACTED] (b)(4),(b)(6)</p>
To Commonwealth	<p><u>John D. Waters</u>  <u>Senior Vice President</u>  <u>Senior Major Claims Counsel</u>  <u>Commonwealth Land Title Ins Co</u>  <u>601 Riverside Avenue</u>  <u>Building 5, Fourth Floor</u>  <u>Jacksonville, FL 32204</u>  Direct Telephone [REDACTED] (b)(4),(b)(6)  Email [REDACTED] (b)(4),(b)(6)</p>
With a copy to	<p>Christopher W. Smart  Carlton Fields, P.A.  4221 West Boy Scout Blvd.  Suite 1000  Tampa, Florida 33607  Tel. No.: [REDACTED] (b)(4),(b)(6)  Fax No.: [REDACTED]  Email: [REDACTED] (b)(4),(b)(6)</p>
To Plaintiff	<p>Paul A. Levin  Mortgage Recovery Law Group  700 N. Brand Blvd, Suite 830  Glendale, CA 92103  Tel. No.: [REDACTED] (b)(4),(b)(6)</p>

Person To Receive Notice	Notification Information		
	Fax No.:		(b)(4),(b)(6)
	Email:		(b)(4),(b)(6)
With a copy to	William Heller Akerman Senterfitt Las Olas Centre II 350 East Las Olas Boulevard Suite 1600 Ft. Lauderdale, FL 33301-2229 Tel. No: [redacted] Fax No: [redacted] Email: [redacted]		(b)(4),(b)(6)
	Email:		(b)(4),(b)(6)

The above addresses may be changed by any Party as to such Party by providing the other Parties notice of any address change in the same manner as is provided above, and which change shall be effective as to any Party upon receipt of written notice from the other Party. In the event that written notice, demand, or request is made as provided in this paragraph 22, that writing shall be deemed to have been received by the Party to whom it was addressed on the earliest of (i) the date that the notice was hand delivered, (ii) the date the notice was sent via facsimile (so long as a facsimile transmittal confirmation sheet is contemporaneously generated by the facsimile machine from which the transmission occurred), or (iii) three days after properly addressed notice was deposited with the U.S. Postal Service, applicable postage prepaid.

23. Remedies. All Parties shall be entitled to all remedies available at law or in equity for any violation of this agreement, including, but not limited to the remedy of specific performance.

24. Further Assurances. The Parties shall execute such other documents as may be reasonably necessary to carry out the terms and conditions of this agreement.

25. Survival. All warranties, representations, covenants, and agreements set forth herein shall survive the Effective Date.

26. Compliance Dates. In the event that any date specified in this agreement shall be on a Saturday, Sunday, or a nationally-declared holiday, then the date so specified shall be deemed to be the next business day following such date, and compliance by such business day hereunder shall not be deemed a default by either of the Parties under this agreement.

27. Waiver. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.

28. Jury Trial Waiver. The Parties hereby waive any and all rights that they may otherwise have to a trial by jury in any action, proceeding, claim, counterclaim or third party complaint, whether in contract or tort, at law or in equity, arising out of or in any way related to this agreement.

29. Entire Agreement. This agreement contains the complete agreement of the Parties concerning the subjects of this agreement and supersedes all prior drafts of this agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning that subject of this agreement, whether in connection with the negotiation of this agreement or otherwise. This agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language

ultimately agreed to in this agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this agreement, the fact that other words may have been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this agreement. This agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

Dated: August 16, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDYMAC BANK, F.S.B.

(b)(6)

By: 

Its: Richard S. Giff  
Counsel

Dated: August 16, 2010

COMMONWEALTH LAND TITLE INSURANCE COMPANY

(b)(6)

By: 

Its: John D. Purcell  
Senior Vice President

Dated: August 16, 2010

TITLE SERVICES CORP.

