

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the Federal Deposit Insurance Corporation as Receiver for The Park Avenue Bank (“FDIC-R”) and the undersigned firm and individual (collectively, “the Undersigned”). Each of the parties hereto may be referred to herein as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS:

Prior to March 12, 2010, The Park Avenue Bank (the “Bank”) was a depository institution organized and existing under the laws of New York.

On March 12, 2010, the Bank was closed by the New York State Banking Department and pursuant to 12 U.S.C. § 1821(c), the FDIC 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 actions against its former law firms and lawyers arising from the performance, nonperformance, and manner of performance of legal services for the Bank.

The FDIC-R has asserted claims against the Undersigned, which at various times provided legal advice and representation to the Bank (the “Claims”). The Undersigned have denied and continue to deny liability for the Claims.

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, within ten (10) days of the execution of, or an exchange in counterpart of executed copies of this Agreement, the Undersigned agree to pay the FDIC-R the sum of \$3.5 million (“the Settlement Payment”).

B. The Undersigned 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 Undersigned.

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement, 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)(3); or

2. Enforce this Agreement, in which event the Undersigned agree to jurisdiction in United States District Court in the Southern District of New York 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 Undersigned and their insurer (the "Insurer") agree to consent, and institute an action on the FDIC-R's claims. The Undersigned and the Insurer further agree to waive all objections, defenses, claims, or counterclaims based on any 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 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: Releases

A. The FDIC-R's Releases.

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

1. The undersigned firm and its members, employees, officers, 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, belonging to the FDIC-R, that arise from or relate to (a) the Claims and/or (b) the performance, nonperformance, or manner of

performance of the undersigned firm's functions, duties, and actions as legal counsel to or as a fiduciary of the Bank.

2. The undersigned individual and his 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 (a) the Claims and/or (b) the performance, nonperformance, or manner of performance of his functions, duties, and actions as legal counsel to or as a fiduciary of the Bank.

B. The Undersigned Firm and Individual's Releases.

1. Effective simultaneously with the release granted in Section II.A. above, the undersigned firm, on behalf of itself and its members, employees, officers, directors, representatives, successors, and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, 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 (a) the Claims and/or (b) the performance, nonperformance, or manner of performance of the undersigned firm's functions, duties, and actions as legal counsel to or as a fiduciary of the Bank.

2. Effective simultaneously with the release granted in Section II.A. above, the undersigned individual, on behalf of himself and his heirs, executors, trustees, administrators, representatives, successors, and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, 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 (a) the Claims and/or (b) the performance, nonperformance, or

manner of performance of his functions, duties, and actions as legal counsel or as a fiduciary of the Bank.

C. 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 Undersigned 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 III: Waiver of Dividends

To the extent, if any, that the Undersigned are or were shareholders of the Bank or Park Avenue Bancorp, Inc., 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, the Undersigned hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, 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 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.

C. 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.

D. 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.

E. 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 New York.

F. 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).

G. Reasonable Cooperation. The undersigned 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 Action and to otherwise perform the terms of this Agreement.

H. 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.

I. 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.

J. No Admission of Liability. The Parties acknowledge and agree that this Agreement constitutes a settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim. The undersigned firm and individual have denied and continue to deny any fault, liability, or wrongdoing as to any claims alleged or asserted by the FDIC-R.

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 THE PARK AVENUE BANK

(b)(6)
Date: 7/30/14

BY: 

TITLE: Counsel

PRINT NAME: Christine P. Hsu

(b)(6)

Date: 7/30/14

PINCILS RAKE

BY:

PRYOR CASHMAN LLP

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PINCHUS RAICE

Date: _____

BY: _____

(b)(6)

Date:

7/30/14

PRYOR CASHMAN LLP

BY:

[Redacted Signature]

TITLE:

CHAIRMAN

PRINT NAME:

GIDEON CASHMAN