

**SETTLEMENT AND RELEASE AGREEMENT**

**Inter Savings Bank, fsb, d/b/a InterBank, fsb,**  
**vs.**  
**WR Appraisals, Inc.**  
(Sherburne County District Court case no. 71-CV-11-1853)

This Settlement and Release Agreement ("Agreement") is made by and between the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for Inter Savings Bank, fsb, d/b/a InterBank, fsb ("FDIC-R") and WR Appraisals ("Settling Defendant") (individually, the FDIC-R, and the Defendant may be referred to herein as "Party" and collectively as the "Parties").

**RECITALS**

**WHEREAS:**

Plaintiff, Inter Savings Bank, fsb, d/b/a InterBank, fsb ("Plaintiff") and Defendant WR Appraisals, Inc. ("Defendant") are parties to the lawsuit captioned above, filed in the Sherburne County District Court (the "Action"). Claims have been asserted by Plaintiff against Defendant in the lawsuit, which claims have been denied by Defendant. Prior to April 27, 2012, Plaintiff was a depository institution organized and existing under the laws of the United States.

On April 27, 2012, the Office of the Comptroller of the Currency closed the Plaintiff pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver ("the FDIC-R"). 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 its assets.

Among the assets to which the FDIC-R succeeded were all of Plaintiff's claims, demands, and causes of action, including the claims asserted by Plaintiff in the inherited Action now pending in Sherburne County District Court File No.: 71-CV-11-1853. Plaintiff's claims arise out of a Small Residential Income Property Appraisal prepared by Defendant with an effective date of July 14, 2007 (the "Appraisal") of a property located at  Anoka, (b)(4), (b)(6)

Minnesota (the "subject property"). The Parties have reached a resolution of these claims and deem it in their best interests to enter into this Agreement to avoid any 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 FDIC-R**

A. Pursuant to this Agreement, Defendant agrees to pay FDIC-R the sum of \$7,500 (seven thousand five hundred dollars) ("Settlement Payment").

B. As an essential covenant and condition to this Agreement, Defendant shall provide the Settlement Payment to FDIC-R on or before forty-five (45) calendar days following the date the FDIC-R executes this Agreement.

C. Defendant shall deliver the Settlement Payment to FDIC-R in good and sufficient funds.

D. If FDIC-R does not receive the Settlement Payment in full by the date determined by subsection A above, then FDIC-R, in its sole discretion, shall have the right at any time after the Settlement Payment is due, but prior to receipt of the Settlement Payment to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or

2. Enforce this Agreement, in which event the Defendant agrees to the jurisdiction in Sherburne County District Court in Minnesota and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Defendant agrees to consent, and re-institute an action on the FDIC-R's claims. The Defendant further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were

otherwise unavailable as of the date this Agreement was fully executed; 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 Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.D.2 through I.D.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

### **SECTION II: Stipulation and Dismissal**

Within ten business days after the latter of (1) execution of this Agreement by the Parties FDIC-R, and (2) receipt of the Settlement Payment, FDIC-R shall file a stipulation of dismissal with prejudice, dismissing all claims against Defendant with prejudice on the merits and without costs and disbursements to any party, executed by the attorneys for all parties hereto.

### **SECTION III: Releases**

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

Upon receipt of the Settlement Payment in full and except as provided in Section III.C, the FDIC-R, on behalf of itself individually, its successors and assigns, and on behalf of Plaintiff Inter Savings Bank, fsb, d/b/a InterBank, fsb, their respective heirs, executors, trustees, administrators, agents, representatives, hereby releases and discharges Defendant and its employees, officers, directors, insurers, 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 allegations contained in the Complaint, the Appraisal, or the subject property.

#### **B. The Defendant's Release.**

Effective simultaneously with the release granted in Section III.A. above, the Defendant, on behalf of itself individually, its successors and assigns, and its respective heirs, executors, trustees, administrators, agents, representatives, hereby releases and discharges the 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 Appraisal, or the subject property.

C. Exceptions from 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 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 them to FDIC-R, the Plaintiff, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Plaintiff or any person or entity other than Plaintiff; and

b. Against any person or entity not expressly released by the 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 the 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.

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 the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States 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: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Defendant is or was a shareholder of the Bank or its holding company and by virtue thereof are 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 FDIC-R 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 FDIC-R 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.

#### **SECTION V: 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 VI: 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 Appraiser Action and to otherwise perform the terms of this Agreement.

**SECTION VII: 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. 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.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Minnesota.

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

On behalf of FDIC-R:

Drake Metzger, Esq.  
Metzger Law Firm, LLC  
2116 Second Avenue South  
Minneapolis, MN 55404

(b)(6)

Email: [REDACTED]

And

John Church, Esq.  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive, Room VS-B 7056  
Arlington, VA 22226-3500

(b)(6)

Email: [REDACTED]

On behalf of Defendant:

Michael Nemo, Esq.

Arthur, Chapman, Kettering, Smetak & Pikala, P.A.  
500 Young Quinlan Building  
81 South Ninth Street  
Minneapolis, MN 55402  
Email:

(b)(6)

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 the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

**THE UNDERSIGNED HAS READ THE FOREGOING COMPLETE RELEASE AND SETTLEMENT AGREEMENT AND, HAVING HAD OPPORTUNITY FOR ADVICE OF COUNSEL, FULLY UNDERSTANDS IT.**

(b)(6)

By: Federal Deposit Insurance Corporation  
as Receiver for Inter Savings Bank, FSB

Dated: 12/22/2016

By: WR Appraisals, Inc., Defendant

Dated: \_\_\_\_\_

Arthur, Chapman, Kettering, Smetak & Pikala, P.A.  
500 Young Quinlan Building  
81 South Ninth Street  
Minneapolis, MN 55402  
Email:

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(b)(6)

By: Federal Deposit Insurance Corporation  
as Receiver for Inter Savings Bank, FSB

By: WR Appraisals, Inc., Defendant

Dated: \_\_\_\_\_

Dated: 1-5-17

*Jan 5th 2017*