



**WHEREAS**, on or about November 20, 2006 Ira S. Hirschbach filed a Class Action Complaint and Jury Demand under the caption *Hirschbach v. NVE Bank, et al.*, Docket No. BER-L-8695-06, Superior Court of New Jersey, Law Division, Bergen County, (the "Action"). A Second Amended Class Action Complaint and Jury Demand ("Complaint") was subsequently filed on or about September 17, 2007. The Complaint was filed on behalf of Ira S. Hirschbach (the "Plaintiff") and a class of those similarly situated and contains two primary allegations: (1) beginning in or about November 2000, Defendants did not inform Plaintiff and other similarly situated depositors of the interest rate at which their Certificates of Deposit ("CD"s) would be renewed and that certain terms of CDs offered by NVE Bank paid below market interest rates; and (2) that Defendants lulled Plaintiff into the reasonable belief that the renewed CDs would bear interest rates competitive with advertised interest rates of other "similar" CDs. Plaintiffs asserts that the conduct described above violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* and unjustly enriched Defendants.

**WHEREAS**, Defendants have vigorously denied, and continue to deny, all liability with respect to any and all of the facts or claims alleged in the Complaint, deny that they acted improperly in any way, and deny any liability of any kind to Plaintiff, any member of the Settlement Class as defined herein, or anyone else. Defendants nonetheless have concluded that it is in their best interests that the allegations contained in the Complaint be settled on the terms and conditions set forth in this Settlement Agreement.

**WHEREAS**, the Plaintiff, the Settlement Class, and Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations alleged in the above-captioned litigation.

**WHEREAS**, Class Counsel and the Plaintiff have conducted an investigation of the facts and analyzed the relevant legal issues, and believe that the claims asserted in the Complaint possess merit. Class Counsel and the Plaintiff have also examined the benefits to be obtained under the terms of the proposed settlement and have considered the costs, risks and delays associated with the continued prosecution of this complex and time-consuming litigation and the likely appeals of any favorable rulings. Class Counsel and Plaintiff believe that, in consideration of all the circumstances and factual and legal defenses raised during prolonged mediation and settlement negotiations with counsel for Defendants and a mutually selected, independent mediator, the proposed settlement embodied in this Settlement Agreement is fair, reasonable, adequate and in the best interests of all members of the Settlement Class.

**NOW, THEREFORE, IT IS HEREBY AGREED**, by and between the Parties, through their respective counsel, that the Action be settled and compromised as between Plaintiff and the Settlement Class on the one hand and Defendants on the other, upon approval of the Court after a hearing as provided for in this Settlement Agreement, on the following terms and conditions:

**I. DEFINITIONS**

In addition to the foregoing defined terms, the following terms shall have the meanings as set forth below:

A. **“Class Counsel”** means Ellen R. Werther, Esq. and Bruce J. Ressler, Esq., Ressler & Ressler, 48 Wall Street, New York, NY 10005.

B. **“Claim Form(s)”** means the “NVE Bank Class Action Settlement Claim Form and Instructions” to be used by Claimants to make a claim under this Settlement Agreement as attached hereto as Exhibit C.

C. **“Class Notice”** means the Court approved forms of notice including the “Notice of Pendency and Settlement of Class Action” (“Settlement Notice”) of the conditional

certification of the Settlement Class and Summary Notice of Proposed Class Settlement (“Summary Notice”), copies of which are attached hereto as Exhibit A and Exhibit B.

D. **“Defendants”** means NVE Bank, NVE Bancorp, MHC, Steven H. Baker, John F. Boyle, Robert S. Monteith, Robert Rey, Andrew F. Durkin, Charles A. Lota, and Steven C. Ruhle.

E. **“Effective Date”** shall be the date five (5) business days after the date on which the Final Judgment and Order of Dismissal with Prejudice, defined below, becomes final. As used in this paragraph, “final” means the expiration of the time for the filing or noticing of any appeal or motion for reargument or reconsideration from the Final Judgment and Order of Dismissal with Prejudice; the date of final affirmance of any appeal therefrom, including reargument of any such appeal; the date of expiration of the time for petitions for review, and, if review is granted, the date of final affirmance following review; or the date of final dismissal of any appeal or proceedings on review, whichever is latest.

