## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 8 day of June, 2012, by, between, and among the following undersigned entities and individuals:

The Federal Deposit Insurance Corporation as Receiver for Suburban Federal Savings Bank ("FDIC"), and Steven R. Ross, Robert L. Morrison, Jr., Robert L. Morrison, Sr., Frank L. Hewitt, III, Richard F. Stefanelli, Ian B. Cohen, and Kenneth G. Malm (collectively the "Settling Directors and Officers"), and Liberty Insurance Underwriters Inc. ("Liberty"). (Individually, the FDIC, the Settling Directors and Officers, and Liberty may be referred to herein as a "Party" to this Agreement and collectively as the "Parties," and the Settling Directors and Officers, along with Liberty, may be collectively referred to as the "Settling Parties").

## RECITALS

WHEREAS:

Prior to January 30, 2009, Suburban Federal Savings Bank ("Bank") was a federally chartered depository institution organized and existing under the laws of the United States;

On January 30, 2009, the Bank was closed by the Office of Thrift Supervision and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver 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 as receiver succeeded were any and 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 and/or officers of the Bank;

By letter dated December 8, 2011 and the draft Complaint attached thereto, the FDIC, through its counsel, notified the Settling Directors and Officers of possible claims against them ("the FDIC's claims") relating to their functions, duties and acts as directors and/or officers of the Bank;

The Settling Directors and Officers have denied liability for the FDIC's claims;

Liberty issued its Executive Advantage Policy, bearing policy number [redacted] (the (b)(4) "Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policy. The Settling Directors and Officers have made claims under the Policy, and Liberty has reserved certain rights under the Policy with regard to claims asserted by the FDIC against the Settling Directors and Officers; and

The Parties deem it in their best interests to enter into this Agreement, without prejudice or admission, 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 Parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC**

A. As an essential covenant and condition to this Agreement, the Settling Parties agree to pay the FDIC the sum of FOUR MILLION DOLLARS ($4,000,000.00) ("the Settlement Funds"), plus interest thereon from June 22, 2012 (if necessary, as provided herein), through the date of payment, at the annual rate of 0.19%, which is based upon one year U.S. Treasury bills as reported in the Wall Street Journal at the end of the last quarter immediately preceding the date of this Agreement. Liberty shall pay $3.1 million of the Settlement Funds, and the Settling Directors and Officers shall collectively pay $900,000.

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the Parties to this Agreement, but no later than June 28, 2012, the Settlement Funds shall be delivered to the FDIC by direct wire transfer into an account designated by the FDIC in writing.

In the event that the Settlement Funds are not delivered to the FDIC by June 22, 2012, interest shall accrue on all unpaid amounts at the rate of 0.19% per annum from June 22, 2012 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC by June 22, 2012 as a result of the FDIC's failure to execute this Agreement, no interest shall accrue until the day after the FDIC executes the Agreement.

C. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC on or before June 28, 2012 (for reasons other than the FDIC's failure to execute this Agreement), then, with respect to any Party that fails to deliver his or its share of the Settlement Funds only (a "Non-Delivering Party"), the FDIC, 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 with respect to such Non-Delivering Party, 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 any Non-Delivering Party. In that event, any such Non-Delivering Party agrees to exclusive personal and subject matter jurisdiction and venue in the United States District Court for the District of Maryland, Southern Division, and agrees to pay all of the FDIC's reasonable attorneys' fees expended in enforcing the terms of this Agreement. Any decision by the FDIC to extend the terms of this Agreement or to accept a portion of the Settlement Funds from any Settling Party shall not prejudice its rights to declare this Agreement null and void solely with respect to any Settling Party that breaches the terms hereof or otherwise fails to timely pay his or its share at any time prior to receipt of all Settlement Funds (including all accrued interest), shall not be grounds for any claim of rescission by any Settling Party, and shall not bar the FDIC from enforcing the terms of this Settlement Agreement against any Settling Party; provided however, that in the event the FDIC declares this Agreement null and void as to any Settling Party, the FDIC will return any and all amounts paid to it under this Agreement by such Party. In no event shall the FDIC declare this Agreement null and void with respect to any Party that has delivered his or its share of the Settlement Funds (including any accrued interest) on or before June 28, 2012. The failure of one Party to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

With respect to Liberty, Liberty will make its payment to the Escrow Account established by Shulman Rogers Gandal Pordy & Ecker.

