

MUTUAL RELEASE OF LIABILITY

This Mutual Release of Liability, dated as of July 30, 2012, is by and between the Federal Deposit Insurance Corporation ("FDIC"), as receiver for BankUnited, FSB ("BankUnited"), and Neil Messinger, Al Bernkrant, Brad Weiss, Hardy Katz, Tod Aronovitz, Marc Jacobson, Sharon Brown, and Al Smith (each individually a "Director" and, collectively, the "Directors" and, together with the FDIC, the "Parties"), as follows:

WHEREAS, BankUnited was closed by the Office of Thrift Supervision on May 21, 2009, and the FDIC was appointed as its Receiver; and,

WHEREAS, the FDIC has the right pursuant to 1821(d)(2)(A)(i) of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") and other authority to assert claims against the former directors and officers of BankUnited; and,

WHEREAS, the FDIC has asserted claims (the "FDIC's Claims"), including claims for payment of monetary damages and for non-monetary relief, against certain former directors and officers of BankUnited (the "Named Individuals"), including the Directors, subject to supplementation, revisions, and/or deletions of claims known or unknown, relating to their services, acts and/or omissions as former officers and/or directors of BankUnited, some of which but without limitation are set forth in a letter (the "Demand Letter") to the Named Individuals dated November 5, 2009 asserting damages of \$227 million, and which specifically do not include any claims that the FDIC may have against Alfred Camner and/or Camner Lipsitz, P.A. relating to their services, acts and/or omissions as attorneys for BankUnited; and,

WHEREAS, on September 16, 2008, the Waterford Township General Employees Retirement System initiated an adversary proceeding in the U.S. District Court for the Southern District of Florida, Miami Division, captioned *In re BankUnited Securities Litigation*, U.S.

District Court, Southern District of Florida, Civil Action No. 08-22572-CIV-Cooke/Turnoff (the "Class Action"); and,

WHEREAS, on April 6, 2009, the Louisiana Municipal Police Employee's Retirement System and the Oklahoma Police Pension and Retirement System ("Lead Plaintiffs") were appointed as lead plaintiffs in the Class Action; and,

WHEREAS, the Lead Plaintiffs have also agreed to assign their rights under an excess insurance policy issued by RSUI Indemnity Company ("RSUI"), Policy Number (b)(4) and any claims against RSUI to the FDIC; and,

WHEREAS, the Named Individuals, including the Directors, are insureds under a primary insurance policy issued by St. Paul Mercury Insurance Company ("Travelers"), Policy Number (b)(4) (the "Primary Policy"), with a liability limit of \$10 million; and,

WHEREAS, the Primary Policy had a policy period of November 10, 2007, through November 10, 2008, and a one-year tail discovery period was purchased by BankUnited's holding company, BankUnited Financial Corporation ("BUFC"), which extended coverage to November 10, 2009; and,

WHEREAS, the Named Individuals Alfred Camner, Ramiro Ortiz, Humberto Lopez and the FDIC have entered into a certain Settlement and Assignment Agreement, dated the date hereof, pursuant to which they have agreed to settle the FDIC's Claims (the "Settlement Agreement"); and

WHEREAS, the FDIC, Lead Plaintiffs, Defendants and/or Named Individuals, and Travelers have agreed that Travelers shall pay all the remaining limits of the Primary Policy as follows: (i) a \$2,500,000 payment to the FDIC as a partial payment of the FDIC's Claims; (ii) a \$3,500,000 payment to the Lead Plaintiffs; and (iii) the remainder of the limits to be placed in a

reserve (the "Defense Reserve") to be used to pay the reasonable defense costs of the Named Individuals, including the Directors, with respect to, or, after a proposed settlement is reviewed and approved through an internal process at the FDIC that has no guaranteed outcome, to pay the settlement of: (1) claims that have been asserted or may in the future be asserted against some or all of the Named Individuals by the Official Committee of Unsecured Creditors of BankUnited Financial Corporation (the "Committee"); and (2) any claim, investigation or action that may be initiated against some or all of the Named Individuals by the Securities & Exchange Commission ("SEC"); and,

WHEREAS, the Directors and the FDIC have agreed to execute the Settlement Agreement and Policy Release (the "Policy Release"), which is attached to the Settlement Agreement as Exhibit "A", in favor of Travelers, releasing and forever discharging Travelers from all manner of action(s), causes of action, suits, claims for sums of money, damages, judgments, and demands whatsoever, known or unknown, suspected or unsuspected, in law or in equity that the Directors and/or the FDIC may now have or may have in the future against Travelers under the Primary Policy, including, but not limited to, any Loss, as defined in the Policy, and any claim in the nature of bad faith or any similar claim or cause of action, under any state, federal, or common law; and

