

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this 16th day of October 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for La Jolla Bank, FSB ("FDIC-R") and Patrick O'Connor & Associates, L.P. dba O'Connor & Associates, ("O'Connor") (individually, the FDIC-R and O'Connor may be referred to herein as a "Party" and collectively as the "Parties").

RECITALS

A. Prior to February 19, 2010, La Jolla Bank, FSB ("Bank"), was a federal savings bank organized and existing under the laws of the United States.

(b)(4) B. In May of 2007, the Bank engaged O'Connor to prepare a market value real property appraisal of the [redacted] apartment complex in Lufkin, Texas, (the "Property"), which would serve as collateral for a \$1.155 million cash-out and rate-and-term-refinance loan made by the Bank to (b)(4) [redacted] in August of 2007. In December of 2007 the Bank engaged O'Connor to prepare another appraisal of the Property. [redacted] defaulted on its loan payments and in January 2008, the Bank foreclosed on the Property. The Bank acquired the Property at foreclosure sale for \$866,250.00. The Bank eventually sold the Property for \$500,000.00 in or about September of 2008. (b)(4)

C. On November 10, 2008, an action was commenced by the Bank in the District Court of Angelina County, Texas, 159th/217th Judicial District (the "Action"). The Action was entitled *LA JOLLA BANK, FSB v. PATRICK O'CONNOR & ASSOCIATES, L.P. d/b/a O'CONNOR & ASSOCIATES*, case number CV-41852-08-11. The Action alleged that O'Connor was negligent in the preparation of the appraisal of the Property for the Bank and sought to recover monetary damages against O'Connor for the Bank's loss on the loan to JAT.

D. On February 19, 2010, the Office of Thrift Supervision closed the Bank and appointed the Federal Deposit Insurance Corporation as its receiver, pursuant to 12 U.S.C. § 1821(c). 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 the claims alleged in the Action.

E. In July 2010, the Action was removed from the Texas state court to the Federal District Court for the Southern District of California and the FDIC-R was substituted in as the real party plaintiff in place of the Bank. The Action thereafter was entitled *FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for La Jolla Bank, FSB v. PATRICK O'CONNOR & ASSOCIATES, L.P. d/b/a O'CONNOR & ASSOCIATES*, case number 10CV1520-BTM (JMA).

F. A dispute exists between the Parties with respect to the claims by the FDIC-R as alleged in the Action (hereinafter any and all present and future claims by the FDIC-R against O'Connor in connection with the May 2007 appraisal of the Property are referred to as the "Claims"). The Parties engaged in settlement negotiations as a result of the Claims. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further 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:

1. Payment to FDIC-R.

A. As an essential covenant and condition to this Agreement, on or before December 1, 2012 ("Settlement Payment Due Date"), O'Connor shall pay the FDIC-R the total sum of One Hundred Thousand Dollars (\$100,000.00) (the "Settlement Payment"). The Settlement Payment shall be made by check payable to "FDIC as Receiver for La Jolla Bank (10185)" with "Professional Liability (37100)" in the memo line. The settlement check shall be sent via a traceable service (FedEx, DHL, etc.) to the following address: Bryce Quine, FDIC, 1601 Bryan Street, Dallas, TX, 75201.

B. If the FDIC-R does not receive the Settlement Payment in full on or before the Settlement Payment Due Date, then the FDIC-R, in its sole discretion, shall have the right to:

i. extend the period of time for payment, including interest accruing from the Settlement Payment Due Date through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(b)(3); or

ii. enforce this Agreement and, in such event, O'Connor agrees to jurisdiction in the Federal District Court for the Southern District of California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement.

Any extension of time for delivery of the Settlement Payment shall not prejudice the FDIC-R's right to take other action or seek any relief during or after such period of extension, including the right to bring an action to enforce the Agreement, or declare the Agreement null and void.

2. Stipulation and Dismissal. Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Payment, the FDIC-R shall dismiss the Action. The undersigned parties agree to enter stipulation(s) providing that the dismissal(s) set forth above shall be with prejudice, with each party to bear its own costs as these were originally incurred.

3. Releases. Each Party acknowledges that this Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against another Party arising from the Claims.

A. The FDIC-R's Release. Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in Paragraph 3 C, the FDIC-R, solely in its limited capacity as the appointed Receiver of Bank and no other receivership, hereby releases and discharges O'Connor, and its employees, officers, directors, representatives, insurers, attorneys, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to the FDIC-R, arising out of or relating to the Claims.

