

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 10th day of December 2013 (the "Effective Date" shall be the date on which the last signature of a Party is affixed to this Agreement), by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as receiver of BankUnited, FSB ("FDIC-R"), and Eric K. Hsing, an individual d/b/a K.C. & Associates f/k/a K.C. Appraisal Services ("Hsing"). (Individually, the FDIC-R and Hsing may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

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

On May 21, 2009, the Bank was closed by the Office of Thrift Supervision and pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R 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-R as receiver succeeded were the Bank's claims, demands, and causes of actions, that are the subject of this Agreement;

On March 27, 2012, the FDIC-R filed a complaint for money damages against Hsing. Those claims for damages are now pending in the United States District Court for the Northern District of California in *Federal Deposit Insurance Corporation as Receiver for BankUnited, F.S.B. vs. Eric K. Hsing, an individual d/b/a K.C. & Associates f/k/a K.C. Appraisal Services*, Case No. 12-cv-01530-LB (the "Action"). All parties have denied liability in the Action.

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, Hsing, through his insurer, agrees to pay the FDIC-R the sum of \$250,000 (“the Settlement Funds”).

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than thirty (30) days after the Effective Date, the Settlement Funds shall be tendered to FDIC-R by direct wire transfer into an account designated by FDIC-R or by certified or cashier’s check drawn upon a depository institution acceptable to FDIC-R.

In the event that the Settlement Funds are not tendered to the FDIC-R (or its counsel) by thirty (30) days after the Effective Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from thirty-one (31) days after the Effective Date until the date of tender.

C. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds (including all accrued interest) are not tendered to the FDIC-R by the thirtieth (30th) day after the Effective Date, unless such failure is caused by FDIC-R or by force majeure or other circumstances beyond the control of Hsing or FDIC-R, the FDIC-R, in its sole discretion, shall thereafter have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall thereafter have the right to extend this Agreement for any period of time until all Settlement Funds (including all accrued interest) are tendered, and/or shall thereafter have the right to enforce this Agreement against the Hsing for failing to tender the Settlement Funds, in which event Hsing agrees to jurisdiction in Federal District Court in the Northern District of California and agrees to pay all of the FDIC-R’s reasonable attorney’s fees expended in enforcing the terms of this

Agreement. Any decision by the FDIC-R to extend the terms of this Agreement or to accept any portion of the Settlement Funds as a partial payment shall not, absent an agreement providing otherwise, prejudice its rights to declare this Agreement null and void with respect to the Hsing at any time prior to tender of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement by Hsing.

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by each of the undersigned Parties, and tender of the Settlement Funds, plus any accrued interest, 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 costs.

SECTION III: Releases

A. Release of Hsing by FDIC-R.

Effective upon tender in full of the settlement funds plus any accrued interest, as described in SECTION I above, and except as provided in PARAGRAPH III.C., the FDIC-R, for itself and its employees, officers, directors, attorneys, insurers, representatives, successors and assigns, hereby releases and discharges Hsing and his respective heirs, executors, administrators, representatives, agents, attorneys, insurers (including but not limited to American International Group, Inc.), successors and assigns, from any and all claims, demands, obligations, damages, losses, liens, obligations, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R or its successors or assigns, that arise from or relate to, in any way, the allegations, claims and/or causes of action in the Action.

B. Release of FDIC-R by Hsing.

Effective simultaneously with the release granted in PARAGRAPH III.A. above, Hsing,

on behalf of himself individually, and his respective heirs, executors, administrators, agents, attorneys, insurers, representatives, successors and assigns, hereby releases and discharges 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, in any way, the allegations, claims and/or causes of action in the Action.

C. 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 Hsing 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 him to 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 Paragraph 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 Federal Deposit Insurance Corporation 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 Northern 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 IV: Representations and Acknowledgements

A. Section 1542 Waiver. Each Party acknowledges that this Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against another Party arising from the Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule. Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

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

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight,

error, negligence, or any other cause.

B. 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 the sufficiency of any of the claims or defenses asserted in the Action.

C. 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.

D. Binding Effect. Each undersigned person represents and warrants that it / he is a party hereto or is authorized to sign this Agreement on behalf of a party hereto, and that it / he has 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, and shall be admissible in evidence to the extent and for the purposes contemplated under California Evidence Code § 1123 and California Code of Civil Procedure § 664.6.

E. Choice of Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State California.

F. Entire Agreement and Amendments. This Agreement constitutes the entire, integrated 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 parties, or by their respective authorized attorney(s) or other representative(s).

G. 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, Hsing agrees 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. Such cooperation shall consist of:

a. producing all documents in his possession that relate to the appraisal (b)(4),(b) performed by Hsing in March of 2007 of [redacted] Piedmont, California to the extent (6) reasonably requested by the FDIC-R, without the necessity of subpoena;

b. making himself available, upon request by the FDIC-R, at reasonable times and places, for interviews regarding facts, as determined by the FDIC-R in its sole (b)(4),(b) discretion, to be relevant to the [redacted] appraisal described above; (6)

c. appearing to testify, upon request by the FDIC-R, in any matter reasonably determined by the FDIC-R in its sole discretion, to be related to the Bank, without the necessity of subpoena, except to the extent such appearance is in connection with any further action, in judicial or administrative forum, against Hsing, as Hsing does not waive his rights under the United States or California Constitutions, including without limitation his rights under the First, Fourth, Fifth, Sixth, Seventh, and Ninth Amendments to the United States Constitution, or any analogs or augmentations thereto in any State Constitution;

d. signing truthful affidavits that are based on personal knowledge of Hsing, upon reasonable request by the FDIC-R, regarding any matter, as reasonably determined by the FDIC-R in its sole discretion, to be relevant to the [redacted] Appraisal described (b)(4),(b) above. (6)

H. 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 its counsel.

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 BANKUNITED, FSB

(b)(6) Date: 12/10/2013 BY:
TITLE: Senior Attorney
PRINT NAME: Tass D. Waterston

(b)(6) Date: 12/11/2013 BY:
ERIC HSING, on behalf of himself, and K.C. & ASSOCIATES
f/k/a K.C. APPRAISAL SERVICES
PRINT NAME: ERIC HSING