WHEREAS, this Mutual Release of Liability is attached as an exhibit to the Settlement Agreement and is subject to and conditioned on the consummation of the transactions contemplated under the Settlement Agreement; and,

WHEREAS, this Mutual Release of Liability, along with the Settlement Agreement and Policy Release, will be presented to the Bankruptcy Court in connection with a motion for relief from the automatic stay to fund the Settlement Agreement in the chapter 11 bankruptcy case

pending before the U.S. Bankruptcy Court for the Southern District of Florida, Miami Division (the "Bankruptcy Court"), captioned *In re BankUnited Financial Corporation, et al.*, Case No. 09-19940-LMI (the "Bankruptcy Case"); and,

WHEREAS, the Settlement Agreement, along with this Mutual Release of Liability and the Policy Release, is subject to and conditioned on the entry of a final and unappealable order of the Bankruptcy Court approving the release of funds from the Primary Policy to fund the Settlement Agreement (the "Bankruptcy Court Approval Order"); and,

WHEREAS, the Settlement Agreement, along with this Mutual Release of Liability and the Policy Release, is subject to and conditioned on the entry of a final and unappealable order of the District Court finally approving the settlement (the "Class Action Settlement") presented to it in connection with the Lead Plaintiffs' September 30, 2011 Motion for Preliminary Approval of Settlement, Certification of a Class for Settlement Purposes, and Approval of Notice to the Class (the "District Court Approval Order" and, together with the Bankruptcy Court Approval Order, the "Approval Orders")); and,

NOW, THEREFORE, in consideration of the mutual release of any and all claims by, between or among the Parties, the Parties agree that the following shall occur:

1. The FDIC hereby releases and forever discharges the Directors from the FDIC's Claims, or any other manners of action(s), causes of action, suits, claims for sums of money, damages, judgments, and demands whatsoever, known or unknown, suspected or unsuspected, in law or in equity that the FDIC may now have or have in the future against the Directors in their capacities as directors of BankUnited. The FDIC agrees that it will not pursue, assert, or otherwise prosecute the FDIC's Claims against the Directors, or any other potential claims against them in their capacities as directors of BankUnited.

2. The Directors hereby release and forever discharge the FDIC from any and all manners of action(s), causes of action, suits, claims for sums of money, damages, judgments, and demands whatsoever, known or unknown, suspected or unsuspected, in law or in equity that the Directors may now have or have in the future against the FDIC in its capacity as Receiver for BankUnited.

3. The Parties understand, acknowledge, and agree that this Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Mutual Release of Liability. Should the FDIC institute any action and proceeding to enforce any provision of this Mutual Release of Liability, or for damages by reason of any alleged breach of any provision of this Mutual Release of Liability, or for a declaration of the FDIC's rights or obligations hereunder, or for any other judicial remedy, if the FDIC prevails, it shall be entitled to be reimbursed by the Directors who breached this Mutual Release of Liability for all reasonable and necessary costs and expenses incurred thereby, including, but not limited to, attorneys' fees for the services rendered to the FDIC in any such action or proceeding. Should a Director or any of their attorneys institute any action and proceeding to enforce any provision of this Mutual Release of Liability against the FDIC, or for damages by reason of any alleged breach of any provision of this Mutual Release of Liability by the FDIC, or for a declaration of a Director's rights or obligations with respect to the FDIC hereunder, or for any other judicial remedy against the FDIC, if the Director prevails, he shall be entitled to be reimbursed by the FDIC for all reasonable and necessary costs and expenses incurred thereby, including, but not limited to, attorneys' fees for the services rendered to Insureds in any such action or proceeding.

4. The Parties agree that this Mutual Release of Liability is not effective unless and until the Directors and the FDIC execute the Policy Release in favor of Travelers.

5. The Parties agree that the Bankruptcy Court will be advised that a settlement agreement has been reached, and if the Bankruptcy Court does not approve the release of funds from the Primary Policy as contemplated in this Mutual Release of Liability, the Settlement Agreement, and the Policy Release, or if the District Court does not approve the Class Action Settlement, this Mutual Release of Liability is null and void.

6. The Parties agree that, upon execution of this Mutual Release of Liability, the FDIC shall take all necessary steps to dismiss the Directors from the declaratory judgment action in the Bankruptcy Court captioned *RSUI Indemnity Company v. BankUnited Financial Corporation*, No. 12-01383 (Bankr. S.D. Fla.)

