

## **RELEASE**

This Release dated January 9, 2013 is given by the Releasors, the FEDERAL DEPOSIT INSURANCE COMPANY as RECEIVER FOR K BANK and CHARLES GOLDSTEIN, TRUSTEE FOR THE ESTATE OF K CAPITAL CORPORATION (herein referred to as the "Releasors") to the Releasees, BAYARD, P.A., ITS SHAREHOLDERS, DIRECTORS AND EMPLOYEES, and DOUGLAS M. HERSHMAN, ESQ. and their insurers, (hereunder referred to as "Releasees").

### **PREAMBLE**

WHEREAS, an action was filed in the Superior court of the State of Delaware in and for New Castle County in the matter of K Bank and K Capital Corporation vs. Bayard, P.A. and Douglas M. Hershman, Esq. under Case No. N10C-01-099 (RRC) (hereinafter referred to as the "Lawsuit").

WHEREAS, during the pendency of the Lawsuit, plaintiff K Bank was closed and the Federal Deposit Insurance Corporation was appointed as Receiver ("FDIC-R") and in that capacity FDIC-R succeeded to the rights of plaintiff K Bank in the Lawsuit, and plaintiff, K Capital Corporation filed for bankruptcy in the United States Bankruptcy Court for the District of Maryland, Case No. 10-35560-NVA, and Charles Goldstein was appointed as Trustee for K Capital Corporation.

WHEREAS, the Releasors and Releasees have agreed to resolve all disputes relating to the litigation, and without admitting or determining liability whatsoever, and to avoid the uncertainties, expense and delays inherent in litigating these claims, the parties desire to enter into this Release in order to provide for certain payment in full settlement and discharge of the Releasors claims against the Releasees.

## DEFINITIONS

**1.0 Definitions.** The following definitions apply to this Release:

A. "Claims" means any and all claims or demands of whatsoever nature including, without limiting the generality of the foregoing, any claims that were brought, which were threatened to be brought, or which could have been brought in the lawsuit relating to Douglas Hershman's involvement with K Bank and K Capital concerning

(b)(4) one or more loans to

**2.0 Release and Discharge.** In consideration of the payment set forth in Section 3.0, the receipt and sufficiency of which are hereby acknowledged, the Releasers hereby completely release, acquit and forever discharge the Releasees and their respective employees, agents, heirs, executors, attorneys, insurers, administrators, successors, members, shareholders and directors (collectively "Releasees") of and from any and all Claims, as herein defined, including, but not limited to, any past, present, and future claims, demand, obligations, actions, causes of action, guarantees, claims for compensatory damages, punitive damages, legal malpractice, breach of the standard of care, breach of fiduciary duty, loss of income earning capacity and profits, loss of compensation, financial injury, attorney's fees, interest and costs of any kind or nature whatsoever, whether based in tort, contract, negligence, legal malpractice, breach of fiduciary duty and statute or any other theory, and whether known or unknown, which Releasers had had, may have, now have, or which they may hereafter accrue or otherwise acquire against Releasees as of the date hereof relating to the Claims.

**2.1** The Releasors expressly waive, and assume the risks of, any and all claims for damages which exist as of this date, but of which the Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence, incomplete knowledge, and uncertain or incomplete discovery, or otherwise, and which if known, would materially affect his decision to enter into this Release. The Releasors further agree that they have accepted payment of the sum specified herein and it is a complete compromise of matters involving disputed issues of law and fact. The Releasors understand and agree that if the law or facts with respect to which this Release is executed be found hereto to be other than, or different from, the law and facts now believed by the parties to be true, the Releasors expressly accept and assume the risk of such possible difference in law or facts, and agree that this Release shall be and will remain effective, notwithstanding any such difference. As an inducement for the considerations set forth below, the Releasors voluntarily assume any and all risk that, as a result of the claims, damages, or events described above, the Releasors may in the future suffer some further harm or damage which is now unknown or unsuspected to the Releasors and Releasees, and the Releasors specifically release the claims having to do with any such future harm, damage and the risk thereof.

**2.2** This Release shall be a fully-binding and complete settlement among the Releasors and the Releasees, and their respective heirs, successors, and assigns. The Releasors are bound by this Release. The Releasors expressly acknowledge, understand and agree that anyone who succeeds to their rights and responsibilities, such as their heirs or administrators or executors

of their estates are also bound. The Releasors understand that all of the terms and conditions of this Release are for the benefit of and binding on them, their heirs or administrators, or executors of their estates, and anyone else who succeeds to their rights and responsibilities. The parties agree that this Release contains all of the terms and conditions agreed upon by the parties with reference to the subject matter contained herein, and no party is relying upon any statements or representations of the other except as set forth in this Release.

**2.3** The parties acknowledge and agree that this is a complete compromise of matters involving disputed issues of law and fact.

