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July 19, 2010

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

Re: A Bank is a Business Too. How Government Backstops in the Banking Industry Provide an Unfair Competitive Advantage.

Dear Governor Arnold Schwarzenegger,

I am writing you today out of concern about unreasonable banking practices brought about by illogical government intervention. As you'll see below, we have pending litigation against us but felt it was necessary to share our story with you as there is a very dangerous moral hazard in existence.

We are a small commercial real estate development company who has fallen fate to the current economic depression. Our project that we have been working on since 2005 was recently put up for sale at public auction and ended up reverting to the bank. In this case, the "Bank" is First Citizens Bank & Trust Company, Raleigh, NC., formerly Temecula Valley Bank, which failed on July 17, 2009 and was assumed by First Citizens Bank via the Federal Deposit Insurance Corporation (FDIC) as receiver.

Prior to the property being sold at auction, we received an offer to purchase the property in the amount of $530,000. This offer constituted a short sale and needed the Bank's approval prior to opening escrow. The Bank rejected the offer and moved ahead with foreclosure and the auction. Their decision vexed us, as the offer was only $4,056 short of our outstanding principal balance. The offer asked for a 180 day escrow and an optional extension period of up to 120 days. We thought the Bank might be leery to accept a longer escrow however long escrows are a typical feature of the commercial real estate sector even in a good economy. So what was the Bank's thought process in rejecting our offer? It wasn't until we fully reviewed the Bank's Shared-Loss Agreement with the FDIC that we realized the advantage for the Bank to move forward with foreclosure.

Upon assuming Temecula Valley Bank, First Citizens Bank entered into a Purchase and Assumption Agreement with the FDIC which also included a Shared-Loss Agreement for various assets including both residential and commercial real estate. Using our actual situation as an example, the Shared-Loss Agreement for a foreclosure works like this:

The Bank purchased all loans at book value, in our case $534,056. The Bank sells (reverted) the property for $422,000. Total outstanding debt plus back interest, fees, etc, at the time of auction was $573,643. The FDIC guarantees to cover 80% or 95% of the loss, we'll assume 80%. In our case the loss is $151,643 ($573,643-$422,000). The FDIC will provide the Bank with a payment of $121,314 (80% x $151,643). Add the $121,314 to the auction price of $422,000 and the total comes out to $543,314. The Bank has made a profit of $9,258 ($543,314 less our outstanding principal balance of $534,056).

Now, let's look at the Shared-Loss Agreement for a short sale:

We'll use the same outstanding debt, plus back interest, fees, etc, at the time of auction, $573,643. Our short sale offer is for $530,000. The Bank's loss is $43,643 ($573,643-$530,000). The FDIC will pay the Bank $34,914 (80% x $43,643). Add the $34,914 to the short sale price of $530,000 and the total comes out to $564,914. The Bank has made a profit of $30,858 ($564,914 less our principal balance of $534,056).

As you can see, the Bank will not suffer any losses per the FDIC Shared-Loss Agreement. The Bank's pending litigation is against us as guarantors and will be for the deficiency amount of approximately $151,643 as outlined above. If we are unable to pay as defined in the Shared-Loss Agreement, the Bank can collect from the FDIC and as shown, still generate a profit. Besides being the morally correct thing to do, why would the Bank want to waste time negotiating a short sale and waiting for an extended escrow to close when it can make money letting the property go to foreclosure auction?

Our question to you Governor; Is the Bank not a business too? Is its goal not to earn profits? If it is a business, how do we compete against an entity with multiple government backstops? If one of our tenants vacates a property, will the FDIC or any other government agency be there to provide a Shared-Loss program to cover our losses? The answer is No. So, while we have to search the marketplace for capital or sell assets to raise capital to make good on a debt, the Bank has the luxury of knowing no matter how bad it gets, there is always a government trough to drink from. Indeed, a moral hazard is created, as the Bank is prevented from failing and is not subject to risks like a normal business. An example would be the lack of communication the Bank had with us during its due diligence inspection of Temecula Valley Bank prior to making the purchase. We were not contacted by the Bank as to the status of our project and continued funding ability of our loan because thoroughly exhausting its (the Bank's) due diligence is not necessary due to the fact that programs like the FDIC Shared-Loss will cover the majority of any losses that arise. The basis of this letter does not even deal with the Troubled Asset Relief Program (TARP) or other government programs created since the financial crisis in the Fall of 2008. What if the Bank was receiving additional funds from other programs as well? There is fair and unfair but having your hand in the cookie jar all the time is absurd.

