

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Claim Release (the "Settlement Agreement") is entered into this 13<sup>th</sup> day of September, 2012 between the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Home Savings of America ("FDIC-R") and St. Paul Mercury Insurance Company ("St. Paul" or "Travelers") (individually, FDIC-R and St. Paul may be referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

A. Prior to February 24, 2012, Home Savings of America ("HSOA" or "the Bank") was a depository institution organized and existing under the laws of the United States:

B. HSOA was closed on February 24, 2012, by the Office of the Comptroller of the Currency ("OCC"), and the OCC appointed the FDIC as its Receiver. In accordance with 12 U.S.C. § 1821(d), FDIC-R succeeded to all rights, title, powers and privileges of the Bank, including those with respect to HSOA's assets, the Policy referenced below, and this Settlement Agreement.

C. Among the assets to which the FDIC-R succeeded were any and all of the Bank's claims, demands, and causes of actions and existing lawsuits against any person or entity.

D. St. Paul had issued a Select One for Community Banks Policy No.  (b)(4) to Home Savings Bancorp ("Bancorp") on a Claims made-and-reported basis for the Policy Period of December 14, 2007, to December 14, 2010 ("the Policy"). By endorsement, HSOA is also an Insured under the Policy (Bancorp and HSOA are referred to collectively as the "Insureds"). As part of its Select One for Community Banks Policy, Home Savings obtained Bankers Professional Liability and Lender Liability Coverage. The Policy reflects a \$2,000,000

Limit of Liability for all Claims, subject to a \$25,000 self-insured retention that applies per Claim. Subject to the Policy's terms and conditions, the Policy gives the duty to defend to the Insureds.

E. On February 19, 2008, HSOA was served with a class action complaint styled *Conder vs. Home Savings, et al.*, Case No. 07-CV-7051, in the United States District Court for the Central District of California ("Conder Action"). The Conder Action generally alleged that HSOA misrepresented the terms of loans it had provided in that the actual interest rate and resulting negative amortization were not properly disclosed.

F. On February 19, 2008, the Insureds submitted the Conder Action to St. Paul for coverage under the Policy. St. Paul accepted coverage of the Conder Action and consented to the appointment of Latham & Watkins LLP to represent the Insureds in connection with the Conder Action subject to a reservation of rights by St. Paul and the Insureds regarding defense fees and costs incurred by Latham & Watkins for allegedly covered/non-covered claims, with such allocation being a subject of the Coverage Litigation referenced below.

G. On May 24, 2011, the Insureds filed a Complaint against St. Paul in Superior Court of California, County of Orange, alleging causes of action for breach of contract, declaratory relief and tortious breach of the implied covenant of good faith and fair dealing (referred to herein as "the Coverage Litigation"). The Coverage Litigation alleged that St. Paul had failed to reimburse the Insureds for all of the defense costs the Insureds had incurred in defending itself in the Conder Action. The Coverage Litigation was removed to federal court in the case styled *Home Savings of America v. St. Paul Mercury Insurance Co.*, Case No. 11-950-JVS(MLGx) in the United States District Court for the Central District of California.

H. On March 2012, FDIC-R was substituted into the Coverage Litigation for HSOA as the proper party plaintiff.

I. As Bancorp had suffered no alleged damages in connection with the Conder Action, and pursuant to the unopposed motion of the Insureds, the Court dismissed Bancorp from the Coverage Litigation on May 30, 2012, leaving HSOA as the only plaintiff in the Coverage Litigation.

J. On April 23, 2012, the plaintiff in the underlying Conder Action dismissed with prejudice all of his individual and putative class action claims against the Insureds. At no point was class certification ever obtained in the Conder Action.

