

SETTLEMENT AND ASSIGNMENT AGREEMENT

The Federal Deposit Insurance Company (the "FDIC"), Receiver for BankUnited, FSB, of Coral Gables, Florida ("BankUnited"), and Alfred Camner, Ramiro Ortiz, and Humberto Lopez (collectively, the "Defendants," and, together with the FDIC, the "Parties"), hereby enter into this Settlement and Assignment Agreement ("Agreement") on this 30 day of July 2012.

WHEREAS, BankUnited was closed by the Office of Thrift Supervision on May 21, 2009, and the FDIC was appointed as its Receiver; and,

WHEREAS, the FDIC has the right pursuant to 1821(d)(2)(A)(i) of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") and other authority to assert claims against the former directors and officers of BankUnited; and,

WHEREAS, the FDIC has asserted claims (the "FDIC's Claims"), including claims for payment of monetary damages and for non-monetary relief, against certain individuals (the "Named Individuals") and/or the Defendants, subject to supplementation, revisions, and/or deletions of claims known or unknown, relating to their services, acts and/or omissions as former officers and/or directors of BankUnited, some of which but without limitation are set forth in a letter (the "Demand Letter") to the Named Individuals dated November 5, 2009 asserting damages of \$227 million and which specifically do not include any claims that the FDIC may have against Alfred Camner and/or Camner Lipsitz, P.A. relating to their services, acts and/or omissions as attorneys for BankUnited; and,

WHEREAS, on September 16, 2008, the Waterford Township General Employees Retirement System initiated an adversary proceeding in the U.S. District Court for the Southern District of Florida, Miami Division, captioned *In re BankUnited Securities Litigation*, U.S. District Court, Southern District of Florida, Civil Action No. 08-22572-CIV-Cooke/Turnoff (the "Class Action"); and,

WHEREAS, on April 6, 2009, the Louisiana Municipal Police Employee's Retirement System and the Oklahoma Police Pension and Retirement System ("Lead Plaintiffs") were appointed as lead plaintiffs in the Class Action; and,

WHEREAS, the Defendants and/or the Named Individuals are insureds under a primary insurance policy issued by St. Paul Mercury Insurance Company ("Travelers"), Policy Number

(b)(4) [redacted] (the "Primary Policy"), with a liability limit of \$10 million; and,

WHEREAS, the Primary Policy had a policy period of November 10, 2007, through November 10, 2008, and a one-year tail discovery period was purchased by BankUnited's holding company, BankUnited Financial Corporation ("BUFC"), which extended coverage to November 10, 2009; and,

WHEREAS, the Named Individuals and/or Defendants are insureds under an excess insurance policy issued by RSUI Indemnity Company ("RSUI"), Policy Number [redacted] (b)(4) (the "Excess Policy"), with a liability limit of \$10 million; and,

WHEREAS, the Excess Policy had a policy period of November 10, 2007, through November 10, 2008, and a one-year tail discovery period purchased by BUFC, which extended coverage to November 10, 2009; and,

WHEREAS, on November 5, 2009, the Demand Letter was forwarded to Travelers and RSUI; and,

WHEREAS, RSUI has been provided with all relevant information necessary to investigate, evaluate, and adjust the subject claims and otherwise perform its obligations under the Excess Policy, but has failed to do so; and,

WHEREAS, the Parties engaged in mediation to facilitate arm's-length negotiations designed to avoid litigation, save litigation expense, including further depletion of the insurance

policies, and to prevent on the part of the insured Defendants a potentially substantial liability; and,

WHEREAS, RSUI was provided with a mediation statement that included a liability and damages analysis regarding liability and recoverable damages of up to \$632 million associated with the negligence, gross negligence, and/or breaches of duty alleged to have occurred during its Policy Period that likely exceed the Excess Policy's limit; and,

WHEREAS, RSUI denied coverage for the FDIC's Claims, and refused to make any of its policy limits available to fund a settlement with the FDIC; and,

WHEREAS, RSUI has been provided with numerous opportunities to effectuate a settlement of the FDIC's Claims within the limits of the Excess Policy, but has refused to even attempt to negotiate or to consider any such settlement; and,

WHEREAS, by refusing to even attempt a potential settlement of the FDIC's Claims, RSUI refused to protect the interests of the insured Defendants; and,

WHEREAS, the Parties do not intend to release or impact any claims against RSUI; and,

WHEREAS, the Parties have taken into consideration the factual allegations underlying the FDIC's Claims, any applicable defenses thereto, the amount of the FDIC's Claims, the evidence in the case, the potential verdict range represented by such suits, as well as the public interest and related factors; and,

WHEREAS, this Agreement is the product of arms-length negotiations between the Parties, each represented by counsel; and,

