

SETTLEMENT AND RELEASE AGREEMENT

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

Federal Deposit Insurance Corporation as Receiver for Washington Federal Bank for Savings (“FDIC-R”); and Therese Gembara solely in her capacity as representative of the Estate of John F. Gembara, George Kozdamba, William Mahon, Lester Stepien, and Janice Weston, (collectively the “Settling Persons”) (individual, FDIC-R and the Settling Persons may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to December 15, 2017, Washington Federal Bank of Savings (“Bank”) was a depository institution organized and existing under the laws of the United States;

On December 15, 2017, the Office of the Comptroller of the Currency closed the Bank and pursuant to 12 U.S.C. § 1821(c), Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), 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 FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against its former directors and officers arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors and officers of the Bank;

FDIC-R has asserted claims against the Settling Persons, each of whom served at various times as a director and/or officer of the Bank. The Settling Persons deny liability for the claims;

American Guarantee and Liability Insurance Company (“Insurer”) issued a director and officer liability [redacted] for the period November 18, 2016, to November 18, 2019 (“Policy”), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Persons asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for

(b)(4)

[redacted]

claims asserted by FDIC-R against the Settling Persons; 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, on or before July 31, 2020, the Settling Persons, jointly and severally, agree to pay or cause Insurer to pay FDIC-R the sum of \$3,000,000.00 (“the Settlement Payment”).

B. The Settling Persons or Insurer shall deliver the Settlement Payment to FDIC-R by direct wire transfer into the following account:

BANK: Federal Home Loan Bank of New York
FOR CREDIT TO: FDIC National Liquidation Account

New York Main Office
101 Park Avenue
New York, NY 10178-0599
212-681-6000
212-441-6890 Fax

OTHER BENEFICIARY INFORMATION:

Account officer: Steve Hall (571) 265-3742.

C. If FDIC-R does not receive the Settlement Payment in full on or before July 31, 2020, then FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full 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)(2);

2. Enforce this Agreement, in which event the Settling Persons agree to jurisdiction in United States District Court in Illinois and to pay all of 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 FDIC-R's claims. The Settling Persons further agree to waive any defense based on any statute of limitations that would bar any of FDIC-R's claims and 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 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 Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. FDIC-R's Releases.

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

1. The Settling 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 FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Persons' respective functions, duties and actions as officers and/or directors of the Bank.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, 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, that arise from or relate to the Policy. As part of this release of the Insurer, FDIC-R agrees that any interest it may have under the Policy is extinguished.

B. The Settling Persons' Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Persons, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge 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 Persons' respective functions, duties and actions as officers and/or directors of the Bank.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, 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 Persons 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 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 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, 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 III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Persons 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 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 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 Persons hereby knowingly assign to 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, 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.

C. Financial Disclosure Representation. Each Settling Defendant has submitted financial information to the FDIC-R including the following financial statements:

| | |
|-----------------|---|
| George Kozdemba | November 13, 2018 |
| William Mahon | November 12, 2018 (supplemented by May 11, 2020 email) |
| Lester Stepien | September 30, 2018 |
| Janice Weston | November 24, 2018 (supplemented by May 11, 2020 email). |

Each Settling Defendant herein affirms that there has been no material change in the financial information described above as of the date of this agreement. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, FDIC-R has reasonably and justifiably relied upon the financial information submitted by the Settling Persons. FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Defendant agrees to cooperate fully with FDIC-R to provide updated financial information and to pay to FDIC-R the lesser of (1) the value of the Settling Defendant's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Defendant.

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. 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. Each Party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. "Electronic signature" means any electronic symbol or security procedure attached to or logically associated with an electronic record and executed, employed or adopted by or on behalf of a party with the intent to authenticate a record, including facsimile electronic signatures.

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 Illinois.

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

FDIC-R:

Stuart Tonkinson
3501 Fairfax Drive
Arlington VA 22226

Estate of John Gembara:

Brian J. Riordan
Clausen Miller P.C.

(b)(6)

(b)(6)

10 South LaSalle Street, Suite 1600
Chicago IL 60603

[Redacted]

If to George Kozdemba, William Mahon, and Janice Weston:

(b)(6)

Thomas M. Breen
The Monadnock Building
53 West Jackson Boulevard, Suite 1215
Chicago IL 60604

[Redacted]

If to Lester Stepien

(b)(6)

Leigh D. Roadman
Clark Hill PLC
130 East Randolph Street
Chicago IL 60601

[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 attorneys, or other representatives.

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 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.

(b)(6)

Date: _____

[Redacted signature]

Stuart Tonkinson, Counsel for Federal Deposit Insurance Corporation as Receiver for Washington Federal Bank for Savings

(b)(6)

Date: 07/15/2020

[Redacted signature]

Therese Gembara, Representative for the Estate of John Gembara

Date: _____

George Kozdemba

Date: _____

William Mahon

Date: _____

Lester Stepien

Date: _____

Janice Weston

Corporation's applicable policies, procedures, and other legal requirements.

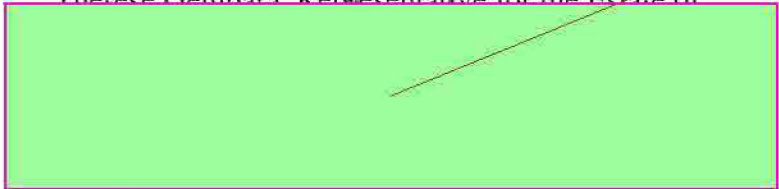
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

Date: _____

Stuart Tonkinson, Counsel for Federal Deposit Insurance Corporation as Receiver for Washington Federal Bank for Savings

Date: _____

Therese Gembara, Representative for the Estate of



(b)(6)

Date: _____

Date: _____

William Mahon

Date: _____

Lester Stepien

Date: _____

Janice Weston

(b)(6)

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.

Date: _____

Stuart Tonkinson, Counsel for Federal Deposit Insurance Corporation as Receiver for Washington Federal Bank for Savings

Date: _____

Therese Gembara, Representative for the Estate of John Gembara

Date: _____

George Kozdema

Date: 7/14/2020

William Mahon

Date: _____

Lester Stepien

Date: _____

Janice Weston

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.

Date: _____

Stuart Tonkinson, Counsel for Federal Deposit Insurance Corporation as Receiver for Washington Federal Bank for Savings

Date: _____

Therese Gembara, Representative for the Estate of John Gembara

Date: _____

George Kozdemba

Date: _____

William Mahon

Date: 7/14/2020

[Redacted Signature]

(b)(6)

Date: _____

Janice Weston

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.

Date: _____

Stuart Tonkinson. Counsel for Federal Deposit Insurance Corporation as Receiver for Washington Federal Bank for Savings

Date: _____

Therese Gembara. Representative for the Estate of John Gembara

Date: _____

George Kozdemba

Date: _____

William Mahon

Date: _____

Lester Stepien

[Redacted Signature]

Janice Weston

Date: 7-15-20

(b)(6)