

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 1st day of February, 2013, by, between, and among the following undersigned parties:

Federal Deposit Insurance Corporation, as receiver of Home Savings of America ("FDIC-R"), and Gonzalo Alvarado and First Choice Appraisals, Inc. (collectively the "Settling Defendants"). Individually, the FDIC-R and the Settling Defendants may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to February 24, 2012, Home Savings of America ("Bank") was a depository institution organized and existing under the laws of Minnesota;

On February 24, 2012, the Bank was closed by the Office of the Comptroller of the Currency and pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R as receiver succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets;

Among the assets to which the FDIC-R as receiver succeeded were any and all of the Bank's claims, demands, and causes of actions;

On March 8, 2011, the Bank filed a complaint for money damages against certain persons, including the Settling Defendants. Those claims for damages are now pending in the United States District Court for the Central District of California in case number SACV12-411 JST (JPRx), *Home Sav. of Am. v. Alvarado, et al.* (the "Lawsuit"). The Settling Defendants have denied liability in the Lawsuit; and

The 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 Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, the Settling Defendants, collectively, agree to pay the FDIC-R the sum of \$52,000 (the "Settlement Funds").

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the Parties to this Agreement, but no later than August 1, 2013, the Settlement Funds shall be delivered to FDIC-R by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R as follows:

Check Instructions

Make check out to: FDIC-R Home Savings of America (10427)

Memo section: Professional Liability (37100)

Mail to:

FDIC Receivership # 10427

P.O. Box # 971774

Dallas, TX 75397-1774

In the event that the Settlement Funds are not delivered to the FDIC-R (or its counsel) by August 1, 2013, interest shall accrue on all unpaid amounts at the rate of 5% per annum from August 1, 2013, until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R by August 1, 2013, as a result of the FDIC-R's failure to execute this Agreement, no interest shall accrue until the day after the FDIC-R executes the Agreement.

C. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC-R on or before August 1, 2013, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against the Parties, in which event the Parties agree to jurisdiction in Federal District Court in California and agree to pay all of the FDIC-R's reasonable attorney's

fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement.

SECTION II: Stipulation and Dismissal

Within five (5) days of execution of this Agreement by each of the Parties, and receipt of the Settlement Funds, plus any accrued interest, the FDIC-R shall dismiss the Lawsuit. The 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 Settling Defendants by FDIC-R.

Effective upon receipt in full of the settlement funds plus any accrued interest and dismissal described in SECTIONS I and II above, and except as provided in PARAGRAPH III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective officers, directors, attorneys, heirs, executors, administrators, agents, 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-R, that arise from or relate to, the subject matter of the Lawsuit.

B. Release of FDIC-R 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 officers, directors, attorneys, heirs, executors, administrators, agents, representatives, successors, and assigns, hereby release and discharge FDIC-R, and its employees, officers, directors, attorneys, agents, 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, the subject matter of the Lawsuit.

C. Express Reservations From Releases By FDIC-R.

1. Notwithstanding any other provision, by this Agreement, the FDIC-R 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 the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank;

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

c. 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 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 which 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 the United States through either the Department of Justice, the United States Attorney's Office for the Central District of California or any other federal judicial district. In addition, the 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.

SECTION IV: Representations and Acknowledgements

A. No Admission of Liability. The 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 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 California.

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the 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).

F. Specific Representations, Warranties, and Disclaimer. The Parties have relied only on those express representations or warranties contained in this Agreement in agreeing to its terms.

G. Reasonable Cooperation. The 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 Lawsuit, and

to otherwise perform the terms of this Agreement.

H. Advice of Counsel. Each Party hereby 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, SOLELY IN ITS CAPACITY AS RECEIVER FOR HOME SAVINGS OF AMERICA

(b)(6) 

Name: Stuart Tonkinson
Title: Counsel

Dated: May 24, 2013

GONZALO ALVARADO

(b)(6) 

GONZALO ALVARADO

Dated: June 10, 2013

FIRST CHOICE APPRAISALS, INC.,
a California corporation

(b)(6) 

Name: Gonzalo Alvarado
Title: owner

Dated: June 10, 2013