

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("*Agreement*") is entered into this 13 day of October, 2009, by and between the Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB ("*FDIC*"), David Tomlinson ("*Tomlinson*"), and Theisen, Inc., doing business as Theisen Appraisals ("*Theisen*"), 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/JJG (the "*Litigation*").

RECITALS

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

WHEREAS, *Tomlinson* performed appraisals of the *Properties* in the name of *Theisen* (the "*Appraisals*");

WHEREAS, *Old IndyMac* asserted claims in the *Litigation* against *Tomlinson* and *Theisen* based on the *Appraisals*;

WHEREAS, on July 11, 2008, *Old IndyMac* was closed and the Federal Deposit Insurance Corporation was appointed as receiver of *Old IndyMac*;

WHEREAS, a new institution named IndyMac Federal Bank, FSB ("*New IndyMac*") was chartered on July 11, 2008 and certain of the assets of *Old IndyMac* including the *Litigation*, were transferred to *New IndyMac*;

WHEREAS, the Federal Deposit Insurance Corporation was appointed as conservator and receiver of *New IndyMac*;

WHEREAS, *Old IndyMac* and *New IndyMac* are hereinafter collectively referenced as "*IndyMac*;"

WHEREAS, *FDIC* is entitled to pursue the claims asserted in the *Litigation* by *IndyMac*;

WHEREAS, the Federal Home Loan Mortgage Corporation ("*Freddie Mac*") assigned any and all claims against *Tomlinson* and *Theisen* relating to the *Litigation* and *Appraisals* to *FDIC*;

WHEREAS, the *FDIC* has not reassigned *Freddie Mac*'s claims against *Tomlinson* and *Theisen*;

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

WHEREAS, to avoid any further expense of litigation, *FDIC*, *Tomlinson*, and *Theisen* 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*, *Tomlinson*, and *Theisen* 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 *Tomlinson* and *Theisen* in the *Litigation*; *Tomlinson*, 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*; *Theisen*, 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*, *Tomlinson* and *Theisen*, 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 *Tomlinson* and/or *Theisen* 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 terms and conditions of this *Agreement*, *Tomlinson* and *Theisen*, their officers, directors, shareholders, insurers, employees, owners, agents, affiliates, successors, estates, heirs, insurance carriers, fiduciaries, and assigns, 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 *Tomlinson* and *Theisen* had, has, claims to have, or may hereafter acquire against each other arising out of the facts and circumstances alleged in the *Litigation*.

For and in consideration of the payment of \$35,000 (Thirty-Five Thousand Dollars) (hereinafter the "*Settlement Amount*") 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*, its officers, agents, and assigns do absolutely and unconditionally release *Tomlinson* and *Theisen*, 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 *Tomlinson* and *Theisen*, arising out of the facts and circumstances alleged in the *Litigation*.

In accepting the *Settlement Amount*, *FDIC* hereby releases and discharges that fraction, portion, or percentage of the total cause of action or claim of damages the *FDIC* and/or *IndyMac* now have or may hereafter possess against all parties responsible for any damages that shall by trial or other disposition be determined to be the sum of the fraction, portion, or percentage of causal fault for which *Tomlinson* and/or *Theisen* are found to be liable to *FDIC* and/or *IndyMac* as a consequence of their claims in the *Litigation*.

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 *Appraisals*, 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.

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. **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. **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.

9. **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.

10. **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.

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.

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 DeHewzel

(b)(6)

Printed Name: Andrew Gilbert

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

By:

(b)(6)

Name: Richard S. Gail

Title: Counsel

Date: 10-23-2009

David Tomlinson

Witnesses

(b)(6)

Printed Name: Russell DiMarzio

(b)(6)

Date: 11/20/09

(b)(6)

Printed Name: Kevin Thompson

Witnesses

(b)(6)

[Redacted Signature]

Printed Name: Todd Parsons

(b)(6)

[Redacted Signature]

Printed Name: Chevis Nelson

Theisen, Inc. doing business as Theisen Appraisals

[Redacted Signature]

(b)(6)

By:

Name: JEFF THEISEN

Title: OWNER

Date: 11-9-09