

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 Inter Savings Bank, fsb d/b/a Inter Bank, fsb of Maple Grove, Minnesota (“FDIC-R”), and Jason M. Schmidt and Aspen Appraisals, LLC (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 April 27, 2012, Inter Savings Bank, fsb d/b/a Inter Bank, fsb of Maple Grove, Minnesota (“Bank”) was a depository institution organized and existing under the laws of the United States;

On April 27, 2012, 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 the Bank’s claims against Settling Defendants for the appraisal services Settling Defendants performed for a different entity;

On July 28, 2011, the Bank filed a complaint for money damages against the Settling Defendants. FDIC-R was substituted as the Receiver for InterBank. Those claims for damages are now pending in the Court for Hennepin County, State of Minnesota in *FDIC, as Receiver for Inter Savings Bank fsb d/b/a InterBank, fsb v. Jason M. Schmidt and Aspen Appraisals, LLC*, Court File No. 27-CV-11-15518 (“Appraiser Action”). The Settling Defendants have denied liability in the Appraiser Action, including but not limited to that Settling Defendants provided appraisal services to Bank.

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 and provides the Settling Defendants with a W-9, the Settling Defendants, jointly and severally, agree to pay the FDIC-R the sum of \$15,000 (“the Settlement Payment”).

B. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by 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 to:

1. Extend the period of time for the Settlement Payment; or
2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in Minnesota State District Court; or
3. Seek any other relief available to it in law or equity.

SECTION II: Stipulation and Dismissal

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

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 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, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as appraisers for the property located at

(b)(4), [redacted]
(b)(6)

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' respective functions, duties and actions as appraisers for the property located at

[redacted]

(b)(4),
(b)(6)

(b)(4), [redacted]
(b)(6)

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: 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 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

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 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 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:

____ John V. Church, Esq.
Federal Deposit Insurance Corporation.
3501 Fairfax Drive, Room VS-B-7056
Arlington, VA 22226-3500
Telephone No. 703-516-1394

(b)(6) [Redacted]

AND

Drake Metzger, Esq.
Metzger Law Firm, LLC
5775 Wayzata Blvd, Suite 700
St. Louis Park, MN 55416
Telephone No. 952-525-2299

(b)(6) [Redacted]

If to the Settling Defendants:

David J. McGee, Esq.
Thomsen & Nybeck, P.A.
3600 American Boulevard West, Suite 400
Bloomington, MN 55431
Telephone No. 952-835-7000

(b)(6) [Redacted]

AND

Jason Schmidt
Aspen Appraisals, LLC
800 Woodland Hills Boulevard
Victoria, MN 55386
Telephone No. 612-325-1647

(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 INTER SAVINGS BANK, FSB d/b/a
INTER BANK, FSB

(b)(6)

Date: 8/15/17

BY:

TITLE: Counsel

PRINT NAME: David Chuel

Date: _____

JASON M. SCHMIDT

Date: _____

ASPEN APPRAISALS, LLC

BY: _____

TITLE: _____

PRINT NAME: _____

[The remainder of this page intentionally left blank.]

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR INTER SAVINGS BANK, FSB d/b/a
INTER BANK, FSB

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

(b)(6)

Date: 11-6-14

[Redacted Signature]

JASON M. SCHMIDT

Date: 11-6-14

(b)(6)

ASPEN APPRAISALS, LLC

BY: [Redacted Signature]

TITLE: Owner / Appraiser

PRINT NAME: JASON SCHMIDT

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