

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 27th day of June 2013, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for United Security Bank (“FDIC-R”) and Pierce Fessenden Smith (the “Settling Defendant”) and Cincinnati Insurance Company (“CIC”). (Individually, the FDIC-R, the Settling Defendant, and CIC may be referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to November 6, 2009, United Security Bank (the “Bank”) was a depository institution organized and existing under the laws of Georgia.

On November 6, 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, including those with respect to its assets.

Among the assets to which the FDIC-R as receiver succeeded were any and all of the Bank’s claims, demands, and causes of action 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 January 6, 2010, the FDIC-R sent a demand letter to the Settling Defendant setting forth allegations against the Settling Defendant (the “Demand”). The Settling Defendant has denied liability for the allegations set forth in the Demand.

On October 23, 2013, the FDIC-R filed a complaint for money damages against the Settling Defendant. Those claims for damages are now pending in the United States District Court for the Northern District of Georgia in *FDIC-R v. Neese*, Case No. 1:12-CV-3694 (N.D. Ga.) (the "D&O Action") against the Settling Defendant, who served as an officer and/or director of the Bank. The Settling Defendant denied liability in the D&O Action.

CIC issued Financial Institutions Blue Chip Policy No. (the "Policy") to (b)(4) the Bank and the Settling Defendant sought coverage under the Policy in response to the allegations set forth in the D&O Action. CIC reserved its rights under the Policy for the claims asserted by the FDIC-R against the Settling Defendant in the D&O Action.

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 above Recitals, which are expressly incorporated herein by reference, as well as 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, the Settling Defendant and CIC, collectively, agree to pay the FDIC-R the sum of six hundred twenty-five thousand dollars and no cents (\$625,000.00) (the "Settlement Funds") to be paid as set forth below.

B. Upon the execution of an original, or originals in counterparts, of this Agreement by each of the undersigned Parties to this Agreement, but no later than July 15, 2013 (the "Payment Due Date") provided that this Agreement has been executed by the FDIC-R and distributed to the other Parties no later than June 28, 2013, the Settlement Funds shall be

delivered to the FDIC-R by check drawn upon a depository institution acceptable to FDIC-R which shall be sent by certified mail or overnight delivery to the following addressee: FDIC Legal Division, Attention: Karen Munce-Gates, 1601 Bryan Street, Dallas, TX 75201. The check or transmittal letter enclosing the check shall include the following information: BANK: Federal

(b)(4) Home Loan Bank of New York; ROUTING #: [REDACTED] FOR CREDIT TO: FDIC

(b)(4) National Liquidation Account; ACCOUNT#: [REDACTED] Fund code(s): [REDACTED] (United Security (b)(4)

Bank); Account officer to be notified and phone number: Michael Sova, 904.256.3802. 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 Due Date until the date of payment, provided that no interest shall accrue prior to the Payment Due Date.

C. 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 Due 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 against the Party or Parties failing to deliver their share of the Settlement Funds, in which event the non-delivering Party, or Parties, agree to jurisdiction in Federal District Court in Georgia 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 with respect to the non-delivering Party, or Parties, 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 by the non-delivering Party, or Parties. In no event shall the FDIC-R declare this Agreement null and void with respect to any Party that has delivered its share of the Settlement Funds on or before the Payment Due Date. The failure of one Party to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds plus accrued interest, if any, the FDIC-R shall dismiss the D&O Action. The FDIC-R and Settling Defendant agree to enter stipulation(s) providing that the dismissal of the D&O Action shall be with prejudice, with each party to bear its own costs as these were originally incurred.

SECTION III: Releases

A. Release of Settling Defendant by the FDIC-R.

Effective upon receipt in full of the Settlement Funds plus accrued interest, if any, and the dismissal of the D&O Action described in SECTION I and SECTION II above, and except as provided in Section III.H. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendant and his 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 Defendant's functions, duties, and actions as an officer and/or director of the Bank including, without limitation, the allegations in the Demand or D&O Action.

B. Release of Covered Persons by the FDIC-R.

Effective simultaneously with the release granted in Section III.A. above, and except as provided in Section III.H. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges all former directors, officers, and employees of the Bank (collectively, the "Covered Persons") 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, based on negligence, gross negligence, and/or breach of fiduciary duty, belonging to the FDIC-R that arise from or relate to the allegations in the Demand and/or the D&O Action. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

C. Release of the FDIC-R by the Settling Defendant.

Effective simultaneously with the releases granted in Section III.A. above, the Settling Defendant, on behalf of himself and his heirs, executors, administrators, agents, representatives, successors, and assigns, hereby releases and discharges 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 performance, nonperformance, or manner of performance of the Settling Defendant's functions, duties, and actions as an officer and/or director of the Bank or that arise from or relate to the Policy including, without limitation, the allegations in the Demand or D&O Action.

