

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this ____ day of _____, 2013, by, between, and among the following undersigned parties:

The Plaintiff, Federal Deposit Insurance Corporation, as Receiver of The Bank of Asheville (the “FDIC-R”), and W. Edward Anderson, Steven D. Coghurn, Darryl J. Hart, Carol L. King, G. Gordon Greenwood, Stephen L. Pignatiello, and David N. Wilcox (collectively the “Settling Defendants”), and Cincinnati Insurance Company (“CIC”). (Individually, the FDIC-R, the Settling Defendants, and CIC may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to January 21, 2011, The Bank of Asheville (the “Bank”) was a depository institution organized and existing under the laws of North Carolina;

On January 21, 2011, the Bank was closed by the North Carolina Office of the Commissioner of Banks and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed as Receiver. 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 any and all of the Bank’s claims, demands, and causes of actions against its former directors, officers and employees arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of the Bank;

On December 29, 2011, the FDIC-R filed a complaint for money damages against the Settling Defendants, who had each served at various times as directors and/or officers of the Bank.

Those claims for damages are now pending in the United States District Court for the Western District of North Carolina, Asheville Division (the "D&O Action"). The Settling Defendants have denied liability in the D&O Action.

CIC issued directors' and officers' liability policy number (the "Policy"), (b)(4) which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policy. The Settling Defendants have made claims for coverage and costs of defense under the Policy for the wrongful acts alleged in the D&O Action.

Any issues relating to the scope of insurance coverage between the Settling Defendants and CIC ("Coverage Issues") were settled by Order of the United States District Court for the Western District of North Carolina on February 2, 2013 in the case of *W. Edward Anderson, Steven D. Cogburn, Darryl J. Hart, Carol L. King, David N. Wilcox, Stephen L. Pignatiello, and Weststar Financial Services Corporation, v. The Cincinnati Insurance Company and the F.D.I.C. as Receiver for the Bank of Asheville*, 1:12-156-HMH. This Agreement does not purport to resolve or address Coverage Issues.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation. Among other things, the Parties have agreed, subject to the reservations set forth in SECTION III. I., below, that the Agreement shall be a "global" 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 the Settling Defendants that arise from or relate to the performance, non-performance or manner of performance of their respective functions, duties, and/or actions as officers and/or directors of the Bank.

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. As an essential covenant and condition to this Agreement, the Settling Defendants and CIC, collectively, agree to pay the FDIC-R the sum of \$2,025,000 (“the Settlement Funds”).

B. No later than January 15, 2014, provided FDIC-R has executed this Agreement by that date (the “Payment Date”), the Settlement Funds shall be delivered and received by check to:

Steven C. Morrison
Counsel, FDIC Professional Liability Unit
8800 Baymeadows Way West, Suite 540p
Jacksonville, Florida 32256

The subject line of the check shall include the following identifier: “Bank of Asheville, FIN 10330, D&O Settlement.” Additionally, the sending party, at least one day before the check is scheduled to be delivered, shall send email notification of the specific delivery date to

(b)(6) Steven C. Morrison [redacted] and Kyle M. Keegan

(b)(6) [redacted]

In the event that the Settlement Funds are not delivered in accordance with the above instructions by the Payment Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Payment Date until the date all unpaid amounts are received in accordance with the above instructions by the FDIC-R.

C. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC-R on or before the Payment Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement. Should an action by the FDIC-R to enforce this Agreement become necessary, the Parties agree to jurisdiction in Federal District Court in North Carolina with venue in the United States District Court for the Western District of North Carolina, and agree to pay all of the FDIC-R's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided, however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement.

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus any accrued interest, the FDIC-R shall dismiss the D&O 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.

SECTION III: Releases

A. Release of Individual Settling Defendants by the FDIC-R.

Effective upon receipt in full of the Settlement Funds plus any accrued interest and dismissal described in SECTIONS I and II, above, and except as provided in SECTION III. I., below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including, without limitation, the causes of action alleged in the D&O Action.

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

Effective simultaneously with the release granted in SECTION III. A., above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge 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 Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank.

C. Release by the Settling Defendants of Each Other.

Effective simultaneously with the releases granted in SECTION III. B., above, the Settling Defendants, and their respective heirs, executors, administrators, representatives, successors and

assigns, hereby release and discharge each other 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 performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and/or directors of the Bank, including, without limitation, the causes of action alleged in the D&O Action.

D. Release of CIC by the FDIC-R.

Effective simultaneously with the releases granted in SECTIONS III. A. and III. B., above, and except as provided in SECTION III. I., below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges CIC, 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.

