

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties: The Plaintiff Federal Deposit Insurance Corporation as Receiver for Orion Bank of Naples, Florida (“FDIC-R”), and Nason, Yeager, Gerson, White, & Lioce, P.A., Alan I. Armour II, Ryan P. Aiello (collectively the “Settling Defendants”), and Chicago Insurance Company (“Insurer”) (individually, the FDIC-R, the Settling Defendants and the Insurer may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

#### WHEREAS:

Prior to November 13, 2009, Orion Bank of Naples, Florida (“Bank”) was a depository institution organized and existing under the laws of Florida;

On November 13, 2009, the Florida Office of Financial Regulation closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded, and currently holds, were all of the Bank’s claims, demands, and causes of action against its former attorneys arising from the performance, nonperformance, and manner of performance of their functions, duties and acts for the Bank;

On March 15, 2013, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom performed legal services for the Bank. Those claims for damages are now pending in the United States District Court for the Middle District of Florida in *FDIC as Receiver for Orion Bank of Naples Florida v. Nason, Yeager, Gerson, White, & Lioce*,

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*P.A., et al.*, case number 2:13-cv-00208-CM-SPC (“Lawsuit”). The Settling Defendants have denied any liability in the Lawsuit.

Insurer issued an errors and omissions liability policy numbered No. LWB  for  (b)(4) the period April 12, 2010 through April 12, 2011 (“Policy”), which insured Settling Defendants according to the terms, provisions, and conditions of the Policy. The Settling Defendants asserted claims for coverage under the Policy. The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty of trial and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC-R**

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement and provides the designated account number to the Settling Defendants (as described in the following paragraph), the Insurer agrees to pay the FDIC-R the sum of \$2,495,000 (“the Settlement Payment”).

B. The Insurer shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants and Insurer. In the event that the Settlement Payment is not delivered to the FDIC-R by required date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the due date until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the

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right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

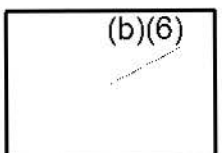
1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or

2. Enforce this Agreement, in which event the Settling Defendants and Insurer agree to jurisdiction in United States District Court in the Middle District of Florida and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants and Insurer agree to consent, and continue the Lawsuit on the FDIC-R's claims. The Settling Defendants and Insurer further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.



## SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for the FDIC-R and the Settling Defendants, in the form attached hereto as Exhibit A, in the Lawsuit.

## SECTION III: Releases

### A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, successors, assigns, insurers, agents, incorporators, owners, officers, directors, former and current employees, from any and all claims, demands, obligations, damages, actions, and causes of action, of whatsoever kind or nature, direct or indirect, in law or in equity, belonging to the FDIC-R, whether known or unknown, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as attorneys for the Bank including without limitation to the causes of action and facts alleged in the Lawsuit including, but not limited to, legal malpractice, professional negligence and breach of fiduciary duty, as well as for any other claims not asserted in the Lawsuit relating to legal services rendered by Settling Defendants to Bank.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, of whatsoever kind or nature, direct or indirect, in law or in equity, whether known or unknown, that arise from

or relate to the causes of action and facts alleged in the Lawsuit. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

B. The Settling Defendants' Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or Orion Bancorp, Inc. or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as attorneys for the Bank including without limitation the causes of action alleged in the Lawsuit.

C. The Insurer's Release.

Effective simultaneously with the releases granted in Section III.A. above, Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Lawsuit.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

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a. Against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

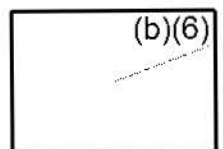
b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person..

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

#### **SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other



distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

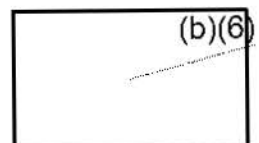
**SECTION V: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

**SECTION VI: Reasonable Cooperation**

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Lawsuit and to otherwise perform the



terms of this Agreement.

**SECTION VII: Other Matters**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Florida

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:  
Dennis Klein  
Hughes, Hubbard & Reed, LLP  
201 South Biscayne Boulevard  
Miami, Florida 33131  
305.379.5564

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If to the Settling Defendants or Insurer:  
Jonathan Vine  
Cole, Scott & Kissane. P.A.

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1645 Palm Beach Lakes Boulevard, 2nd Floor  
West Palm Beach, FL 33401  
305.383.9200

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E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

H. Severability. If any section or part of Agreement is held to be invalid by a court of law, the remaining portions of the Agreement shall continue to be in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR ORION BANK

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Date: July 23, 2014

BY:

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TITLE: *Counsel*

NAME: *Steven E. Smith*

Date: \_\_\_\_\_

NASON YEAGER GERSON WHITE & LIOCE, P.A.

BY:

TITLE:

NAME:

Date: \_\_\_\_\_

ALAN I. ARMOUR II

\_\_\_\_\_

Date: \_\_\_\_\_

RYAN P. AIELLO

\_\_\_\_\_

Date: \_\_\_\_\_

CHICAGO INSURANCE COMPANY

BY:

TITLE:

PRINT NAME:

TITLE:

NAME:

Date: 7/22/14

NASON YEAGER GERSON WHITE & LIOCE, P.A.

(b)(6)

BY:

[Redacted signature box]

TITLE:

*President*

NAME:

*GARY D GERSON*

Date: 7/22/2014

ALAN I. ARMOUR II

(b)(6)

[Redacted signature box]

Date: \_\_\_\_\_

RYAN P. AIELLO

Date: \_\_\_\_\_

CHICAGO INSURANCE COMPANY

BY:

TITLE:

PRINT NAME:

[Redacted signature box]

(b)(6)

TITLE:

NAME:

Date: \_\_\_\_\_

NASON YEAGER GERSON WHITE & LIOCE, P.A.

BY:

TITLE:

NAME:

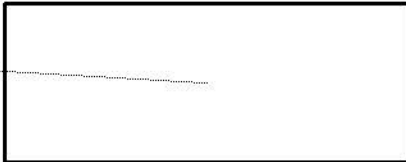
Date: \_\_\_\_\_

ALAN I. ARMOUR II

Date: 7/21/2014

RYAN P. AIELLO

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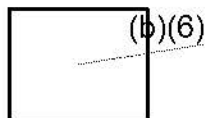
Date: \_\_\_\_\_

CHICAGO INSURANCE COMPANY

BY:

TITLE:

PRINT NAME:



TITLE:

NAME:

Date: \_\_\_\_\_

NASON YEAGER GERSON WHITE & LIOCE, P.A.

BY:

TITLE:

NAME:

Date: \_\_\_\_\_

ALAN I. ARMOUR II

\_\_\_\_\_

Date: \_\_\_\_\_

RYAN P. AIELLO

\_\_\_\_\_

Date: 8/5/14

CHICAGO INSURANCE COMPANY

(b)(6)

BY:

TITLE: ASSISTANT VICE PRESIDENT

PRINT NAME: TIMOTHY R. DIVERLY

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