

RELEASE AND ASSIGNMENT

This Release and Assignment Agreement (the "Agreement") is made as of this ___ day of December, 2015 (the "Effective Date"), by, between, and among the following undersigned Parties: The Federal Deposit Insurance Corporation, as Receiver of Premier Community Bank of the Emerald Coast ("FDIC-R" or "Premier"), and St. Paul Mercury Insurance Company ("St. Paul") (individually, the FDIC-R and St. Paul may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to December 16, 2011, Premier was a depository institution organized and existing under the laws of the State of Florida.

St. Paul issued a Financial Institution Bond, Policy No. [REDACTED] (the "Bond"), to Premier for (b)(4) the period of July 1, 2010 to July 1, 2011. The Bond provided a Single Loss Limit of Liability of \$1,000,000.00 for employee dishonesty.

On June 30, 2011, Premier provided St. Paul with a Notice of Loss (the "Bond Claim") seeking coverage under the Bond for losses incurred by Premier that were caused by the dishonest acts of certain Premier employees.

Premier submitted a Proof of Loss to St Paul on December 11, 2011 in connection with the Bond Claim.

On December 16, 2011, Premier was closed by the Florida Office of Financial 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 succeeded to all rights, titles, powers and privileges of Premier, including those with respect to its assets, including all of Premier's claims, demands, and causes of actions against St. Paul relating to the Bond Claim.

Subsequent to the FDIC-R's appointment as Receiver for Premier, the FDIC-R provided to St. Paul additional information relating to the Bond Claim. This additional information included documents showing that the total losses incurred by the FDIC-R in connection with the Bond Claim are \$2,020,790.54.

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

A. As an essential covenant and condition to this Agreement and in consideration for the Releases and Assignment set forth below, St. Paul agrees to pay the FDIC-R the sum of \$1,000,000.00 (the "Payment"). The Payment shall be made to the FDIC-R within thirty (30) calendar days after both Parties sign the Agreement. The Parties agree that time is of the essence with respect to the obligation to make the Payment

B. St. Paul shall deliver the Payment to the FDIC-R by either (1) direct wire transfer into an account designated by the FDIC-R, or (2) by mailing a check payable to the Federal Deposit Insurance Corporation as Receiver of Premier Community Bank of the Emerald Coast. If St. Paul chooses to make the Payment via wire transfer, then the FDIC-R will provide to St. Paul the instructions for this direct wire transfer. If St. Paul chooses to make the Payment via check, then the check shall be mailed to Mullin Hoard & Brown, LLP, c/o Robert R. Bell, 500 S. Taylor, Suite 800, Amarillo, TX 79101.

C. If the FDIC-R does not receive the Payment in full on or before the date determined by Section 1.A. above, then the FDIC-R in its sole discretion shall have the right at any time prior to its receipt of the Payment in full to:

1. Extend the period for the Payment;

2. Enforce this Agreement, in which event St. Paul agrees to the jurisdiction in the United States District Court for the Northern District of Florida and to pay all of the FDIC-R's reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement;

3. Terminate the Agreement; 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 Payment or acceptance of a portion of the 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 the Payment.

II. RELEASES

A. Release by the FDIC-R

Upon receipt of the Payment in full as provided in Section I, and except as provided in Section II.C, the FDIC-R, for itself and its successors and assigns, hereby release and discharge St. Paul and its respective heirs, executors, 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, that arise from or relate to the Bond Claim.

B. Release by St. Paul

Effective simultaneously with the release granted in PARAGRAPH II.A. above, St. Paul for itself, and its respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby 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, in law or in equity, that arise from or relate to the Bond Claim.

C. Express Reservations From Releases By FDIC-R

1. Notwithstanding any other provision in 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 St. Paul 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 the FDIC-R, Premier, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC-R as successor in interest to Premier or any person or entity other than Premier;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraphs II.A.

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-R 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 relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

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, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined in 18 U.S.C. § 6.

4. 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.

III. SUBROGATION AND ASSIGNMENT

1. In further consideration of the Payment, the FDIC-R does hereby transfer and assign to St. Paul, except as provided in Section II.C, all of its claims, rights, demands and causes of action against all persons, firms or corporations whomsoever arising out of or in any way connected with the Bond Claim.

2. The Parties affirm their understanding and agreement to be bound by the Bond provisions relating to subrogation and assignment rights, including but not limited to the provisions set forth in Section 7 of the Bond relating to recovery (including, without limitation, the order of recovery provisions) and agree to cooperate with the one another to the fullest extent possible to affect recovery. The Parties agree that the FDIC-R has a ONE MILLION TWENTY THOUSAND SEVEN HUNDRED NINETY AND 54/100 DOLLAR (\$1,020,790.54) loss in excess of the applicable Bond Single Loss Limit of Liability.

SECTION IV: REPRESENTATIONS AND ACKNOWLEDGEMENTS

A. Authorized Signatories. Each of the undersigned persons represents and warrants that he or she is authorized to sign this Agreement on behalf of the Respective Party on behalf of whom he or she is signing, and that he or she has 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, representative, successors and assigns.

B. 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 that this Agreement is not an admission or evidence of liability by any of them regarding any claim. The

undersigned Parties further acknowledge that they may not base any claim of waiver or estoppel in any other matter upon the execution of this Agreement or payment of consideration described herein.

C. Execution in Counterparts. 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. 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 Florida.

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 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).

F. Reasonable Cooperation. 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 necessary to perform the terms of this Agreement.

G. 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 his or her counsel.

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

If to the FDIC-R:

L. Anthony Lehr
Counsel, Federal Deposit Insurance Corporation
3501 Fairfax Dr., # B-7008
Arlington, VA 22226

(b)(6)

Robert R. Bell
Mullin Hoard & Brown, LLP
500 S. Taylor, Ste. 800
LB# 213
Amarillo, Texas 79120-1656

(b)(6)

If to St. Paul:

Kevin M. Mekler
Senior Claim Counsel, Bond & Specialty Insurance
St. Paul Mercury Insurance Company
1 North Dale Mabry, PO Box 31967
Tampa, FL 33631

(b)(6)

I. 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.

J. No Confidentiality. All Parties acknowledge 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, and as St. Paul deems appropriate.

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 PREMIER COMMUNITY BANK OF THE EMERALD COAST

Date: 12-2-15

By: 

(b)(6)

Title: Counsel

Agreed as to Form:

Print Name: L. Anthony Lehr

ST. PAUL MERCURY INSURANCE COMPANY

Date: 12-15-15

By: 

(b)(6)

Title: Senior Claim Counsel

Agreed as to Form:

Print Name: Kevin M. Mekler