(b)(6)

By: 

Its: John H. Davis  
President

APPROVED AS TO FORM:

(b)(4)

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NO. 5306 P. 3

003/007

(b)(2)

ANDERSON MCPHARLIN

LIMS Mr [redacted]  
DAF / Mortgage Fraud

9/2/10

ENTERED  
9/8/10

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into and made effective as of the 9th day of August, 2010 ("Effective Date"), by and between FINANCIAL FREEDOM SENIOR FUNDING CORPORATION by FDIC as RECEIVER FOR INDYMAC BANK FSB AS SOLE SHAREHOLDER OF FINANCIAL FREEDOM SENIOR FUNDING CORPORATION (hereinafter "FDIC/FINANCIAL FREEDOM") and AMERITIME MORTGAGE ("AMERITIME MORTGAGE"). FDIC/FINANCIAL FREEDOM and AMERITIME MORTGAGE may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

(b)(2)

**1. RECITALS**

**WHEREAS:**

1.1 On February 27, 2009, FINANCIAL FREEDOM filed a lawsuit entitled *FINANCIAL FREEDOM SENIOR FUNDING CORPORATION vs. AMERITIME MORTGAGE COMPANY, LLC, a Texas limited liability company; ABSOLUTE MORTGAGE SOLUTIONS, LLC, a Connecticut limited liability company; WORLD PROPERTIES INTERNATIONAL, a business entity, form unknown; SAYYI PROFESSIONAL TITLE, a business entity, form unknown; GARRY MARTIN, an individual, Case No. SACV09-0246 DOC(VBKx)* ("Action"). Pursuant to its Complaint in the Action, FINANCIAL FREEDOM sought damages from AMERITIME and others for claims arising out of the following 5 loans: Rodriguez/loan no. [redacted]

(b)(6)

Orlando, FL 32809, 8/6/2008; Ramos/loan no. [redacted]

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Deleon Springs, FL 32130, 8/13/2008; Hinson/loan no. [redacted]

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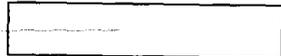


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The Villages, FL 32162, 6/16/2008; Adams/loan no.

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Alamonte Springs, FL 32701, 8/1/2008;

(b)(6)



Archer, FL 32618. 6/20/2008

Ford/loan no. ("Subject Loans").

1.2 INDYMAC BANK, FSB ("INDYMAC") was the sole shareholder of FINANCIAL FREEDOM. The FDIC is a government entity appointed by the Office of Thrift Supervision, to act as Receiver for INDYMAC pursuant to 12 U.S.C. § 1821(c)(2)(A). Accordingly, the FDIC as Receiver of IndyMac is authorized to enter into and execute this Agreement. The FDIC's only involvement in this Action is, and at all times was, as Receiver for INDYMAC. The FDIC has never been involved in this Action in any other capacity.

1.3 The Parties desire and have agreed to settle all claims relating to this Action.

**2. AGREEMENT**

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

2.1 **Payment to FINANCIAL FREEDOM.** Payment of Fifty Seven Thousand Five Hundred Dollars and no/cents (\$57,500) (the "Settlement Funds") shall be paid to FDIC/FINANCIAL FREEDOM on behalf of AMERITIME, and made payable to the "Anderson McPharlin & Connors Trust Account" c/o Vanessa H. Widener, Esq.,

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Anderson, McPharlin & Connors LLP, 444 S. Flower St., 31<sup>st</sup> Floor, Los Angeles, CA 90071. FDIC/FINANCIAL FREEDOM's counsel acknowledges receipt of the Settlement Funds which shall not be negotiated until AMERITIME's counsel's receipt of this fully executed Agreement.

2.2 Within five (5) business days of FDIC/FINANCIAL FREEDOM's counsel's receipt of the fully executed Settlement Agreement and the Settlement Payment, FDIC/FINANCIAL FREEDOM's counsel shall file a request for dismissal of the Action with prejudice as to AMERITIME only.

2.3 Each Party agrees that Section 664.6 of the Code of Civil Procedure of the State of California shall apply to this Settlement Agreement and requests that the court retain jurisdiction over the Parties to enforce this Settlement Agreement.

2.4 The Parties shall bear their own costs and attorneys' fees incurred in the Action.

(b)(4)

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NO. 5306 P. 6

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: August 19, 2010  
APPROVED AS TO FORM

MAXIE, RHEINHEIMER, STEPHENS & VREVICH

By:



(b)(6)

BARRY VREVICH

Attorneys for Defendant,  
AMERITIME MORTGAGE COMPANY, LLC

DATED: August 18, 2010

AMERITIME MORTGAGE COMPANY, LLC

By:



(b)(6)

*Brandon Armstrong, President*

*Signatures continue on next page.*

(b)(4)

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NO. 5306 P. 7

ANDERSON MCPHARLIN

001/007

(b)(6)

