

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this ^{14th} day of ~~July~~ ^{August 2012} 2012, by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation, as Receiver of Heritage Community Bank ("FDIC-R"), on the one hand, and John M. Saphir, Patrick G. Fanning, Stephen L. Faydash, William Hetler, Thomas Jelinek, Lori A. Moseley, Stephen Anthony, Jerry C. Brucce, James K. Champion, Andrew B. Nathan, and Mary C. Mills on the other hand (collectively, the "Settling Defendants"). The FDIC-R and the Settling Defendants may be referred to individually herein as "Party," and collectively as the "Parties."

RECITALS

WHEREAS:

Prior to February 27, 2009, Heritage Community Bank ("Heritage" or the "Bank") was a depository institution organized and existing under the laws of the State of Illinois, and its principal place of business was located at 18301 South Halsted Street, Glenwood, Illinois;

On February 27, 2009, Heritage 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), the FDIC-R, as Receiver succeeded to all of Heritage's rights, titles, powers, and privileges, including those with respect to its assets.

Among the assets to which the FDIC-R, as Receiver, succeeded were any and all of Heritage's claims, demands, and causes of actions against its former directors, officers, and employees 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:

The FDIC-R filed a complaint in the United States District Court for the Northern District of Illinois, entitled, *Federal Deposit Insurance Corporation, as Receiver of Heritage Community Bank v. John M. Saphir, et al.*, Case No. 10-cv-7009 (herein, the "Action"), asserting claims against the Settling Defendants, who had each served at various times as directors and/or officers of the Bank. The Settling Defendants deny liability for the FDIC-R's claims.

The undersigned parties, without any admission of liability, deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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, the Settling Defendants, shall cause their insurer to pay the FDIC-R the sum of Three Million, One Hundred Fifty Thousand Dollars (\$3,150,000) (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 Defendants in the Action.

B. Within thirty (30) business days of the date counsel for the Settling Defendants receives a fully executed copy of this Agreement (that is, the Agreement has been executed by each and every Party) (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 Heritage Community Bank. If the Settlement Funds are not paid 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. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds are not received by the FDIC-R on or before the Payment Date, then the FDIC-R, in its sole discretion, shall have the right to enforce this Agreement against the Settling Defendants, in which event the non-delivering Parties agree to jurisdiction in the United States District Court for the Northern District of Illinois, or to declare the Agreement null and void and sue on any and all claims as if the Agreement had never been signed.

SECTION II: Releases

A. Effective upon receipt in full of the Settlement Funds, and except as provided in Paragraph(s) II.D below, the FDIC-R, for itself and its successors and assigns, hereby fully, finally, and generally releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, insurers, 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 and Heritage, including to any such claims that arise from or relate to the Settling Defendants' positions as directors, officers, or employees of Heritage, or the performance, non-performance, or manner of performance of the Settling Defendants' respective functions, duties, and actions as officers and/or directors of Heritage.

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

administrators, agents, representatives, insurers, successors, and assigns, hereby fully, finally, and generally release and discharge the FDIC-R and its employees, officers, directors, representatives, 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 Settling Defendants' positions as directors, officers, or employees of Heritage, or the Bank, or to the performance, non-performance, or manner of performance of the Settling Defendants' respective functions, duties, and actions as officers and/or directors of Heritage, or that arise from or relate to the Policy.

C. Effective simultaneously with the releases granted in Paragraphs II.A and II.B above, the Settling Defendants, and their respective heirs, executors, administrators, representatives, successors, and assigns hereby 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 officers and/or directors of Heritage. Excluded from the releases granted in this Paragraph II.C are all payments and funding rights and obligations provided for in that certain Fanning-Faydash Escrow Agreement among certain of the Settling Defendants.

D. 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 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 that are insured by the FDIC, including, without limitation, any claims acquired by the 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 in this Agreement.

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 FDIC 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 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: Dismissal of Action with Prejudice

After the Settlement Payment is made, the Parties will jointly file a Stipulation of Dismissal with Prejudice in the Action with all parties to bear their own costs.

SECTION IV: Representations

A. 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 Defendants.

B. The Settling Defendants expressly deny the claims asserted by the FDIC-R against the Settling Defendants. The undersigned parties each acknowledge and agree 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.

C. This Agreement may be executed in counterparts by one or more of the parties named herein, 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.

D. 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 she 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. This Agreement shall be interpreted, construed, and enforced according to applicable federal law or, in its absence, the laws of the State of Illinois.

F. This Agreement constitutes the entire agreement and understanding between the FDIC-R and the Settling Defendants 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 application thereof is held to be invalid, the invalidity shall not affect other provisions or applications of this Settlement and Release Agreement.