## SECTION II: Releases

A. **<u>Release of Individual Settling Directors and Officers by FDIC.</u>**

Effective upon receipt in full of the Settlement Funds plus any accrued interest described in Section I above, and except as provided in Paragraph II.H., the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the Settling Directors and Officers and their respective heirs, executors, administrators, 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, belonging to the FDIC, that arise from or relate to the Bank, or to the performance, nonperformance, or manner of performance of the Settling Directors' and Officers' respective functions, duties and actions as officers and/or directors of the Bank. In the event the FDIC declares this Agreement null and void with regard to any Settling Director or Officer for any reason set forth in Section IV, Paragraph F below, the release in this Paragraph shall remain binding and enforceable in regard to all other Settling Directors and Officers.

B. **<u>Release of FDIC by the Settling Directors and Officers.</u>**

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

C. **<u>Release by Settling Directors and Officers of Each Other.</u>**

Effective simultaneously with the releases granted in Paragraph II.B. above, the Settling Directors and Officers, and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge each other from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and/or directors of the Bank to the same extent that each Settling Director and Officer is being released herein by the FDIC. In the event the FDIC declares this Agreement null and void with regard to any Settling Director or Officer for any reason set forth in Section IV, Paragraph F below, the release in this Paragraph shall remain binding and enforceable among all of the Settling Directors and Officers. Further, any Settling Director(s) or Officer(s) who becomes a defendant or respondent in any lawsuit or legal proceeding brought by the FDIC for any reason set forth in Section IV, Paragraph F below, covenants and agrees not to sue any other Settling Director or Officer concerning any claims made therein, or otherwise implead any other Settling Director or Officer into, any such lawsuit or legal proceeding.

D. **Release of Liberty by FDIC.**

Effective simultaneously with the releases granted in Paragraphs II.A. and II.B. above, the FDIC, for itself and its successors and assigns, hereby releases and discharges Liberty, its parents, subsidiaries, affiliates and reinsurers, and their respective 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 Policy. The FDIC agrees that any interest it may have under the Policy is extinguished.

E. **Release of Liberty by Settling Directors and Officers.**

In conjunction with all Parties' execution of this Agreement, the Settling Directors and Officers and Liberty shall each execute a separate Release and Settlement Agreement relevant to the issues between the Settling Directors and Officers and Liberty.

F. **Release of FDIC by Liberty.**

Effective simultaneously with the release granted in Paragraph II.D. above, Liberty, 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 FDIC, 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 FDIC's claims (as defined herein) and/or the Policy.

G. **Release of Settling Directors and Officers by Liberty.**

In conjunction with all Parties' execution of this Agreement, the Settling Directors and Officers and Liberty shall each execute a separate Release and Settlement Agreement relevant to the issues between the Settling Directors and Officers and Liberty.

H. **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 the Settling Directors and 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, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC 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. which are not expressly released in Paragraphs II.A. or II.D. above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either

the Department of Justice, the United States Attorney's Office for the District of Maryland or any other federal judicial district. In addition, for any claim not released herein, 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.

**SECTION III: Waiver of Dividends**

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

**SECTION IV: Representations and Acknowledgements**

A. No Admission of Liability. The Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party (or parties) subscribed thereto upon the execution by all Parties to this Agreement. A signature transmitted by email shall be as effective as an original signature.

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a Party 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, administrators, representatives, successors and assigns.

D. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Maryland.

