

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 16th day of _____ June 2014 (“Effective Date”), by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation, as receiver of Bank of the Commonwealth (“FDIC-R”) and Bruce F. Hatfield and Bruce Hatfield and Associates (collectively “Hatfield”) (the FDIC-R and Hatfield may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, prior to September 23, 2011, Bank of the Commonwealth (“Bank”) was a state-chartered bank with its principal place of business in Norfolk, Virginia.

WHEREAS, on September 23, 2011, the Bank was closed by the Virginia State Corporation Commission and pursuant to 12 U.S.C. § 1821, the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821, the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

WHEREAS, on October 1, 2012, the FDIC-R sent a demand letter asserting claims against Hatfield in connection with appraisal work that Hatfield performed for the Bank. Hatfield has denied liability for the FDIC-R’s claims.

WHEREAS, Hatfield is insured by a Real Estate Appraisers Errors and Omissions insurance policy number (the “Policy”), which insured Hatfield according to the terms, provisions and conditions of the Policy. Hatfield has asserted claims for coverage under the Policy.

WHEREAS, the Parties 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 the 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, Hatfield agrees to pay the FDIC-R the sum of five hundred and forty thousand dollars (\$540,000) (the "Settlement Payment"). The Settlement Payment to the FDIC-R shall be made by direct wire transfer into an account designated by the FDIC-R by notice to Hatfield. The FDIC-R shall provide all necessary payment instructions no later than the date on which it executes this Agreement.

B. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by Section I.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 Hatfield agrees to jurisdiction in United States District Court for the Eastern District of Virginia 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. Seek any other relief available to it in law or equity.

Any extension of time under Section I.B.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.B. at any time prior to receipt of Settlement Payment in full.

SECTION II: Releases

A. Release of Hatfield by the FDIC-R.

Effective upon receipt in full of the Settlement Payment described in Section I above, the FDIC-R, for itself and its successors and assigns, hereby releases, acquits and forever discharges Hatfield and its respective parent corporations, subsidiaries, affiliates, heirs, executors, administrators, representatives, employees, associates, members, trustees, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of Hatfield's functions, duties and actions as an appraiser to the Bank.

B. Hatfield's Release of the FDIC-R.

Effective simultaneously with the release granted in Section II.A. above, Hatfield, on behalf of itself, its respective parent corporations, subsidiaries, affiliates, heirs, executors, administrators, employees, associates, members, trustees, representatives, predecessors, successors and assigns hereby releases, acquits and forever discharges the FDIC-R and its, 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 Hatfield's functions, duties, and actions as an appraiser to the Bank.

C. Express Reservations From Releases By FDIC-R.

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 Hatfield 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, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank;

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

c. Which are not expressly released in Section II.A., above.

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 which may arise by operation of law, rule or regulation.

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 the Eastern District of Virginia, or any other federal judicial district. In addition, the FDIC 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: Representations and Acknowledgements

A. No Admission of Liability. The 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.

B. 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.

C. Authority to Act. 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.

D. No Assignment. The Parties hereby represent and warrant that they have not transferred, assigned, released, or otherwise compromised any rights or claims released herein.

E. 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.

F. Authorship/Construction of Agreement. This Agreement states the terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any Party by reason of which Party drafted it.

G. 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 Action, and

to otherwise perform the terms of this Agreement.

H. 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.

I. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties 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).

J. Section Headings. Section headings contained in this Agreement are inserted solely as reference aids for the ease and convenience of the reader; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions or any other aspect of this Agreement.

K. 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.

L. Singular and Plural. As used in this Agreement, the singular or plural shall be deemed to include the other whenever the context so indicates or requires.

M. Attorney's Fees/Costs. Except as set forth in Section I.B.2, the Parties shall bear their own attorney's fees, costs and litigation expenses incurred in connection with or related to the subject matter of this Agreement and the negotiation, drafting and execution of this Agreement.

N. Invalid Provisions. If any provision of this Agreement shall for any reason be

held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, but shall be construed as if such provision had never been contained herein.

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.

(b)(6) _____
Date: 06/10/2014

FEDERAL DEPOSIT INSURANCE CORPORATION
BY:
TITLE: Counsel
PRINT NAME: Christine Hsu

Date: 06/10/2014
(b)(6) _____

BRUCE HATFIELD AND ASSOCIATES
BY:
TITLE: owner
PRINT NAME: BRUCE F. HATFIELD

Date: 06/10/2014
(b)(6) _____

BRUCE F. HATFIELD
SIGNATURE: