

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this \_\_\_ day of September, 2013, by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver of First State Bank ("FDIC-R"), Frieri Conroy & Lombardo, LLC, and Donna M. Conroy, Esq., and all of the firm's employees, partners, officers, directors, successors, predecessors, affiliates, insurers, including, but not limited to, American Guarantee & Liability Insurance Co., representatives, assigns, heirs, executors, administrators and agents, however designated (collectively, the "Settling Defendants"). (Individually, the FDIC-R and the Settling Defendants may be referred to herein as a "Party" and collectively as the "Parties").

### RECITALS

#### WHEREAS:

Prior to October 14, 2011, First State Bank (the "Bank") was a state-chartered commercial bank operating in the State of New Jersey.

On October 14, 2011, the New Jersey Department of Banking and Insurance closed the Bank and the FDIC-R was appointed receiver pursuant to 12 U.S.C. § 1821(c). In accordance with 12 U.S.C. § 1821(d), the FDIC-R, as receiver, succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Prior to the appointment of the FDIC-R, the Bank had filed a Complaint in the Superior Court of New Jersey, Union County, under Docket No. L-4595-10 against Settling Defendants, alleging claims of professional malpractice against the Settling Defendants arising out of the legal representation of the Bank as set forth in the Complaint. The Settling Defendants denied

the allegations and asserted third-party claims. On March 29, 2012, the FDIC-R was substituted as Plaintiff in the action and, on March 30, 2012, the FDIC-R removed the case to United States District Court for the District of New Jersey, where it was docketed as Case No. 2:12-cv-01951 (the "Civil Action").

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

NOW, THEREFORE, in consideration of the undertakings contained in this Agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

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

A. As an essential covenant and condition of this Agreement, the Settling Defendants agree to pay the FDIC-R the sum of Five Hundred Thousand Dollars (\$500,000.00). The settlement payment shall be referred to herein as the "Settlement Funds."

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than thirty (30) business days following receipt by counsel for the Settling Defendants of an executed original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, the Settlement Funds shall be delivered to the attorneys for the FDIC-R and will be made payable consistent with written instructions to be provided by counsel for the FDIC-R.

In the event that the Settlement Funds are not delivered to the FDIC-R (or its counsel) within thirty days of execution of this Agreement, interest shall accrue on all unpaid amounts at the rate of 5% per annum until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R within thirty days from execution, as a result of the FDIC-

R's failure to execute this Agreement, no interest shall accrue until the day after the FDIC-R executes the Agreement.

## **SECTION II: Stipulation and Dismissal**

Upon execution of this Agreement by each of the Parties, and receipt of the Settlement Funds, plus any accrued interest, the FDIC-R shall dismiss the Civil Action. The Parties agree to enter into 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 Settling Defendants by FDIC-R.**

Effective upon receipt in full of the Settlement Funds plus any accrued interest and dismissal as described in SECTION(S) I and II above, and except as provided in PARAGRAPH(S) III.C, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants 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 out of the Civil Action.

### **B. Release of FDIC-R by the Settling Defendants.**

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the Settling Defendants, that arise out of the Civil Action.

C. Express Reservations From Releases By FDIC-R.

1. Notwithstanding any other provision, by 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 not expressly released in this Agreement; and

b. 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 and authority of the Federal Deposit Insurance Corporation, in its Corporate Capacity, 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 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 New Jersey or any other federal judicial district. 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 U.S.C. § 3663, *et. seq.*, if appropriate.

4. The rights of the Settling Defendants shall be governed by the New Jersey Comparative Negligence Act, N.J.S.A. 2A: 15-5.2, the New Jersey Joint Tortfeasor Contribution Law, N.J.S.A. 2A: 53A-2, and the cases interpreting these statutes, including without limitation Young v. Latta, 123 N.J. 584, 585 (1991), and Town of Kearny v. Brandt, No. A-60/61-11 (N.J. June 20, 2013) (slip op.).

#### **SECTION V: Representations and Acknowledgments**

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.

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 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 New Jersey.

E. Entire Agreement and Amendments.

This Agreement constitutes the entire agreement and understanding between and among 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.

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 conclude the Civil Action and to otherwise perform the terms of this Agreement.

2. Further, the Settling Defendants agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing within a reasonable time all non-privileged 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;

b. making themselves available upon request 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;

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

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

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.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the dates set forth below.

(signatures follow on next page)

FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR FIRST  
STATE BANK

Dated: 10 | 10 | 13

By:  (b)(6)

Title: Counsel

FRIERI CONROY & LOMBARDO, LLC

Dated: \_\_\_\_\_

By:  (b)(6)

Title: JOHN R. FRIERI, PARTNER/MEMBER

DONNA M. CONROY, ESQ.

(b)(6) \_\_\_\_\_

\_\_\_\_\_ *J*

Dated: \_\_\_\_\_