7. The Parties understand, acknowledge, and agree that this Mutual Release of Liability may not be altered, amended, modified, or otherwise changed in any respect whatsoever, except by agreement in writing signed by the Parties hereto.

8. The Parties understand, acknowledge, and agree that this Mutual Release of Liability shall, as provided above, be effective as a full and final agreement. The Parties understand, acknowledge, and agree that if they hereafter discover facts different from or in addition to the facts they now know or believe to be true with respect to the subject matter of this Mutual Release of Liability, it is nevertheless their intent that this Mutual Release of Liability constitutes a full and final agreement.

9. This Mutual Release of Liability, together with the Settlement Agreement and the Policy Release, constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Mutual Release of Liability and supersedes any prior and

contemporaneous, oral or written agreement, negotiations and discussions with respect to the subject matter of this Mutual Release of Liability.

10. The Parties understand, represent, and warrant that they enter into this Mutual Release of Liability upon the legal advice of their attorneys, that said attorneys have explained the terms of the Mutual Release of Liability, and that they fully understand and voluntarily accept the terms of this Mutual Release of Liability.

11. Each person executing this Mutual Release of Liability on behalf of a Party hereby warrants that he or she has the authority to sign on behalf of said Party. The Parties agree to execute all documents and to do all things necessary to effectuate the terms of this Mutual Release of Liability.

12. The Parties agree that the provisions of this Mutual Release of Liability shall be deemed to have been simultaneously drafted by all Parties and no laws or rules relating to the interpretation of contracts against the drafter of any particular clause should be applied to the interpretation or enforcement of this Mutual Release of Liability.

13. This Mutual Release of Liability may be executed in counterparts with the same effect as if the signatures were upon the same instrument. Each counterpart will be deemed an original, which taken together shall constitute a single instrument.

14. All notices required or permitted under or pertaining to this Mutual Release of Liability shall be in writing and delivered by any method providing proof of delivery. Notices shall be delivered to the Parties at the following addresses until a different address has been designated by notice to other parties:

Michael Nachwalter
Kenny Nachwalter
1100 Miami Center

201 S. Biscayne Boulevard
Miami, Florida 33131
Tel: (305) 373-1000
Fax: (305) 372-1861
as counsel for Neil Messinger, Al Bernkrant, Brad Weiss, Hardy
Katz, Tod Aronovitz, Marc Jacobson, Sharon Brown, and Al Smith

Dennis S. Klein
Hughes Hubbard & Reed LLP
201 S. Biscayne Boulevard
Miami, Florida 33131
Tel: (305) 379-5574
Fax: (305) 371-8759
as counsel for the Federal Deposit Insurance Corporation

15. This Mutual Release of Liability shall become effective on the date the last signatory executes this document and all of the counterparts are exchanged, provided, however, that it does not become effective unless and until the Directors execute the Policy Release.

THE PARTIES HEREBY CERTIFY THAT THEY HAVE READ THIS ENTIRE AGREEMENT AND HAVE HAD THE TERMS HEREIN AND THE CONSEQUENCES THEREOF EXPLAINED BY THEIR ATTORNEYS, AND THAT THEY FULLY UNDERSTAND ALL THE TERMS AND CONSEQUENCES OF THIS AGREEMENT.

The Parties, themselves or through their duly authorized representatives, have caused this Agreement to be executed as of the dates indicated below.

DATED: July <u>20</u> , 2012	<div style="border: 1px solid black; width: 150px; height: 40px; margin-bottom: 5px;"></div> Neil Messinger
DATED: July __, 2012	Al Bernkrant
DATED: July __, 2012	Brad Weiss
DATED: July __, 2012	Hardy Katz
DATED: July __, 2012	Tod Arenovitz
DATED: July __, 2012	Marc Jacobsen
DATED: July __, 2012	Sharon Brown
DATED: July __, 2012	Al Smith
DATED: July __, 2012	FEDERAL DEPOSIT INSURANCE CORPORATION By: Steven E. Smith, Counsel

(b)(6)

(b)(6)

[Redacted]

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The Parties, themselves or through their duly authorized representatives, have caused this Agreement to be executed as of the dates indicated below.

(b)(6)

DATED: July __, 2012	[Redacted]
DATED: July __, 2012	[Redacted]
DATED: July __, 2012	Al Berkman
DATED: July __, 2012	Brad Weiss
DATED: July __, 2012	Hardy Katz
DATED: July __, 2012	Tod Aronovitz
DATED: July __, 2012	Marc Jacobson
DATED: July __, 2012	Sharon Brown
DATED: July __, 2012	Al Smith
DATED: July __, 2012	FEDERAL DEPOSIT INSURANCE CORPORATION
	By: Steven E. Smith, Counsel

The Parties, themselves or through their duly authorized representatives, have caused this Agreement to be executed as of the dates indicated below.

