

GLOBAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1. **PARTIES**: The parties to this Settlement Agreement ("Agreement") are Plaintiff FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for Downey Savings & Loan Association, F.A. ("FDIC-R"), Defendant corporate mortgage broker, COVERDALE VENTURES, INC., a California corporation ("CVI"); Defendant managing broker, ANUSHKA COVERDALE ("Coverdale"), an individual; Defendant loan officer MAGNOLIA ABIGAY GUERRERO ("Guerrero"), an individual; and the defendants' Errors and Omissions carrier, ASPEN SPECIALTY INSURANCE CO., a Limited Liability Company ("Aspen"). The FDIC-R, CVI, Coverdale, Guerrero and Aspen are sometimes herein collectively referred to as the "Parties."

2. **RECITALS**: This Agreement is made with reference to the following facts:

2.1 Certain claims arose between the Parties concerning four (4) residential loans that were made by Downey to borrowers [REDACTED] (b)(6)

[REDACTED] (b)(6)
[REDACTED] (b)(6) (jointly, the "Loans").

2.2 The Loans were secured by trust deeds on real properties then owned by each borrower. CVI was the mortgage broker that submitted to Downey the four loan applications. Coverdale is alleged to have been, at the time, the managing broker through whose license CVI did business with Downey. Guerrero is alleged to have been the licensed Loan Officer working with CVI at the time, who is alleged to have submitted to Downey loan applications for [REDACTED] (b)(6)

2.3 The Loans were approved and funded by Downey and subsequently defaulted. Following foreclosure sales each of the properties securing the Loans reverted to Downey, resulting in an alleged loss to the thrift of over \$800,000.

2.4 On November 21, 2008 Downey was closed by the Office of Thrift Supervision, 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 Downey, including those with respect to its assets. Among the assets to

which the FDIC-R as receiver succeeded were Downey's claims, demands and causes of action, including the loss relating to the Loans ("Claims").

2.5 CVI and Coverdale utilized the services of Austin & Austin Insurance Services, Inc. ("Austin") as their insurance broker to procure an errors and omissions insurance policy issued by Aspen for the period February 28, 2010 to February 28, 2011, Policy No. (b)(4) [redacted] ("Aspen Policy").

2.6 The Claims subsequently became the subject of a Complaint ("Complaint") entitled *FDIC-R v. Coverdale Ventures, Inc., etc., et al.*, Case No. SACV11-00027 JVS, filed by the FDIC-R in the United States District Court for the Central District of California, Southern Division ("Action").

2.7 CVI, Coverdale and Guerrero filed an Answer in response to the FDIC-R's Complaint. In the Action, CVI, Coverdale and Guerrero are represented by legal counsel retained by Aspen.

2.8 At the Court's ordered mediation of the Action the Parties conditionally agreed to a settlement of the FDIC-R's Claims, as hereafter set forth. The only condition to the Parties' settlement was the FDIC-R obtaining formal approval to enter into this settlement, which approval has now been obtained by the FDIC-R.

2.9 By this Agreement the Parties hereto intend to settle and dispose of, fully and completely, any and all claims, demands, causes of action, obligations, damages, and liabilities that arise out of or relate to the Action and the Claims alleged therein by the FDIC-R against CVI, Coverdale and Guerrero.

2.10 The FDIC-R expressly reserves and retains its right to proceed to request entry of default judgment against any and all named defendants whom it served with process and who failed to timely appear in response thereto.

2.11 The Federal Deposit Insurance Corporation in its separate corporate capacity as the insurer of deposits and bank regulator, and all other federal agencies of the United States of America, are not parties to this Agreement and are not bound in any manner to its terms and conditions. The FDIC-R enters into this Agreement solely in its limited capacity as the appointed Receiver of Downey Savings & Loan Association, F.A., and no other receivership

now existing, previously existing or hereafter appointed.

3. **NO ADMISSION RE MERITS OF CLAIMS:** The Parties agree that nothing in this Agreement, and no performance under this Agreement, shall be construed as an admission by any Party of the validity or invalidity of the Claims alleged in the Action; and, the Parties agree that this Agreement is entered into solely for the purpose of convenience and to compromise the disputed Claims the FDIC-R has alleged in the Action.

