

SETTLEMENT AND RELEASE AGREEMENT

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

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Premier Community Bank of the Emerald Coast, Crestview, Florida (“FDIC-R”), and William C. Horne, John Elamad, International Design Consulting Group, Inc. d/b/a/ ECM (“Engineer Defendants”), Jack Gilliland, Creative Design International, Inc. d/b/a/ CDA (“Architect Defendants”) (collectively the “Settling Defendants”), and James River Insurance Company and New Hampshire Insurance Company/Lexington Insurance Company (“Insurers”) (individually, the FDIC-R, the Settling Defendants and the Insurers may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to December 16, 2011, Premier Community Bank of the Emerald Coast, Crestview, Florida (“Bank”) was a depository institution organized and existing under the laws of Florida.

On December 16, 2011, the Florida Office of Financial Regulation 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, causes of action, and inherited litigation against professionals and others arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts related to the design and construction of a single family residence at (b)(4), (b)(6) Drive, Shalimar, Florida for which the Bank provided construction financing.

On June 19, 2009, the Bank filed a complaint for money damages against, among others, the Settling Defendants. The FDIC-R was substituted as Plaintiff by Order dated November 12,

2013. Those claims for damages are now pending in the Circuit Court in and for Okaloosa County, Florida in *Federal Deposit Insurance Corporation as Receiver for Premier Community Bank of the Emerald Coast v. William C. Horne, P.E., et al., Case No. 2009-CA-003593-S* (“Inherited Action”). The Settling Defendants have denied liability in the Inherited Action.

James River Insurance Company issued an architects and engineers professional liability policy numbered (b)(4) for the period November 10, 2008 through November 10, 2009, which insured the Engineer Defendants according to its terms, provisions, and conditions (“Engineer Defendants Policy”). New Hampshire Insurance Company/Lexington Insurance Company issued an architects and engineers professional liability policy numbered (b)(4) for the period November 29, 2008 through November 29, 2009, which insured the Architect Defendants according to its terms, provisions, and conditions (“Architect Defendants Policy”) (collectively the Engineer Defendants Policy and the Architect Defendants Policy are referred to as “Policies”). The Settling Defendants asserted claims for coverage under the Policies. Insurers have reserved their respective rights to deny coverage under the Policy for claims asserted by the FDIC-R against the Settling Defendants.

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, 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 thirty (30) calendar days following December 21, 2015, the Engineer Defendants and James River Insurance, jointly and severally, agree to pay the FDIC-R the sum of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00) and the Architect Defendants and New Hampshire Insurance Company/Lexington Insurance Company, jointly and severally, agree to pay the FDIC-R the sum of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) (“the

Settlement Payment”).

B. The Settlement Payment shall be delivered to the FDIC-R by check payable to FDIC as Receiver for Premier Community Bank of the Emerald Coast (FIN 10415), Memo Line:

(b)(6) Attn: DRR Investigations, [REDACTED], and sent via Overnight Delivery to:

JPMorgan Chase (TX1-0006)

Attn: FDIC Receivership Lock Box [REDACTED]

14800 Frye Road, 2nd Floor

Ft. Worth, TX 76155

(b)(4)

In the event that the Settlement Payment is not delivered to the FDIC-R by January 21, 2016, interest shall accrue on all unpaid amounts at the rate of 5% per annum from January 21, 2016 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R by January 21, 2016, as a result of the FDIC-R’s failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R executes the Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A 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 A 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 the Settling Defendants and Insurers agree to jurisdiction in United States District Court in Florida 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, move to vacate any dismissal order, to which the Settling Defendants and Insurers agree to consent, and re-institute an action on the FDIC-R’s claims. The Settling Defendants and Insurers further agree to waive any defense based on any

statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, 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 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 Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the Inherited Action.

SECTION III: Releases

A. The FDIC-R's Releases.

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

1. The Settling Defendants 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 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 as professionals in connection with the design and construction of a single family residence at (b)(4), (b)(6)
(b)(4), (b)(6) Drive, Shalimar, Florida, including without limitation the causes of action alleged in the Inherited Action.

2. Insurers, their 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 Policies. As part of this release of the Insurers, the FDIC-R agrees that any interest it may have under the Policies is extinguished.

