

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 8th day of July, 2013, by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver of Community Bank of Lemont (“FDIC-R”), on the one hand, and William Brower, Quintin Harmon, Michael Kelly, James Kopacz, Vytenis Lictuvninkas, Richard Meade, Matthew Sitkowski, and Bradley Stamper (collectively, the “Settling Parties” and individually, a “Settling Party”), on the other hand. The FDIC-R and the Settling Parties may be referred to individually herein as a “Party,” and collectively as the “Parties.”

RECITALS

WHEREAS:

1. Prior to October 30, 2009, Community Bank of Lemont (“CBOL” or the “Bank”) was a state nonmember depository institution organized and existing under the laws of the State of Illinois, and its principal place of business was located at 1229 State Street, Lemont, Illinois;
2. On October 30, 2009, CBOL was closed by the Illinois Department of Financial and Professional Regulation, and pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed Receiver. In accordance with 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC-R succeeded to all of the Bank’s rights, titles, powers, and privileges, including those with respect to its assets.
3. Among the assets to which the FDIC-R succeeded were any and all of CBOL’s claims, demands, and causes of actions against its former directors and/or officers arising from the performance, non-performance, and manner of performance of their respective functions, duties, and acts as directors and/or officers of the Bank;

4. By letter dated February 12, 2010, the FDIC-R asserted claims against the Settling Parties and several other former CBOL directors and/or officers (collectively, the "Other CBOL D&Os"). In 2012, the FDIC-R sent additional letters to the Settling Parties, but not to the Other CBOL D&Os. The Settling Parties have denied liability for the claims asserted in the letters issued by the FDIC-R (the "FDIC-R Claims") and nothing herein shall constitute an admission or evidence of liability by any of them.

5. The Parties entered into a Tolling Agreement, effective as of October 19, 2012 (the "Tolling Agreement"), which tolled the running of any applicable Statutes of Limitations (as defined therein) for the FDIC-R's claims to and including February 28, 2013. Thereafter, the Parties agreed to extend all such Statutes of Limitation to and including July 12, 2013 through six agreements to extend the Tolling Agreement (the "Tolling Agreement Extensions"), effective as of February 4, 2013, March 22, 2013, April 8, 2013, April 23, 2013, May 17, 2013 and June 24, 2013. The Tolling Agreement and Tolling Agreement Extensions (collectively, the "Tolling Agreements") are incorporated by reference herein.

6. The Settling Parties deny any wrongdoing and/or misconduct and the FDIC-R denies the validity of any defense. The Parties agree that this Agreement shall not constitute an admission of any fact or the validity of any claim or defense but have entered into this Agreement to avoid the uncertainty, trouble, distraction, and expense of litigation and the expenditure of further insurance policy proceeds on litigation.

7. The undersigned Parties, without any admission of liability, deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, distraction, and expense of 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. Settlement Funds. As an essential covenant and condition to this Agreement, the Settling Parties shall cause payment to be made to the FDIC-R in the sum of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) (the "Settlement Funds") in full and complete settlement of all claims that have been made or could be made by FDIC-R against the Settling Parties and the Other CBOL D&Os relating to their positions as directors and/or officers of CBOI, and the performance, non-performance, or manner of performance of their respective functions, duties, and actions as directors and/or officers of CBOI.

B. Payment of Settlement Funds. Within thirty calendar days of the date counsel for the Settling Parties receives a fully executed copy of this Agreement (that is, the Agreement has been executed by each and every Party) (the 30th calendar day is referred to hereinafter as the "Payment Date"), the Settlement Funds shall be delivered to the FDIC-R by a check payable to the Federal Deposit Insurance Corporation as Receiver of Community Bank of Lemont. If the Settlement Funds are not paid in full by the Payment Date, interest shall accrue on all unpaid amounts from the Payment Date until finally paid, at the rate of one-year U. S. Treasury bills as reported in the WALL STREET JOURNAL at the end of the last quarter immediately preceding the date of this Agreement.

