

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made as of this 31<sup>st</sup> day of May, 2012, by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation, as receiver of The Community Bank of Loganville, Georgia ("FDIC-R"), and J. Coy Baker, Stanley Kelley, Donald Myers, James E. Towler, C. Neil Kelley, R. Alan Willett, and Katherine Kelley Franklin (collectively, the "Settling Defendants"). The FDIC-R and the Settling Defendants may be referred to individually herein as "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS:

Prior to November 21, 2008, The Community Bank of Loganville, Georgia ("TCB" or the "Bank") was a depository institution organized and existing under the laws of Georgia;

On November 21, 2008, TCB 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 TCB's rights, titles, powers and privileges, including those with respect to its assets.

Among the assets to which the FDIC-R as receiver succeeded were any and all of TCB's claims, demands, and causes of actions against its former directors, officers and employees arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of the Bank;

The FDIC-R asserted claims against the Settling Defendants, who had each served at various times as directors and/or officers of the Bank. The Settling Defendants denied liability for the FDIC-R's claims.

American International Specialty Lines Insurance Company ("AISLIC") issued AISLIC's Management and Professional Liability for Private Companies Policy No. [REDACTED] (the [REDACTED] (b)(4) "Policy"). The Settling Defendants have made claims under the Policy.

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: Payment to FDIC-R**

A. As an essential covenant and condition to this Agreement, AISLC, on behalf of the Settling Defendants, shall pay the FDIC-R the sum of \$740,000 ("the Settlement Funds").

B. Within thirty (30) business days of the date counsel for the Settling Defendants receives a fully executed copy of this Agreement (that is, the Agreement has been executed by each and every Party) ("the Payment Date"), the Settlement Funds shall be delivered to the FDIC-R by a check payable to the FDIC-R. If the Settlement Funds are not paid by the Payment Date, interest shall accrue on all unpaid amounts from the Payment Date until finally paid, at the rate of one-year U.S. Treasury bills as reported in the Wall Street Journal at the end of the last quarter immediately preceding the date of this Agreement.

C. 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 the Payment Date, then, the FDIC-R, in its sole discretion, shall have the right to enforce this Agreement against the Settling Defendants, in which event the non-delivering Parties agree to jurisdiction in Federal District Court in Georgia, or to declare the Agreement null and void and sue on any and all claims as if the Agreement had never been signed.

D. The Tolling Agreement executed by the Parties as of November 16, 2011 is

hereby extended through July 31, 2012. This provision shall survive the termination of this Agreement and shall be enforceable against any Party notwithstanding any voiding of this Agreement for nonpayment of the Settlement Funds.

## **SECTION II: Releases**

### **A. Release of Individual Settling Defendants by the FDIC-R.**

Effective upon receipt in full of the Settlement Funds, and except as provided in PARAGRAPH(S) III.D. and III.E. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, whether known or unknown, whether accrued, inchoate, liquidated, contingent, actual or asserted, direct or indirect, in law, including but not limited to any violation of any state or federal statute, rule or regulation, or in equity, belonging to the FDIC-R, that arise from or relate to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of TCB.

### **B. Release of the FDIC-R by the Settling Defendants.**

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the FDIC-R, and its 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 or in equity, that arise from or relate to the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of TCB or that arise from or relate to the Policy.

### **C. Release by Settling Defendants of Each Other.**

Effective simultaneously with the releases granted in Paragraph III.B. above, the Settling Defendants, and their respective heirs, executors, administrators, representatives, successors and

assigns, hereby release and discharge each other 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 performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and/or directors of TCB.

D. Express Reservations From Releases By the FDIC-R.

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 the Settling Defendants 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-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 Bank;

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

c. which are not expressly released in Paragraphs III.A. 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-R 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 or the United States Attorney's Office for the Northern District of Georgia or any other federal judicial district. In addition, the FDIC-R 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.

E. Express Reservation of Rights of Bond Claim.

I. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the FDIC-R's claim regarding conduct of the Settling Defendants as set forth in the Proof of Loss submitted by the FDIC-R dated July 10, 2009, as supplemented on or about September 7, 2011 and November 28, 2011 ("Fidelity Claim") under the Financial Institution Bond issued to TCB by National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"). It is not the intention of the Parties to prejudice the FDIC-R's rights regarding the Settling Defendants for the conduct set forth in the Fidelity Claim, and it is further not the intention of the Parties to prejudice National Union's subrogation rights, both under the Fidelity Bond and by operation of law or equity, against any persons or entities responsible for the Fidelity Claim, including but limited to the Settling Defendants.

### **SECTION III: Waiver of Dividends**

To the extent, if any, that Settling Defendants are or were shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other pro-rata distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC-R any and all right, title and interest in and to any and all such dividends, payments or other pro-rata distributions.

### **SECTION IV: Representations and Acknowledgments**

A. No Admission of Liability. The Settling Defendants expressly deny the claims asserted by the FDIC-R against the Settling Defendants. 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. 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.