WHEREAS, the Defendants have agreed to settle the FDIC's Claims for the sum of One Hundred Twenty Five Million Dollars (\$125,000,000.00), and have agreed to assign their rights under the RSUI policy and any claims against RSUI to the FDIC; and,

WHEREAS, the Lead Plaintiffs have also agreed to assign their rights under the RSUI policy and any claims against RSUI to the FDIC; and,

WHEREAS, the FDIC, Lead Plaintiffs, Defendants and/or Named Individuals, and Travelers have agreed that Travelers shall pay all the remaining limits of the Primary Policy as follows: (i) a \$2,500,000 payment to the FDIC as a partial payment of the FDIC's Claims; (ii) a \$3,500,000 payment to the Lead Plaintiffs; and (iii) the remainder of the limits to be placed in a reserve (the "Defense Reserve") to be used to pay the reasonable defense costs of the Named Individuals and/or Defendants (the "Defense Costs"), with respect to, or, after a proposed settlement is reviewed and approved through an internal process at the FDIC that has no guaranteed outcome, to pay the settlement of: (1) claims that have been asserted or may in the future be asserted against some or all of the Named Individuals and/or Defendants by the Official Committee of Unsecured Creditors of BankUnited Financial Corporation (the "Committee"); and (2) any claim, investigation or action that may be initiated against some or all of the Named Individuals and/or Defendants by the Securities & Exchange Commission ("SEC"); and,

WHEREAS, any funds in the Defense Reserve not expended by July 1, 2014 will be distributed to the FDIC in further partial payment of the FDIC's Claims, provided that such distribution shall be made only after there are no remaining pending claims, investigations, or actions against any of the Named Individuals by either the Committee or the SEC, within the meaning of this Agreement; and,

WHEREAS, the funds in the Defense Reserve shall be held in an interest bearing account to be jointly administered by the law firms of Coffey Burlington and Fowler White Burnett, who shall use those funds to pay the reasonable Defense Costs of the Named Individuals, including the Defendants, in connection with any claims or actions asserted against the Named Individuals, including the Defendants, by either the Committee or the SEC, until July 1, 2014, or until the

termination of all pending claims, investigations, or actions against the Named Individuals by either the Committee or the SEC, as defined in this Agreement. Defense Reserve funds may also be used to pay the settlement of any claims or actions asserted against the Named Individuals, including the Defendants, by either the Committee or the SEC. The FDIC shall have the right to approve and consent to any amount of the Defense Reserve to be utilized for any purpose, such consent and approval not to be unreasonably withheld. No funds from the Defense Reserve shall be used to pay any settlement of any claims without the FDIC's written prior consent, which the Parties understand cannot be obtained, and shall not be given, until after an internal approval process at the FDIC that has no guaranteed outcome; and,

WHEREAS, this Agreement will be presented to the Bankruptcy Court in connection with a motion for relief from the automatic stay to fund this Agreement in the chapter 11 bankruptcy case pending before the U.S. Bankruptcy Court for the Southern District of Florida, Miami Division (the "Bankruptcy Court"), captioned *In re BankUnited Financial Corporation, et al.*, Case No. 09-19940-LMI (the "Bankruptcy Case"); and,

WHEREAS, this Agreement is subject to and conditioned on the entry of a final and unappealable order of the Bankruptcy Court approving the release of funds from the Primary Policy to fund the Settlement Agreement (the "Bankruptcy Court Approval Order"); and,

WHEREAS, this Agreement is subject to and conditioned on the entry of a final and unappealable order of the District Court finally approving the settlement (the "Class Action Settlement") presented to it in connection with the Lead Plaintiffs' September 30, 2011 Motion for Preliminary Approval of Settlement, Certification of a Class for Settlement Purposes, and Approval of Notice to the Class (the "District Court Approval Order" and, together with the Bankruptcy Court Approval Order, the "Approval Orders")); and,

WHEREAS, in exchange for Travelers' commitment to provide the full policy limits of the Primary Policy in the method described, each of the Defendants and/or Named Individuals agrees to execute the Settlement Agreement and Policy Release in favor of Travelers ("Policy Release") attached hereto as Exhibit "A"; and,

WHEREAS, the FDIC and the Named Individuals who are not Defendants within the meaning of this Agreement shall each execute the Mutual Release of Liability ("FDIC Release") attached hereto as Exhibit "B"; and,

NOW, THEREFORE, the undersigned Parties agree as follows:

