

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into by and between the Federal Deposit Insurance Corporation as Receiver for The Park Avenue Bank, Valdosta, Georgia ("FDIC-R"), and The Cincinnati Insurance Company ("Cincinnati") (individually, the FDIC-R and Cincinnati may be referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to April 29, 2011, The Park Avenue Bank (PAB or the "Bank") was a depository institution organized and existing under the laws of Georgia;

On April 29, 2011, the Bank was closed by the Georgia Department of Banking and Finance and pursuant to 12 U.S.C. § 1821(c) the Federal Deposit Insurance Corporation ("FDIC") was appointed receiver. In accordance with 12 U.S.C. § 1821(d)(2), the FDIC-R 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;

Among the assets to which FDIC-R succeeded were any and all claims, demands, and causes of action against the Bank's financial institution bond insurer, including against Cincinnati as issuer of the Bond, as that term is defined below.

On May 1, 2009, Cincinnati issued to PAB Depository Institutions Blanket Bond No.

(b)(4) (the "Bond");

The Bank sent a timely notice of loss and proof of loss on January 8, 2009, and April 7, 2009, respectively, to Cincinnati, seeking coverage under the Bond ("Claims");

On June 27, 2014, the FDIC-R filed a Complaint for money damages against Cincinnati based on its breach of the Bond by refusing to pay the Claims. That action is now pending in the United States District Court for the Middle District of Georgia, Valdosta Division, Case No. 7:14-CV-00102 (the "Action"); and

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation;

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

- A. The Recitals above are incorporated herein by reference.
- B. As an essential covenant and condition of this Agreement, Cincinnati agrees to pay to the FDIC-R the sum of Two Million Dollars (\$2,000,000) (the "Settlement Funds").
- C. Within three business days after the last date this Agreement is signed below (the "Payment Due Date"), the Settlement Funds shall be delivered to the FDIC-R by check payable to the FDIC as Receiver for The Park Avenue Bank.
- D. 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 30 days following the Payment Due Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against Cincinnati, in which event Cincinnati agrees to jurisdiction in the United States District Court for the Middle District of Georgia, Valdosta Division, and agrees to pay all of the FDIC-R's reasonable attorneys' fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement by Cincinnati.

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by the FDIC-R and Cincinnati, and receipt of the

Settlement Funds, plus any accrued interest, the FDIC-R shall dismiss the Action. The Parties agree to enter a stipulation providing that the dismissal set forth above shall be with prejudice, with each Party to bear its own costs as these were originally incurred.

SECTION III: Releases

A. Release of Cincinnati by FDIC-R

Effective upon receipt in full of the Settlement Funds, plus any accrued interest, and the dismissal described in Sections I and II above, and except as provided in Paragraph III.D below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Cincinnati, its 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 equity, that are alleged or could have been alleged in the Action, and/or that arise from or relate to the Claims. The FDIC-R further agrees that any interest it may have under the Bond is extinguished.

B. Release of FDIC-R by Cincinnati

Effective simultaneously with the Release granted in Paragraph III.A above, Cincinnati, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates, and reinsurers and their successors and assigns, hereby releases and discharges the FDIC-R and its 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 Claims, the Action or the Bond including any rights of subrogation, legal equitable or otherwise except as set out in Paragraph III.C.2 below.

C. Waiver of Subrogation by Cincinnati

1. Except as set forth in Paragraph III.C.2 below, Cincinnati agrees to and hereby does irrevocably waive any rights of subrogation it may have relating to or arising out of any of the Claims, the Action, or the Bond ("Rights of Recovery"). Cincinnati agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of such Rights of Recovery as it sees fit, in its sole and unfettered discretion. Any future recovery pursuant to such Rights of Recovery

shall not modify or otherwise affect the amount of Settlement Funds due under this Agreement and required to be paid by Cincinnati.

2. On November 1, 2010, the Bank obtained a judgment against Edward John Hosch in *The Park Avenue Bank v. John Hosch, Exchange Agent, Inc., and Michael A. Prozer, III*, Civil Action No. 09-CV-1378, Superior Court of Bartow County, Georgia, in the amount of \$3,561,641.99 ("Hosch Judgment). Cincinnati agrees that the FDIC-R is the sole owner of the Rights of Recovery on the Hosch Judgment and the FDIC-R may retain, sell, transfer, compromise, settle or otherwise dispose of the Hosch Judgment as it sees fit, in its sole and unfettered discretion; provided, however, that if the FDIC-R elects not to pursue any recovery with regard to the Hosch Judgment, it will provide notice of this decision to Cincinnati and permit Cincinnati, at Cincinnati's sole expense, to pursue recovery with regard to the Hosch Judgment. In the event the FDIC-R obtains any recovery on the Hosch Judgment, then the FDIC-R agrees to pay Cincinnati the first \$175,000 received net of any and all attorneys' fees and expenses incurred in connection with such recovery ("Cincinnati Recovery"). The Parties agree that the FDIC-R is entitled to any recovery on the Hosch Judgment in excess of the Cincinnati Recovery.

D. Express Reservations from Releases by FDIC-R

I. Notwithstanding any other provision contained in 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 any 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 claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank.

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

c. under or relating to any policy of insurance issued by Cincinnati (or any

other insurer) other than the Bond; and

d. which are not expressly released in Paragraph 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 of the FDIC 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 which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not waive or release any claims which could be brought any person or entity other than the FDIC-R, including without limitation by the United States through either the Department of Justice, the United States Attorney's Office for the Middle District of Georgia or any other federal judicial district, or by any other agency or instrumentality of the United States government. 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 USC § 3663, et. seq., if appropriate.

SECTION IV: Representations and Acknowledgements

A. No Admission of Liability

The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability 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 Party represents and warrants that they 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, administrators, representatives, successors and assigns.

D. Choice of Law

This Agreement shall be interpreted, construed and enforced according to the 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 the 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. Reasonable Cooperation

The undersigned Parties agree to cooperate in good faith to effectuate all of the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

G. 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.

H. No Confidentiality

The Parties acknowledge and agree that this Agreement is a public document that will need to be disclosed pursuant to 12 U.S.C. § 1821(s) and other applicable laws and regulations.

IN WITNESS WHEREOF, the Parties have hereto caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(6)

Date: _____

BY:

TITLE: Counsel

PRINT NAME: Patrick M. McGuirk

THE CINCINNATI INSURANCE COMPANY

(b)(6)

Date: 9/10/14

BY:

TITLE: ASST. VICE-PRESIDENT

PRINT NAME: J. MICHAEL HENNIGAN