

## **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 Heartland Tri-State Bank (“FDIC-R”), and Mandy Burton (“Defendant”) are collectively referred to as the “Settling Parties”). (FDIC-R and Defendant may be referred to herein individually as “Party” and collectively as the “Parties”). This Settlement Agreement shall be effective as of the date last executed by any Party (“Effective Date”).

### **RECITALS**

WHEREAS:

Prior to July 28, 2023, Heartland Tri-State Bank (“Heartland” or “Bank”) was a depository institution organized and existing under the laws of Kansas;

Heartland incurred a loss of approximately \$47 Million as a result of a scheme orchestrated and executed by Shan Hanes, the former CEO of Heartland (“Incident”);

On July 28, 2023, the Kansas Office of the State Bank Commissioner closed Heartland, and, pursuant to 12 U.S.C. § 1821(c), Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), FDIC-R succeeded to all rights, titles, powers and privileges of Heartland, including those with respect to its assets;

Among the assets to which FDIC-R succeeded were all of Heartland’s claims, demands, and causes of action against its former directors, officers, and employees arising from gross negligence and breaches of fiduciary duties;

In a letter dated February 13, 2024, FDIC-R asserted claims against the Defendant, who served as an officer of the Bank. The Defendant denies liability for these claims (“Dispute”);

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, on or before the forty-fifth (45th) calendar day following the Effective Date, Defendant shall cause to be paid to FDIC-R the sum of One Million, One-Hundred and Twenty-Five Thousand Dollars (\$1,125,000) (“Settlement Payment”). The Settlement Payment shall constitute a debt due and owing FDIC-R, an instrumentality, agency, and/or other entity of the United States, on the Effective Date. The debt shall be discharged by payment in full to FDIC-R.

B. Defendant shall deliver or cause to be delivered the Settlement Payment to FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number to be provided by FDIC-R, within 10 business days of signing this Agreement.

C. If FDIC-R does not receive the Settlement Payment in full on or before the date determined in subsection A above, then the Defendant shall be in default of its payment obligations (“Default”). Upon Default, FDIC-R may declare the entire unpaid portion of the Settlement Payment be immediately due and payable, and interest shall accrue thereon at the rate of five percent (5% ) per annum or the rate calculated in accordance with 26 U.S.C. § 6621(a)(2), whichever rate is higher (“Default Interest Rate”) on the unpaid total (i.e., unpaid amount of

Settlement Payment together with all accrued interest) until paid in full, and FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the payment of any of the Settlement Payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above; or
2. Enforce this Agreement, in which case the Defendant waives and covenants not to plead, argue, or otherwise assert any defense, claim, or counterclaim of any kind whatsoever except the defense of payment of the Settlement Payment, in part or in full, to an action or motion to enforce this Agreement, and agrees to exclusive jurisdiction and venue in the United States District Court for the District of Kansas; and/or
3. Seek any other relief available to FDIC-R in law or equity. Any decision by FDIC-R to extend the time, and any extension of time, under Section I.C.1 for delivery of any installment or any decision by FDIC-R to accept a portion of the Settlement Payment, and any acceptance of a portion of the Settlement Payment, shall not prejudice FDIC-R's rights to take any of the actions set forth in Section I.C.1 through I.C.2 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

## **SECTION II: Releases**

### **A. FDIC-R's Releases.**

Upon receipt of the Settlement Payment in full and except as provided in Section II.C., FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Defendant and her heirs, executors, trustees, administrators, representatives, insurers, 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 FDIC-R, that arise from or relate to the performance, nonperformance, or manner of performance of the Defendant's functions, duties and actions as an officer of the Bank.

B. The Defendant's Reciprocal Release.

Effective simultaneously with the release granted in Section II.A. above, the Defendant, on behalf of herself individually, and her heirs, executors, trustees administrators, agents, representatives, attorneys, successors, and assigns, hereby releases and discharges 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 Bank or to the performance, nonperformance, or manner of performance of the Defendant's functions, duties and actions as officer of the Bank.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, FDIC, in any capacity, 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 Defendant 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 her 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 Heartland or any person or entity other than Heartland; and

b. By FDIC in any capacity other than as Receiver for Heartland; and

c. Against any person or entity not expressly released by 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 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 or entity.

3. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed or interpreted as waiving, or intending to waive, any claims that could be brought by the United States or any department, agency or instrumentality thereof (other than FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office. In addition, 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.

C. Express Reservation of Rights of Financial Institution Bond Carrier

1. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall release or prejudice the rights of Heartland's Financial Institution Bond insurance carrier or any other underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to bring any claims by way of subrogation to the claims of FDIC-R, against (a) any directors, officers, or employees of the Bank, including but not limited to the Defendant, in her capacity as an officer of the Bank or in any other capacity, or (b) any other individual or entity.

2. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of Heartland's Financial Institution Bond insurance carrier or any other bond underwriter by way of subrogation to claims of FDIC-R, that would not exist had this Agreement not been executed.

### **SECTION III: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that the Defendant is or was a shareholder of the Bank or its holding company and by virtue thereof is 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. 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 as described in this section.

#### **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.

#### **SECTION V: Reasonable Cooperation**

A. 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 Dispute and to otherwise perform the terms of this Agreement.

B. The Defendant agrees to provide reasonable cooperation with FDIC-R required under this Agreement and in connection with a matter directly related to the Incident. Such cooperation shall consist of:

1. Producing all documents requested by FDIC-R and in Defendant's possession and control, without the necessity of subpoena, as determined by FDIC-R, in its sole discretion, to be relevant to the Incident;

2. Upon reasonable notice, appearing as requested by FDIC-R at reasonable times and places for interviews regarding facts, as determined by FDIC-R in its sole discretion, to be relevant to the Incident;

3. Upon reasonable notice, testifying as requested by FDIC-R, without the necessity of a subpoena, in any matter relevant to the Incident, as determined by FDIC-R;

4. Signing truthful affidavits, regarding any matter, as determined by FDIC-R in its sole discretion, to be relevant to the Incident.

#### **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. Counterparts and Digital Signatures.

This Agreement may be executed digitally by DocuSign or similar services which use public key cryptography or by hand, in any number of counterparts, and delivered electronically or physically, each original or electronic copy thereof will be deemed an original, and all of which when taken together constitute one and the same Agreement.

C. Choice of Law/Jurisdiction.

This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Kansas. For purposes of construing this



Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

D. Notices.

Any notices required hereunder shall be sent by nationally recognized overnight delivery service (e.g. FedEx or UPS), and by email, to the following:

If to FDIC-R:

Brittany A. McEwan  
3501 Fairfax Drive, VS-E-7014  
Arlington, Virginia 22226

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bmcewan@fdic.gov

If to Defendant:

Patrick A. McInerney  
Spencer Fane LLP  
1000 Walnut Street, Suite 1400  
Kansas City, MO 64106  
pmcinerney@spencerfane.com

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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 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.

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

FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR HEARTLAND TRI-STATE BANK  
**BRITTANY**  
**MCEWAN**  
Digitally signed by BRITTANY  
MCEWAN  
Date: 2025.07.23 10:22:04 -04'00'

\_\_\_\_\_  
Brittany A. McEwan  
Attorney

Date: 7-23-2025

DEFENDANT

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Date:

7/23/15

ATTORNEY FOR DEFENDANT

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Patrick A. McInerney

Daniel M. Nelson

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1000 Walnut Street, Suite 1400

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