DATED: August 9, 2010  
APPROVED AS TO FORM

ANDERSON, MCPHARLIN & CONNERS LLP



VANESSA H. WIDENER  
Attorney for Plaintiff,  
FINANCIAL FREEDOM SENIOR FUNDING  
CORPORATION

DATED: August 9, 2010

FINANCIAL FREEDOM SENIOR FUNDING  
CORPORATION by FDIC as RECEIVER FOR  
INDYMAC BANK FSB AS SOLE SHAREHOLDER  
OF FINANCIAL FREEDOM SENIOR FUNDING  
CORPORATION

(b)(6)

By:



Signature

Richard S. Gill, Counsel  
Type/Print Name and Title

## **RELEASE AND SETTLEMENT AGREEMENT**

This Release and Settlement Agreement (the "*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*") and Texas Supreme Mortgage, Inc. ("*Texas Supreme*") with respect to the claims made in the case captioned *Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB v. Lawyers Title Insurance Corporation, et al.*, in the 157th Judicial District Court of Harris County, Texas, Cause No. 2008-22781 (the "*Litigation*").

### **RECITALS**

WHEREAS, IndyMac Bank, F.S.B ("*IndyMac*") and *Texas Supreme* entered into a Customer Contract and e-MITS User Agreement, as amended (the "*Contract*"), which incorporated the IndyMac Lending Guide, as amended, supplemented, or otherwise modified from time to time (the "*Guide*");

WHEREAS, Chi Van Nguyen ("*Borrower*") applied for mortgage loan financing to purchase the real property located at 3311 Yupon Street, Unit 505, Houston, Texas (the "*Property*");

WHEREAS, *Texas Supreme* processed *Borrower's* loan applications and originated a primary and secondary mortgage loan secured by the *Property* which IndyMac funded (the "*Subject Loans*");

WHEREAS, *IndyMac* asserted claims in the *Litigation* against *Texas Supreme* based on the *Subject Loans* and alleged that *Texas Supreme* failed to comply with the terms and conditions of the *Contract* and *Guide*;

WHEREAS, *FDIC* alleges it is entitled to pursue the claims asserted by *IndyMac* in the *Litigation*;

WHEREAS, *Texas Supreme* expressly denies 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 and Release.** *FDIC* and *Texas Supreme*, through counsel, shall execute a dismissal with prejudice and without any costs or attorney's fees to any party regarding all claims in the *Litigation* between *Texas Supreme* and *FDIC*.

For and in consideration of the total payment of \$20,000 (Twenty Thousand Dollars) by *Texas Supreme*, and in consideration of the terms and conditions of this *Agreement*, *FDIC* does absolutely and unconditionally release *Texas Supreme*, its officers, directors, shareholders, members, insurers, employees, owners, agents, affiliates, successors, fiduciaries, and assigns, jointly and severally, from any and all claims, demands, actions or causes of action, 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 *Texas Supreme*, arising out of the *Subject Loans*, and/or the facts and circumstances alleged in the *Litigation*. Provided, however, that, in the event the payment set forth herein 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.

*Texas Supreme* shall make payment of \$20,000 (Twenty Thousand Dollars) to “RJ Landau Partners PLLC, as Attorneys for Federal Deposit Insurance Corporation,” in one initial installment of \$2,000 (Two Thousand Dollars) and twelve monthly installments of \$1,500 (One Thousand Five Hundred Dollars) pursuant to the following schedule:

- \$2,000 to be payable immediately upon the *Effective Date*;
- \$1,500 to be payable on September 30, 2010;
- \$1,500 to be payable on October 31, 2010;
- \$1,500 to be payable on November 30, 2010;
- \$1,500 to be payable on December 31, 2010;
- \$1,500 to be payable on January 31, 2011;
- \$1,500 to be payable on February 28, 2011;
- \$1,500 to be payable on March 31, 2011;
- \$1,500 to be payable on April 30, 2011;
- \$1,500 to be payable on May 31, 2011;
- \$1,500 to be payable on June 30, 2011;
- \$1,500 to be payable on July 31, 2011;
- \$1,500 to be payable on August 31, 2011;

Payments shall be made in a manner to ensure delivery to RJ Landau Partners, PLLC at 5340 Plymouth Road, Suite 200, Ann Arbor, Michigan, 48105 on or before the due date for each payment.

If *Texas Supreme* fails to make any payments on or before the due date set forth above, *Texas Supreme's* failure to pay shall be considered an event of default. Upon receiving notice of an event of default, *Texas Supreme* 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 certified, return receipt requested to *Texas Supreme's* current counsel of record, David A. Fettner, Fettner Thompson, 4635 Southwest Freeway, Suite 640, Houston, Texas 77027 and electronic mail to the address  *Texas Supreme*

(b)(4),(b)(6)

hereby agrees that if the default is not cured within this period, *FDIC* may file with the Court a consent judgment in favor of *FDIC* and against *Texas Supreme* 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*. *Texas Supreme* 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 *Texas Supreme* 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*. *Texas Supreme* 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 *Texas Supreme*'s successors and assigns, and inures to the benefit of *FDIC*'s successors and assigns.

3. **Express Reservation from Releases by *FDIC*.** 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, or (b) any action taken by any other federal agency.

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

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

6. **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.

7. **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.

8. **Warranty of Capacity to Execute Agreement.** *FDIC* represents and warrants that no other person or entity has an ownership interest in the claims, demands, obligations or causes of action referred to in this *Agreement*, except as otherwise set forth herein; and that *FDIC* has the sole right and exclusive authority to execute this *Agreement* and receive the sums specified in it; and that *FDIC* has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this *Agreement*.

9. **Governing Law.** This *Agreement* shall be governed by and construed in accordance with Texas 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 have proceeded with the advice of an attorney of their own choice, that they have read the terms of this *Agreement*, that the terms of this *Agreement* have been completely read and explained to

the parties by their attorney, 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.

IN WITNESS WHEREOF, 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

By:

(b)(6)

Name: Jock S. Duncan

Title: Counsel

Date: Sept. 28, 2010

Texas Supreme Mortgage, Inc.

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

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

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

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

the parties by their attorney, 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.

IN WITNESS WHEREOF, 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

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

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

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

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

Texas Supreme Mortgage, Inc.

(b)(6)

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

Name: WESLEY P. CORDEAU

Title: PRESIDENT

Date: SEPTEMBER 15, 2010

(b)(6)

LIMS Mv



rece.  
9/27/10

ENTERED  
9/30/10

**RELEASE AGREEMENT**

This Release Agreement ("Agreement") is executed and effective the date that it is executed by the Claimant, **Federal Deposit Insurance Corporation, as Receiver for Indy Mac Federal Bank, FSB**, as set forth below.

(b)(2)

**DEFINITIONS**

The term "Claimant" refers to **Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB** and includes not only the named entity, but also its fiduciaries, administrators, representatives, assigns, predecessors, successors, related entities, parent companies, owners, shareholders, and subsidiaries.

The term "Alleged Tortfeasor" refers to **Layne W. Lucia and Redfern, Lucia & Associates, LLC**, (i) their heirs, fiduciaries, executors, administrators, representatives, successors, assigns, or any other person, firm, corporation or entity charged or chargeable with responsibility for their acts or omissions, and (ii) the predecessors, successors, assigns, past or present employees, servants, agents, partners, fiduciaries, insurers and any other person, firm, corporation or entity charged or chargeable with responsibility for their acts or omissions.

The term "Lawsuit" refers to the following action filed in the Genesee County Circuit Court, State of Michigan: *Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB v. Great Lakes Broker Funding, LLC, et al*, No. 06-83931-CZ.

The term "Claims" refers to all claims which the Claimant may have or might possess against the Alleged Tortfeasor arising out of any and all real property appraisal services performed by or on behalf of Alleged Tortfeasor.

The term "Parties" refers to the Claimant and the Alleged Tortfeasor.

**TERMS**

1. **Settlement of Claims.** The Parties have agreed that further litigation of the Claimant's Claims would not be in the best interest of the Claimant or the Alleged Tortfeasor. As a result, the Parties have agreed to amicably resolve and settle all Claims which have been or which could be brought or asserted by Claimant against the Alleged Tortfeasor as a result of professional services performed by the Alleged Tortfeasor.
2. **Consideration.** The sole and full consideration to be given by and on behalf of the Alleged Tortfeasor in exchange for the agreements, promises and acknowledgments of the Claimant expressed herein, shall be payment of **One Hundred Fifty Thousand (\$150,000) Dollars**, which shall be paid on behalf of

the Alleged Tortfeasor forthwith to the Claimant's attorneys, which shall be fully inclusive of all interest, costs and fees which are or might be taxable.

