

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is effective as of April 30, 2014, by, between, and among the following undersigned parties: (a) Plaintiff Federal Deposit Insurance Corporation as Receiver for Ravenswood Bank (“FDIC-R”); (b) Eric Hubbard, Ronald Friedman, Raymond Prosser, Kalman Shiner, Charles Eck, Roger Luri, and Sam Segvich (collectively, the “Settling Defendants”); and (c) Federal Insurance 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 August 6, 2010, Ravenswood Bank, Chicago, Illinois (“Bank”) was a depository institution organized and existing under the laws of the State of Illinois;

WHEREAS, on August 6, 2010, the Illinois Department of Financial and Professional Regulation closed the Bank and pursuant to 12 U.S.C. § 1821(c), and 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;

WHEREAS, 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;

WHEREAS, on August 2, 2013, 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 v. Hubbard et al.*, Case 1:13-cv-05530 (“D&O Action”).

The Settling Defendants have denied and continue to deny liability in the D&O Action.

WHEREAS, Insurer issued a director and officer liability policy numbered  for (b)(4) the period July 25, 2009 to July 25, 2011 (“Policy”), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Defendants made 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.

WHEREAS, 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 the date the FDIC-R executes this Agreement (the thirtieth calendar day shall be the “Payment Date”), the Insurer agrees to pay the FDIC-R the sum of Three Million Four Hundred Twenty-Five Thousand Dollars (U.S. \$3,425,000) (“the Settlement Payment”) on behalf of the Settling Defendants.

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

Bank: Federal Home Loan Bank of New York

ABA Routing Number:

For Credit to: FDIC National Liquidation Account

(b)(4)

(b)(4) \_\_\_\_\_ Account Number:

FIN 10276; Ravenswood Bank

Contact: Barry H. Gottfried, 703-562-2519; Professional Liability ; DIF Fund \_\_\_\_\_ (b)(4)

C. If the FDIC-R does not receive the Settlement Payment in full on or before the Payment Date, 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 Payment Date, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); and/or
2. Terminate the Agreement and continue to litigate the D&O Action; or
3. Enforce this Agreement, in which event the Settling Defendants and Insurer agree to jurisdiction in the United States District Court for the Northern District of Illinois and the Insurer agrees to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; 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 D&O 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 each of them, and each of their respective heirs, executors, trustees, legatees, beneficiaries, administrators, agents, attorneys, representatives, successors, and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to or that ever did belong 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, attorneys, representatives, successors, and assigns, from any and all claims, demands, contracts, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, known or unknown, 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 (each a "Covered Person") and their respective heirs, executors, trustees, legatees, beneficiaries, administrators, agents, attorneys, representatives, successors, and assigns (each a "Covered-

Person Related Party”), from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to or that ever did belong to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of a Covered Person’s 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 that arises from or relates to, the performance, nonperformance, or manner of performance of such Covered Person’s functions, duties and actions as a director, officer, and/or employee of the Bank, including, without limitation, the causes of action alleged in the D&O Action. This release likewise shall be null and void as to any Covered-Person Related Party if such Covered-Person Related Party asserts any claim against the FDIC-R that arises from or relates to, the performance, nonperformance, or manner of performance of a Covered Person’s functions, duties and actions as a director, officer, and/or employee of the Bank, including, without limitation, the causes of action alleged in the D&O Action.

**B. The Settling Defendants’ Releases.**

**1. The Settling Defendants’ Release of the FDIC-R.**

Effective simultaneously with the releases granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, legatees, beneficiaries, administrators, agents, attorneys, representatives, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, agents, attorneys, representatives, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known

or unknown, 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. The Settling Defendants' Release of Each Other.

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, legatees, beneficiaries, administrators, agents, attorneys, representatives, successors, and assigns, hereby release and discharge each other, and/or any person who may be considered an "insured" as defined by the Policy, from any and all claims, demands, contracts, obligations, actions and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Policy.

3. The Settling Defendants' Release of Insurer.

Effective simultaneously with the releases granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, legatees, beneficiaries, administrators, agents, attorneys, representatives, successors, and assigns, hereby release and discharge Insurer, its parents, subsidiaries, affiliates, representatives, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the D&O Action. This release shall not extend to Insurer's obligations to pay the Settling Defendants' legal and consulting fees incurred prior to the date of this Agreement's execution. This release shall not operate as a release of any of the Settling Defendants' remaining rights under the Policy with respect to any other claims, and remaining coverage under the

aggregate liability limits of the Policy.

C. The Insurer's Release.

1. Insurer's Release of FDIC-R.

Effective simultaneously with the releases granted in Section III.A. above, Insurer, for itself, for its employees, officers, directors, agents, attorneys, representatives, successors, and assigns, for its parents, subsidiaries, affiliates and reinsurers, and and for their respective employees, officers, directors, agents, attorneys, representatives, successors, and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, successors, and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Policy.

2. Insurer's Release of Settling Defendants.

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 the Settling Defendants, and each of them, and each of their 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 claims asserted by the FDIC in the D&O Action.

