

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made as of this 31<sup>st</sup> day of October, 2011, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation ("FDIC") as receiver of Georgian Bank, and James Talley and his law firm, Talley, Richardson & Cable P.C. (collectively, referred to as "Talley"), First Citizens Bank and Trust Company, Inc. ("FCB"), and Fidelity National Title Insurance Company ("Fidelity") (individually, the FDIC, Talley, FCB, and Fidelity may be referred to herein as "Party" and collectively as the "Parties").

**RECITALS**

**WHEREAS:**

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

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 was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC 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 as receiver succeeded were, inter alia, any and all of the Bank's claims, demands, rights, judgments, and causes of actions against any attorney employed or retained by Georgian;

On September 25, 2009, the FDIC entered into a Purchase and Assumption Agreement ("P&A") with FCB which acquired certain assets of Georgian;

Talley rendered certain legal services as closing attorneys on behalf of Georgian in two (b)(4) loan closings involving [redacted] as borrower, occurring on November 9, 2004 and May 5, 2005 ("Closings");

Before Georgian was closed, it asserted a legal malpractice claim against Talley stemming from Talley's representation of Georgian in connection with the aforementioned (b)(4) Closings of loans to [redacted] and Talley's alleged failure to obtain a

[redacted] (b)(6)

security deed on certain real property ("Tract 2") as collateral for the loan (the "Talley Malpractice Claim");

Georgian was an insured under title insurance policy number [redacted] issued by [redacted] (b)(4) Fidelity insuring Georgian's first priority security interest in Tract 2 (the "Fidelity Title Policy"). Upon finding that it did not have a first priority security deed on Tract 2, Georgian made a claim under the Fidelity Title Policy (the "Fidelity Claim");

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: Settlement**

A. As an essential covenant and condition to this Agreement, Talley agrees to pay or cause to be paid a total settlement amount of Three Hundred Twenty-five Thousand Dollars (\$325,000) as follows:

1. to the FDIC the sum of Two Hundred Eighty-nine Thousand Five Hundred Seventy-six Dollars (\$289,576) ("the FDIC Settlement Funds"); and

2. to FCB the sum of Thirty-five Thousand Four Hundred Twenty Four Dollars (\$35,424) ("the FCB Settlement Funds").

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than thirty (30) days after full execution of this Agreement ("Payment Due Date"):

1. The FDIC Settlement Funds shall be delivered to FDIC by direct wire transfer to:

**BANK:** Federal Home Loan Bank of New York

(b)(4) **ROUTING #:** [redacted]

**FOR CREDIT TO:** FDIC National Receivership Account

[redacted] (b)(6)

(b)(4) \_\_\_\_\_ ACCOUNT #:

**OTHER BENEFICIARY INFORMATION (OBI):**

- a. Fund code(s): **10122**
- b. 4C Asset number: **10122003347**
- c. Account officer to be notified and phone number:  \_\_\_\_\_ (b)(6)  
**972.761.2545**
- d. Description of the Transaction: Georgian Bank, Attorney Malpractice Claim

2. The FCB Settlement Funds shall be delivered to FCB by check issued by Talley's insurer.

In the event that the FDIC and/or FCB Settlement Funds are not delivered by the Payment Due Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from that date until payment.

C. In addition, and without waiving any other rights that the FDIC may have, in the event that all FDIC Settlement Funds are not received by the FDIC by the Payment Due Date, then the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all FDIC 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 FDIC Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against Talley, in which event Talley agrees to jurisdiction in United States District Court for the Northern District of Georgia in any action to enforce the terms of this Agreement by FDIC. Any decision by the FDIC to extend the terms of this Agreement or to accept a portion of the FDIC Settlement Funds shall not prejudice its rights to declare this Agreement null and void with respect to Talley, at any time prior to receipt of all FDIC Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC declares this Agreement null and void, the FDIC shall tender contemporaneously with said declaration all amounts paid to it under this Agreement by Talley and FCB shall return all amounts paid to it under this Agreement by Talley as soon as practicable after said declaration by the FDIC.

