

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is entered into by and between Plaintiff Federal Deposit Insurance Corporation as Receiver of Downey Savings and Loan Association, F.A. ("FDIC-R"), on the one hand, and Defendant Pastor S. Engkabo dba Engkabo Appraisal Service ("Engkabo" or "Defendant"), and his insurance carrier Chartis, Inc. and National Union Fire Insurance Company of Pittsburgh, PA ("Chartis") on the other hand, and is effective as of October 4, 2011 (the "Effective Date"). FDIC-R and Defendant are collectively referred to herein as "Settling Parties" or individually as a "Settling Party."

### RECITALS

This Agreement is entered into with respect to the following generalized facts:

On October 15, 2008, Downey Savings and Loan Association, F.A. ("Downey Savings") filed a complaint against Wendy L. Green ("Green"), mortgage broker Macan Pacific, Inc. dba San Francisco Mortgage Exchange ("Macan") and appraiser Engkabo (collectively hereinafter referred to as the "Defendants") generally asserting causes of action for breach of contract and negligent misrepresentation ("Complaint"). Engkabo asserted cross-claims against Green, Macan, and Merri Jane Funk ("Funk"). The matter was assigned Case No. 30-2008-00113299, in the Superior Court of the State of California, County of Orange (the "Action").

The Action arose out of a \$609,000 mortgage loan issued by Downey Savings to Green on or about August 25, 2005 (the "Subject Loan") secured by the real property commonly known as  Brentwood, California 94513 (the "Subject Property").

In the Action, Downey Savings asserted claims against Defendants alleging, among other things, that Defendants had submitted to Downey Savings a mortgage loan package on behalf of the Borrower, including an appraisal report prepared by Engkabo.

Downey Savings contended in the Action that the Engkabo Appraisal Report was flawed and over-valued the subject property .

Defendant denied the allegations made in the Complaint.

On November 21, 2008, Downey Savings was closed by the Office of Thrift Supervision 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 Downey Savings' claims, demands, and causes of action that were asserted in the Action.

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Settling Parties each desire to settle and terminate the dispute existing between and among them as outlined in the Action as well as all other known or unknown claims they each might have concerning any of the facts surrounding the transaction, or series of transactions that underlie the Action, on the terms set forth below.

## AGREEMENT

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

### 1. Settlement Payment and Dismissal

1.1. Enkabo shall cause payment to be delivered to Plaintiff's counsel in immediately available funds payable to "Law Offices of Sean A. Kading, Client Trust Account", in the total amount of \$155,000 and no/100 (\$155,000.00) ("Settlement Payment"). The Settlement Payment shall be delivered via overnight mail to the Law Offices of Sean A. Kading, 30211 Avenida Banderas, Suite 200, Rancho Santa Margarita, California 92688, with delivery due within thirty (30) days following execution of the Agreement by all parties.

1.2. Upon receipt of the Settlement Payment, counsel for FDIC-R shall cause to be filed a Request for Dismissal with prejudice of the Action as against Engkabo. Nothing contained herein shall be deemed to release any claims the FDIC-R has or may have against Macan, Green, or any other third parties.

### 2. Releases

2.1 Release by the FDIC-R. Effective upon receipt in full of the Settlement Funds, the FDIC as Receiver of Downey Savings and Loan Association, F.A., and in that capacity alone, fully and forever releases and discharges Engkabo and Chartis, from and against all known actions, proceedings, causes of action, claims for relief, demands, rights, interests, damages, losses, costs, expenses, disbursements (including attorneys' fees and costs), obligations, liabilities and other claims of every nature whatsoever arising from or related to the transaction, or series of transactions, underlying the Action as well as related to any other appraisals prepared by Engkabo submitted to Downey Savings and Loan Association, F.A., or any other real estate appraisal of Engkabo made to or relied upon by Downey Savings & Loan Association, F.A. (collectively, the "Claims").

2.2 Express Reservations From Releases by FDIC-R 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 any Settling Party 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

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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 including, but not limited to, Green, Macan, or any other third parties. FDIC-R expressly reserves the right to continue to prosecute any and all claims and causes of action as against these non-settling parties; and

c. which are not expressly released in Paragraph 3.1 above.

2.3 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 Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish that entity's ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement which may arise by operation of law, rule or regulation.

2.4 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 Northern District of California or any other federal agency.

2.5 Release by Engkabo. In exchange for the promises herein, Engkabo fully and forever releases and discharges the FDIC as Receiver for Downey Savings and Loan Association, F.A., and its agents, representatives, attorneys, officers, and successors-in-interest, and Merri Jane Funk, from and against all known actions, proceedings, causes of action, claims for relief, demands, rights, interests, damages, losses, costs, expenses, disbursements (including attorneys' fees and costs), obligations, liabilities and other claims of every nature whatsoever arising from or related to the transaction, or series of transactions, underlying the Action (collectively, the "Claims").

