

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (hereinafter referred to as "*Agreement*") is entered into this ____ day of _____, 2009, by and between Federal Deposit Insurance Corporation As Receiver For IndyMac Federal Bank, FSB (hereinafter referred to as "*FDIC*") and Samuel Willis (hereinafter referred to as "*Borrower*"), with respect to the claims made in the case captioned *Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB v. Great Lakes Broker Funding, LLC, et al.*, Genesee County Circuit Court Case No. 06-83931-CZ (hereinafter referred to as the "*Litigation*").

RECITALS

WHEREAS, *Borrower* entered into a Buy and Sell Agreement with Great Lakes Broker Funding LLC, attached hereto as Exhibit A, whereby *Borrower* agreed to purchase certain real property located in Genesee County, Michigan, referred to in the Buy and Sell Agreement as Lot 103 of Rivershyre, for \$190,000 (hereinafter referred to as the "*Purchase Transaction*");

WHEREAS, *Borrower* entered into a mortgage loan transaction whereby *Borrower* received a warranty deed from Great Lakes Broker Funding LLC (hereinafter referred to as the "*Warranty Deed*") for certain real property located in Genesee County, Michigan, referred to in the *Warranty Deed* as Proposed Lot 103, Rivershyre No. 5, which is recorded as Instrument No.

(b)(4),
(b)(6) [redacted] with the Register of Deeds of Genesee County, Michigan, and attached hereto as Exhibit B, and granted a mortgage to IndyMac Bank, F.S.B. (hereinafter referred to as the "*Mortgage*") on certain real property located in Genesee County, Michigan, referred to in the *Mortgage* as Lot 103, Rivershyre No. 5, which is recorded as Instrument No. [redacted] with the Register of Deeds of Genesee County, Michigan, and attached hereto as Exhibit C, (b)(4),
(b)(6)

(hereinafter referred to as the "*Mortgage Transaction*");

WHEREAS, *FDIC* has asserted claims in the *Litigation* against *Borrower* and others; and

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

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

2. **Interest in Real Property.** *Borrower* shall transfer and convey to *FDIC* any and all interest obtained by *Borrower*, as a result of the *Purchase Transaction*, the *Mortgage Transaction*, or any other transaction, in any real property located within the parcel of land described as:

OUTLOT B ATHERTON ESTATES & A PARCEL OF LAND BEG N 88 DEG 51 MIN 34 SEC W 1270.26 FT & N 01 DEG 40 MIN 12 SEC E 264.13 FT FROM E 1/4 COR OF SEC TH N 88 DEG 51 MIN 38 SEC W 769.01 FT TH N 01 DEG 56 MIN 18 SEC E 297.23 FT TH N 88 DEG 17 MIN 30 SEC W 150 FT TH N 01 DEG 55 MIN 51 SEC E 490 FT TH S 88 DEG 17 MIN 30 SEC E 600 FT TH N 01 DEG 55 MIN 51 SEC E 280.10 FT TH S 88 DEG 17 MIN 30 SEC E 264.08 FT TH S 36 DEG 34 MIN 07 SEC W 205.77 FT TH S 13 DEG 34 MIN 47 SEC E 317.76 FT TH N 79 DEG E 231.97 FT TH S 11 DEG E 50 FT TH S 60 DEG 58 MIN 01 SEC W 138.10 FT TH S 28 DEG 01 MIN 59 SEC E 152.73 FT TH S 60 DEG 58 MIN 01 SEC W 258.03 FT TH S 17 DEG 56 MIN 09 SEC W 54.73 FT TO POB SEC 28 T7N R8E

(b)(4), Tax Parcel Identification Number:

(b)(6) (hereinafter referred to as the "*Property*"). *Borrower* agrees to execute and deliver such documents necessary to transfer any and all interest held by *Borrower* in the *Property* to *FDIC* or its designated party and to do anything else that is necessary in the future to ensure that any and all interest held by *Borrower* in the *Property* is transferred to *FDIC* or its designated party.

Borrower expressly agrees that the execution and delivery of the documents necessary to transfer any and all interest held by *Borrower* in the *Property* to *FDIC* shall not in any manner be deemed a merger with or extinguishment of the *Mortgage*, or a release of the debt secured by the *Mortgage*. The *Mortgage* shall be and remain in full force and effect according to its terms for purposes of foreclosing the *Mortgage* should *FDIC* in its sole discretion, determine to do so.

Borrower shall execute a deed in lieu of foreclosure to *FDIC* or any entity designated by *FDIC*. The deed in lieu shall be in a form acceptable to *FDIC* and will not merge the *Mortgage* with ownership. A true and accurate copy of the deed in lieu is attached hereto and incorporated herein by reference as Exhibit D. *Borrower* agrees that it may be necessary for *FDIC* to foreclose the *Mortgage* even though the *Borrower* has executed a deed in lieu. *Borrower* also expressly agrees that *Borrower* may need to execute and deliver documents in addition to the deed in lieu in order to fully comply with this paragraph, and agrees to fully cooperate with and to perform any additional acts necessary to ensure that any and all interest in the *Property* obtained by *Borrower* as a result of the *Purchase Transaction*, the *Mortgage Transaction*, or any other transaction is vested in *FDIC* or its designated party.

