

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into by and between Federal Deposit Insurance Corporation as Receiver for Washington Federal Bank for Savings (“FDIC-R”) and Colonial American Casualty and Surety Company (“Colonial”) (individually, the FDIC-R and Colonial may be referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to December 15, 2017, Washington Federal Bank for Savings (the “Bank”) was a depository institution organized and existing under the laws of Illinois;

On December 15, 2017, the Office of the Comptroller of the Currency closed the Bank 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), 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 FDIC-R succeeded were any and all claims, demands, and causes of action against the Bank’s financial institution bond insurer, including against Colonial as issuer of the Bond, as that term is defined below;

Colonial issued [REDACTED] for the period November 18, 2016, to November 18, 2019, to [REDACTED] and the Bank;

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The Bank sent a notice of potential loss and FDIC-R submitted a proof of loss and supplemental supporting documents to Colonial seeking coverage under the Bond for net losses sustained of at least \$15.66 million (“Claim”);

Colonial disputed that the claim was adequately documented and raised other coverage defenses; and

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of 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. As an essential covenant and condition of this Agreement and in consideration for the releases set forth in Section II, Colonial agrees to pay to FDIC-R the sum of \$1,250,000.00 (One Million, Two Hundred and Fifty Thousand U.S. Dollars and Zero Cents) (the "Settlement Payment"). The Settlement Payment shall be paid to FDIC-R within thirty (30) calendar days after both Parties sign the Agreement. The Parties agree that time is of the essence with respect to the obligation to make the Settlement Payment.

B. Colonial shall deliver the Settlement Payment to FDIC-R by direct check. The check shall be made payable to Federal Deposit Insurance Corporation as Receiver for Washington Federal Bank for Savings. The check shall be delivered to:

Stuart Tonkinson
Counsel, Professional Liability Unit
Federal Deposit Insurance Corporation
3501 Fairfax Drive, VS-B-7052
Arlington, Virginia 22226

C. If FDIC-R does not receive the Settlement Payment in full on or before the date determined by Section I.A. above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full 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)(2);

2. Enforce this Agreement, in which event Colonial agrees to jurisdiction in United States District Court for the Northern District of Illinois and to pay all of FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement;

3. Terminate the Agreement; and/or

4. Seek any relief available to it in law or equity.

In the event FDIC-R extends the period of time in accordance with Section I.C.1, the actions set forth in Section I.C.2 through I.C.4 shall only be available if FDIC-R does not receive the Settlement Payment (including all accrued interest) in full on or before the date set out in the extension.

SECTION II: Releases

A. Release of Colonial by FDIC-R

Effective upon receipt in full of the Settlement Payment, plus any accrued interest that may have become due pursuant to Section I.C.1 above, and except as provided in Section II.D below, FDIC-R, for itself and its successors and assigns, hereby releases and discharges Colonial, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns (collectively the "Colonial Released Parties"), from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or equity, that arise from or relate to the Claim or the Bond. As part of this release of Colonial, FDIC-R further agrees that any interest it has or may have under the Bond is extinguished.

B. Release of FDIC-R by Colonial

Effective simultaneously with the Release granted in Section II.A above, Colonial, for itself and its successors and assigns, and on behalf of the Colonial Released Parties hereby releases and discharges 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 Claim or the Bond.

C. Waiver of Subrogation by Colonial

1. Colonial agrees to and hereby does irrevocably waive any rights under Section 7 of the Bond and any rights of subrogation or recovery it may have relating to or arising out of the Claim or the Bond ("Rights of Recovery") including, without limitation, any rights arising from

Colonial's payment of the Settlement Payment. Colonial does hereby assign, transfer, and convey to FDIC-R any of its rights, claims, title, and interest as to any Rights of Recovery. Colonial agrees that FDIC-R may retain, sell, transfer, or otherwise dispose of such Rights of Recovery as it sees fit, in its sole and unfettered discretion, and retain the proceeds (if any) thereof. Any future recovery pursuant to such Rights of Recovery shall not modify or otherwise affect the amount of Settlement Payment due under this Agreement and required to be paid by Colonial.

D. Express Reservations from Releases by FDIC-R

1. Notwithstanding any other provision contained in this Agreement, 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 any 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 Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by 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;

c. under or relating to Policy No. [REDACTED] or any other policy of insurance issued by Colonial (or any other insurer) other than the Bond; and

d. which are not expressly released in Section II.A above.

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 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.

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3. Notwithstanding any other provision of this Agreement, this Agreement does not waive, or intend to waive, any claims which could be brought by the United States through the Department of Justice, the United States Attorney's Office for the Northern District of Illinois or any other federal judicial district, or by any other department, agency or instrumentality of the United States as defined by 18 U.S.C. § 6. In addition, 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 III: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they 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. Ownership of the Claim. The Parties hereby represent and warrant that they have not transferred, assigned, released, or otherwise compromised any rights or claims released herein. FDIC-R represents and warrants that it is the sole owner of the Claim. FDIC-R understands and agrees that this representation is a material part of the consideration provided to Colonial in this Agreement.

C. 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 or infirmity by either Party 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 terms.

D. 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; 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.

E. Choice of Law. This Agreement shall be interpreted, construed and enforced according to the applicable federal law, or in its absence, the laws of the state of Illinois.

F. Entire Agreement and Amendments. This Agreement constitutes the entire Agreement and understanding between the 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 to be bound thereby, or by their respective authorized attorney(s), or other representative(s).

G. Reasonable Cooperation. The undersigned Parties agree to cooperate in good faith to effectuate all of 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 perform the terms of this Agreement.

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. No Confidentiality. The Parties acknowledge and agree that this Agreement is a public document that will need to be disclosed pursuant to 12 U.S.C. § 1821(s) and other applicable laws and regulations.

J. 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.

IN WITNESS WHEREOF, the Parties have hereto caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

Date: September 12, 2019


**FEDERAL DEPOSIT
INSURANCE CORPORATION**

BY: 
TITLE: Counsel
PRINT NAME: J. S. Tonkinson

(b)(6)

Date: 9/13/19

**COLONIAL AMERICAN
CASUALTY AND SURETY COMPANY**

BY: 
TITLE: Claims Counsel, Surety & Financial Lines
PRINT NAME: JAMES A. KNOX

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