



LIMS M- [redacted]  
DIF/Mortgage Fraud

ENTERED  
10/21/10

**SETTLEMENT AGREEMENT**

(b)(2)

**THIS SETTLEMENT AGREEMENT** ("Settlement Agreement") is entered into and made effective as of the 25 day of November 2009 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for INDYMAC BANK, F.S.B. ("FDIC/INDYMAC"), MEGA CAPITAL FUNDING, INC. ("MEGA CAPITAL") and MEGA CAPITAL's President and sole shareholder YONG SOK NA. FDIC/INDYMAC, MEGA CAPITAL and YONG SOK NA may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

**1. RECITALS**

1.1 On or about January 10, 2006, FDIC/INDYMAC and MEGA CAPITAL entered into a business relationship governed by a Mortgage Loan Purchase and Interim Servicing Agreement (hereinafter "Agreement").

1.2 Pursuant to the terms of the Agreement, MEGA CAPITAL sold to FDIC/INDYMAC the following five (5) loans identified by borrower name, loan number(s), principal amount(s) and address:

(b)(6) (a) BLANCAS LOAN – The loan to [redacted] in the principal amount  
(b)(6) of \$477,000, secured by real property located at [redacted] La Puente,  
(b)(6) California, 91744 (Loan No. [redacted]) and which was submitted and sold to  
FDIC/INDYMAC on or about June 4, 2007.

(b)(6) (b) FLORES LOAN – The loan to [redacted] in the principal amount of  
(b)(6) \$352,000.00, secured by real property located at [redacted] Compton,  
(b)(6) California (Loan No. [redacted]) and which was submitted and sold to  
FDIC/INDYMAC on or about April 16, 2007.

(b)(6) (c) CARMONA LOAN – The loan to [redacted] in the principal  
(b)(6) amount of \$384,000, secured by real property located at [redacted] Hesperia,  
(b)(6) California, 92345 (Loan No. [redacted]) and which was submitted and sold to  
FDIC/INDYMAC on or about April 10, 2007. (b)(6)

(b)(6) (d) FINNEY LOAN – The loan to [redacted] in the principal amount  
(b)(6) of \$324,000, secured by real property located at [redacted] Concord, CA  
(b)(6) 94521 (Loan No. [redacted]) and which was submitted and sold to FDIC/INDYMAC on  
or about January 24, 2007.

(b)(6) (e) LOZANO LOAN – The loan to [redacted] in the principal amount  
(b)(6) of \$575,000, secured by real property located at [redacted] Anaheim, California

(b)(6) 92804 (Loan No. [redacted]) and which was submitted and sold to FDIC/INDYMAC on or about October 20, 2006.

1.3 The five (5) loans described in paragraph 1.2 above are collectively referred to herein as the "SUBJECT LOANS".

1.4 FDIC/INDYMAC claims that the SUBJECT LOANS were an Early Payment Default as defined by Section 3.05 of the Agreement and that MEGA CAPITAL breached the Agreement by refusing to repurchase the SUBJECT LOANS after receiving demands from INDYMAC to do so.

1.5 MEGA CAPITAL disputes FDIC/INDYMAC's claims relating to the SUBJECT LOANS.

1.6 On or about July 24, 2009, FDIC/INDYMAC filed a lawsuit entitled *FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, FSB v. MEGA CAPITAL FUNDING, INC., a California corporation* in the United States District Court, Central District of California, Case No. CV09-05431 (hereinafter "Action") seeking damages arising out of the SUBJECT LOANS. The Complaint included six (6) separate claims for relief – five (5) for breach of contract and one (1) for specific performance.

1.7 FDIC/INDYMAC filed a Notice of Motion and Motion for Writ of Attachment. The Motion for Writ of Attachment came on for hearing on October 19, 2009 before the Hon. Patrick J. Walsh in Courtroom B of the United States District Court, Central District of California. After reviewing the moving, opposing and reply papers, and hearing oral argument, the court granted FDIC/INDYMAC's motion and issued a right to attach order.

