

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is made as of this 29<sup>th</sup> day of April, 2014, by, between, and among the following undersigned parties:

- (a) The Federal Deposit Insurance Corporation as Receiver of Colonial Bank (the “FDIC”);  
and
- (b) Robert E. Lowder; Caryn Cope-Hughes; James L. Hogan; Joseph V. Chillura; Michael Sleaford; Keith Casey Cummings; Alan Ojeda; E. Ralph Crawford; Riley L. Hogan; Deborah L. Linden; Alfred Marulli; James Pelloni; A. Wayne Rich; Steven Saiontz; Steven Shimp; Barney A. Smith, Jr.; George B. Clements, as Executor of the Estate of Augustus K. Clements, III; William E. Powell, III; Simuel Sippial, Jr.; Phillip E. Adams, Jr.; Thomas F. Dyas, Jr.; Howell Keith Henderson and Judy Hardwick, as Co-executors of the Estate of Howell P. Henderson; and Paul Spina, Jr. (each a “D&O Party” and collectively, the “D&O Parties”).

The FDIC and the D&O Parties may be referred to herein collectively as the “Parties;” any one of them may be referred to as a “Party.”

**RECITALS**

**WHEREAS:**

- 1. At the time it was closed on August 14, 2009, Colonial Bank (the “Bank”) was a state, nonmember depository institution organized and existing under the laws of Alabama.
- 2. On August 14, 2009, the Bank was closed by the State of Alabama Banking Department and, pursuant to 12 U.S.C. § 1821(c)(2)(A)(i), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC 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. The FDIC is the sole owner of all of these rights, titles, powers and privileges.

3. Among the assets to which the FDIC as receiver succeeded were any and all claims, demands, and causes of action that the Bank had against the Bank's former directors, officers, advisory directors, regional loan committee members and employees as a result of their association with the Bank arising from the performance, nonperformance, and manner of performance of their respective functions, duties, and acts.

4. On August 25, 2009, the Bank's holding company, the Colonial BancGroup Inc. ("Colonial BancGroup"), filed for bankruptcy protection pursuant to Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Alabama (the "Bankruptcy Court"), bearing the caption, *In re The Colonial BancGroup Inc.*, Case No. 09-32303.

5. In January 2013, the FDIC notified the D&O Parties of the claims it intended to bring against them as former directors and/or officers of the Bank for approval and oversight of the Bank's lending function with respect to acquisition, development and construction loans and other commercial real estate loans that the FDIC alleges were made as a result of the negligence and gross negligence of and the breaches of fiduciary duty by the D&O Parties (the "FDIC Claims"). Previously, in 2012, the FDIC had initiated probate proceedings by asserting some or all of the FDIC Claims against the estates of two former Bank directors in the following matters: *Estate of Howell P. Henderson*, Case No. S2011-517 (Probate Ct. St. Clair Cty., Ala.); and *Estate of Augustus Kirby Clements, III*, Case No. 12-00236 (Probate Ct. Montgomery Cty., Ala.).

6. The D&O Parties and the FDIC have entered into that certain Tolling Agreement effective as of August 7, 2012, and thereafter executed the Extension to the Tolling Agreement

as of October 8, 2012; the Second Extension of Tolling Agreement as of December 10, 2012; the Third Extension of Tolling Agreement as of February 6, 2013; the Fourth Extension of Tolling Agreement as of May 10, 2013; the Fifth Extension of Tolling Agreement as of June 25, 2013; the Sixth Extension of Tolling Agreement as of August 27, 2013; the Seventh Extension of Tolling Agreement as of October 11, 2013; the Eighth Extension of Tolling Agreement as of December 12, 2013; and the Ninth Extension of Tolling Agreement as of February 24, 2014 (collectively, the "Tolling Agreements"), which are incorporated herein by reference and toll as of August 7, 2012 the limitations period under any applicable Statute of Limitations (as defined in the Tolling Agreements) for claims that may be asserted by the FDIC.

7. The D&O Parties and other directors and officers of the Bank are insureds under insurance policies issued by Federal Insurance Company ("Federal"), National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") and Allied World Assurance Company, Ltd. ("Allied World") (each an "Insurer" and collectively, the "Insurers").

8. Federal issued Financial Institution Portfolio Policy Number [redacted] (the [redacted] (b)(4) "Federal Policy"), which insured specified "Insured Persons," as that term is defined in the Federal Policy, according to the terms, provisions and conditions of the Federal Policy. The D&O Parties have requested coverage under the Federal Policy in connection with any claims that might be asserted by the FDIC. Federal has reserved its rights under the Federal Policy for any claims that may be asserted by the FDIC against the D&O Parties.

