

## 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 InBank ("FDIC-R") and Virginia Browning, Elbert Elmore, Norman Reiher, and Robert Romero (collectively the "Settling Defendants") (individually, the FDIC-R and the Settling Defendants may be referred to herein as "Party" and collectively as the "Parties").

### RECITALS

WHEREAS:

Prior to September 4, 2009, InBank ("Bank") was a depository institution organized and existing under the laws of Illinois;

On September 4, 2009, the Illinois Department of Financial and Professional 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 were all of the Bank's claims, demands, and causes of action against its former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

On March 7, 2013, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom served at various times as a director and/or officer of the Bank. Those claims for damages are now pending in the United States District Court for the Northern District of Illinois in *FDIC as Receiver for InBank v. Elmore, et al.*, No. 1:13-cv-1767 ("D&O Action"). The Settling Defendants have denied all liability in the D&O Action and have asserted various affirmative defenses; and

Without conceding the validity of any claim or defense, the undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty 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 Parties' execution of this Agreement, the Settling Defendants agree to pay the FDIC-R the sum of \$1,500,000 ("the Settlement Payment").

B. The Settling Defendants shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the below account:

Bank: Federal Home Loan Bank of New York

ABA Routing Number:

For Credit to: FDIC National Liquidation Account

Account Number:

FIN 10113; InBank

Contact: J.S. Tonkinson, 972-761-8105; Professional Liability  DIF Fund (b)(4)

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 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 agree to jurisdiction in United States District Court for the Northern District of Illinois and to pay all of the FDIC-R's reasonable attorney's fees and costs expended to enforce the terms of this Agreement; or

3. Terminate the Agreement, return any settlement funds paid pursuant to this Agreement, move to vacate any dismissal order entered in the D&O Action, to which the Settling Defendants agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants further 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 the 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 all Parties hereto, in the form attached hereto as Exhibit A, in the D&O Action.

## **SECTION III: Releases**

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

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

1. The Settling Defendants and their respective heirs, executors, trustees, beneficiaries, administrators, representatives, insurers, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action; and

2. All other former directors, officers, and employees of the Bank (collectively, the "Covered Persons") and their respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Covered Persons' respective functions, duties and actions as directors, officers and/or employees of the Bank, including without limitation the causes of action alleged in the D&O Action. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

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, beneficiaries, administrators, agents, representatives, attorneys, insurers, 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 to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

C. 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:

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**

The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents, attorneys and insurers to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the D&O Action 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 internal laws of the State of Illinois without regard to principles relating to conflicts of law.

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: Kathleen R. Pasulka-Brown, Pugh, Jones & Johnson, P.C., 180 S. LaSalle Street, Suite 3400, Chicago, IL 60601, 312.768.7800, [REDACTED] (b)(6)

If to the Settling Defendants: John M. George and Nancy A. Temple, Jr., Katten & Temple LLP, 542 South Dearborn St., 14<sup>th</sup> Floor, Chicago, Illinois 60605, 312.663.4427,

(b)(6) [REDACTED] [REDACTED] and Michael S. Loeffler, Loeffler Thomas P.C., 500 Skokie Blvd., Suite 260, Northbrook, IL 60062, 847.656.9201,

(b)(6) [REDACTED]

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.

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 INBANK

(b)(6) Date: March 2, 2015

BY:

