

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is effective as of December 16, 2016, by, between, and among the following undersigned parties: the Plaintiff Federal Deposit Insurance Corporation, as Receiver for Patriot Bank Minnesota (“FDIC-R”), and Orion Appraisals, Inc. and Joseph P. Sullivan (collectively, the “Settling Defendants”), and Navigators Insurance Company (“Insurer”) (individually, the FDIC-R, the Settling Defendants, and the Insurer may be referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

1. Prior to January 27, 2012, Patriot Bank, Minnesota (“Bank”) was a state non-member bank, owned by of Lino Lakes Banc Shares, Inc., a registered bank holding company incorporated under the laws of the State of Minnesota;

2. On January 27, 2012, the Minnesota Department of Commerce closed the Bank and appointed FDIC-R 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.

3. Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against the Settling Defendants for appraisal malpractice and negligence (the “Actionable Claims”);

4. The Settling Defendants have denied liability for the Actionable Claims;

5. Insurer issued liability policy number (the “Policy”) which (b)(4) insured the Settling Defendants according to the terms, provisions and conditions of the Policy, and the Settling Defendants made claims under the Policy for coverage of the claims asserted against them by FDIC-R for the Actionable Claims; 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, and in reliance upon the Recitals, which are incorporated by reference into the rest of this Agreement and are a material part of this Agreement, 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 that the FDIC-R executes this Agreement, the sum of (b)(6) *Four hundred sixty two thousand Five hundred* Dollars (\$ *462,500*) shall be paid by wire on behalf of the Settling Defendants (the "Settlement Payment").

B. In the event that the Settlement Payment is not delivered to the FDIC-R by the date determined by Subsection A above, interest shall accrue on all unpaid amounts at the rate calculated in accordance with 26 U.S.C. § 6621(a)(2) from the date determined by Subsection A above until the date of payment. FDIC-R shall provide all payment instructions no later than five calendar days after full execution of this 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 the 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 by 26 U.S.C. § 6621(a)(2); and/or

2. Enforce this Agreement, in which event the Settling Defendants and Insurer agree to jurisdiction in the United States District Court for the District of Minnesota 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

3. Terminate this Agreement, and initiate an action on the FDIC-R's claims. The Settling Defendants and Insurer further agree to waive any defense based on the statute of limitations that would bar any of the 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 1.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the rights of the FDIC-R to take any of the actions set forth in Sections 1.C.2 through 1.C.4 at any time prior to receipt of the Settlement Payment (including all accrued interest) in full.

SECTION II: _____

[INTENTIONALLY OMITTED]

SECTION III: Releases

A. 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, attorneys, appraisers, contractors, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to the FDIC-R against the Settling Defendants that arise from or relate to, the performance, non-performance, or manner of performance of Settling Defendants' functions, duties and actions as an appraiser providing appraisal services for the Bank, including without limitation the Actionable Claims.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and their respective 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. As a part of this release, the FDIC-R agrees that any interest it may have under the Policy 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, that arise from or relate to, the performance, non-performance, or manner of performance of Settling Defendants' functions, duties and actions as an appraiser providing appraisal services for the Bank, including without limitation the Actionable Claims.

C. The Insurer's Release.

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 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 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 the Bank,

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 the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative

enforcement 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 which 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 Victim and Witness Protection Act, 18 U.S.C. § 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. 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. Non-Assignment. Each Party represents and warrants that he, she or it has not assigned to any other person or entity any claims released by such Party pursuant to this Agreement.

SECTION V: Reasonable Cooperation

The Parties agree to cooperate in good faith to effectuate all of 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 Action and to otherwise perform this Agreement.

SECTION VI: Destruction of Confidential Documents and ESI

Within thirty (30) days of the effective date of the release given by FDIC-R to the Settling Defendants pursuant to this Agreement, counsel for the Settling Defendants shall certify to the FDIC-R that all documents and electronically stored information (“ESI”) related to the Bank that FDIC-R provided in response to informal discovery requests, in connection with mediation or settlement discussions, or as part of the FDIC-R’s investigation, (hereinafter, “Confidential Materials Provided by FDIC-R”) have been destroyed and deleted, with no copies retained, in a manner designed to protect the confidential nature of the Confidential Materials

Provided by FDIC-R. Furthermore, the Settling Defendants and their counsel shall continue to comply with any previous confidentiality agreements with the FDIC-R concerning Confidential Materials Provided by FDIC-R.

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. 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 Minnesota, without regard to conflict of law rules.

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

If to FDIC-R:
M. Jesse Carlson, Counsel
Federal Deposit Insurance Corporation

3501 North Fairfax Drive, Room B-7030
Arlington, VA 22226

(b)(6) [Redacted]

with a copy to:

Charles J. Schoenwetter, Esq.
Bowman and Brooke LLP
150 South Fifth Street
Suite 3000
Minneapolis, MN 55402

(b)(6) [Redacted]

If to Settling Defendants or Insurer:
David J. Hanus, Esq.
Hinshaw & Culbertson LLP
100 East Wisconsin Avenue
Suite 2600
Milwaukee, WI 53202

(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. Title 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.

H. No Reliance. The Parties warrant and represent that no promise or inducement has been offered, made, or accepted by anyone in connection with this Agreement except for the mutual covenants expressly set forth herein, and that they have accepted and executed this Agreement without reliance upon any other statements, claims, or representations made by other Parties or their attorneys, consultants, representatives, or agents.

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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 Patriot Bank Minnesota

(b)(6)

By: _____

[Redacted Signature]

Name: _____

Michael Jesse Carlson

Title: _____

Counsel

Dated: _____

December 16, 2016

ORION APPRAISALS, INC.

(b)(6)

By: _____

[Redacted Signature]

Name: _____

Joseph P. Sullivan

Title: _____

Vice President

Dated: _____

12/16/16

JOSEPH P. SULLIVAN, AN INDIVIDUAL

(b)(6)

Dated: _____

[Redacted Signature]

12/16/16

NAVIGATORS INSURANCE COMPANY

(b)(6)

By:



Name: Jung PARK

Title: Attorney for Navigators Ins. Co.

Dated: 12/16/16