4. **SETTLEMENT TERMS:** The Parties agree to the following settlement terms:

4.1 Aspen. Aspen shall pay, by draft payable on first presentation, the sum of \$22,500.00 to the FDIC-R within twenty one (21) days of the full execution of this Agreement.

4.2 CVI and Coverdale. Concurrent with the execution of this Agreement, CVI and Coverdale shall execute and provide to the FDIC-R a Stipulation for Entry of Judgment ("CVI and Coverdale Stipulation for Judgment") in the amount of \$37,500.00, which may be fully satisfied if CVI and Coverdale pay the FDIC-R the sum of \$2,000.00 on the 15th day of the next month following the full execution of this Agreement and, thereafter \$2,000.00 on the 15th day of the next eleven (11) months until the full sum of the \$24,000.00 has been paid. The CVI and Coverdale Stipulation for Judgment shall be held by the FDIC-R and not filed with the Court unless or until a default in payment under its terms occurs. If a default in payment occurs that is not timely cured, then the FDIC-R may file the CVI and Coverdale Stipulation for Judgment with the Court and request entry of judgment against CVI and Coverdale, less all payments previously made thereon. Upon full payment of the CVI and Coverdale Stipulation for Judgment CVI and Coverdale shall be dismissed from the Action with prejudice.

4.3 Guerrero. Concurrent with the execution of this Agreement, Guerrero shall execute and provide to the FDIC-R a Stipulation for Entry of Judgment ("Guerrero Stipulation for Judgment") in the amount of \$37,500.00, which may be fully satisfied if Guerrero pays the FDIC-R the sum of \$2,000 on the 15th day of the next month following the full execution of this Agreement and, thereafter \$2,000 on the 15th day of the next eleven (11) months until the full sum of the \$24,000.00 has been paid. The Guerrero Stipulation for Judgment shall be held by the FDIC-R and not filed with the court unless or until a default in payment under its terms occurs. If a default in payment occurs that is not timely cured, then the FDIC-R may file the Guerrero Stipulation for Judgment with the Court and request entry of

judgment against Guerrero. Upon full payment of the Guerrero Stipulation for Judgment Guerrero shall be dismissed from the Action with prejudice.

4.4 Non-dischargeable Judgment. In the event a Judgment is entered against either CVI, Coverdale or Guerrero pursuant to their separate Stipulations for Judgment, then such Judgment shall be non-dischargeable in any proceeding (voluntary or involuntary) commenced under the U.S. Bankruptcy Code, pursuant to 11 U.S.C. § 523(a)(2)(A).

5. **MUTUAL RELEASES:**

5.1 In consideration of the Settlement terms as set forth in Paragraph 4 above, and all other promises, covenants and consideration provided for herein, the Parties agree that, except as to such rights or claims as may be created by this Agreement, they hereby covenant not to sue each other and Austin ever again on the Claims and Austin's procurement of the Aspen Policy for CVI and Coverdale in relation to the Claims and the Parties acknowledge full and complete satisfaction of, and hereby release, remise, and forever discharge each other and Austin, including their respective officers, directors, affiliated companies, agents, insurance brokers, servants, representatives, spouse, heirs, successors or predecessors in interest, assignees, attorneys, employees and contractors from any and all the Claims, demands, counts, obligations, agreements, damages, liabilities, losses, costs and expenses of any kind, in law or in equity, whether known or unknown, that either Party now holds, or has ever held against the other, or may hold in the future, that arise out of or are in any way connected with, the Claims alleged in the Action and Austin's procurement of errors and omissions insurance coverage for CVI and Coverdale as this procurement pertains to the Claims alleged in the Action.

5.2 The parties expressly waive all rights under section 1542 of the *California Civil Code* or analogous provisions of other state and/or federal laws. *California Civil Code* section 1542 provides:

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.

5.3 This Agreement shall be binding on the Parties and on their respective officers, directors, affiliated companies, agents, servants, representatives, spouses, heirs, successors or predecessors in interest, assignees, attorneys, employees and contractors and shall inure to the benefit of the Parties, and each of them.

