

insiders used to carry out the scheme, breach fiduciary duties to RVG and enrich themselves. In connection with this effort, the Receiver investigated and pursued claims against NewBridge Bank (“NewBridge”). NewBridge was Paul Burks’ (“Burks”) and RVG’s bank for a number of years through June 2012.

On March 12, 2015, the Receiver and NewBridge entered into a one-year Tolling Agreement (to toll statutes of limitation and repose) in order to allow time for pre-suit discussions and discovery pursuant to the Receiver’s subpoena power under the August 17, 2012 Agreed Order. NewBridge initially provided documents to the Receiver in October 2012 that were designated “confidential” subject to the Court’s subsequently entered January 22, 2013 Protective Order (Doc. 119), such that public use is restricted pending removal of the “confidential” designation by agreement or by a motion. A subsequent document production occurred in July 2015.

After review of information produced by NewBridge, counsel for the Receiver drafted a complaint against NewBridge that was used as a basis for pre-suit settlement negotiations. The draft complaint refers to and quotes a number of email communications that NewBridge designated as “confidential” subject to the Protective Order. It is the Receiver’s understanding and intent that the draft complaint, which has not been filed with the Court, will remain subject to the Protective Order, will remain confidential and will not be publicly available after approval of the settlement, subject to any future order of the Court requiring disclosure. However, the Receiver intends that this motion and the Settlement Agreement attached will not be kept under seal if the Court approves the Settlement Agreement. Thus, this motion and the Settlement Agreement will be publicly available if the settlement is approved.

The Receiver will provide a copy of the draft complaint against NewBridge for *in camera* review at the Court's request.

NewBridge denies intentional or inadvertent wrongdoing, denies the allegations and inferences of the Receiver's draft complaint, and denies liability to the Receiver. To avoid litigation over these contested claims, on February 29, 2016, the Receiver and NewBridge entered into an agreement (the "Settlement Agreement"), subject to approval by the Court, to settle all claims that could have been brought by the Receiver against NewBridge for a payment to the Receivership in the amount of ten million dollars (\$10,000,000). A copy of the Settlement Agreement is attached as Exhibit 1.

Since this settlement occurred before a civil action was filed, a brief summary of the circumstances on which the Receiver's claims against NewBridge are based follows:

Burks and RVG were account holders at NewBridge for a number of years before the ZeekRewards scheme began in January 2011. Until May 2012, NewBridge was RVG's only bank and was Burks' personal bank.

NewBridge began investigating RVG's dramatic growth in transaction volume and deposits not later than August 2011, after RVG's account balance went from approximately \$1,000 in January 2011 to over \$1,000,000 in August 2011. By March 2012, RVG was NewBridge's largest depositor, depositing \$54 million in March 2012 alone. In April 2012, NewBridge conducted a focused investigation into whether Burks was using RVG to operate an illegal business. The Receiver contends that, by mid-April 2012, NewBridge executives knew, or should have known, that Burks was using RVG and its account(s) at NewBridge to conduct an illegal Ponzi and pyramid scheme.

On April 17, 2012, two NewBridge executives met with Burks and terminated NewBridge's relationship with RVG, telling Burks to find another bank for RVG. However, the Receiver also contends that, at the same time, with knowledge of the fraudulent nature of the ZeekRewards business, NewBridge entered into an agreement with Burks to continue to process RVG's incoming deposits and outgoing "commission" checks, the lifeblood of the ZeekRewards scheme, until May 15, 2012. At Burks' request, NewBridge later extended the agreement and continued to pay "commission" checks drawn on RVG's NewBridge account through June 2012. Additionally, NewBridge's executives agreed to keep NewBridge's decision to terminate its relationship with RVG confidential to facilitate a quiet move of RVG's accounts to another bank.

The primary claim asserted by the Receiver arose under the Uniform Fiduciary Act, N.C. Gen. Stat. § 32-9. In pertinent part the statute provides,

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. (Emphasis added)

In short, the Receiver alleged that, as of April 17, 2012, NewBridge officers and executives were aware that Burks was a fiduciary to RVG, that Burks breached fiduciary duties to RVG by conducting the illegal ZeekRewards scheme using RVG's account at NewBridge, and that payment of weekly "commission" checks was essential to continuance of the scheme. As such, all checks paid by NewBridge after April 17, 2012 were paid with knowledge of Burks' breach of fiduciary duty to RVG or, alternatively, were paid with knowledge of such facts that payment of the items was in bad faith.