F. **“Final Judgment and Order of Dismissal with Prejudice”** means a judgment substantially in the form attached hereto as Exhibit D which approves this Settlement Agreement; judges its terms to be fair, reasonable and adequate; directs consummation of its terms and retains jurisdiction in this Court to effectuate and interpret the same; certifies the Settlement Class; dismisses the Action on the merits, with prejudice and without costs, other than those provided for herein; and permanently bars and enjoins Plaintiff and Settlement Class Members from asserting, commencing, prosecuting or continuing any of the Released Claims against any of the Released Parties.

G. **“Defendants’ Counsel”** means Richard A. Beran, Esq., McCarter & English LLP, Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102.

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H. **“Initial Notice Date”** means the date upon which the direct mailing of Class Notice as required in the Order of Preliminary Settlement Approval is made.

I. **“Notice” or “Notices”** means, the manner in which the Settlement Notice is given as provided in the Order of Preliminary Settlement Approval.

J. **“Order of Preliminary Settlement Approval”** means the Order of Preliminary Settlement Approval substantially in the form attached hereto as Exhibit C which, inter alia, conditionally certifies the Settlement Class and orders the mailing and publication of the Settlement Notice.

K. **“Parties”** means the Plaintiff, the Defendants and their respective representatives.

L. **“Person”** means any natural person and any entity of any kind. Without limiting the generality of the foregoing, person includes any individual; any firm, corporation, company, business, partnership, organization or association; any public agency, department, bureau or board; and any other form of public, private or legal entity.

M. **“Preliminary Approval Hearing”** means the hearing scheduled by the Court to, inter alia, preliminarily approve this Settlement Agreement and conditionally certify a provisional Settlement Class.

N. **“Putative Class Member”** means any person and/or entity who is within the scope of the definition of the Settlement Class, including those who validly and timely request exclusion from the Settlement Class as provided herein.

O. **“Released Claims”** means any and all claims by or on behalf of Plaintiff and any Settlement Class Member against the Released Parties relating to or concerning any interest rates paid by NVE Bank on CDs held by members of the Settlement Class including those claims that are asserted in the Complaint, could have been asserted in the Complaint, or otherwise relate to

any of the claims asserted in the Complaint, as more specifically set forth in Paragraph VII below.

P. **“Released Parties”** means Defendants and each of their respective affiliates, predecessors, successors, parents, subsidiaries, assigns, counsel, agents, and all past, present or future officers, directors, managers, members, employees, alter egos, heirs executors, administrators, insurers and sureties, which have been or could have been name or identified as parties to the transactions, actions, conduct and events that are the subject of the Action and the Settlement.

Q. **“Settlement Class”** is defined and composed of those Persons who purchased or renewed a CD from NVE Bank between November 30, 2000 through and including January 30, 2009.

R. **“Settlement Class Member”** is any Person who purchased or renewed a CD from NVE Bank between November 30, 2000 through and including January 30, 2009 (“Class Period”). Excluded from the definition of Settlement Class Member are (a) employees, officers, directors, agents, and legal representatives of any Defendants or any affiliated entity of any Defendants; and (b) Persons who validly exclude themselves from the Settlement Class under Section 6 of this Settlement Agreement. In order to determine the settlement benefit each Settlement Class Member may be entitled to receive under the provisions of this Settlement Agreement, each Settlement Class Member must submit the following information in their Claim Form:

1. Claimant: Claimant’s name, address, telephone number and social security number;

2. Proof of Account holder status: For those Settlement Class Members who have not received mailed notice directly from NVE Bank, at least one of the following Proof of Purchase documents must be provided to NVE Bank: original or copy of CD Passbook or Affidavit of Lost CD Passbook in the form provided by NVE Bank.

S. “Settlement Hearing” means the hearing at which the Court will consider and finally decide whether to certify the Settlement Class, approve this Settlement Agreement and order final consummation of its terms, enter the Final Judgment and Order of Dismissal With Prejudice, and make such other final rulings, as are contemplated by this Settlement Agreement.

