

## SETTLEMENT AND RELEASE AGREEMENT

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

The Plaintiff Federal Deposit Insurance Corporation as Receiver for the Bank of Hiawassee, Georgia (“FDIC-R”), and Robert L. Anderson, III; Robert L. Anderson, III as Executor of the Estate of Elois D. Anderson; Tonia H. Anderson; C. Gregory Adams; Hugh E. Allen; Gwendolyn A. Christian; Clay Dotson; Steve L. Giles; Chris B. Kelley; Rebecca L. King; Gary O. Lance; Charles W. Nicholson; Howell D. Paris, Jr., as Executor of The Estate of Howell D. Paris, Sr.; Jeffrey L. Patterson; and Susie Rose (collectively the “Settling Individuals”) and William Daryl Allison, Emily K. Price, and Richard B. York (collectively the “Other Released Individuals”) (individually, the FDIC-R, the Settling Individuals, and the Other Released Individuals may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

#### WHEREAS:

Prior to March 19, 2010, the Bank of Hiawassee, Georgia (“Bank”) was a depository institution organized and existing under the laws of Georgia;

On March 19, 2010, the Georgia Department of Banking and Finance 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 against the Settling Individuals and the Other Released Individuals, each of whom served at various times as a director and/or officer of the Bank. The Settling Individuals and the Other Released Individuals deny any and all liability for the claims or any other alleged wrongdoing or liability.

The Settling Individuals and the Other Released Individuals were insured under a director and officer liability insurance policy ("Policy"), which covered the directors and officers of the Bank according to the terms, provisions, and conditions of the Policy. The Settling Individuals have asserted claims for coverage under the Policy.

Effective February 22, 2013, the FDIC-R and the Settling Individuals executed successive Tolling Agreements under which all timing defenses, including all statutes of limitations, were suspended, tolled, and extended at least through and including the effective date of this Agreement. Among other things, each Settling Individual specifically warranted and agreed to not challenge or contest in any way the validity or enforceability of the Tolling Agreements.

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 the FDIC-R**

A. As an essential covenant and condition to this Agreement, on or before March 17, 2014 (the "Payment Date"), the sum of Three Million Three Hundred Thousand Dollars and no

cents (\$3,300,000.00) ("the Settlement Payment") shall be paid by or on behalf of the Settling Individuals to the FDIC-R provided the Agreement is fully executed and wire transfer instructions are provided no later than twelve (12) days before the Payment Date.

B. In the event that the Settlement Payment is not delivered to the FDIC-R 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. However, if said Settlement Payment is not delivered to the FDIC-R by the Payment Date as a result of the FDIC-R's failure to timely provide wire transfer information or to provide an executed settlement agreement at least twelve (12) days before March 17, 2014, no interest shall accrue until twelve (12) days after the FDIC-R executes the Agreement and provides wire transfer instructions (whichever occurs last).

C. If the FDIC-R does not receive the Settlement Payment in the time set forth 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; or
2. Enforce this Agreement, in which event the Settling Individuals agree to jurisdiction in United States District Court for the Northern District of Georgia 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, move to vacate any dismissal order, to which the Settling Individuals agree to consent, and institute an action on the FDIC-R's claims. The Settling Individuals further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and 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; 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.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Individuals, the Other Released Individuals, and their respective heirs, executors, trustees, administrators, representatives, insurers, 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 Individuals' and the Other Released Individuals' respective functions, duties, and actions as officers and/or directors of the Bank, including without limitation the claims asserted by the FDIC-R against Settling Individuals.

### **B. The Settling Individuals' and the Other Released Individuals' Release.**

Effective simultaneously with the release granted in Section II.A. above, the Settling Individuals and the Other Released Individuals, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, insurers, 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 Individuals' and the Other Released Individuals' respective functions, duties, and actions as officers and/or directors of the Bank.

C. Exceptions from Releases by the 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 Individuals, the Other Released Individuals, 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 the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the 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 Individuals or Other Released Individuals are or were shareholders of the Bank 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 Individuals and Other Released Individuals 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 Acknowledgement**

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.

