

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made by, between, and among the Federal Deposit Insurance Corporation as Receiver for The Park Avenue Bank ("FDIC-R") and National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union" or "Bond Insurer") (individually, the FDIC-R and National Union may be referred to herein as "Party" and collectively as the "Parties").

**RECITALS**

WHEREAS:

Prior to March 12, 2010, The Park Avenue Bank ("Bank") was a depository institution organized and existing under the laws of New York;

National Union issued Financial Institution Bond Number  to the Bank for  (b)(4) the bond period of November 9, 2009, through November 9, 2010 (the "Bond").

On or about December 3, 2009, the Bank sent a Notice of Claim to National Union (the "Notice"), which claim was designated as Claim No.  (the "Bond Claim").  (b)(4)

On March 12, 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 any and all claims, demands, and causes of action under the Bond or with respect to the Bond Claim. The FDIC-R submitted its Proof of Loss on August 24, 2010, for loss in the amount of \$8,842,628.86 plus interest, and supplemented it on January 19, 2011, for additional loss in the amount of \$2,630,400 plus interest (together, the "Proof of Loss") with respect to the Bond Claim, for total loss sustained in the amount of **\$11,473,028.86**.

(b)(6)

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and further 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 the FDIC-R**

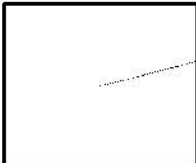
On or before thirty (30) calendar days following the FDIC-R's execution and delivery of this Agreement, National Union agrees to pay to the FDIC-R the sum of \$1 million (the "Settlement Payment").

National Union shall deliver its payment by check made payable to the Federal Deposit Insurance Corporation as receiver for The Park Avenue Bank, to Christine P. Hsu, Esq., FDIC Legal Division, FDIC, 3501 Fairfax Drive, Room VS-B-7054, Arlington, VA 22226-3500.

**SECTION II: Releases and Assignment**

A. Release of National Union by the FDIC-R.

Effective upon its receipt of the Settlement Payment in full, as described in Section I, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges National Union, its parents, subsidiaries, affiliates, and reinsurers, and their respective employees, officers, directors, agents, representatives, predecessors, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Bond, the Bond Claim, the Notice, or the Proof of Loss. The FDIC-R agrees that any interest it may have under the Bond or with respect to the Bond Claim, the Notice, and the Proof of Loss is extinguished.

 (b)(6)

B. Release of the FDIC-R by National Union.

Effective simultaneously with the release granted in Paragraph II.A. above, National Union, for itself and its predecessors, successors, and assigns, hereby releases and discharges the FDIC-R and its employees, officers, directors, agents, representatives, predecessors, 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 Bond, the Bond Claim, the Notice, and the Proof of Loss, subject to the Subrogation-Recoveries provisions contained in Paragraph D below.

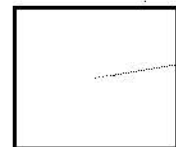
C. Assignment to National Union.

In consideration of the aforesaid payment by National Union, the FDIC-R does hereby transfer, assign and sign over to National Union all of its claims and rights arising out of the Bond Claim, the Proof of Loss, or the Bond, but only to the extent of the Settlement Payment and National Union's cost of collection. The FDIC-R does hereby agree to execute any and all reasonable papers, releases, and/or assignments, and shall provide any reasonable cooperation and assistance that may be necessary to effectuate the purposes of this assignment.

D. Subrogation - Recoveries

It is understood that National Union maintains subrogation rights to the extent of its payment to the FDIC-R, and is entitled, but not obligated, to pursue recovery under its subrogation rights and/or assignment rights as set forth in this section and Section C.

Recoveries, whether pursued by the FDIC-R or by National Union, shall be applied net of the expense of such recovery first to the satisfaction of the FDIC-R's Bond Claim loss that is excess of the amounts reimbursed by National Union, regardless if it was a covered or uncovered loss under the Bond, and secondly, to National Union as reimbursement to the extent of its



payment to the FDIC-R. The FDIC-R agrees to provide National Union with further information, cooperation and assistance as National Union reasonably requests in pursuing recovery from third parties. Each party agrees not to do anything to prejudice the other party's potential rights of recovery.

**SECTION III: 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 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 its counsel.

C. Ownership of the Claims. The Parties hereby represent and warrant that they have not transferred, assigned, released, or otherwise compromised any rights or claims released herein. The FDIC-R represents and warrants that it is the sole owner of the Bond Claim. The FDIC-R understands and agrees that this representation is a material portion of the consideration provided to National Union in this Agreement.

D. Binding Effect. This Agreement is intended to confer rights and benefits only on the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, representatives, members, alter egos, and related entities. Except as otherwise expressly provided herein, no person or entity other than the Parties shall have any rights under this Agreement.



E. Attorney's Fees. Each Party shall bear all of its attorney's fees and costs with respect to the Notice, the Proof of Loss, the Bond Claim, and/or the Bond.

F. 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 perform the terms of this Agreement.

G. 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 or in connection with either Party's efforts to recover against third parties.

H. 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.

I. 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.

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

If to FDIC-R:

Christine P. Hsu  
FDIC



(b)(6)

3501 Fairfax Drive, Room VS-B-7054  
Arlington, VA 22226

(b)(6) [Redacted]

If to National Union:

Barbara Leone  
AIG Claims, Inc.  
Fidelity Bond Department  
175 Water Street, 5<sup>th</sup> Floor  
New York, NY 10038

(b)(6) [Redacted]

with a copy to:

Arthur N. Lambert  
Frenkel Lambert Weiss Weisman & Gordon, LLP  
One Whitehall Street  
New York, NY 10004

(b)(6) [Redacted]

(b)(4) Frenkel Lambert File [Redacted]

K. 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).

L. 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.

M. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential.

[Redacted] (b)(6)

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 The Park Avenue Bank**

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

Its: Counsel

Date: 10/13/15

**AIG CLAIMS, INC. on behalf of NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA**

(b)(6) \_\_\_\_\_  
By:   
Barbara Leone

Its: Assistant Vice President

Date: 10/13/15