After April 17, 2012, NewBridge paid approximately 26,000 "commission" checks drawn by Burks on RVG's NewBridge account payable to RVG "affiliates" for approximately \$31

million. NewBridge also was aware of and processed other transfers, including transfers to insiders and to an RVG account at another bank. The Receiver also asserted a number of common law claims arising from the circumstances described including negligence, facilitating fraud, aiding and abetting breach of fiduciary duty, and fraudulent transfer.

Following settlement discussions, the Parties entered into the Settlement Agreement. The Receiver believes this settlement, which will recover \$10,000,000 for the Receivership estate, is in the overall best interests of the victims of the Zeek scheme and in fulfillment of the Receiver's duties.

The standard for determining whether a proposed settlement should be approved is whether the settlement is "fair, reasonable and adequate." *In re Mid-Atl. Toyota Antitrust Litig.*, 605 F. Supp. 440, 442 (D. Md. 1984). An equitable receivership's primary purpose is the marshaling of the estate's assets for the benefit of all the aggrieved investors and other creditors of the receivership entities. *S.E.C. v. Parish*, No. 2:07-cv-00919-DCN, 2010 WL 8347143, at *6 (D.S.C. Feb. 10, 2010) (citing *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986)).

As in the administration of a bankruptcy, settlements are a normal part of the process of a receivership. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)); *ReGen Capital III, Inc. v. Official Committee of Unsecured Creditors (In re Trism, Inc.)*, 282 B.R. 662, 668 (B.A.P. 8th Cir. 2002). Indeed, settlement agreements are generally encouraged and favored by the courts, and "[in] the absence of mistake or fraud, a settlement agreement will not be lightly set aside." *Justine Realty Co. v. American Nat'l Can Co.*, 976 F.2d 385, 391 (8th Cir. 1992).

Here, the Court should find that the proposed settlement is fair and equitable and is in the best interests of the estate. *See Anderson*, 390 U.S. at 424 (1968). In determining whether a settlement is within the “range of reasonableness,” the Court may consider using what are known as the *Flight Transportation* or *Drexel* factors: (a) the probability of success in the litigation; (b) the likely difficulties, if any, to be encountered in collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors; and, when applicable, (e) whether the agreement promotes the integrity of the judicial system. *See Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929); *In re Flight Transp. Corp.*, 730 F.2d 1128, 1135 (8th Cir. 1984). These factors seek to balance the probable benefit and potential cost of pursuing a claim or defense against the costs of the proposed settlement. Finally, in making the determination of whether the proposed settlement is fair and equitable, the court may consider the opinion of the Receiver. *See In re Petters Company, Inc.*, 455 B.R. at 176-77; *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994). These factors support approval of the Settlement Agreement.

A. Likelihood of Success and Complexity of Litigation.

The claims nominally alleged in the Receiver’s draft complaint are: 1) Uniform Fiduciary Act for checks; 2) Uniform Fiduciary Act for wires and other transfers to insiders; 3) negligence; 4) facilitating fraud; 5) civil conspiracy; 6) aiding and abetting breach of fiduciary duty; 7) aiding and abetting conversion; 8) unfair trade practices; and 9) fraudulent transfer.

The Receiver believes that RVG’s legal claims to recover damages from NewBridge are strong and straightforward; yet, Zeek itself was an extraordinarily large and complex scheme which will unavoidably create complexity in the litigation to assert these claims. Proof of claims against NewBridge requires proof of the Zeek scheme. The claims in this action are based on facts

and circumstances occurring in NewBridge's relationship with Burks and RVG, including personal communications and thousands upon thousands of individual transactions. These claims, however, may have to be tried without the cooperation of Burks or other RVG insiders as witnesses. Alternatively, these claims may in part depend upon, and could be undermined by, the cooperation, or lack thereof, of indicted or convicted felons. As such, the Receiver believes that claims will have to be proved primarily, if not exclusively, through documents, email and adverse witness testimony from current and former NewBridge officers and employees. The standard for liability under the Receiver's Uniform Fiduciary Act claim is "actual knowledge" or "knowledge of facts sufficient to show bad faith payment of checks." *See* N.C. Gen. Stat. § 32-9. Though the Receiver believes the circumstantial case is strong, reliance upon documents and testimony of NewBridge witnesses may make proof of the "actual knowledge" or "bad faith" elements challenging. In sum, there are likely to be issues of fact that preclude summary judgment in favor of the Receiver and pursuit of the claims to final judgment will be complex and protracted.

