

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made as of this 9 day of October, 2012, by, between, and among the following undersigned parties:

The Plaintiff, Federal Deposit Insurance Corporation, as Receiver of Georgian Bank ("the FDIC-R"), Gordon R. Teel, William Kelly, Gary Nix, Rebecca Abraham, Philip T. Homan, David R. Hunter, Donald A. Rolader, Gary C. Waddell, and J. C. Wallace, Jr. (collectively the "Settling Defendants"), and Federal Insurance Company ("Federal"). The FDIC-R, the Settling Defendants, and Federal may be referred to herein individually as a "Party" and collectively as the "Parties".

**RECITALS**

**WHEREAS:**

A. Prior to September 25, 2009, Georgian Bank ("the Bank") was a depository institution organized and existing under the laws of Georgia;

B. On September 25, 2009, the Bank was closed by the Georgia Department of Banking and Finance and pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R as receiver succeeded to all rights, titles, powers and privileges of the Bank, its shareholders, and creditors, including right and title with respect to the Bank's assets.

C. Among the assets to which the FDIC-R as receiver succeeded were any and all claims, demands, and causes of actions against the Bank's 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;

D. The FDIC-R has asserted claims against the Settling Defendants, who had each served at various times as directors and/or officers of the Bank. The Settling Defendants have denied liability for the FDIC-R's claims.

E. Federal issued directors' and officers' liability policy number [redacted] (the (b)(4), (b)(6) "Federal Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Federal Policy. The Settling Defendants have made claims under the Federal Policy. Federal has reserved its rights under the Federal Policy for claims asserted by FDIC-R against the Settling Defendants.

The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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, Federal, on behalf of the Settling Defendants, shall pay \$6.75 million (\$6,750,000) to the FDIC-R. Within ten (10) business days following the execution of an original, or originals in counterparts, of this Agreement by each of the undersigned Parties to this Agreement (the "Payment Date"), the \$6.75 million settlement amount (hereinafter the "Settlement Funds") shall be delivered to the FDIC-R by direct wire transfer to the Federal Home Loan Bank of New York, New York Main Office, 101 Park Avenue, New York, NY 10178-0599, Routing No. 0260-0973-9, Account No.

(b)(4), (b)(6) [redacted] for the credit to FDIC National Liquidation Account OBI Georgian Bank, Atlanta, GA (FIN 10122) Professional Liability (37100) DIF Fund—contact Marion Tarin ([redacted] or (b)(6)

(b)(6) Douglas Lang  In the event that the Settlement Funds are not delivered to the FDIC-R by the Payment Due Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Payment Date until the date of payment.

B. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds 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 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, in which event the Parties agree to jurisdiction in the United States District Court for the Northern District of Georgia and the prevailing party(ies) shall be entitled to reasonable attorney's fees in such enforcement action. In the event the FDIC-R declares the Agreement null and void, the Parties agree that all statutes of limitation or timing defenses with respect to claims that the FDIC-R had against any Party prior to the date of the Agreement are tolled from the date of the Agreement until fifteen (15) days after the Agreement is declared null and void.

**SECTION II: Releases**

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

Effective upon payment of the Settlement Funds plus any accrued interest described in SECTION I and except as provided in Paragraph II.H, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, and administrators, from any and all claims, demands, obligations, damages, actions, and causes of action, whether known or unknown, whether accrued, inchoate, liquidated, contingent, actual or asserted, 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.

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

Effective simultaneously with the release granted in Paragraph II.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 Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Paragraph II.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.

D. Release of Federal by FDIC-R.

Effective simultaneously with the releases granted in Paragraphs II.A. and II.B. above, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Federal, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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 Federal Policy; provided that this release shall not extend to or affect any other Federal policy of insurance, including but not limited to Financial Institution Bond No.  (b)(4)

E. Release of FDIC-R by Federal.

Effective simultaneously with the release granted in Paragraph II.D. above, Federal, 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, 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 Federal Policy.

F. Release of Settling Defendants by Federal.

Effective simultaneously with the releases granted in Paragraph II.E. above, Federal, 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, that arise from or relate to the Federal Policy or the performance, nonperformance, or manner of performance of the FDIC's functions, duties and actions.