C. Remedies for Non-Payment of Settlement Funds. In addition, and without waiving any other rights that the FDIC-R may have, in the event that the Settlement Funds are not received in full by the FDIC-R on or before the Payment Date, then the FDIC-R, in its sole

discretion, shall have the right to (i) enforce this Agreement against the Settling Parties, in which event the Settling Parties agree to jurisdiction in the United States District Court for the Northern District of Illinois; or (ii) extend this Agreement for any period of time until it receives the Settlement Funds in full (including all accrued interest); or (iii) declare this Agreement null and void and sue on any and all claims the FDIC-R may have as if this Agreement had never been signed, in which case the Settling Parties consent to jurisdiction in the United States District Court for the Northern District of Illinois and agree that any Statutes of Limitations (as defined in the Tolling Agreements) applicable to any such claims shall be tolled and extended from the date of this Agreement to and including fifteen (15) business days after this Agreement is declared null and void.

SECTION II: Releases

A. Releases by FDIC-R. Effective upon receipt in full of the Settlement Funds, and except as provided in Paragraph II.D below, the FDIC-R, for itself and its employees, officers, directors, administrators, representatives, agents, successors and assigns, hereby fully, finally, and generally releases and discharges each Settling Party, and all of their respective heirs, executors, administrators, representatives, agents, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, whether known or unknown, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, whether in law, equity, or otherwise, including but not limited to any violation of any state or federal statute, rule or regulation, or in equity, belonging to the FDIC-R, whether asserted or not, that arise from or relate to their respective positions as directors and/or officers of CBOL, or the performance, non-performance, or manner of performance of their respective functions, duties, and actions as directors and/or officers of CBOL.

B. Releases by Settling Parties of FDIC-R. Effective simultaneously with the release granted in Paragraph II.A above, the Settling Parties, each on behalf of himself individually and for each of his respective heirs, executors, administrators, agents, representatives, successors, and assigns, hereby fully, finally, and generally release and discharge the FDIC-R and its employees, officers, directors, administrators, representatives, agents, successors, and assigns from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, whether in law, equity, or otherwise, that arise from or relate to the Settling Parties' positions as directors and/or officers of CBOI., or the performance, non-performance, or manner of performance of their respective functions, duties, and actions as directors and/or officers of CBOL.

C. Mutual Releases by Settling Parties. Effective simultaneously with the releases granted in Paragraphs II.A and II.B above, the Settling Parties and all of their heirs, executors, administrators, agents, representatives, insurers, successors, and assigns hereby fully, finally, and generally release and discharge each other from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the performance, non-performance, or manner of performance of their respective functions, duties, and actions as directors and/or officers of CBOL.

D. Express Reservations from Releases by FDIC-R.

1. Notwithstanding any other provision, by this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

(a) Against the Settling Parties 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 any of them (collectively, the “Indebtedness Claims”) to the FDIC-R, the Bank, other financial institutions that are insured by the Federal Deposit Insurance Corporation, including, without limitation, any Indebtedness Claims acquired by the 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 Paragraph II A of this Agreement; and

(c) Against the Settling Parties or any other person or entity for liability relating to any breach of this Agreement or any breach of that certain Confidentiality and Non-Disclosure Agreement executed by the Parties hereto and their counsel and the Settling Parties’ insurer and its counsel and effective October 12, 2012.

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.

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 or the United States Attorney’s Office for the Northern District of Illinois or for 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 III: Waiver of Dividends

To the extent, if any, that any of the Settling Parties was a shareholder of the Bank, and by virtue thereof, is or may have been entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank, such Settling Parties hereby assign to the FDIC-R any and all right, title, and interest in and to any and all such dividends, payments, or other distributions.

SECTION IV: Representations and Covenants

A. No Assignment of Claims. FDIC-R represents that it has not transferred or assigned any claim or cause of action that it has held or may have ever held or owned against any of the Settling Parties.