1. SETTLEMENT AGREEMENT:

A. In consideration of the promises, representations, and warranties set forth herein, and without admitting any liability in connection with the FDIC's Claims or any potential claims against them as directors and/or officers of BankUnited, Defendants agree to settle the FDIC's Claims for One Hundred Twenty Five Million Dollars (\$125,000,000.00), and to assign the FDIC the Defendants' rights and claims against RSUI. The FDIC and the Defendants agree that this settlement is a compromise of disputed claims, and that such settlement is not to be construed as an admission on the part of the Defendants of any liability or responsibility at any time or for any purpose whatsoever. The Bankruptcy Court will be advised that a settlement agreement has been reached, and if the Bankruptcy Court approves the release of funds from the Primary Policy to fund the settlement described in this Agreement, the District Court approves the Class Action Settlement, the Defendants perform all other duties and promises required by this Agreement, and the FDIC resolves its claims against RSUI, the FDIC will grant the Defendants a covenant not to sue for the FDIC's Claims, but in a manner that permits the court to retain jurisdiction to enforce this Agreement. If the Bankruptcy Court does not approve the

release of funds from the Primary Policy as contemplated in this Agreement, or if the District Court does not approve the Class Action Settlement, this Agreement is null and void.

B. The Parties agree that, notwithstanding anything else in this Agreement, upon approval of this Agreement by the Bankruptcy Court, the Defense Reserve shall be funded. The Parties further agree that such funds shall be held in an interest bearing account to be jointly administered by the law firms of Coffey Burlington and Fowler White Burnett, who shall use those funds to pay the reasonable Defense Costs of the Named Individuals, including the Defendants, in connection with any claims or actions asserted by either the Committee or the SEC, until July 1, 2014, or until the termination of all pending claims, investigations, or actions against the Named Individuals by either the Committee or the SEC. The Parties further agree that funds in the Defense Reserve may also be used to pay a settlement of any claims or actions asserted against the Named Individuals, including the Defendants, by either the Committee or the SEC, and that the FDIC shall have the right to approve and consent to any amount of the Defense Reserve to be utilized for any purpose, such consent and approval not to be unreasonably withheld. The Parties specifically agree that no funds from the Defense Reserve shall be used to pay a settlement of any claims without the FDIC's prior written consent. The Parties also specifically agree, understand, and acknowledge that the FDIC shall not consent to the payment of any funds from the Defense Reserve to settle any claims until after such proposed settlement is reviewed and approved through an internal process at the FDIC that has no guaranteed outcome. The Parties further agree that any funds in the Defense Reserve not expended by July 1, 2014 will be distributed to the FDIC in further partial payment of the FDIC's Claims, provided that such distribution shall be made only after there are no remaining pending claims, investigations, or actions against the Named Individuals and/or Defendants by either the Committee or the SEC. The Parties further agree that, for purposes of this Agreement, there is a

pending claim, investigation, or action by the SEC only if the SEC provides written notice to the Named Individuals and/or Defendants of the SEC's initiation of or intent to initiate a claim, investigation, or other enforcement action against the Defendants and/or other former directors of BankUnited before July 1, 2014.

2. ASSIGNMENT OF RIGHTS AND CAUSES OF ACTION: The Defendants hereby assign to the FDIC their right, title, and interest in the Excess Policy and any and all causes of action they may have against RSUI (including any and all damages related to those causes of action) pursuant to the Excess Policy, common law of bad faith or similar law, and under Florida Statute § 624.155, as a result of RSUI's refusal to provide the Defendants with the full benefits due under the Excess Policy or to consent to a settlement within the limits of the Excess Policy, subject to the conditions of this Agreement. As further consideration for this Agreement, the Defendants also specifically assign their entitlement to assert the attorney client privilege and/or work product immunity with respect to any attorney client communications or attorney work product made regarding the FDIC's Claims, or made regarding any cause of action the Defendants may have against RSUI.

3. CAUSES OF ACTION ON DEFENDANTS' BEHALF: The Parties agree that the FDIC may, at its sole discretion, prosecute causes of action seeking coverage under the Excess Policy and/or bad faith on its own behalf, or as Assignee of any or all of the insured Defendants. Regardless of the style of the case, or whether joined as party plaintiffs or party defendants, the Defendants agree to cooperate with the FDIC in the provision of information necessary to the lawsuit(s).

4. CONDITIONS OF ASSIGNMENT:

A. The Defendants, by this Agreement, assign one hundred percent (100%) of their interest to the FDIC in any damages recovered by the FDIC in any action brought pursuant

to this Agreement against RSUI and/or any of its agents. The Defendants shall have no interest in or be responsible for any attorney's fees or costs awarded in connection with any such action.