D. Release of CIC by the FDIC-R.

Effective simultaneously with the releases granted in Sections III.A., III.B., and III.C. above, 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, if any, it may have had under the Policy is extinguished.

E. Release of CIC by Settling Defendant.

Effective simultaneously with the releases granted in Sections III.A. and III.C. above, the Settling Defendant, on behalf of himself, and his heirs, executors, administrators, agents, representatives, successors, assigns, and all other “Insureds” under the Policy, hereby releases and discharges CIC, its parents, subsidiaries, affiliates, and reinsurers and their respective employees, officers, directors, agents, representatives, 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 allegations that were asserted or could have been asserted in the Demand or the D&O Action, except with respect to “Defense Costs,” as that term is used in the Policy, that have been incurred or may be incurred in the future by the Settling Defendant in connection with the D&O Action.

F. Release of the FDIC-R by CIC.

Effective simultaneously with the release granted in Section 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 Settling Defendant by CIC.

Effective simultaneously with the releases granted in Section III.E. above, CIC, on behalf of itself and on behalf of its parents, subsidiaries, affiliates, reinsurers and their respective employees, officers, directors, agents, representatives, and assigns hereby releases and discharges the Settling Defendant and his 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 allegations that were asserted or could have been asserted in the Demand or the D&O Action, except with respect to "Defense Costs," as that term is used in the Policy, that have been incurred or may be incurred in the future by the Settling Defendant in connection with the D&O Action.

H. 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 Defendant, the Covered Persons, 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 to 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 released in this Agreement; and
- c. which are not released in Sections III.A., III.B., and III.D. 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 Federal Deposit Insurance Corporation 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 that could be brought by 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 IV: WAIVER OF DIVIDENDS AND PROCEEDS FROM LITIGATION

To the extent, if any, that Settling Defendant is or was a shareholder of the Bank or its holding company and by virtue thereof is or may be entitled to (I) a dividend, payment, or other distribution upon resolution of the receivership of the Bank or (II) proceeds from 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, he hereby assigns to the FDIC-R any and all rights, titles and interest in and to any and all such dividends, payments, distributions, or proceeds.

SECTION V: 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 them regarding any claim or of coverage under the Policy. The Settling Defendant expressly denies any liability regarding the Demand or 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 and delivered 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. 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. Specific Representations, Warranties, and Disclaimers. The Settling Defendant expressly acknowledges 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 statement submitted by the Settling Defendant to the FDIC-R. The Settling Defendant swears and affirms that all financial information in the financial statement prepared by him and provided to the FDIC-R was true and accurate at the time of submission. The FDIC-R has no independent obligation to verify the completeness and accuracy of that financial information. If, in his financial statement, the Settling Defendant has failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the Settling Defendant agrees to cooperate fully with the FDIC-R to transfer his interest in the asset to the FDIC-R and to sign any and all documents necessary to effectuate the transfer.

G. Reasonable Cooperation and Notice.

1. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement and any action required under this Agreement including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the 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 Defendant agrees to reasonably cooperate 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 himself 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, 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;

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.

3. Notwithstanding the cooperation obligations set forth in Section V.G.2., the Settling Defendant does not waive any privileges he may possess under the Fifth Amendment to the Constitution of the United States of America.

4. The Parties further agree that in the event any issue arises related to effectuating the terms and conditions of this Agreement other than terms and conditions regarding receipt of the full Settlement Funds, a Party will first give written notice to the other Party or Parties, whose performance or cooperation is required. In the event the respective Parties acting in good faith cannot resolve the issue or obtain the requested performance or cooperation within a reasonable period, not to exceed thirty (30) days after notice is given, then the Party or Parties may proceed with all available remedies at law or in equity.

H. Advice of Counsel. Each Party hereby acknowledges that he or it has consulted with and obtained the advice of his or its counsel prior to executing this Agreement and that this Agreement has been explained to that Party by his or its 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 FOR UNITED SECURITY BANK**

Date: June 28th 2013

(b)(6)

BY:

TITLE: Counsel

PRINT NAME: Mark A. Black

PIERCE NEESE

Date: _____

BY: _____

PRINT NAME: _____

H. Advice of Counsel. Each Party hereby acknowledges that he or it has consulted with and obtained the advice of his or its counsel prior to executing this Agreement and that this Agreement has been explained to that Party by his or its 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 FOR UNITED SECURITY BANK**

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PIERCE NEESE

Date: 6/27/13

BY: 

PRINT NAME: Pierce T. Neese

(b)(6)

CINCINNATI INSURANCE COMPANY

Date: 7/1/13

(b)(6)

BY:

[Redacted Signature Box]

TITLE: ASSOCIATE MANAGER - C/C

PRINT NAME: DARREN E. RUTENF