B. No Admission of Liability. The Settling Parties expressly deny the claims asserted by the FDIC-R against the Settling Parties. Each Party acknowledges and agrees that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim or of the validity of any defense to such claim.

C. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties hereto, 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. Facsimile or e-mailed signatures shall be considered the same as originals.

D. Binding Effect. Each of the undersigned persons represents and warrants that he or she is a Party hereto, or is authorized to sign this Agreement on behalf of the respective Party, and that he or she has the capacity and the full power and authority to bind such Party to each and every provision of this Agreement. Each Party represents and warrants that he or it intends to carry out the obligations 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.

E. Choice of Law. This Agreement shall be interpreted, construed, and enforced according to applicable federal law or, in its absence, the laws of the State of Illinois without regard to the choice of law principles of federal law and/or Illinois law.

F. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between the FDIC-R and the Settling Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s). The parties agree that if any provision of the Settlement and Release Agreement or any application thereof is held to be invalid, the invalidity shall not affect other provisions or applications of this Settlement and Release Agreement, without prejudice to any Party's rights at law and/or in equity to establish otherwise.

G. Specific Representations, Warranties and Disclaimer. Each Settling Party expressly (i) acknowledges that in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information submitted by

him or by his counsel (the "Financial Disclosures"), and (ii) represents that the Financial Disclosures were materially accurate as of the time submitted to the FDIC-R. If, in his Financial Disclosures, any Settling Party failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, such Settling Party agrees to cooperate fully with the FDIC-R to transfer his interest in such asset to the FDIC-R and to sign any and all documents necessary to transfer his interest therein to the FDIC-R. In addition, if any Settling Party's Financial Disclosures did not disclose any material interest, legal, equitable, or beneficial, in any material asset, the FDIC-R, in its sole discretion, may exercise one or more or all of the following additional remedies:

- (1) The FDIC-R may declare the release granted to any such Settling Party as null and void, to which declaration such Settling Party shall consent;
- (2) The FDIC-R may retain the Settlement Funds; and/or
- (3) The FDIC-R may sue such Settling Party for damages, an injunction, and specific performance for the breach of this Agreement.

In the event the FDIC-R declares this Agreement to be null and void as to any such Settling Party pursuant to this Paragraph V.G, the FDIC-R may sue on any and all claims the FDIC-R may have against such Settling Party as if this Agreement had never been signed, in which case such Settling Party agrees to jurisdiction in the United States District Court for the Northern District of Illinois and to the tolling of any Statutes of Limitations (as defined in the Tolling Agreements) applicable to such claims from the date of this Agreement to and including fifteen (15) business days after this Agreement is declared null and void as to such Settling Party.

II. Reasonable Cooperation. 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 reasonably necessary to perform the terms of this Agreement.

I. Advice of Counsel. The Parties hereby acknowledge that they have read this Settlement and Release Agreement, that they have had the opportunity to consult with and obtain the advice of counsel prior to executing this Agreement, and to have this Agreement explained to them by counsel.

J. Notices. Any notices relating to or arising out of this Agreement shall be in writing sent by email and registered or certified mail, return receipt requested, shall be deemed delivered when received by the Party to whom it is sent, and shall be addressed as follows:

To the FDIC-R:

Timothy P. O'Connor
Meyer & O'Connor, LLC
Suite 3300
135 South LaSalle Street
Chicago, IL 60603

(b)(6)

[Redacted]

and

Thomas J. O'Brien
Counsel
Federal Deposit Insurance Corporation
Room VS-B7032
3501 Fairfax Drive
Arlington, VA 22226-3500

To William Brower, Quintin Harmon, James Kopacz, Vytenis Lietuvninkas,
Richard Meade, Matthew Sitkowski:

John M. George, Jr.
Katten & Temple LLP
542 South Dearborn Suite 14th Floor
Chicago, IL 60605

(b)(6) [Redacted]