1.8 On October 21, 2009, the levying officer served a writ of attachment on MEGA CAPITAL's bank account at Nara Bank in Los Angeles, California. The levied funds in the amount of \$853,301.34 are currently being held by the levying officer, the U.S. Marshal's Service.

1.9 The Parties desire and have agreed to settle all claims relating to the SUBJECT LOANS described in paragraph 1.2 of this Settlement Agreement.

## 2. AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

**2.1 Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**2.2 Payment to FDIC/INDYMAC.** Payment of Four Hundred Thousand Dollars and no/cents (\$400,000.00) (the "Settlement Funds") shall be paid on behalf of MEGA CAPITAL to FDIC/INDYMAC.

(a) Of the Settlement Funds, the initial payment (the "Initial Payment") shall be for Two Hundred Thousand Dollars and no cents (\$200,000.00). Pursuant to the Stipulation of the Parties and order of the Court thereon, the Initial Payment shall be paid to FDIC/INDYMAC directly from the funds levied as a result of the Writ of Attachment and which are currently held by the levying officer. The levying officer shall deliver the sum of Two Hundred Thousand Seventy-One Dollars and no cents (\$200,071.00) to FDIC/INDYMAC c/o Anderson, McPharlin & Conners, LLP at 444 S. Flower Street, 31<sup>st</sup> Floor, Los Angeles, California, 90071, Attn: Vanessa H. Widener. The Initial Payment shall be paid by certified funds made payable to Anderson, McPharlin & Conners Trust Account. FDIC/INDYMAC and MEGA CAPITAL stipulate and agree that the funds distributed to the FDIC/INDYMAC shall include the Seventy-One Dollar (\$71.00) fee paid by FDIC/INDYMAC to the levying officer for relating to the processing and service of the Writ of Attachment. The remainder of the levied funds totaling Six Hundred Fifty Three Thousand Two Hundred Thirty Dollars and Thirty-Four Cents (\$653,230.34) shall be returned by the levying officer to MEGA CAPITAL c/o YONG SOK NA, 5000 N. Parkway Calabasas #100, Calabasas, CA 91302.

(b) The remaining Settlement Funds totaling Two Hundred Thousand Dollars and no cents (\$200,000.00) shall be paid by MEGA CAPITAL to FDIC/INDYMAC in ten equal payments of Twenty Thousand Dollars and no cents (\$20,000.00) beginning on February 1, 2010 ("Monthly Payments") and continuing on the first of each month thereafter until paid in full. The Monthly Payments shall be made by wiring the funds as follows:

Bank : City National Bank

City : Los Angeles

ABA :

Account:

(b)(4)

**2.3** The Monthly Payments shall be personally guaranteed by YONG SOK NA in a form attached hereto as Exhibit 1. Concurrently with the signing and delivery of this Settlement Agreement, MEGA CAPITAL and YONG SOK NA shall execute a Stipulation for Entry of Judgment in the amount of Two Hundred Thousand Dollars and no cents (\$200,000.00) less any amounts received pursuant to paragraph 2.2(b), against MEGA CAPITAL and YONG SOK NA, jointly and severally, in the form attached

hereto as Exhibit 2. The Stipulation for Entry of Judgment incorporates by reference the Judgment (Pursuant to Stipulation), attached to the Stipulation as Exhibit A. Both the Stipulation and Judgment are incorporated by reference herein and their terms made a part of this Settlement Agreement. The Stipulation and Judgment shall be held in trust by FDIC/INDYMAC'S attorneys of record and shall not be filed unless MEGA CAPITAL breaches paragraph 2.2(b) above and fails to timely cure said breach pursuant to paragraph 2.5 after receiving FDIC/INDYMAC notice of default as provided in paragraph 2.4. The Judgment (Pursuant to Stipulation) shall not be entered so long as MEGA CAPITAL performs under the terms of this Settlement Agreement with respect to making the Monthly Payments required by paragraph 2.2(b) above.

