

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Appalachian Community Bank (“FDIC-R”), and Federal Insurance Company (“Federal”) (individually, the FDIC-R and Federal may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to March 19, 2010, Appalachian Community Bank (“Bank”) was a depository institution organized and existing under the laws of Georgia;

On March 19, 2010, the Georgia Department of Banking and Finance 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), 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 the Bank’s claims, demands, and causes of action against insurance carriers that issued financial institution bonds to the Bank;

Federal issued a Community Bank Bond, Number to Appalachian for the (b)(4) period May 1, 2009, to May 1, 2010 (“Bond”);

On or about January 19, 2010, Appalachian provided notice of potential loss under the Bond to Federal;

On or about August 3, 2010, the FDIC-R provided proofs of loss to Federal, which were subsequently supplemented (“Proof of Loss”); 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 to this Agreement, on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement, Federal agrees to pay the FDIC-R the sum of THREE MILLION DOLLARS (\$3 million) ("the Settlement Payment").

B. Federal shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the following account:

Bank: Federal Home Loan Bank of New York

ABA Routing Number:

For Credit To: FDIC National Liquidation Account

Account Number:

FIN 10199; Appalachian Community Bank

Contact: Stuart Tonkinson, 972-761-8105; Professional Liability (); DIF Fund. (b)(5)

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection 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 Federal agrees to jurisdiction in the United States District Court in the Northern District of Georgia and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement;

3. Terminate the Agreement and institute an action on the FDIC-R's claims. In the event the FDIC-R terminates the Agreement, the Parties agree that all statutes of limitation or timing defenses with respect to claims that the FDIC-R had against Federal prior to the date of the Agreement are tolled from the date of the Agreement until fifteen (15) days after the Agreement is terminated, or the expiration of the Tenth Tolling Agreement entered into by the Parties, whichever is later; and/or

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

Any extension of time under Section I.C.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.C.2 through I.C.4 at any time prior to receipt of Settlement Payment in full.

SECTION II: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Federal, its parents, affiliates, reinsurers, and subsidiaries, and their successors, assigns, employees, officers, directors, agents, and representatives, 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 Bond or the Proof of Loss. The FDIC-R acknowledges that any interest it may have under the Bond or with respect to the Proof of Loss is extinguished. Upon payment of the amount described in Section I of this Agreement, Federal shall have no further obligation with respect to the Bond or the Proof of Loss.

B. Federal's Release.

Effective simultaneously with the release granted in Section III.A. above, Federal on behalf of itself and its parents, subsidiaries, affiliates, and reinsurers, and their successors and assigns, hereby releases and discharges the FDIC-R and its successors, assigns, employees, officers, directors, agents, and representatives, 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 Bond or the Proof of Loss.

C. Waiver of Subrogation.

Federal irrevocably waives any rights of subrogation it may have relating to the Bond, including without limitation those arising from Federal's payment of the Settlement Payment or involving the claims asserted in the Proof of Loss and all rights to recovery thereof ("Recovery Rights"). Federal agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of any

Recovery Rights as it sees fit, in its sole discretion, and retain the proceeds (if any) thereof, and any such present or future retention or disposition of such Recovery Rights shall not serve to modify, alter, increase, decrease, or otherwise affect the consideration due under this Agreement or the monetary amount being paid by Federal.

D. 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 Federal 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 Bank, 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 Bank or any person or entity other than Bank; 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 III: 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.

C. Ownership of Claim. The FDIC-R represents and warrants that, pursuant to 12 U.S.C. § 1821(d), the FDIC-R is the sole owner of, and that it has not assigned, sold, or transferred any interest in the claims under the Bond released herein.

SECTION IV: 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 perform the terms of this Agreement.

SECTION V: 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 applicable federal law, or in its absence, the laws of the State of Georgia.

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

If to the FDIC-R: Stuart Tonkinson, Federal Deposit Insurance Corporation, 1601 Bryan Street, 35th Floor, Dallas, Texas 75201, [REDACTED], and Mary Wolff, Wolff Ardis, P.C., 5810 Shelby Oaks Drive, Memphis, Tennessee 38134, [REDACTED] (b)(6)

If to Federal: C. David Hailey, Mozley, Finlayson & Loggins LLP, One Premier Plaza, Suite 900, 5605 Glenridge Drive NE, Atlanta, Georgia 30342, [REDACTED] and (b)(6) Catherine M. Pensanti, Chubb & Son, 82 Hopmeadow Street, Simsbury, Connecticut, 06070-7683, [REDACTED] (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.

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 APPALACHIAN COMMUNITY
BANK

(b)(6) Date: 10/16/2015

BY:

TITLE: Counsel

PRINT NAME: J.S. Tonkinson

FEDERAL INSURANCE COMPANY

Date: _____

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 FOR APPALACHIAN COMMUNITY
BANK

Date: _____

BY: _____

TITLE: Counsel

PRINT NAME: J.S. Tonkinson

FEDERAL INSURANCE COMPANY

(b)(6)

Date: 10-14-15

BY: _____

TITLE: Sr Claims Officer

PRINT NAME: Catherine M. Pensanti