## II. CERTIFICATION OF PLAINTIFF CLASS

A. For settlement purposes only, the Parties agree and shall jointly request as part of the Order of Preliminary Settlement Approval, that the Court enter an order certifying the Settlement Class, and appointing Plaintiff as representative of the Settlement Class, and the following Plaintiff’s Counsel as Class Counsel for the Settlement Class: Ellen R. Werther, Esq. and Bruce J. Ressler, Esq., Ressler & Ressler, 48 Wall Street, New York, NY 10005.

B. If the Settlement Class is not certified as defined herein, this Settlement Agreement shall be terminated, the Order certifying the Settlement Class shall be vacated, and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party to either request or oppose class certification.

C. Defendants do not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action. In the event this Settlement Agreement is terminated pursuant to its terms, or the Effective Date does not occur for any reason, the order certifying the Settlement Class shall be vacated, and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party to either request or oppose class certification.

### **III. ENTRY OF SETTLEMENT NOTICE ORDER AND NOTICE TO SETTLEMENT CLASS**

A. The Parties will jointly apply to the Court for entry of the Order of Preliminary Settlement Approval on or before January 30, 2009:

- (i) finding that the Settlement Class meets all the prerequisites of Rule 4:32 of the Rules Governing the Courts of the State of New Jersey, including numerosity, commonality, predominance of common issues, and typicality, and that Plaintiff is an adequate representative of the Settlement Class, and certifying the Action as a class action for settlement purposes only and defining the Settlement Class as set forth above;
- (ii) approving the form of Settlement Notice (Exhibit A) and Summary Notice (Exhibit B) attached hereto and ordering that such notices be disseminated substantially in the manner set forth in the Order of Preliminary Settlement Approval;
- (iii) finding that the Settlement Agreement has been duly accepted by and is binding upon Plaintiff and Defendants;
- (iv) finding that Ira S. Hirschbach, a customer of NVE Bank who purchased or renewed a CD during the Class Period as set forth in paragraph I.R. above, is hereby appointed class representative of the Settlement Class and that the law firm of Ressler & Ressler (Ellen R. Werther, Esq. and Bruce J. Ressler, Esq.) is appointed Class Counsel for the Settlement Class;
- (v) approving the form of Final Judgment and Order of Dismissal with Prejudice Exhibit D;

- (vi) providing that Putative Class Members who do not, in connection with the Settlement Notice, file valid and timely requests for exclusion will be bound by the Final Judgment and Order of Dismissal with Prejudice;
- (vii) finding that the Class Notice to be given pursuant to the Order of Preliminary Settlement Approval constitutes the best notice practicable under the circumstances and constitutes valid, due and sufficient notice to all members of the Settlement Class, complying fully with the requirements of Rule 4:32-2(b) of the Rules Governing the Courts of the State of New Jersey, the Constitution of the United States, and any other applicable law;
- (viii) scheduling a hearing (the "Settlement Hearing") with the Court to consider and determine whether the proposed settlement of the Action as contained in this Settlement Agreement should be approved as fair, reasonable and adequate, and whether a judgment approving the settlement and dismissing the Action on the merits and with prejudice against Defendants should be entered;
- (ix) providing that the Settlement Hearing may, from time to time without further notice to the Settlement Class, be continued or adjourned by order of the Court; and
- (x) providing that any objections by any Settlement Class Member to the proposed settlement contained in this Settlement Agreement shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Settlement Hearing.

#### **IV. SETTLEMENT TERMS**

Members of the Settlement Class will be entitled to receive the following benefits for each NVE Bank CD purchased or renewed during the Class Period:

A. **Current CD Holders: Waiver of Early Withdrawal Fees.** Current holders of NVE Bank CDs will be entitled, within sixty (60) days following the Effective Date of the Final Judgment, (i) to terminate their CD accounts and withdraw their CD deposits without incurring the early withdrawal fees that would otherwise have been charged by NVE Bank as agreed to in the CD contracts; and (ii) also will be entitled, within sixty (60) days following the Effective Date of the Final Judgment, to the extent of the CD deposits withdrawn pursuant to the foregoing clause, to purchase any CD product offered during the Exercise Period by NVE Bank (including premium CD products) without satisfying, during the initial term of the CD only, any requirement of maintaining a checking account at NVE Bank or opening the CD account with new funds. During the sixty (60) day Exercise Period, NVE Bank agrees to continue to offer premium CD products in a manner consistent with current practices.