E. Release of CIC by the Settling Defendants.

Effective simultaneously with the releases granted in SECTIONS III. A. and III. B., above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge CIC, 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, for the lawsuit styled, *Federal Deposit Insurance Corporation, as Receiver for the Bank of Asheville v. G. Gordon Greenwood, W. Edward Anderson, Steven D. Cogburn, Darryl J. Hart, Carol L. King, Steven L. Pignatiello, and David N. Wilcox*, Case No. 1:11 cv 00337. Nothing in

this release shall impair or have effect on the duties, responsibilities and/or liability of CIC in connection with any disputes and claims in the Buncombe County, North Carolina civil action with the file number 11 CV 3156, captioned *Deerborne Cottages, LLC, et al. v. Greenwood, et al.*, and any appeal thereof.

F. Release of the FDIC-R by CIC.

Effective simultaneously with the release granted in SECTIONS III.D., above, CIC, 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 the FDIC-R, and its 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.

G. Release of the Settling Defendants by CIC.

Effective simultaneously with the releases granted in SECTION III.E., above, CIC, 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 Defendants, and their respective heirs, executors, administrators, 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, for the lawsuit styled, *Federal Deposit Insurance Corporation, as Receiver for the Bank of Asheville v. G. Gordon Greenwood, W. Edward Anderson, Steven D. Cogburn, Darryl J. Hart, Carol L. King, Steven L. Pignatiello, and David N. Wilcox*, Case No. 1:11 cv 00337. This release, however, shall not affect CIC's obligations with respect to reasonable and necessary Defense Costs incurred by the Settling

Defendants through counsel retained to defend against the FDIC-R's released claims, which retention was previously consented to by CIC.

H. Release of Other Insureds by the FDIC.

Effective simultaneously with the release granted in SECTION III.A. above, and except as provided in SECTION III.I. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges all other persons insured under the Policy (the "Other Insureds") and each of their respective heirs, executors, administrators, representatives, successors and assigns, from any and all known and unknown claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise at any time from or relate to, the performance, nonperformance, or manner of performance of the operations and/or management of the Bank, the Other Insured's respective functions, duties and actions as directors, officers, and/or employees of the Bank or that arise from or relate to the Policy. This release shall be null and void as to any Other Insured that asserts any claim against the FDIC-R arising out of matters pertaining to the Bank.

I. Express Reservations From Releases By the FDIC-R.

1. Notwithstanding any other provision, by 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 Defendants 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, the Bank, other financial institutions, or any other person or entity, including, without limitation, any 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 in this Agreement; and
- c. which are not expressly released in SECTION III.A. or III.D., above.
- d. which are currently or hereafter included in the fidelity claim made against

(b)(4) Financial Institution Bond No. (the "Fidelity Bond") issued to the Bank by CIC; and

e. relating to or arising out of the Buncombe County, North Carolina civil action with the file number 11 CV 3156, captioned *Deerborne Cottages, LLC, et al. v.*

Greenwood, et al. However, it is specifically understood and agreed that the claims brought against the Settling Defendants, including Settling Defendant G. Gordon Greenwood, in the D&O Action are released by execution of this Agreement, and are not reserved by this subparagraph, and that such claims shall not be reasserted by the FDIC-R against any of the Settling Defendants, including Settling Defendant G. Gordon Greenwood, in the *Deerborne Cottages, LLC, et al. v. Greenwood, et al.* lawsuit, or otherwise.

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 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, 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 Western District of North Carolina or any other federal judicial district. In addition, the FDIC-R specifically reserves the right to seek, and/or enforce any existing, court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

SECTION IV: Waiver Of Dividends And Proceeds From Litigation

To the extent, if any, that the Settling Defendants are or were shareholders of the Bank or Weststar Financial Services Corporation 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 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 FHLBB, OTS, RTC, FDIC, the FSLIC Resolution Fund or the United States government in connection with the Bank, its conservatorship or receivership; 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 distributions, or such proceeds, with such assignment of G. Gordon Greenwood being subject to that Amended Judgment and Order of Restitution, and any amendments or modifications thereto, entered in the federal criminal action numbered DNCW111CR000012-001 in the United States District Court for the Western District of North Carolina, Asheville Division.

SECTION V: Waiver Of Subrogation Rights

A. No Impairment of Subrogation Rights. No releases or agreements contained herein, including the releases contained in SECTIONS III.A. and III.H., shall be construed as releasing or impairing any rights or claims that CIC may have, or be subrogated to, under the Fidelity Bond.

B. Waiver of Subrogation Rights. CIC, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates, and reinsurers, and their successors and assigns, hereby waives its rights to subrogation and/or assignment under the Fidelity Bond of 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 performance, nonperformance, or manner of performance of

the Settling Defendants' and/or the Other Insureds' respective functions, duties and actions as directors, officers, and/or employees of the Bank, including, without limitation, the causes of action alleged in the D&O Action or those claims which are currently or hereafter included in the fidelity claim made against the Fidelity Bond.

SECTION VI: Representations and Acknowledgements

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 that this Agreement is not an admission or evidence of liability by any of the undersigned Parties regarding any claim. The Settling Defendants expressly deny any liability regarding the FDIC-R's claims, including without limitation the causes of action alleged in the D&O Action.

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 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, successors and assigns.

