

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this ___th day of April, 2012, by, between, and among the following undersigned parties: the Federal Deposit Insurance Corporation as Receiver of First Priority Bank ("FDIC-R"), the former officers and directors of First Priority Bank, including but not limited to Peter M. Brown, Michael J. Fuller, George W. Najmy, Stephen Putnam, Brian Sullivan, Thomas R. Testwuide, Sr., John E. Wickman, and Alan Zirkelbach (collectively the "Settling Defendants"), and St. Paul Mercury Insurance Co. ("Travelers"). The FDIC-R, the Settling Defendants, and Travelers may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

This Agreement is entered into in reference to the following:

1. Prior to August 1, 2008, First Priority Bank (the "Bank") was an FDIC-insured bank organized and existing under the laws of the State of Florida.

2. On or about August 1, 2008, the Florida Office of Financial Regulation closed the Bank and the FDIC-R was appointed receiver pursuant to 12 U.S.C. § 1821(c). In accordance with 12 U.S.C. § 1821(d), the FDIC-R, as receiver, 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 any and all of the Bank's claims, demands, and causes of actions against its former directors, officers and employees arising from the performance, nonperformance and/or manner of performance of their respective functions, duties and acts as directors, officers and/or employees of the Bank.

3. The FDIC-R asserted claims against the Settling Defendants arising from the performance, nonperformance and/or manner of performance of their respective functions, duties and acts as directors, officers and/or employees of the Bank.

4. Travelers issued SelectOne for Community Banks Policy No. (the (b)(4)

(b)(6)

"Policy") to the Bank that expired November 5, 2008. The Settling Defendants sought coverage under the Policy in response to claims asserted by the FDIC-R. Travelers reserved its rights to deny coverage under the Policy for claims asserted by the FDIC-R against the Settling Defendants.

5. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency and receipt of which consideration is hereby acknowledged, the Parties agree as follows:

Section I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, Travelers, and/or the Settling Defendants, on behalf of the Settling Defendants, shall pay to the FDIC-R the sum of ONE MILLION, SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,750,000.00) (the "Settlement Funds") by way of wire transfer to the Federal Home Loan Bank of NY, Routing ~~(b)(4)~~ Routing No. Account No. for the credit to "FDIC National Liquidation Account OBI First Priority Bank, Bradenton, FL (FIN 10019) Professional Liability (37100); DIF Fund— contact Steven Smith 972-761-2474." Payment shall be made in accordance with the instructions received from the FDIC-R.

B. Within thirty days following the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement ("the due date"), the Settlement Funds shall be delivered to the FDIC-R by direct wire transfer as described in Paragraph A, above. In the event that the Settlement Funds are not delivered to the FDIC-R by the due date, interest shall accrue on all unpaid amounts at the rate of 6% per annum from the due date until the date of payment, unless the failure to make timely payment was due to the FDIC-R's failure to provide payment instructions.



C. If the Settlement Funds are not received by May 25, 2012, this Agreement shall be deemed null and void, having no legal validity or binding affect whatsoever upon the Parties, unless the failure to make timely payment was due to the FDIC-R's failure to provide payment instructions.

Section II: Releases

A. Release of Settling Defendants by FDIC-R.

Effective upon payment of the Settlement Funds pursuant to Section I above, and except as provided in Section II.G. below, the FDIC-R, for itself and its employees, officers, directors, attorneys, representatives, agents, successors and assigns, hereby releases and discharges each of the Settling Defendants 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, that arise from or relate to, (1) the performance, nonperformance, or manner of performance of the former employees', officers', and/or directors' respective functions, duties and actions as employees, officers and/or directors of the Bank and/or (2) the fact that any Settling Defendant is or was an officer, director or employee of the Bank. For purposes of clarification and certainty, this release is applicable to, and includes each of the Settling Defendants, as well as each and every of their respective heirs, executors, administrators, representatives, successors and assigns.

B. Release of FDIC-R by the Settling Defendants.

Effective simultaneously with the release granted in Paragraph A of this Section II, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, attorneys, 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 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 or that arise from or relate to the Policy.

C. Release of Travelers by FDIC-R.

Effective simultaneously with the releases granted in Paragraphs A and B of this Section II, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Travelers, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, attorneys, 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. The FDIC-R agrees that any interest it may have under the Policy is extinguished.