B. The Settling Defendants' Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge the 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 Defendants' respective functions, duties and actions as professionals in connection with the design and construction of a single family residence at [redacted] Drive, Shalimar, Florida, including without limitation the causes of action alleged in the Inherited Action.

(b)(4), (b)(6)

C. The Insurers' Release.

Effective simultaneously with the releases granted in Section III.A. above, Insurers, for themselves and their respective successors and assigns, and on behalf of their parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby release and discharge 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 the Policy.

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 Defendants 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 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 Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et. seq.*, if appropriate.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank 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 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 the 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 Defendants 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 V: 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.

SECTION VI: Reasonable Cooperation

A. 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 conclude the Inherited Action, and to otherwise perform the terms of this Agreement.

B. The Settling Defendants agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. Producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;
2. Appearing as requested by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;
3. Testifying as requested by the FDIC-R, without the necessity of a

subpoena, in any matter relevant to the Bank, as determined by the FDIC-R;

4. Signing truthful affidavits, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

SECTION VII: 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 Florida.

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:

Barbara Slott Pegg, Counsel
Federal Deposit Insurance Corporation
3501 N. Fairfax Dr. B7062
Arlington, VA 22226
(703) 516-5273

(b)(6)



If to the Settling Defendants
William C. Horne, John Elamad, and
International Design Consulting Group,
Inc. d/b/a/ ECM:

Clay Whittaker, Esq.
Cole, Scott & Kissane
715 So. Palafox Street

Pensacola, FL 32502

(b)(6) _____ [Redacted]

If to the Settling Defendants Jack Gilliland and Creative Design International, Inc. d/b/a/ CDA:

Steven Gonzalez, Esq.
Weinberg Wheeler Hudgins Gunn & Dial
2601 So. Bayshore Drive, Suite 1500
Miami, FL 33133

(b)(6) _____ [Redacted]

If to Insurer James River Insurance Company:

Clay Whittaker, Esq.
Cole, Scott & Kissane
715 So. Palafox Street
Pensacola, FL 32502

(b)(6) _____ [Redacted]

If to Insurer New Hampshire Insurance Company/Lexington Insurance Company :

Steven Gonzalez, Esq.
Weinberg Wheeler Hudgins Gunn & Dial
2601 So. Bayshore Drive, Suite 1500
Miami, FL 33133

(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.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance

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
RECEIVER FOR PREMIER COMMUNITY BANK
OF THE EMERALD COAST

(b)(6)

Date: 12/21/2015

By:

Barbara Slott Pegg
TITLE: Counsel for Plaintiff

PRINT NAME: B Slott Pegg

Date: 12/22/2015

(b)(6)

SETTLING DEFENDANT:

BY:

William C. Horne

PRINT NAME: WILLIAM C. HORNE

Date: 12/21/2015

(b)(6)

SETTLING DEFENDANT:

BY:

John Elamad

PRINT NAME: JOHN H. ELAMAD

Date: 12/21/2015

SETTLING DEFENDANT:
International Design Consulting Group, Inc. d/b/a/
ECM

BY:

[Redacted Signature]

(b)(6)

TITLE:

President

PRINT NAME:

JOHN H. ELAMAD

Date: _____

SETTLING DEFENDANT:

BY:

Jack Gilliland

PRINT NAME:

Date: 12/21/2015

SETTLING DEFENDANT:
Creative Design International, Inc. d/b/a/ CDA

BY:

[Redacted Signature]

(b)(6)

TITLE:

Pres. C&D

PRINT NAME:

JOHN H. ELAMAD

Date: _____

James River Insurance Company

BY:

TITLE:

PRINT NAME:

Date: _____

New Hampshire Insurance Company/Lexington
Insurance Company

BY:

TITLE:

PRINT NAME:

Date: 12/21/2015

(b)(6)

SETTLING DEFENDANT:
International Design Consulting Group, Inc. d/b/a/
ECM

BY: [Redacted]

TITLE: President

PRINT NAME: JOHN H. ELAMAD

(b)(6)

Date: 2/11/16

SETTLING DEFENDANT:

BY: [Redacted]

Jack Gilliland

PRINT NAME: JACK GILLILAND

(b)(6)