G. Release of Certain Insured Persons Other than Settling Parties.

Effective upon payment of the Settlement Funds plus any accrued interest described in SECTION I and except as provided in Paragraph II.H, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the certain insured persons listed in Exhibit

A (hereinafter "Certain Insured Persons") that were named in demand letters sent by the FDIC-R on or about June 24, 2010, and their respective heirs, executors, and administrators, from any and all claims, demands, obligations, damages, actions, and causes of action, whether known or unknown, whether accrued, inchoate, liquidated, contingent, actual or asserted, 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 Certain Insured Persons' respective functions, duties and actions as officers and/or directors of the Bank.

H. Express Reservations From Releases By 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 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 Bank, and including but not limited to the right to object to the discharge or dischargeability of any such indebtedness in any bankruptcy proceeding;

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

(c) which are not expressly released in SECTION II 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 the FDIC-R 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 any other federal or state governmental agency, including the United States through either the Department of Justice, the United States Attorney's Office for the Northern District of Georgia or any other federal judicial district. In addition, the FDIC-R specifically reserves the right 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.

**SECTION III: Waiver of Dividends and Receivership Claims**

To the extent, if any, that Settling Defendants are or were shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other prorata distribution upon resolution of the receivership of the Bank, 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. The Settling Defendants also waive any claim in the Georgian Bank receivership.

**SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Defendants are or were shareholders of Georgian 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 Georgian 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 Georgian 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 Georgian 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.

**SECTION V: Salvage and Waiver of any Subrogation**

The FDIC-R shall retain all rights to recover from any of the debtors, direct obligors, or guarantors, and to sell or otherwise dispose of any collateral securing the underlying obligations which form the bases of the losses claimed by the FDIC-R against the Settling Defendants. The Settling Defendants and Federal waive any and all rights or claims of subrogation, legal, equitable, or otherwise.

**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, that this Agreement is not an admission or evidence of liability by any of them regarding any claim, and the Settling Defendants expressly deny any liability regarding the FDIC's claims.

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 Georgia.

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; provided that, the obligations set forth in the Confidentiality Agreement executed by the parties shall remain in effect. 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. Jointly Drafted.

All of the Parties and their respective counsel mutually contributed to the preparation of, and have had the opportunity to review and revise this Agreement. Accordingly, no provision of this Agreement shall be construed against any Party because that Party, or its counsel, drafted the provision. This Agreement and all of its terms shall be construed equally as to all persons or entities.

G. Specific Representations Warranties and Disclaimer.

The Settling Parties expressly acknowledge that in determining to settle the claims released here, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information in the financial statements submitted. If, in their financial statements, a Settling Party has intentionally or recklessly failed to disclose any interest, legal, equitable, or beneficial, in any material asset,<sup>1</sup> the involved Settling Party agrees to cooperate fully with the FDIC-R to transfer their interest in the asset to the FDIC-R and to sign any and all documents necessary to transfer their interest in the asset to the FDIC-R. Moreover, if, in their financial statements the involved Settling Party has failed to disclose any interest, legal, equitable, or beneficial, in any material asset, the FDIC-R in its sole discretion, may exercise one or more or all of the following remedies: (a) the FDIC-R may declare the releases granted to the involved Settling Party as null and void; (b) the FDIC-R may retain the Settlement Funds; (c) the FDIC-R may sue the involved Settling Party for damages, an injunction, and specific performance for the breach of this agreement; and (d) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against the involved Settling Party. The Settling Parties agree that if, in their financial statements, they have failed to disclose any interest, legal, equitable, or beneficial, in any material asset, the involved Settling Parties consent to the reinstatement of FDIC-R's claims and waive any statute of limitations that would bar any of the FDIC-R's claims against them.

H. Reasonable Cooperation.

1. The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

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<sup>1</sup> "Material Asset" means any asset having a fair market value of at least 10% of the total amount of assets disclosed by the Settling Party in their financial statement. If multiple assets are involved then the 10% threshold shall be determined on a cumulative basis.