6. **ATTORNEYS' FEES:** In the event any action is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees in addition to any other relief to which the prevailing party may be entitled.

7. **REPRESENTATIONS AND WARRANTIES:** The Parties represent, warrant, and agree as follows:

7.1 The FDIC-R is the lawfully appointed Receiver for Downey and has succeeded to and now holds each of the Claims that are the subject of the Action and this Agreement. The FDIC-R has the authority to enter into this compromise and settlement of the Claims as the Receiver of Downey.

7.2 Each of the Parties has received or had the opportunity to seek their own independent legal advice with respect to the advisability of executing this Agreement. The Parties acknowledge that they have executed this Agreement without fraud, duress, or undue influence. The Parties affirm that they have read this Agreement and understand the contents hereof.

7.3 No Party, nor any agent or attorney of any Party, has made any statement, representation, or promise to any other Party regarding any facts which the Party has then relied upon in entering into this Agreement, and the Parties here each affirm that they have not relied upon any statement, representation or promise by any other Party, or of any agent or attorney for another Party, in executing this Agreement, or in making the settlement provided for herein, except as is expressly represented or promised in this Agreement.

7.4 None of the Parties have heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the Claims that are alleged in the Action.

7.5 Each Party agrees to execute any additional documents as reasonably convenient, necessary or desirable to carry out the provisions of this Agreement specifically including, without limitation, the separate Stipulations for Entry of Judgment described in

paragraphs 4.2, 4.3 and 4.4 above.

8. MISCELLANEOUS:

8.1 This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.2 This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties. This Agreement may only be modified in a writing signed by all the Parties. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties to this Agreement.

8.3 The provisions of this Agreement are contractual and not mere recitals. The Agreement shall be considered severable, such that if any provision or part of the Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement shall remain in force and effect to the extent allowed by law, and all other provisions or parts shall remain in full force and effect.

8.4 This Agreement may be executed in counterparts and shall be effective on the date first executed by any one of the Parties hereto if so executed in counterparts (the "effective date"). Any signature obtained by facsimile or e-mail shall be as valid as an original signature. An authenticated copy of this Agreement can be used for any purpose for which the original may be used.

DATED: 10/7/2011

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Downey Savings & Loan Assoc., F.A.

(b)(6)

By

[Redacted Signature Box]

Name: David Bartels
Title: Senior Attorney

Signatures continue on page following.

DATED: _____

ASPEN SPECIALTY INSURANCE CO., a
Limited Liability Company

By: _____

Name: _____

Title: _____

DATED: 9/28/11

COVERDALE VENTURES, INC., a California
corporation

(b)(6)

(b)(6)

By: _____

Name: ANUSHKA H COVERDALE

Title: BROKER / PRESIDENT

(b)(6)

DATED: 9/28/11

(b)(6)

ANUSHKA COVERDALE, an individual

(b)(6)

DATED: 9/28/11

MAGNOLIA ABIGAY GUERRERO, an individual

(b)(6)

APPROVED AS TO FORM:

HERSHORIN & HENRY LLP

CARLSON LAW GROUP, INC.

By: _____
JEAN C. WILCOX, Esq.
Attorneys for Federal Deposit Insurance
Corporation as Receiver for Downey
Savings & Loan Association, F.A.

By: _____
MARK C. CARLSON, ESQ.
STUART T. MILLER, ESQ.
Attorneys for Coverdale Ventures, Inc.,
Anushka Coverdale, and Magnolia
Abigay Guerrero

DATED: _____

DATED: _____

DATED: 9/29/11

ASPEN SPECIALTY INSURANCE CO., a
Limited Liability Company

By: (b)(6)

Name: BIRDIE WARD
Title: Senior Claims Analyst

DATED: _____

COVERDALE VENTURES, INC., a California
corporation

By: _____

Name: _____
Title: _____

DATED: _____

ANUSHKA COVERDALE, an individual

DATED: _____

MAGNOLIA ABIGAY GUERRERO, an individual

APPROVED AS TO FORM:

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By: _____

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Anushka Coverdale, and Magnolia
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DATED: 10/05/2011

DATED: 10/3/11