9. National Union issued directors' and officers' liability policy number [redacted] (b)(4) [redacted] (the "National Union Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the National Union Policy. The D&O Parties have requested coverage under the National Union Policy in connection with any claims that might be

asserted by the FDIC. National Union has reserved its rights under the National Union Policy for any claims that may be asserted by the FDIC against the D&O Parties.

10. Allied World issued directors' and officers' liability policy number  (b)(4) (the "Allied World Policy" and together with the Federal Policy and the National Union Policy, the "D&O Policies"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Allied World Policy. The D&O Parties have requested coverage under the Allied World Policy in connection with any claims that might be asserted by the FDIC. Allied World has reserved its rights under the Allied World Policy for any claims that may be asserted by the FDIC against the D&O Parties.

11. The D&O Contribution, as defined hereinbelow, has been paid by the D&O Parties into an escrow fund, and the D&O Parties' escrow agent has certified that the D&O Contribution is held in escrow, with instructions to hold such funds in escrow pending entry of the "Final Order" (as defined hereinbelow), and thereupon to transfer the D&O Contribution to the FDIC in accordance with Section I.C. hereinbelow.

12. It is understood and agreed that this Agreement is the compromise of disputed claims, and that the consideration provided for herein is not an admission on the part of any Party or Insurer. The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, inconvenience, distraction, 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 Parties agree, each with the other, as follows:

#### **SECTION I: Payment to FDIC**

A. The D&O Parties and the Insurers shall pay the FDIC the total sum of \$16,000,000.00 (in the aggregate, the "Settlement Funds"), of which sum \$2,000,000.00 shall be paid to the FDIC by the D&O Parties (the "D&O Contribution"). The D&O Parties shall direct the Insurers to pay the FDIC the remainder of the Settlement Funds from the proceeds of the D&O Policies (the "Insurance Contribution").

B. As a further essential covenant and condition of this Agreement, not later than ten (10) calendar days after the execution of this Agreement by all of the Parties, the D&O Parties shall file a motion and shall cause the Insurers to join in such motion seeking an order from the Bankruptcy Court authorizing the Insurers to fund the Insurance Contribution and Holdback Remainder Payment (as defined herein below) from the proceeds of the D&O Policies, and modifying the automatic stay (§ 362 of the Bankruptcy Code), to the extent applicable and/or necessary, for the limited purpose of allowing the use of the insurance proceeds to disburse the Insurance Contribution and the Holdback Remainder Payment (the "Bankruptcy Court Approval Order"). The D&O Parties shall confer with the FDIC with regard to the form of the Bankruptcy Court Approval Order and shall use their best efforts to obtain its entry by the Bankruptcy Court. The Bankruptcy Court Approval Order shall become final for purposes of this Agreement (a "Final Order") so long as it has not been reversed, stayed, vacated, modified, or amended and (i) any right to appeal, or seek certiorari, review, reargument, stay or rehearing has expired and no appeal or petition for certiorari, review, reargument, stay or rehearing is pending, or (ii) an appeal has been filed or petition for certiorari, review, reargument, stay or rehearing has been filed and (a) such appeal or petition for certiorari, review, reargument stay or rehearing has been resolved by the highest court to which the order or judgment was appealed or from which certiorari, review, reargument, stay or rehearing was sought or (b) the time to appeal further or

seek certiorari, review, reargument, stay or rehearing has expired and no such further appeal or petition for certiorari, review, reargument, stay or rehearing is pending. If the foregoing conditions are satisfied, the Bankruptcy Court Approval Order shall be deemed a Final Order even if the time for filing a motion with respect to such Order pursuant to Rule 60 of the Federal Rules of Civil Procedure or to Bankruptcy Rule 9024 has not expired. The seeking of the Bankruptcy Court Approval Order shall under no circumstances be deemed an admission or concession by any of the Parties that proceeds of the D&O Policies are property of Colonial BancGroup's bankruptcy estate.

C. Not later than thirty (30) calendar days after the Bankruptcy Court Approval Order has become a Final Order, the D&O Parties shall (i) cause the Insurers to pay by wire transfer the Insurance Contribution to the FDIC pursuant to the wire instructions below, and (ii) cause Designated Counsel to release the D&O Contribution from the Trust/Escrow Fund and pay the amount in the Trust/Escrow Fund by wire transfer to the FDIC pursuant to the following wire instructions:

**BANK:** Federal Home Loan Bank of New York

**ROUTING #:**

**FOR CREDIT TO:** FDIC National Liquidation Account

**ACCOUNT#:**

**OBI:** FIN 10103; Colonial Bank, Montgomery, AL;

**Contact:** Thomas J. O'Brien; 703-562-6414; Professional Liability (37100); DIF Fund

FHLB New York  
New York Main Office  
101 Park Avenue  
New York, NY 10178-0599  
212-681-6000 (Phone)  
212-441-6890 (Fax)