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, and in light of the mutual desire of the Parties to settle and forever resolve any and all pending or potential disputes among them in connection with coverage for the Conder Action and the Coverage Litigation, and with regard to any and all questions that existed or might have existed as to the application of the Policy to the Conder Action, and with respect to any and all payments by or on behalf of any of the Parties or Insureds for any alleged liability, settlement, defense fees or other costs that may have been incurred in the Conder Action or in the Coverage Litigation, the undersigned Parties agree, each with the other, as follows:

**AGREEMENT**

NOW THEREFORE, the Parties agree as follows:

**1.0 RELEASE AND DISCHARGE**

1.1 The FDIC-R and St. Paul, in consideration of the payments and other agreements set forth in Section 2, hereby completely release and forever discharge one another from any and all claims, demands, damages, civil remedies, actions, causes of actions, or suits at law or in equity, of whatsoever kind or nature that relate or pertain to the Conder Action and/or the Coverage Litigation, for or because of any matter or thing done, omitted, or suffered to be done by said parties prior to and including the date hereof, including but not limited to, any and all past, present or future claims, lawsuits, demands, civil remedies, obligations, actions, causes of action, rights, damages, costs, losses of services, expenses, lost wages, settlements, judgments, awards, punitive damages, attorney's fees, and compensation of any nature whatsoever, whether based on a tort, contract, or other theory of recovery, known or unknown, suspected or unsuspected that the Parties now have, or at any other time had, or which may hereafter accrue or otherwise be acquired, arising from or related in any manner to the Conder Action, the Coverage Litigation, or the terms, provisions, endorsements, addenda, and/or conditions of the Policy as they relate to the Conder Action and/or the Coverage Litigation, including but not limited to any claims or purported claims for violation of California insurance laws or regulations, or the insurance laws or regulations of any other state or jurisdiction, or for "bad faith" arising out of St. Paul's handling and/or administration of the Insureds' request for coverage under the Policy with respect to the Conder Action.

1.2 The foregoing Release and Discharge set forth in Section 1.1 shall apply to all Parties' agents, representatives, estates, heirs, executors, administrators, assigns, past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, all other persons, firms or

corporations with whom any of the former have been, are now, or may hereafter be affiliated, and any person or entity who is or who may seek to be considered an "Insured" or "Insured Person" under the Policy, including but not limited to HSOA and Bancorp.

1.3 FDIC-R represents and the Parties understand and agree that all vendor invoices and legal fees and/or costs, including any such fees or costs generated by Latham & Watkins have been paid. FDIC-R and/or the Insureds hereby agree to defend and hold harmless St. Paul and its foregoing releases from any and all varieties of claims as set forth in Section 1.1 above, which may result from any attempt by any other person or entity that is or might seek to be considered an "Insured" or "Insured Person" under the Policy to hereinafter seek coverage under the Policy with respect to the Conder Action.

1.4 The Parties expressly waive and assume the risk of any and all claims for damages arising out of the Conder Action or the Coverage Litigation that exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Parties' decision to enter into this Settlement Agreement.

1.5 The Parties agree that they have accepted and made payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. The Parties agree that this settlement is a compromise of a disputed claim, and the payments are not to be construed as an admission of liability on the part of either of the Parties.

1.6 California Civil Code § 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties are aware of the contents of § 1542 of the Civil Code of the State of California, and understand and agree that § 1542 and the benefits thereof are hereby expressly waived, to the extent applicable. It is understood and agreed that this is a release of any and all claims as described above, and the Parties agree that it shall apply to all unknown, unanticipated, unsuspected and undisclosed claims, demands, liabilities, actions or causes of action, as well as those which are now known, anticipated, suspected or disclosed, as described above.

1.7 Notwithstanding any other provision, by this Settlement Agreement, FDIC-R does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, any claims or causes of action related to the Select One for Community Banks Policy No.  or any other insurance policy issued by St. Paul for any events other than the events and acts related to the Conder Action or the Coverage Litigation.

(b)(4)

**2.0 PAYMENT AND OTHER CONSIDERATION**

2.1 In consideration of the mutual releases set forth above, the Parties agree that St. Paul shall pay FDIC-R the sum of \$610,000.00 (the "Settlement Funds").

2.2 Upon execution of an original (or an original in counterparts) of this Settlement Agreement by each of the undersigned Parties, but no later than 30 days after the Settlement Agreement is fully executed (the "Payment Date"), St. Paul shall deliver the Settlement Funds via check made jointly payable to "Federal Deposit Insurance Corporation" and "Jonathan M. Jenkins Client Trust Fund" and delivered to:

Jonathan M. Jenkins, Esq.  
Jonathan M. Jenkins & Associates  
8075 W. Third St., Ste. 407  
Los Angeles, California 90048

2.3 Should the Parties seek to enforce this Settlement Agreement, the Parties agree to the exclusive jurisdiction of the United States District Court for the Central District of California. In any action relating to or arising from this Settlement Agreement, the prevailing Party as determined by the Court shall recover its costs and expenses (including, but not limited to, reasonable attorneys' fees).