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

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

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

(c) appearing to testify at reasonable times and places, upon request by the FDIC-R, in any matter determined by the FDIC-R in its sole discretion, to be related to the Bank, without the necessity of subpoena from the FDIC-R;

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

I. 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.

J. Notices

Any notices relating to or arising out of this Agreement shall be in writing sent by email and registered or certified mail, return receipt requested, shall be considered delivered when received by the Party to whom it was sent, and shall be addressed to the following recipients:

To the FDIC:

Charles B. Lee, Esq.  
Miller & Martin PLLC

(b)(6) Email: [REDACTED]

Suite 1000 Volunteer Building  
832 Georgia Avenue  
Chattanooga, Tennessee 37402

and

Federal Deposit Insurance Corporation

(b)(6) Email: [REDACTED]

7777 Baymeadows Way Est, Room 551F  
Jacksonville, Florida 32256  
Attn: Doug Lang, Esq.

To Gordon R. Teel:

James B. Manley, Jr. Esq.  
McKenna Long & Aldridge LLP

(b)(6) Email: [REDACTED]

303 Peachtree Street, NE  
Suite 5300  
Atlanta, Georgia 30308

To William Kelly, Gary Nix, and Rebecca Abraham:

W. Scott Sorrels, Esq.  
Sutherland, Asbill & Brennan LLP

(b)(6) Email: [REDACTED]

999 Peachtree Street, NE  
Atlanta, Georgia 30309

To Philip T. Homan, David R. Hunter, Donald A. Rolader, Gary C. Waddell, and J.C. Wallace, Jr.:

Robert R. Long, Esq.  
Alston & Bird, LLP

(b)(6) Email: [REDACTED]

1201 W. Peachtree Street  
Atlanta, Georgia

**IN WITNESS WHEREOF** the Parties have executed this Agreement individually and with the approval of their attorneys, whose names appear herein, and the FDIC-R has executed this agreement by its duly authorized representatives. By executing this Agreement, each Party

stipulates, agrees, and warrants as follows: (i) that the terms of this Agreement are reasonable; (ii) that he or it will not challenge or contest in any way the capacity or the authority of any Party hereto to make the Agreements set forth herein, and (iii) that the person executing this Agreement on his behalf, or on behalf of the entity indicated, has the necessary and appropriate authority and capacity to execute this Agreement and to make this Agreement fully binding upon and enforceable against himself or the entity he represents.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

(b)(6)

By



Title: Senior Attorney, FDIC

Date: 10/9/2012

Print Name: DOUGLAS B. LANG

**GORDON R. TEEL**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**WILLIAM KELLY**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**GARY NIX**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

stipulates, agrees, and warrants as follows: (i) that the terms of this Agreement are reasonable; (ii) that he or it will not challenge or contest in any way the capacity or the authority of any Party hereto to make the Agreements set forth herein, and (iii) that the person executing this Agreement on his behalf, or on behalf of the entity indicated, has the necessary and appropriate authority and capacity to execute this Agreement and to make this Agreement fully binding upon and enforceable against himself or the entity he represents.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

(b)(6)



GORDON R. TEEL

Title: \_\_\_\_\_

Print Name: GORDON R. TEEL

Date: Oct 8, 2012

WILLIAM KELLY

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

GARY NIX

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

stipulates, agrees, and warrants as follows: (i) that the terms of this Agreement are reasonable; (ii) that he or it will not challenge or contest in any way the capacity or the authority of any Party hereto to make the Agreements set forth herein, and (iii) that the person executing this Agreement on his behalf, or on behalf of the entity indicated, has the necessary and appropriate authority and capacity to execute this Agreement and to make this Agreement fully binding upon and enforceable against himself or the entity he represents.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**GORDON R. TEEL**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

(b)(6)

[Redacted Signature]

**WILLIAM KELLY**

Title: Officer

Date: 10/8/12

Print Name: William Kelly

**GARY NIX**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**GORDON R. TEEL**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**WILLIAM KELLY**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

(b)(6)

[Redacted Signature Box]

**GARY NIX**

Title: \_\_\_\_\_

Date: 10/8/12

Print Name: Gary L. Nix



(b)(6)



REBECCA ABRAHAM

Title: Officer

Date: 10-8-12

Print Name: Rebecca A. Abraham

PHILIP T. HOMAN

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

DAVID R. HUNTER

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

DONALD A. ROLADER

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

GARY C. WADDELL

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**REBECCA ABRAHAM**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

(b)(6)

\_\_\_\_\_

(b)(6)

**PHILIP T. HOMAN**

Title: \_\_\_\_\_

Date: Oct. 8-2012.