C. Binding Effect. Each of the undersigned persons represents and warrants that he or she is a party hereto or is authorized to sign this Agreement on behalf of the respective party, and that he or she 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, successors and assigns.

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).

F. Specific Representations, Warranties and Disclaimer. The Settling Defendants expressly acknowledge that in determining to settle the claims released here, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information in the affidavits submitted. If, in their affidavits, the Settling Defendants have failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the Settling Defendants agree to cooperate fully with the FDIC-R to transfer their interest in the asset to the FDIC-R and to sign any and all documents necessary to transfer their interest in the asset to the FDIC-R. Moreover, if, in their affidavits, any of the Settling Defendants have failed to disclose any material interest, legal, equitable, or beneficial, in any asset, the FDIC-R, in its sole discretion, may exercise one or more or all of the following remedies: (a) the FDIC-R may declare the releases granted to that Settling Defendant as null and void; (b) the FDIC-R may retain the Settlement Funds; (c) the FDIC-R may sue that Settling Defendant for damages, an injunction, and specific performance for the

breach of this Agreement; and (d) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against that Settling Defendant. The Settling Defendants agree that if, in their affidavits, they have failed to disclose any material interest, legal, equitable, or beneficial, in any asset, they consent to the reinstatement of FDIC-R's claims against the Settling Defendant who failed to disclose the material interest and waive any statute of limitations that would bar any of the FDIC-R's claims against that Party. If the FDIC-R reinstates a claim against any of the Settling Defendants pursuant to this subpart, the Settling Defendants shall release and discharge AISLC and its respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action arising out of the claim which has been reinstated by the FDIC-R. Nothing in this Agreement shall be construed to permit the FDIC-R to reinstate any claims against a Settling Defendant who discloses all material interests, legal, equitable, or beneficial, in his or her assets.

G. Reasonable Cooperation.

1. 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.

2. The Settling Defendants agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement.

H. 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.

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 DEPARTMENT OF INSURANCE  
CORPORATION Receiver of The  
Community Development Bank, Georgia

(b)(6)

By: \_\_\_\_\_  
Name: Steven Smith  
Title: Council  
Date: May 31, 2012

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Stanley H. Kelley  
Date: \_\_\_\_\_

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Katherine Kelley Franklin  
Date: \_\_\_\_\_

\_\_\_\_\_  
C. Neil Kelley  
Date: \_\_\_\_\_

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R. Alan Willett  
Date: \_\_\_\_\_

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Coy Baker  
Date: \_\_\_\_\_

\_\_\_\_\_  
Donald Myers  
Date: \_\_\_\_\_

\_\_\_\_\_  
James E. Towler



FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver of The  
Community Bank, Loganville, Georgia

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



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Stanley H. Kelley  
Date: 5/25/2012

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Katherine Kelley Franklin  
Date: \_\_\_\_\_

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C. Neil Kelley  
Date: \_\_\_\_\_

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R. Alan Willett  
Date: \_\_\_\_\_

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Coy Baker  
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Donald Myers  
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James E. Towler

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver of The  
Community Bank, Loganville, Georgia

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Stanley H. Kelley

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

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Katherine Kelley Franklin

Date: 05/24/2012

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C. Neil Kelley

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

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R. Alan Willett

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Donald Myers

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James E. Towler

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver of The  
Community Bank, Loganville, Georgia

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Stanley H. Kelley  
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Katherine Kelley Franklin  
Date: \_\_\_\_\_

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C. Neil Kelley  
Date: 5-25-12

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R. Alan Willett  
Date: \_\_\_\_\_

Coy Baker  
Date: \_\_\_\_\_

Donald Myers  
Date: \_\_\_\_\_

James E. Towler

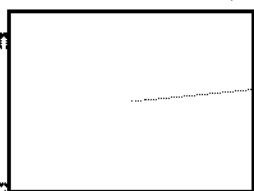
FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of The Community Bank, Loganville, Georgia

By: \_\_\_\_\_  
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Stanley H. Kelley  
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Katherine Kelley Franklin  
Date: \_\_\_\_\_

C. Neil Kelley  
Date: \_\_\_\_\_

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R. Alan Willett  
Date: 5-24-2012

Coy Baker  
Date: \_\_\_\_\_

Donald Myers  
Date: \_\_\_\_\_

James E. Towler

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver of The  
Community Bank, Loganville, Georgia

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R. Alan Willett  
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Donald Myers  
Date: 5-25-12

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James E. Towler

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of The Community Bank, Loganville, Georgia

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Stanley H. Kelley  
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Katherine Kelley Franklin  
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C. Neil Kelley  
Date: \_\_\_\_\_

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R. Alan Willett  
Date: \_\_\_\_\_

Coy Baker  
Date: \_\_\_\_\_

Donald Myers  
Date: \_\_\_\_\_

Jan \_\_\_\_\_  
Date: 5-24-2012

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