B. **Former CD Holders: Waiver of Certain CD Requirements.** Members of the Settlement Class who no longer hold a CD purchased from NVE Bank will be entitled, within sixty (60) days following the Effective Date of the Final Judgment, to purchase any CD product offered during the Exercise Period by NVE Bank (including premium CD products) without satisfying, during the initial term of the CD only, any requirement of maintaining a checking account at NVE Bank or opening the CD account with new funds. During this sixty (60) day Exercise Period, NVE Bank agrees to continue to offer premium CD products in a manner consistent with current practices.

C. **Availability of Rate Information:** From and after the Effective Date, NVE Bank shall, at all of its branch offices, display in plain view a copy of its interest rate sheet(s) listing current rate information for all of its CDs that are available to the general public and make readily available copies of its interest rate sheet(s) listing current rate information for all of its

CDs that are available to the general public, including the applicable interest rate and annual percentage yield (“APY”).

From the Effective Date, Class Members shall have sixty (60) days within which to exercise their rights hereunder. In no event shall Settlement Class Members be provided with more than sixty (60) days within which to exercise his or her rights hereunder. Moreover, the rights set forth in Section IV A and B above shall not apply to subsequent renewals of CDs purchased in connection with the enumerated settlement benefits.

#### **V. NOTICE AND ADMINISTRATION COSTS**

A. Defendants shall be responsible for providing notice to the Settlement Class and for causing such notice to be given in the manner set forth in the Order of Preliminary Settlement Approval, or as the Court otherwise directs.

B. Defendants shall be responsible for all reasonable costs associated with the administration of the Settlement, including the costs and expenses reasonably incurred in the administration of the Settlement, but in no event shall Defendants be responsible for any costs associated with communications solely between Class Counsel and Members of the Settlement Class.

#### **VI. THE FINAL JUDGMENT**

Prior to the Settlement Hearing, the Parties shall promptly submit to the Court a judgment substantially in the form of the Final Judgment and Order of Dismissal with Prejudice Exhibit D:

A. approving this Settlement Agreement; judging its terms to be fair, reasonable and adequate; directing consummation of its terms; and retaining jurisdiction to effectuate and interpret the same;

B. dismissing the Action on the merits, with prejudice and without costs, other than those costs provided for herein; and

C. permanently barring and enjoining Plaintiff and all Settlement Class Members from asserting, commencing, prosecuting or continuing any of the Released Claims against any of the Released Parties.

## VII. RELEASES

Upon the Effective Date, each Settlement Class Member shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties.

As fully set forth in Paragraph 7 of the Final Judgment, the Releasers, on behalf of themselves and their respective affiliates, predecessors, successors, parents, subsidiaries, assigns, counsel, agents, and all past, present or future officers, directors, managers, members, employees, alter egos, heirs, executors, administrators, insurers and sureties, which have been or could have been named or identified as parties to the transactions, actions, conduct and/or events that are the subject of the Action and/or the Settlement (collectively, "Releasers") shall be deemed to and do absolutely and forever covenant not to sue, and release and discharge Defendants NVE Bank, NVE Bancorp, MHC, Steven H. Baker, John F. Boyle, Robert S. Monteith, Robert Rey, Andrew F. Durkin, Charles A. Lota, and Steven C. Ruhle and each of their respective affiliates, predecessors, successors, parents, subsidiaries, assigns, counsel, agents, and all past, present or future officers, directors, managers, members, employees, alter egos, heirs, executors, administrators, insurers and sureties, which have been or could have been named or identified as parties to the transactions, actions, conduct and/or events that are the subject of the Action and/or the Settlement (collectively, the "Released Parties") with respect to any and all claims, demands, damages, debts, liabilities, accounts, costs, attorneys' fees, expenses, liens, actions, causes of action, suits, and losses of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected, which they now have, own or hold,

or at any time before ever had, owned or held, or could, shall or may hereafter have, own or hold, based on or arising out of the allegations in the Action, including but not limited to claims based on any common law, statutory law, contract, agreement, or consumer protection statute. However, this release does not extend to any obligations, rights or remedies which any party or Settlement Class Member has under the Settlement Agreement.

