

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is effective as of January 26, 2015, by, between, and among the following undersigned parties: (a) Plaintiff Federal Deposit Insurance Corporation as Receiver for Community Security Bank (“FDIC-R”); (b) Arvin Jacobson, Jason Ashley, Jeffrey Jacobson, and Gary Meyer (collectively, the “Settling Defendants”); and (c) Federal Insurance Company (“Insurer”) (individually, the FDIC-R, the Settling Defendants and the Insurer may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, prior to July 23, 2010, Community Security Bank, New Prague, Minnesota (“Bank”) was a state non-member bank organized and existing under the laws of the State of Minnesota;

WHEREAS, on July 23, 2010, the Minnesota Department of Commerce closed the Bank and appointed the FDIC as receiver. In accordance with 18 U.S.C. § 1821(d), the FDIC succeeded to all rights, titles, powers and privileges of the Bank, including all of the Bank’s assets.

WHEREAS, among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against its former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

WHEREAS, the FDIC-R has asserted claims against the Settling Defendants, each of whom served at various times as a director and/or officer of the Bank. The Settling Defendants have denied and continue to deny liability for the claims. No litigation has been commenced;

WHEREAS, Insurer issued a director and officer liability policy numbered [redacted] for (b)(4) the period September 15, 2007 to September 15, 2010, with an extended reporting period through September 15, 2011 ("Policy"), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Defendants made claims for coverage under the Policy. Insurer has reserved its rights to deny coverage under the Policy for claims asserted by FDIC-R against the Settling Defendants.

WHEREAS, the undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty 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, on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement (the thirtieth calendar day shall be the "Payment Date"), the Insurer agrees to pay the FDIC-R the sum of Four Hundred Eighty-Four Thousand Five Hundred Dollars (U.S. \$484,500) ("the Settlement Payment") on behalf of the Settling Defendants.

B. The Insurer shall deliver the Settlement Payment to the FDIC-R by check payable to FDIC National Liquidation Account

(b)(4) Account Number: [redacted]

FIN 10264; Community Security Bank

C. If the FDIC-R does not receive the Settlement Payment in full on or before the Payment Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to

receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the Payment Date, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); and/or

2. Terminate the Agreement and institute an action on the FDIC-R's claims. The Settling Defendants and Insurer further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

3. Enforce this Agreement, in which event the Settling Defendants and Insurer agree to jurisdiction in the United States District Court for the District of Minnesota and the Insurer agrees to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section II.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Defendants, and each of them, and each of their respective heirs, executors, trustees, legatees, beneficiaries, administrators, representatives, successors, agents, attorneys, and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to or that ever did or may belong to the FDIC-R, by assignment or otherwise, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties, inactions and actions as employees, officers and/or directors of the Bank.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, attorneys, representatives, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Policy. As part of this release of the Insurer, the FDIC-R agrees that any interest it may have under the Policy is extinguished.

3. All other former officers, directors and employees of the Bank insured under the Policy, including but not limited to the individuals identified in the FDIC's demand letter dated September 2, 2011 (the "Other Insureds") and each of their respective heirs, executors, administrators, 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, belonging to the FDIC, that arise at any time from or relate to, the performance, nonperformance, or manner of performance of the Other Insured's respective functions, duties and actions as directors, officers, and/or employees of the Bank. This release shall be null and void as to any Other Insured that asserts any claim against the FDIC arising out of matters

pertaining to the Bank.

B. The Settling Defendants' Releases.

1. The Settling Defendants' Release of the FDIC-R.

Effective simultaneously with the release granted in Section II.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank.

2. The Settling Defendants' Release of Each Other.

Effective simultaneously with the release granted in Section II.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, legatees, beneficiaries, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge each other, and/or any person who may be considered an "insured" as defined by the Policy, from any and all claims, demands, contracts, obligations, actions and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Policy.

3. The Settling Defendants' Release of Insurer.

Effective simultaneously with the release granted in Section II.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees,

legatees, beneficiaries, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge Insurer, its parents, subsidiaries, affiliates, representatives, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the D&O Action. This release shall not extend to Insurer's obligations to pay the Settling Defendants' legal and consulting fees incurred prior to the date of this Agreement's execution. This release shall not operate as a release of any of the Settling Defendants' remaining rights under the Policy with respect to any other claims, and remaining coverage under the aggregate liability limits of the Policy.

C. The Insurer's Release.

1. Insurer's Release of FDIC-R.

Effective simultaneously with the releases granted in Section II.A. above, Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, 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 the Policy.

