

**PAYING AGENT AGREEMENT**

**AMONG**

**FEDERAL DEPOSIT INSURANCE CORPORATION,**

**RECEIVER OF OMNI NATIONAL BANK,  
ATLANTA, GEORGIA,**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**and**

**SUNTRUST BANK**

**DATED AS OF**

**MARCH 27, 2009**

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## **INSURED DEPOSIT TRANSFER AGREEMENT**

**THIS AGREEMENT**, made and entered into as of the 27<sup>th</sup> day of March, 2009, by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER of OMNI NATIONAL BANK, ATLANTA, GEORGIA** (the "Receiver"), **SUNTRUST BANK**, organized under the laws of the State of Georgia, and having its principal place of business in Atlanta, Georgia (the "Agent Bank"), and the **FEDERAL DEPOSIT INSURANCE CORPORATION**, organized under the laws of the United States of America and having its principal office in Washington, D.C., acting in its corporate capacity (the "Corporation").

### **WITNESSETH:**

**WHEREAS**, on Bank Closing, the Chartering Authority closed Omni National Bank (the "Failed Bank") pursuant to applicable law and the Corporation was appointed Receiver thereof; and

**WHEREAS**, pursuant to 12 U.S.C. Section 1821(f)(1), in the case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the Received Deposits in such institution may be made by the Corporation by making available to each depositor a transferred deposit in another insured depository institution in an amount equal to the Insured Deposit of each such depositor, as determined by the Corporation; and

**WHEREAS**, pursuant to this Agreement, the Agent Bank (i) accepts certain limited duties, responsibilities and obligations as the agent of the Corporation, (ii) accepts the transfer of the Received Deposits of the Failed Bank made available by the Corporation, and (iii) will commence payment of or otherwise make available to the depositors of the Failed Bank such transferred Received Deposits to the Failed Bank's depositors; and

**WHEREAS**, pursuant to 12 U.S.C. Sections 1819 (Third) and (Seventh) and 1821(f)(1), the Corporation may provide assistance to the Agent Bank which may include indemnification of the Indemnitees (as hereinafter defined), to facilitate the transaction contemplated by this Agreement; and

**WHEREAS**, the Board of Directors of the Corporation has determined that such transfer of Received Deposits to the Agent Bank and provision of indemnification to the Indemnitees is necessary to discharge the obligation of the Corporation to provide insurance coverage for the Received Deposits of the Failed Bank under 12 U.S.C. Section 1821(f).

**NOW THEREFORE**, in consideration of the mutual promises herein set forth and other valuable consideration, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth in this Article I, or elsewhere in this Agreement. As used herein, words imparting the singular include the plural and vice versa.

**"Affiliate"** of any Person means any director, officer, or employee of that Person and any other Person (i) who is directly or indirectly controlling, or controlled by, or under direct or indirect common control with, such Person, or (ii) who is an affiliate of such Person as the term "affiliate" is defined in Section 2 of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841.

**"Agreement"** means this Insured Deposit Transfer Agreement by and among the Agent Bank, the Corporation and the Receiver, as amended or otherwise modified from time to time.

**"Bank Closing"** means the close of business of the Failed Bank on the date on which the Chartering Authority closed such institution.

**"Bank Premises"** means the banking houses, drive-in banking facilities, and teller facilities (staffed or automated) together with appurtenant parking, storage and service facilities and structures connecting remote facilities to banking houses, and land on which the foregoing are located, that are owned or leased by the Failed Bank and that are occupied by the Failed Bank as of Bank Closing.

**"Business Day"** means a day other than a Saturday, Sunday, Federal legal holiday or legal holiday under the laws of the State where the Failed Bank is located, or a day on which the principal office of the Corporation is closed.

**"Chartering Authority"** means (i) with respect to a national bank, the Office of the Comptroller of the Currency, (ii) with respect to a Federal savings association or savings bank, the Office of Thrift Supervision, (iii) with respect to a bank or savings institution chartered by a State, the agency of such State charged with primary responsibility for regulating and/or closing banks or savings institutions, as the case may be, (iv) the Corporation in accordance with 12 U.S.C. Section 1821(c), with regard to self appointment, or (v) the appropriate Federal banking agency in accordance with 12 U.S.C. 1821(c)(9).

**"Deposit"** means a deposit as defined in 12 U.S.C. Section 1813(l), including, without limitation, outstanding cashier's checks and other official checks and all uncollected items included in the depositors' balances and credited on the books and records of the Failed Bank; provided, that the term "Deposit" shall not include all or any portion of those deposit balances which, in the discretion of the Receiver or the Corporation, (i) may be required to satisfy it for any liquidated or contingent liability of any depositor arising from an unauthorized or unlawful transaction, or (ii) may be needed to provide payment of any liability of any depositor to the Failed

Bank or the Receiver, including the liability of any depositor as a director or officer of the Failed Bank, whether or not the amount of the liability is or can be determined as of Bank Closing.

