

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 23<sup>rd</sup> day of October, 2012, by, between, and among the following undersigned parties:

Federal Deposit Insurance Corporation, as Receiver of Georgian Bank ("FDIC-R"); and  
Federal Insurance Company ("Federal"). Individually, the FDIC-R and Federal may be referred to herein as "Party" and collectively as the "Parties."

### RECITALS

#### **WHEREAS:**

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

B. 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-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, its shareholders, and creditors, including right and title with respect to the Bank's assets.

C. Among the assets to which the FDIC-R as receiver succeeded were any and all claims, demands, and causes of actions against the Bank's financial institution bond insurer(s).

D. On May 21, 2010, the FDIC-R submitted three proofs of loss (the "Proofs of Loss") to Federal for its claims (the "Claims") under Georgian's Financial Institution Bond No. 82122894 (the "Bond").

E. The FDIC-R has asserted Claims against Federal under the Bond.

F. The 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: Payment to FDIC-R**

A. The Recitals above are incorporated herein by reference.

B. As an essential covenant and condition to this Agreement, Federal agrees to pay to the FDIC-R the sum of Three Million Dollars (\$3,000,000) (the "Settlement Funds").

C. No 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-R by direct wire transfer to the Federal Home Loan Bank of New York, New York Main Office, 101 Park Avenue, New York, NY 10178-0599, Routing No. 0260-0973-9, Account No. [redacted] for the (b)(4) credit to FDIC National Liquidation Account OBI Georgian Bank, Atlanta, GA (FIN 10122) Professional Liability (37100) DIF Fund -- contact Marion Tarin ([redacted]) or Douglas (b)(6)

(b)(6) Lang [redacted]

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

E. 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 30 days following 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 Federal, which agrees to jurisdiction in Federal District Court in Atlanta, Georgia and further agrees to pay all the FDIC-R's reasonable attorneys' fees expended in enforcing Federal's obligation to pay the Settlement Funds or any part of them. 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 the FDIC-R's rights to declare this Agreement null and void 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 Federal. The Parties further agree to the jurisdiction of the Federal District Court in Atlanta to resolve any other disputes related to the enforcement of the terms of this Agreement (other than with respect to the matters addressed in Section II C, below). In the event the FDIC-R declares the Agreement null and void, the Parties agree that all statutes of limitation or timing defenses with respect to claims that the FDIC-R had against Federal prior to the date of the Agreement are tolled from the date of the Agreement until fifteen (15) days after the Agreement is declared null and void.

## **SECTION II: Releases**

### **A. Release of Federal by FDIC-R.**

Effective upon payment by Federal of the Settlement Funds, together with any accrued interest, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Federal, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from the Claims, including but not limited to any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, statutory or non-contractual, that the FDIC-R alleged or could have alleged against Federal in connection with the Claims, or the Proofs of Loss, or which

the FDIC-R could have alleged against Federal that arise from or relate to any claims asserted by the FDIC-R under the Bond, Federal's adjusting of such Claims, or otherwise arise from, relate to or concern the Bond and agrees that any interest it may have under the Bond is extinguished; provided that, this release shall not extend to or affect any other Federal policy of insurance, including but not limited to directors' and officers' liability Policy No.  or the (b)(4) settlement agreement related thereto.

B. Release of FDIC-R by Federal.

Effective simultaneously with the release granted in Paragraph II.A. above, Federal, 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 Proofs of Loss, the Claims, and/or the Bond including but not limited to any rights of subrogation, legal, equitable, or otherwise.

C. Waiver of Subrogation by Federal.

Federal agrees to and hereby does irrevocably waive any rights of subrogation it may have relating to the Claims, including without limitation those arising from Federal's payment of the Settlement Funds, or involving the underlying properties, assets or claims involved in the Claims and all rights to recovery thereof ("Rights of Recovery"). Federal agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of such Rights of Recovery as it sees fit, in its sole discretion, and retain the proceeds (if any) thereof and any such present or future retention or disposition of such Rights of Recovery shall not serve to modify, alter, increase, decrease, or otherwise affect the consideration due under this Agreement or the monetary amount being paid by Federal.

