

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this ____ day of August, 2012, by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver of The John Warner Bank (collectively "FDIC-R"), the former officers, directors and employees of The John Warner Bank ("JWB"), including but not limited to Charles R. Frost, Craig Campbell, Douglas Campbell, John Warner IV, Richard Howell, Jo L. Miller and Scott Campbell (collectively, the "Settling Individuals"), and Cincinnati Insurance Company ("Cincinnati"). The FDIC-R, the Settling Individuals and Cincinnati may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

This Agreement is entered into in reference to the following:

1. Prior to July 2, 2009, JWB was a state-chartered nonmember institution operating in the State of Illinois.

2. On July 2, 2009, the Illinois Department of Financial and Professional Regulation closed JWB. The FDIC-R was appointed receiver for JWB pursuant to 12 U.S.C. § 1821(c). In accordance with 12 U.S.C. 5 1821(d), the FDIC-R, as receiver, succeeded to all rights, titles, powers and privileges of JWB, including those with respect to its assets. Among the assets to which the FDIC-R succeeded were any and all of claims, demands, and causes of actions JWB might have against its former directors, officers and employees arising from the performance, nonperformance and/or manner of performance of their respective functions, duties and acts as directors, officers and/or employees of JWB.

3. Cincinnati issued a directors and officers' liability policy, Policy No. [REDACTED] (b)(4)

(b)(4) [REDACTED] (the "Policy"), to JWB. The Settling Individuals sought coverage under the Policy in

response to claims asserted by the FDIC-R. Cincinnati reserved its rights to deny coverage under the Policy for claims asserted by the FDIC-R against the Settling Individuals.

4. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation. Among other things, the Parties have agreed that the Agreement shall be a settlement and release of all claims held by the FDIC-R, including its agents, successors and assigns, for all claims now or hereafter held by the FDIC-R against all former officers, directors and employees of JWB (collectively, the "Non-Settling Individuals") that arise from or relate to the performance, non-performance or manner of performance of the Non-Settling Individuals' respective functions, duties and/or actions as employees, officers and/or directors of JWB. The Settling Individuals denied and continue to deny any and all liability. The Parties further agree that, as a compromise and settlement of disputed claims, this Agreement is not an admission or evidence of liability or of coverage with respect to the disputed claims.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency and receipt of which consideration is hereby acknowledged, the Parties agree as follows:

Section I: Payment to the FDIC-R

A. As an essential covenant and condition to this Agreement, Cincinnati shall pay to the FDIC-R the sum of ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS (\$1,350,000.00) by way of check payable to FDIC as Receiver for The John Warner Bank.

B. The Settlement Funds shall be delivered to the FDIC-R by check sent by certified mail addressed to Karen Munce-Gates, Federal Deposit Insurance Corporation, Legal Division, 1601 Bryan Street, Dallas, Texas 75201 on or before 30 days after the Parties have fully executed

the Agreement (“the due date”). In the event that the Settlement Funds are not delivered to the FDIC-R by the due date, interest shall accrue on all unpaid amounts at the rate of 6% per annum from the due date until the date of payment, said date of payment shall in no event be later than 90 days after the Parties have fully executed the Agreement as described more fully in Paragraph

I. C. below. Interest shall be owed only by the Party that fails to make timely payment.

C. If all Settlement Funds and accrued interest are not received within 90 days after the Parties have fully executed the Agreement, this Agreement shall be deemed null and void, having no legal validity or binding affect whatsoever upon the Parties.

Section II: Releases

A. Release of Settling Individuals and Non-Settling Individuals by the FDIC-R

Effective upon payment of the Settlement Funds pursuant to Section 1 above, and except as provided in Section II.G below, the FDIC-R, for itself and its agents, successors and assigns, hereby releases and discharges each of the Settling Individuals and all other individuals who served as a director, officer or employee of JWB (“Non-Settling Individuals”) from any and all claims, demands, obligations, damages, fees, costs, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to the FDIC-R, that arise from or relate to (1) the performance, nonperformance, or manner of performance of the Settling Individuals’ and/or Non-Settling Individuals’ respective functions, duties and actions as employees, officers and/or directors of JWB and/or (2) the fact that any Settling Individual or Non-Settling individual is or was an officer, director, or employee of JWB. For purposes of clarification and certainty, this release is applicable to, and includes each of the Settling Individuals and each and every Non-Settling Individual who is not a Settling Individual, as well

as each and every of their respective heirs, executors, administrators, estates, agents, attorneys representatives, spouses, successors and assigns.

