

SETTLEMENT AND RELEASE AGREEMENT

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

Federal Deposit Insurance Corporation, as receiver of Platinum Community Bank ("FDIC"); and

Continental Casualty Company ("Continental"), as issuer of Community Financial Institutions Bond No. (the "Bond") to Platinum Community Bank (the "Bank") (individually, the FDIC and Continental may be referred to herein as "Party" and collectively as the "Parties").

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RECITALS

WHEREAS:

Prior to September 4, 2009, the Bank was a depository institution organized and existing under the laws of the State of Illinois.

On or about August 14, 2009, the Bank provided notice under the Bond of a purported loss involving the embezzlement of funds by Theodore Thornell ("Thornell"), a former branch manager of the Bank's Ocala, Florida office.

On September 4, 2009, the Bank was closed by the Office of Thrift Supervision 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.

On February 12, 2010, the FDIC submitted a Proof of Loss to Continental in support of a claim under the Bond alleging Thornell's embezzlement of funds totaling \$365,109.26 from the

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Bank by making unauthorized transactions from the accounts of several depositors (the "Thornell Claim").

Following the submission of the Proof of Loss, Continental requested additional information and documents from the FDIC in order to evaluate the Thornell Claim. The FDIC contends that it incurred expenses in searching for and providing the information and documents requested by Continental.

The Parties would now like to resolve the Thornell Claim under the Bond.

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

A. The Recitals above are incorporated herein by reference.

B. As an essential covenant and condition to this Agreement, Continental agrees to pay to the FDIC the sum of \$301,107.04 (the "Settlement Funds").

C. Not later than ten business days following the execution of a signed original, or signed originals in counterpart, of this Agreement by the undersigned Parties to this Agreement (the "Payment Due Date"), the Settlement Funds shall be delivered to the FDIC by direct wire transfer into the following designated account:

BANK: Federal Home Loan Bank of New York

ROUTING #:

FOR CREDIT TO: FDIC National Liquidation Account

ACCOUNT #:

OBI: FIN 10115; Platinum Community Bank, Rolling Meadows, IL, Contact: Thomas J. O'Brien, 703-562-6414; Professional Liability (37100); DIF Fund

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D. In the event that the Settlement Funds are not delivered in full to the FDIC by the Payment Due Date, interest shall accrue on all unpaid amounts at the compound rate of 5% per annum from such date until the date of payment in full.

E. In addition, in the event that all Settlement Funds are not received by the FDIC on or before 30 days following the Payment Due Date, then the FDIC, 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 Continental, which agrees to jurisdiction in the United States District Court for the Northern District of Illinois in Chicago, Illinois (the "Federal District Court"), and further agrees to pay all the FDIC's reasonable attorneys' fees expended in enforcing Continental's obligation to pay the Settlement Funds or any part of them. Any decision by the FDIC to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice the FDIC's rights to declare this Agreement null and void if it does not receive Settlement Funds on or before 30 days following the Payment Due Date 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 will return all amounts paid to it under this Agreement by Continental. The Parties further agree to the jurisdiction of the Federal District Court to resolve any other disputes related to the enforcement of the terms of this Agreement.

SECTION II: Releases

A. Release of Continental by FDIC.

Effective upon payment by Continental of the Settlement Funds, together with any accrued interest (as specified in Section I.D above), the FDIC, for itself and the Bank, and each

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of their respective successors and assigns, shareholders, subsidiaries, officers, directors, and employees, and their successors and assigns, hereby releases and discharges Continental, its parents, shareholders, 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, statutory or non-contractual, known or unknown, suspected or unsuspected, fixed or contingent, which are based upon or arising from acts or omissions described in the Thornell Claim, including without limitation any claim with respect to the Thornell Claim that is based upon, arising from or in any way connected with, relating to or concerning claims for, or assertions of, extra-contractual liability, "bad faith" or unfair claims handling practices, or any violations of similar statutory or common law provisions in any jurisdiction.

B. Release of FDIC by Continental.

Effective simultaneously with the release granted in Paragraph II.A. above, Continental, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, hereby releases and discharges the FDIC and the Bank, and each of their respective shareholders, subsidiaries, officers, directors, employees, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, statutory or non-contractual, known or unknown, suspected or unsuspected, fixed or contingent, which are based upon or arising from acts or omissions described in the Thornell Claim.



