

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 21st day of July, 2013, by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation, as receiver of BankUnited, FSB ("FDIC-R"), and James Edward Heyward, an individual d/b/a Effort Appraisal Group ("Heyward"), and James Schuster ("Schuster") (collectively the "Settling Defendants").

### RECITALS

#### WHEREAS:

Prior to May 21, 2009, BankUnited, F.S.B. ("Bank") was a depository institution organized and existing under the laws of California.

On May 21, 2009, the Bank was closed by the Office of Thrift Supervision ("OTS") 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 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 as receiver succeeded were any and all of the Bank's claims, demands, and causes of actions against third party appraisers.

On or about August 14, 2007, Bank funded a mortgage refinance loan in the amount of \$1,500,000 (the "Loan") secured by real property located in Woodland Hills, California (the "Property").

On May 15, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendants. Those claims for damages are now pending in the United States District Court for the Central District of California in *FDIC v. Heyward*, Case No. cv-12-00786-JST (the "Action"). The Settling Defendants have denied liability in the Action.

Schuster purchased certain policies of insurance from The Navigator's Group, Inc. ("Navigators") that Schuster claims provide, or are alleged by Schuster to provide, insurance coverage to Schuster.

Heyward purchased certain policies of insurance from American International Group, Inc. ("AIG") that Heyward claims provide, or are alleged by Heyward to provide, insurance coverage to Heyward.

Schuster made a claim against Heyward for contribution and indemnity based upon the FDIC-R allegations in the Action and tendered a claim to AIG ("Contribution Claims").

The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further 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, the Settling Defendants, collectively, agree to pay the FDIC-R the sum of \$300,000 ("the Settlement Funds"), as follows: (1) \$245,000 paid by or on behalf of Heyward by AIG and (2) \$55,000 paid by Navigator's Group, Inc. on behalf of Schuster.

B. Within 30 days of the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, the Settlement Funds shall be delivered to FDIC-R by check made payable to the Mortgage Recovery Law Group Client Trust Account and delivered to counsel for the FDIC-R.

C. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds are not received per this Agreement, then, with respect to the Party, or Parties, that fail to deliver their share of the Settlement Funds only, the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds to extend this Agreement for any period of time until it receives all Settlement Funds and/or shall have the right to enforce this Agreement against the Party or Parties, failing to deliver their share of the Settlement Funds, in which event the non-delivering Party, or Parties, agree to jurisdiction in Federal District Court in California. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to enforce the terms of this Settlement Agreement. The failure of one Party to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

D. The settlement funds herein are severable and not joint. A settlement payment by one party will entitle that paying party to a release and dismissal, as discussed below, even if the other party has failed to pay its respective amount.

#### **SECTION II: Stipulation and Dismissal**

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, the FDIC-R shall dismiss the Action. The undersigned parties agree to enter stipulation(s) providing that the dismissal(s) set forth above shall be with prejudice, with each party to bear its own fees and costs as these were originally incurred.

### SECTION III: Releases

#### A. Release of Individual Settling Defendants by FDIC-R.

Effective upon receipt in full of the settlement funds and dismissal described in SECTIONS I and II above, and except as provided in PARAGRAPH III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, insurers, 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, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as appraisers related to the loans at issue in the Action including without limitation the causes of action alleged in the Action.

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

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge 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, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as appraisers related to the loans at issue in the Action including without limitation the causes of action alleged in the Action.

#### C. Release by Settling Defendants of Each Other.

Effective upon receipt in full of the settlement funds and dismissal described in SECTIONS I and II above, and except as provided in PARAGRAPH III.D., Heyward and Schuster, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors, spouses, families, agents, servants, employees, employers, officers, partners, principals, owners, stockholders, directors, representatives, affiliates, joint venturers, insurers, assigns and any and all of their assigned, affiliated or related persons or entities of any type or nature whatsoever hereby irrevocably and unconditionally release and forever discharge each other and each of their respective heirs, executors, administrators, predecessors, successors, spouses, families, agents, servants, employees, employers, officers, partners, principals, owners, stockholders, directors, representatives, insurers (including, AIG and Navigators, subject to the payment of the settlement funds), attorneys, experts, affiliates, joint venturers, franchisers, and/or franchisees, assigns, predecessors, successors, and any and all of their associated, affiliated or related persons or entities, of any type or nature whatsoever, of and from any and all claims, demands, complaints (administrative and civil), causes of actions, obligations, liens, damages, losses, costs, attorney's fees, and expenses of every kind and nature, at law or in equity, direct or derivative, known or unknown, fixed,