Date: 12/21/2015

SETTLING DEFENDANT:
Creative Design International, Inc. d/b/a/ CDA

BY: [Redacted]

TITLE: Pres. C&D

PRINT NAME: JOHN H. ELAMAD

Date: _____

James River Insurance Company

BY: _____

TITLE: _____

PRINT NAME: _____

Date: _____

New Hampshire Insurance Company/Lexington
Insurance Company

BY: _____

TITLE: _____

PRINT NAME: _____

Date: 12/21/2015

SETTLING DEFENDANT:
International Design Consulting Group, Inc. d/b/a/
BCM

BY:

(b)(6)

TITLE: President

PRINT NAME: JOHN H. ELAMAD

Date: _____

SETTLING DEFENDANT:

BY: _____
Jack Gilliland

PRINT NAME: _____

Date: 12/21/2015

SETTLING DEFENDANT:
Creative Design International, Inc. d/b/a/ CDA

(b)(6)

BY:

TITLE: Pres. CED

PRINT NAME: JOHN H. ELAMAD

Date: 01/06/2016

James River Insurance Company

BY:

(b)(6)

TITLE: Claims Specialist

PRINT NAME: Linda Finstad

Date: _____

New Hampshire Insurance Company/Lexington
Insurance Company

BY: _____

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:
International Design Consulting Group, Inc. d/b/a/
ECM

BY: _____

TITLE: _____

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:

BY: _____
Jack Gilliland

PRINT NAME: _____

Date: _____

SETTLING DEFENDANT:
Creative Design International, Inc. d/b/a/ CDA

BY: _____

TITLE: _____

PRINT NAME: _____

Date: _____

James River Insurance Company

BY: _____

TITLE: _____

PRINT NAME: _____

Date: 1-21-16

New Hampshire Insurance Company/Lexington
Insurance Company

BY: (b)(6)

TITLE: AVP, Financial Lines, AIG Claims, Inc.

PRINT NAME: Brendan O'Rourke

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA**

Federal Deposit Insurance Corporation,
as Receiver for Premier Community Bank
of the Emerald Coast,

Plaintiff,

CASE NO.: 2009 CA 003593 S

vs.

William C. Horne, PE, Jack Gilliland, Architect,
John Elamad, International Design Consulting
Group, Inc. d/b/a/ ECM, Creative Design
International, Inc. d/b/a CDA,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Federal Deposit Insurance Corporation, as Receiver for Premier Community Bank of the Emerald Coast, Crestview, Florida ("FDIC-R"), and Defendants William C. Horne, PE, Jack Gilliland, Architect, John Elamad, International Design Consulting Group, Inc. d/b/a/ ECM, and Creative Design International, Inc. d/b/a CDA (collectively with FDIC-R, the "Parties"), by and through their respective undersigned attorneys, and pursuant to Fla. R. Civ. P. 1.420(a)(1) hereby stipulate to the dismissal of this action with prejudice, with the Parties to each bear their own attorney's fees, costs, and expenses incurred in this action.

Dated this ____ day of January, 2016.

EXHIBIT A

ANCHORS SMITH GRIMSLEY

/s/ Richard P. Peterman

Richard P. Petermann
Florida Bar No.: 362956
Jeffrey L. Burns
Florida Bar No.: 40782
909 Mar Walt Drive, Suite 1014
Fort Walton Beach, Florida 32547
(850) 863-4064
(850) 243-9692

Attorneys for Plaintiff, FDIC-R

COLE SCOTT & KISSANE

/s/ Clay Whittaker

Clay Whittaker, Esq.
Florida Bar No.: 0057944.
715 So. Palafox Street
Pensacola, FL 32502
Phone: 850-483-5911
Fax: 850-438-6969

*Attorneys for Defendants William C. Horne,
John Elamad, and International Design
Consulting Group, Inc. d/b/a/ ECM*

WEINBERG WHEELER HUDGINS GUNN & DIAL

/s/ Steven Gonzalez

Steven Gonzalez, Esq.
Florida Bar No.: 658448
2601 So. Bayshore Drive, Suite 1500
Miami, FL 33133
Phone: 305-455-9500
Fax: 305-455-9501

*Attorneys for Defendants Jack
Gilliland and Creative Design
International, Inc. d/b/a/ CDA*