D. The Parties acknowledge that payment of the Insurance Contribution may not exhaust the limits of coverage available under the D&O Policies, and that additional coverage

may remain available to pay any covered Loss (as defined in the Federal Policy) under the D&O Policies. Following payment of the Insurance Contribution, any remaining insurance limits under the D&O Policies (the "Holdback Fund") may be used for the purpose of meeting any obligations of the Insurers for other covered Loss under the D&O Policies as provided herein. In the event that, as of December 31, 2014, any part of the Holdback Fund has not been depleted by, or committed to the payment of, such other covered Loss and there are then no pending actions or claims under the D&O Policies, the D&O Parties shall direct the Insurers to pay to the FDIC within thirty (30) days any such remaining part of the Holdback Fund (the "Holdback Remainder Payment") in the same manner as the payment of the Insurance Contribution. In the event there are then pending actions or claims under the D&O Policies, the D&O Parties shall provide to the FDIC a written statement regarding the nature of those pending actions or claims.

E. The Tolling Period as defined in the Tolling Agreements is further extended until 30 days after all Settlement Funds to be paid to the FDIC under this Agreement are paid in full to and received by the FDIC. The D&O Parties shall not challenge or contest the validity or enforceability of the Tolling Agreements.

## SECTION II: Releases

### A. Release of D&O Parties by FDIC.

Effective upon payment in full of the Settlement Funds, and except as provided in SECTION II.G, the FDIC, for itself and its successors and assigns, hereby releases and discharges all D&O Parties, including but not limited to each such D&O Party's heirs, executors, administrators, representatives, successors and assigns, (collectively, the "D&O Party Releasees," any one of whom individually is a "D&O Party Releasee") from any and all claims, including but not limited to the FDIC Claims, demands, obligations, damages, actions, and causes of action, direct or indirect, known and unknown, in law or in equity, belonging to the FDIC, that arise from or relate to, the performance, nonperformance, or manner of performance of such released D&O Party's functions, duties and actions as an officer, director, advisory director and/or regional loan committee member of the Bank.

### B. Release of Other Insured Persons by FDIC.

Effective simultaneously with the release granted in SECTION II.A above, and except as provided in SECTION II.G, the FDIC, for itself and its successors and assigns, hereby releases and discharges all "Insured Persons" (as that term is defined in the Federal Policy) other than the D&O Parties (collectively "Other Insured Persons"), from any and all claims, including but not limited to the FDIC Claims, demands, obligations, damages, actions, and causes of action, direct or indirect, known and unknown, in law or in equity, belonging to the FDIC, that arise from or relate to, the performance, nonperformance, or manner of performance of such released Other Insured Person's functions, duties and actions as an officer, director, advisory director and/or regional loan committee member of the Bank; provided, however, that the release provided by this SECTION II.B, shall be null and void with respect to any Other Insured Persons who initiate



any claim, demand or legal action against the FDIC arising out of or related to the Bank. For purposes of this Release, Other Insured Persons shall not include Colonial BancGroup or any of its affiliates, Catherine L. Kissick or Teresa A. Kelly.

C. Release of FDIC by the D&O Parties.

Effective simultaneously with the releases granted in SECTIONS II.A and II.B above, each D&O Party, on behalf of himself or herself and each of his or her respective heirs, executors, administrators, representatives, successors and assigns, hereby releases and discharges the FDIC, and its successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, known or unknown, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the respective D&O Party's functions, duties and actions as an officer, director, advisory director and/or regional loan committee member of the Bank and, to the extent applicable, as shareholders, officers and/or directors of the Bank's holding company, Colonial BancGroup.

D. Release by D&O Parties of Each Other.

Effective simultaneously with the releases granted in SECTIONS II.A, II.B and II.C above, each D&O Party hereby releases and discharges all other D&O Party Releasees 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 the functions, duties and actions of each respective D&O Party as an officer, director, advisory director and/or regional loan committee member of the Bank.