(b)(6)

D. As a material inducement for entering into this Agreement and in consideration of payment of One Hundred Dollars (\$100.00) of the FCB Settlement Funds paid hereunder, FCB and Fidelity hereby agree to keep confidential this Agreement, the terms of the Agreement, the amount of any of the Settlement Funds and all negotiations relating to the Agreement, and the allegations that were asserted by FCB, Fidelity or FDIC (collectively, the "Confidential Information"). The Confidential Information shall be kept strictly confidential and shall not be made known or disclosed to anyone who is not a party to the Agreement, including any other person, entity, tribunal, disciplinary board or association, except that FCB or Fidelity may disclose Confidential Information to its attorneys, accountants, tax advisors or insurers or prospective insurers, or if compelled to do so by subpoena or other legal process. Notwithstanding anything else in this Agreement, FCB and Fidelity (or attorneys representing either) may disclose the terms of this Agreement in any proceeding in which

(b)(6) FCB or Fidelity, on the one hand, and [redacted] (or any entity in which [redacted] (b)(6)

(b)(6) [redacted] has an ownership interest or managerial control), on the other, are parties and such disclosure shall not constitute a breach of this Agreement. FCB and Fidelity further agree not to communicate any disparaging information regarding Talley to any third party in any manner whatsoever, except as may be required in the aforementioned

(b)(6) proceedings involving [redacted] The Parties understand, acknowledge, and agree that the FDIC is not bound by this confidentiality provision. The Parties further agree that the FDIC has absolutely no obligation whatsoever to keep confidential this Agreement and may disclose the Confidential Information.

## SECTION II: Releases

### A. Release of Talley by FDIC.

Effective upon receipt in full of the FDIC Settlement Funds described in SECTION I above, and except as provided in PARAGRAPH II G., the FDIC, for itself and its successors and

assigns, hereby irrevocably and unconditionally release and forever discharges James Talley and Talley, Richardson & Cable P.C. and each of its respective heirs, executors, administrators, representatives, officers, directors, shareholders, agents, employees, successors, assigns, and insurers (including but not limited to ProAssurance Casualty Company) from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law, equity or statutory, belonging to the FDIC, that arise from or in any way relate to the Closings, the Fidelity Claim and/or the Talley Malpractice Claim.

B. Release of Talley by FCB.

Effective upon receipt in full of the FCB Settlement Funds described in SECTION I above, FCB, for itself and its successors and assigns, hereby irrevocably and unconditionally releases and forever discharges James Talley and Talley, Richardson & Cable P.C. and each of its respective heirs, executors, administrators, representatives, officers, directors, shareholders, agents, employees, successors, assigns, and insurers (including but not limited to ProAssurance Casualty Company) from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law, equity or statutory, belonging to FCB, that arise from or in any way relate to the Closings, the Fidelity Claim and/or the Talley Malpractice Claim.

C. Release of FDIC and FCB by Talley.

Effective simultaneously with the release granted in PARAGRAPH IIA and B. above, Talley, on behalf of himself individually and the professional corporation, and their respective heirs, executors, administrators, agents, employees, representatives, successors and assigns, hereby irrevocably and unconditionally release and forever discharge FDIC and FCB, and each of their present, future and former 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, equity or statutory, that arise from or in any way relate to, the Closings, the Fidelity Claim and/or Talley Malpractice Claim.

D. Mutual Release between FDIC and FCB.

Effective simultaneously with receipt of the Settlement Proceeds, the FDIC and FCB, and

their respective heirs, executors, administrators, representatives, successors and assigns, hereby irrevocably and unconditionally release and forever discharge each other, and each of their respective present, future and former members, subsidiaries, affiliates, agents, officers, directors, employees, representatives, attorneys, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law, equity or statutory, that arise from or in any way relate to, the Settlement Proceeds, the Closings, Fidelity Claim and/or the Talley Malpractice Claim.