This release shall be effective as a full and final accord and satisfaction and release of each and every Released Claim. The Plaintiff on behalf of himself and as Class Representative, hereby expressly waives and relinquishes every right or benefit, to the full extent that he may lawfully waive such right or benefit, with regard to the claims raised in the Action or any claim that could have been raised in the Action. In connection with such waiver and relinquishment, Plaintiff, on behalf of himself and the Releasers, acknowledges that he is aware that he or Releasers may later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention hereby fully, finally and forever, to settle and release all Released Claims, known or unknown, suspected or unsuspected, which now exist, may exist or previously existed. In furtherance of such intention, the releases given here shall be and shall remain in effect as a full and complete release, notwithstanding the discovery or existence of any such additional or different facts. This complete release is fully and fairly bargained for with full assistance of counsel for the parties and the Settlement Class.

Upon the Effective Date, the Defendants, and each of the Released Parties, shall be deemed to have, and by operation of the Final Judgment shall have, fully finally, and forever, released, relinquished and discharged Plaintiff, each Settlement Class Member, and Class Counsel from all claims arising out of the institution and conduct of this Action. However, this

release does not extend to any obligations, rights or remedies which the Defendants or any of the Released Parties has under the Settlement Agreement.

Upon the Effective Date, each Settlement Class Member shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged Plaintiff and Class Counsel from all claims arising out of the defense and conduct of this Action. However, this release does not extend to any obligations, rights or remedies which the Settlement Class Members have under the Settlement Agreement.

#### **VIII. ATTORNEYS' FEES AND DISBURSEMENT OF EXPENSES**

A. Defendants agree to pay, subject to final Court approval of this Settlement Agreement, and in addition to the Settlement benefits described in Section IV above, Plaintiff's reasonable attorneys' fees in an amount to be approved by the Court not to exceed \$850,000 and for expenses in an amount to be approved by the Court not to exceed \$100,000. To date, Plaintiff's Counsel have not received any payment for their services in conducting the litigation. The agreement to pay such fees and expenses was not negotiated until after the substantive settlement relief to the Settlement Class was mediated, negotiated, and established.

B. Defendants recognize that this Settlement is the result of the efforts of Class Counsel on behalf of the settling Plaintiff and Settlement Class and Defendants will not oppose any application by Plaintiff's and Class Counsel for Court approval of fees not to exceed \$850,000 and expenses not to exceed \$100,000.

C. Defendants shall not be obligated to pay any attorneys' fees that exceed the aggregate amount of \$850,000 nor any expenses that exceed the aggregate amount of \$100,000 nor shall Defendants be obligated to pay any interest on any attorneys' fees and expenses. Within thirty (30) days after the Effective Date, Defendants shall pay the full amount of

attorneys' fees and expenses as may be approved by the Court, not to exceed \$850,000 in attorneys' fees and \$100,000 in expenses.

**IX. NOTICE TO THE CLASS**

Upon entry by the Court of the Order of Preliminary Settlement Approval, no later than the Initial Notice Date, Defendants shall, at their cost, provide the Settlement Notice (in the form approved by the Court) by regular first-class mail to any Putative Class Members who can reasonably be identified from NVE Bank's electronic customer databases. Defendants shall also cause to be published the Summary Notice (in the form approved by the Court) in the Bergen Record on or before the Initial Notice Date. Defendants agree to pay for all costs and expenses of Notice. The Notice to the Settlement Class shall be subject to Court approval. Except for the Class Notice and information in this Settlement Agreement, Defendants are not financially or otherwise responsible for any information or communications provided by Class Counsel.

**X. OPT OUT RIGHTS AND OBJECTORS**

Settlement Class Members have the right to exclude themselves ("Opt Out") from or object to this Settlement Agreement by submitting a timely completed Opt Out Notice or Objection, as described in the Settlement Notice, to NVE Bank. Class Members who so timely elect to opt out or object shall be excluded from this Agreement and from the Settlement Class. Such opt-out rights must be exercised by the "Opt-Out Deadline" and objections must be filed by the "Objection Deadline" as set by the Court in the Order of Preliminary Settlement Approval. The Opt-Out Deadline and Objection Deadline shall be the same date. Within seven (7) business days after the Opt-Out Deadline and Objection Deadline, NVE Bank shall provide Class Counsel with a complete list of all timely and valid opt-outs and objectors, together with copies of all such completed Opt-Out Notice and objections.