Print Name: Phillip T. Homan

**DAVID R. HUNTER**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**DONALD A. ROLADER**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**GARY C. WADDELL**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

REBECCA ABRAHAM

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

PHILIP T. HOMAN

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_



DAVID R. HUNTER

Title: \_\_\_\_\_

Date: Oct. 8, 2012

Print Name: David R. Hunter

DONALD A. ROLADER

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

GARY C. WADDELL

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

(b)(6)

REBECCA ABRAHAM

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

PHILIP T. HOMAN

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

DAVID R. HUNTER

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

(b)(6)

DONALD A. ROLADER

Title: *director*

Date: *10-8-12*

Print Name: *DONALD A. ROLADER*

GARY C. WADDELL

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

REBECCA ABRAHAM

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

PHILIP T. HOMAN

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

DAVID R. HUNTER

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

DONALD A. ROLADER

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

(b)(6)

(b)(6)

[Redacted]

[Redacted]

GARY C. WADDELL

Notary Public, Cobb County, State of GA  
My Commission Expires 06-12-15

Title: BANK BOARD

Date: 10/2/12

Print Name: GARY C. WADDELL

(b)(6)



J. C. WALLACE, JR.

Title: Director

Date: \_\_\_\_\_

Print Name: James C. Wallace, Jr.  
**FEDERAL INSURANCE  
COMPANY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

J. C. WALLACE, JR.

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**FEDERAL INSURANCE  
COMPANY**

(b)(6)

By

Title: Assistant Vice President  
Chubb+Sol, as Manager for Federal Ins. Co.

Date: October 9, 2012

Print Name: HUGH D SPEARS

**EXHIBIT A**  
**ADDITIONAL D&Os**

- Yetty Arp
- Kenneth Barber
- Fred Bentley, Jr.
- Frank Brown
- Christine Cooper
- Lynn Darby
- Vince Dooley
- Earl Ehrhart
- Brian Fisher
- Tricia Griner
- Andrew "Jack" Head
- Mark Hennessy
- Pamela Hubby
- David "Robbie" Hunter
- Danny Jett
- John O. Knox
- Patrick Kotora
- Adams "De" Little
- Dexter Lummas
- Cheryl Moultrie
- Alan Najjar
- Adam Ogburn
- John Poelker
- Gerald Ragan
- Wesley Rakestraw
- Philip Resch
- William Russell
- Andy Schival
- Taylor Smith
- Richard Spink
- Michael Thompson
- Don Updegraff
- Kim Ward
- Charlie Watts
- Mary Williamson
- Dan Wolf
- Robert Wynne
- Dorothy Young



**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-Disclosure Agreement ("Agreement") is entered into this 10th day of October, 2011, between the Federal Deposit Insurance Corporation (the "FDIC"), acting as receiver of Georgian Bank (the "Bank"), Chubb & Son, a division of Federal Insurance Company, as claim manager for Federal Insurance Company and its affiliates (collectively, "Chubb") and outside counsel for the former officers and directors of the Bank (collectively "Counsel"), as listed in Attachment A. The FDIC, Chubb and Counsel are referred to individually as a "Party" or together as the "Parties."

**RECITALS**

1. This Agreement is made in connection with the FDIC's June 24, 2010 demand for payment of civil damages and notice of wrongful acts against certain former directors and officers of the Bank (the "D&O Claim"), and Chubb's investigation of the foregoing matter.
2. The Bank was closed on \_\_September 25, 2009\_\_, by the Georgia Department of Banking and Finance, and the FDIC was appointed Receiver for the Bank.
3. Chubb issued Policy No.  (the "D&O Policy") to Georgian Bancorporation Inc. (the "Bank") for the Policy Period of October 28, 2008 to October 28, 2009.
4. Officers and directors of the Bank have submitted the D&O Claim for coverage under the D&O Policy.
5. As a regulated insurer and as part of its standard business practice, Chubb is obligated to safeguard and keep confidential information contained in its claim files. However, Chubb, as a regulated insurer, and as a reinsured, has certain statutory, regulatory and contractual obligations to make information held in its records accessible to its auditors, attorneys, accountants, regulators and reinsurers. Such information includes information held in Chubb's claim files.
6. To investigate and evaluate the D&O Claim, and coverage under the D&O Policy, the Parties wish to exchange documents and other information, while simultaneously maintaining the confidential nature of such documents and information.

