

## 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 Community South Bank (“FDIC-R”), and Jonathan D. Graves, Executor of the Estate of Danny L. Graves (the “Settling Defendant” or “Executor”) (individually, the FDIC-R, the Settling Defendant may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

WHEREAS:

Prior to August 23, 2013, Community South Bank (“Bank”) was a depository institution organized and existing under the laws of Tennessee;

On August 23, 2013, the Tennessee Department of Financial Institutions 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;

On March 9, 2016, the FDIC-R in a demand letter (“Demand Letter”) asserted claims against Danny L. Graves (“D. Graves”), former Chairman of the Board of the Bank for gross negligence in connection with the approving of a number of loans, and other wrongful acts has caused substantial losses to the Bank ( the “Claims”). A copy of the Demand Letter is attached as Exhibit A;

Graves died on October 7, 2012, and Jonathan D. Graves (“J. Graves”) was appointed Executor for the Estate of Danny L. Graves on March 21, 2013;

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, the Settling Defendant agrees to pay the FDIC-R the sum of One Hundred Forty Six Thousand (\$146,000.00) ("the Settlement Payment") as follows:

1. The Settling Defendant shall deliver the to the FDIC-R by certified or cashier's check the sum of \$50,000 upon full execution of this Agreement;

2. The balance of \$96,000.00 of the Settlement Payment shall be paid in installments by certified or cashier's check as follows:

- a. On or before July 1, 2016, <sup>Sixteen</sup> ~~Fifteen~~ Thousand Dollars (\$16,000.00);
- b. On or before October 1, 2016, <sup>Sixteen</sup> ~~Fifteen~~ Thousand Dollars (\$16,000.00);
- c. On or before January 1, 2017, <sup>Sixteen</sup> ~~Fifteen~~ Thousand Dollars (\$16,000.00);
- d. On or before March 1, 2017, <sup>Sixteen</sup> ~~Fifteen~~ Thousand Dollars (\$16,000.00);
- e. On or before July 1, 2017, <sup>Sixteen</sup> ~~Fifteen~~ Thousand Dollars (\$16,000.00);
- f. On or before October 1, 2017, <sup>Sixteen</sup> ~~Fifteen~~ Thousand Dollars (\$16,000.00);

The payments in subsection A.1 and A. 2 above are collectively referred to as the "Installment Payments" and individually as an "Installment Payment." The check for each Installment Payment should be made payable to: **Federal Home Loan Bank of New York; ROUTING #:**

(b)(4) [redacted]; **FOR CREDIT TO: FDIC National Liquidation Account; ACCOUNT #:**

(b)(4) [redacted]; **OBI: FIN 10486 – Community South Bank, Parsons, TN; Contact: Doug Lang**

(b)(5) **703-516-1243; Professional Liability** [redacted] **DIF Fund.** The checks should be sent to [redacted]

(b)(6) [redacted] **Financial Manager, FDIC-Financial Processing Department, 1601 Bryan St., Rm: ENG-17116, Dallas, Texas 75201-3430.**



(b)(6)

(b)(6)

B. In the event that the Settlement Payment (including any Installment Payment) is not delivered to the FDIC-R (or its counsel) by the dates set forth in subsection A above, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the due date until the date of payment.

C. If the FDIC-R does not receive each of Installment Payment in full on or before the due dates 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 installment payments in full (including all accrued interest) to:

1. Extend the period of time for the Installment 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)(3); or

2. Enforce this Agreement, in which event the Settling Defendant agrees to jurisdiction in United States District Court in Tennessee 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. The Settling Defendant further agrees 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 Installment Payments or acceptance of a portion of an Installment 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 Defendant, as Executor and his 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 D. Graves' respective functions, duties and actions as an officer and/or director of the Bank including without limitation the Claims alleged in the Demand Letter.

### **B. The Settling Defendant's Release.**

Effective simultaneously with the release granted in Section II.A. above, the Settling Defendant, as Executor, and his 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 D. Graves' respective functions, duties and actions as officer and/or director of the Bank, including without limitation the Claims alleged in the Demand Letter.

### **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 Executor, J. Graves, D. Graves 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 D. Graves or Executor is or was a shareholder 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 Defendant hereby knowingly assigns 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. Settling Defendant has submitted affidavit of financial information to the FDIC-R dated April 6, 2016, and herein affirms that the financial information of the Estate of Danny L. Graves is true and accurate as of the date of this agreement. Settling Defendant 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 Defendant. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information.

#### **SECTION V: 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 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 Tennessee.

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: Douglas B. Lang, Counsel  
Professional Liability Unit  
Federal Deposit Insurance Corp. – Legal Division  
3501 Fairfax Drive, Room VS-B-7064  
Arlington, VA 22226-3500

If to the Settling Defendant: Carolyn W. Schott  
Sherrard Roe Voigt & Harbison, PLC  
150 3rd Avenue South, Suite 1100  
Nashville, TN 37201

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 Community South Bank

(b)(6) By:

Printed Name: DOUGLAS B. LANG

Attorney for the FDIC

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

(b)(6)

Jonathan D. Graves, Executor for the Estate of Danny L. Graves

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

**SHERRARD ROE VOIGHT & HARBISON, PLC**

By:  (b)(6)

Printed Name: Carolyn W. Schott

Attorney for the Jonathan D. Graves,  
Executor for the Estate of Danny L. Graves

Date: April 27, 2016