

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this \_\_ day of June, 2012, by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank, ("FDIC-Receiver"), Defendants Eric K. Fisher, GT Investments, LLC, KMG Rentals, LLC, Kgatale S. Malatse, Metro Real Estate, and S.J.S. Partnership (collectively the "Settling Defendants"). Individually, the FDIC-Receiver and each Settling Defendant may be referred to herein as "Party" and collectively as the "Parties").

### RECITALS

WHEREAS:

At all relevant times prior to September 25, 2008, Washington Mutual Bank ("the Bank") was a depository institution organized and existing under the laws of the state of Nevada;

On September 23, 2008, the Bank asserted claims against certain persons, including the Settling Defendants, for negligence, fraud, and breach of contract, among others. Those claims for damages are now pending in the Allen County Circuit Court under Cause Number 02C01-0809-PL-124, ("Action").

On September 25, 2008, the Bank was closed by the Office of Thrift Supervision and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-Receiver succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to the Action. On February 2, 2010, the FDIC-Receiver was substituted as proper party for the Bank in the Action.

The Settling Defendants have denied liability for the FDIC-Receiver's claims. However, the undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC-Receiver**

A. As an essential covenant and condition to this Agreement, the Settling Defendants, collectively, agree to pay the FDIC-Receiver the sum of \$15,000.00 (“the Settlement Funds”).

B. Within 20 days after the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, the Settlement Funds shall be delivered to counsel for the FDIC-Receiver by certified or cashier’s check(s) drawn upon a depository institution acceptable to FDIC-Receiver.

**SECTION II: Stipulation and Dismissal**

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, the FDIC-Receiver shall dismiss the Action as to the Settling Defendants. The undersigned parties agree to enter a stipulation providing that the dismissal set forth above shall be with prejudice, with each party to bear its own costs as these were originally incurred.

**SECTION III: Releases**

A. Release of Individual Settling Defendants by FDIC-Receiver.

Effective upon receipt in full of the settlement funds and the dismissal described in SECTION(S) I and II above, and except as provided in PARAGRAPH III.C., the FDIC-Receiver, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-Receiver, that arise from or relate to the allegations made in the Action, including without limitation the mortgage loans at issue in the Action.

B. Release of FDIC-Receiver by the Settling Defendants.

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC-Receiver, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, to the allegations made in the Action, including without limitation the mortgage loans at issue in the Action.

C. Express Reservations From Releases by FDIC-Receiver.

1. Notwithstanding any other provision, by this Agreement, the FDIC-Receiver does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

a. against any person or entity not expressly released in this Agreement; and

b. which are not expressly released in Paragraphs III.A above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC-Receiver in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition, or any other administrative enforcement action that may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by any other agency or instrumentality of the United States government including the Department of Justice or the

United States Attorney's Office for the Northern District of Indiana or any other federal judicial district. In addition, the FDIC-Receiver 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.

#### **SECTION V: Representations and Acknowledgments**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this agreement is not an admission or evidence of liability by any of them regarding any claim.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this Agreement.

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a party hereto or are authorized to sign this Agreement on behalf of the respective party, and that they have the full power and authority to bind such party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns.

D. 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 Indiana.

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties concerning the matters

set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

G. Reasonable Cooperation.

1. The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement including doing or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

2. Further, the Settling Defendants agree to cooperate fully with the FDIC-Receiver in connection with the Action. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-Receiver pursuant to its internal guidelines and policy for such reimbursement.

H. Advice of Counsel. Each party acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that party by his or her counsel.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION as  
Receiver for Washington Mutual Bank

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

PRINT NAME: \_\_\_\_\_

GT INVESTMENTS, LLC

BY: \_\_\_\_\_

TITLE: *Gen* \_\_\_\_\_

PRINT NAME: *George Jordan* \_\_\_\_\_

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

ERIC K. FISHER

PRINT NAME: \_\_\_\_\_

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

KMG RENTALS, LLC

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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

KGATALE S. MALATSE

PRINTED NAME \_\_\_\_\_

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

METRO REAL ESTATE, INC.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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

S.J.S. PARTNERSHIP

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

PRINT NAME: \_\_\_\_\_

GT INVESTMENTS, LLC

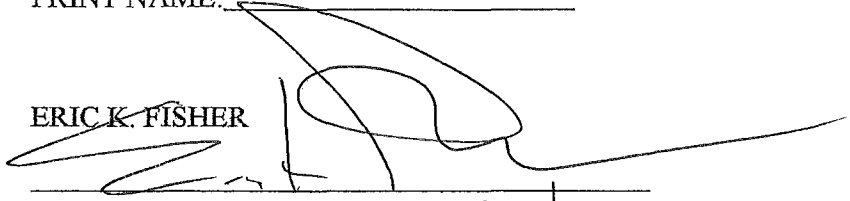
BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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

ERIC K. FISHER



PRINT NAME: Eric K - Fisher

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

KMG RENTALS, LLC

BY:  \_\_\_\_\_

TITLE: member

PRINTED NAME: Kevin Garbers

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

KGATALE S. MALATSE

\_\_\_\_\_  
PRINTED NAME \_\_\_\_\_

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

METRO REAL ESTATE, INC.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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

S.J.S. PARTNERSHIP

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

PRINT NAME: \_\_\_\_\_

GT INVESTMENTS, LLC

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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

ERIC K. FISHER

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

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

KMG RENTALS, LLC

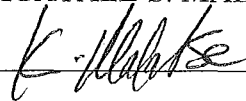
BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

Date: 6/26/12

KGATALE S. MALATSE

  
\_\_\_\_\_  
PRINTED NAME KGATALE MALATSE

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

METRO REAL ESTATE, INC.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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

S.J.S. PARTNERSHIP

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_



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

PRINT NAME: \_\_\_\_\_

GT INVESTMENTS, LLC

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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

ERIC K. FISHER

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

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

KMG RENTALS, LLC

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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

KGATALE S. MALATSE

\_\_\_\_\_  
PRINTED NAME \_\_\_\_\_

Date: 6-27-12

METRO REAL ESTATE, INC.

BY:  \_\_\_\_\_

TITLE: President \_\_\_\_\_

PRINTED NAME: Brian Schaper \_\_\_\_\_

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

S.J.S. PARTNERSHIP

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

PRINT NAME: \_\_\_\_\_

GT INVESTMENTS, LLC

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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

ERIC K. FISHER

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

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

KMG RENTALS, LLC

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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

KGATALE S. MALATSE

\_\_\_\_\_  
PRINTED NAME \_\_\_\_\_

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

METRO REAL ESTATE, INC.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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

S.J.S. PARTNERSHIP

BY: \_\_\_\_\_ 

TITLE: JOHN O SCHEELE  
General Partner