B. Release of the FDIC-R by the Settling Individuals

Effective simultaneously with the release granted in Paragraph II.A above the Settling Individuals, on behalf of themselves individually, and their respective heirs, executors, administrators, estates, agents, representatives, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, attorneys, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, fees, costs, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to JWB or to the performance, nonperformance, or manner of performance of the Settling Individuals' respective functions, duties and actions as officers and/or directors of JWB and/or the fact that any Settling Individual is or was an officer, director, or employee of JWB.

C. Release of Cincinnati by the FDIC-R

Effective simultaneously with the releases granted in Paragraphs A and B of this Section II, 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 Policy. The FDIC-R agrees that any interest it may have under the Policy is extinguished.

D. Release of Cincinnati by Settling Individuals

Effective simultaneously with the releases granted in Paragraphs A and B of this Section II, the Settling Individuals, on behalf of themselves individually, and their respective heirs,

executors, administrators, estates, agents, representatives, successors and assigns, hereby release and discharge 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, fees, costs, actions and causes of action, direct or indirect, in law or in equity, that are based upon the claims by the FDIC-R against the Settling Individuals that have been released pursuant to this Agreement, including but not limited to any contractual or extra-contractual claims based upon the handling, defense, or resolution of the claims released by the FDIC-R. The Settling Individuals agree that any interest they may have in the Policy as respects the claims released by the FDIC-R is extinguished. This release, however, shall not affect Cincinnati's obligations with respect to the reasonable and necessary Defense Costs incurred by the Settling Individuals through counsel retained to defend against the FDIC-R's released claims, which retention was previously consented to by Cincinnati.

E. Release of the FDIC-R by Cincinnati

Effective simultaneously with the release granted in Paragraphs II.C. and II.D., above, Cincinnati, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges FDIC-R, and its employees, officers, directors, agents, attorneys, 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 Policy.

F. Release of Settling Individuals by Cincinnati

Effective simultaneously with the releases granted in Paragraph C, D and E of this Section II, Cincinnati, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates, and reinsurers, and their successors and assigns, hereby releases and

discharges each of the Settling Individuals, and their respective heirs, executors, administrators, estates, agents, attorneys, representatives, successors and assigns, from any and all claims, demands, obligations, damages, fees, costs, actions, and causes of action, direct or indirect, in law or in equity, based upon the claims released by the FDIC-R pursuant to this Agreement, including but not limited to any contractual or extra-contractual claims based upon the handling, defense, or resolution of the claims released by the FDIC-R.

G. Express Reservations From Releases By the FDIC-R

1. Notwithstanding any other provision in 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 the Settling Individuals or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or other evidence of indebtedness payable or owed by them or any of them to FDIC-R, JWB, or other financial institutions, or any other person or entity, including without limitation any claims acquired by Federal Deposit Insurance Corporation in its corporate capacity ("FDIC-C") or as successor in interest to JWB or any person or entity other than JWB;

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

c. against the Settling Individuals or any other person or entity for liability that arises from or relates to (1) the performance, nonperformance, or manner of performance of the Settling Individuals' and/or Non-Settling Individuals' respective functions, duties and actions as employees, officers and/or directors of any financial institution other than JWB and/or (2) the fact that any Settling Individual or Non-Settling Individuals is or was an officer, director, or employee of any institution other than JWB.

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-C 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 hereof, 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 Northern District of Illinois, the United States Attorney's Office for the Central District of Illinois or the United States Attorney for any other federal judicial district. In addition, the right of the United States 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, also is not waived or released.

4. The FDIC-R represents and warrants that, as of the date of this Agreement, it has not transferred any claim, cause of action or other right that would be released hereunder if such claim, cause of action or right had not been previously transferred by the FDIC-R prior to the date of this Agreement, and to that end the Parties agree that the release by the FDIC-R set forth in Paragraph A of Section II is a full and complete release of all such claims, causes of action and rights.

Section III: Waiver of Dividends

To the extent, if any, that Settling Individuals are or were depositors, creditors and/or shareholders of JWB and by virtue thereof are or may have been entitled to a dividend, payment, or other pro rata distribution upon resolution of the receivership of JWB, they hereby knowingly

assign to the FDIC-R any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

Section IV: Representations and Acknowledgments

A. **No Admission of Liability** Each of the Parties acknowledges and agrees 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 of or coverage by any of them regarding any claim. The Parties further stipulate and agree that, as a settlement and compromise, neither this Agreement nor any matter related to it may be offered or admitted in any court or administrative proceeding as evidence of liability or wrongdoing whatsoever with respect to any of the Settling Individuals' performance, nonperformance and/or manner of performance of their respective functions, duties and acts as directors, officers and/or employees of JWB.