**2.4** The Releasors understand that the payment of the sum specified herein, and their execution of this Release, is done entirely for the purpose of compromising and settling disputed claims. Neither the payment of such sums, nor the compromise and settlement of such claims shall be construed as an admission of liability on the part of Releasees, each and all of whom expressly deny liability.

### **PAYMENTS**

**3.0** In consideration of the Release set forth herein, and Releasors' complete execution of this Release, and dismissal of the lawsuit, with prejudice, the Releasees agree to pay the sums outlined in this section as follows:

A. To Releasors, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) in full payment for making this Release. Releasors agree that they will not seek anything further, including any other payments from the Releasees. The settlement check shall be

made payable to: Rosenberg, Martin & Greenberg, LLP.

**3.1 Governing Law.** This Release shall be construed and interpreted in accordance with the laws of the State of Delaware.

**3.2 Additional Documents.** The Releasors agrees to cooperate fully with the Releasees and execute any and all supplementary documents, and to take all additional actions, including the filing of a Stipulation of Dismissal, With Prejudice, of the lawsuit as to Defendants, Bayard, P.A. and Douglas M. Hershman.

**3.3 Entire Agreement and Successors In Interest.** This Release contains the entire agreement between the Releasors and Releasees with regard to the matters set forth in it, and supersedes any and all prior agreements and understandings, whether written or oral of the parties hereto relating to the subject matter hereof. This Release shall be binding upon, and inure to the benefit of the Releasors and Releasees hereto, and to their executors, administrators, personal representatives, heirs, successors, assigns, and insurers.

**3.4 Representation of Comprehension of Documents.** The Releasors have relied upon the advice of their attorneys in entering into this Release, and further acknowledge that they have been afforded a full and complete opportunity to review and evaluate the terms and conditions of this settlement, and further acknowledge that the terms of this Release are fully understood and voluntarily accepted.

**WHO IS BOUND**

**4.0** The Releasors are bound by this Release. Anyone who succeeds to the rights and

responsibilities, such as their heirs or executors of their estates, is also bound. This Release is made for the benefit of the Releasees, all who succeed to their rights and responsibilities, such as their heirs or the executors of their estates, or agents, employees, insurers, or principals of the Releasees.

IN WITNESS WHEREOF, the Plaintiffs have hereunto signed this Release and Settlement Agreement the day and year first above written.

The Federal Deposit Insurance Corporation  
as Receiver of K Bank

Dated: \_\_\_\_\_

BY: \_\_\_\_\_  
Name:  
Title:

Sworn to and subscribed before me  
this \_\_\_\_\_ day of January, 2013.

NOTARY PUBLIC

THE ESTATE OF K CAPITAL CORP.

Dated: 1/1/13

BY:  \_\_\_\_\_ (b)(6)  
CHARLES GOLDSTEIN, TRUSTEE

Sworn to and subscribed before me  
this \_\_\_\_\_ day of January 2013.

(b)(6)



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responsibilities, such as their heirs or executors of their estates, is also bound. This Release is made for the benefit of the Releasees, all who succeed to their rights and responsibilities, such as their heirs or the executors of their estates, or agents, employees, insurers, or principals of the Releasees.

IN WITNESS WHEREOF, the Plaintiffs have hereunto signed this Release and Settlement Agreement the day and year first above written.

The Federal Deposit Insurance Corporation  
as Receiver of K Bank

Dated: \_\_\_\_\_

BY: \_\_\_\_\_  
Name:  
Title:

Sworn to and subscribed before me  
this \_\_\_\_\_ day of January, 2013.

NOTARY PUBLIC

THE ESTATE OF K CAPITAL CORP.

Dated: 1/1/13

BY:  \_\_\_\_\_ (b)(6)  
CHARLES GOLDSTEIN, TRUSTEE

Sworn to and subscribed before me  
this \_\_\_\_\_ day of January 2013.

(b)(6)

responsibilities, such as their heirs or executors of their estates, is also bound. This Release is made for the benefit of the Releasees, all who succeed to their rights and responsibilities, such as their heirs or the executors of their estates, or agents, employees, insurers, or principals of the Releasees.

IN WITNESS WHEREOF, the Plaintiffs have herunto signed this Release and Settlement Agreement the day and year first above written.

Dated: 1/10/2013

The Federal Deposit Insurance Corporation  
as Receiver of K Bank

BY:  (b)(6)  
Name: Kevin Wheelwright  
Title: Counsel

Sworn to and subscribed before me  
this      day of January, 2013.

NOTARY PUBLIC

THE ESTATE OF K CAPITAL CORP.

Dated: \_\_\_\_\_ BY: \_\_\_\_\_  
CHARLES GOLDSTEIN, TRUSTEE

Sworn to and subscribed before me  
this      day of January 2013.

NOTARY PUBLIC