#### **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.

B. Without waiving any Constitutional, statutory, or common law privileges, the Settling Individuals and Other Released Individuals agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. Producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;
2. Appearing as requested by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;
3. Testifying as requested by the FDIC-R, without the necessity of a subpoena, in any matter relevant to the Bank, as determined by the FDIC-R;
4. Signing truthful affidavits, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

#### **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 Georgia.

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:

David Joseph  
Senior Attorney  
Federal Deposit Insurance Corporation  
1601 Bryan Street, #35020  
Dallas, TX 75201

(b)(6)

[Redacted]

If to the Settling Individuals:

Mary Gill  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424

(b)(6)

[Redacted]

If to the Other Released Individuals: Mary Gill



Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424

(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 BANK OF HIAWASSEE,  
GEORGIA**

(b)(6)

Date: 3 Mar 2014

BY:

[Redacted Signature]

TITLE: Senior Attorney

PRINT NAME: David C. Joseph

**ROBERT L. ANDERSON, III, Individually**

(b)(6)

Date:

2/28/14

BY:

PRINT NAME:

Robert L. Anderson III

**ROBERT L. ANDERSON, III AS EXECUTOR OF  
THE ESTATE OF ELOIS D. ANDERSON**

(b)(6)

Date:

2/28/14

BY:



PRINT NAME:

Robert L. Anderson III

TONIA H. ANDERSON

(b)(6)

Date: 2/20/14

BY:

PRINT NAME: Tonia H. Anderson

C. GREGORY ADAMS

(b)(6)

Date: 3/3/14

BY:



PRINT NAME: C. Gregory Adams

HUGH E. ALLEN

Date: 3/3/14

[Redacted Signature Box]

(b)(6)

BY: \_\_\_\_\_  
PRINT NAME: Hugh E. Allen

(b)(6)

GWENDOLYN A. CHRISTIAN

Date: March 3, 2014

BY:

PRINT NAME: GWENDOLYN A. CHRISTIAN

CLAY DOTSON

(b)(6)

Date: 2-28-14

BY:




PRINT NAME: CLAY DOTSON





**STEVE L. GILES**

Date: 3-1-2014

BY:  (b)(6)  
PRINT NAME: STEVE L. GILES

CHRIS B. KELLEY

(b)(6)

Date: 3-3-2014

BY:



PRINT NAME: Chris B. Kelley

REBECCA L. KING

(b)(6)

Date: 3/3/14



BY: \_\_\_\_\_  
PRINT NAME: Rebecca L. King

GARY O. LANCE

(b)(6)

Date: 3-3-14

BY:

[Redacted Signature Box]

PRINT NAME: GARY O. LANCE

CHARLES W. NICHOLSON

(b)(6)

Date: FEBRUARY 28, 2014  
2-28-2014

BY:



PRINT NAME: CHARLES W. NICHOLSON

HOWELL D. PARIS, JR., AS EXECUTOR OF THE  
ESTATE OF HOWELL D. PARIS, SR.

(b)(6)

Date:

March 20/14

BY:

[Redacted Signature]

PRINT NAME:

H. D. PARIS, JR.

(b)(6)

Date: 3 MAR 2014

JEFFREY L. PATTERSON



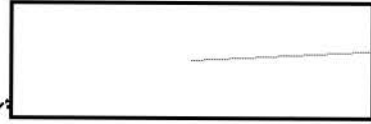
BY:

PRINT NAME: Jeffrey L Patterson

Date: 3-3-2014

SUSIE ROSE

BY:  
PRINT NAME: \_\_\_\_\_



(b)(6)



WILLIAM DARYL ALLISON

(b)(6)

Date:

3/3/2014

BY:

[Redacted Signature]

PRINT NAME:

William Daryl Allison

(b)(6)

Date:

3/8/2014

EMILY K. PRICE

BY:



PRINT NAME:

Emily Price

(b)(6)

**RICHARD B. YORK**

Date: 3/2/14



BY: \_\_\_\_\_  
PRINT NAME: Richard B. York