(b)(4)

**AGREEMENT**

In consideration of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

**1. Definitions.**

- (a) **Confidential Material** shall mean certain documents, records, and information that are not publicly available and are composed or stored in written, electronic, digital, or any other medium, received from another Party and bearing the "Confidential" legend as set forth in Paragraph 4 of this Agreement. Confidential Material includes any information

identifying any names, addresses, account information, personal information (such as social security number, date of birth, and any other personal identification information) recognized by law as, or required to be maintained as, confidential including, without limitation, the following:

- (i) **Regulatory Material:** any and all documents and information related in any way to the regulation or supervision of the Bank, in whatever form, whether preliminary or final, including, but not limited to, reports of examination or inspection, regulatory correspondence, reports, orders, memoranda, or agreements.
- (ii) **Bank and Customer Material:** any and all documents and information concerning customers of the Bank, including, but not limited to, bank account information, signature cards, bank statements, general ledger entries, deposit information, and related records; documents or information of any kind whatsoever that contain any names, addresses, account information, personal information (including, but not limited to, social security number, date of birth, and other identifying information); and documents or information in any way related to loans and lending transactions, including, but not limited to, loan applications, financial statements and credit reports, business and personal state and federal income tax forms, correspondence, and related loan documentation relating to any extension of credit or loan to any borrower.
- (iii) **Receivership Material:** any and all documents or information related to the activities of the receivership of the Bank, including, but not limited to, any information on loss or estimates of such loss on assets.
- (iv) **Statutorily Protected Material:** any and all documents that are confidential or exempt from disclosure as provided in the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"); the FDIC's regulations governing the disclosure of information, 12 C.F.R. Part 309; the laws of the State of Georgia; or any other applicable federal or state laws.

(b) **Third Party** shall mean any person, individual, company, partnership, corporation, agency, organization, entity, legal or otherwise, who is not authorized to review Confidential Material pursuant to this Agreement or Attachment B hereto.

**2. Approval of Release of Regulatory Material.** The Parties understand and agree that the release of Regulatory Material by the FDIC may require approval from independent government agencies, and that no Regulatory Material, however obtained, will be disclosed to any Third Party without approval by the respective regulatory authority or a court order.

**3. Future Litigation.** The Parties and their respective counsel may, in any future litigation between the Parties, challenge the Party or Parties' designation of document or information as Confidential Material, in which event the Court will determine whether such documents should remain confidential and protected by the terms of this Agreement. The Parties shall not contend or assert that the production of Confidential Material pursuant to this Agreement in any way acts as a waiver of any discovery or evidentiary objections by any of the Parties or otherwise entitles the Parties to obtain or use Confidential Material in a manner contrary to this Agreement.

**4. Confidential Designation and Treatment of Confidential Material.** Documents subject to this Agreement shall be designated as confidential by affixing to them the legend "Confidential Material Provided by [Name of Party]" on each page of each document. Confidential

electronic or digital materials shall be so designated either by electronic tag or by letter accompanying the production. The failure of any Party to designate any materials with such legend shall not constitute a waiver by the Parties of the right to later request that such documents be stamped as confidential and thereafter assert that such documents contained protected confidential, proprietary, personal, or trade secret information or are otherwise confidential. In the event that any Party inadvertently produces Confidential Material without designating the documents or information as Confidential Material, and if the producing Party subsequently notifies the receiving Party or Parties and their counsel that the documents or information should have been designated Confidential Material, the Parties agree to treat any such subsequently identified documents or information as duly designated Confidential Material and subject to this Agreement. Absent the "Confidential Material" designation or the subsequent notification referenced above, a receiving Party shall have no obligation to treat received material as Confidential Material.

**5. Documents that are not Confidential.** The Parties agree that the following will not constitute Confidential Material for purposes of this Agreement:

- (a) Confidential Material which, at the time of disclosure, is in the public domain; and
- (b) Confidential Material which shall become part of the public domain after disclosure other than as a consequence of a breach of this Agreement.

**6. Use of Confidential Material.** Confidential Material shall be considered confidential and shall not be disclosed except as provided herein. Confidential Material shall only be used in conjunction with the Parties' and their respective counsels' investigation and analysis of the D&O Claim and D&O Policy or any litigation arising out of or relating to the terms or conditions of the D&O Policy.