D. Release of Travelers by Settling Defendants.

Effective simultaneously with the releases granted in Paragraphs A and B of this Section II, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge Travelers, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, attorneys, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, in law or in equity, that are based upon the claims belonging to the FDIC-R that are released by the FDIC-R pursuant to this Agreement, including but not limited to any contractual or extra contractual claims based upon the handling, defense, or resolution of the claims released by the FDIC-R. Furthermore, this release shall not affect Travelers' obligations with respect to Defense Costs (as that term is defined in the Policy) incurred by the Settling Defendants through counsel consented to by Travelers in response to the FDIC-R's released claims.

E. Release of FDIC-R by Travelers.

Effective simultaneously with the releases granted in Paragraph C and D of this Section II, Travelers, 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, attorneys, agents, attorneys, 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.

F. Release of Settling Defendants by Travelers

Effective simultaneously with the releases granted in Paragraph C, D and E of this Section II, Travelers, 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 each of the Settling Defendants, and their respective heirs, executors, administrators, agents, attorneys, 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 claims released by the FDIC-R pursuant to this Agreement including but not limited to any contractual or extra contractual claims based upon the handling, defense, or resolution of the claims released by the FDIC-R.

G. Express Reservations From Releases By FDIC-R.

1. Notwithstanding any other provision, contained in this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the 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 other evidence of indebtedness payable or owed by them or any of them to the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by Federal Deposit Insurance Corporation in its corporate capacity ("FDIC-C") or as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraphs A and C of this Section II.

2. Notwithstanding any other provision, nothing in this Agreement shall be



construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC-C 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 administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision hereof, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the Middle District of Florida or any other federal judicial district. In addition, this Agreement does not purport to waive, or intend to waive, the right of the United States 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.

4. The FDIC-R represents and warrants that as of the date of this Agreement, it has not transferred any claim, cause of action or other right that would be released hereunder if such claim, cause of action or right had not been previously transferred by the FDIC-R prior to the date of this Agreement, and to that end the Parties agree that the release by the FDIC-R set forth in Paragraph A of Section II is a full and complete release of all such claims, causes of action and rights.

Section III: Waiver of Dividends

To the extent, if any, that Settling Defendants are or were depositors, creditors and/or shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other pro-rata distribution upon resolution of the receivership of the Bank, they 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 pro rata distributions.



Section IV: Representations and Acknowledgements

A. **No Admission of Liability.** Each of the Parties acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability or of coverage by any of them regarding any claim.

B. **Execution in Counterparts.** This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party or Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. **Binding Effect.** Each of the undersigned persons represents and warrants that they are a Party hereto or are authorized to sign this Agreement on behalf of the respective Party for which they are signing, 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, administrators, representatives, successors and assigns.

D. **Reasonable Cooperation.** The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of 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 Florida.

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. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).



G. 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 her counsel.

H. Enforcement of Agreement. In the event that any Party brings suit to enforce the terms of this Agreement, or based on the alleged breach of the terms hereof, the Parties agree to exclusive venue in the United States District Court for the Middle District of Florida, Tampa Division, or in the event that the said federal court does not have jurisdiction, the Circuit Court in and for Hillsborough County, Florida. In such event, the prevailing Party or Parties shall be entitled to recover all costs incurred from the non-prevailing party or parties, including reasonable attorneys' fees. This Agreement shall not be construed more strictly against one Party than another by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that this Agreement is the result of arm's length negotiations among the Parties.

I. Severability. If any portion or portions of this Agreement are determined to be in conflict with any federal, state, or local law or are otherwise held unenforceable in accord with their terms, all remaining provisions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions had not been included herein.

J. Time is of the Essence. Time is of the essence in this Agreement, including specifically, payment of the Settlement Funds to the FDIC-R on or before the due date.

SIGNATURE PAGES TO FOLLOW



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.

(b)(6)

FEDERAL SAVINGS AND LOAN ASSOCIATION, INC. (FSLIC) INSURANCE CORPORATION,
as REINSURER OF FIRST PRIORITY BANK

Date: 04-23-2012

BY: _____
TITLE: Counsel
PRINT NAME: Steven Smith

ST. PAUL MERCURY INSURANCE COMPANY

(b)(6)

Date: 4.16.12

BY: _____
TITLE: SVP, BPP Claim
PRINT NAME: Rethynal Walker

Date: _____

Peter M. Brown

Date: _____

Michael J. Fuller

Date: _____

George W. Najmy

Date: _____

Stephen Putnam

Date: _____

Brian Sullivan

Date: _____

Thomas R. Testwuide, Sr.