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 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 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.

E. Common Exceptions from the Parties' Respective Releases.

With respect to the FDIC-R, the Settling Defendants and the Insurer, none of the foregoing parties release, and expressly preserve fully and to the same extent as if this Agreement had not been executed, any claims or causes of action against any person or entity not expressly released by a Party in this Agreement.



#### **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. 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 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 its counsel.

#### **SECTION VI: Reasonable Cooperation**

A. The Parties agree to cooperate in good faith to effectuate all the terms and

conditions of this Agreement.

#### **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. The Settling Defendants deny any fault, liability or wrongdoing as to any facts or claims alleged or asserted by FDIC-R in the D&O Action and in any other action or proceeding. Payment by Insurer shall not be an admission of coverage.

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. Signature pages may be delivered by facsimile or e-mail transmission, which will constitute complete delivery without the necessity to deliver original signed signature pages.

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, without regard to conflict of law rules.

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: Christopher J. Graham, Jones Lemon & Graham LLP, The

Fulton House, 328 South Second, Geneva, Illinois 60134; 630-208-0805; Fax: 630-208-4651;

(b)(6) [redacted] and Barry H. Gottfried, Counsel, Professional Liability Unit, Federal  
Deposit Insurance Corporation, 3501 Fairfax Drive, Room VS-B-7018, Arlington, Virginia  
22226-3500; (703) 562-2519; Fax (703) 516-5067; [redacted] (b)(6)

If to the Settling Defendants: Jeffery M. Heftman, Gozdecki, Del Giudice,  
Americus, Farkas & Brocato LLP, 1 East Wacker Drive, Suite 1700, Chicago, Illinois 60601;  
(b)(6) (312) 782-5010; Fax: (312) 782-4324; [redacted]

If to Insurer: Brownyn A. De Witt, 233 S. Wacker Drive, Suite 4700, Chicago, IL  
(b)(6) 60606; (312) 454-4740; (Fax) (312) 454-4401; [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. Agreement Not Confidential. Pursuant to 12 U.S.C. § 1821(s), this Agreement cannot be and shall not be deemed to 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 RAVENSWOOD BANK

(b)(6)

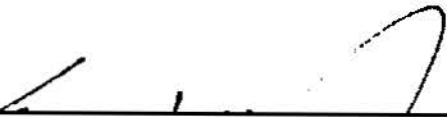
Date: 4/29/14

BY: 

TITLE: Counsel

PRINT NAME: Barry H. Gottfried

Date: 4/29/14

ERIC HUBBARD   
\_\_\_\_\_

(b)(6)

PRINT NAME: Eric Hubbard

Date: \_\_\_\_\_

RONALD FRIEDMAN

\_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_

RAYMOND PROSSER

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PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_

KALMAN SHINER

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PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_

ERIC HUBBARD

\_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Date: APRIL 28, 2014

RONALD FRIEDMAN

(b)(6)

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PRINT NAME: RONALD H. FRIEDMAN

Date: \_\_\_\_\_

RAYMOND PROSSER

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PRINT NAME: \_\_\_\_\_

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KALMAN SHINER

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PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ ERIC HUBBARD

PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ RONALD FRIEDMAN

PRINT NAME: \_\_\_\_\_

Date: Apr. 28, 2014

RAYMOND PROSSER

PRINT NAME: RAYMOND PROSSER

Date: \_\_\_\_\_ KALMAN SHINER

PRINT NAME: \_\_\_\_\_

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Date: \_\_\_\_\_ ERIC HUBBARD

TITLE: \_\_\_\_\_

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TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

(b)(6)

Date: 4/29/14 \_\_\_\_\_ KALMAN SHINER

TITLE: DIRECTOR

PRINT NAME: KALMAN SHINER



Date: 4/29/2014

CHARLES ECK

(b)(6)

[Redacted box]

PRINT NAME: C. E. Eck

Date: \_\_\_\_\_

ROGER LURI

PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_

SAM SEGVICH

PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_

FEDERAL INSURANCE COMPANY

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

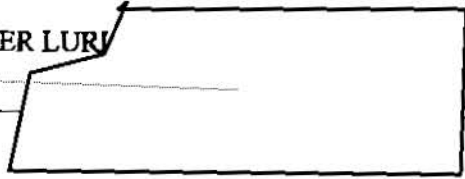
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ROGER LURI



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Date: \_\_\_\_\_ FEDERAL INSURANCE COMPANY

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PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ CHARLES ECK

PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ ROGER LURI

PRINT NAME: \_\_\_\_\_

Date: 4/29/14 SAM SEGVICH

(b)(6)

PRINT NAME: SAM J. SEGVICH

Date: \_\_\_\_\_ FEDERAL INSURANCE COMPANY

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ CHARLES ECK  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ ROGER LURI  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ SAM SEGVICH  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Date: 4/29/14 FEDERAL INSURANCE COMPANY  
TITLE: ASST VP  
PRINT NAME: Brownyn DeWitt