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DIR/Fidelity Bond

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SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 7th
day of ~~June~~ ^{July}, 2009, by and between the following undersigned parties:

The Federal Deposit Insurance Corporation in any of its capacities, including but not limited to, its capacity as receiver for BestBank of Boulder, Colorado and its capacity as receiver for Franklin Bank, SSB of Houston, Texas (collectively, "FDIC"), and Travelers Casualty and Surety Company, as successor in interest to St. Paul Companies, and St. Paul Fire and Marine Insurance Company (as Successors in Interest to United States Fidelity & Guaranty Company) and St. Paul Mercury Insurance Company (collectively "Travelers").

RECITALS

WHEREAS:

Prior to July 23, 1998, BestBank of Boulder, Colorado ("BestBank") was a depository institution organized and existing under the laws of Colorado;

On July 23, 1998, BestBank was closed by the State of Colorado Division of Banking 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 BestBank, including those with respect to its assets;

Among the assets to which the FDIC as receiver succeeded were any and all of BestBank's claims, demands, and causes of action against bonding companies that issued policies to BestBank;

On January 21, 1999, the FDIC, as receiver for BestBank, submitted a Proof of Loss to Travelers under the terms of the Financial Institution Bond No.

(b)(4)

(which may also be referenced by Nos. CCR [redacted] and CCR [redacted] issued to BestBank;

(b)(4)

On January 17, 2003, the FDIC, as receiver for BestBank, filed a complaint for money damages against Travelers. That claim is now pending in the United States District Court for the District of Colorado in *FDIC v. St. Paul Cos.*, Civ. Action No. 03-CV-00115-MEH-BNB (the "BestBank Bond Action");

Prior to November 7, 2008, Franklin Bank, SSB of Houston, Texas ("Franklin") was a depository institution organized and existing under the laws of Texas;

On November 7, 2008, Franklin was closed by the Texas Department of Savings and Mortgage Lending 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 Franklin, including those with respect to its assets;

Among the assets to which the FDIC as receiver succeeded were any and all of Franklin's claims, demands, and causes of action against bonding companies that issued policies to Franklin;

On June 29, 2006, Franklin submitted its Proof of Loss to Travelers under the terms of Financial Institution Bond No. [redacted] issued to Franklin;

(b)(4)

On September 14, 2007, Franklin filed a complaint for money damages against Travelers. That claim is now pending in the United States District Court for the Southern District of Texas (Houston) in *Franklin Bank, SSB v. St Paul Mercury Insurance Company*, Civ. Action No. 07-02978 (the "Franklin Bond Action").

The undersigned parties deem it in their best interests to enter into this Agreement to compromise and settle the FDIC's claims with respect to both the Franklin Bond Action and the BestBank Bond Action and avoid the uncertainty, trouble, and expense of further 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

A. As an essential covenant and condition to this Agreement, settling both the BestBank Bond Action and the Franklin Bond Action, Travelers agrees to pay the FDIC the sum of \$5,700,000 (Five million, seven hundred thousand dollars) (the "Settlement Funds").

B. Upon execution of an original, or original in counterparts, of this Agreement by each of the undersigned Parties to this Agreement, but no later than 30 days after the Agreement is fully executed (the "Payment Date"), the Settlement Funds shall be delivered to the FDIC by direct wire transfer into the following account with the following instructions:

Bank: Federal Home Loan Bank of (b)(2),(b)(4)
Routing No.:
For Credit To: FDIC National Liquidation Account
Account No.: (b)(2),(b)(4)

OBI: Contact: Scott Taylor, Investigations, (972) 761-8528; Bond Claim Settlements on 2 banks

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

C. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds are not received by the FDIC by the Payment Date, then the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all of the 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 of the Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against Travelers, in which event Travelers agrees to the jurisdiction of the United States District Court for the District of Colorado and agrees to pay all of the FDIC's reasonable attorneys' fees expended in enforcing the terms of this Agreement. Any decision by the FDIC to extend the terms of this Agreement or to accept some of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all of the Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that acceptance of some of the Settlement Funds shall reduce Traveler's obligation to the FDIC under the Bonds or under this Agreement solely in the amount of such received funds.