Date: _____

John E. Wickman

Date: _____

Alan Zirkelbach

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 OF FIRST PRIORITY BANK**

Date: _____

BY: _____
TITLE: _____
PRINT NAME: _____

ST. PAUL MERCURY INSURANCE COMPANY

Date: _____

BY: _____
TITLE: _____
PRINT NAME: _____

(b)(6)

Date: 11/21/12

Peter M. Brown

Date: _____

Michael J. Fuller

Date: _____

George W. Najmy

Date: _____

Stephen Putnam

Date: _____

Brian Sullivan

Date: _____

Thomas R. Testwuide, Sr.

Date: _____

John E. Wickman

Date: _____

Alan Zirkelbach

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**FEDERAL DEPOSIT INSURANCE CORPORATION,
as RECEIVER OF FIRST PRIORITY BANK**

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

ST. PAUL MERCURY INSURANCE COMPANY

Date: _____

BY: _____

TITLE: _____

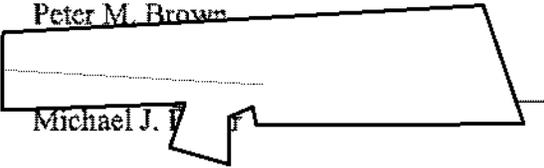
PRINT NAME: _____

Date: _____

Peter M. Brown

(b)(6)

Date: 4/10/2012



Michael J. [Redacted]

Date: _____

George W. Najmy

Date: _____

Stephen Putnam

Date: _____

Brian Sullivan

Date: _____

Thomas R. Testwuide, Sr.

Date: _____

John E. Wickman

Date: _____

Alan Zirkelbach

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PRINT NAME: _____

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Date: _____

BY: _____
TITLE: _____
PRINT NAME: _____

Date: _____

Peter M. Brown

Date: _____

Michael J. F.

(b)(6)

Date: 4/12/12

ge W

Date: _____

Stephen Putnam

Date: _____

Brian Sullivan

Date: _____

Thomas R. Testwuide, Sr.

Date: _____

John E. Wickman

Date: _____

Alan Zirkelbach

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PRINT NAME: _____

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BY: _____

TITLE: _____

PRINT NAME: _____

Date: _____

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Date: _____

Michael J. Fuller

Date: _____

George W. Naimy

(b)(6)

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Date: _____

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Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

Date: _____

Peter M. Brown

Date: _____

Michael J. Fuller

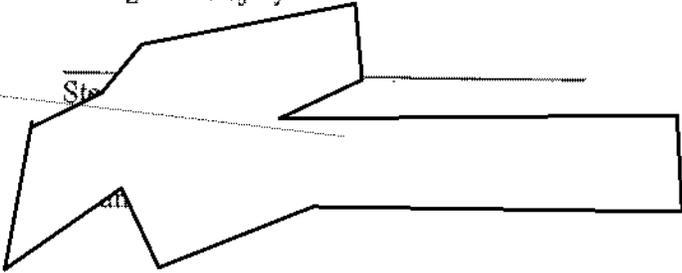
Date: _____

George W. Najmy

(b)(6) Date: _____

Ste

Date: 11/13, 2012



Date: _____

Thomas R. Testwuide, Sr.

Date: _____

John E. Wickman

Date: _____

Alan Zirkelbach

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as RECEIVER OF FIRST PRIORITY BANK**

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

ST. PAUL MERCURY INSURANCE COMPANY

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

Date: _____
Peter M. Brown

Date: _____
Michael J. Fuller

Date: _____
George W. Najmy

Date: _____
Stephen Putnam

(b)(6) Date: _____
Brian Sullivan
Date: April 10, 2012 [Redacted]
Thomas R. Testwuide, Sr.

Date: _____
John E. Wickman

Date: _____
Alan Zirkelbach

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Brian Sullivan

Date: _____
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(b)(6) Date: 4/10/12
John E. Wickman
Date: _____
Alan Zirkelbach

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Brian Sullivan

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Date: _____
John E. Wickman

Date: April 10, 2012
Alan Zirkelbach

(b)(6)