

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*

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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.

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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

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