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 New City Bank ("FDIC-R"), and Albert Baldermann, Merri Ehrenwerth-Baldermann, William M. Beavers, Peter J. Bilanzic, Vincent Cainkar, Michael Debre, Ronald Fisher, Donald L. Hartz, Glenn Krietsch, Raymond Lazzara, Burton Odelson, Thomas V. Powell, Gary R. Wapinski, and Jack F. Zausa, (collectively the "Settling Defendants"), and Continental Casualty Company ("Insurer") (individually, the FDIC-R, the Settling Defendants, and the Insurer may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to March 9, 2012, New City Bank ("Bank") was a depository institution organized and existing under the laws of Illinois;

On March 9, 2012, the Illinois Department of Financial and Professional 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, and causes of action against its former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

On March 6, 2015, the FDIC-R filed a Complaint for money damages against the Settling Defendants, each of whom served at various times as a director and/or officer of the Bank. Those claims for damages are now pending in the United States District Court for the Northern District of Illinois in *FDIC as Receiver for New City Bank v. Baldermann*, Case No. 1:15-cv-

02027 (N.D. Ill.) (the "D&O Action"). The Settling Defendants deny liability for the claims.

Insurer issued a director and officer liability policy numbered [redacted] ("Policy"), (b)(4) which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Defendants asserted claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for claims asserted by 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 twenty-one (21) calendar days following the date all parties execute this Agreement, the Settling Defendants and Insurer, jointly and severally, agree to pay the FDIC-R the sum of Two Million Five Hundred Thousand Dollars ($2,500,000.00) ("the Settlement Payment").

B. The Settling Defendants shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants and Insurer.

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the date determined by Subsection A above, interest shall accrue on all unpaid amounts at the rate of 5% per annum from that date until the date of payment.

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)(2); or

2. Enforce this Agreement, in which event the Settling Defendants and Insurer agree to jurisdiction in United States District Court in the Northern District of Illinois 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 Insurer agree to consent, and institute an action on the FDIC-R's claims. The Settling Defendants and Insurer 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; provided, however, the FDIC will return all amounts paid to it under this Agreement by the Settling Directors.

SECTION II: Stipulation and Dismissal

Within ten businesses 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.

SECTION III: Releases

A. <u>The FDIC-R's Releases.</u>

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 officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

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, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

3. All other former directors, officers, and employees of the Bank (collectively, the "Covered 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 the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Covered Persons' respective functions, duties and actions as directors, officers and/or employees of the Bank, including without limitation the causes of action alleged in the D&O Action. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

B. <u>The Settling Defendants' Releases.</u>

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:

1. 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 officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

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, the Settling Defendants agrees that any interest it may have under the Policy is extinguished.

3. Each other 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 officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

C. The Insurer's Releases.

Effective simultaneously with the releases granted in Section III.A. above, Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges:

1. 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.

2. 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 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 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 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. <u>Authorized Signatories</u>. 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. <u>Advice of Counsel</u>. 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. <u>Financial Disclosure Representation</u>. Each Settling Defendant has submitted financial information to the FDIC-R including personal financial statements and tax returns and herein affirms that his/her financial information is true and accurate as of the date of this agreement. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the 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 the FDIC-R to provide updated financial information and to pay to the 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 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 D&O 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 Illinois.

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 FDIC:

Robinson Curley & Clayton, P.C.
300 South Wacker Drive
Suite 1700
Chicago, Illinois 60606

Attn: Lydia Bueschel

If to the Settling Defendants:

Duane Morris LLP
190 South La Salle Street, Suite 3700
Chicago, Illinois 60606

Attn: Mark D. Belongia

Katten & Temple LLP
542 South Dearborn Street, 14th Floor
Chicago, Illinois 60605

Attn: John M. George

Faegre Baker Daniels LLP
311 South Wacker Drive, Suite 4400
Chicago, Illinois 60603

Attn: Edward C. Fitzpatrick

If to Insurer:

CNA Specialty Claim Management Liability,
Financial Institutions and Technology
333 S. Wabash Ave.
Chicago, Illinois 60604

Attn: Anne Lewis

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 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 NEW CITY BANK

(b)(6)

Date: May 7, 2015

BY: [redacted]

TITLE: Counsel - Legal Division

PRINT NAME: Michael Jesse Carlson

CONTINENTAL CASUALTY COMPANY

Date:_____

BY:

TITLE:

PRINT NAME:

Date:_____

____
Albert Baldermann

Date:_____

____
Merri Ehrenwerth-Baldermann

Date:_____

____
William M. Beavers

Date:_____

____
Peter J. Bilanzic

Date:_____

____
Vincent Cainkar

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR NEW CITY BANK

Date: _____ BY:

TITLE:

PRINT NAME:

CONTINENTAL CASUALTY COMPANY

(b)(6) Date: 5/14/15 BY:

TITLE: Claims Consultant

PRINT NAME: Anne K. Lewis

Date:_____

Albert Baldermann

Date:_____

Merri Ehrenwerth-Baldermann

Date:_____

William M. Beavers

Date:_____

Peter J. Bilanzic

Date:_____

Vincent Cainkar

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR NEW CITY BANK

Date: _____ BY:

TITLE:

PRINT NAME:

CONTINENTAL CASUALTY COMPANY

Date: _____ BY:

TITLE:

PRINT NAME:

(b)(6)

Date: 5-6-15 [redacted]

Albert Baldermann

(b)(6)