E. Release of the Insurers by the D&O Parties

After full payment by the Insurers of their respective limits of liability pursuant to SECTIONS I.A, I.C and I.D above, each of the D&O Parties hereby releases and discharges the Insurers from any and all contractual or extra-contractual claims, demands, obligations, damages, actions, and causes of action, direct or indirect, known or unknown, in law or in equity, that arise from or relate to the performance, nonperformance, or manner of performance of the Insurers with respect to the D&O Policies, or matters noticed under the D&O Policies (the "Released Insurance Claims"). The Released Insurance Claims shall also include, but are not limited to, claims for "bad faith" or unfair claims handling practices in connection with the FDIC Claims; (ii) common law claims for "bad faith" insurance practices or breach of the implied covenant of good faith and fair dealing in connection with the FDIC Claims; and (iii) all rights and claims which the D&O Parties may have under the D&O Policies or pursuant to any applicable statute and/or case law for any alleged failure on the part of the Insurers to effectuate prompt, fair and equitable settlements of claims which the D&O Parties now have, claim to have or may have in the future with respect to the FDIC Claims or any other matter that has or could have been noticed under the D&O Policies. This release does not release the D&O Parties' rights to coverage prior to full exhaustion of Allied World's remaining limit of liability. Nothing in this SECTION II.E shall affect or impair the FDIC's rights to enforce the Insurers' obligation to pay the Holdback Remainder Payment.

F. Extinguishment of D&O Policies.

The D&O Parties acknowledge and agree that the Insurers' payments pursuant to SECTIONS I.A, C and D above, once paid, constitute the entire remaining limits of liability of the D&O Policies, and that such payments, once completed, extinguish all further obligations or liabilities of the Insurers under the D&O Policies.

G. Express Reservations From Releases By FDIC.

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 D&O Party, Insurer, or 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, the Bank, or other financial institutions or any other person or entity including but not limited to any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than the Bank, including but not limited to the right to object to the discharge or dischargeability of any such indebtedness in any bankruptcy proceeding;

b. against any person or entity not expressly released in this Agreement, PricewaterhouseCoopers LLP, Crowe Horwath LLP, and any other non-party to this Agreement; and

c. which are not expressly released in SECTIONS II.A and II.B, 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 by the Federal Deposit Insurance Corporation, in the exercise of its supervisory, corporate or regulatory authority, or to diminish its ability to institute administrative proceedings seeking removal, prohibition or other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by any other federal or state governmental agency, including the United States through either the Department of Justice or the United States Attorney's Office for the Middle District of Alabama or any other federal judicial district. In addition, the FDIC 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. The D&O Parties expressly reserve all rights to dispute any and all aspects of such claims.

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

To the extent, if any, that any D&O Parties are or were shareholders of the Bank or Colonial BancGroup, and by virtue thereof are or claim to be entitled to any dividend, payment, or other distribution from the FDIC or from any settlement or judgment in any litigation based on or arising out of, in whole or in part, the closing of Colonial Bank, including but not limited to litigation which has been or could be brought against the United States or any agency or department thereof, Federal Home Loan Bank Board, Federal Reserve Board, Office of the Comptroller of the Currency, Office of Thrift Supervision, Resolution Trust Corporation, Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation Resolution Fund, such D&O Parties hereby assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other distributions, or such proceeds. Notwithstanding the foregoing, the waiver in this SECTION III shall not extend to or apply to claims by any D&O Party asserted in his or her capacity as a member of the plaintiff class in the actions styled *In re Colonial BancGroup Inc. Securities Litigation*, No. 2:09cv00104, United States District Court for the Middle District of Alabama and *In re Colonial BancGroup Inc.*

*ERISA Litigation*, No. 2:09cv792, United States District Court for the Middle District of Alabama.

#### **SECTION IV: Retained Rights**

The FDIC shall retain all rights to recover from any of the debtors, direct obligors, or guarantors, and to sell or otherwise dispose of any collateral securing the underlying obligations the approval of which gave rise to any losses the FDIC alleges were caused by any of the D&O Parties.

#### **SECTION V: Preferences**

In the event that the FDIC is required to return any portion of the Settlement Funds due to a final order by a court that the transfer of any D&O Party's share of the Settlement Funds or any portion thereof constituted a preference, voidable preference, fraudulent transfer or similar transaction, then, in its sole discretion, the FDIC may, without waiver of any other rights it may have in law or equity terminate this Agreement as to such D&O Party, declare the FDIC's release null and void as to such D&O Party, and file a claim in the applicable bankruptcy court for the FDIC Claims, to which such D&O Party waives any Statute of Limitations (as defined in the Tolling Agreements) that would otherwise bar any of the FDIC's Claims from being asserted. Termination of this Agreement as to such D&O Party shall not affect the validity of the release given herein in favor of other D&O Parties.

## SECTION VI: Representations and Acknowledgements

A. No Admission of Liability. Each of the undersigned Parties acknowledges and agrees 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 or of the validity of any defense to any claim, and that such liability is expressly and vigorously disputed.

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 persons signing this Agreement 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 Parties and their respective heirs, executors, administrators, directors, officers, employees, agents, 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 Alabama.