**"Fixtures"** means those leasehold improvements, additions, alterations and installations constituting all or a part of Bank Premises and which were acquired, added, built, installed or purchased at the expense of the Failed Bank, regardless of the holder of legal title thereto as of Bank Closing.

**"Furniture and Equipment"** means the furniture and equipment (other than Safe Deposit Boxes, artwork, motor vehicles, and leased data processing equipment, including hardware and software), leased or owned by the Failed Bank and reflected on the books of the Failed Bank as of Bank Closing, including without limitation automated teller machines, carpeting, furniture, office machinery (including personal computers), shelving, office supplies, telephone, surveillance and security systems.

**"Guaranteed Transaction Accounts"** means those transaction accounts covered by the Transaction Account Guarantee Program as described in 73 Federal Register 210 (29 October 2008), pp. 64179-64191.

**"Indemnitees"** means (i) the Agent Bank, (ii) the Subsidiaries and Affiliates of the Agent Bank other than any Subsidiaries or Affiliates of the Failed Bank that are or become Subsidiaries or Affiliates of the Agent Bank, and (iii) the directors, officers, employees and agents of the Agent Bank and its Subsidiaries and Affiliates who are not also present or former directors, officers, employees or agents of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank.

**"Insured Deposits"** means the net amount due to any depositor with respect to its Deposits as determined by the Receiver or the Corporation pursuant to 12 U.S.C. Section 1813(m), and applicable regulations at 12 C.F.R. Part 330.

**"Payment Date"** means the first Business Day after Bank Closing.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, excluding the Corporation.

**"Primary Indemnitor"** means any Person (other than the Agent Bank or any of its Affiliates) who is obligated to indemnify or insure, or otherwise make payments (including payments on account of claims made against) to or on behalf of any Person in connection with the claims covered under Article X, including without limitation any insurer issuing any directors and officers liability policy or any Person issuing a financial institution bond or banker's blanket bond.

**"Received Deposits"** means Insured Deposits, the uninsured portion of the Guaranteed Transaction Accounts, and Deposits of public money (other than such liabilities that are Insured Deposits) in the Failed Bank to the extent such Deposits are properly and fully secured, but excluding all brokered deposits.

In the event that a depositor's aggregate Deposits in the Failed Bank are in excess of its Insured Deposit, the Corporation, in accordance with its standard policies and procedures, shall determine which Deposits are assumed.

A Deposit in the form of a negotiable instrument shall not be assumed by or transferred to the Agent Bank, and any interest with respect thereto as provided in this Agreement shall not accrue or be paid until the owner thereof shall provide proof satisfactory to the Corporation that such negotiable instrument was negotiated to such owner prior to Bank Closing Date, as provided in 12 C.F.R. Section 330.4(b)(4).

**"Record"** means any document, microfiche, microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) of the Failed Bank generated or maintained by the Failed Bank that is owned by or in the possession of the Receiver at Bank Closing.

**"Safe Deposit Boxes"** means the safe deposit boxes of the Failed Bank, if any, including the removable safe deposit boxes and safe deposit stacks in the Failed Bank's vault(s), all rights and benefits under rental agreements with respect to such safe deposit boxes, and all keys and combinations thereto.

**"Settlement Date"** means the first Business Day immediately prior to the day which is one hundred twenty (120) days after Bank Closing, or such other date prior thereto as may be agreed upon by the Receiver and the Agent Bank. The Receiver, in its discretion, may extend the Settlement Date.

**"Subsidiary"** has the meaning set forth in Section 3(w)(4) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(w)(4), as amended.

**"Transferred Deposits"** means the Received Deposits made available at the Agent Bank to the depositors of the Failed Bank and which are transferred to the Agent Bank pursuant to Section 2.1.

## ARTICLE II TRANSFER OF RECEIVED DEPOSITS

**2.1 Transfer of Received Deposits.** The Corporation transfers to the Agent Bank and the Agent Bank accepts the transfer of the Received Deposits as stated on the books of the Failed Bank as of Bank Closing as set forth in Schedule 2.1 attached hereto and incorporated herein. The Agent Bank agrees to commence payment of or otherwise make available such Transferred Deposit upon demand to each such depositor (or to such other Person who can establish to the Agent Bank's satisfaction that such Person is the owner thereof), subject to the provisions of Section 2.5. Schedule 2.1 is based upon the best information available to the Corporation and may be adjusted as provided in Article VII.