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** Each of the undersigned persons represents and warrants that they are Party hereto or are authorized to sign this Agreement on behalf of the respective Party for which they are signing, 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, successors and assigns.

D. **Specific Representations and Warranties** The Settling Individuals severally but not jointly swear and affirm that all financial information in the affidavits and financial statements prepared by them and voluntarily provided to the FDIC-R in response to its request was true and accurate at the time of submission to the best of their knowledge, information, and belief.

E. **Reasonable Cooperation** The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

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 Illinois.

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. 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).

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 his or her counsel.

I. **Enforcement of Agreement** In the event that any Party brings suit to enforce the terms of this Agreement, or based on the alleged breach of the terms hereof, the Parties agree to exclusive venue in the United States District Court for the Northern District of Illinois or in the event that the said federal court does not have jurisdiction, the Circuit Court in and for Cook

County, Illinois. In such event, the prevailing Party or Parties shall be entitled to recover all costs incurred from the non-prevailing party or parties, including reasonable attorneys' fees.

J. **Time is of the Essence** Time is of the essence in this Agreement, including specifically, payment of the Settlement Funds to FDIC-R on or before the due date.

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 The John Warner Bank**

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

Cincinnati Insurance Company

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

Date: _____

Charles R. Frost

Date: _____

Craig Campbell

Date: _____

Douglas Campbell

Date: _____

John Warner IV

Date: _____

Richard Howell

Date: _____

Jo L. Miller

Date: _____

Scott Campbell

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FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for The John Warner Bank

(b)(6)

Date: 8-17-12 BY: [Redacted]
TITLE: COUNSEL
PRINT NAME: TERRY WOLFSMITH

Cincinnati Insurance Company

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

Date: _____
Charles R. Frost

Date: _____
Craig Campbell

Date: _____
Douglas Campbell

Date: _____
John Warner IV

Date: _____
Richard Howell

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**FEDERAL DEPOSIT INSURANCE CORPORATION as
Receiver for The John Warner Bank**

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

Cincinnati Insurance Company 11

(b)(6) Date: 8-29-2012

BY: _____

TITLE: Attorney at Law

PRINT NAME: Constance S. Hennigan

Date: _____

Charles R. Frost

Date: _____

Craig Campbell

Date: _____

Douglas Campbell

Date: _____

John Warner IV

Date: _____

Richard Howell

(b)(6)

Date: 8/13/2012



Charles R. Frost

Date: _____

Craig Campbell

Date: _____

Douglas Campbell

Date: _____

John Warner IV

Date: _____

Richard Howell

Date: _____

Jo L. Miller

Date: _____

Scott Campbell

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Receiver for The John Warner Bank

(b)(6)

Date: 8-17-12

BY:
TITLE: COUNSEL
PRINT NAME: JOHN WOLFSMITH

Cincinnati Insurance Company

Date: _____

BY: _____
TITLE: _____
PRINT NAME: _____

Date: _____

(b)(6)

Date: 8-22-12

Charles R. Frost

Craig Campbell

Date: _____

Douglas Campbell

Date: _____

John Warner IV

Date: _____

Richard Howell

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**FEDERAL DEPOSIT INSURANCE CORPORATION as
Receiver for The John Warner Bank**

(b)(6) Date: 8-17-12 BY: [Redacted]
TITLE: COUNSEL
PRINT NAME: JOHN WOLF SMITH

Cincinnati Insurance Company

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

Date: _____
Charles R. Frost

Date: _____
Craig Campbell

(b)(6) Date: 8-30-12 BY: [Redacted]
Douglas Campbell

Date: _____
John Warner IV

Date: _____
Richard Howell

Date: _____

Charles R. Frost

Date: _____

Craig Campbell

Date: _____

Douglas Campbell

(b)(6)

Date: 8-14-12

John Warner IV

Date: _____

Richard Howell

Date: _____

Jo L. Miller

Date: _____

Scott Campbell

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FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for The John Warner Bank

(b)(6) Date: 8-17-12 BY: [Redacted]
TITLE: COUNSEL
PRINT NAME: JOHN WOLFSON

Cincinnati Insurance Company

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

Date: _____ Charles R. Frost

Date: _____ Craig Campbell

Date: _____ Douglas Campbell

Date: _____ John Warner IV

(b)(6) Date: Aug 22, 2012 [Redacted]
Richard Howell

(b)(6)

Date: 8/22/12



J.B. Miller

Date: _____

Scott Campbell

Date: _____

Jo L. Miller

(b)(6)

Date: 8/17/12

Scott Campbell

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