E. Non-U.S. Insurer Participation. The Parties acknowledge and agree that the negotiation and performance of this Agreement shall not be deemed to be, and shall not constitute, any admission or evidence that Allied World in any way does business in the United

States, or any state, territory, or possession of the United States, or that Allied World is subject to the jurisdiction of any United States federal or bankruptcy court, or of any court of any state, territory or possession of the United States.

F. Entire Agreement and Amendments. This Agreement and the Tolling Agreements together constitute 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 any such Party's authorized attorney(s) or other representative(s).

G. Jointly Drafted. All of the Parties and their respective counsel mutually contributed to the preparation of, and have had the opportunity to review and revise this Agreement. Accordingly, no provision of this Agreement shall be construed against any Party because that Party, or its counsel, drafted the provision. This Agreement and all of its terms shall be construed equally as to all persons or entities.

H. Specific Stipulations, Agreements and Warranties.

Each Party stipulates, agrees, and warrants as follows: (i) that the Party shall not challenge or contest in any way the capacity or the authority of any other Party hereto to make this Agreement, and (ii) that the person executing this Agreement on the Party's behalf has the necessary and appropriate authority and capacity to execute this Agreement and to make this Agreement fully binding upon and enforceable against such Party.

I. Reasonable Cooperation.

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. The D&O Parties cooperation shall include, but not necessarily be limited to, providing reasonable assistance in any efforts to proceed against the Insurers if the Insurers fail to transfer either the Insurance Contribution or the Holdback Remainder Payment, or both, in accordance with the terms set forth in this Agreement.

J. Advice of Counsel. Each Party hereby acknowledges having had an opportunity to consult with and obtain the advice of counsel prior to executing this Agreement, and to be given an explanation by counsel concerning the rights and obligations arising from this Agreement.

K. Notices. Any notices relating to or arising out of this Agreement shall be in writing sent by email and registered or certified mail, return receipt requested, shall be considered delivered when received by the Party or Insurer to whom it was sent, and shall be addressed to the following recipients:

To the FDIC:

Charles B. Lee  
Miller & Martin PLLC  
Email:   
Suite 1000 Volunteer Building  
832 Georgia Avenue  
Chattanooga, Tennessee 37402

and to:

Thomas J. O'Brien

(b)(6)



Federal Deposit Insurance Corporation

Email: [REDACTED]

L. William Seidman Center

3501 Fairfax Drive

Room VS-B-7032

Arlington, VA 22226-3500

To Robert Lowder, Joseph V. Chillura and Michael Sleaford:

Samuel H. Franklin

Lightfoot Franklin White LLC

Email: [REDACTED]

The Clark Building

400 20th Street North

Birmingham, AL 35203-3200

To Caryn Cope-Hughes and James L. Hogan:

J. Mark White

Augusta S. Dowd

White, Arnold & Dowd P.C.

Email: [REDACTED]

2025 Third Avenue North, Suite 500

Birmingham, AL 35203

To Thomas F. Dyas, Jr., William E. Powell, III, Simuel Sippial, Jr., George B. Clements, as Executor of the Estate of Augustus K. Clements, III, Howell Keith Henderson and Judy Harwick, as Co-executors of the Estate of Howell P. Henderson, Paul Spina, Jr. and Phillip E. Adams, Jr.:

William C. Athanas

Larry B. Childs

Waller Lansden Dortch & Davis, LLP

Email: [REDACTED]

1901 Sixth Avenue N., Suite 1400

Birmingham, AL 35203-2623

To A. Wayne Rich and James Pelloni:

Edward L. Hardin, Jr.  
Tony Harlow  
Burr Forman

(b)(6) Email: [REDACTED]  
420 North 20th Street, Suite 3400  
Birmingham, AL 35203

To Alan Ojeda:

Robert W. Turken  
Bilzin Sumberg

(b)(6) Email: [REDACTED]  
1450 Brickell Avenue, 23rd Floor  
Miami, FL 33131

To Keith Casey Cummings and Steven Saiontz:

Mark P. Dikeman  
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.

(b)(6) Email: [REDACTED]  
150 W. Flagler Street, Floor 22  
Miami, FL 33130-1545

To Alfred Marulli:

Nathan E. Nason  
Nason, Yeager, Gerson, White & Lioce, P.A.

(b)(6) Email: [REDACTED]  
Sabadell United Bank Tower  
1645 Palm Beach Lakes Boulevard, Suite 1200  
West Palm Beach, FL 33401

To Barney A. Smith, Jr., Deborah L. Linden, E. Ralph Crawford, Riley L. Hogan and Steven Shimp:

David McKnight  
Baxley, Dillard, McKnight & James

(b)(6) Email: [REDACTED]  
2008 Third Avenue South  
Birmingham, AL 35233

L. Severability. If any provision of this Agreement is held unenforceable, then such provision will, if possible, be modified to be enforceable but still reflect the Parties' intentions. In any event, the remaining provisions of this Agreement shall remain in full force and effect.

