

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is made by, between, and among the Federal Deposit Insurance Corporation as Receiver for Bank of the Commonwealth ("FDIC-R") and Fidelity & Deposit Company of Maryland ("F&D" or "Bond Insurer") (individually, the FDIC-R and F&D may be referred to herein as "Party" and collectively as the "Parties").

### RECITALS

#### WHEREAS:

Prior to September 23, 2011, Bank of the Commonwealth (the "Bank") was a depository institution organized and existing under the laws of Virginia;

F&D issued Financial Institution Select Bond Number [REDACTED] (the "Bond") to (b)(4) Commonwealth Bankshares, Inc. and the Bank effective from September 1, 2010 to September 1, 2011. The Bond has a \$7.5 million Fidelity Limit of Liability, subject to a \$75,000 deductible

On or about May 10, 2011, the Bank sent a Notice of Claim to F&D (the "Notice"), (b)(4) which claim was designated as Claim No. [REDACTED] (the "Bond Claim").

On September 23, 2011, the Virginia State Corporation Commission 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 any and all claims, demands, and causes of action under the Bond or with respect to the Bond Claim. The FDIC-R submitted its Proof of Loss on or about July 3, 2012, and supplemented it on or about October 12, 2012 (together, the "Proof of Loss") with respect to the Bond Claim.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and further 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 the FDIC-R**

On or before thirty (30) calendar days following the FDIC-R's execution and delivery of this Agreement, F&D agrees to pay to the FDIC-R the sum of \$4 million (the "Settlement Payment").

F&D shall deliver its payment by check made payable to the Federal Deposit Insurance Corporation as receiver for Bank of the Commonwealth, to Christine P. Hsu, Esq., FDIC Legal Division, FDIC, 3501 Fairfax Drive, Room  Arlington, VA 22226-3500.

(b)(6)

**SECTION II: Releases and Assignment**

A. Release of F&D by the FDIC-R.

Effective upon its receipt of the Settlement Payment in full, as described in Section I, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges F&D, its parents, subsidiaries, affiliates, and reinsurers, and their respective employees, officers, directors, agents, representatives, predecessors, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Bond, the Bond Claim, the Notice, or the Proof of Loss, or F&D's investigation and/or handling of the Bond Claim. The FDIC-R agrees that any interest it may have under the Bond or with respect to the Bond Claim, the Notice, and the Proof of Loss is extinguished.

B. Release of the FDIC-R by F&D.

Effective simultaneously with the release granted in Paragraph II.A. above, F&D, for itself and its predecessors, successors, and assigns, hereby releases and discharges the FDIC-R and its employees, officers, directors, agents, representatives, predecessors, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, that arise from or relate to the Bond, the Bond Claim, the Notice, and the Proof of Loss, including but not limited to any rights of subrogation, legal, equitable, or otherwise.

C. Waiver of Assignment of Insured's Rights, Subrogation, and Recovery

F&D expressly waives any and all of its rights under section 7 ASSIGNMENT – SUBROGATION – RECOVERY – COOPERATION of the Bond. F&D specifically agrees not to seek an assignment of, and waives its right of subrogation to, the FDIC-R's rights, title and interest and causes of action it has against any person or entity to the extent of the Settlement Payment. The parties agree that neither party shall have an ongoing right or obligation as to the other under section 7 of the Bond.

**SECTION III: 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, administrators, representatives, successors, and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that 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 its counsel.

C. Ownership of the Claims. The Parties hereby represent and warrant that they have not transferred, assigned, released, or otherwise compromised any rights or claims released herein. The FDIC-R represents and warrants that it is the sole owner of the Bond Claim. The FDIC-R understands and agrees that this representation is a material portion of the consideration provided to F&D in this Agreement.

D. Binding Effect. This Agreement is intended to confer rights and benefits only on the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, representatives, members, alter egos, and related entities. Except as otherwise expressly provided herein, no person or entity other than the Parties shall have any rights under this Agreement.

E. Attorney's Fees. Each Party shall bear all of its attorney's fees and costs with respect to the Notice, the Proof of Loss, the Bond Claim, and/or the Bond.

F. 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 perform the terms of this Agreement.

G. 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 or in connection with either Party's efforts to recover against third parties.

H. 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.

I. 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 Virginia.

J. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to FDIC-R:

Christine P. Hsu  
FDIC

3501 Fairfax Drive, Room [REDACTED]  
Arlington, VA 22226

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(b)(6)

If to F&D:

Ms. Dolores A. Parr  
Ms. Jean Prem  
Fidelity and Deposit Company of Maryland  
Surety and Financial Claims  
P. O. Box 968032  
Schaumburg, IL 60196

(b)(6)

(b)(6)

Email: [REDACTED]

K. 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).

L. No Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver.

M. Severability. In the event any portions of this Agreement are found void, voidable, or unenforceable, the remaining portions shall remain in full force and effect.

N. 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.

O. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential.

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 Bank of the Commonwealth**

(b)(6) By:   
Christine P. Hsu

Its: Counsel

Date: 3/29/17

**FIDELITY & DEPOSIT COMPANY OF MARYLAND**

(b)(6) By:   
Dolores Parr

Its: Managing Counsel

Date: 4-3-17