2.4 In the event MEGA CAPITAL defaults by failing to make a timely payment to FDIC/INDYMAC as set forth in paragraphs 2.2(b) above, FDIC/INDYMAC shall give written notice of the default and notice of its intent to enter Judgment (Pursuant to Stipulation) to MEGA CAPITAL and YONG SOK NA via mail and facsimile as follows: (1) Yong Sok Na, President, Mega Capital Funding, Inc., 5000 N. Parkway Calabasas #100, Calabasas, CA 91302, Voice: [REDACTED] and Fax: [REDACTED] and (2) Thomas J. Ryu, Ryu Law Group, APC, 3435 Wilshire Blvd., Suite 2050, Los Angeles, California, 90010, Voice: [REDACTED] and Fax: [REDACTED]

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

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

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

2.5 MEGA CAPITAL shall have five (5) business days from receipt of the notice of default to cure the default. If MEGA CAPITAL fails to cure the default within five (5) business days, FDIC/INDYMAC shall retain all consideration it received, and it may, in its sole discretion, seek to enter the Judgment (Pursuant to Stipulation) against MEGA CAPITAL and YONG SOK NA, jointly and severally, and enforce said Judgment against MEGA CAPITAL and YONG SOK NA, jointly and severally. Judgment may be entered by ex parte application (without testimony or trial and MEGA CAPITAL and YONG SOK NA further waive the right to a court and/or jury trial) with notice given to MEGA CAPITAL and YONG SOK NA and Thomas J. Ryu, Esq. by facsimile and telephone at the facsimile and phone numbers listed in paragraph 2.4 above.

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

2.6 Within five (5) business days of FDIC/INDYMAC's counsel's receipt of the fully executed Settlement Agreement and Stipulation for Entry of Judgment, FDIC/INDYMAC's counsel shall file a request for dismissal of the entire Action with prejudice.

2.7 Each Party agrees that Section 664.6 of the Code of Civil Procedure of the State of California shall apply to this Settlement Agreement and requests that the court retain jurisdiction over the Parties to enforce this Settlement Agreement and, if necessary, the Judgment (Pursuant to Stipulation).

2.8 The Parties shall bear their own costs and attorneys' fees incurred in the Action.

**3. RELEASE**

**3.1 Unknown Claims.** FDIC/INDYMAC and MEGA CAPITAL acknowledge and agree that the release they give to each other upon executing this Settlement Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which they may have against each other arising from or in conjunction with the SUBJECT LOANS described in paragraph 1.2 of this Settlement Agreement.

**3.2** The Parties acknowledge and agree that MEGA CAPITAL processed, packaged and/or sold other mortgage loans to FDIC/INDYMAC which are not described in paragraph 1.2 of this Settlement Agreement and that this Settlement Agreement and the Release does not apply to mortgage loans not described herein. FDIC/INDYMAC expressly reserves its rights to pursue any and all claims and causes of action it may have in law or equity against MEGA CAPITAL arising out of any mortgage loan which is not described herein.

**3.3** The Parties hereby expressly waive application of *California Civil Code §1542* with respect to the SUBJECT LOANS. The Parties certify that they have read and understand the following provisions of *California Civil Code §1542* which states in pertinent part as follows:

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.

**3.4** The Parties understand and acknowledge that the significance and consequence of its waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising from or in conjunction with the SUBJECT LOANS or any facts or circumstances related to the SUBJECT LOANS, that Party will not be able to make any claim for those damages. Furthermore, each Party acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release relating to the SUBJECT LOANS, but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**3.5** Except for the rights, duties, and obligations set forth in this Settlement Agreement and Stipulation for Entry of Judgment, the Parties each hereby fully, finally, and forever release and discharge the other Party, and any and all of its respective, employees, brokers, investors, members, partners, joint venturers, independent

contractors, attorneys, insurers, agents, investors, representatives, officers, directors, shareholders, independent contractors, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees and/or agents, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, employees and/or agents of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the SUBJECT LOANS.