liquidated or contingent, tort, contract, statutory or mixed, which either of them ever had, may now have or may hereafter have against each other by reason of any act or omission, matter, cause or thing arising out of or connected with the Action, the prosecution of the Action and the defense, handling or settlement of the Action as well as any and all matters or issues raised or which could have been raised, or in the future might have been raised in the Action, relating to the Property, the Loan, Bank and the Contribution Claim.

**D. Express Reservations From Releases By FDIC-R.**

1. Notwithstanding any other provision, by 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 indebtedness payable or owed by them to the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC-R 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 III.A, above.

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 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, 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 Central District of California or any other federal judicial district. In addition, the FDIC-R specifically reserves the right 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.

**SECTION V: Representations and Acknowledgements**

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 that this Agreement is not an admission or evidence

of liability by any of them regarding any claim, including but not limited to the allegations made in the Action.

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, 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. 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 California.

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. 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).

F. Reasonable Cooperation.

1. 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.

2. Further, the Settling Defendants agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement.

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. California Civil Code § 1542 Waiver. The Parties acknowledge that they have been advised by legal counsel and are familiar with the provision of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS/HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM/HER, MUST HAVE MATERIALLY AFFECTED HIS/HER SETTLEMENT WITH THE DEBTOR.”

The parties expressly waive and relinquish any and all rights or benefits they may have under, or which may be conferred upon them by, the provisions of Section 1542 of the California Civil Code to the fullest extent that they may lawfully waive such rights or benefits pertaining to the subject matter of this release.

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

If to the FDIC-R:

Paul Levin  
Mortgage Recovery Law Group  
700 North Brand Boulevard, Suite 830  
Glendale, California 91203  
(818) 630-7901

(b)(6)

If to James Heyward, d/b/a Effort Appraisals, and/or AIG:

Rinat Klier-Erich, Esq.  
Manning & Kass Ellrod Ramirez Trester  
801 S. Figueroa St., 15<sup>th</sup> Floor  
Los Angeles, CA 90017  
(213) 624-6900

(b)(6)

If to James Schuster, and/or Navigators:

Ari L. Markow, Esq.  
Spile, Leff & Goor, LLP  
16501 Ventura Blvd.  
Encino, CA 91436  
(818) 784-6899

(b)(6)

J. Assumption of Risk of Differences in Facts. Other than the representations and warranties made herein, each of the Parties acknowledges that, if



the facts with respect to which this Agreement are executed are found hereafter to be different from the facts in that connection now believed by them to be true, each expressly accepts and assumes the risk of such possible differences in facts, and agrees that this Agreement shall be, and shall remain, effective, notwithstanding such differences in facts.

K. No Reliance. The Parties hereto and each of them represent and declare that in executing this Agreement, they rely solely upon their own judgment, belief and knowledge, and that they have not been influenced to any extent whatsoever in executing the same by any of the Parties hereto or by any person representing them, or any of them.

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

(b)(6)

Date: 7/24/2013

BY: 

Tass D. Waterston  
Senior Attorney

Date: \_\_\_\_\_

JAMES EDWARD HEYWARD, d/b/a EFFORT  
APPRAISAL GROUP

BY: \_\_\_\_\_  
James Edward Heyward

(b)(6)

Date: 7/31/2013



JAMES SCHUSTER

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FEDERAL DEPOSIT INSURANCE  
CORPORATION

(b)(6)

Date: 7/24/2013

BY: 

Tass D. Waterston  
Senior Attorney

Date: 8/26/2013

JAMES EDWARD HEYWARD, d/b/a EFFORT  
APPRAISAL GROUP

(b)(6)

BY: 

James Edward Heyward

Date: \_\_\_\_\_

\_\_\_\_\_  
JAMES SCHUSTER