

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 for Washington Federal Bank for Savings (“FDIC-R”) and Bansley & Kiener, LLP (“B&K”) (individually, FDIC-R and B&K may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to December 15, 2017, Washington Federal Bank for Savings (“Bank”) was a depository institution organized and existing under the laws of the United States;

On December 15, 2017, the Office of the Comptroller of the Currency closed the Bank 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 the Bank, including those with respect to its assets;

Among the assets to which FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against its former professional service providers arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts;

FDIC-R has asserted claims against B&K, which served as the Bank’s outside auditor. B&K denies liability for the claims;

Continental Casualty Company has deposited the Settlement Payment (defined below) in a trust account with Falkenberg Ives LLP (“Escrow Agent”), and proof of the deposit has been provided to FDIC-R; 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, 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, B&K agrees to pay FDIC-R the sum of \$2,500,000 (“the Settlement Payment”).

B. The Escrow Agent shall deliver the Settlement Payment in escrow to FDIC-R no later than 7 calendar days after this Agreement is fully executed by direct wire transfer into the following account:

BANK: Federal Home Loan Bank of New York
[Redacted]
FOR CREDIT TO: FDIC National Liquidation Account
[Redacted]
New York Main Office
101 Park Avenue
New York, NY 10178-0599
212-681-6000
212-441-6890 Fax

OTHER BENEFICIARY INFORMATION:

[Redacted]
[Redacted]
Account officer: Steve Hall (571) 265-3742.

SECTION II: Releases

A. FDIC-R’s Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section II.C., FDIC-R, for itself and its successors and assigns, hereby releases and discharges B&K and its partners, officers, employees, 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, belonging to FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of B&K’s functions, duties, and actions as accountants for the Bank.

B. B&K's Release.

Effective simultaneously with the release granted in Section II.A. above, B&K, on behalf of itself and its partners, officers, employees, agents, attorneys, representatives, successors, and assigns, hereby release and discharge FDIC-R and its officers, employees, directors, 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 Bank or to the performance, nonperformance, or manner of performance of B&K's functions, duties, and actions as accountants for the Bank.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, 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 B&K 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 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.

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, 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 and Proceeds from Litigation

To the extent, if any, that B&K is or was a shareholder of the Bank or its holding company and by virtue thereof is 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 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 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, B&K hereby knowingly assigns to FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or 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 her counsel.

SECTION V: 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 VI: 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. This Agreement also may be executed by electronic signatures, and each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. "Electronic signature" means any electronic symbol or security procedure attached to or logically associated with an electronic record and executed, employed or adopted by or on behalf of a Party with the intent to authenticate a record, including facsimile electronic signatures.

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 Illinois.

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

If to FDIC-R: Stuart Tonkinson
Federal Deposit Insurance Corporation
3501 Fairfax Drive, VA-SQ-B-7052
Arlington VA 22226
(703) 562-2490

(b)(6)

If to B&K: Thomas F. Falkenberg
Falkenberg Ives LLP
230 W. Monroe Street, Suite 2220
Chicago, IL 60606
(312) 566-4801

(b)(6)

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. 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 undersigned 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 WASHINGTON FEDERAL BANK
FOR SAVINGS

(b)(6)

Date: _____

BY: _____
TITLE: Counsel
PRINT NAME: Stuart Tonkinson

(b)(6)

BANSLEY & KIENER, LLP

Date: 8/28/20

BY: _____
TITLE: Partner
PRINT NAME: Robert Hannigan

As escrow agent pursuant to Section I.B. of this Agreement, Falkenberg Ives LLP agrees to receive and distribute the Settlement Payment in accordance with the terms of this Agreement.

(b)(6)

BY: _____
TITLE: _____
PRINT NAME: Thomas Falkenberg