3. Dismissal of Alleged Tortfeasor. Upon the execution of this Agreement and the payment of the consideration set forth in Paragraph 2 of this Agreement, the Parties agree to execute and prepare such documents as are necessary to effectuate the dismissal of the Lawsuit as to the Alleged Tortfeasor with prejudice and without costs.
4. Release by Claimant. In consideration of the payments and agreements made herein, the Claimant hereby releases and discharges the Alleged Tortfeasor of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of services, expenses, and compensation whatsoever on account of, or because of, or in any way growing out of the Claims or the events related to any and all services performed by the Alleged Tortfeasor. It is understood and agreed that this Agreement is intended to effect a complete release of all Claims or actions of any type which the Claimant now has or may hereafter acquire against the Alleged Tortfeasor for damages and losses arising out of the professional services performed by the Alleged Tortfeasor. The Claimant understands and agrees that this is a release in full and that, with the exception of enforcing this Agreement, it will never again be able to recover damages, monies, or benefits of any type from the Alleged Tortfeasor as result of services performed by the Alleged Tortfeasor, even though its damages or injuries may be greater or more extensive than currently anticipated.
5. Release by Alleged Tortfeasor. In consideration of the terms and conditions of this Agreement, the Alleged Tortfeasor hereby releases and discharges the Claimant of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of services, expenses, and compensation whatsoever on account of, or because of, or in any way growing out of the Claims or the events related to any and all services performed by the Alleged Tortfeasor. It is understood and agreed that this Agreement is intended to effect a complete release of all Claims or actions of any type which the Alleged Tortfeasor now has or may hereafter acquire against the Claimant for damages and losses arising out of the Claims or the events related to any and all services performed by the Alleged Tortfeasor. The Alleged Tortfeasor understands and agrees that this is a release in full and that, with the exception of enforcing this Agreement, it will never again be able to recover damages, monies, or benefits of any type from the Claimant as a result of the Claims or the events related to any and all services performed by the Alleged Tortfeasor, even though its damages or injuries may be greater or more extensive than currently anticipated.
6. Representations by Claimant. Claimant represents and warrants to the Alleged Tortfeasor that no person or entity other than the Claimant presently has any interest in the claims, damages, rights, causes of action, or other matters to which this Agreement applies; that the Claimant has the sole right and authority to

execute this Agreement and covenants that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, rights, or causes of action referred to, compromised, or surrendered in this Agreement:

7. Non-Admission of Liability. Claimant acknowledges that this settlement is a compromise of a disputed claim, and that the payment made by or on behalf of the Alleged Tortfeasor is not to be construed as an admission of liability on the part of the Alleged Tortfeasor, by whom liability is expressly denied.
8. Advice Concerning Settlement. The Parties acknowledge and represent that, before deciding to enter into this Agreement and signing this Agreement, they obtained the advice of counsel. The Parties executed this Agreement knowingly and voluntarily without relying on any statements or representations by any other Party, person or entity other than the statements or representations contained in this Agreement.
9. Binding Effect. All the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns.
10. Authority to Execute Agreement. The Parties represent that they are legally competent and have full authority to enter into this Agreement.
11. Counterpart 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.
12. Entire Agreement. Except as otherwise provided, this Agreement contains the entire understanding among the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous Agreements, understandings and/or negotiations. No parol evidence of prior or contemporaneous agreements, understandings, and/or negotiations shall be used to modify this Agreement. No modification or alteration shall be deemed effective unless in writing and signed by all of the Parties.
13. Michigan Law Applies. The Parties agree that Michigan law governs and controls this Agreement and any disputes to be resolved hereunder.

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**FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER  
FOR INDYMAC FEDERAL BANK, FSB**

By: Richard S. Crill

Its: Counsel

**REDFERN, LUCIA &  
ASSOCIATES, LLC**

By: Layne W. Lucia

Its:

LAYNE W. LUCIA

**FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER  
FOR INDYMAC FEDERAL BANK, FSB**

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

Its:

**REDFERN, LUCIA &  
ASSOCIATES, LLC**

\_\_\_\_\_

(b)(6)

By: Layne W. Lucia

Its: President

(b)(6)

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**LAYNE W. LUCIA**