In addition to the factual complexity of the Zeek scheme, some of the claims asserted by the Receiver against NewBridge are novel or are claims that have not been brought by a Receiver in a similar context. There are also conflicts of laws issues, complex attorney-client privilege issues and statutory privilege issues that may impact admissibility of important evidence if the case is brought and tried. In sum, there are a number of complex legal issues to be resolved that may be outcome determinative on one or more claims. Because the amount of potential damages is large, the Receiver believes it is likely that a judgment in favor of the Receiver would be appealed and the same complex issues would be subject to review in the Fourth Circuit, such that the ultimate outcome on several substantive and evidentiary issues may remain uncertain for years.

Some claims asserted by the Receiver are fairly characterized as unique applications, novel or requiring extension of current law. For example, the UFA, adopted in twenty-six states, has not been applied in the context of a Ponzi/Pyramid action in any reported case. The UFA does not expressly apply to wire transfers or any form of transfer other than checks. Aiding and abetting conversion is not a claim formally recognized by North Carolina courts to date. The North Carolina Unfair And Deceptive Trade Practices Act has been held not to apply to claims under a different section of the Uniform Fiduciary Act, though there is a reasonable argument it should apply to the claims asserted by the Receiver under N.C. Gen. Stat. § 32-9. The legal issues, though the Receiver believes most would be decided in the Receiver's favor, are numerous and add to complexity and uncertainty of potential litigation.

For some claims asserted, the Receiver anticipates affirmative defenses including the standard defenses of statute of limitations (notwithstanding the tolling agreement), contributory negligence, mitigation and defenses related to standing and causation.

Privilege related evidentiary issues arise from the fact that NewBridge used outside counsel to conduct portions of the investigation into RVG's legitimacy and may have relied on advice of counsel when the decision was made to terminate NewBridge's relationships with Burks and RVG. Additionally, certain NewBridge documents, records and communications may have immunity from production to the Receiver as Suspicious Activity Reports under the Bank Secrecy Act. Again, though these issues may be decided in the Receiver's favor, they add complexity to discovery and trial.

Proof of damages on the Uniform Fiduciary Act claim requires a relatively straight forward accounting of checks paid by NewBridge. Damages theories for other claims are potentially larger, but less certain legally and more complex factually. In short, there is a damages theory that would

posit that NewBridge's acts and omissions were a proximate cause of all losses suffered by RVG after April 17, 2012 (or some later date). The Receiver discounted heavily the viability of claims upon which a larger damages theory could be based and, therefore, used damages available on the UFA claim to negotiate the settlement with NewBridge. Even under the UFA theory of damages, the Receiver sees potential defenses, including mitigation, that may reduce the amount of UFA damages significantly below the approximate \$31 million face value of the claim.

So, while the Receiver believes there is a significant likelihood of success, the path to obtaining a judgment against NewBridge will not be quick or easy, damages though calculable are uncertain, litigation of the claims will be expensive and settlement of the claims without the expense and delay of litigation is worthwhile.

B. Difficulty of Collection.

NewBridge was a public company. After executing the Settlement Agreement on February 29, 2016, NewBridge was merged into Yadkin Bank, a larger public company. NewBridge had insurance coverage that is paying a portion of the settlement, and NewBridge or its successor and insurer are able to pay the settlement amount within 30 days of approval by the Court. NewBridge (or its successor) and its insurer would likely be able to pay a judgment in the Receiver's favor in excess of the settlement amount, perhaps up the full amount of damages available under the UFA claim or more. Whether NewBridge or its successor would in the future have the resources or insurance to pay a judgment in the maximum amount of a potential judgment is unknown to the Receiver.

NewBridge's ability, or inability, to pay is not a factor that favors settlement directly. However, the fact that a defendant can pay more than the settlement amount does not render a settlement unfair or not in the best interests of the estate. *See, McBean v. City of New York*, 233

F.R.D. 377, 388 (S.D.N.Y. 2006) (“There is no doubt that defendant... could withstand a judgment greater than the nearly three million dollars in damages it will pay to the class under the settlement. However, fairness does not require that the [defendant] empty its coffers before this Court will approve a settlement. Where there is a risk that an insolvent defendant could not withstand a greater judgment, this factor will strongly favor settlement. That is not the case here. However, the ability of defendants to pay more, on its own, does not render the settlement unfair, especially where the other Grinnell factors favor approval.”) The early and voluntary collection of settlement funds will benefit the victims by increasing the amount of money available for distribution.