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Specific Representations, Warranties and Disclaimer. The Settling Directors and Officers expressly acknowledge that in determining to settle the claims released herein, (i) the FDIC asserts it has reasonably and justifiably relied upon the accuracy of financial information which the Settling Directors and Officers submitted, and (ii) that the FDIC is not releasing any claims related to those alleged inducements as against any such individual respondent(s) who fraudulently understated his/their own supposed individual net worth in such submissions to the limited extent the FDIC relied to its detriment upon any such understated net worth submission from any such individual(s).

Liberty expressly acknowledges that the Policy Limit of Liability erosion information provided to counsel for the FDIC and counsel for the Settling Directors and Officers by email dated May 4, 2012 was completely accurate.

G. Reasonable Cooperation.

1. The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to

do whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to perform the terms of this Agreement.

2. Further, the Settling Directors and Officers agree to cooperate fully with the FDIC in connection with any action required under this Agreement provided that all such cooperation is subject to all attorney-client, work product and other privileges available to the Settling Directors and Officers. Any such cooperation that involves any out of pocket costs (including any reasonable attorneys' fees incurred by any cooperating Party) is subject to reasonable reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC, without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to the Bank;

b. making themselves available upon request by the FDIC at reasonable times and places for interviews regarding facts, as determined by the FDIC, in its sole discretion, to be relevant to the Bank;

c. appearing to testify, upon request by the FDIC, in any matter determined by the FDIC, in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC, in its sole discretion, to be relevant to the Bank.

H. Advice of Counsel. Each Party hereby acknowledges that he/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/its counsel.

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

(b)(6)

FEDERAL DEPOSIT INSURANCE CORPORATION

Date: June 8, 2012

BY:

TITLE: Counsel

PRINT NAME: Herbert G. Smith II

**Settling Directors and Officers**

Date: ______________ ______________________________
Steven R. Ross

Date: ______________ ______________________________
Robert L. Morrison, Jr.

Date: ______________ ______________________________
Robert L. Morrison, Sr.

Date: ______________ ______________________________
Frank L. Hewitt, III

Date: ______________ ______________________________
Richard F. Stefanelli

Date: ______________ ______________________________
Ian B. Cohen

Date: ______________ ______________________________
Kenneth G. Malm

LIBERTY INSURANCE UNDERWRITERS INC.

Date: ______________

BY: ______________________________

TITLE:

PRINT NAME:

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: ____________ BY: ______________________________

TITLE:

PRINT NAME:

**Settling Directors and Officers**

(b)(6)

Date: 6-4-12 ______________________________
Steven R. Ross

Date: ____________ ______________________________
Robert L. Morrison, Jr.

Date: ____________ ______________________________
Robert L. Morrison, Sr.

Date: ____________ ______________________________
Frank L. Hewitt, III

Date: ____________ ______________________________
Richard F. Stefanelli

Date: ____________ ______________________________
Ian B. Cohen

Date: ____________ ______________________________
Kenneth G. Malm

**LIBERTY INSURANCE UNDERWRITERS INC.**

Date: ____________ BY: ______________________________

TITLE:

PRINT NAME:

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: ______________ BY: ______________________________

TITLE:

PRINT NAME:

**Settling Directors and Officers**

Date: ______________ ______________________________

Steven B. Rosa (b)(6) [redacted]

(b)(6) [redacted]

Date: 6-2-12 ______________________________

Robert L. Morrison, Jr.

Date: ______________ ______________________________

Robert L. Morrison, Sr.

Date: ______________ ______________________________

Frank L. Hewitt, III

Date: ______________ ______________________________

Richard F. Stefanelli

Date: ______________ ______________________________

Ian B. Cohen

Date: ______________ ______________________________

Kenneth G. Malm

**LIBERTY INSURANCE UNDERWRITERS INC.**

Date: ______________ BY: ______________________________

TITLE:

PRINT NAME:

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: ______________ BY: ________________________________

TITLE:

PRINT NAME:

**Settling Directors and Officers**

Date: ______________ ______________________________
Steven R. Ross

Date: ______________ ______________________________
Robert L. Morrison, Jr. (b)(6)

(b)(6)

Date: June 4, 2012 (b)(6) Robert L. Morrison, Sr.