B. O'Connor's Release. Effective simultaneously with the release in Paragraph 3 A above, O'Connor hereby releases and discharges the FDIC-R, and its employees, officers, directors,

representatives, attorneys, successors and assigns, from any and all claims belonging to O'Connor arising out of or relating to the Claims.

C. Exceptions to Release by FDIC-R.

i. 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 O'Connor 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 claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released by the FDIC-R in this Agreement; or

c. which are not expressly released in Paragraph 3 A above.

ii. Notwithstanding any other provision of this Agreement, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority to institute administrative enforcement or other proceedings seeking removal, prohibition, civil penalties, restitution or other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person, or which may arise by operation of law, rule, or regulation.

iii. Notwithstanding any other provision of this Agreement, this Agreement does not waive any claims brought on behalf of another failed institution or any claims which could be brought by any other governmental entity.

D. California Civil Code § 1542 Waiver.

It is further understood and agreed that all rights under Section 1542 of the California Civil Code and any similar federal law or law of any state or territory of the United States are EXPRESSLY WAIVED. SAID SECTION READS AS FOLLOWS:

"§1542: CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

4. **Insolvency.**

A. Insolvency. O'Connor warrants as to payments made by or on its behalf that at the time of such payment, it is not insolvent nor will the payment made by or on its behalf render it insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code.

B. Preferences. In the event that the FDIC-R is required to return any portion of the Settlement Payment due to a final order by a court that the transfer of the Settlement Payment or any portion thereof constituted a preference, voidable preference, fraudulent transfer or similar transaction, then, in its sole discretion, the FDIC-R may, without waiver of any other rights it may have in law or equity, pursue any of the rights and remedies set forth in Paragraph 1 B above, and/or otherwise permitted by law.

5. Termination. In the event the FDIC-R exercises its right to declare this Agreement null and void as provided herein, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of October 12, 2012.

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

If to the FDIC-R: Paul T. Johnson
Paul T. Johnson Law Group, APC
5055 Avenida Encinas, Suite 210
Carlsbad, CA 92008
(760) 431-8988

(b)(6)

If to O'Connor: Hugh L. McKenney
McKenney & Associates, P.C.
2200 North Loop West, Suite 333
Houston, Texas 77018
(713) 688-6767

(b)(6)

7. **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 hereto, except to enforce its terms.

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. Binding Effect. All of the undersigned persons represent and warrant that they are a Party 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, attorneys, successors, and assigns.

D. Entire Agreement. 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. No representations, warranties or inducements have been made to or relied on by any Party concerning this Agreement and its exhibits other than those contained therein.

E. Amendments. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing by the Party or Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Reasonable Cooperation.

1. 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.

2. Further, O'Connor agrees to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

i. producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;

ii. making a qualified representative of O'Connor available upon request by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;

iii. causing a qualified representative of O'Connor to appear to testify, upon request by the FDIC-R, in any matter determined by the FDIC-R in its sole discretion, to be related to the Bank, without the necessity of subpoena;

iv. causing a qualified representative of O'Connor to sign truthful affidavits upon request by the FDIC-R, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

G. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the internal laws of the State of California, without regard to its conflicts of laws.

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. Title 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. Mutual Waiver of Fees and Costs. Each Party shall bear its respective costs and fees incurred in connection with the Action and this Agreement including, but not limited to, attorneys' fees, court costs and expert witness fees and costs.

K. No Assignments or Transfers. All Parties hereto have represented and warranted that there have been no assignments or transfers of any interest in any of the Claims released hereunder, and all Parties have agreed to indemnify and hold each other harmless from any liability, demands, damages, costs, expenses, and attorney's fees incurred by any party as a result of any such assignment or transfer.

L. Authorship/Construction. The compromise and settlement which forms the basis of this Agreement has been arrived at through thorough negotiation and bargaining, and represents a final, mutually agreeable compromise. This Agreement sets forth 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 but, rather, this Agreement shall be interpreted equally as to all Parties.

M. Enforcement of Agreement. If any action or proceeding is instituted between the Parties in connection with this Agreement, its interpretation or its enforcement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs of action, including, without limitation, attorneys' fees and costs as fixed by the court therein. The right to recover attorneys' fees shall include, but not be limited to, any fees incurred in enforcing any right of indemnity set forth herein or in obtaining any injunction or other equitable relief.

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 La Jolla Bank, FSB

Patrick O'Connor & Associates, L.P.
dba O'Connor & Associates

(b)(6)
By: _____

By: (b)(6)

Name: Bryce Quine
Title: Counsel

Name: Patrick O'Connor
Title: President

Federal Deposit Insurance Corporation
Date: 11/20/12

Date: 11-20-12