C. This Settlement is in the Best Interests of Victims.

The Receiver and Receiver’s counsel believe that the most probable “high-end” judgment that could be obtained against NewBridge is approximately \$31,000,000. The settlement sum of \$10,000,000 represents approximately thirty two percent (32%) of the maximum likely judgment after trial and appeal. The Receiver views the settlement amount as a fair and reasonable sum when balanced against complexity, uncertainty, cost and delay of litigation. *See, In re A.H. Robins Co.*, 880 F.2d 709, 748 (4th Cir. Va. 1989). (“It is not, however, to be assumed that a settlement is ‘unfair or unreasonable because . . . the settlement ‘may only amount to a fraction of the potential recovery.’”); *Horton v. Merrill Lynch, Pierce, Fenner & Smith*, 855 F. Supp. 825, 833 (E.D.N.C. 1994) (“Thus, the mere fact that the proposed settlement may amount to only a fraction of plaintiffs’ loss, even if damages allowed recovery of such a loss, is not reason to deny approval.”)

The Receiver estimates that future costs, expert witness fees and attorneys’ fees associated with litigating claims against NewBridge to judgment and through appeal will be a minimum of several hundred thousand dollars, and potentially much greater depending on motion practice, issues for discovery and trial, and elapsed time to judgment. Litigation against NewBridge also

has the potential to delay payment to claimants and increase administrative costs to the estate while litigation is pending. The Receiver concludes that it is not in the best interests of the Receivership estate to forego the opportunity to collect \$10,000,000 now against the prospect of an uncertain greater sum several years from now after litigation is complete.

As discussed, the proposed Settlement Agreement will minimize the risks, costs, and delay of litigation with NewBridge and the costs and risks of collection in the future. The Receiver believes the settlement reached as part of the negotiation process is the best outcome for the Receivership, and that balanced against the necessary expenditure of additional funds to obtain a judgment and the risk associated with obtaining a judgment, the settlement amount of \$10,000,000 is a fair settlement for the estate and will provide increased recovery for the eventual distribution to the Zeek victims. Further, this settlement minimizes the burdens on the Court. In sum, this settlement provides an immediate and concrete benefit to the RVG estate in a fair and efficient manner.

Accordingly, the RVG Receiver respectfully requests the Court enter an order approving the Settlement Agreement attached as Exhibit 1, authorizing the Receiver to perform according to the terms of the Settlement Agreement, directing that this Motion and the Settlement Agreement are to be available publicly, and granting such further and other relief as the Court deems just and equitable.

Respectfully submitted this 2nd day of March, 2016.

By: /s/ Joseph W. Moss, Jr.

Joseph W. Moss, Jr.

N.C. Bar No. 20236

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Attorney for KENNETH D. BELL, in his capacity as
court-appointed Receiver for Rex Venture Group,
LLC d/b/a ZeekRewards.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic copies to counsel of record registered to receive electronic service.

Dated: March 2, 2016

/s/ Joseph W. Moss, Jr.

EXHIBIT 1

SETTLEMENT AGREEMENT

Filed Under Seal

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SECURITIES AND EXCHANGE) COMMISSION,)) Plaintiff,)) vs.)) REX VENTURE GROUP, LLC) d/b/a ZEEKREWARDS.COM, and) PAUL BURKS,)) Defendants,)	No. 3:12-CV-519
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SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into as of February ____, 2016, by and between KENNETH D. BELL, in his capacity as Receiver for Rex Venture Group, LLC d/b/a ZeekRewards.com (the "Receiver"), and NewBridge Bank, a North Carolina state chartered bank with its headquarters in Greensboro, North Carolina ("NewBridge") (collectively the "Parties"), who hereby freely and voluntarily enter into this Agreement:

RECITALS

WHEREAS, on August 17, 2012, the Securities and Exchange Commission filed an action to halt allegedly fraudulent activities of Rex Venture Group, LLC d/b/a ZeekRewards.com ("RVG");

WHEREAS, the Receiver was appointed by the United States District Court for the Western District of North Carolina for and over all the assets, rights, and all other interests of RVG and its subsidiaries and any businesses or business names under which RVG conducted business;

WHEREAS, NewBridge provided banking services to, and held accounts for, RVG and RVG's founder, Paul Burks ("Burks") during a portion of the time when the alleged fraudulent activities of RVG were undertaken;