D. 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 North Carolina.

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. 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).

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 conclude the D&O Action and to otherwise perform the terms of this Agreement.

2. Further, the Settling Defendants agree to cooperate fully with the FDIC 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 pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

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

b. making themselves available upon request by the FDIC at reasonable times and places for interviews regarding facts, as determined by the FDIC in its sole discretion, to be relevant to the Bank;

c. appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC in its sole discretion, to be relevant to the Bank.

G. 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.

c. appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC in its sole discretion, to be relevant to the Bank.

G. 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.

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 OF THE BANK OF ASHEVILLE

(b)(6) Date: 12/19/13

By:

Title: FDIC Counsel, Professional Liability

Print Name: Steven C. Morrison

Date: _____

W. EDWARD ANDERSON

By: _____

Title: _____

Print Name: _____

Date: _____

STEVEN D. COGBURN

By: _____

Title: _____

Print Name: _____

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 OF THE BANK OF ASHEVILLE

Date: _____

By: _____

Title: _____

Print Name: _____

Date: 12-19-13

W. EDWARD ANDERSON

(b)(6)

By:

Title: _____

Print Name: William Edward ANDERSON

Date: _____

STEVEN D. COGBURN

By: _____

Title: _____

Print Name: _____

Date: _____

DARRYL J. HART

By: _____

Title: _____

Print Name: _____

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 OF THE BANK OF ASHEVILLE

Date: _____

By: _____

Title: _____

Print Name: _____

Date: _____

W. EDWARD ANDERSON

By: _____

Title: _____

Print Name: _____

Date: 12-19-2013

STEVEN D. COGBURN

(b)(6)

By:

Title: Director

Print Name: STEVEN D. COGBURN

Date: _____

DARRYL J. HART

By: _____

Title: _____

Print Name: _____

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 OF THE BANK OF ASHEVILLE

Date: _____

By: _____

Title: _____

Print Name: _____

Date: _____

W. EDWARD ANDERSON

By: _____

Title: _____

Print Name: _____

Date: _____

STEVEN D. COGBURN

By: _____

Title: _____

Print Name: _____

Date: 12-30-13

DARRYL J. HART

(b)(6)

By: _____

Title: _____

Print Name: Darryl Hart

Date: 12/19/13

(b)(6)

CAROL L. KING

By:

Title: _____

Print Name: CAROL L. KING

Date: _____

G. GORDON GREENWOOD

By: _____

Title: _____

Print Name: _____

Date: _____

STEPHEN L. PIGNATIELLO

By: _____

Title: _____

Print Name: _____

Date: _____

DAVID N. WILCOX

By: _____

Title: _____

Print Name: _____

Date: _____

CINCINNATI INSURANCE COMPANY

By: _____

Title: _____

Print Name: _____

Print Name: _____

Date: _____

DARRYI. J. HART

By: _____

Title: _____

Print Name: _____

Date: _____

CAROL L. KING

By: _____

Title: _____

Print Name: _____

Date: 12-22-13

(b)(6)

G. GORDON GREENWOOD

By:

Title: _____

Print Name: G. Gordon Greenwood

Date: _____

STEPHEN L. PIGNATIELLO

By: _____

Title: _____

Print Name: _____

Date: _____

DAVID N. WILCOX

By: _____

Title: _____

Print Name: _____

Print Name: _____

Date: _____

DARRYL J. HART

By: _____

Title: _____

Print Name: _____

Date: _____

CAROL L. KING

By: _____

Title: _____

Print Name: _____

Date: _____

G. GORDON GREENWOOD

By: _____

Title: _____

Print Name: _____

Date: 19 Dec 2013

(b)(6)

STEPHEN L. PIGNATIELLO

By:

Title: Director

Print Name: STEPHEN L. PIGNATIELLO

Date: _____

DAVID N. WILCOX

By: _____

Title: _____

Print Name: _____

Date: _____

CAROL L. KING

By: _____

Title: _____

Print Name: _____

Date: _____

G. GORDON GREENWOOD

By: _____

Title: _____

Print Name: _____

Date: _____

STEPHEN L. PIGNATIELLO

By: _____

Title: _____

Print Name: _____

Date: 12/19/2013

DAVID N. WILCOX

(b)(6)

By:

Title: _____

Print Name: DAVID N. WILCOX

Date: _____

CINCINNATI INSURANCE COMPANY

By: _____

Title: _____

Print Name: _____

Date: _____

CAROL L. KING

By: _____

Title: _____

Print Name: _____

Date: _____

G. GORDON GREENWOOD

By: _____

Title: _____

Print Name: _____

Date: _____

STEPHEN L. PIGNATIELLO

By: _____

Title: _____

Print Name: _____

Date: _____

DAVID N. WILCOX

By: _____

Title: _____

Print Name: _____

Date: December 23, 2013 CINCINNATI INSURANCE COMPANY

(b)(6)

By:

Title: Manager - Creditors & Claims

Print Name: Constance S. Hennigan