

**SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is between Federal Deposit Insurance Corporation as Receiver for BankUnited, F.S.B. ("FDIC"), Gary Silberman, P.A. ("GSPA") and Gary Silberman ("Silberman").

**RECITALS**

1. FDIC filed its Complaint in the lawsuit styled Federal Deposit Insurance Corporation as Receiver for BankUnited, F.S.B. v. Gary Silberman, P.A. and Gary Silberman, IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION, CASE NO.: 1:12-CV-21892-UU (hereinafter "CASE NO.: 1:12-CV-21892-UU").

2. FDIC, GSPA and Silberman have agreed to resolve any and all claims or potential claims arising out of CASE NO.: 1:12-CV-21892-UU pursuant to the terms of this Agreement.

3. GSPA and Silberman have at all times denied, and continue to deny, any liability to FDIC. The settlement provided for herein is not and shall not in any way be construed or deemed to be evidence or an admission or a concession of any fault, liability, fact or amount of damages, or any other matter whatsoever on the part of GSPA and/or Silberman.

4. The parties are entering into this Agreement to avoid the substantial expense, inconvenience and burden of further litigation and to completely and finally put to rest all claims that were or could have been made against GSPA and/or Silberman, arising out of or related to CASE NO.: 1:12-CV-21892-UU.

**COVENANTS AND AGREEMENTS**

In consideration of the recitals set forth above, the covenants, terms and conditions set forth below, the Releases and Representations contained herein, and other good and valuable consideration, the parties agree as follows:

1. Incorporation of Recitals. Each of the foregoing recitals is incorporated by reference herein and made a part hereof.

2. Settlement Amount. Two hundred twenty five thousand dollars (\$225,000)(the "Settlement Amount") shall be paid to Welbaum Guernsey's Trust Account within thirty (30) days of the execution of this Agreement by all parties in settlement of CASE NO.: 1:12-CV-21892-UU.

3. Dismissal. Upon delivery of the Settlement Amount as set forth in paragraph 2 above, FDIC shall promptly file and request entry of an appropriate order from the court dismissing all claims against GSPA and Silberman with prejudice with each party to bear



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their own attorneys' fees and costs in CASE NO.: 1:12-CV-21892-UU as against, to any extent applicable, GSPA and Silberman and in full and final satisfaction of all of FDIC's claims which have been, or could have been, asserted in CASE NO.: 1:12-CV-21892-UU against GSPA's and Silberman's predecessors, successors, assigns, all current and former employees and personnel, attorneys, officers, directors, stockholders, parent corporations, subsidiary corporations, affiliates, agents, attorneys, insurers and representatives.

4. Costs. Each party shall bear and pay their own attorney's fees and costs that have arisen, or that could have arisen from CASE NO.: 1:12-CV-21892-UU.

5. Reasonable Settlement. The parties expressly agree that the terms of this Agreement are reasonable and adequate, and represent a good faith compromise of the disputes at issue in CASE NO.: 1:12-CV-21892-UU.

6. Release. FDIC, for itself, its predecessors, successors, assigns, all current and former employees and personnel, attorneys, officers, directors, stockholders, parent corporations, subsidiary corporations, affiliates, agents, and representatives, hereby remises, releases, acquits, satisfies, and forever discharges GSPA and Silberman and their predecessors, successors, assigns, all current and former employees and personnel, attorneys, officers, directors, stockholders, parent corporations, subsidiary corporations, affiliates, agents, insurers and representatives, from any and all liability and from any and all causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands of whatever name or nature in any manner arisen, in law or in equity, whether known or unknown, whether accrued or unaccrued, and whether sounding in contract, tort, statute or otherwise, derived from, based upon, or arising out of the claims and allegations set forth in CASE NO.: 1:12-CV-21892-UU. Notwithstanding the foregoing, each Party expressly excludes from the effect of this Release and does not release the Releasees from (a) the terms and conditions of this Agreement, and (b) any claims arising out of any other financial institution other than BankUnited, FSB.

7. Entire Agreement. This Agreement constitutes the entire agreement and understanding between FDIC on the one hand and GSPA and Silberman on the other with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written agreements, proposed agreements, negotiations, and discussions with respect to the subject matter hereof. This Agreement may not be altered, modified, or amended, unless by writing executed by the parties hereto, nor any of its provisions waived, unless in writing by the party granting such waiver. Each of the parties to this Agreement acknowledges that other than as stated in this Agreement, no other party, agent, or attorney of any other party has made any promises or representation or warranty to induce it to enter into this Agreement, and the parties hereto acknowledge that they have not executed this Agreement in reliance upon any such promise, representation, or warranty not contained herein.



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8. Authority to Act. FDIC, GSPA and Silberman represent and warrant that their respective signatories have full authority to execute this Agreement.

9. Choice of Law and Venue. This Agreement is made and entered into in the State of Florida and shall in all respects be interpreted, enforced and governed under the laws of Florida. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its plain meaning, and not strictly for or against either party. In the event that litigation arises relating to the interpretation or enforcement of this Agreement, the parties stipulate that venue shall be in Miami Dade County, Florida.

10. Paragraph Headings. Paragraph headings contained in this Agreement are inserted solely as reference aids for the ease and convenience of the reader; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions or any other aspect of this Agreement.

11. Singular and Plural. As used in this Agreement, the singular or plural shall be deemed to include the other whenever the context so indicates or requires.

12. Invalid Provisions. If any provision of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, but shall be construed as if such provision had never been contained herein.

13. Heirs and Successors Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective parent companies, shareholders, owners, affiliates, heirs, successors, and assigns, and any corporation, partnership or other entity into or with which any party hereto may merge, consolidate, or reorganize.

14. One Signatory Per Copy Permitted. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be and have the same force and effect as an original, and all of which, taken together, shall constitute and be construed as a single agreement. Photocopies and fax copies likewise shall be deemed to be and have the same force and effect as an original.



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IN WITNESS WHEREOF, the below signatory has caused this Full and Complete Agreement and Release to be duly executed and delivered as of the date set forth in the acknowledgments below.

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[Redacted Signature]

Federal Deposit Insurance Corporation as Receiver for BankUnited, F.S.B.

STATE OF TEXAS )

) ss:

COUNTY OF DALLAS

BEFORE ME, the undersigned, personally appeared Maryann Bullion who is personally known to me or has produced \_\_\_\_\_ as identification.

SWORN TO AND SUBSCRIBED before me this 11<sup>th</sup> day of February, 2013.

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[Redacted Signature]

NOTARY PUBLIC, State of Texas

My Commission Expires:



