

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("*Agreement*") is entered into this 23rd day of October, 2009, by and between the Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB and assignee of claims of Federal Home Loan Mortgage Corporation ("*Freddie Mac*"), ("*FDIC*"), Kurt Bigalk ("*Bigalk*"), and Lakeland Residential, Inc. ("*Lakeland*"), with respect to the claims made in the case captioned *Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB v. American Wholesale Lending, LLC, et al.*, United States District Court for the District of Minnesota, Case No. 07-CV-04514-JNE/JIG (the "*Litigation*").

RECITALS

WHEREAS, IndyMac Bank, F.S.B ("*IndyMac*") funded mortgage loans secured by the (b)(4),(b) properties located at [redacted] Chaska, Minnesota and [redacted] Otsego, (b)(4),(b) (6) Minnesota (the "*Properties*");

WHEREAS, *IndyMac* transferred certain mortgage loans at issue in the *Litigation* to *Freddie Mac*;

WHEREAS, *Bigalk* performed appraisals of the *Properties* in the name of *Lakeland* (the "*Appraisals*");

WHEREAS, *IndyMac* asserted claims in the *Litigation* against *Bigalk* and *Lakeland* based on the *Appraisals*;

WHEREAS, *Freddie Mac* assigned any and all claims relating to the *Litigation* and *Appraisals* to *FDIC*;

WHEREAS, *FDIC* is entitled to pursue the claims asserted in the *Litigation* by *IndyMac* and any and all claims that could have been asserted by *Freddie Mac* relating to the *Litigation* and/or *Appraisals*;

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

WHEREAS, to avoid any further expense of litigation, *FDIC*, *Bigalk*, and *Lakeland* 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, *FDIC*, *Bigalk*, and *Lakeland* 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*, through counsel, shall execute a Dismissal with Prejudice and without costs or attorney's fees to any party regarding all claims asserted by *IndyMac* and continued by *FDIC* against *Bigalk* and *Lakeland* in the *Litigation*; *Bigalk* and *Lakeland*, through counsel, shall execute a Dismissal with Prejudice and without costs or attorney's fees to any party regarding all cross-claims asserted in the *Litigation*; and the parties shall release one another as follows.

For and in consideration of the terms and conditions of this *Agreement*, *Bigalk* and *Lakeland*, their officers, directors, shareholders, insurers, employees, owners, agents, affiliates, successors, estates, heirs, insurance carrier, fiduciaries, and assigns, jointly and severally, do absolutely and unconditionally release *FDIC* 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 *Bigalk* and/or *Lakeland* had, has, claims to have, or may hereafter acquire against *FDIC* arising out of the facts and circumstances alleged in the *Litigation*.

For and in consideration of the payment of \$30,000 (Thirty Thousand Dollars) to be payable to the client trust account of RJ Landau Partners PLLC immediately upon execution of this *Agreement*, and in consideration of the terms and conditions of this *Agreement*, *FDIC* does absolutely and unconditionally release *Bigalk* and *Lakeland*, their officers, directors, shareholders, insurers, employees, owners, agents, affiliates, successors, estates, heirs, insurance carriers, 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 *Bigalk* and *Lakeland*, arising out of the facts and circumstances alleged in the *Litigation*.

3. **Parties Released – Pierringer Release.** The parties hereto, by this Release intend to release only the parties specifically named and desire to settle their respective claims and liabilities arising out of the *Litigation* consistent with the method and form of settlement as set forth in *Pierringer v. Hoyer*, 21 Wis. 2d 182, 124 N.W.2d 106 (1963) and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978). *FDIC* expressly reserves the balance of the whole cause of action, or any other claim of whatever kind or nature not released hereby, which *FDIC* may have, or hereafter have, against any other person, corporation, company, or other entity arising out of the facts and circumstances alleged in the *Litigation*.

4. **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. 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 in any federal judicial district. In addition, *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.

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 Minnesota 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.

Witnesses

(b)(6)

Printed Name: Robert DeHewzal

(b)(6)

Printed Name: ANDREW Gilbert

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

By:

(b)(6)

Name: Richard S. Gill

Title: Counsel

Date: 10-23-2009

Kurt Bigalk

Witnesses

Printed Name: _____

Date: _____

Printed Name: _____

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

Witnesses

Printed Name: _____

Printed Name: _____

By: _____

Name: _____

Title: _____

Date: _____

(b)(6)

Witnesses

Printed Name: *Stephanie Anadkar*

(b)(6)

Printed Name: *Andres B. Wieg*

Kurt Bigalk

(b)(6)

Date: *9/17/09*

Witnesses

(b)(6)

Printed Name: Stephanie Angolker

(b)(6)

Printed Name: Andres B. Wings

Lakeland Residential, Inc.

(b)(6)

By:

Name: Kurt Bork

Title: OWNER

Date: 9/17/09