D Express Reservations From Releases.

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 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-R, the Bank, other financial institutions, or 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 expressly released in this Agreement; and

c. under or relating to any policy of insurance issued by Federal (or any other insurer) other than the Bond, and

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

2. 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 including, but not limited to, the Department of Justice and/or the United States Attorney's Office for any federal judicial district, other than the FDIC-R. In addition, the FDIC specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Victim and Witness Protections Act, 18 U.S.C. § 3663, et seq., if appropriate.

3. Notwithstanding any other provisions, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction 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.

### **SECTION III: Representations and Acknowledgments**

A. Ownership of the Claims. The FDIC-R represents and warrants that, pursuant to 12 U.S.C. §1821(d), the FDIC-R owns and has not assigned the Claims.

B. No Additional Actions. Federal hereby agrees that it will not bring, file, or otherwise pursue any claims against any party, in relation to the Bond, including any claims for indemnity or subrogation.

C. 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 Federal 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.

D. 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.

E. 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.

F. 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 insurers, agents, heirs, executors, administrators, representatives, attorneys, successors and assigns.

G. 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.

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

I. Notices. If any Party is required to give 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, (iii) sent by facsimile, (iv) sent by United States certified or registered mail, postage prepaid, return receipt requested, or (v) sent by email with a confirmation to be sent the same day by one of the methods enumerated above. 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, (iii) on the date sent by facsimile or email, with confirmation of transmission, if sent during normal business hours of the recipient, or, if not, then on the next business day, or (iv) if sent by certified or registered mail, five business days after the date of deposit in the United States mail to the respective address of the Party as set forth below, with copies sent to the persons indicated below:

To the FDIC:

Charles B. Lee, Esq.  
Miller & Martin PLLC  
Suite 1000, Volunteer Building  
832 Georgia Avenue  
Chattanooga, TN 37402-2289

Email:

(b)(6)

and

Federal Deposit Insurance Corporation  
7777 Baymeadows Way West, Room 551F  
Jacksonville, Florida 32256  
Attn: Doug Lang, Esq.

Email:

(b)(6)

To Federal Insurance Company:

C. David Hailey  
Mozley, Finlayson & Loggins, LLP  
One Premier Plaza, Suite 900  
5605 Glenridge Drive, N.E.  
Atlanta, GA 30342-1386

Email:

(b)(6)

and

Michael Maillet  
Chubb & Son  
N.Y Specialty Claims  
55 Water St  
29<sup>th</sup> Floor  
New York, NY 10041-2899

Email:

(b)(6)

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.

J. 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.

K. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties concerning the matters set forth herein; provided that, the obligations set forth in the previously executed Confidentiality Agreement shall remain in effect. 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).

L. 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.

M. 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, her, or its counsel.

N. Authority to Settle.

The FDIC-R, for itself and expressly in its capacity of having succeeded to all of

Georgian Bank's claims against Federal under the Bond relating to the Claims, and Federal, respectively, each warrant and represent that they are the persons or entities which have collectively all of the interest in any of the matters set forth herein, that the Recitals set forth above are material, true and accurate, and that they have the full right, power, and specific authority to enter into, execute and consummate this Agreement.

O. Severability.

If any provision of this Agreement or the application of any provision herein to any person or circumstance is held invalid or unenforceable, only that provision shall be affected, and the remainder of this Agreement (and the application of such provision to other persons or circumstances) shall remain in full force and effect.

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 Georgian Bank

(b)(6)  
Date: October 23, 2012

By:

Title: Senior Attorney, FDIC  
Print Name: DOUGLAS B. LANG

FEDERAL INSURANCE COMPANY

Date: October 23, 2012

By:

Title: Assistant Vice President, Claims Division  
Print Name: Michael Morlet

(b)(6)