2.6 Waiver of Civil Code Section 1542. Each of the Settling Parties expressly waives and relinquishes any and all rights and benefits conferred on them by California *Civil Code* §1542 and any similar enactment of, or other such rights afforded by, the State of California, the United States or any other state territory of the United States. Section 1542 of the California *Civil Code* states:

*"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."*

Each of the Settling Parties acknowledges that the effect and import of California *Civil Code* §

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1542, and the foregoing waiver and relinquishment of those rights, are understood by them and made voluntarily. Each of the Settling Parties acknowledges that if they hereafter discover facts different than or in addition to those that they now know or believe to be true, that said release shall be given full force and effect according to each and all of its express terms and conditions, notwithstanding such different or additional facts. The discovery of such different facts shall not in any way alter or affect the release contained herein.

3. Dismissal

3.1 Dismissal of Action As Against Engkabo. Forthwith, Plaintiff shall file a request for dismissal with prejudice of the Complaint *as against Engkabo only*, and provide Engkabo with a conformed copy after entry of dismissal is made by the Court.

4. Waiver of Attorneys' fees and costs. Upon execution of this Agreement, each of the Settling Parties shall bear his or its own attorneys' fees and costs in the Action.

5. No Admission of Liability. Neither the existence of this Agreement nor the conduct of any of the Parties shall constitute or be construed as an admission of liability or any wrongdoing whatsoever on the part of the Parties.

6. Interpretation. In the case of any uncertainty or ambiguity regarding any part of this Agreement, the language shall be construed in accordance with its fair meaning rather than being interpreted against the party who caused the uncertainty to exist.

7. Parties in Interest Except as expressly stated in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer third-party beneficiary status or to otherwise confer any rights or remedies on any person or entity (collectively "Third Party"), other than the Settling Parties. Nor shall any provision hereof afford any Third Party any right of subrogation, indemnity, contribution, set-off or action over and against any party to this Agreement.

8. Informed Consent. Each Party acknowledges that it has selected, or been afforded the opportunity to select, an attorney of its choice to review this Agreement and all related matters. Each Party declares that such party has received sufficient information, either through such Party's own legal counsel or other sources of such party's own selection, so as to be able to make an intelligent and informed judgment to enter into this Agreement. Each party further states that each has read this Agreement in its entirety prior to executing this Agreement, and that each has executed this Agreement voluntarily, with competence and capacity to contract and with knowledge of the terms, significance and legal effect of this Agreement. By executing this Agreement, it is understood by each party that substantial rights may be compromised and/or waived in their entirety.

9. Attorneys' Fees. If any action, motion or proceeding at law or in equity is instituted to enforce or interpret the terms of this Agreement, the prevailing party or parties therein shall be entitled to an award of reasonable attorneys' fees, costs, and necessary disbursements, as determined

by a court of competent jurisdiction, in addition to any other relief to which any of the Settling Parties may be entitled.

10. Further Assurances. The Settling Parties shall execute all documents and perform all acts necessary or appropriate to effectuate the performance of this Agreement.

11. Severability. It is intended that any portion of this Agreement shall be treated as separate and divisible, and if any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Agreement is unaffected.

12. Complete Instrument. This Agreement contains the complete understanding made between or among the Settling Parties with respect to the claims being settled and released by this Agreement. This Agreement cannot be amended or modified in any manner except by a writing executed by each of the Settling Parties or by their valid successor(s). Each of the Settling Parties acknowledges that no representations, warranties, covenants, assurances or other promises not specifically set forth in this Agreement have been made by any party in connection with the subject matter of this Agreement, nor is any party relying on any such conduct in entering into this Agreement. Any negotiations or other communications between the Parties relating to the subject matter of this Agreement are of no force or effect and are superseded by this document.

13. Counterparts. This Agreement may be signed in counterparts, and each counterpart shall have the same force and effect as though the signatures were contained in a single document. A faxed signature shall be considered an original signature for all purposes under this Agreement.

14. Time of Essence. Time is of the essence of each provision of this Agreement wherein time is a factor.

15. Applicable Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be the state or federal courts located in Orange County, California, in accordance with applicable law.

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16. Successors and Assigns. The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, each of the undersigned Settling Parties have executed this Agreement effective as of October 4, 2011.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF  
DOWNEY SAVINGS AND LOAN  
ASSOCIATION, F.A.**

[Redacted]

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DATED: \_\_\_\_\_

1/9/2012

[Redacted Signature]

By: David T. Bartels

**Pastor S. Engkabo dba Engkabo Appraisal Service**

DATED: \_\_\_\_\_

By: Pastor S. Engkabo

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**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF  
DOWNEY SAVINGS AND LOAN  
ASSOCIATION, F.A.**

DATED: \_\_\_\_\_

By: David T. Bartels

**Pastor S. Engkabo dba Engkabo Appraisal Service**



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DATED: Jan. 4, 2012

By: Pastor S. Engkabo