To Michael Kelly:

Ed Fitzpatrick
Facgre, Baker & Daniels, LLP
311 S. Wacker Drive, Suite 4400
Chicago, IL 60606

(b)(6) [Redacted]

To Bradlee Stamper:

Aaron Stanton
Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash Avenue, 22nd Floor
Chicago, Illinois 60611-3607

(b)(6) [Redacted]

K. Recitals. The recitals are incorporated herein and made a part of this Agreement.

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 of Community Bank of Lemont, Lemont, Illinois

By: [Redacted] (b)(6)
Printed Name: THOMAS J. O'BRIEN
Title: Counsel, FDIC
Date: July 8, 2013

WILLIAM BROWER

Date: _____

(b)(6)

[Redacted]

To Michael Kelly:

Ed Fitzpatrick
Fuegre, Baker & Daniels, LLP
311 S. Wacker Drive, Suite 4400
Chicago, IL 60606

(b)(6)

[Redacted]

To Bradlee Stamper:

Aaron Stanton
Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash Avenue, 22nd Floor
Chicago, Illinois 60611-3607

(b)(6)

[Redacted]

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FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of Community Bank of Lemont, Lemont, Illinois

By: _____
Printed Name: _____
Title: _____
Date: _____

WILLIAM BROWER

[Redacted]

(b)(6)

Date: 7/2/2013

~~QUINTIN HARMON~~ *A*

[Redacted]

(b)(6)

Date: 7-1-13

MICHAEL KELLY

Date: _____

JAMES KOPACZ

Date: _____

VYTENIS LIETUVNINKAS

Date: _____

RICHARD MEADE

Date: _____

MATTHEW SITKOWSKI

Date: _____

BRADLEE STAMPER

Date: _____

QUINTIN HARMON

Date: _____

MICHAEL KELLY

(b)(6)

Date: *April 1, 2013*

JAMES KOPACZ

Date: _____

VYTENIS LIETUVNINKAS

Date: _____

RICHARD MEADE

Date: _____

MATTHEW SITKOWSKI

Date: _____

BRADLEE STAMPER

Date: _____

QUINTIN HARMON

Date: _____

MICHAEL KELLY

Date: _____

JAMES KOPACZ

_____ (b)(6)

Date: 07/02/2013

VYTENIS LIETUVNINKAS

Date: _____

RICHARD MEADE

Date: _____

MATTHEW SITKOWSKI

Date: _____

BRADLEE STAMPER

Date: _____

QUINTIN HARMON

Date: _____

MICHAEL KELLY

Date: _____

JAMES KOPACZ

Date: _____

NYTENIS LIETTI/VNINKAS

[Redacted]

(b)(6)

Date: 7/1/13

RICHARD MEADE

Date: _____

MATTHEW SITKOWSKI

Date: _____

BRADLEE STAMPER

Date: _____

QUINTIN HARMON

Date: _____

MICHAEL KELLY

Date: _____

JAMES KOPACZ

Date: _____

VYTENIS LIETUVNINKAS

Date: _____

RICHARD MEADE

(b)(6)

Date: 7/3/13

MATTHEW SITKOWSKI

Date: _____

BRADLEE STAMPER

Date: _____

QUINTIN HARMON

Date: _____

MICHAEL KELLY

Date: _____

JAMES KOPACZ

Date: _____

VYTENIS LIETUVNINKAS

Date: _____

RICHARD MEADE

Date: _____

MATTHEW SITKOWSKI

[Redacted]

(b)(6)

Date: *July 1, 2013*

BRADLEE STAMPER

Date: _____

QUINTIN HARMON

Date: _____

MICHAEL KELLY

Date: _____

JAMES KOPACZ

Date: _____

VYTENIS LIETUVNINKAS

Date: _____

RICHARD MEADE

Date: _____

MATTHEW SITKOWSKI

Date: _____

BRADLEE STAMPER

(b)(6)

Date: 7-2-2013