TITLE: Counsel

PRINT NAME: J.S. Tonkinson

Date: \_\_\_\_\_, 2015

PRINT NAME: Virginia Browning

Date: \_\_\_\_\_, 2015

PRINT NAME: Elbert Elmore

Date: \_\_\_\_\_, 2015

PRINT NAME: Norman Reiher

Date: \_\_\_\_\_, 2015

PRINT NAME: Robert Romero



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 INBANK

Date: \_\_\_\_\_, 2015

BY: \_\_\_\_\_

TITLE: Counsel

PRINT NAME: J.S. Tonkinson

(b)(6) \_\_\_\_\_  
Date: 3/13/, 2015

\_\_\_\_\_

PRINT NAME: Virginia Browning

Date: \_\_\_\_\_, 2015

\_\_\_\_\_  
PRINT NAME: Elbert Elmore

Date: \_\_\_\_\_, 2015

\_\_\_\_\_  
PRINT NAME: Norman Reiher

Date: \_\_\_\_\_, 2015

\_\_\_\_\_  
PRINT NAME: Robert Romero

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 INBANK

Date: \_\_\_\_\_, 2015

BY: \_\_\_\_\_

TITLE: Counsel

PRINT NAME: J.S. Tonkinson

Date: \_\_\_\_\_, 2015

PRINT NAME: Virginia Browning

(b)(6) Date: 03-05, 2015

[Redacted Signature Box]

PRINT NAME: Elbert Elmore

Date: \_\_\_\_\_, 2015

PRINT NAME: Norman Reiher

Date: \_\_\_\_\_, 2015

PRINT NAME: Robert Romero

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 INBANK

Date: \_\_\_\_\_, 2015

BY: \_\_\_\_\_

TITLE: Counsel

PRINT NAME: J.S. Tonkinson

Date: \_\_\_\_\_, 2015

\_\_\_\_\_  
PRINT NAME: Virginia Browning

Date: \_\_\_\_\_, 2015

\_\_\_\_\_  
PRINT NAME: Elbert Elmore

(b)(6)

Date: 3/13/15, 2015



\_\_\_\_\_  
PRINT NAME: Norman Reiher

Date: \_\_\_\_\_, 2015

\_\_\_\_\_  
PRINT NAME: Robert Romero

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 INBANK

Date: \_\_\_\_\_, 2015

BY: \_\_\_\_\_

TITLE: Counsel

PRINT NAME: J.S. Tonkinson

Date: \_\_\_\_\_, 2015

\_\_\_\_\_

PRINT NAME: Virginia Browning

Date: \_\_\_\_\_, 2015

\_\_\_\_\_

PRINT NAME: Elbert Elmore

Date: \_\_\_\_\_, 2015

\_\_\_\_\_

PRINT NAME: Norman Reiher

(b)(6)

Date: March 12, 2015

\_\_\_\_\_

PRINT NAME: Robert Romero

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER for  
INBANK,

Plaintiff,

v.

ELBERT ELMORE, VIRGINIA  
BROWNING, NORMAN REIHER, and  
ROBERT ROMERO,

Defendants.

Civil No. 13-CV-01767

District Judge: Amy J. St. Eve

Magistrate Judge: Susan E. Cox

**NOTICE OF VOLUNTARILY DISMISSAL**

Plaintiff, FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INBANK ("FDIC-R"), by and through its attorneys, Pugh, Jones & Johnson, P.C., pursuant to FCRP 41(a)(1) and agreement with counsel for ELBERT ELMORE, VIRGINIA BROWNING, NORMAN REIHER and ROBERT ROMERO ("Defendants"), voluntarily dismisses its Complaint in the matter, ECF Doc. No. 1, with prejudice and without costs.

Respectfully submitted,

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER  
FOR INBANK

By: /s/ Kathleen R. Pasulka-Brown  
One of Its Attorneys

Stephen H. Pugh (ARDC #2262177)  
Kathleen R. Pasulka-Brown (ARDC #6194317)  
Pugh, Jones & Johnson, P.C.  
180 North LaSalle Street, Suite 3400  
Chicago, Illinois 60601  
Telephone: (312) 768-7800  
Facsimile: (312) 768-7801

Agreed to by:

By: /s/ John M. George, Jr.

John M. George, Jr.  
Katten & Temple LLP  
542 South Dearborn St., 14<sup>th</sup> Floor  
Chicago, Illinois 60605  
Telephone: (312) 663-4427  
Facsimile: (312) 663-0900

and

By: /s/ Michael S. Loeffler

Michael S. Loeffler  
Loeffler Thomas P.C.  
500 Skokie Blvd., Suite 260  
Northbrook, IL 60062  
Telephone: (847) 656-9201  
Facsimile: (847) 656-9211

EXHIBIT A