#### **SECTION VII: Destruction of Confidential Documents and ESI**

Within thirty (30) days of the effective date of any release given by the FDIC to any D&O Party pursuant to this Agreement, counsel for such D&O Party shall certify to the FDIC that all confidential mediation materials, documents and electronically stored information ("ESI") related to the Bank and provided by the FDIC for the use of counsel and such D&O Party and specifically identified as confidential (hereinafter, "Confidential Materials Provided by FDIC") have been destroyed and deleted, with no copies retained, in a manner designed to protect the confidential nature of the Confidential Materials Provided by the FDIC; provided, however, that counsel for any D&O Party may retain a copy of any such Confidential Materials Provided by the FDIC as may be required by law or by counsel's document retention practices. Furthermore, all Parties and their respective counsel shall: (1) continue to hold all Confidential Materials and any other mediation information and communications strictly confidential in accordance with previously executed mediation agreements; and (2) continue to comply with any previous confidentiality agreements with the FDIC.

#### **SECTION VIII: Dismissal Of Probate Claims**

Upon the execution of this Agreement and delivery to the FDIC of the payment of the respective shares of the Settlement Funds, the FDIC shall dismiss with prejudice its above-referenced probate claims filed of record against the Estate of Howell P. Henderson and the Estate of Augustus K. Clements, III, as applicable, to which dismissal each such estate shall stipulate, subject to each party paying its own costs and attorney's fees.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by each of them or their duly authorized representatives.

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER OF COLONIAL BANK

(b)(6)

By:

Title: COUNSEL FDIC

Date: 4/29/2014

Print Name: THOMAS J. O'BRIEN

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

\_\_\_\_\_  
**ROBERT E. LOWDER**

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

\_\_\_\_\_  
**CARYN COPE-HUGHES**

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

\_\_\_\_\_  
**JAMES L. HOGAN**

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

\_\_\_\_\_  
**JOSEPH V. CHILLURA**

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

\_\_\_\_\_  
**MICHAEL SLEAFORD**

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

\_\_\_\_\_  
**KEITH CASEY CUMMINGS**

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by each of them or their duly authorized representatives.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF COLONIAL  
BANK**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Print Name: \_\_\_\_\_

(b)(6)

Date: 4-24-14

\_\_\_\_\_

**ROBERT E. LOWDER**

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

**CARYN COPE-HUGHES**

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

**JAMES L HOGAN**

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

**JOSEPH V. CHILLURA**

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

**MICHAEL SLEAFORD**

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

**KEITH CASEY CUMMINGS**

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by each of them or their duly authorized representatives.

**FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER OF COLONIAL BANK**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

**ROBERT E. LOWDER**

(b)(6)

Date: 4/25/14

**CARYN COPE-HUGHES** ✓

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

**JAMES L. HOGAN**

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

**JOSEPH V. CHILLURA**

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

**MICHAEL SLEAFORD**

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

**KEITH CASEY CUMMINGS**

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by each of them or their duly authorized representatives.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF COLONIAL  
BANK**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

**ROBERT E. LOWDER**

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

**CARYN COPE-HUGHES**

(b)(6)

Date: 7/23/2014

**JAMES L. HOGAN**

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

**JOSEPH V. CHILLURA**

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

**MICHAEL SLEAFORD**

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

**KEITH CASEY CUMMINGS**

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by each of them or their duly authorized representatives.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF COLONIAL  
BANK**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

**ROBERT E. LOWDER**

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

**CARYN COPE-HUGHES**

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

**JAMES L. HOGAN**

(b)(6)



Date: 4-24-14

**JOSEPH V. CHILLURA**

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

**MICHAEL SLEAFORD**

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

**KEITH CASEY CUMMINGS**



IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by each of them or their duly authorized representatives.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF COLONIAL  
BANK**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Print Name: \_\_\_\_\_

Date: \_\_\_\_\_  
**ROBERT E. LOWDER**

Date: \_\_\_\_\_  
**CARYN COPE-HUGHES**

Date: \_\_\_\_\_  
**JAMES L. HOGAN**

Date: \_\_\_\_\_  
**JOSEPH V. CHILLURA**

(b)(6)

Date: 9/29/14  
  
**MICHAEL SLEAFORD**

Date: \_\_\_\_\_  
**KEITH CASEY CUMMINGS**

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by each of them or their duly authorized representatives.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF COLONIAL  
BANK**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Print Name: \_\_\_\_\_

