

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (the "Agreement") is made as of the 7th day of September, 2012, among the undersigned Parties (collectively "Parties"):

Federal Deposit Insurance Corporation for itself and as receiver of Westernbank Puerto Rico (the "FDIC"), and

Chartis Insurance Company of Puerto Rico f/k/a American International Insurance Company of Puerto Rico ("CHARTIS"), and

ACE Insurance Company ("ACE").

**I. RECITALS**

**WHEREAS:**

On or about November 15, 2006, Chartis and ACE hereinafter, collectively the "Underwriters" issued a Financial Institution Bond, Bond No.  (inclusive of all (b)(4) riders, amendments, endorsements, modifications and together with any and all renewals and/or extensions thereof, hereinafter collectively the "Bond") in favor of W Holding Company, Inc. ("WHC") as named insured;

The FDIC contends that on September 25, 2007, Westernbank of Puerto Rico ("Westernbank" or the "Bank") reported a loss to the Underwriters and thereafter submitted a Proof of Loss;

WHC, the FDIC, and the Underwriters are Parties in a lawsuit, currently pending in the United States District Court for the District of Puerto Rico, Case No. 3:10-cv-01713-JAF captioned "*W Holding Company, Inc., Plaintiff v. Chartis Insurance Company – Puerto Rico, formerly known as American Insurance Company of Puerto Rico; ACE Insurance Company, Defendants; Federal Deposit Insurance Corporation, as Receiver of Westernbank Puerto Rico, Intervenor*" (the "Bond Lawsuit");

On February, 5, 2010, WHC filed a lawsuit against Underwriters in Puerto Rico Commonwealth Court. Following Westernbank's closure by the FDIC in April, 2010, the FDIC intervened as a plaintiff in the Bond Lawsuit and removed the matter to Federal Court in Puerto Rico;

On May 16, 2011, the FDIC filed in the Bond Lawsuit an Amended and Restated Complaint in Intervention and Cross-Claim, alleging *inter alia* that (i) the Bank paid the premiums for the Bond, (ii) the Bond was owned by the Bank and not by WHC, (iii) on April 30, 2010, the FDIC became receiver for the Bank and succeeded to all of the rights and assets of the Bank, including ownership of the Bond and any claims against the Underwriters under the Bond, and (iv) the FDIC as receiver for the Bank is the only proper party entitled to assert any and all claims to the relief as claimed by WHC on and/or arising out of the Bond and all other claims and damages arising out of the Bond;

On January 3, 2012, the FDIC moved in the Lawsuit for the entry of default against WHC and on January 31, 2012 the Court granted the FDIC's motion and entered default against WHC in the Lawsuit; and

The FDIC and the Underwriters desire to reach a final settlement of their disputes with respect to the Bond and/or the Lawsuit.

**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:

**II. Payment to FDIC**

Within 10 business days of the date of the execution of this Agreement, the Underwriters shall pay to the FDIC the total sum of Seven Hundred Thousand (\$700,000) Dollars (the "Settlement Amount"), of which the sum of Four Hundred Twenty Thousand (\$420,000) Dollars

will be paid by CHARTIS and Two Hundred Eighty Thousand (\$280,000) will be paid by ACE. The Payment shall be by check to "FDIC as Receiver for Westernbank Puerto Rico (FIN 10231)". Payment shall be sent by overnight mail to the below contact:

John V. Church  
Counsel, Professional Liability Unit  
Federal Deposit Insurance Corporation, Legal Division  
3501 Fairfax Drive, VS-B-7025  
Arlington, VA 22226

**III. Stipulation and Dismissal**

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, the FDIC and the Underwriters shall jointly apply to the Court to enter a Stipulation and Consent Order for the voluntary dismissal of the Bond Lawsuit, with Prejudice, and without costs to any party, except that the Court shall retain jurisdiction for the purpose of enforcing the terms of the Stipulation and Consent Order and of this Agreement.

**IV. Releases**

**A. Release of Underwriters**

Effective upon its receipt of the Settlement Amount, FDIC, irrevocably releases and discharges the Underwriters, together with their respective parents, subsidiaries, affiliates, reinsurers, officers, directors, employees, representatives and agents, from and against any liability, loss, damages, and/or obligations of any kind or nature which the FDIC and/or the Bank has or may ever have against the Underwriters, whether known or unknown, arising from the claims which were alleged or could have been alleged in the Bond Lawsuit and/or under the Bond.

**B. Release of FDIC**

Effective simultaneously with the release granted in Paragraph IV.A. above, the Underwriters, for their selves and their successors and assigns, and on behalf of their parents,

subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby irrevocably releases and discharges the FDIC, 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, arising from the Bond Lawsuit including but not limited to any rights of subrogation.

C. Express Reservations From Releases

1. This Release shall not be deemed to apply to claims currently being asserted by the FDIC against the Underwriters in a separate lawsuit currently pending in the United States District Court for the District of Puerto Rico, Case No. 11-cv-02271 (the "D&O Lawsuit"), and FDIC expressly reserves and does not release all claims against the Underwriters and all other defendants in the D&O Lawsuit, including, but not limited to, all claims arising from the Bank's loans and/or extensions of credit to, and/or relationship with, [REDACTED] (b)(4)

(b)(4) [REDACTED] (together with and inclusive of their present and/or past parents, subsidiaries and affiliates), except that the FDIC agrees that it is not asserting and shall not assert in the D&O Lawsuit or otherwise, any claims under the Bond.