**3.6 Express Reservation from Releases by FDIC.** Notwithstanding any other provision, by this Settlement Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, (a) any claims or causes of action that do not arise from or relate to the SUBJECT LOANS, or the defense of the same, or (b) any action taken by any other federal agency. As of the execution of this Settlement Agreement, the FDIC is not aware of any action taken or claims held by another federal agency arising from or related to the SUBJECT LOANS. In addition, this Settlement 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, 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.

#### **4. MISCELLANEOUS**

**4.1 Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement and Stipulation for Entry of Judgment is free and voluntary.

**4.2 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

**4.3 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties

**4.4 Governing Law.** The Parties agree to submit any dispute arising out of this Settlement Agreement, or related thereto, to the Courts of the City and County of Los Angeles, California or the United States District Court, Central District of California,

consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**4.5 Attorneys Fees and Costs.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**4.6 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**4.7 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**4.8 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understood the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**4.9 Approval, Authority, and Nonassignment.** The Parties represent and warrant to one another that the approval of this Settlement Agreement has been undertaken in a proper and lawful manner and that they have the requisite power and authority to enter into and to perform their obligations under this Settlement Agreement, and further warrant and represent that they have not sold, assigned, granted or transferred to any other person, corporate or natural, or to any entity, any claim, action, demand, or cause of action released by this Settlement Agreement.

**4.10 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**4.11 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile or e-mail shall be valid and effective

for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**4.12 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**4.13 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**4.14 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**4.15 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: November ~~22~~ 2009  
APPROVED AS TO FORM

RYU LAW GROUP, APC

By:

[Redacted Signature]

(b)(6)

Thomas J. Ryu, Esq.

Attorneys for Defendant, MEGA CAPITAL  
FUNDING, INC.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]



DATED: November 19, 2009

MEGA CAPITAL FUNDING, INC.

By:  (b)(6)  
Yong Sok Na (b)(6)  
President of MEGA CAPITAL FUNDING,  
INC.

DATED: November 19, 2009

By:  (b)(6)  
Yong Sok Na (b)(6)

DATED: November \_\_, 2009  
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By: \_\_\_\_\_  
VANESSA H. WIDENER  
Attorneys for Plaintiff,  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for INDYMAC BANK,  
F.S.B.

DATED: November \_\_, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR INDYMAC BANK, F.S.B.

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Type/Print Name and Title*

DATED: November \_\_\_, 2009

MEGA CAPITAL FUNDING, INC.

By: \_\_\_\_\_  
Yong Sok Na  
President of MEGA CAPITAL FUNDING,  
INC.

DATED: November \_\_\_, 2009

By: \_\_\_\_\_  
Yong Sok Na

DATED: November \_\_\_, 2009  
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By: \_\_\_\_\_  
VANESSA H. WIDENER  
Attorneys for Plaintiff,  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for INDYMAC BANK,  
F.S.B.

DATED: November 17, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR INDYMAC BANK, F.S.B.

By:   
*Signature*

(b)(6)

Joak S. Duncan, Counsel  
Type/Print Name and Title

DATED: November \_\_, 2009

MEGA CAPITAL FUNDING, INC.

By: \_\_\_\_\_  
Yong Sok Na  
President of MEGA CAPITAL FUNDING,  
INC.

DATED: November \_\_, 2009

By: \_\_\_\_\_  
Yong Sok Na

DATED: November 25, 2009  
APPROVED AS TO FORM

(b)(6)

ANDERSON, McPHARLIN & CONNERS LLP

By: \_\_\_\_\_  
VANESSA/H. WIDENER  
Attorneys for Plaintiff,  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for INDYMAC BANK,  
F.S.B.

DATED: November \_\_, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR INDYMAC BANK, F.S.B.

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Type/Print Name and Title*

**AGREEMENT OF GUARANTY**

This Agreement of Guaranty (herein the "Guaranty") is made by YONG SOK NA ("Guarantor") for the benefit of the Federal Deposit Insurance Corporation as Receiver for IndyMac Bank, FSB, (FDIC/INDYMAC).

