

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation as Receiver for DORAL BANK PUERTO RICO ("FDIC-R"), and GLEN WAKEMAN and ENRIQUE UBARRI (collectively the "Settling Officers"), and UNDERWRITERS AT LLOYD'S, LONDON BY CATLIN INSURANCE SERVICES, INC.; LANDMARK AMERICAN INSURANCE COMPANY; and EVEREST NATIONAL INSURANCE COMPANY ("Insurers") (individually, the FDIC-R and the Settling Officers and the Insurers may be referred to herein as "Party" and collectively as the "Parties").

**RECITALS**

WHEREAS:

Prior to February 27, 2015, Doral Bank Puerto Rico ("Bank") was a depository institution organized and existing under the laws of Puerto Rico;

On February 27, 2015, the Office of the Commissioner of Financial Institutions of Puerto Rico closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R 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-R succeeded were all of the Bank's claims, demands, and causes of action 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, officers, and employees of the Bank;

The FDIC-R has asserted claims for gross negligence, among others, against the Settling

Officers, each of whom served at various times as a director and/or officer of the Bank. The Settling Officers deny liability for the claims.

The Insurers issued various director and officer liability policies for the period October 31, 2011 through October 31, 2015 ("Policies"), which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policies. The Settling Officers asserted claims for coverage under the Policies. The Insurers have reserved their rights to deny coverage under the Policies for claims asserted by FDIC-R against the Settling Officers.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty 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, on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement, the Settling Officers will cause the Insurers to pay the FDIC-R the sum of Fourteen Million Dollars (\$14,000,000.00) ("the Settlement Payment").

B. The Settling Officers shall cause the Insurers to deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Officers and Insurers or by check drawn upon a depository institution acceptable to FDIC-R.

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the date determined in Section I.A, any Insurer who failed to make its respective payment

shall pay interest to the FDIC-R on all unpaid amounts at the rate of 5% per annum accruing from the date determined in Section I.A, until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event the Settling Officers and Insurers agree to jurisdiction in the United States District Court for the District of Columbia or the United States District Court for the Southern District of New York and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement and institute an action on the FDIC-R's claims.

The Settling Officers and Insurers agree to waive all statute of limitations defenses that would bar any of the FDIC-R's claims, to the extent that such defenses arise after the date this Agreement was fully executed. The Settling Officers and Insurers further agree to waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed. In the event the FDIC-R elects to terminate the Agreement under Section I.C.3, the FDIC-R agrees to return any and all portions of the Settlement Payment already paid to the FDIC-R to the Insurer(s) that made such payment(s); and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

## **SECTION II: Releases**

### **A. The FDIC-R's Releases.**

Upon receipt of the Settlement Payment in full and except as provided in Section II.D., the FDIC-R, for itself and its successors and assigns, hereby expressly releases and discharges:

1. The Settling Officers and their respective heirs, executors, trustees, administrators, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Officers' respective functions, duties and actions as officers, directors and/or employees of the Bank.
2. The Insurers, their parents, 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, that arise from or relate to the Policies. As part of this release of the Insurers, the FDIC-R agrees that any interest it may have under the Policies is extinguished.
3. All other former directors, officers, and employees of the Bank (collectively, the "Covered Persons") and their respective heirs, executors, trustees, administrators, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Covered Persons' respective functions, duties and actions as directors, officers and/or employees of the Bank. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

B. The Settling Officers' Release.

Effective simultaneously with the release granted in Section II.A. above, the Settling Officers, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, attorneys, 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 Officers' respective functions, duties and actions as officers and/or directors of the Bank.

C. The Insurers' Release.

Effective simultaneously with the releases granted in Section II.A. above, the Insurers, for themselves and their successors and assigns, and on behalf of their parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, agents, representatives, attorneys, 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 Policies.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against the Settling Officers 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 such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18

U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

**SECTION III: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Officers are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Officers hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

**SECTION IV: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties 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, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or 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.

C. Financial Disclosure Representation. Each Settling Officer has submitted financial information to the FDIC-R and herein affirms that his financial information is true and

accurate as of the date of this agreement. Each Settling Officer expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Officers. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Officer failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Officer agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of the Settling Officer's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Officer.

**SECTION V: Reasonable Cooperation**

A. The 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.

**SECTION VI: Other Matters**

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 defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute

the final Agreement, as if one document had been signed by all Parties; 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 this Agreement.