E. Mutual Release between FDIC, FCB and Fidelity.

Effective simultaneously with receipt of the Settlement Proceeds, the FDIC and FCB, collectively on the one hand, and Fidelity, on the other hand, for themselves and each of their respective heirs, executors, administrators, representatives, successors and assigns, hereby irrevocably and unconditionally release and forever discharge each other, and each of their respective present, future and former members, subsidiaries, affiliates, agents, officers, directors, employees, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law, equity or statutory, that arise from or in any way relate to the Fidelity Claim.

F. Mutual Release between Talley and Fidelity

Effective simultaneously with the releases provided in PARAGRAPH II.E above, Fidelity and Talley, for themselves and each of their respective heirs, executors, administrators, representatives, successors and assigns, hereby irrevocably and unconditionally release and forever discharge each other, and each of their respective present, future and former members, subsidiaries, affiliates, agents, officers, directors, employees, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law, equity or statutory, that arise from or in any way relate to the Closings, the Talley Malpractice Claim, or the Fidelity Claim.

G. Express Reservations From Releases By FDIC.

1. 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:

a. against Talley 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, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank;

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

c. which are not expressly released in Paragraphs II.A, D, and E 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 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.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which 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 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: 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.

B. Execution in Counterparts and Facsimile/Electronic Signatures. 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. Facsimile or electronic signatures shall constitute original signatures to the 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. All terms, conditions, and obligations under this Agreement survive closing.

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). This Agreement may not be modified by course of dealings or performance.

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

G. 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.



Georgian Bank Settlement 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 dates hereinafter subscribed.

Date: 10/31/2011

(b)(6)

FEDERAL DEPOSIT INSURANCE CORPORATION

BY:

TITLE: Senior Attorney

PRINT NAME: DOUGLAS B. LANG

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

FIRST CITIZENS BANK AND TRUST COMPANY, INC.

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

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

PRINT NAME: \_\_\_\_\_

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

TALLEY, RICHARDSON & CABLE P.C.

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

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

PRINT NAME: \_\_\_\_\_

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

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

JAMES TALLEY

FIDELITY NATIONAL TITLE INSURANCE COMPANY

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

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

PRINT NAME: \_\_\_\_\_

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

Georgian Bank Settlement 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 dates hereinafter subscribed.

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

FEDERAL DEPOSIT INSURANCE CORPORATION

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

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

PRINT NAME: \_\_\_\_\_

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

FIRST CITIZENS BANK AND TRUST COMPANY, INC.

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

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

PRINT NAME: \_\_\_\_\_

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

TALLEY, RICHARDSON & CABLE P.C.

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

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

PRINT NAME: \_\_\_\_\_

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

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

JAMES TALLEY

(b)(6)

Date: 1/2/11

FIDELITY NATIONAL TITLE INSURANCE COMPANY

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

TITLE: Vice President

PRINT NAME: Catherine C. Wagoner

Georgian Bank Settlement 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 dates hereinafter subscribed.

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

FEDERAL DEPOSIT INSURANCE CORPORATION

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

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

PRINT NAME: \_\_\_\_\_

Date: 10-31-2011

FIRST CITIZENS BANK AND TRUST COMPANY, INC.

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

TITLE: SVP

PRINT NAME: Richard V. Spink

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

TALLEY, RICHARDSON & CABLE P.C.

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

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

PRINT NAME: \_\_\_\_\_

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

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

JAMES TALLEY

FIDELITY NATIONAL TITLE INSURANCE COMPANY

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

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

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

PRINT NAME: \_\_\_\_\_

(b)(6)

Georgian Bank Settlement 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 dates hereinafter subscribed.

Date: \_\_\_\_\_ FEDERAL DEPOSIT INSURANCE CORPORATION  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ FIRST CITIZENS BANK AND TRUST COMPANY, INC.  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ TALLEY, RICHARDSON & ABLE P.C.  
(b)(6) BY: \_\_\_\_\_  
TITLE: Pres. \_\_\_\_\_  
PRINT NAME: James B Talley, Jr.

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
JAMES TALLEY

FIDELITY NATIONAL TITLE INSURANCE COMPANY  
BY: \_\_\_\_\_  
Date: \_\_\_\_\_ TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_