Any Settlement Class Member who does not submit a properly completed Opt-Out Notice by the Opt-Out Deadline or objection by the Objection Deadline shall be considered part of the Settlement Class and shall be bound by the terms of this Settlement Agreement and the Final Judgment and Order of Dismissal with Prejudice. Any Settlement Class Member who timely submits an Opt-Out Notice shall have until the Settlement Hearing to file a written revocation of the Opt-Out Notice.

If greater than 25% of the noticed Settlement Class Members choose to opt out of the proposed final settlement in accordance and compliance with the provisions of Section X, Defendants shall have the right to rescind this Settlement Agreement and render to it null and void.

#### **XI. STAY**

Unless this Settlement Agreement is terminated pursuant to its provisions, all discovery, motions, pleadings, and other activity in the Class Action affecting Defendants, Ira S. Hirschbach and/or any Settlement Class Member shall be stayed except to the extent necessary to effectuate this Settlement.

#### **XII. CONTINUING JURISDICTION AND EXCLUSIVE VENUE**

A. Defendants and each Settlement Class Member hereby irrevocably submit to the exclusive jurisdiction and venue of the Superior Court of New Jersey, Law Division, Bergen County for any suit, action, proceeding, case, controversy, or dispute relating to this Settlement Agreement and Exhibits hereto, negotiation and performance or breach of same. All Settlement Class Members and Defendants are barred and enjoined from commencing or continuing any suit, action, proceeding, case, controversy, or dispute relating to this Settlement Agreement and Exhibits hereto and negotiation, performance or breach of same, in any state or federal court or other body other than the Superior Court of New Jersey, Law Division, Bergen County.

B. It is expressly agreed and stipulated that the Superior Court of New Jersey, Law Division, Bergen County, shall have exclusive jurisdiction and authority to consider, rule upon, and issue a final order with respect to the subject matter of any of the following actions, suits, or proceedings whether judicial, administrative or otherwise, which may be instituted by any Person, individually or derivatively, with respect to: (i) the validity or enforceability of this Settlement Agreement; (ii) the authority of all Parties to enter into or perform this Settlement Agreement in accordance with its terms; (iii) the remedies afforded by this Settlement Agreement, attorneys' fees, costs, and expenses provided for in this Settlement Agreement; or (iv) any other foreseen or unforeseen case or controversy in the United States related to or impacted by this Settlement Agreement. This reservation of jurisdiction does not limit any other reservation of jurisdiction in this Settlement Agreement or do any other such reservations limit the reservation in this subsection.

C. The Parties agree to move the Court to include the substance of the foregoing provisions in an order that certifies a conditional class and sets this Settlement Agreement for final hearing and in the Final Judgment and Order of Dismissal with Prejudice. In the event of a case, controversy, or dispute arising out of the negotiation of, approval of, performance of, or breach of this Settlement Agreement, the Court shall award attorneys' fees and costs to the prevailing party. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties hereto irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise; any claim or objection that they are not subject to the jurisdiction of such court, or that such Court is, in any way, an improper venue or an inconvenient forum.

### **XIII. NO PRESUMPTION AGAINST DRAFTER**

None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter, hereof. This Settlement Agreement was drafted with substantial input by all Parties, and no reliance was placed on any representations other than those contained herein.

### **XIV. GOVERNING LAW**

This Settlement Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of New Jersey except for any conflict of law provisions in said laws of the State of New Jersey that may otherwise require the application of the laws of a jurisdiction other than that of the State of New Jersey to the performance, validity, construction or enforcement of this Settlement Agreement.

### **XV. SUCCESSORS AND ASSIGNS**

This Settlement Agreement shall be binding upon and inure to the benefit of, the heirs, administrators, executors, successors, and assigns of the Parties hereto, except that the claims preclusive effect of Final Judgment on this Settlement Agreement and the release herein provided only inures to the heirs, administrators, executors, successors, and assigns to the extent of the successor liability assumed from the Released Parties with respect to claims within the scope of this Agreement that are released and not to any other independent liability that the successor or assign may have. Without limiting the generality of the foregoing, each and every covenant and agreement herein made by Class Counsel and the Plaintiff on behalf of himself and on behalf of the Settlement Class, shall be binding upon all Settlement Class Members upon the Effective Date.