2.4 The Parties agree that the consideration detailed in this Settlement Agreement is the entire consideration agreed upon and provided under this Settlement Agreement, and that the Parties will not seek any consideration for any other claimed damages, costs, or attorney's fees in connection with the matters encompassed in this Settlement Agreement.

### **3.0 DELIVERY OF DISMISSAL WITH PREJUDICE**

3.1 Upon execution of this Settlement Agreement by the undersigned Parties and the FDIC's receipt of the Settlement Funds, counsel for FDIC-R shall deliver to counsel for St. Paul an executed Order of Dismissal with Prejudice of all claims, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).

3.2 Counsel for FDIC-R shall file the Order of Dismissal with the Court.

### **4.0 ATTORNEY'S FEES AND COSTS**

Except as otherwise set forth in this Settlement Agreement, each Party shall bear all attorneys' fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement and the Coverage Litigation.

### **5.0 REPRESENTATION OF COMPREHENSION OF DOCUMENT**

In entering into this Settlement Agreement, the Parties represent that they relied upon the advice of their own attorney(s), concerning the legal consequences of this Settlement Agreement;

that they understand the terms of this Settlement Agreement; and that they voluntarily accept the terms.

**6.0 WARRANTY OF CAPACITY TO EXECUTE AGREEMENT**

The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that they have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; that the Parties or their representatives signing below are fully competent to execute this Settlement Agreement, are of legal age, sound mind, and not operating under any legal disability. Any individual executing this Settlement Agreement on behalf of another entity hereby represents and warrants that he or she has the authority to enter into this Settlement Agreement on behalf of that entity and to bind that entity.

**7.0 NON-ASSIGNMENT**

The Parties represent and warrant that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

**8.0 GOVERNING LAW**

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

**9.0 ADDITIONAL DOCUMENTS**

All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.



**10.0 ENTIRE AGREEMENT AND ALTERATIONS**

This Settlement Agreement contains the entire agreement between and among the Parties with regard to the matters set forth in it. It supersedes all prior negotiations, agreements, and understandings. There are no other collateral understandings or agreements that modify, vary, enlarge or are inconsistent with it. This Settlement Agreement may not be altered, amended, or modified in any respect except by a writing duly executed by each of the Parties expressly reciting such intent.

**11.0 EFFECTIVENESS**

This Settlement Agreement shall become effective immediately following execution by each of the Parties.

**12.0 DUPLICATES ARE AS EFFECTIVE AS THE ORIGINAL**

The Parties understand and agree that the original signature pages shall be executed by each of the respective Parties. The originals shall all be returned to counsel for FDIC-R and each Party shall be provided with a complete copy of this Settlement Agreement and a copy of each executed signature page. Copies of said signature pages shall be as effective as the original signature pages.

**13.0 SEVERABILITY**

If any provision of this Settlement Agreement is held unenforceable, then such provision will, if possible, be modified to be enforceable but still reflect the Parties' intentions. In any event, the remaining provisions of this Settlement Agreement shall remain in full force and effect.

**14.0 TITLES AND CAPTIONS**

All section titles and captions contained in this Settlement Agreement are for convenience

only and shall not affect the interpretation of this Settlement Agreement.

**15.0 AUTHORSHIP/CONSTRUCTION**

This Settlement Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Settlement Agreement shall not be construed for or against any Party by reason of which Party drafted it.

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

IN TESTIMONY WHEREOF, this Settlement Agreement has been executed this 12<sup>th</sup> day of September, 2012.

St. Paul Mercury Insurance Company

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

Printed Name: JAMES T. HYNES

Title: Technical Director

IN TESTIMONY WHEREOF, this Settlement Agreement has been executed this 13<sup>th</sup> day of September, 2012.

FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER FOR HOME SAVINGS OF AMERICA

Printed Name: CRAIG G. PENROSE

Title: ATTORNEY