3. **Dismissal and Release.** *Borrower* and *FDIC*, through counsel, shall execute a Dismissal with Prejudice and without costs or attorney's fees to any party regarding all claims asserted by *FDIC* against *Borrower* in the *Litigation* and a Stipulated Order for Dissolution of the Preliminary Injunction dated June 5, 2006 as to *Borrower*; and the parties shall release one another as follows.

For and in consideration of the terms and conditions of this *Agreement*, *Borrower* and *Borrower's* estates, heirs, fiduciaries, and assigns, jointly and severally, do absolutely and unconditionally release *FDIC*, its officers, directors, shareholders, employees, agents, affiliates,

successors 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 *Borrower* 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*, *FDIC*, its officers, directors, shareholders, employees, agents, affiliates, successors and assigns, jointly and severally do absolutely and unconditionally release *Borrower* and *Borrower's* estates, heirs, 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 *Borrower*, arising out of the facts and circumstances alleged by *FDIC* in the *Litigation*. Provided, however, that in the event *Borrower* fails to completely transfer and convey any and all interest in the *Property* obtained by *Borrower* as a result of the *Purchase Transaction*, the *Mortgage Transaction*, or any other transaction to *FDIC* or its designated party, 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.

4. **Express Reservation from Releases.** Nothing in this *Agreement* waives any claim, cause of action, or any rights to contribution or other claims held by either *FDIC* or *Borrower* existing currently or arising in the future, against any other individual or entity not expressly released by this *Agreement*, including but not limited to any other party in the *Litigation*.

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. **Assignment.** *Borrower*, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby assigns without recourse to *FDIC* all of *Borrower's* right, title, and interest in and to any and all claims, demands, actions, and causes of action of whatever nature or description, known or unknown, at law or in equity, whether arising by contract, tort, or otherwise, whether or not asserted and whether or not well founded in fact or in law, which *Borrower* ever had, now had or may hereafter acquire, arising out of or related in any manner pending in the *Litigation* and any related transactions described or referred to therein including without limitation: (1) the *Purchase Transaction*, (2) the *Mortgage Transaction*, (3) the title insurance policy issued by Lawyers Title Insurance Corporation ("*Lawyers Title*") to *Borrower* with respect to the *Purchase Transaction* and the *Mortgage Transaction*; (4) any closing protection letter issued by *Lawyers Title* with respect to the *Purchase Transaction* and the *Mortgage Transaction*; or (5) otherwise (collectively, the "*Assigned Claims*"), against any person or entity, including without limitation: Harbor Pointe Financial Services, Inc., The Appraisal Group of SE Michigan, LLC, Julia Meyers, James J. Fish, Great Lakes Broker

Funding LLC, Kurt W. Heintz, Lisa N. Heintz, *Lawyers Title*, and/or Calvin C. Gatesman; and the affiliates, successors, assigns, and alter-egos, if any, of any of the foregoing.

Subject to the exceptions stated in this *Agreement*, this assignment includes, but is not in any way limited to, the assignment of any right, title, and interest in and to any claims, causes of action, remedies at law, or remedies in equity that may be available against any person or business entity involved in any way, directly or indirectly, with the *Litigation*, and includes, by way of illustration and not limitation, the right to forgive, request, demand, sue for, recover, collect, receive, and hold all amounts that are or may become due on account of such claims, and the right to take all lawful means and equitable and legal remedies and proceedings with respect to such *Assigned Claims* in furtherance of the collection and recovery thereof, and to adjust, sell, further assign, compromise, and agree with respect to such *Assigned Claims*, and to execute and deliver, all endorsements, releases, receipts, or other sufficient discharges for the same, as could *Borrower*, in the same manner his own name, but for the effect of this assignment. *Borrower* shall not assign, release, settle or otherwise compromise any of the *Assigned Claims* and represents and warrants that he has not.

6. **Cooperation.** *Borrower*, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to submit to an interview conducted by *FDIC's* counsel or the representatives of *FDIC's* counsel in which *Borrower* will make a full and complete disclosure regarding the scope of *Borrower's* involvement in the *Purchase Transaction*, the *Mortgage Transaction*, and any other related transactions relevant to the *Litigation* as well as *Borrower's* knowledge regarding the involvement of other parties and non-parties in such transactions. Upon completion of this interview process, *Borrower* agrees to

provide sworn testimony in a form satisfactory to *FDIC* to preserve the information provided by *Borrower* through the interview process.

7. **Attorney's Fees and Costs.** Each party shall bear its own attorney's fees and costs with respect to the *Litigation*.

8. **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.

9. **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.

10. **Governing Law.** This *Agreement* shall be governed by and construed in accordance with Michigan 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.

11. **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.

12. **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

had the opportunity to proceed with the advice of an attorney of their own choice, that they completely read the terms of this *Agreement*, and that those terms are fully understood and voluntarily accepted by the parties.

13. **Integrated Agreement; Exhibits.** This *Agreement* and any Exhibits hereto set 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.

14. **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.

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: _____

Name: _____

Title: _____

Date: _____

Samuel Willis

(b)(6)

Printed Name: SAMUEL WILLIS

Date: November 25, 2009

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

(b)(6)

By:

Name: Richard S. Gail

Title: Counsel

Date: 2-26-2010

(b)(6)

Samuel Willis

Printed Name: SAMUEL WILLIS

Date: November 25, 2009