There is nothing more we would like to do than to complete the project we started. You don't spend five years working on something just to walk away but we have realized the magnitude of this economic depression so we attempted to make good on our debt with the Bank. We are seeking to gain nothing and are suffering significant losses as we purchased the property for $1,550,000 and invested over $320,000 in design fees, city fees, interest payments, property taxes, etc. All we seek is reasonable consideration on the Bank's part. The Bank rejected a reasonable offer due to unreasonable government policy. The Bank had a subjective appraisal or broker's price opinion (BPO) to establish an auction price while we had an objective short sale offer from a willing buyer. Once again, we believe the FDIC Shared-Loss Agreement may have been a factor in determining the subjective auction price.

Governor, we call on you for consideration and assistance. There is no doubt you will hear more cases like this one, if you haven't already. I have provided the worksheets from the First Citizens Bank, FDIC Shared-Loss Agreement using our specific numbers as outlined above. I have copied this letter to our United States Senators as well as the CEO of First Citizens Bank.

Sincerely,

Michael Quirk
Managing Member, Elsinore West, LLC.

ATTACHED:

1.) **Worksheets as provided in the Shared-Loss Agreement between First Citizens Bank and FDIC.**

Cc: Senator Dianne Feinstein
Senator Barbara Boxer
Frank B. Holding Jr., CEO First Citizens Bank

<u>Worksheets as provided in the Shared-Loss Agreement between First Citizens Bank and FDIC</u>

Note: The exhibits published in the online Purchase and Assumption Agreement and Shared-Loss Agreement are incomplete. The following worksheets were provided as examples for residential foreclosure and short sale property. No worksheet examples were provided for the Commercial Shared-Loss Agreement.

The Purchase and Assumption Agreement and Shared-Loss Agreement can be viewed online at:

www.fdic.gov/bank/individual/failed/temecula.html

Exhibit 2a(2)
CALCULATION OF FORECLOSURE LOSS
No Proceeding Loan Mod under Loss Share

1	Shared-Loss Month	T.B.D.
2	Loan no:	748001936
3	REO #	N/A
4	Interest paid-to-date	6/8/09
5	Foreclosure date	6/17/10
6	Liquidation date	N/A
7	Note Interest rate	7.00%
8	Owner occupied?	No
9	If owner-occupied:	
10	Borrower current gross annual income	
11	Estimated NPV of loan mod	
12	Most recent BPO	422,000
13	Most recent BPO date	6/1/10 [a]
	Foreclosure Loss calculation	
16	Loan Principal balance after last paid installment	534,056
17	Accrued interest, limited to 90 days	9,360
18	Attorney's fees	12,000 [a]
19	Foreclosure costs, including title search, filing fees, advertising, etc.	2,000 [a]
20	Property protection costs, maint, and repairs	
21	Tax and insurance advances	10,000 [a]
	Other Advances	
22	Appraisal/Broker's Price Opinion fees	5,000 [a]
23	Inspections	
24	Other	1,227 [a]
25	Gross balance recoverable by Purchaser	573,643
	Cash Recoveries	
26	Net liquidation proceeds (from HUD-1 settl stmt)	
27	Hazard Insurance proceeds	
28	Mortgage Insurance proceeds	
29	T & I escrow account balances, if positive	
30	Other credits, if any (itemize)	
31	Total Cash Recovery	422,000
32	**Loss Amount**	151,643

[a] Note: The BPO date, all fees are estimated.