Date: \_\_\_\_\_  
**ROBERT E. LOWDER**

Date: \_\_\_\_\_  
**CARYN COPE-HUGHES**

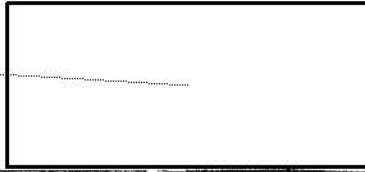
Date: \_\_\_\_\_  
**JAMES L. HOGAN**

Date: \_\_\_\_\_  
**JOSEPH V. CHILLURA**

Date: \_\_\_\_\_  
**MICHAEL SLEAFORD**

(b)(6) \_\_\_\_\_  
Date: 4/24/14 \_\_\_\_\_  
**KEITH CASEY CUMMINGS**

(b)(6)



Date: Apr 24, 2014

ALAN OJEDA

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

E. RALPH CRAWFORD

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

RILEY L. HOGAN

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

DEBORAH L. LINDEN

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

ALFRED MARULLI

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

JAMES PELLONI

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

A. WAYNE RICH

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

STEVEN SAJONTZ

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

STEVEN SHIMP

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

ALAN OJEDA *N M*

(b)(6)



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

E. RALPH CRAWFORD

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

RILEY L. HOGAN

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

DEBORAH L. LINDEN

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

ALFRED MARULLI

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

JAMES PELLONI

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

A. WAYNE RICH

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

STEVEN SAJONTZ

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

STEVEN SHIMP

Date: \_\_\_\_\_  
ALAN OJEDA

Date: \_\_\_\_\_  
E. RALPH CRAWFORD

(b)(6) \_\_\_\_\_  
Date: 4-25-14 \_\_\_\_\_  
RILEY L. HOGAN

Date: \_\_\_\_\_  
DEBORAH L. LINDEN

Date: \_\_\_\_\_  
ALFRED MARULLI

Date: \_\_\_\_\_  
JAMES PELLONI

Date: \_\_\_\_\_  
A. WAYNE RICH

Date: \_\_\_\_\_  
STEVEN SAIONTZ

Date: \_\_\_\_\_  
STEVEN SHIMP

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

**ALAN OJEDA**

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

**E. RALPH CRAWFORD**

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

**RILEY L. HOGAN**

Date: *4/24/14*

**DEBORAH L. LINDEN**

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

**ALFRED MARULLI**

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

**JAMES PELLONI**

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

**A. WAYNE RICH**

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

**STEVEN SAIONTZ**

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

**STEVEN SHIMP**

(b)(6)




Date: \_\_\_\_\_  
ALAN OJEDA

Date: \_\_\_\_\_  
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Date: \_\_\_\_\_  
RILEY L. HOGAN

Date: \_\_\_\_\_  
DEBORAH L. LINDEN

(b)(6)

Date: 4/25/2014 \_\_\_\_\_  
  
ALFRED MARULLI

Date: \_\_\_\_\_  
JAMES PELLONI

Date: \_\_\_\_\_  
A. WAYNE RICH

Date: \_\_\_\_\_  
STEVEN SAIONTZ

Date: \_\_\_\_\_  
STEVEN SHIMP

Date: \_\_\_\_\_ **ALAN OJEDA**


Date: \_\_\_\_\_ **E. RALPH CRAWFORD**

Date: \_\_\_\_\_ **RILEY L. HOGAN**

Date: \_\_\_\_\_ **DEBORAH L. LINDEN**

Date: \_\_\_\_\_ **ALFRED MARULLI**

(b)(6)

Date: 4/25/14 \_\_\_\_\_  
  
**JAMES PELLONI**

Date: \_\_\_\_\_ **A. WAYNE RICH**

Date: \_\_\_\_\_ **STEVEN SAIONIZ**

Date: \_\_\_\_\_ **STEVEN SHIMP**



Date: \_\_\_\_\_ ALAN OJEDA

Date: \_\_\_\_\_ E. RALPH CRAWFORD

Date: \_\_\_\_\_ RILEY L. HOGAN

Date: \_\_\_\_\_ DEBORAH L. LINDEN

Date: \_\_\_\_\_ ALFRED MARULLI

Date: \_\_\_\_\_ JAMES PELLONI

(b)(6)

Date: 4/24/1986  A. WAYNE RICH

Date: \_\_\_\_\_ STEVEN SAIONTZ

Date: \_\_\_\_\_ STEVEN SHIMP

Date: \_\_\_\_\_ ALAN OJEDA

Date: \_\_\_\_\_ E. RALPH CRAWFORD

Date: \_\_\_\_\_ RILEY L. HOGAN

Date: \_\_\_\_\_ DEBORAH L. LINDEN

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Date: \_\_\_\_\_ JAMES PELLONI