**RECITALS**

1.1 On or about January 10, 2006, FDIC/INDYMAC and MEGA CAPITAL FUNDING INC. ("MEGA CAPITAL") entered into a business relationship governed by a Mortgage Loan Purchase and Interim Servicing Agreement (hereinafter "Agreement").

1.2 Pursuant to the terms of the Agreement, MEGA CAPITAL sold to FDIC/INDYMAC the following five (5) loans identified by borrower name, loan number(s), principal amount(s) and address:

(b)(6) (a) BLANCAS LOAN – The loan to [redacted] in the principal amount of  
(b)(6) \$477,000, secured by real property located at [redacted] La Puente, California, 91744  
(b)(6) (Loan No. [redacted]) and which was submitted and sold to FDIC/INDYMAC on or about June  
4, 2007.

(b)(6) (b) FLORES LOAN – The loan to [redacted] in the principal amount of  
(b)(6) \$352,000.00, secured by real property located at [redacted] Compton, California  
(b)(6) (Loan No. [redacted]) and which was submitted and sold to FDIC/INDYMAC on or about April  
16, 2007.

(b)(6) (c) CARMONA LOAN – The loan to [redacted] in the principal amount of  
(b)(6) \$384,000, secured by real property located at [redacted] Hesperia, California, 92345  
(b)(6) (Loan No. [redacted]) and which was submitted and sold to FDIC/INDYMAC on or about April  
10, 2007.

(b)(6) (d) FINNEY LOAN – The loan to [redacted] in the principal amount of  
(b)(6) \$324,000, secured by real property located at [redacted] (b)(6), Concord, CA 94521 (Loan  
No. [redacted]) and which was submitted and sold to FDIC/INDYMAC on or about January 24,  
2007.

(b)(6) (e) LOZANO LOAN – The loan to [redacted] in the principal amount of  
(b)(6) \$575,000, secured by real property located at [redacted] Anaheim, California 92804  
(b)(6) (Loan No. [redacted]) and which was submitted and sold to FDIC/INDYMAC on or about  
October 20, 2006.

1.3 The five (5) loans described in paragraph 1.2 above are collectively referred to herein as the "SUBJECT LOANS".

1.4 FDIC/INDYMAC claims that the SUBJECT LOANS were an Early Payment Default as defined by Section 3.05 of the Agreement and that MEGA CAPITAL breached the Agreement by refusing to repurchase the SUBJECT LOANS after receiving demands from INDYMAC to do so.

1.5 MEGA CAPITAL disputes FDIC/INDYMAC's claims relating to the SUBJECT LOANS.

1.6 On or about July 24, 2009, FDIC/INDYMAC filed a lawsuit entitled *FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, FSB v. MEGA CAPITAL FUNDING, INC., a California corporation* in the United States District Court, Central District of California, Case No. CV09-05431 (hereinafter "Action") seeking damages arising out of the SUBJECT LOANS. The Complaint included six (6) separate claims for relief – five (5) for breach of contract and one (1) for specific performance.

1.7 FDIC/INDYMAC filed a Notice of Motion and Motion for Writ of Attachment. The Motion for Writ of Attachment came on for hearing on October 19, 2009 before the Hon. Patrick J. Walsh in Courtroom B of the United States District Court, Central District of California. After reviewing the moving, opposing and reply papers, and hearing oral argument, the court granted FDIC/INDYMAC's motion and issued a right to attach order.

1.8 On October 21, 2009, the levying officer served a writ of attachment on MEGA CAPITAL's bank account at Nara Bank in Los Angeles, California. The levied funds in the amount of \$853,301.34 are currently being held by the levying officer, the U.S. Marshal's Service.

1.9 The Parties desire and have agreed to settle all claims relating to the Action and the SUBJECT LOANS described in paragraph 1.2, and have entered into a Settlement Agreement in addition to this Guaranty. Pursuant to the Settlement Agreement, MEGA CAPITAL agrees to pay to FDIC/INDYMAC the total sum of Four Hundred Thousand Dollars and no/cents (\$400,000.00) which payments are personally guaranteed by YONG SOK NA and paid as follows: Two Hundred Thousand Dollars and no/cents (\$200,000.00) paid immediately and Two Hundred Thousand Dollars and no/cents (\$200,000.00) paid over ten (10) months beginning February 1, 2010.