Date: ______________ ______________________________
Frank L. Hewitt, III

Date: ______________ ______________________________
Richard F. Stefanelli

Date: ______________ ______________________________
Ian B. Cohen

Date: ______________ ______________________________
Kenneth G. Malm

**LIBERTY INSURANCE UNDERWRITERS INC.**

Date: ______________ BY: ________________________________

TITLE:

PRINT NAME:

## FEDERAL DEPOSIT INSURANCE CORPORATION

Date: ____________ BY: ______________________

TITLE:

PRINT NAME:

**Settling Directors and Officers**

Date: ____________ ______________________ Steven R. Ross

Date: ____________ ______________________ Robert L. Morrison, Jr.

Date: ____________ [redacted]

(b)(6)

Date: 6/11/12 Frank L. Hewitt, III

Date: ____________ ______________________ Richard F. Stefanelli

Date: ____________ ______________________ Ian B. Cohen

Date: ____________ ______________________ Kenneth G. Malm

## LIBERTY INSURANCE UNDERWRITERS INC.

Date: ____________ BY: ______________________

TITLE:

PRINT NAME:

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: ____________ BY: ____________________

TITLE:

PRINT NAME:

**Settling Directors and Officers**

Date: ____________ ____________________
Steven R. Ross

Date: ____________ ____________________
Robert L. Morrison, Jr.

Date: ____________ ____________________
Robert L. Morrison, Sr.

Date: ____________ ____________________
Frank L. Hewitt, III (b)(6)

(b)(6)

Date: 6/1/12 ____________________
Richard F. Stefanelli (b)(6)

Date: ____________ ____________________
Ian B. Cohen

Date: ____________ ____________________
Kenneth G. Malin

**LIBERTY INSURANCE UNDERWRITERS INC.**

Date: ____________ BY: ____________________

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

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**Settling Directors and Officers**

Date: ____________ ______________________________
Steven R. Ross

Date: ____________ ______________________________
Robert L. Morrison, Jr.

Date: ____________ ______________________________
Robert L. Morrison, Sr.

Date: ____________ ______________________________
Frank L. Hewitt, III

Date: ____________ ______________________________
Richard F. Stefanelli

(b)(6)

Date: 6\4\12 ______________________________
Ian B. Cohen

Date: ____________ ______________________________
Kenneth G. Malm

**LIBERTY INSURANCE UNDERWRITERS INC.**

Date: ____________ BY: ______________________________

TITLE:

PRINT NAME:

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: ____________ BY: ______________________________

TITLE:

PRINT NAME:

**Settling Directors and Officers**

Date: ____________ ______________________________
Steven R. Ross

Date: ____________ ______________________________
Robert L. Morrison, Jr.

Date: ____________ ______________________________
Robert L. Morrison, Sr.

Date: ____________ ______________________________
Frank L. Hewitt, III

Date: ____________ ______________________________
Richard F. Stefanelli

Date: ____________ ______________________________
Ian B. (b)(6)

Date: 6/1/12 ______________________________
Kenneth G. Mahn (b)(6)

**LIBERTY INSURANCE UNDERWRITERS INC.**

Date: ____________ BY: ______________________________

TITLE:

PRINT NAME:

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: ____________ BY: ______________________________

TITLE:

PRINT NAME:

**Settling Directors and Officers**

Date: ____________ ______________________________
Steven R. Ross

Date: ____________ ______________________________
Robert L. Morrison, Jr.

Date: ____________ ______________________________
Robert L. Morrison, Sr.

Date: ____________ ______________________________
Frank L. Hewitt, III

Date: ____________ ______________________________
Richard F. Stefanelli

Date: ____________ ______________________________
Ian B. Cohen

Date: ____________ ______________________________
Kenneth G. Malm

(b)(6) [redacted] (b)(6)

**LIBERTY INSURANCE UNDERWRITERS INC.**

Date: 6/4/12 BY: [redacted]

TITLE: Complex Claims Specialist

PRINT NAME: Juan J. Trillo