G. The Settling Defendants expressly acknowledge that in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information contained in the sworn FDIC Form 7600/01 (the "Sworn Form") submitted. If, in their Sworn Forms, the Settling Defendants have failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the Settling Defendants agree to cooperate fully with the FDIC-R to transfer their interest in the asset to the FDIC-R and to sign any and all documents necessary to transfer their interest in the asset to the FDIC-R. Moreover, if, in Sworn Forms, any of the Settling Defendants have failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the FDIC-R, in its sole discretion, may exercise one or more or all of the following remedies:

- (1) The FDIC-R may declare the releases granted to that Settling Defendant as null and void;
- (2) The FDIC-R may retain the Settlement Funds; and
- (3) The FDIC-R may sue that Settling Defendant for damages, an injunction, and specific performance for the breach of this Agreement.

H. 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. The Parties hereby acknowledge that they have read this Settlement and Release Agreement, that they have consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to them by their counsel.

J. 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
Heritage Community Bank, Glenwood,
Illinois**

By:

Name: [Redacted]

Title: General Counsel

Date: August 14, 2002

(b)(6)

JOHN M. SAPHIR

Date: _____

PATRICK G. FANNING

Date: _____

(3) The FDIC-R may sue that Settling Defendant for damages, an injunction, and specific performance for the breach of this Agreement.

H. 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.

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**FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver of
Heritage Community Bank, Glenwood,
Illinois**

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

JOHN M. SAPHIR

(b)(6)

(b)(6)

Date (b)(6)

July 25, 2012

PATRICK G. FANNING

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
Heritage Community Bank, Glenwood,
Illinois**

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

JOHN M. SAPHIR

Date: _____

PATRICK G. EANNING

(b)(6)

Date: 8/7/2012

STEPHEN L. FAYDASH

Date: _____

WILLIAM E. HETLER

Date: _____

THOMAS JELINEK

Date: _____

STEPHEN L. FAYDASH

(b)(6)

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Date: 31 JUL 2012

WILLIAM E. HETLER

Date: _____

THOMAS JELINEK

Date: _____

LORI A. MOSELEY

Date: _____

STEPHEN ANTHONY

Date: _____

JERRY C. BRUCER

Date: _____

JAMES K. CHAMPION

Date: _____

ANDREW B. NATHAN

Date: _____

STEPHEN L. FAYDASH

Date: _____

WILLIAM E. HETLER

(b)(6)

Date: 8/8/2012

THOMAS JELINEK

Date: _____

LORI A. MOSELEY

Date: _____

STEPHEN ANTHONY

Date: _____

JERRY C. BRUCER

Date: _____

JAMES K. CHAMPION

Date: _____

ANDREW B. NATHAN

Date: _____

STEPHEN L. FAYDASH

Date: _____

WILLIAM E. HETLER

Date: _____

THOMAS JELINEK

(b)(6)

Date: (b)(6) 8/7/12

LORI A. MOSELEY

Date: _____

STEPHEN ANTHONY

Date: _____

JERRY C. BRUCER

Date: _____

JAMES K. CHAMPION

Date: _____

ANDREW B. NATHAN

Date: _____

STEPHEN L. FAYDASH

Date: _____

WILLIAM E. HETLER

Date: _____

THOMAS JELINEK

Date: _____

LORE A. MOSELEY (b)(6)

(b)(6)

Date: 7/25/12 (b)(6)

STEPHEN ANTHONY

Date: _____

JERRY C. BRUCER

Date: _____

JAMES K. CHAMPION

Date: _____

ANDREW B. NATHAN

Date: _____

STEPHEN L. FAYDASH

Date: _____

WILLIAM E. HETLER

Date: _____

THOMAS JELINEK

Date: _____

LORI A. MOSELEY

Date: _____

STEPHEN ANTHONY

_____ (b)(6)

Date: 7-26-12 (b)(6)

JERRY C. BRUCER

Date: _____

JAMES K. CHAMPION

Date: _____

ANDREW B. NATHAN

Date: _____

STEPHEN L. FAYDASH

Date: _____

WILLIAM E. HETLER

Date: _____

THOMAS JELINEK

Date: _____

LORI A. MOSELEY

Date: _____

STEPHEN ANTHONY

Date: _____

TERRY C. BRICER

[Redacted]

(b)(6)

Date: _____

JAMES K. CHAMPION

Date: _____

ANDREW B. NATHAN

Date: _____

STEPHEN F. LAY DASH

Date: _____

WILLIAM L. HULLER

Date: _____

THOMAS J. LINSER

Date: _____

LORNA M. MOSELEY

Date: _____

STEPHEN S. NUHONY

Date: _____

JERRY C. BRUCER

Date: _____

JAMES K. CHAMPION

(b)(6) _____

Date: 10/21/2019

ANDREW B. NATHAN

Date: _____

STEPHEN L. FAYDASH

Date: _____

WILLIAM E. HETLER

Date: _____

THOMAS JELINEK

Date: _____

LORI A. MOSELEY

Date: _____

STEPHEN ANTHONY

Date: _____

JERRY C. BRUCER

Date: _____

JAMES K. CHAMPION

Date: _____

ANDREW B. NATHAN

(b)(6)

Date: 8-7-2012

MARY B. MILLS

[Redacted]

(b)(6)

Date: 8/10/17