C. 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 Puerto Rico.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R: Joyce Gist Lewis  
Shingler Lewis LLC  
1230 Peachtree Street, Suite 1075  
Atlanta, Georgia 30309

(b)(6)

If to Glen Wakeman: David D. Aufhauser  
Williams & Connolly LLP  
725 Twelfth Street NW  
Washington, DC 20005

(b)(6)

If to Enrique Ubarri: David S. Krakoff  
Buckley Sandler LLP  
1250 24th Street NW  
Washington, DC, 20037

(b)(6)

If to UNDERWRITERS AT LLOYD'S, LONDON BY CATLIN INSURANCE SERVICES, INC.:

Matthew Abreu, Esq.  
Senior Claims Specialist  
Professional Lines Claims  
XL Catlin  
Brookfield Place  
200 Liberty Street, 22nd Floor  
New York, NY 10281

(b)(6)

With copies (that shall not constitute notice) to:

Daniel H. Brody, Esq.  
Kaufman Dolowich & Voluck, LLP  
40 Exchange Place, 20th Floor  
New York, NY 10005

(b)(6)

[Redacted]

If to LANDMARK AMERICAN INSURANCE COMPANY:

Douglas Perry  
Vice President  
Directors and Officers Claims  
Landmark American Insurance Company  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

(b)(6)

[Redacted]

If to EVEREST NATIONAL INSURANCE COMPANY:

James Real  
Vice President -- Specialty Claims  
Everest National Insurance Company  
461 5<sup>th</sup> Avenue, 5<sup>th</sup> Floor  
New York, NY 10017

(b)(6)

[Redacted]

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 and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

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

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance

Corporation's applicable policies, procedures, and other legal requirements.

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 FOR DORAL BANK PUERTO RICO

(b)(6)

Date: 10/26/17

BY:



TITLE: Counsel

PRINT NAME: Bryce Quine

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

GLEN WAKEMAN

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

TITLE: Counsel

PRINT NAME: David D. Aufhauser

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

ENRIQUE UBARRI

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

TITLE: Counsel

PRINT NAME: David S. Krakoff

Corporation's applicable policies, procedures, and other legal requirements.

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FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR DORAL BANK PUERTO RICO

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

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

TITLE: Counsel

PRINT NAME: Bryce Quine

(b)(6)

Date: 10/23/17

GLENN WAKEMAN

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

TITLE: Counsel

PRINT NAME: David D. Aufhauser

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

ENRIQUE UBARRI

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

TITLE: Counsel

PRINT NAME: David S. Krakoff

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RECEIVER FOR DORAL BANK PUERTO RICO

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

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

TITLE: Counsel

PRINT NAME: Bryce Quine

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

GLEN WAKEMAN

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

TITLE: Counsel

PRINT NAME: David D. Aufhauser

Date: 10/23/2017

(b)(6)

ENRIQUE UBARRI

BY:

TITLE: Counsel

PRINT NAME: David S. Krakoff

UNDERWRITERS AT LLOYD'S, LONDON BY  
CATLIN INSURANCE SERVICES, INC.

(b)(6)

Date: 10/25/17

BY:

TITLE: Senior Claims Specialist

PRINT NAME: Matthew Abreu

LANDMARK AMERICAN INSURANCE COMPANY

Date: ..

BY: ..

TITLE: Vice President, Directors & Officers Claims

PRINT NAME: Douglas Perry

EVEREST NATIONAL INSURANCE COMPANY

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

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

TITLE:

PRINT NAME:

UNDERWRITERS AT LLOYD'S, LONDON BY  
CATLIN INSURANCE SERVICES, INC.

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

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

TITLE:

PRINT NAME:

LANDMARK AMERICAN INSURANCE COMPANY

(b)(6)

~~Date: 10-23-2019~~

BY:

TITLE: Vice President, Directors & Officers Claims

PRINT NAME: Douglas Perry

EVEREST NATIONAL INSURANCE COMPANY

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

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

TITLE:

PRINT NAME:

UNDERWRITERS AT LLOYD'S, LONDON BY  
CATLIN INSURANCE SERVICES, INC.

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

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

TITLE:

PRINT NAME:

LANDMARK AMERICAN INSURANCE COMPANY

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

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

TITLE: Vice President, Directors & Officers Claims

PRINT NAME: Douglas Perry

(b)(6)

Date: 10/23/17

EVE [REDACTED] COMPANY

BY:

(b)(6)

TIT [REDACTED] Vice President, Claims (b)(6)

PR [REDACTED] AM [REDACTED] mes J. Real