

## 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 The Community Bank (“FDIC-R”), and National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) (individually, the FDIC-R and National Union may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

#### WHEREAS:

Prior to November 22, 2008, The Community Bank (“Bank”) was a depository institution organized and existing under the laws of Georgia;

On November 22, 2008, 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 the Bank’s financial institution bond insurer.

National Union issued a financial institution bond policy numbered [REDACTED] for the (b)(4) first named Insured, Triangle Financial Group, Inc., (parent company of Bank) for the period February 1, 2008 through February 1, 2009 (“Policy”), which insured the Bank according to the terms, provisions, and conditions of the Policy. The FDIC-R asserted claims against National Union on the Policy based on actions by a Bank officer relating to a number of loans or loan renewals to certain borrowers, as set forth in the Proof of Loss submitted by the FDIC-R on July 10, 2009, and as supplemented and amended, which was assigned Claim No: [REDACTED] (b)(4) (“Claim”). 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 twenty (20) calendar days following the date the FDIC-R executes and delivers this Agreement, National Union agrees to pay the FDIC-R the sum of \$1,650,000.00, which reflects application of the Policy's \$50,000.00 deductible ("the Settlement Payment").

B. National Union shall deliver the Settlement Payment to the FDIC-R by check. The FDIC-R has provided the address to which the Settlement Payment will be delivered

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:

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; or

2. Enforce this Agreement, in which event National Union agrees to jurisdiction in United States District Court in the Northern District of Georgia; or

3. Terminate the Agreement and institute an action on the Claim. National Union further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

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

Any extension of time under Section I.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 if the Settlement Payment is not received within the time, as extended.

## **SECTION II: Releases**

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

Upon receipt of the Settlement Payment in full and except as provided in Section II.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges National Union, its parents, subsidiaries, and affiliates, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Claim. As part of this release of National Union, the FDIC-R agrees that any interest it may have under the Policy related to the Claim is extinguished.

### **B. National Union's Release.**

Effective simultaneously with the releases granted in Section II.A. above. National Union, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, and affiliates, and their successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, 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.

### **C. Waiver of Subrogation by National Union**

National Union irrevocably waives any rights of subrogation it may have relating to the Claim, including without limitation those arising from National Union's payment of the Settlement Funds, or involving the underlying properties, assets, or claims involved in the Claim and all rights to recovery thereof ("Recovery Rights"). National Union agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of any Recovery Rights in its sole discretion and retain the proceeds (if any) thereof without modifying, increasing, decreasing, or otherwise affecting the Settlement Payment by National Union under this Agreement.

### **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 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 Acknowledgments**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the

undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

#### **SECTION IV: Reasonable Cooperation**

A. 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 certified mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:  
William G. Leonard  
Taylor English Duma LLP  
1600 Parkwood Circle, Suite 400  
Atlanta, Georgia 30339  
678.336.7162

(b)(6)



If to National Union:  
C. David Hailey  
Mozley, Finlayson & Loggins LLP  
One Premier Plaza, Suite 900  
5605 Glenridge Drive NE  
Atlanta, GA 30342  
404.845.1943

(b)(6)



With a copy to:  
Mark Wolin  
Complex Claim Director  
Fidelity Bond Claims  
175 Water Street, 7<sup>th</sup> Floor  
New York, NY 10038

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between 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 by the FDIC 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 THE COMMUNITY BANK

(b)(6)

Date: 10/6/2014

BY:

TITLE: COUNSEL

PRINT NAME: *Steven Smith*

AIG CLAIMS, INC., on Behalf of - NATIONAL UNION  
FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

(b)(6)

Date: 10/24/2014

BY:

TITLE: *Complex Claims Director, Financial Lines*

PRINT NAME: *Mark Wolin*