

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for LibertyPointe Bank (“FDIC-R”), Jeshayahu Boymelgreen, Zvi Boymelgreen, Meyer Eichler, Jacob Goldstein, Norman McClave, Anthony Meo, Nicholas J. Santoro, Malca Szabo-Benedic, and William F. Weaver (collectively the “Settling Individuals”), and Progressive Casualty Insurance Company (“Progressive”) (individually, the FDIC-R, the Settling Individuals, and Progressive may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

WHEREAS:

Prior to March 11, 2010, LibertyPointe Bank (“Bank”) was a depository institution organized and existing under the laws of New York;

On March 11, 2010, the New York State Banking Department 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;

The FDIC-R has asserted claims in correspondence dated May 10, 2010, May 12, 2010, and April 18, 2013 (“Claims”) against the Settling Individuals, each of whom served at various times as a director and/or officer of the Bank. The Settling Individuals deny liability for the Claims;

Progressive issued a directors’ and officers’ liability policy numbered  (the “Policy”), under which the directors and officers of the Bank were insureds, according to the

terms, provisions, and conditions of the Policy. The Settling Individuals asserted claims for coverage under the Policy. Progressive has reserved its rights to deny coverage under the Policy for Claims asserted by FDIC-R against the Settling Individuals; and

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of 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 the Settling Individuals and Progressive, collectively and not severally, agree to pay the FDIC-R the sum of \$3 million (“the Settlement Payment”).

B. The Settlement Payment shall be delivered to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Individuals and Progressive. The Settlement Payment shall be delivered within thirty (30) calendar days of the last of the following to occur: (i) the execution of this Agreement by all Parties, (ii) delivery by the FDIC-R to counsel for Progressive of full wiring instructions for transfer of the Settlement Payment, or (iii) receipt by counsel for Progressive of the taxpayer ID number and a completed for W-9 for the account into which the Settlement Payment is to be transferred.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection B 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 B 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 Progressive and the Settling Individuals

agree to jurisdiction in United States District Court for the Southern District of New York 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, and institute an action on the FDIC-R's Claims; and/or
4. Seek any other relief available to it in law or equity.

Any extension of time under Section LC.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: Releases**

### A. The FDIC's Releases.

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

1. The Settling Individuals and their respective heirs, executors, administrators, 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, belonging to the FDIC-R, that arise from or relate to (a) the Claims and/or (b) the performance, nonperformance, or manner of performance of the Settling Individuals' respective functions, duties, and actions as officers and/or directors of the Bank.

2. All former directors, officers, and employees of the Bank (collectively, the "Covered Persons") and their respective heirs, executors, administrators, agents, 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 (a) the Claims and/or (b) 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. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

3. Progressive, its parents, subsidiaries, affiliates, and reinsurers, and their respective 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, belonging to the FDIC-R, that arise from or relate to the Policy. The FDIC-R agrees that any interest it may have under the Policy is extinguished.

B. The Settling Individuals' Releases

Effective simultaneously with the release granted in Section II.A. above, the Settling Individuals, on behalf of themselves individually, and their respective heirs, executors, administrators, successors, and assigns, hereby release and discharge:

1. 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 (a) the Claims, (b) the Bank, and/or (c) the performance, nonperformance, or manner of performance of the Settling Individuals' respective functions, duties, and actions as officers, directors, and/or employees of the Bank.

2. Progressive, its parents, subsidiaries, affiliates, and reinsurers, and their respective 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 (a) the Claims, (b) the Bank, (c) the performance, nonperformance, or manner of performance of the Settling Individuals' respective functions, duties, and actions as directors, officers and/or employees of the Bank, and/or (d) the Policy. Progressive represents that, as of the date of this Agreement, no other claims or notices of potential claims under the Policy have been received.

3. Each other and each other's respective heirs, executors, administrators, agents, representatives, insurers, 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 Claims.

C. Releases by Progressive.

Effective simultaneously with the release granted in Section II.A. above, Progressive, 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:

1. 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 Policy.

2. Each of the Settling Individuals, and their respective heirs, executors, administrators, agents, representatives, insurers, 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 (a) the Claims, (b) the Bank, (c) the performance, nonperformance, or manner of performance of the Settling Individuals' respective functions, duties, and actions as officers, directors, and/or employees of the Bank and/or (d) the Policy. Nothing in this release shall affect any defense to coverage Progressive may have with respect to any claim that may be asserted against it in connection with the Policy or otherwise.

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:

a. against the Settling Individuals 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 the 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 Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

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

To the extent, if any, that Settling Individuals 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 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, the FDIC-R, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Individuals 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 IV: 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, 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.

C. Financial Disclosure Representation. Each Settling Individual has submitted financial information to the FDIC-R including a signed Financial Disclosure Form (FDIC form 7600/01) and herein affirms that his/her financial information is true and accurate as of the date of this Agreement in all material respects. Each Settling Individual expressly acknowledges that, in determining to settle the Claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Individuals. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that, in his or her Financial Disclosure Form, a Settling Individual has intentionally or negligently failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, that Settling Individual agrees to cooperate fully with the FDIC-R to provide updated financial information and, upon entry of a court order, to pay to the FDIC-R the lesser of (1) the value of the Settling Individual's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Individual.

#### **SECTION V: 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 and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to perform the terms of this Agreement.