### AGREEMENT

THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to induce FDIC/INDYMAC to settle its claims against MEGA CAPITAL in the Action relating to the SUBJECT LOANS, Guarantor hereby covenants, warrants and represents as follows:

2.1 **Reliance.** Guarantor agrees and acknowledges that this Guaranty is given to induce FDIC/INDYMAC to settle its claims against MEGA CAPITAL in the Action related to the SUBJECT LOANS. Absent execution and delivery of this Guaranty, FDIC/INDYMAC would not have entered into the Settlement Agreement.

2.2 **Guaranteed Obligations.** Guarantor hereby unconditionally guarantees to FDIC/INDYMAC the full and prompt payment of all obligations on the part of MEGA CAPITAL to be paid, as and when due, in connection with the Settlement Agreement. All obligations of MEGA CAPITAL herein guaranteed are referred to as the "Guaranteed Obligations." In the event of any default by MEGA CAPITAL in the payment of any of the Guaranteed Obligations, Guarantor shall promptly pay the same, upon demand.

**2.3 Continuing Guaranty.** This Guaranty shall be unconditional, continuing and absolute and shall not be affected or impaired by any modification, extension or amendment of the Settlement Agreement or any other agreement now or hereafter executed between MEGA CAPITAL and FDIC/INDYMAC.

**2.4 Direct Liability.** The liability of Guarantor hereunder is direct and unconditional and may be enforced without requiring FDIC/INDYMAC first to exercise, enforce or exhaust any right or remedy against MEGA CAPITAL, and such liability shall continue in full force and effect until all Guaranteed Obligations have been fully paid. Upon any default by MEGA CAPITAL relating to the Settlement Agreement, FDIC/INDYMAC may, at its option, proceed directly and at once against Guarantor to collect the full amount of Guarantor's liability hereunder, or any portion thereof, without first proceeding against any person, corporation, partnership or other entity.

**2.5 Waivers. Guarantor hereby:**

a) Waives presentment, demand, protest, and notice of acceptance, notice of demand, notice of protest, notice of dishonor, notice of default, notice of nonpayment, and all other notices to which Guarantor might otherwise be entitled;

b) Waives all claims or defenses relating to lack of diligence or delays in collection or enforcement, or any other indulgence or forbearance with respect to any obligations relating to the Settlement Agreement or the Guaranteed Obligations, and any defense which Guarantor may have by reason of any defense which MEGA CAPITAL may have against FDIC/INDYMAC, other than payment of the Guaranteed Obligations;

c) Waives any right, title or interest in, or claim to, whether by subrogation or otherwise, any collateral or assets of MEGA CAPITAL, until all Guaranteed Obligations have been fully paid; and

d) Waives any defense or claim that resort must first be had to MEGA CAPITAL, and waives any defense or claim relating to the marshalling of assets or any requirement to proceed against any parties or collateral in any particular order.

**2.6 Expiration.** The liabilities, duties and obligations of Guarantor hereunder shall continue until all Guaranteed Obligations have been fully paid and satisfied.

**2.7 Costs and Attorneys' Fees.** Guarantor agrees, in addition to the liability above assumed, to reimburse FDIC/INDYMAC for all costs and expenses, including reasonable attorneys' fees, which FDIC/INDYMAC may incur (a) in the collection of the Guaranteed Obligations or any part thereof, (b) for the enforcement of any of the Settlement Agreement or any term, agreement, covenant, provision, obligation or duty arising thereunder, or (c) in the enforcement of this Guaranty or any term, agreement, covenant, provision, obligation or duty hereunder. Guarantor shall promptly reimburse FDIC/INDYMAC to the extent that payment of such attorneys' fees, costs and disbursements are due from, and not paid by, MEGA CAPITAL.