C. Express Reservations From Releases.

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 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, the Bank, 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;

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

c. against Continental for any other losses, claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, aside from those arising from the Thornell Claim, for which coverage may be provided under the Bond or any other Continental insurance policy issued to the Bank; and

d. which are not expressly released in Section II.A above.

2. Notwithstanding any other provision, by this Agreement, Continental 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 Thornell.

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.

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SECTION III: Additional Covenants

A. Assignment. The FDIC hereby assigns and transfers to Continental, its successors and assigns, to their use and benefit, all rights, claims and actions which the FDIC may have against Thornell based upon or arising from acts or omissions committed by Thornell described in the Thornell Claim, limited to the extent of the amount of the Settlement Funds. Excluded from the scope of this assignment are any rights, claims and actions which the FDIC may have against Thornell that would compensate the FDIC for any loss arising from the Thornell Claim not covered by the Bond.

B. Confidential Materials. Continental may retain possession of any and all documents produced to it by the FDIC in connection with the Thornell Claim; however, Continental shall not publish such documents or disclose them to any other person except as may be necessary in connection with any claim Continental may pursue against Thornell pursuant to the assignment in Section III.A above or as may be permitted under that certain Confidentiality Agreement entered by the FDIC and Continental, dated September 22, 2010 (the "Confidentiality Agreement"). Upon the conclusion of any claim that Continental may pursue against Thornell, or if Continental decides not to pursue such a claim, Continental shall dispose of all documents produced to it by the FDIC in connection with the Thornell Claim as provided under the Confidentiality Agreement.

SECTION IV: Representations and Acknowledgments

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 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

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the Bond or any other insurance policy. This Agreement and its negotiation 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 Continental under the Bond to any Party or non-party to this Agreement; provided, however, the Parties may use the Agreement in any manner as may be necessary to enforce the terms of the Agreement and/or to establish the fact of payment by Continental to the FDIC.

B. Cooperative Drafting. The Parties to this Agreement have participated jointly in the negotiation and preparation of this Agreement. Accordingly, each Party agrees not to assert that the 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 Party.

C. 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.

D. Binding Effect. Each of the undersigned persons represents and warrants that he or she is duly authorized to sign this Agreement on behalf of the respective Party, and has 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, directors, officers, employees, agents, attorneys, successors and assigns.

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E. 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.

F. Construction. The descriptive headings of this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

G. Notices. If any Party gives notice to another Party under this Agreement, such notice shall be (i) delivered personally, (ii) sent by Federal Express (or another recognized overnight or two-day courier) requesting next or second business day delivery, or (iii) sent by United States certified or registered mail, postage prepaid, return receipt requested. Any such notice shall be deemed given when (i) so delivered personally, (ii) if sent by express courier, one or two business days (as the case may be) following delivery to the courier, or (iii) if sent by certified or registered mail, three business days after the date of deposit in the United States mail to the respective address of the Party as set forth below:

If to the FDIC:

Thomas J. O'Brien
Counsel
Federal Deposit Insurance Corporation
3501 North Fairfax Drive
Arlington, VA 22226
Telephone: (703) 562-6414

With a copy to:
Randall D. Lehner
Ulmer & Berne, LLP
500 W. Madison, Suite 3600
Chicago, IL 60661
Telephone: (312) 658-6518

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If to Continental:


Timothy Markey, Esq.
Claim Director
CNA
1249 South River Road
Cranbury, NJ 08512
Telephone: (609) 860-2341

With a copy to:
Edward J. Kirk
Clyde & Co US, LLP
405 Lexington Avenue, 16th Floor
New York, NY 10174
Telephone: (212) 710-3960

or to such other address as the recipient Party has specified by prior written notice to the sending Party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

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 State of Illinois.

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).

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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 of Platinum Community Bank.

(b)(6) Date: December 20, 2012

By:

Title: COUNSEL

Print Name THOMAS J. O'BRIEN

CONTINENTAL CASUALTY COMPANY

Date: _____, 2012

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 dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver of Platinum Community Bank.

Date: _____, 2012

By: _____

Title: _____

Print Name _____

CONTINENTAL CASUALTY COMPANY

(b)(6) Date: Dec 21, 2012

By: 

Title: Claim Director

Print Name Timothy Markey