

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is made as of this 10th day of January, 2014, by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation, as receiver of BankUnited, FSB (“FDIC-R”) on the one hand, and Keith Howard and Associates, P.A., Keith Howard, and Devon Howard (aka Devon Mears) (collectively the “Settling Defendants”), on the other hand (individually, the FDIC-R, the Settling Defendants and the Insurance Company may be referred to herein as “Party” and collectively as the “Parties”).

### **RECITALS**

WHEREAS:

Prior to May 21, 2009, BankUnited, F.S.B. (“Bank”) was a depository institution organized and existing under the laws of Florida;

On May 21, 2009, the Bank was closed by the Office of Thrift Supervision (“OTS”) and pursuant to 12 U.S.C. § 1821(e), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver 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 as receiver succeeded were the Bank’s claims, demands, and causes of actions against third party appraisers;

On May 16, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendants. Those claims for damages are now pending in the United States District Court for the Middle District of Florida in *FDIC v. Keith Howard and Associates, et. al.*, Case No. 3:12-cv-00578-MMH-JRK (the “Action”). The Settling Defendants have denied all liability for the FDIC-R’s claims in the Action.

The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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, the Settling Defendants, collectively, agree to pay the FDIC-R the sum of two hundred and ten thousand dollars and no cents (\$210,000) (“the Settlement Funds”) as full and final settlement for all claims, compensatory damages, statutory damages, attorney’s fees, and any other damages of any nature.

B. Within thirty (30) days of the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than January 30, 2014, the Settlement Funds shall be delivered to FDIC-R by check made payable to the Mortgage Recovery Law Group Client Trust Account.

C. In the event that the Settlement Funds are not delivered to the FDIC-R (or its counsel) by January 30, 2014, interest shall accrue on all unpaid amounts at the rate of 5% per annum from January 31, 2014 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R (or its counsel) by January 30, 2014, as a result of the FDIC-R’s failure to execute this Agreement, no interest shall accrue until the first business day following the date the FDIC-R executes the Agreement and a copy is delivered to counsel for the Settling Defendants.

D. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement funds (including all accrued interest) are not received by the FDIC-R (or its counsel) by the close of business on January 30, 2014, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds, and/or shall have the right to enforce this Agreement,

except however, the provisions of this section, I(D), shall not apply if the failure to pay the Settlement Funds is due to the FDIC-R's failure to sign this Agreement.

## **SECTION II: Stipulation and Dismissal**

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus accrued interest, if any, the FDIC-R shall dismiss the Action with prejudice. The undersigned parties agree to enter stipulation(s) providing that the dismissal(s) set forth above shall be with prejudice, with each party to bear its own attorney's fees and costs as these were originally incurred.

## **SECTION III: Releases**

### **A. Release of Settling Defendants by FDIC-R.**

Effective upon receipt in full of the settlement funds plus accrued interest, if any, and dismissal described in SECTIONS II above, and except as provided in PARAGRAPH III.C., below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Keith Howard and Associates, P.A., Keith Howard, individually, and Devon Howard (a/k/a Devon Mears), individually, and their respective heirs, executors, personal representatives, beneficiaries, administrators, representatives, agents, attorneys, assigns, insurers, successors predecessors, officers, directors, and shareholders 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, including without limitation the causes of action alleged in the Action.

### **B. Release of FDIC-R by the Settling Defendants.**

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge

FDIC-R, and its employees, officers, directors, 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, that arise from or relate to, the performance, nonperformance, or manner of performance of the Bank.

C. Express Reservations From Releases By FDIC-R.

1. Notwithstanding any other provision, by this Agreement, the Parties do not release, and expressly preserve fully and to the same extent as if the Agreement had not been executed, any claims, causes of action, or defenses:

a. against the Settling Defendants or any other person or entity for liability, if any, incurred as a 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 claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraphs III.A or III.B, above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the Middle District of Florida or any other federal judicial district. 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 IV: Representations and Acknowledgements**

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 that this Agreement is not an admission or evidence of liability by any of them regarding any claim. Defendants expressly deny any and all liability for the conduct alleged in the Action. The Defendants have agreed to settle and pay the Settlement Funds for prudent business purposes and to avoid the cost, expense, and disruption associated with continued and protracted litigation.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this Agreement. Any signature evidenced by pdf or facsimile shall have the same legal force and effect as an original ink of the same signature.

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a party 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.

D. 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.

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. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized

attorney(s) or other representative(s).

F. Reasonable Cooperation. The undersigned 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 Action, and to otherwise perform the terms of this Agreement.

G. Forum Selection. The Parties agree that any suit or litigation arising from or in connection with this Agreement or the enforcement of its terms shall be brought exclusively in the Federal District Court in the Southern District of Florida.

H. Attorneys' Fees. In the event of litigation or arbitration in connection with the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to the payment of its attorney's fees, costs, and expenses incurred in connection therewith.

I. 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 his or her counsel.

J. 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.

K. 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 BankUnited, F.S.B.**

By:

Name: Tass D. Waterston

Title: Senior Attorney

Date: 01-10-2014

**Keith Howard**

Date:

[Redacted Signature]

1/16/14

**Keith Howard & Associates, P.A.**

By:

Name: Keith E. Howard

Title: President

Date: 1/16/14

**Devon Howard (aka Devon Mears)**

Date:

[Redacted Signature]

1/16/14