# SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

Federal Deposit Insurance Corporation as Receiver ("FDIC-R") for Heartland Tri-State Bank ("Heartland") and Great American Alliance Insurance Company ("Insurer"). FDIC-R and Insurer may be referred to herein individually as "Party" and collectively as the "Parties"). This Agreement shall be effective as of the date executed by the last Party signing below ("Effective Date").

## RECITALS

WHEREAS:

Prior to July 28, 2023, Heartland was a depository institution organized and existing under the laws of the State of Kansas;

Insurer issued Financial Institution Bond No. F24E422217 (the "Bond") to Elkhart Financial Corporation and Heartland, with a Bond Period of January 31, 2022, to January 31, 2025, but terminated on July 28, 2023 when Heartland was closed;

On July 28, 2023, the Kansas Office of the State Bank Commissioner closed Heartland and, pursuant to 12 U.S.C. § 1821(c), Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), FDIC-R succeeded to all rights, titles, powers and privileges of Heartland, including those with respect to its assets, including the Bond;

Among the assets to which FDIC-R succeeded were all of Heartland's claims, demands, and causes of action under the Bond;

On July 24, 2023, Heartland provided Insurer with notice of loss under the Bond, and thereafter FDIC-R provided a completed a proof of loss to Insurer dated February 21, 2024, alleging that Heartland's former President and Chief Executive Officer, Shan Hanes, "acted dishonestly or fraudulently with the intent to cause Heartland to sustain losses and to obtain financial benefit for himself or others by wiring and transferring over $47.1 million of Heartland's funds to both his personal bank accounts and crypto account with Payward Ventures, Inc., d/b/a Kraken ("Payward"), where he had a personal digital wallet" (the "Claim"); and

The Parties deem it in their best interests to enter into this Agreement to resolve their disagreement and 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 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 the thirtieth (30th) calendar day following the Effective Date, Insurer shall pay FDIC-R the sum of One Million, Eight-Hundred and Forty-Five Thousand Dollars ($1,845,000.00) (the "Settlement Payment"). The Settlement Payment shall constitute a debt due and owing FDIC-R, an instrumentality, agency and/or other entity of the United States, on the Effective Date. The debt shall be discharged by payment in full to FDIC-R.

B. Insurer shall deliver the Settlement Payment to FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number, which have been provided by FDIC-R.

C. If FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then Insurer shall be in default of its payment obligations ("Default") and interest shall accrue at the rate of five percent (5% ) per annum or the rate calculated in accordance with 26 U.S.C. § 6621(a)(2), whichever rate is higher ("Default Interest Rate") on the unpaid total (i.e. unpaid amount of Settlement Payment together with all accrued interest) until paid in full, and FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the Settlement Payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above; or

2. Enforce this Agreement, in which case Insurer waives and covenants not to plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever except the defense of payment of the Settlement Payment, in part or in full, to an action or motion to enforce this Agreement and agrees to exclusive jurisdiction and venue in United States District Court in the District of Columbia; or

3. Terminate the Agreement by declaring it null and void and institute an action on FDIC-R's claims. Insurer further agrees to waive and covenant to not plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever that did not exist or was otherwise unavailable as of the Effective Date, except the defense of payment of the Settlement Payment, in part or in full; and/or

4. Seek any other relief available to it in law or equity.

Any decision by FDIC-R to extend the time, and any extension of time, under Section I.C.1 for delivery of the Settlement Payment or any decision by FDIC-R to accept a portion of the Settlement Payment, and any acceptance of a portion of the Settlement Payment, shall not prejudice FDIC-R's rights to take any of the actions set forth in Section I.C.1 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full; provided, however, that in the event FDIC-R terminates this Agreement by declaring it null and void, FDIC-R will return to Insurer any and all amounts paid to FDIC-R under this Settlement Agreement.

## SECTION II: Releases

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

Upon receipt of the Settlement Payment in full, FDIC-R, for itself and its successors and assigns, hereby releases and discharges Insurer, its parents, subsidiaries, affiliates (including but not limited to ABA Insurance Services Inc.) 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 Bond and/or the Claim. As part of this release of Insurer, FDIC-R agrees that any interest it may have under the Bond is extinguished.

B. Insurer's Reciprocal Release.

Effective simultaneously with the release granted in Section II.A. above, Insurer, on behalf of itself and its parents, subsidiaries, and affiliates, and their respective successors and assigns, hereby releases and discharges 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 Bond and/or the Claim.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, FDIC, in any capacity, 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 Insurer 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, other than any liability under or with respect to the Bond, to FDIC-R, Heartland, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to Heartland or any person or entity other than Heartland;

b. by FDIC in any capacity other than as Receiver for Heartland; and

c. 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 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 or entity.

3. Notwithstanding any other provision of this Agreement,

this Agreement shall not be construed or interpreted as waiving, or intending to waive, any claims that could be brought by the United States or any department, agency or instrumentality thereof (other than FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.

## SECTION III: 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 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 her counsel.

## SECTION IV: Reasonable Cooperation

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 perform the terms of this

Agreement.

## SECTION V: Other Matters

A. No Admission of Liability.

The 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. Counterparts and Digital Signatures.

This Agreement may be executed digitally by DocuSign or similar services which use public key cryptography or by hand, in any number of counterparts, and delivered electronically or physically, each original or electronic copy thereof will be deemed an original, and all of which when taken together constitute one and the same Agreement.

C. Choice of Law/Jurisdiction.

This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Kansas. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute. All Parties hereto submit to the personal jurisdiction of the United States District Court for the District of Kansas for purposes of implementing and enforcing the settlement embodied in this Agreement.

D. Notices.

Any notices required hereunder shall be sent by nationally recognized overnight delivery service (e.g. FedEx or UPS), and by email, to the following:

If to FDIC-R:

Brittany A. McEwan
3501 Fairfax Drive, VS-E-7014
Arlington, Virginia 22226
(703) 618-3132
bmcewan@fdic.gov

If to Insurer:

Michael Keeley
Clark Hill
901 Main Street, Suite 6000
Dallas, TX, 75202

and:

Eric J. Steiner
Senior Vice President – Claims
ABA Insurance Services
3401 Tuttle Rd., Suite 300
Shaker Heights, Ohio 44122
esteiner@abais.com

E. Entire Agreement and Amendments.

This Agreement constitutes the entire agreement and understanding between and among the 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 Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to 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 HEARTLAND TRI-STATE BANK

Date: ___________________ BY: ________________________________

TITLE: Attorney

PRINT NAME: Brittany McEwan

GREAT AMERICAN ALLIANCE INSURANCE COMPANY

Date: ___________________ BY: _________________________________

TITLE: Divisional Vice President

PRINT NAME: Ann Intili Gardiner