

## **SETTLEMENT AND RELEASE AGREEMENT**

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

The Federal Deposit Insurance Corporation as Receiver for American National Bank (“FDIC-R”); and H.R. Kopf (“Kopf”), David Neuman (“Neuman”), Thomas Ohradzansky (“Ohradzansky”), Alvin Siegal (“Siegal”), and George Szeretvai (“Szeretvai”) (collectively the “Settling Parties”). (Individually, the FDIC-R, and the Settling Parties may be referred to herein as “Party” and collectively as the “Parties”).

### **RECITALS**

WHEREAS:

Prior to March 19, 2010, American National Bank (“Bank”) was a depository institution organized and existing under the laws of the United States;

On March 19, 2010, the Office of the Comptroller of the Currency 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 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;

The FDIC-R has asserted claims relating to the Bank’s Mortgage Servicing Business against the Settling Parties, each of whom served at various times as a director and/or officer of the Bank. The Settling Parties deny liability for the claims.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty 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. As an essential covenant and condition to this Agreement on or before sixty (60) calendar days following March 17, 2014, , the Settling Parties, jointly and severally, agree to pay the FDIC-R the sum of Two Million Four Hundred Seventy-Seven Thousand, Five Hundred Dollars (\$2,477,500) (“the Settlement Payment”).

B. The Settling Parties shall deliver the Settlement Payment to the FDIC-R by direct wire transfer. The FDIC-R shall provide all necessary payment instructions no later than five days after full execution of the Agreement.

In the event that the Settlement Payment is not delivered to the FDIC-R by the date established in Section I.A, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date that the payment was due until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by Section I.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 Section I.A above, at a rate of 5% per annum through the date of payment.; or

2. Enforce this Agreement, in which event the Settling Parties agree to jurisdiction in United States District Court in the Northern District of Ohio 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 and institute an action on the FDIC-R’s claims, in which event the Settling Parties 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: Releases**

### A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Parties and their respective heirs, executors, trustees, 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-R, that arise from or relate to the performance, nonperformance, or manner of performance of the Settling Parties' respective functions, duties and actions as officers and/or directors of the Bank.

### B. The Settling Defendants' Release.

Effective simultaneously with the release granted in Section II.A. above, the Settling Parties, 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, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Parties' respective functions, duties and actions as officers and/or directors of the Bank.

### 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 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 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.

### **SECTION III: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Parties 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 Parties 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, 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.

C. Financial Disclosure Representation. Each Settling Party has submitted financial information to the FDIC-R in response to administrative subpoenas, including financial statements and/or tax returns and herein affirms that his/her financial information is true and accurate as of the date of this agreement. Each Settling Party expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Parties. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Party failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Party agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of the Settling Party's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged

against that Settling Party.

#### **SECTION V: 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 Parties agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. Producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;
2. Appearing as requested by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;
3. Testifying as requested by the FDIC-R, without the necessity of a subpoena, in any matter relevant to the Bank, as determined by the FDIC-R;
4. Signing truthful affidavits, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

#### **SECTION VI: 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. The Parties agree that delivery by email of pdf copies of signature pages shall be deemed a binding delivery.

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 Ohio.

D. Notices. Any notices required hereunder shall be sent by overnight mail service and by email, and shall be deemed delivered on the second (2nd) business day following the date of deposit with such overnight mail service, to the following:

If to the FDIC to: Mark A. Black  
FDIC  
3501 N. Fairfax Drive  
Room VS-B-7039  
Arlington, VA 22226-3500  
Phone: (703) 516-5147  
Fax: (703) 516-5067

(b)(6) \_\_\_\_\_ [Redacted]

With a copy to:

Randall D. Lehner  
Ulmer & Berne, LLP  
500 West Madison Street, Suite 3600  
Chicago, IL 60661  
Phone: (312) 658-6500  
Fax: (312) 658-6501

(b)(6) \_\_\_\_\_ [Redacted]

If to the Settling Parties to: Edward C. Fitzpatrick  
Faegre Baker Daniels  
311 S. Wacker Drive, Suite 4400  
Chicago, Illinois 60606-6622  
Phone: (312) 212-6540  
Fax: (312) 212-6501

(b)(6) \_\_\_\_\_ [Redacted]

Marc W. Freimuth  
Wachter Kurant, LLC  
30195 Chagrin Blvd., Suite 300  
Pepper Pike, Ohio 44124-5073  
Phone: (216) 292-3300, ext. 107  
Fax: (216) 292-3340

(b)(6) \_\_\_\_\_ [Redacted]

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 AMERICAN NATIONAL BANK**

(b)(6)

Date: 03/17/2014

BY:

[Redacted Signature Box]

TITLE: Counsel

PRINT NAME: Mark A. Black



H.R. KOPF

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

DAVID NEUMAN

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

THOMAS OHRADZANKSY

(b)(6)



Print Name: *THOMAS OHRADZANSKY*

Date: *3/17/14*

ALVIN SIEGAL

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

GEORGE SZERETVAI

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**H.R. KOPF**

**DAVID NEUMAN**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**THOMAS OHRADZANKSY**

**ALVIN SIEGAL**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

(b)(6)

*George Szereiva*  
**GEORGE SZERETVAI**  
\_\_\_\_\_

Print Name: **SZERETVAI GEORGE**  
Date: **3/17/14**

(b)(6)

H.R. KOPF

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Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

DAVID NEUMAN

\_\_\_\_\_

Print Name: DAVID NEUMAN

Date: 3/17/14

THOMAS OHRADZANKSY

\_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

ALVIN SIEGAL

\_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

GEORGE SZERETVAI

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Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

H.R. KOPF

\_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

DAVID NEUMAN

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Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

THOMAS OHRADZANKSY

\_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

ALVIN SIEGAL

[Redacted] (b)(6)

Print Name: *ALVIN SIEGAL*

Date: *3/17/14*

GEORGE SZERETVAI

\_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_