**2.8 Statute of Limitations; Bankruptcy.** Guarantor shall remain liable with respect to the payment, performance, observance, compliance or satisfaction of the Guaranteed

Obligations or any part thereof irrespective of whether a recovery upon the same may have been barred by any statute of limitations. In the event of any proceeding by or against MEGA CAPITAL, or Guarantor under the provisions of the Federal Bankruptcy Code, or any other bankruptcy, insolvency or receivership proceeding, Guarantor expressly waives any right to seek extension of the obligations of this Guaranty under any provisions of such Code or any laws or rules applicable to any such proceedings, and hereby agrees that FDIC/INDYMAC may proceed immediately to collect any amounts or demand immediate and strict performance due under the terms of this Guaranty.

**2.9 Notices.** Except for any notice requirements expressly stated in the Settlement Agreement, all notices and demands of every kind and nature are hereby waived by Guarantor. If FDIC/INDYMAC shall desire to give any notice or make any demand upon Guarantor, such notice or demand may be given or made by a writing addressed to the Guarantor and mailed postage prepaid to the last address of Guarantor known to FDIC/INDYMAC. No such notice shall operate to waive any rights of FDIC/INDYMAC or create a duty to give any other notice.

**2.10 No Loan Commitment.** Nothing contained herein shall be construed as an undertaking on the part of FDIC/INDYMAC to make any loan or advances to MEGA CAPITAL.

**2.11 Investigation.** Guarantor delivers this Guaranty based solely upon Guarantor's independent investigation of the financial condition of MEGA CAPITAL and in no part upon any representation or statement of FDIC/INDYMAC with respect thereto. Guarantor is in a position to and does hereby assume full responsibility for obtaining any additional information concerning MEGA CAPITAL's financial condition as the Guarantor may deem material to its obligations hereunder, and Guarantor is not relying upon, nor expecting FDIC/INDYMAC to furnish, any information in FDIC/INDYMAC's possession concerning MEGA CAPITAL's financial condition. FDIC/INDYMAC and Guarantor agree that Guarantor hereby knowingly accepts the full range of risks encompassed within this Guaranty. This Guaranty will be effective when delivered to FDIC/INDYMAC without need for acceptance or any other formality.

**2.12 Successors.** This Guaranty shall be binding upon Guarantor, Guarantor's heirs, personal representatives, successors and assigns, and shall inure to FDIC/INDYMAC's benefit and to the benefit of FDIC/INDYMAC's successors and assigns.

**2.13 Integration; Waiver.** This Guaranty contains the sole and entire understanding and agreement of the parties and supersedes all prior negotiations and understandings. This Guaranty may not be terminated or otherwise amended, changed or modified, nor a waiver by FDIC/INDYMAC provided, except by a written instrument signed by FDIC/INDYMAC. No waiver, express or implied, by FDIC/INDYMAC of any default hereunder shall be deemed a waiver of any other or succeeding default hereunder.

**2.14 Interpretation.** This Guaranty and the rights and obligations of the FDIC/INDYMAC and the Guarantor hereunder shall be governed and construed in accordance with the laws of the State of California. This Guaranty has been submitted to the scrutiny of all parties hereto and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight being given to its having been drafted by any

party hereto or such party's counsel. It is not the intent of the parties hereto to violate any applicable laws, including, without limitation, any laws relating to usury. If for any reason any provision of this Guaranty does violate any such laws or is not fully enforceable in accordance with the terms and provisions hereof, this Guaranty shall be limited or construed to comply with such laws and shall be enforced to the full extent permitted by such laws.

**2.15 Rights Cumulative.** The rights and remedies of FDIC/INDYMAC herein are cumulative and not exclusive of any other rights or remedies available to FDIC/INDYMAC at law or in equity.

This Guaranty has been executed and delivered effective as of the 19 day of November, 2009.

GUARANTOR: YONG SOK NA

[Redacted]

(b)(6)

Signature

[Redacted] (b)(6)

Address: 5000 N. Parkway Calabasas #100  
Calabasas, CA 91302