**7. Exceptions to Non-disclosure:**

**(a) Exceptions to Non-disclosure: FDIC.** The FDIC may disclose Confidential Material received pursuant to this Agreement to the following person or entities:

- (i) FD IC personnel, including but not limited to the FDIC's Chairman, Board of Directors, in-house attorneys, investigators and senior executives, conducting, assisting, monitoring, reviewing, or making determinations with regard to or related to the D&O Claim, or any litigation or proceeding arising out of or related to the D&O Claim and/or the D&O Policy;
- (ii) counsel (together with any employees of counsel) engaged by the FDIC to assist or participate in the above matters;
- (iii) vendors, experts, consultants, mediators, and arbitrators engaged by the FDIC or its counsel to assist or participate in the above matters;
- (iv) auditors, examiners and regulators required or authorized by law to review materials that may include Confidential Material;
- (v) persons to whom the information is required to be made available under the FOIA or the FDIC's FOIA regulations, 12 CFR §309.5, upon receipt of a proper FOIA request for such information; and

(vi) individuals, entities and agencies permitted access to exempt information under 12 CFR §309.6.

**(b) Exceptions to Non-disclosure: Counsel.** Counsel may disclose Confidential Material received pursuant to this Agreement to the following persons or entities:

- (i) all former directors and officers represented by Counsel;
- (ii) Counsel's employees who are assisting, monitoring, reviewing, or making determinations with regard to or related to the D&O Claim, or any litigation or proceeding arising out of or related to the D&O Claim and/or the D&O Policy;
- (iii) vendors, experts, consultants, mediators, and arbitrators engaged by Counsel to assist or participate in the above matters;

**(c) Exceptions to Non-disclosure: Chubb.** Chubb may disclose Confidential Material received pursuant to this Agreement to the following persons or entities:

- (i) counsel engaged by Chubb to assist or participate in the above matters;
- (ii) Chubb's personnel who are assisting, monitoring, reviewing, or making determinations with regard to or related to the D&O Claim, or any litigation or proceeding arising out of or related to the D&O Claim and/or the D&O Policy;
- (iii) auditors or examiners required or authorized by law to review materials that may include Confidential Material;
- (iv) vendors, experts, consultants, mediators, and arbitrators engaged by Chubb to assist or participate in the above matters
- (v) reinsurers, auditors or other entities to which Chubb may be required to respond or report in the ordinary course of business regarding the subject matter of the D&O Claims, but only so long as such persons or entities are already subject to substantially similar confidentiality obligations; and
- (vi) regulators to which Chubb may be required to respond or report in the ordinary course of business regarding the subject matter of the D&O Claim.

**8. Confidentiality Agreement Certificate.** Confidential Material may only be disclosed to persons or entities identified in the following paragraphs after that person or entity, through an authorized representative, agrees to be bound by this Agreement and signs a written Agreement to Maintain Confidentiality in the form attached as Attachment B:

- (i) 7(a)(ii) and (iii)
- (ii) 7(b)(i) and (iii)
- (iii) 7(c)(i) and (iv).

**9.** The Parties shall keep all of their respective Agreements to Maintain Confidentiality containing original or electronic signatures.

**10. Demands by Third Parties for Confidential Material.** Notwithstanding any other provision in this Agreement to the contrary, if any Third Party requests, requires, or demands by subpoena, court order, discovery request, regulatory or governmental agency inquiry, or pursuant to statutory, regulatory or legal right production by a Party of Confidential Material, the Party

receiving such demand shall promptly notify the designated Parties outlined in Paragraph 17 of the document, demand or inquiry within fourteen business days of the date the Party receives any such document, demand or inquiry and provide the Parties with the opportunity to object to such disclosure. If any Party does not object to the receiving Party producing documents in response to such document, demand or inquiry within fourteen business days from the date the Party receives the receiving Party's notification, the receiving Party may produce documents responsive to such document, demand or inquiry. If any Party objects, the receiving Party shall not produce the Confidential Material absent court order. Should any Party choose to oppose the receiving Party's production of Confidential Material or the Third Party's initial demand and assert any applicable protections in response to any such document, demand, or inquiry, the burden and expense of opposing any such document, demand, or inquiry shall be borne solely by the objecting Party.

**11. Power of Execution of Agreement.** This Agreement may be executed in counterparts by the parties and each such counterpart upon execution shall be deemed a complete original binding the parties subscribed thereto.