#### **SECTION VI: 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 New York.

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:

Christine P. Hsu  
FDIC  
3501 Fairfax Drive, Room VS-B-7054  
Arlington, VA 22226

(b)(6)

If to the Settling Individuals:

Jeshayahu Boymelgreen and  
Zvi Boymelgreen

Goldberg Segalla LLP  
665 Main Street, Suite 400  
Buffalo, NY 14203-1425  
Attn: Christopher Belter

(b)(6)

Norman McClave,  
Anthony Meo, and  
William Weaver

Fox Rothschild LLP  
100 Park Avenue, 15th Floor  
New York, NY 10017  
Attn: Mitchell Berns

(b)(6)



Meyer Eichler

Lazare Potter & Giacovas LLP  
875 Third Avenue  
New York, NY 10022  
Attn: Stephen Lazare

[Redacted]

(b)(6)

Jacob Goldstein,  
Nicholas Santoro, and  
Malca Szabo-Benedic

Herrick, Feinstein LLP  
2 Park Avenue, 23rd Floor  
New York, NY 10016-9301  
Attn: David Rosenfield

[Redacted]

(b)(6)

If to Progressive:

Lewis K. Loss, Esq.  
Loss, Judge, & Ward, LLP  
1133 21<sup>st</sup> St., NW  
Washington, DC 20036

(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.

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 LibertyPointe Bank

(b)(6)   
By: \_\_\_\_\_  
Christine P. Hsu  
Its: Counsel

Date: 1/13/14

JESHAYAHU BOYMELGREEN, an individual

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

ZVI BOYMELGREEN, an individual

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

MEYER EICHLER, an individual

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

JACOB GOLDSTEIN, an individual

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

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FEDERAL DEPOSIT INSURANCE CORPORATION  
As Receiver for LibertyPointe Bank

By: \_\_\_\_\_

Christine P. Hsu

Its: Counsel

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

JESHAYAHU BOYMELGREEN, an individual

(b)(6)

\_\_\_\_\_

Dated: *JAN. 9-14*

ZVI BOYMELGREEN, an individual

\_\_\_\_\_

MEYER EICHLER, an individual

\_\_\_\_\_

JACOB GOLDSTEIN, an individual

\_\_\_\_\_

Dated:

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By: \_\_\_\_\_

Christine P. Hsu

Its: Counsel

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

JESHAYAHU BOYMELGREEN, an individual

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

ZVI BOYMELGREEN, an individual

(b)(6)

\_\_\_\_\_

Dated: 1-9-14

MEYER EICHLER, an individual

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

JACOB GOLDSTEIN, an individual

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

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FEDERAL DEPOSIT INSURANCE CORPORATION  
As Receiver for LibertyPointe Bank

By: \_\_\_\_\_  
Christine P. Hsu  
Its: Counsel  
Date: \_\_\_\_\_

JESHAYAHU BOYMELGREEN, an individual

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

ZVI BOYMELGREEN, an individual

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

MEYER EICHLER, an individual

(b)(6)  \_\_\_\_\_  
Dated: / 1/6/13

JACOB GOLDSTEIN, an individual

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

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 LibertyPointe Bank**

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By: \_\_\_\_\_  
Christine P. Hsu  
Its: Counsel  
Date: \_\_\_\_\_

**JESHAYAHU BOYMELGREEN, an individual**

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

**ZVI BOYMELGREEN, an individual**

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

**MEYER EICHLER, an individual**

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

**JACOB GOLDSTEIN, an individual**

(b)(6) [Redacted Signature]

Dated: 11/7/14

NORMAN MCCLAYE, an individual

(b)(6)



Dated: *January 8, 2014*

ANTHONY MEO, an individual

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

NICHOLAS SANTORO, an individual

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

MALCA SZABO-BENEDIC, an individual

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

WILLIAM WEAVER, an individual

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

PROGRESSIVE CASUALTY INSURANCE COMPANY

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



NORMAN MCCLAVE, an individual

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

ANTHONY MEO, an individual

(b)(6)



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

9/25/13  
1/8/13

NICHOLAS SANTORO, an individual

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

MALCA SZABO-BENEDIC, an individual

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

WILLIAM WEAVER, an individual

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

PROGRESSIVE CASUALTY INSURANCE COMPANY

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

NORMAN MCCLAVE, an individual

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

ANTHONY MEO, an individual

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

NICHOLAS SANTORO, an individual

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\_\_\_\_\_

Dated: *JAN 07 2014*

MALCA SZABO-BENEDIC, an individual

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

WILLIAM WEAVER, an individual

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

PROGRESSIVE CASUALTY INSURANCE COMPANY

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

NORMAN MCCLAVE, an individual

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

ANTHONY MEO, an individual

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

NICHOLAS SANTORO, an individual

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

MALCA SZABO-BENEDIC, an individual

(b)(6)

[Redacted Signature]

✓ Dated: 1/9/14

WILLIAM WEAVER, an individual

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

PROGRESSIVE CASUALTY INSURANCE COMPANY

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

NORMAN MCCLAVE, an individual

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

ANTHONY MEO, an individual

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

NICHOLAS SANTORO, an individual

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

MALCA SZABO-BENEDIC, an individual

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

WILLIAM WEAVER, an individual

(b)(6)



Dated:

*1/8/2014*

PROGRESSIVE CASUALTY INSURANCE COMPANY

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

NORMAN MCCLAVE, an individual

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

ANTHONY MEO, an individual

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

NICHOLAS SANTORO, an individual

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

MALCA SZABO-BENEDIC, an individual

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

WILLIAM WEAVER, an individual

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

PROGRESSIVE CASUALTY INSURANCE COMPANY

(b)(6) \_\_\_\_\_  
By

Print Name: Lawrence D. Leeders

Title: Casualty Specialist Sr.

Date: 1/9/14