B. The Defendants will cooperate fully with the FDIC and its counsel in the pursuit or defense of the contemplated lawsuits or bad faith claims involving RSUI, including: (1) providing any necessary documentation upon request, provided that the Defendants have possession or control of the requested documentation; (2) attending depositions and/or any reasonably necessary conferences or meetings called by the FDIC subject to reasonable notice and availability; and (3) otherwise providing truthful information which may be called for in the FDIC's discretion incident to the lawsuits or bad faith claims contemplated by this Agreement. The FDIC shall not be obligated to pay fees or costs incurred by counsel representing the Defendants as personal counsel, should any choose to engage such counsel in responding to discovery requests or agreeing to depositions, mediations, or trial.

C. The FDIC and its counsel shall have the sole discretion on whether to pursue litigation against RSUI and the choice of any cause of action to be asserted against RSUI. The FDIC and its counsel shall further have sole authority to compromise, resolve, or try any action pursuant to this Agreement, as they deem appropriate. Similarly, the FDIC and its counsel may, in its sole discretion, determine whether or not to appeal an adverse decision, or to defend any appeal taken by RSUI. Upon execution of this Agreement, the FDIC shall take all necessary steps to dismiss the Defendants from the declaratory judgment action in the Bankruptcy Court captioned *RSUI Indemnity Company v. BankUnited Financial Corporation*, No. 12-01383 (Bankr. S.D. Fla.).

5. NO RELEASE OF LIABILITY: The Parties have reviewed the Florida Supreme Court case of *Rosen v. FIGA*, 802 So. 2d 291 (Fla. 2001), and each agree that it is neither the intention of the Defendants nor the FDIC to release or discharge RSUI from any of its liability to

the Defendants or the FDIC in connection with the Excess Policy, or under the law. The Defendants are also not released or discharged from liability. The FDIC agrees to seek satisfaction of the settlement from RSUI first and the Parties agree to toll any limitations period related to the FDIC's Claims. Should the FDIC recover an amount equal to, or greater than, the amount agreed to in this Agreement (One Hundred Twenty Five Million Dollars (\$125 million dollars)), plus interest and costs; prevail in whole or in part in any subsequent lawsuit against RSUI; lose, withdraw, or dismiss the coverage or bad faith lawsuit or claim against RSUI; and/or resolve its differences with RSUI; the FDIC shall provide a covenant not to sue the Defendant for the FDIC's Claims, provided, that the Defendants have faithfully discharged the terms, conditions, and/or warranties contained in this Agreement and have fully cooperated with the FDIC as described herein.

6. ASSIGNMENT PRIOR TO DISCHARGE OF LIABILITY: This Assignment is given prior to the discharge of any liability for payment on the Agreement, and as a condition precedent to the waiver of any deficiency action against the Defendants should the Agreement not be fully satisfied. In addition, this Assignment is given in consideration of the FDIC's: (i) subsequent agreement to forbear further proceedings asserting the FDIC's Claims against the Defendants; and (ii) granting a covenant not to sue the Defendants to recover the amount of the settlement of the FDIC's Claims from the personal assets of the Defendants. Furthermore, this Assignment is given in exchange for cooperation by the Defendants.

7. COSTS OF LITIGATION: Any action brought against RSUI and/or its agents pursuant to this Agreement shall be prosecuted or defended by the FDIC, and it will bear full financial responsibility for the prosecution and defense of its own fees and costs for such suits and actions.

8. SEVERABILITY OF RELEASE AND ASSIGNMENT: If for any reason this Agreement is rendered invalid or unenforceable as to any Defendant, the Agreement shall remain effective as to the others.

9. CONSTRUCTION OF AGREEMENT: This Agreement, its effect, and enforceability shall be construed under the laws of the State of Florida.

10. MERGER CLAUSE: This Agreement, together with the Policy Release and the FDIC Release, constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes any prior and contemporaneous, oral or written agreement, negotiations and discussions with respect to the subject matter of this Agreement.

10. REPRESENTATION BY COUNSEL: The Parties have each reviewed this Agreement through counsel of their choosing or been afforded the opportunity before signing this Agreement.

11. EXECUTION OF AGREEMENT: The Parties have expressly agreed that this Agreement may be executed in counterparts.

[Redacted Signature Box]

(b)(6)

By:

Steven E. Smith, As Counsel (date)
For the Federal Deposit Insurance
Corporation

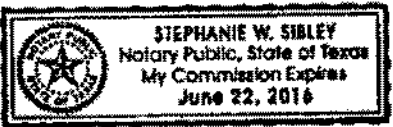
STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI DADE)

SWORN TO AND SUBSCRIBED before me this 30 day of July,

2011, by Steven E. Smith, who DID/DID NOT take an oath and who:

is personally known to me; or
 produced identification: _____

My Commission Expires:



[Redacted Notary Signature Box]

(b)(6)

Notary Public