DATED: July __, 2012	 Neil Messinger
DATED: July __, 2012	 AJ Bernkrant
DATED: July __, 2012	<div style="border: 1px solid black; width: 150px; height: 30px; display: inline-block;"></div> Brad Weiss <i>B</i>
DATED: July __, 2012	 Hardy Katz
DATED: July __, 2012	 Tod Aronovitz
DATED: July __, 2012	 Marc Jacobson
DATED: July __, 2012	 Sharon Brown
DATED: July __, 2012	 AJ Smith
DATED: July __, 2012	FEDERAL DEPOSIT INSURANCE CORPORATION By: _____ Steven E. Smith, Counsel

(b)(6)

The Parties, themselves or through their duly authorized representatives, have caused this Agreement to be executed as of the dates indicated below.

DATED: July __, 2012	 _____ Neil Messinger
DATED: July __, 2012	 _____ Al Bernkrant
DATED: July __, 2012	 _____ Brad Weiss
DATED: July <u>18</u> , 2012	 _____ Hardy Katz
DATED: July __, 2012	 _____ Tod Aronovitz
DATED: July __, 2012	 _____ Marc Jacobson
DATED: July __, 2012	 _____ Sharon Brown
DATED: July __, 2012	 _____ Al Smith
DATED: July __, 2012	FEDERAL DEPOSIT INSURANCE CORPORATION By: _____ Steven E. Smith, Counsel

(b)(6)

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DATED: July __, 2012	 Neil Messinger
DATED: July __, 2012	 Al Bernkrant
DATED: July __, 2012	 Brad Weiss
DATED: July __, 2012	 Hardy Katz
DATED: July __, 2012	 [Redacted Signature] _____ TOD APOKOYBE
DATED: July __, 2012	 Marc Jacobson
DATED: July __, 2012	 Sharon Brown
DATED: July __, 2012	 Al Smith
DATED: July __, 2012	FEDERAL DEPOSIT INSURANCE CORPORATION By: _____ Steven E. Smith, Counsel

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DATED: July __, 2012	 Neil Messinger
DATED: July __, 2012	 Al Bernkrant
DATED: July __, 2012	 Brad Weiss
DATED: July __, 2012	 Hardy Katz
DATED: July __, 2012	 Tod Aronovitz
(b)(6) DATED: July __, 2012	<div style="border: 1px solid black; width: 200px; height: 40px; margin: 0 auto;"></div> Marc Jacobson
DATED: July __, 2012	 Sharon Brown
DATED: July __, 2012	 Al Smith
DATED: July __, 2012	FEDERAL DEPOSIT INSURANCE CORPORATION By: _____ Steven E. Smith, Counsel

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DATED: July __, 2012	 Neil Messinger
DATED: July __, 2012	 Al Bernkrant
DATED: July __, 2012	 Brad Weiss
DATED: July __, 2012	 Hardy Katz
DATED: July __, 2012	 Tod Aronovitz
DATED: July __, 2012	 Marc Jacobson
DATED: July <u>20</u> , 2012	<div style="border: 1px solid black; width: 150px; height: 40px; margin: 5px 0;"></div> Sharon Brown
DATED: July __, 2012	 Al Smith
DATED: July __, 2012	FEDERAL DEPOSIT INSURANCE CORPORATION By: _____ Steven E. Smith, Counsel

(b)(6)



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DATED: July __, 2012	 _____ Neil Messinger
DATED: July __, 2012	 _____ Al Bernkrant
DATED: July __, 2012	 _____ Brad Weiss
DATED: July __, 2012	 _____ Hardy Katz
DATED: July __, 2012	 _____ Tod Aronovitz
DATED: July __, 2012	 _____ Marc Jacobson
DATED: July __, 2012	 _____ Sharon Brown
DATED: July __, 2012	 _____ Al Smith

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DATED: July __, 2012	_____ Neil Messinger
DATED: July __, 2012	_____ Al Bernkrant
DATED: July __, 2012	_____ Brad Weiss
DATED: July __, 2012	_____ Hardy Katz
DATED: July __, 2012	_____ Tod Aronovitz
DATED: July __, 2012	_____ Marc Jacobson
DATED: July __, 2012	_____ Sharon Brown
DATED: July __, 2012	_____ URANCE
DATED: July <u>14</u> , 2012	_____ Steven E. Smith Counsel

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