Date: \_\_\_\_\_ A. WAYNE RICH

(b)(6) \_\_\_\_\_  
Date: 4/24/14 \_\_\_\_\_  
STEVEN SAIONTZ

Date: \_\_\_\_\_ STEVEN SHIMP

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Date: \_\_\_\_\_ ALFRED MARULLI

Date: \_\_\_\_\_ JAMES PELLONI

Date: \_\_\_\_\_ A. WAYNE RICH

Date: \_\_\_\_\_ STEVEN SAIONTZ

(b)(6) \_\_\_\_\_  
Date: 27 APR 2014

STEVEN SHIMP



(b)(6)

Date:

04-22-2014



**BARNEY A. SMITH, JR.**

Date:

**GEORGE B. CLEMENTS,  
AS EXECUTOR OF THE ESTATE OF  
AUGUSTUS K. CLEMENTS, III**

Date:

**WILLIAM E. POWELL, III**

Date:

**SIMUEL SIPPIAL, JR.**

Date:

**PHILLIP E. ADAMS, JR.**

Date:

**THOMAS F. DYAS, JR.**

Date:

**HOWELL KEITH HENDERSON,  
AS CO-EXECUTOR OF THE ESTATE OF  
HOWELL P. HENDERSON**

Date:

**JUDY HARWICK,  
AS CO-EXECUTOR OF THE ESTATE OF  
HOWELL P. HENDERSON**

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

**BARNEY A. SMITH, JR.**

(b)(6)



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

**GEORGE B. CLEMENTS,  
AS EXECUTOR OF THE ESTATE OF  
AUGUSTUS K. CLEMENTS, III**

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

**WILLIAM E. POWELL, III**

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HOWELL P. HENDERSON**

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AS CO-EXECUTOR OF THE ESTATE OF  
HOWELL P. HENDERSON**

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

**BARNEY A. SMITH, JR.**

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

**GEORGE B. CLEMENTS,  
AS EXECUTOR OF THE ESTATE OF  
AUGUSTUS K. CLEMENTS, III**

(b)(6)



Date: 4-24-2014

**WILLIAM E. POWELL, III**

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

**SIMUEL SIPPAL, JR.**

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

**PHILLIP E. ADAMS, JR.**

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

**THOMAS F. DYAS, JR.**

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**JUDY HARWICK,  
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HOWELL P. HENDERSON**

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Date: \_\_\_\_\_ **WILLIAM E. POWELL, III**

(b)(6)

Date: 4/25/14   
**SIMUEL SIPPAL, JR.**

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(b)(6)

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HOWELL P. HENDERSON**

Date: \_\_\_\_\_ **JUDY HARWICK,  
AS CO-EXECUTOR OF THE ESTATE OF  
HOWELL P. HENDERSON**



*Final Settlement Page*

Date: \_\_\_\_\_ BARNEY A. SMITH, JR.

Date: \_\_\_\_\_ GEORGE B. CLEMENTS,  
AS EXECUTOR OF THE ESTATE OF  
AUGUSTUS K. CLEMENTS, III

Date: \_\_\_\_\_ WILLIAM E. POWELL, III

Date: \_\_\_\_\_ SIMUEL SIPPAL, JR.

Date: \_\_\_\_\_ PHILLIP E. ADAMS, JR.

(b)(6)

Date: 4/24/14 \_\_\_\_\_ THOMAS F. DYAS, JR.

Date: \_\_\_\_\_ HOWELL KEITH HENDERSON,  
AS CO-EXECUTOR OF THE ESTATE OF  
HOWELL P. HENDERSON

Date: \_\_\_\_\_ JUDY HARWICK,  
AS CO-EXECUTOR OF THE ESTATE OF  
HOWELL P. HENDERSON

Date: \_\_\_\_\_  
**BARNEY A. SMITH, JR.**

Date: \_\_\_\_\_  
**GEORGE B. CLEMENTS,  
AS EXECUTOR OF THE ESTATE OF  
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**THOMAS F. DYAS, JR.**

(b)(6) \_\_\_\_\_  
Date: 4/24/14 \_\_\_\_\_  
**HOWELL KEITH HENDERSON,  
AS CO-EXECUTOR OF THE ESTATE OF  
HOWELL P. HENDERSON**

(b)(6) \_\_\_\_\_  
Date: 4/24/14 \_\_\_\_\_  
**JUDY HARWICK,  
AS CO-EXECUTOR OF THE ESTATE OF  
HOWELL P. HENDERSON**

(b)(6)

Date: 4/24/14



PAUL SPINA, JR.