**12. Violation of Agreement.** In the event of any alleged violation of this Agreement by the Parties or a signatory of Attachment B, the Parties shall first seek to resolve the alleged violation through prompt and reasonable discussion. In the event such efforts fail to promptly resolve the alleged violation, or within 30 days of notice to the designated Parties in paragraph 17 that the alleged violation has not been resolved, each Party has the right to initiate litigation in the appropriate venue pursuant to paragraph 18 to resolve the violation.

**13. Dispute as to Confidential Material.** By entering into this Agreement, the Parties do not concede that the Confidential Material provided pursuant to this Agreement is confidential. However, in order to facilitate an amicable resolution of this issue, and to allow them to move forward with their analysis of the D&O Claim, the Parties have agreed to enter into this Agreement. The Parties specifically reserve the right to disagree and contest any such designation of documents or material as Confidential Material. However, should a dispute arise between any of the Parties concerning the designation of any documents or information as Confidential Material, the Parties agree to maintain the confidentiality of any such documents and information as set forth herein until an agreement is reached between the Parties, or a court order is entered, permitting the Parties to treat such documents or information other than as set forth herein.

**14. No Waiver of Privileges and Rights.** This Agreement in no way modifies, revises, changes, alters, or in any way amends the D&O Policy. Chubb's consent to this Agreement does not waive any rights or defenses it may have with respect to the D&O Claim. Chubb has and continues to reserve all of its rights and defenses in connection with the D&O Claim under the D&O Policy and applicable law. Further, by entering into this Agreement the Parties do not waive any privilege, including any attorney-client privilege, work product protection, or any other privilege or protection that they might have. Nothing in this Agreement creates any rights of access to documents or information which the FDIC does not voluntarily provide.

**15. Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the undersigned parties with respect to the subject matter hereof, and any prior oral or written statements concerning same are merged herein for all purposes and shall be of no force and effect. This Agreement shall only be amended, revised or altered by a writing

signed by the parties to this Agreement. The captions heading the paragraphs of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the provisions hereof.

**16. Binding Effect; Assignment; Severability.** This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, successors and assigns. No Party may assign any right or delegate any duty under this Agreement other than to an affiliate without the other Party's prior written consent. In the event that any provision hereof is deemed unlawful or unenforceable, such provision shall be stricken from the Agreement to the extent of such illegality or unenforceability, and the Agreement shall remain in full force and effect.

**17. Notice.** All notices required to be given under this Agreement shall be in writing and delivered to the addressees set forth below. Notice shall be sent by email and either overnight delivery or registered or certified mail, return receipt requested, and shall be considered delivered upon receipt.

If to the FDIC: Gonzalez Saggio & Harlan LLP  
One Financial Way, Suite 312  
Cincinnati, Ohio 45242

(b)(6) \_\_\_\_\_ Attn:

and

Federal Deposit Insurance Corporation  
7777 Baymeadows Way West, Room 551F  
Jacksonville, Florida 32256

(b)(6) \_\_\_\_\_ Attn:

If to Counsel: As set forth in Attachment A

If to Chubb: Claims Department  
Chubb Group of Insurance Companies  
82 Hopmeadow Street  
Simsbury, CT 06070

(b)(6) \_\_\_\_\_ Attention:

(b)(6) \_\_\_\_\_

**18. Governing Law.** This Agreement shall be governed by federal law, and to the extent that state law would apply under applicable federal law, the laws of the State of Georgia. The Parties consent to venue and personal jurisdiction in the United States District Court for the Northern District of Georgia should any dispute relating to this Agreement arise.

**19. Return or Destruction of Documents.** Upon the final resolution of the D&O Claim, either through resolution during or after the claim process, or by entry of a final, non-appealable judgment governing the rights and obligations of the FDIC, the directors and officers of the Bank and Chubb under the D&O Policy, the parties agree:

- (a) Chubb and its counsel and the FDIC may retain a copy of any Confidential Material as reasonably necessary, to comply with future requests for review by reinsurers, auditors and regulators, or as necessary to exercise or enforce any subrogation rights or as necessary to meet other business requirements. When such retention is no longer needed, Chubb shall destroy the retained documents in accordance with its standard record destruction procedures, subject to any applicable litigation hold or any other document or information hold imposed by any governmental body or court order. Chubb and its counsel shall maintain the confidentiality of all such Confidential Material retained by Chubb or its counsel, in accordance with this Agreement until such documents are destroyed. This paragraph does not apply to any documents or information ordered produced by a court without the limitations set forth in this Agreement.
- (b) Counsel may retain an archival copy of Confidential Material for one year after the resolution of the D&O Claim.
- (c) All other signatories to Attachment B agree to destroy or return documents produced to them within twenty days of the resolution of the D&O Claim.