2. Insurer's Release of Settling Defendants.

Effective simultaneously with the releases granted in Section II.A. above, Insurer, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges the Settling Defendants, and each of them, and each of their employees, officers, directors, agents, representatives, attorneys, 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 the claims asserted by the FDIC-R.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action against the Settling Defendants 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 them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, 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 or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. §

6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution

pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

E. **Common Exceptions from the Parties' Respective Releases.**

With respect to the FDIC-R, the Settling Defendants and the Insurer, none of the foregoing parties release, and expressly preserve fully and to the same extent as if this Agreement had not been executed, any claims or causes of action against any person or entity not expressly released by a Party in this Agreement.

SECTION III: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

SECTION IV: Representations and Acknowledgements

A. **Authorized Signatories.** All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have 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, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he or 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.

C. Non-Assignment. Each Party represents and warrants that he, she or it has not assigned to any other person or entity any claims released by such Party pursuant to this Agreement.

SECTION V: Reasonable Cooperation

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

SECTION VI: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that this Agreement and all negotiations, discussions and proceedings in connection with this settlement shall not be deemed or constitute an admission by the Settling Defendants of fault, liability or wrongdoing as to any facts or claims and shall not be offered or received in evidence or otherwise used by any person in any other action or proceeding for any purpose, except in connection with a proceeding to enforce this Agreement. There has been no adjudication by any court pursuant to which the Settling Defendants have been determined to have caused a loss to the Bank. The Settling Defendants deny any fault, liability or wrongdoing as to any facts or claims alleged or asserted by FDIC-R. Payment by Insurer shall not be an admission of coverage.

B. Execution in Counterparts. This Agreement may be executed in counterparts by

one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement. Signature pages may be delivered by facsimile or e-mail transmission, which will constitute complete delivery without the necessity to deliver original signed signature pages.

C. 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 Minnesota, without regard to conflict of law rules.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R: Scott S. Payzant
Leonard, O'Brien, Spencer, Gale & Sayre LTD.
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402.

If to the Settling Defendants: Janel M. Dressen
Anthony Ostlund Baer & Louwagie P.A.
90 South Seventh Street, Suite 3600
Minneapolis, MN 55402

If to Insurer: Brownyn De Witt
Federal Insurance Company
82 Hopmeadow Street
Simsbury, CT 06070-7863

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed

by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. Agreement Not Confidential. Pursuant to 12 U.S.C. § 1821(s), this Agreement cannot be and shall not be deemed to be confidential, and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

H. Termination of Tolling Agreement. Effective upon the FDIC-R receipt of the Settlement Payment and the Settlement Check clearing, this Agreement shall immediately and simultaneously terminate the Tolling Agreement dated July 19, 2013, as amended, between the FDIC and Settling Defendants.

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.

[SIGNATURES FOLLOW ON PAGES 11-12]

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR COMMUNITY SECURITY BANK

(b)(6)

Date: February 5, 2015

BY:

TITLE: COUNSEL

PRINT NAME: ROBERT T. BARNARD

(b)(6)

Date: 1-26-15

Arvin Jacobson



Date: _____

Jason Ashley

Date: _____

Jeffrey Jacobson

Date: _____

Gary Meyer

Date: _____

FEDERAL INSURANCE COMPANY

TITLE: _____

PRINT NAME: _____

Arvin Jacobson

Date: _____

Jason Ashley

(b)(6) Date: 1/20/15



Jeffrey Jacobson

Date: _____

Gary Meyer

Date: _____

FEDERAL INSURANCE COMPANY

Date: _____

TITLE: _____

PRINT NAME: _____

Date: _____ Arvin Jacobson

Date: _____ Jason Ashley

(b)(6) Date: _____ Jeffrey Jacobson

Date: _____ Gary Meyer

Date: _____ FEDERAL INSURANCE COMPANY
TITLE: _____

PRINT NAME: _____

Date: _____

Arvin Jacobson

Date: _____

Jason Ashley

Date: _____

Jeffrey Jacobson

(b)(6)

Date: 1/26/2015

Gary Meyer



Date: _____

FEDERAL INSURANCE COMPANY

TITLE: _____

PRINT NAME: _____

Date: _____ Arvin Jacobson

Date: _____ Jason Ashley

Date: _____ Jeffrey Jacobson

Date: _____ Gary Meyer

(b)(6) Date: 12/6/15 FEDERAL INSURANCE COMPANY
TITLE:
PRINT NAME: Brownyn DeWitt