

SETTLEMENT AND RELEASE AGREEMENT

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

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Brickwell Community Bank (“FDIC-R”), and John M. Prill and Commercial Appraisal & Consulting Group, LLC d/b/a Commercial Appraisal & Consulting Group (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 September 11, 2009, Brickwell Community Bank, Woodbury, Minnesota (“Bank”) was a depository institution organized and existing under the laws of the United States;

On September 11, 2009, the Minnesota Department of Commerce 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 the Settling Defendants;

On May 18, 2102, the FDIC-R filed a complaint for money damages against the Settling Defendants, an appraiser (John M. Prill) and Commercial Appraisal & Consulting Group, LLC d/b/a Commercial Appraisal & Consulting Group. Those claims for damages are now pending in the United States District Court for the District of Minnesota in Case Number 12-cv-01218 (the “Appraiser Action”). The Settling Defendants have denied liability in the Appraiser 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, contemporaneously with the FDIC-R's execution and delivery of this Agreement to the Settling Defendants, the Settling Defendants and Insurer, jointly and severally, agree to pay the FDIC-R the sum of \$415,000.00 ("the Settlement Payment").

B. The Settling Defendants shall deliver the Settlement Payment to the FDIC-R by check and it shall be deposited by the FDIC-R into its bank account. If the check does not clear and become good funds within ten days of deposit into FDIC-R's bank account, this Agreement will be null and void.

SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, (2) receipt of the Settlement Payment, and (3) the deposit and clearing of the check, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all, in the form attached hereto as Exhibit A.

SECTION III: Releases

A. The FDIC-R's Releases.

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, 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, allegations and claims made by FDIC-R

against John M. Prill and Commercial Appraisal & Consulting Group and Commercial Appraisal & Consulting Group, LLC, arising out of any and all known or unknown injury or damage as a result of A Real Property Appraisal Report completed by John M. Prill for Brickwell Community

(b)(4),(b) Bank on the [REDACTED] Stillwater, MN
(6) 55082 with a report date of January 19, 2007, and which is the subject of the Appraiser Action, and for a Real Property Appraisal Report completed by John M. Prill for Brickwell Community

(b)(4),(b) Bank for [REDACTED] Stillwater, MN 55082
(6) with a report date of March 12, 2007, known or unknown consequences thereof and for which FDIC-R has for it and as receiver for Brickwell Community Bank made claim against Settling Defendants.

2. Insurer, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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, 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.

B. The Settling Defendants' Release.

Effective simultaneously with the release granted in Section III.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, that arise from or relate to the performance, nonperformance, or manner of performance of the Settling Defendants functions, duties and actions in connection with the appraisal reports referenced in Section III.A. herein. The release described in this Section III.B only applies to any and all known or unknown claims related to the appraisal reports referenced in Section III.A., but to nothing else.

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.

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.

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 conclude the Appraiser Action, and to otherwise perform the terms of this Agreement.

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.

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.

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: Robert J. DeHenzel, Counsel, FDIC, 3501 North Fairfax Drive, Room VS-B-7002, Arlington, VA 22226.

If to the Settling Defendants: Tim Waldeck, Waldeck Law Firm P.A., 1400 TCF Tower, 121 South 8th Street, Minneapolis, MN 55402.

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 BRICKWELL COMMUNITY BANK
BANK

(b)(6)

Date: 3/6/14

BY:

TITLE: Counsel

PRINT NAME: Robert J. DeHenzel, Jr.

JOHN M. PRILL

Date: March 5, 2014

BY:
JOHN M. PRILL

(b)(6)

TITLE: Appraiser

PRINT NAME: John M. Prill

COMMERCIAL APPRAISAL & CONSULTING
GROUP, LLC d/b/a COMMERCIAL APPRAISAL
& CONSULTING GROUP

(b)(6)

Date: 3/9/14

BY:

TITLE: Co-owner

PRINT NAME: Jeremiah Johnson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR BRICKWELL COMMUNITY BANK,)	CIVIL NO.: 0:12-cv-01218-RHK-JSM
)	
Plaintiff,)	
)	
v.)	
)	STIPULATION OF DISMISSAL
JOHN M. PRILL, and COMMERCIAL APPRAISAL & CONSULTING GROUP, LLC d/b/a COMMERCIAL APPRAISAL & CONSULTING GROUP,)	
)	
Defendants.)	

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), it is hereby stipulated and agreed by and between all of the parties hereto, through their respective counsel, that the above entitled action may be dismissed with prejudice, but without any costs or attorneys' fees to any of the parties hereto.

BOWMAN AND BROOKE LLP

Dated: March __, 2014

By: _____
Richard G. Morgan (MN Bar No. 0157053)

(b)(6) _____
Charles (C.J.) Schoenwetter (MN Bar No. 025115X)

(b)(6) _____
Michael R. Carey (MN Bar No. 0388271)

(b)(6) _____
150 South Fifth Street, Suite 3000
Minneapolis, Minnesota 55402
Telephone: (612) 339-8682
Fax: (612) 672-3200

**ATTORNEYS FOR PLAINTIFF FEDERAL
DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR BRICKWELL COMMUNITY
BANK**

WALDECK LAW FIRM P.A.

Dated: March ____, 2014

By: _____
Timothy W. Waldeck, Esq. (#1008396)

(b)(6)

Lindsey J. Woodrow, Esq. (#0389136)

(b)(6)

Suite 1400 TCF Tower
121 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: 612.375.1550

**ATTORNEYS FOR DEFENDANTS JOHN M.
PRILL, and COMMERCIAL APPRAISAL &
CONSULTING GROUP, LLC d/b/a
COMMERCIAL APPRAISAL & CONSULTING
GROUP**