2. Notwithstanding any other provision, by this Agreement, the FDIC 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 against any person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC, the Bank, or other financial institutions, or any other person or entity, including without limitation any claims acquired by the FDIC as successor in interest to the Bank or any person or entity other than the Bank.

3. Notwithstanding any other provision, this Agreement does not waive any claims or actions that could be brought by any agency or instrumentality of the United States government other than the FDIC.

**V. No Third Party Rights**

This Agreement is being entered by way of compromise of disputes and/or potential disputes between the Parties and is solely for the benefit of the Parties hereto. Except as otherwise expressly provided herein, nothing in this Agreement is intended to create any rights in any third parties.

**VI. Representations and Acknowledgments**

A. FDIC Representation. The FDIC represents and warrants that (i) the Bank paid the premiums for the Bond, (ii) the Bond was owned by the Bank and not by WHC, (iii) on April 30, 2010, the FDIC became receiver for the Bank and succeeded to all of the rights and assets of the Bank, including ownership of the Bond and any claims against the Underwriters under the Bond, and (iv) the FDIC as receiver for the Bank is the only proper party entitled to assert any and all claims to the relief as claimed by WHC on and/or arising out of the Bond and all other claims and damages arising out of the Bond as receiver for the Bank.

B. 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 a disputed claim, and that this Agreement is not an admission or evidence of liability by either of them regarding any claim nor is it intended to be, nor shall it be construed as, an interpretation of the Bond or any other insurance policy. This Agreement shall not be used as evidence, or in any other manner, before any court or any proceeding to create, prove, or interpret the obligations or alleged obligations of The Underwriters under the Bond to any party or non-party to this Agreement. Except as provided above, the Parties may use the Agreement in any other

proceeding to the extent deemed relevant and admissible by a court and may use this Agreement in any manner as may be necessary to enforce the terms of the Agreement.

C. Cooperative Drafting. The Parties to this Agreement have participated jointly in the negotiation and preparation of this Agreement. Accordingly, the Parties agree not to assert that any other party is the sole or principal drafter of the Agreement. The Parties also agree not to assert that any canon of construction applicable to sole or principal drafters should be applied against any other party.

D. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall together constitute the 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

E. 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.

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

G. Construction. The Recitals above are incorporated herein by reference. The descriptive headings of this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

H. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the Commonwealth of Puerto Rico.

I. 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).

J. Notices. Notices under this Agreement shall be provided as follows:

**TO FDIC:**

John Church, Esq.  
Federal Deposit Insurance Corporation  
Legal Division  
3501 Fairfax Drive, VS-B-7025  
Arlington, VA 22226

(b)(6)

**WITH A COPY TO:**

George Denegre, Jr., Esq.  
Liskow & Lewis  
One Shell Square  
701 Poydras Street, Suite 5000  
New Orleans, LA 70139

(b)(6)

**TO ACE INSURANCE COMPANY:**

ACE Insurance Company  
c/o Maria S. Toledo, Esq.

(Physical address):  
Doral Bank Center, Suite 501  
Calle Resolucion #33  
San Juan, PR 00920-2717  
(U.S. Mail address):  
P.O. Box 191249  
San Juan, PR 00919-1249

(b)(6) [Redacted]

and

Katharine B. Bowman, Esq.  
Bailey Cavaleri LLC  
10 W. Broad Street, Suite 2100  
Columbus, OH 43215

**TO CHARTIS INSURANCE COMPANY:**

Viviane L. Falzon  
Counsel & Assistant Vice President  
American International Group  
75 Water Street, 15<sup>th</sup> Floor  
New York, N.Y. 10038

(b)(6) [Redacted]

**WITH A COPY TO:**

Armen Shahinian, Esq.  
Wolff & Samson PC  
One Boland Drive  
West Orange, New Jersey 07052

(b)(6) [Redacted]

K. Reasonable Cooperation. The undersigned 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.



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

FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER OF WESTERNBANK PUERTO RICO

(b)(6) Date: 9/7/2012

BY:

TITLE: Counsel

Print name: JOHN V. CHURCH

CHARTIS INSURANCE COMPANY OF PUERTO  
RICO F/K/A AMERICAN INTERNATIONAL  
INSURANCE COMPANY OF PUERTO RICO

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Print name: \_\_\_\_\_

ACE 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 date hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER OF WESTERNBANK PUERTO RICO**

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Print name: \_\_\_\_\_

**CHARTIS INSURANCE COMPANY OF PUERTO  
RICO F/K/A AMERICAN INTERNATIONAL  
INSURANCE COMPANY OF PUERTO RICO**

(b)(6)

Date: SEPT 7, 2012

BY:

TITLE: VICE PRESIDENT REGIONAL CLAIMS

Print name: GUSTAVO A. SARABIA

**ACE 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 date hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER OF WESTERNBANK PUERTO RICO

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Print name: \_\_\_\_\_

CHARTIS INSURANCE COMPANY OF PUERTO  
RICO F/K/A AMERICAN INTERNATIONAL  
INSURANCE COMPANY OF PUERTO RICO

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Print name: \_\_\_\_\_

ACE INSURANCE COMPANY

(b)(6)

Date: 9/10/12

BY:

TITLE: VP Claims

Print name: Maria S. Toledo