

AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE (the "Agreement") is made and entered into by and between **FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for DWELLING HOUSE SAVINGS AND LOAN ASSOCIATION ("FDIC-R")** and **TERRY COLLIER & ASSOCIATES, P.C. ("TCA")**. FDIC-R and TCA may be referred to herein collectively as the "Parties."

RECITALS

This agreement is made with reference to the following facts:

- A. Dwelling House Savings and Loan Association ("DHSL") was a mutual savings association located in Pittsburgh, Pennsylvania.
- B. On August 14, 2009, the Office of Thrift Supervision ("OTS") closed DHSL and appointed the FDIC as receiver due to the fact that the OTS had determined DHSL was in an unsafe and unsound condition, was critically undercapitalized, and had no reasonable prospect of recovery.
- C. The failure of DHSL arose out of fraud scheme commencing in or around 2007 wherein multiple individuals, none of whom are parties to this Agreement, manipulated the Automated Clearing House ("ACH") system in order to make numerous unauthorized and improper electronic withdrawals from savings accounts maintained at DHSL.
- D. On or about December 20, 2010, counsel for FDIC-R notified counsel for TCA in writing of certain claims FDIC-R alleged that it had against TCA arising out of audit and/or accounting services performed by TCA for DHSL.
- E. TCA has denied, and continues to deny, any and all liability for any losses suffered by DHSL arising out of the improper ACH withdrawals or otherwise.

F. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, and expense of litigation. By this agreement, the Parties intend to memorialize the terms of their compromise and settlement of the claims of FDIC-R against TCA.

AGREEMENT AND MUTUAL RELEASE

NOW, THEREFORE, in consideration of the undertakings contained in this Agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **Preamble, Recitals and Exhibits.** The foregoing preamble and recitals are true and correct and are integral parts of this Agreement.
2. **Settlement Payment by TCA to FDIC-R.** No later than thirty (30) business days following full execution of this Agreement, Defendant TCA shall pay the amount of Three Hundred Thousand Dollars (\$300,000.00) to FDIC-R. The settlement payment shall be made by wiring the funds to an account designated by FDIC-R upon the execution of this agreement. The Parties agree that timely receipt of the Settlement Payment is an essential term of this agreement, and a condition to the effectiveness of this agreement.
3. **Release by FDIC-R.** The FDIC-R hereby releases and forever discharges TCA and its current and former officers, directors, employees, agents, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of any audit, accounting, and/or other professional services performed for or on behalf of DHSL.
4. **Express Reservations from Release by Plaintiff.** This Agreement does not

release any claims brought, or which could be brought, by or on behalf of any other agency or entity of the United States of America including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*

5. **Release by TCA.** TCA hereby releases and forever discharges FDIC-R and its current and former officers, directors, employees, agents, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns, and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of any audit, accounting, and/or other professional services performed for or on behalf of DHSL

6. **No Admission of Liability.** Payment of the settlement amount and the entry into this Agreement shall not constitute or be considered as an admission of any fault or liability by TCA, and TCA has denied and continues to deny that it has any liability to FDIC-R..

7. **Representations and Warranties.** The Parties represent and warrant to and agree with each other as follows:

- a. FDIC-R and TCA have received independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement and of giving the releases provided herein.
- b. In connection with the execution of this Agreement and the making of the settlement provided for herein, no Party to this Agreement has relied upon any statement, representation or promise of any other Party not expressly contained herein.

- c. This Agreement is fully integrated and contains the entire agreement of the Parties hereto. There are no agreements or understandings between the Parties hereto relating to the matters and releases referred to in this Agreement other than as set forth in this Agreement, and this Agreement supersedes and replaces any and all prior negotiations and agreements between the Parties hereto, whether written or oral.
 - d. FDIC-R and TCA have made such investigation of the facts pertaining to the releases contained herein as they deem necessary.
 - e. The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the role of the Party in drafting and preparation of the Agreement shall not be referred to in order to construe the Agreement against that Party, and that canon of contractual interpretation shall not be applied.
 - f. This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This Agreement is signed freely by each Party executing it.
 - g. The Parties have not assigned or transferred any of their claims being released herein.
8. **Consideration** The consideration received in connection with this Agreement is fair, adequate and substantial and consists only of the terms set forth in this Agreement.
9. **Agreement Binding on Successors and Assigns**. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective officers,

directors, joint venturers, partners, employees, agents, servants, heirs, administrators, executors, successors, representatives and assigns.

10. **Applicable Law.** This Agreement has been negotiated and exchanged in the Commonwealth of Pennsylvania. As such, this Agreement and all matters relating thereto shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law. In addition, in the event of any disputes arising between the Parties out of this Agreement, the Parties agree that the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the Western District of Pennsylvania.

11. **Execution and Delivery Required – Effective Date.** This instrument shall not be considered to be the Agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the “Effective Date”). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the Agreement and shall become a binding and enforceable contract.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. Signatures on this Agreement, or any counterpart of this Agreement, transmitted by facsimile machine or electronic mail in pdf format shall have the same force and effect as original signatures.

13. **Severability.** In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect.

14. **Warranty of Authority.** Each Party or attorney whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed and that he or she is acting in the scope of such agency and authority. Each Party specifically represents and warrants that no signatures other than those made on this Agreement are necessary to bind the Parties to all of the obligations imposed by the Agreement.

15. **Attorneys' Fees and Costs.** The Parties each agree to bear their own costs, attorneys' fees and expenses incurred in connection with the claims which are the subject of this Agreement.

16. **Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

17. **Remedies.** All Parties shall be entitled to all remedies available at law or in equity for any violation of this Agreement, including, but not limited to the remedy of specific performance.

18. **Waiver.** The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.

19. **Entire Agreement.** This Agreement contains the complete agreement of the Parties concerning the subjects of this agreement and supersedes all prior drafts of this Agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning that subject of this agreement, whether in connection with the negotiation of this agreement or otherwise. This agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. This Agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

[THIS SECTION INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR DWELLING HOUSE SAVINGS AND LOAN ASSOCIATION

Dated: 5-14, 2012

By: (b)(6)

Its: Counsel

TERRY COLLIER & ASSOCIATES, P.C.

Dated: 5/10, 2012

By: (b)(6)

Its: Terry Collier & Associates, P.C.