WHEREAS, in the course of investigating RVG, the Receiver issued a subpoena to NewBridge and received documents from NewBridge;

WHEREAS, the Bank and the Receiver entered into a Tolling Agreement, dated March 12, 2015 and with an expiration date of March 12, 2016, to toll statutes of limitation and repose;

WHEREAS, the Receiver alleges that services provided to, and accounts held for, RVG by NewBridge allowed RVG to conduct its fraudulent acts past the time when NewBridge knew or should have known that RVG and its insiders were using RVG to perpetrate a fraud;

WHEREAS, NewBridge denies the allegations made by the Receiver and denies that it is liable for the claims asserted by the Receiver;

WHEREAS, the Parties, as a result of their discussions of settlement and compromise, desire now to fully and finally settle and resolve any and all claims the Receiver has, has had, or could ever assert against NewBridge on the terms set forth below; and

WHEREAS, the Parties acknowledge and agree (i) that this Agreement is subject to court approval pursuant to the Agreed Order entered in the case styled *Securities and Exchange Commission v. Rex Venture Group, LLC d/b/a ZeekRewards.com et al.*, No. 3:12cv519 (W.D.N.C.) (the "SEC Action"); (ii) that the Receiver will file a motion seeking court approval in the SEC Action; (iii) the Receiver will file this Agreement and the motion to approve this Agreement under seal in the SEC Action pending approval by the Court; (iv) NewBridge may disclose any or all terms of this Agreement in connection with disclosures to shareholders in connection with its pending merger with Yadkin Bank or in connection with other filings or public statements in its discretion, prior to consideration of the Receiver's motion by the Court; and (v) after approval, the Receiver's Motion to Approve Settlement Agreement and the Settlement Agreement itself will not remain under seal.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Receiver and NewBridge hereby agree as follows:

1. **Settlement Payment.** NewBridge shall pay to the Receiver in connection with this settlement the sum of Ten Million Dollars (\$10,000,000) (the "Settlement Payment"). NewBridge will contribute Five Million Dollars (\$5,000,000) to the Settlement Payment and NewBridge's insurer, Zurich American Insurance Company ("Zurich"), will contribute Five Million Dollars (\$5,000,000) to the Settlement Payment on behalf of NewBridge; provided, however, that NewBridge is obligated to make the Settlement Payment in full. NewBridge and Zurich shall make the Settlement Payment within thirty (30) days of the date when (i) the Receiver provides NewBridge with an IRS Form W-9 and (ii) the United States District Court for the Western District of North Carolina enters an order in the SEC Action approving this settlement. The Settlement Payment shall be made by wire transfers to the account specified by the Receiver or by check payable to the person/entity identified in the W-9 the Receiver will provide. If for any reason Zurich does not timely pay \$5,000,000 to the Receiver in accordance with this paragraph, NewBridge or its successor shall pay the additional \$5,000,000 to the Receiver within 10 days of notice of Zurich's failure to make payment.

2. **Receiver's Release of Claims.** Upon receipt of the Settlement Payment in full,

RVG, its subsidiaries, and any business or businesses under which RVG has done business, and all of their successors and assigns (including, without limitation, any receivers, examiners or trustees in bankruptcy or otherwise) hereby release, waive, acquit, and forever discharge NewBridge, NewBridge Bancorp and their respective successors (including Yadkin Bank and Yadkin Financial Corporation, collectively "Yadkin"), assigns, officers, directors, agents, employees, attorneys, insurer(s) (including, but not limited to, Zurich) and any other affiliated or related persons or entities (the "Releasees"), from any and all past or present claims, liabilities, rights of action, causes of action, obligations, promises, costs, interest, expenses, losses or demands of every kind or nature, known or unknown, matured or unmatured, whether at common law, statutory, equity or otherwise, suspected or not suspected to exist, that the Receiver or RVG and all other persons and entities claiming under, by or through the Receiver or RVG, had or claims to have had, or now has or claims to have, or hereafter may have or assert to have, arising from or related in any way to any Releasees' relationships with, or accounts for, Burks, RVG, its subsidiaries and any business or businesses under which RVG has done business, ZeekRewards or Zeekler or the claims or allegations asserted by the Receiver preceding this Agreement.

