

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is entered into by and between the Federal Deposit Insurance Corporation as Receiver for Tifton Banking Company (“FDIC-R”) and Cincinnati Insurance Company (“Cincinnati”). The FDIC-R and Cincinnati may be referred to herein individually as “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS:**

A. Prior to November 12, 2010, Tifton Banking Company (“Tifton”) was a depository institution organized and existing under the laws of the State of Georgia.

B. Cincinnati issued to Tifton Depository Institutions Bond, Policy Number  (b)(4)  (“Bond”), which was issued for the effective Bond Period of September 9, 2007, to September 9, 2010, and provided a Single Loss Limit of Liability of \$3 million for Loss resulting from employee fraud or dishonesty.

C. On or about September 2, 2010, Tifton provided notice (the “Notice”) to Cincinnati under the Bond seeking coverage for losses incurred by Tifton that were caused by fraud or dishonesty by certain Tifton employees. The claim was designated as Claim No.  (b)(4)

D. On November 12, 2010, Tifton was closed by the Georgia Department of Banking and Finance, and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of Tifton, including those with respect to Tifton’s assets.

E. Among the assets to which FDIC-R succeeded were any and all claims, demands, and causes of action against Tifton's financial institution bond insurer(s), including against Cincinnati under the Bond and with respect to Claim No. [redacted] (b)(4)

F. On or about March 18, 2011, the FDIC-R submitted a sworn Proof of Loss (the "Proof of Loss") to Cincinnati with respect to Claim No. [redacted] seeking coverage under (b)(4) Insuring Agreement A of the Bond.

G. On November 10, 2016, the FDIC-R filed a Complaint against Cincinnati asserting a claim for breach of contract based upon Cincinnati's failure to make payment under the Bond on Claim No. [redacted] in *Federal Deposit Insurance Corporation as Receiver for Tifton Banking Company v. Cincinnati Insurance Company*, No. 7:16-cv-00206-WLS (M.D. Ga.) (the "Action"). (b)(4)

H. The Parties 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:

**SECTION I: Payment to the FDIC-R**

A. The Recitals above are incorporated herein by reference.

B. As an essential covenant and condition to this Agreement and in consideration for the Releases set forth below, Cincinnati agrees to pay to the FDIC-R the sum of Two Million and Five Hundred Thousand Dollars and 00/100 (\$2,500,000.00) (the "Settlement Funds").

C. Within five (5) business days after the last date this Agreement is signed below, the Settlement Funds shall be delivered to the FDIC-R by check payable to the Federal Deposit

Insurance Corporation as Receiver for Tifton Banking Company or by direct wire transfer into an account designated by the FDIC-R. The FDIC-R shall provide to Cincinnati the instructions for this direct wire transfer.

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

1. Extend the period for payment of the Settlement Funds;
2. Enforce this Agreement, in which event Cincinnati agrees to the jurisdiction in the United States District Court for the District of Columbia 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.D.1 for delivery of the Settlement Funds or acceptance of a portion of the Settlement Funds shall not prejudice the FDIC-R's rights to take any or all of the actions set forth in Section I.D.2 through I.D.4 at any time prior to receipt of the Settlement Funds in full.

**SECTION II: Stipulation of Dismissal**

Within ten (10) business days after the latter of (1) execution of this Agreement by the FDIC-R and Cincinnati, and (2) receipt of the Settlement Funds by the FDIC-R, the FDIC-R shall file a stipulation of dismissal of the Action with prejudice. The Parties agree to enter a stipulation providing that the dismissal set forth above shall be with prejudice, with each Party to bear its own costs and attorney fees.

**SECTION III: Releases**

A. The FDIC-R's Release of Cincinnati.

Effective upon its receipt of the Settlement Funds in full as provided in Section I, and the dismissal described in Section II above, and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Cincinnati, its parents, subsidiaries, affiliates, and reinsurers, and their respective employees, officers, directors, agents, 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 Notice, the Proof of Loss, the Bond, Cincinnati's adjustment or handling of the Proof of Loss, and/or the Action. The FDIC-R agrees that any interest it has or may have under the Bond is extinguished.

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

Effective simultaneously with the release granted in Paragraph III.A. above, Cincinnati, for itself and its predecessors, successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their respective agents, representatives, successors and assigns, hereby releases and discharges the FDIC-R and its employees, officers, directors, agents, attorneys, representatives, predecessors, 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 Notice, the Proof of Loss, the Bond, and/or the Action, including but not limited to any rights of subrogation, legal, equitable, or otherwise.

C. Cincinnati's Waiver of Subrogation.

Cincinnati agrees to and hereby does irrevocably waive any rights of subrogation it may have relating to the Notice, the Proof of Loss, the Bond, or the Action ("Rights of Recovery").

Cincinnati agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of such Rights of Recovery as it sees fit, in its sole discretion, and retain the proceeds (if any) thereof. Any such present or future retention or disposition of such rights of recovery shall not modify, alter, or otherwise affect the consideration due under this Agreement or the amount of the Settlement Funds to be paid by Cincinnati.

D. Express Exceptions to Releases by FDIC-R.

1. 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 rights, claims, or causes of action:

a. against Cincinnati 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, Tifton, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank;

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

c. under or relating to any policy of insurance issued by Cincinnati (or any other insurer) other than the Bond; and

d. that are not expressly released in Section III.A above.

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 the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or diminishing 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 does not purport to waive, or intend to waive, any claims that could be brought by any person or entity other than the FDIC-R, including without limitation the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department, agency or instrumentality of the United States government as defined by 18 U.S.C. § 6. In addition, 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.

#### **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 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, successors, and assigns.

B. 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 the Party by its counsel.

C. 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.

D. 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, 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.

E. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement. Signatures delivered via email shall be treated as original signatures for all purposes.

F. 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 Georgia.

G. 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).

H. 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.

I. No Confidentiality. The Parties acknowledge and agree that this Agreement shall not be confidential and nothing in this Agreement prohibits the FDIC-R or Cincinnati from disclosing the Agreement or its terms.

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

If to FDIC-R:

Glenn A. Harris  
FDIC  
3501 Fairfax Drive, Room VS-B-7026  
Arlington, VA 22226

(b)(6)

If to Cincinnati:

Sam H. Poteet, Jr.  
Manier & Herod  
1201 Demonbreun Street, Suite 900  
Nashville, TN 37203

In witness whereof, the Parties hereto have caused this Agreement to be executed by each of them by their authorized representatives on the date hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
TIFTON BANKING COMPANY**

Date: 4-13-17

BY: [Redacted] (b)(6)

TITLE: Counsel

PRINT NAME: Glenn A. Harris

(b)(6)

**CINCINNATI INSURANCE COMPANY**

Date: 4-13-17

BY:

TITLE: Superintendent, Bond Claims

PRINT NAME: Elizabeth Carley