

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 ("*FDIC*"), Thomas Hanson ("*Hanson*"), and Act Appraisals ("*Act Appraisals*"), 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 ("*IndyMac*") funded mortgage loans secured by the property located at Otsego, Minnesota (the "*Property*");

WHEREAS, *IndyMac* transferred certain mortgage loans at issue in the *Litigation* to Federal Home Loan Mortgage Corporation ("*Freddie Mac*");

WHEREAS, *Hanson* performed an appraisal of the *Property* in the name of *Act Appraisals* (the "*Appraisal*");

WHEREAS, *IndyMac* asserted claims in the *Litigation* against *Hanson* and *Act Appraisals* based on the *Appraisal*;

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

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

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

WHEREAS, *Hanson* and *Act Appraisals* expressly deny any liability relating to the asserted claims in the *Litigation*; and

WHEREAS, to avoid any further expense of litigation, *FDIC*, *Hanson*, and *Act Appraisals* 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*, *Hanson*, and *Act Appraisals* agree as follows:

1. **Recitals.** The above Recitals are incorporated herein by reference and made a part of this *Agreement*.

2. **Dismissal.** *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 *Hanson* and *Act Appraisals* in the *Litigation*; *Hanson* and *Act Appraisals*, 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*.

3. **Pierringer Release.** For and in consideration of the payment of \$15,000 (Fifteen Thousand Dollars) to be payable to "RJ Landau Partners PLLC, Attorneys for Federal Deposit Insurance Corporation" immediately upon execution of this *Agreement*, and in consideration of the terms and conditions of this *Agreement*, *FDIC* does absolutely and unconditionally release *Hanson* and *Act Appraisals*, their officers, directors, shareholders, employees, owners, agents, affiliates, successors, estates, heirs, insurance carriers, fiduciaries, assigns, and their insurer, 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 *Hanson* and *Act Appraisals*, arising out of the facts and circumstances alleged in the *Litigation*. The *FDIC* further covenants and expressly agrees to refrain forever from instituting any other action or making any other demand or claim of any kind against *Hanson* and/or *Act Appraisals* for damages sustained by the *FDIC* as a result of, arising from, or in anyway relating to the *Litigation* and/or the *Appraisal*.

The payment by *Hanson* and/or *Act Appraisals* and their insurer, General Star Management Company, is not intended as full compensation for damages claimed by *FDIC* as a result of, arising from, or in anyway relating to the *Litigation* and/or the *Appraisal*. This *Release* is not entered into, nor in any way intended to release any claim or cause of action by the *FDIC* against any third-party for damages sustained, arising from or related to the *Litigation*, *Appraisal*, or *Property*, said claims and causes of action being specifically reserved and retained against all third parties. This *Agreement* only releases, and is only intended to release, all claims against *Hanson* and *Act Appraisals* and their insurer, General Star Management Company, for damages sustained as a result of, arising from, or in anyway relating to the *Litigation* and/or the *Appraisal*.

The *FDIC* specifically agrees to hold *Hanson* and/or *Act Appraisals* and their insurer, General Star Management Company, harmless, and specifically agrees to indemnify them for any claims or causes of action by any person or entity, for contribution or indemnity, or otherwise, whether such is alleged to arise by reason of judgment, settlement, reallocation of fault in the event of insolvency or uncollectability of any award, or otherwise. By this *Agreement* the *FDIC* discharges *Hanson* and/or *Act Appraisals* and their insurer General Star Management Company from their liability, if any, for contribution or indemnity with respect to

the *FDIC's* claim for damages and all of the *FDIC's* claims for damages are satisfied to the extent of that percentage of the *FDIC's* total claim for damages against *Hanson* and/or *Act Appraisals* and their insurer, General Star Management Company, as a result of, arising from, or in anyway relating to the *Litigation* and/or the *Appraisal*, which shall hereafter, by further trial or other disposition of this or any other cause of action, be determined to be the percentage of causal fault or causal responsibility, if any, whether for negligence or any other liability, for which *Hanson* and/or *Act Appraisals* are found to be liable.

By signing this *Agreement* it is the intention of the *FDIC*, through the language contained in this *Agreement*, to extinguish any potential liability on the part of *Hanson* and/or *Act Appraisals* and their insurer, General Star Management Company, for contribution or indemnity which might be claimed by others as a result of, arising from, or in anyway relating to the *Litigation* and/or the *Appraisal*.

The term "claims or causes of action" includes, but is not limited to, all liability, actions, causes of actions, claims and demands for all known and unknown, foreseen and unforeseen, contemplated or un contemplated damages, and consequences thereof, including unforeseen consequences of known or unknown conditions, and includes claims for actual, compensatory, consequential, punitive, exemplary, contractual or extra-contractual damages or injuries of any kind, and all derivative claims, and includes claims for attorney's fees, expenses, interest and costs and disbursements.

Notwithstanding the assignment by *Freddie Mac* identified in the Recitals of this *Agreement*, the term "claims or causes of action" specifically includes any action by *Freddie Mac* for damages as a result of, arising from or in anyway relating to the *Litigation*, *Property* and/or the *Appraisal*, except that the term "claims or causes of action" excludes any action taken

by *Freddie Mac* to place *Hanson* and/or *Act Appraisals* on its exclusionary list, and any damages or consequences thereof whether foreseen or unforeseen, contemplated or un contemplated.

It is the intention of the parties that this *Agreement* be construed in accord with the principles 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).

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 *Appraisal*, 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 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 attorneys, 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 the entity.

IN WITNESS WHEREOF, the parties to this *Agreement* have executed this *Agreement* as of the date indicated by each party's authorized signature below.

Witnesses

(b)(6)
Printed Name: Robert DeHeuzel

(b)(6)
Printed Name: Andrew Gilbert

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

By: (b)(6)
Name: Richard S. O'Neil
Title: Counsel
Date: 10-23-2009

Thomas Hanson

THOMAS HANSON

Witnesses

(b)(6)

[Redacted]

[Redacted]

Printed Name: Mary N. Fredrickson Date: 11-2-09

(b)(6)

[Redacted]

Printed Name: Gale A. Pettee

Act Appraisals

Witnesses

(b)(6)

[Redacted]

[Redacted]

(b)(6)

By:

Printed Name: Mary N. Fredrickson

(b)(6)

[Redacted]

Name: TOM HANSON

Title: PRE

Date: 11/2/09

Printed Name: Gale A. Pettee