3. **NewBridge's Release.** Upon Receiver's receipt of the Settlement Payment, NewBridge hereby fully and forever compromises, settles, releases, acquits, and discharges RVG, the Receiver, McGuireWoods, LLP, Erwin, Bishop, Capitano & Moss, PA and their predecessors, successors, subsidiaries, assigns, affiliates, insurers and any and all present and former employees, attorneys, agents, officers, directors or persons, corporations, representatives and any other affiliated or related persons or entities (the "Receiver Releasees"), from any and all past or present claims, causes of action, suits, demands, losses, liabilities, costs or obligations of any nature whatsoever, whether based on tort, contract, or other theories of recovery, between NewBridge and the Receiver Releasees that arise out of or relate to the claims or allegations asserted by the Receiver preceding this Agreement, whether now known, unknown, asserted, unasserted, foreseen, unforeseen, contingent, actual, liquidated or unliquidated.

4. **Tolling of Statutes of Limitation and Repose.** NewBridge acknowledges and agrees that any and all applicable statutes of limitation and repose for all claims the Receiver has or may have against NewBridge shall be tolled as provided by the March 12, 2015 Tolling Agreement, extending from the execution of this Agreement beyond the March 12, 2015 Tolling Agreement expiration of March 12, 2016 through and until: (a) entry of an order by the Court approving this Agreement and receipt of the full Settlement Payment (\$10,000,000) by the Receiver; or, (b) if the Court denies approval of this Agreement, 120 days from entry of an order by the Court denying approval of this Agreement ((a) and/or (b) are the "Tolling Period").

5. **Motion to Approve.** The Receiver shall file a motion to approve this Settlement Agreement in the SEC Action within seven (7) days of execution of this Agreement by the Parties.

6. **Termination.** In the event the Court denies its approval of this Agreement, then this Agreement shall immediately terminate without further action or notice by or to the Parties. Notwithstanding the foregoing or any other provision of this Agreement, paragraph (4) of this Agreement providing the Tolling Period shall survive any such termination of this Agreement.

7. **Other Representations and Warranties.** The Parties represent and warrant to each other that: (a) they have the legal capacity and authority to enter into this Agreement on the

terms recited herein; (b) each has freely, voluntarily, and without duress or coercion of any kind whatsoever, entered into this Agreement under the advice of counsel or with the opportunity to seek the advice of counsel; and (c) this Agreement constitutes the voluntary, legal, valid, and binding obligation of said party. NewBridge hereby represents and warrants that: (a) prior to the execution of this Agreement, it was fully apprised of sufficient relative data, in order to intelligently exercise judgment in deciding whether or not to execute this instrument and in evaluating the contents of the same; (b) the decision to execute this Agreement was not predicated on or influenced by any declarations or representations made by the Receiver or the Receiver's counsel; (c) this Agreement in all respects has been voluntarily and knowingly executed by the Parties; and (d) NewBridge's Board of Directors and Yadkin have authorized this settlement on the terms stated and have authorized execution of this Agreement.

8. **Choice of Law.** This Agreement shall be governed by the laws of the State of North Carolina.

9. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements, and understandings, oral or written, with respect to the subject matter hereof. Each Party declares and represents that no promise, inducement or agreement not herein expressed has been made to the other Party and that this Agreement contains the entire terms of the settlement between the Parties, each party has had the opportunity to consult with an attorney of their choice and, further, each Party has read the terms of this Agreement, understands them, and accepts them of such Party's own free will.

10. **Binding Effect.** Effective as of the day and year first above written, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, legal representatives, successors, assigns, insurer(s) and all of those holding title under either of them and the pronouns used herein shall include, where appropriate, either gender and both singular and plural.

11. **Attorneys' Fees and Costs.** Each Party agrees to bear its respective attorneys' fees and costs in the matters described herein.

12. **Modification.** This Agreement may not be amended, altered, modified or otherwise changed except in a writing signed by all Parties.

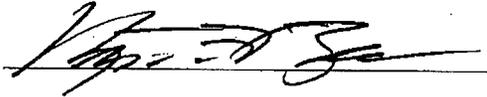
13. **No Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

14. **Execution in Counterparts.** This Agreement may be executed in several counterparts and through the exchange of facsimile or PDF signature papers and, as executed, shall constitute one Agreement.

15. **Captions and Rules of Construction.** The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of

this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a paragraph is to a paragraph of this Agreement. "Includes" and "including" are not limiting.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective this _____ day of February, 2016.



Kenneth D. Bell, RVG Receiver

NewBridge Bank

By: Robin S. Hager

Name: Robin S. Hager

Title: Chief Administrative
Officer

Attest/Witness:

William W. Budd Jr.