**20. Power of Execution of Agreement.** Each of the signatories severally represents and warrants that he, she or it in the capacities recited herein has the full power and authority to execute, deliver and perform this Agreement.

21. This Agreement may be executed in one or more counterparts, including by facsimile and electronic mail.

and regulators, or as necessary to exercise or enforce any subrogation rights or as necessary to meet other business requirements. When such retention is no longer needed, Chubb shall destroy the retained documents in accordance with its standard record destruction procedures, subject to any applicable litigation hold or any other document or information hold imposed by any governmental body or court order. Chubb and its counsel shall maintain the confidentiality of all such Confidential Material retained by Chubb or its counsel, in accordance with this Agreement until such documents are destroyed. This paragraph does not apply to any documents or information ordered produced by a court without the limitations set forth in this Agreement.

(b) Counsel may retain an archival copy of Confidential Material for one year after the resolution of the D&O Claim.

(c) All other signatories to Attachment B agree to destroy or return documents produced to them within twenty days of the resolution of the D&O Claim.

20. **Power of Execution of Agreement.** Each of the signatories severally represents and warrants that he, she or it in the capacities recited herein has the full power and authority to execute, deliver and perform this Agreement.

21. This Agreement may be executed in one or more counterparts, including by facsimile and electronic mail.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

As Receiver of Georgian Bank

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

**CHUBB & SON, A DIVISION OF FEDERAL INSURANCE COMPANY**

By  \_\_\_\_\_ (b)(6)

Printed Name Hugh D Spears

Date 11/1/11

**COUNSEL**

By \_\_\_\_\_

Representing \_\_\_\_\_

Date \_\_\_\_\_



**FEDERAL DEPOSIT INSURANCE CORPORATION**

As Receiver of Georgian Bank

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

**CHUBB & SON, A DIVISION OF FEDERAL INSURANCE COMPANY**

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

**COUNSEL**

By

(b)(6)

Representing See Attachment A

Date October 10, 2011

**ATTACHMENT A**

**FORMER OFFICERS OF GEORGIAN BANK, ATLANTA, GA**

Rebecca Abraham	Sutherland Asbill & Brennan LLP 999 Peachtree St., NE Atlanta, GA 30309  Attn: W. Scott Sorrels, Esq.
Kenneth Barber	
Chris Cooper	
Brian Fisher	
Tricia Griner	
Pamela Hubby	
Robbie Hunter	
Danny Jett	
Bill Kelly	
Dexter Lummus	
Alan Najjar	
Gary Nix	
Adam Ogburn	
Gerald Ragan	
Phil Resch	
Richard Spink	
Don Updegraff	
Kim Ward	
Mary Williamson	
Dan Wolf	

**ATTACHMENT B**

**AGREEMENT TO MAINTAIN CONFIDENTIALITY**

I hereby acknowledge that I have been provided and have read a copy of the attached Confidentiality and Non-Disclosure Agreement ("Agreement"), dated \_\_\_\_\_, 2011, between the Federal Deposit Insurance Corporation as Receiver for \_\_\_\_\_, Counsel, and Chubb. I understand that any Confidential Material within the meaning of the Agreement shown to me is confidential, shall be used by me only as provided in the Agreement, and shall not be disclosed by me unless expressly permitted under the Agreement. I agree to abide by the terms of the Agreement, including its provisions concerning the return or destruction of such Confidential Material.

Name: \_\_\_\_\_  
(signature)

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(printed)

Telephone: \_\_\_\_\_  
(Business)

Company: \_\_\_\_\_

\_\_\_\_\_  
(Home)

Address 1: \_\_\_\_\_

\_\_\_\_\_  
(Cell)

Address 2: \_\_\_\_\_

City: \_\_\_\_\_

State/Zip Code: \_\_\_\_\_