## **XVI. OTHER PROVISIONS OF THE SETTLEMENT**

A. Except as provided herein, Defendants and other Released Parties shall bear no other expenses, costs, damages or fees alleged or incurred by Plaintiff or any other Settlement Class Member, or by any of their attorneys, experts, advisors, agents, or representatives.

B. In the event that this Settlement Agreement is not approved by the Court in substantially its present form, or the Settlement Class is not certified, or if such approval is modified in any way not permitted by this Settlement Agreement, or set aside on appeal, or the settlement does not become final for any other reason, the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the parties and, to the extent permitted by law, shall not be used in the Action or in any other proceeding for any purpose and any final judgment entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, nunc pro tunc, subject to the provisions of Section II. C. above.

C. The Parties agree to consummate this Settlement Agreement upon the terms herein and agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. The timing and content of any press release or other communication to the public at large, if any, concerning this Action or its settlement, shall be only as mutually agreed to by the parties.

D. The Parties agree that to the fullest extent permitted by law, neither this Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim, or of any wrongdoing or liability of Defendants and the Released Parties; (ii) is or may be deemed to be or

may be used as an admission of, or evidence of, any fault or omission of Defendants and the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal, other than in such proceedings as may be necessary to consummate or enforce the Settlement Agreement, the Settlement or Final Judgment and Order of Dismissal with Prejudice, except that Defendants and the Released Parties may file the Settlement Agreement and/or the Final Judgment and Order of Dismissal with Prejudice in any action that may be brought by or against them in order to support a claim, defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar claim, defense or counterclaim.

E. All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

F. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Settlement Agreement on behalf of their respective clients.

G. This Settlement Agreement contains the entire agreement between the Parties hereto, and supersedes any prior agreements or understandings between them. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon, and shall inure to the benefit of, each of the Parties hereto, their heirs, administrators, executors, agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties hereof, including any Settlement Class Member.

H. Upon the Effective Date, each of the Released Parties shall be deemed to have released and discharged all of the Settlement Class Members and all counsel in the Action from any claims arising out of, relating to, or in connection with the institution, prosecution, assertion, or resolution of the Action or the Released Claims, except to the extent provided for in this Settlement Agreement.

I. This Settlement Agreement may be modified only by a written instrument signed by or on behalf of all Parties hereto or their successors-in-interest.

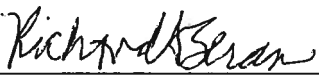
J. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties to this Settlement Agreement shall exchange among themselves original signed counterparts and a complete set of original executed counterparts shall be filed with the Court.

K. The Superior Court of New Jersey, Law Division, Bergen County shall have exclusive and continuing jurisdiction over the implementation, interpretation and execution of this Settlement Agreement, with respect to all Parties hereto and all beneficiaries hereof, including all Settlement Class Members. Any and all requests or petitions regarding the enforcement, construction, or interpretation of the Settlement Agreement, any orders or the Final Judgment and Order of Dismissal entered by the Court, or the conduct of the policies and procedures described herein must be made, if at all, by motion to the Court in the Action.

**EXECUTED AND DELIVERED** on or about January 30, 2009, but to be “made effective as of the date on which the Court preliminarily approves the Settlement Agreement and conditionally certifies a provisional Settlement Class.

By: 

Bruce J. Ressler, Esq.  
Ellen R. Werther, Esq.  
**RESSLER & RESSLER**  
48 Wall Street  
New York, New York 10005  
(212)  
*Counsel for Plaintiff Ira S. Hirshbach*

By: 

Richard A. Beran, Esq.  
**MCCARTER & ENGLISH, LLP**  
Four Gateway Center  
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Newark, New Jersey 07102  
*Counsel for Defendants NVE Bank,  
NVE Bancorp, MHC, Steven H. Baker,  
John F. Boyle, Robert S. Monteith,  
Robert Rey, Andrew F. Durkin,  
Charles A. Lota, and Steven C. Ruhle*