Date: 5-6-15 [redacted]

Merri Ehrenwerth-Baldermann

Date: _____ ____________________

William M. Beavers

Date: _____ ____________________

Peter J. Bilanzic

Date: _____ ____________________

Vincent Cainkar

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR NEW CITY BANK

Date: _____ BY:

TITLE:

PRINT NAME:

CONTINENTAL CASUALTY COMPANY

Date: _____ BY:

TITLE:

PRINT NAME:

Date: _____ ______________________________

Albert Baldermann

Date: _____ ______________________________

Merri Ehrenwerth-Baldermann

(b)(6) [redacted]

Date: 5/14/15 ______________________________

William M. Beavers

Date: _____ ______________________________

Peter J. Bilanzic

Date: _____ ______________________________

Vincent Cainkar

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR NEW CITY BANK

Date: _____ BY:

TITLE:

PRINT NAME:

CONTINENTAL CASUALTY COMPANY

Date:_____ BY:

TITLE:

PRINT NAME:

Date:_____ ______________________________

Albert Baldermann

Date:_____ ______________________________

Merri Ehrenwerth-Baldermann

Date:_____ ______________________________

William M. Beavers

(b)(6)

Date: May 4, 2015 ______________________________

Peter J. Bilanzic

Date:_____ ______________________________

Vincent Cainkar

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR NEW CITY BANK

Date: _____ BY:

TITLE:

PRINT NAME:

CONTINENTAL CASUALTY COMPANY

Date:_____ BY:

TITLE:

PRINT NAME:

Date:_____ ______________________________

Albert Baldermann

Date:_____ ______________________________

Merri Ehrenwerth-Baldermann

Date:_____ ______________________________

William M. Beavers

Date:_____ ______________________________

Peter J. Bilanzic

(b)(6)

Date: 5/8/2015 [redacted]

Vincent Cainkar

(b)(6)

Date: 5/5/15 ____________________
Michael Debre

Date:_____ ____________________
Ronald Fisher

Date:_____ ____________________
Donald L. Hartz

Date:_____ ____________________
Glenn Krietsch

Date:_____ ____________________
Raymond Lazzara

Date:_____ ____________________
Burton Odelson

Date:_____ ____________________
Thomas V. Powell

Date:_____ ____________________
Gary R. Wapinski

Date:_____ ____________________
Jack F. Zausa,

____

Date:____

Michael Debre

(b)(6)

Date: 5/6/15

Ronald Fisher

Date:____

Donald L. Hartz

Date:____

Glenn Krietsch

Date:____

Raymond Lazzara

Date:____

Burton Odelson

Date:____

Thomas V. Powell

Date:____

Gary R. Wapinski

Date:____

Jack F. Zausa,

Date:_____

Michael Debre

Date: 5-7-2015

Ronald Fisher

(b)(6)

Date: 5-7-2015

Donald L. Hartz

Date:_____

Glenn Krietsch

Date:_____

Raymond Lazzara

Date:_____

Burton Odelson

Date:_____

Thomas V. Powell

Date:_____

Gary R. Wapinski

Date:_____

Jack F. Zausa,

Date:_____

Michael Debre

Date:_____

Ronald Fisher

Date:_____

Donald L. Hartz

(b)(6) [redacted]

Date: 5/4/15

Glenn Krietsch

Date:_____

Raymond Lazzara

Date:_____

Burton Odelson

Date:_____

Thomas V. Powell

Date:_____

Gary R. Wapinski

Date:_____

Jack F. Zausa,

Date:_____

Michael Debre

Date:_____

Ronald Fisher

Date:_____

Donald L. Hartz

Date:_____

Glenn Krietsch

(b)(6)

Date: 8-10-2015 [redacted]

Raymond Lazzara

Date:_____

Burton Odelson

Date:_____

Thomas V. Powell

Date:_____

Gary R. Wapinski

Date:_____

Jack F. Zausa,

____

Date:_____

____
Michael Debre

Date:_____

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Ronald Fisher

Date:_____

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Donald L. Hartz

Date:_____

____
Glenn Krietsch

Date:_____

____
Raymond Lazzara

(b)(6)

Date: 5/13/15

[redacted]
Burton Odelson

Date:_____

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Thomas V. Powell

Date:_____

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Gary R. Wapinski

Date:_____

____
Jack F. Zausa,

____

Date:_____

Michael Debre

Date:_____

Ronald Fisher

Date:_____

Donald L. Hartz

Date:_____

Glenn Krietsch

Date:_____

Raymond Lazzara

Date:_____

Burton Odelson

(b)(6)

Date: 5-11-15

Thomas V. Powell

Date:_____

Gary R. Wapinski

Date:_____

Jack F. Zausa,

Date:_____

Michael Debre

Date:_____

Ronald Fisher

Date:_____

Donald L. Hartz

Date:_____

Glenn Krietsch

Date:_____

Raymond Lazzara

Date:_____

Burton Odelson

Date:_____

Thomas V. Powell

(b)(6) Date: 5/5/13 [redacted]

Gary R. Wapinski

Date:_____

Jack F. Zausa.

Date:______ Michael Debre

Date:______ Ronald Fisher

Date:______ Donald L. Hartz

Date:______ Glenn Krietsch

Date:______ Raymond Lazzara

Date:______ Burton Odelson

Date:______ Thomas V. Powell

Date:______ Gary R. Wapinski

(b)(6)

Date: 05/06/2015 Jack F. Zausa,