Exhibit 2a(2)

CALCULATION OF FORECLOSURE LOSS

No Preceeding Loan Mod under Loss Share

1	**Shared-Loss Month**	May-09
2	**Loan no:**	292334
3	**REO #**	477
4	Interest paid-to-date	4/30/08
5	Foreclosure date	1/15/09
6	Liquidation date	4/12/09
7	Note Interest rate	8.000%
8	Owner occupied?	Yes
9	If owner-occupied:	
10	Borrower current gross annual income	42,000
11	Estimated NPV of loan mod	195,000
12	Most recent BPO	235,000
13	Most recent BPO date	1/21/09
	Foreclosure Loss calculation	
16	Loan Principal balance after last paid installment	300,000
17	Accrued interest, limited to 90 days	6,000
18	Attorney's fees	0
19	Foreclosure costs, including title search, filing fees, advertising, etc.	4,000
20	Property protection costs, maint. and repairs	5,500
21	Tax and insurance advances	1,500
	Other Advances	
22	Appraisal/Broker's Price Opinion fees	0
23	Inspections	50
24	Other	0
25	Gross balance recoverable by Purchaser	317,050
	Cash Recoveries:	
26	Net liquidation proceeds (from HUD-1 settl stmt)	205,000
27	Hazard Insurance proceeds	0
28	Mortgage Insurance proceeds	0
29	T & I escrow account balances, if positive	0
30	Other credits, if any (itemize)	0
31	Total Cash Recovery	205,000
32	**Loss Amount**	112,050

Exhibit 2c(1)

CALCULATION OF LOSS FOR SHORT SALE LOANS

No Proceeding Loan Mod under Loss Share

1	Shared-Loss Month	T.B.D.
2	Loan #	748001936
3	RO #	N/A
4	Interest paid-to-date	6/8/09
5	Short Payoff Date	12/1/2010 [a]
6	Note Interest rate	7.00%
7	Owner occupied?	No
	If so:	
8	Borrower current gross annual income	
9	Estimated NPV of loan mod	
10	Most Recent BPO	422,000
11	Most Recent BPO date	6/1/2010 [a]
	<u>Short-Sale Loss calculation</u>	
12	Loan Principal balance	534,056
13	Accrued interest, limited to 90 days	9,360
14	Attorney's fees	12,000 [a]
15	Tax and insurance advances	10,000 [a]
16	3rd party fees due	8,227 [a]
17	Incentive to borrower	
18	Gross balance recoverable by Purchaser	573,643
19	Amount accepted in Short-Sale	530,000
20	Hazard Insurance	
21	Mortgage Insurance	
22	Total Cash Recovery	530,000
23	**Loss Amount**	43,643

[a] Note: The payoff date, BPO date, all fees are estimated

Exhibit 2c

This exhibit contains two versions of the loss share calculation for short sales, plus explanatory notes.

Exhibit 2c(1)

CALCULATION OF LOSS FOR SHORT SALE LOANS

No Preceeding Loan Mod under Loss Share

1	Shared-Loss Month:	May-09
2	Loan #	58776
3	RO #	542
4	Interest paid-to-date	7/31/08
5	Short Payoff Date	4/17/09
6	Note Interest rate	7.750%
7	Owner occupied?	Yes
	If so:	
8	Borrower current gross annual income	38,500
9	Estimated NPV of loan mod	200,000
10	Most recent BPO	380,000
11	Most recent BPO date	1/31/06
	Short-Sale Loss calculation	
12	Loan Principal balance	375,000
13	Accrued interest, limited to 90 days	7,266
14	Attorney's fees	0
15	Tax and insurance advances	0
16	3rd party fees due	2,800
17	Incentive to borrower	2,000
18	Gross balance recoverable by Purchaser	387,066
19	Amount accepted in Short-Sale	255,000
20	Hazard Insurance	0
21	Mortgage Insurance	0
22	Total Cash Recovery	255,000
23	**Loss Amount**	132,066