SECTION II: STIPULATION AND DISMISSAL

Upon execution of this Agreement by each of the undersigned parties and the FDIC's receipt of the Settlement Funds, plus any accrued interest, the parties shall execute and submit to the respective Courts, a joint stipulation of dismissal of both the BestBank Bond Action and Franklin Bond Action, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii). The undersigned parties agree that the stipulation of dismissal shall be with prejudice, with each party to bear its own costs as these were originally incurred.

SECTION III: RELEASES

A. **Release of Travelers by the FDIC.** Effective upon payment of all of the Settlement Funds plus any accrued interest as described in Section I above and dismissal, the FDIC, for itself and its successors and assigns, hereby releases and discharges Travelers and its employees, officers, directors, representatives, agents, attorneys, predecessors, successors, assigns, affiliates and subsidiaries 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, that in any way arise from or relate to either of the Bonds previously referred to herein, including, without limitation, the causes of action alleged in both the Franklin Bond Action and the BestBank Bond Action, and agrees that any interest it may have under either Bond is extinguished.

B. **Release of the FDIC by Travelers.** Effective simultaneously with the release granted in Paragraph III.A. above, Travelers for itself and its successors and assigns, hereby releases and discharges the FDIC and its employees, officers, directors, representatives, agents, attorneys, predecessors, 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 either Bond including, but not limited to, any rights of subrogation.

SECTION IV: 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 either of them regarding any claim.

B. Waiver of Subrogation/Assignment. Travelers hereby waives all rights of assignment and subrogation provided for in Section 7 of the Bonds or otherwise.

C. Execution in Counterparts. This Agreement may be executed in counterparts by the undersigned parties 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 parties subscribed thereto upon the execution by all parties to the Agreement.

D. Binding Effect. Each of the undersigned persons represents and warrants that each of them is a party hereto or is authorized to sign this Agreement on behalf of the respective party, and that each of them has the full power and authority to bind such party to each and every provision of this Agreement. This Agreement shall be valid and binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns and when duly executed shall be valid and binding upon the parties in accordance with its terms.

E. 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 Colorado.

F. 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 attorneys or other representatives.

G. 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 conclude the Franklin Bond Action and the BestBank Bond Action that are the subject of this Agreement, and to otherwise perform the terms of this Agreement.

H. Enforceability. In the event that any provision of Section IV of this Agreement (except Section IV.B.) is held to be void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall have the same force and effect as though the void or unenforceable parts have been deleted.

I. Alteration. This Agreement may not be altered, amended or modified in any respect except by a writing duly executed by each of the Parties expressly reciting such intent.

J. Authorship. In the event any dispute, disagreement or controversy arises regarding this Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

K. Titles and Captions. All section titles or captions contained in this Agreement are for convenience only and shall not affect the interpretation 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

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

TRAVELERS CASUALTY AND SURETY COMPANY,
AS SUCCESSOR IN INTEREST TO ST. PAUL
COMPANIES, AND ST. PAUL FIRE AND MARINE
INSURANCE COMPANY (AS SUCCESSORS IN
INTEREST TO UNITED STATES FIDELITY &
GUARANTY COMPANY) AND ST. PAUL MERCURY
INSURANCE COMPANY

(b)(6)

Date: 7-7-09

BY:

TITLE: VP Fidelity Claims

PRINT NAME: Tracey Santor

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

(b)(6)

Date: 7/7/09

BY:

TITLE: Counsel

PRINT NAME: Roberta Koss

TRAVELERS CASUALTY AND SURETY COMPANY,
AS SUCCESSOR IN INTEREST TO ST. PAUL
COMPANIES, AND ST. PAUL FIRE AND MARINE
INSURANCE COMPANY (AS SUCCESSORS IN
INTEREST TO UNITED STATES FIDELITY &
GUARANTY COMPANY) AND ST. PAUL MERCURY
INSURANCE COMPANY

(b)(6)

Date: 7-7-09

BY:

TITLE: VP Fidelity Claims

PRINT NAME: Tracey Santor