

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

Plaintiff Federal Deposit Insurance Corporation as Receiver for First State Bank (“FDIC-R”), and Defendants Albert Gasparro, Primanagement, Inc. (currently incorporated in Delaware and/or in Toronto, Canada) and Ultravest Capital Corp. (collectively the “Settling Defendants”) (individually, the FDIC-R and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to October 14, 2011, First State Bank (“Bank”) was a depository institution organized and existing under the laws of the State of New Jersey;

On October 11, 2014, the New Jersey Department of Banking and Insurance closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against any parties who caused harm the Bank;

On January 7, 2013, the FDIC-R filed an Amended Complaint for money damages against, among others, the Settling Defendants, relating to a series of financial transactions involving the Bank between September 2009 and May 2010. These claims for damages are now pending in the Superior Court of New Jersey, Law Division, Union County,

Docket No. UNN-L-3362-11 (“the Action”). The Settling Defendants have denied liability in the Action.

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, the Settling Defendants, jointly and severally, agree to pay the FDIC-R the sum of Four Hundred Thousand United States Dollars (\$400,000) (“the Settlement Payment”), in two installments:

- 1) \$200,000 within thirty (30) days of the signing of this agreement;
and
- 2) \$200,000 within sixty (60) days of the signing of this agreement.

B. The Settling Defendants shall deliver the Settlement Payments to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Defendants or by certified or cashier’s check drawn upon a depository institution acceptable to FDIC-R.

In the event an installment of the Settlement Payment is not delivered to the FDIC-R (or its counsel) on or before the date determined by subsection A above, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date payment becomes due until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the final installment date set forth in subsection A above, 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 date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event the Settling Defendants and the FDIC-R agree to jurisdiction in the Superior Court of New Jersey Law Division and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and re-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

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: Stipulation and Dismissal

Upon the execution of this Agreement by the settling parties, counsel for the FDIC-R and the Settling Defendants shall advise the Court that the FDIC-R has settled all claims against the Settling Defendants subject only to the payment of the settlement consideration recited hereinabove. Upon receipt of the second settlement payment from the Settling Defendants, plus any accrued interest, the FDIC-R shall file a Stipulation of Dismissal of Counts I and II of the Complaint against Gasparro and Primanagement, Inc with prejudice , executed by the attorneys for all parties appearing in the Action. Additionally, the FDIC-R shall file a Stipulation of Dismissal without prejudice of the breach of contract claims against Ultravest in Count III of the Amended Complaint. If all parties do not consent to the stipulations of dismissal, the FDIC-R and the Settling Defendants shall jointly file a motion asking the Court to dismiss all claims against the Settling Defendants as provided hereinabove under the New Jersey Rules of Court.

SECTION III: Releases

A. The FDIC-R's Releases of the Settling Defendants.

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

1. The Settling Defendants and their respective heirs, executors, trustees, administrators, 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, belonging to the FDIC-R against the Settling Defendants relating to the Bank that arise from or relate to the matters alleged in the Action.

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

Effective simultaneously with the release granted in Section III.A.1. 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, against the FDIC-R, that arise from or relate to the matters alleged in the Action.

C. 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:

a. 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

D. Exceptions from Releases by the Settling Defendants.

Notwithstanding any other provision of this Agreement, the Settling Defendants do not 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 the FDIC-R in this Agreement, including but not limited to (b)(6) and the law firm, Frieri Conroy.

SECTION IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that Settling Defendants are or were shareholders of the Bank 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 V: 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, she, 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 her counsel.

SECTION VI: Reasonable Cooperation

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to perform the terms of this Agreement.

B. The Settling Defendants, through their Toronto counsel, shall respond to reasonable requests for information or documents from the FDIC-R. However, this Agreement shall not require Settling Defendants to appear or offer testimony in any civil proceeding in the United States

SECTION VII: Other Matters

A. **No Admission of Liability.** The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

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.

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 New Jersey.

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:

John J. Murphy, Esquire
2600 One Commerce Square, Philadelphia Pa 19103
(215) 564-8019
Email:

(b)(6)

If to the Settling Defendants:

Mark A. Berman, Esquire
HARTMANN DOHERTY ROSA
BERMAN & BULBULIA, LLC
65 Route 4 East

River Edge, NJ 07661

(201) 441-9056

Email:

(b)(6)

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. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR FIRST STATE BANK

BY:

TITLE:

Howard B. Klein, Counsel

PRINT NAME:

Howard B. Klein

(b)(6)

ALBERT G. SPARRO

(b)(6)



PRIMANAGEMENT, INC.

(b)(6)

BY:



TITLE: CEO

PRINT NAME: ALBERT GASPARRO

ULTRAVEST CAPITAL CORP.

(b)(6)

BY:



TITLE: CEO

PRINT NAME: ALBERT GASPARRO