**2.2 Interest on Transferred Deposits.** The Agent Bank agrees that, from and after Bank Closing, it will accrue and pay interest on Transferred Deposits transferred pursuant to Section 2.1 at a rate(s) it shall determine; provided, that for nontransaction Transferred Deposits such rate(s) shall not be less than the lowest rate offered by the Agent Bank to its depositors for nontransaction deposit accounts. The Agent Bank shall permit each depositor to withdraw, without penalty for early withdrawal, all or any portion of such depositor's Transferred Deposit, whether or not the Agent Bank elects to pay interest in accordance with any deposit agreement formerly existing between the Failed Bank and such depositor; and further provided, that if such Transferred Deposit has been pledged to secure an obligation of the depositor to the Failed Bank, any withdrawal thereof shall be subject to the terms of the agreement governing such pledge. The Agent Bank shall give notice to such depositors as provided in Section 5.3 of the rate(s) of interest which it has determined to pay and of such withdrawal rights.

**2.3 Schedule of Discharged Deposit Liabilities.** The Agent Bank shall provide to the Corporation a "Schedule of Discharged Deposit Liabilities" at intervals of ninety (90) days from Bank Closing setting forth those Transferred Deposits with respect to which the Corporation's liability for an Insured Deposit of the Failed Bank has been discharged by either (i) payment by the Agent Bank of a Transferred Deposit to the depositor, or (ii) confirmation of a new deposit agreement between each such depositor and the Agent Bank during such ninety (90)-day period and thereafter until the Corporation's liability for Received Deposits has been discharged or until unclaimed Received Deposits have been paid to the Corporation pursuant to Section 2.4. Each such Schedule shall set forth such information as the Corporation may request, including the number and names of the Transferred Deposit accounts paid or assumed by the Agent Bank, the manner of settlement and efforts of the Agent Bank to contact depositors.

**2.4 Unclaimed Deposits.** If, within eighteen (18) months after Bank Closing, any depositor of the Failed Bank does not claim or arrange to continue such depositor's Transferred Deposit at the Agent Bank, the Agent Bank shall, within fifteen (15) Business Days after the end of such eighteen (18)-month period, (i) refund to the Corporation the full amount of each such Transferred Deposit (without reduction for service charges), (ii) provide to the Corporation a schedule of all such refunded Transferred Deposits in such form as may be prescribed by the Corporation, and (iii) assign, transfer, convey and deliver to the Receiver all right, title and interest of the Agent Bank in and to Records previously transferred to the Agent Bank and other records generated or maintained by the Agent Bank pertaining to such Transferred Deposits. During such eighteen (18)-month period, at the request of the Corporation, the Agent Bank promptly shall provide to the Corporation schedules of unclaimed Transferred Deposits in such form as may be prescribed by the Corporation.

**2.5 Withheld Payments.** At any time, the Receiver or the Corporation may, in its discretion, determine that all or any portion of any deposit balance transferred to the Agent Bank pursuant to this Agreement does not constitute a "Deposit" (or otherwise, in its discretion, determine that it is the best interest of the Receiver or Corporation to withhold all or any portion of any deposit), and may direct the Agent Bank to withhold payment of all or any portion of any such deposit balance. Upon such direction, the Agent Bank agrees to hold such deposit and not to make any payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. The Agent Bank agrees to maintain the "withheld payment" status of

any such deposit balance until directed in writing by the Receiver or the Corporation as to its disposition. At the direction of the Receiver or the Corporation, the Agent Bank shall return all or any portion of such deposit balance to the Receiver or the Corporation, as appropriate, and thereupon the Agent Bank shall be discharged from any further liability to such depositor with respect to such returned deposit balance. If such deposit balance has been paid to the depositor prior to a demand for return by the Corporation or the Receiver, and payment of such deposit balance had not been previously withheld pursuant to this Section, the Agent Bank shall not be obligated to return such deposit balance to the Receiver or the Corporation. The Agent Bank shall be obligated to reimburse the Corporation or the Receiver, as the case may be, for the amount of any deposit balance or portion thereof paid by the Agent Bank in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance, the payment of which was withheld pursuant to this Section.

**2.6 Payment of Deposits.** In the event any depositor does not accept the obligation of the Agent Bank to pay any Transferred Deposit transferred to the Agent Bank pursuant to this Agreement and asserts a claim against the Receiver for all or any portion of any such Deposit liability, the Agent Bank agrees on demand to provide to the Receiver funds sufficient to pay such claim in an amount not in excess of the Deposit liability reflected on the books of the Agent Bank at the time such claim is made. Upon payment by the Agent Bank to the Receiver of such amount, the Agent Bank shall be discharged from any further obligation under this Agreement to pay to any such depositor the amount of such Transferred Deposit paid to the Receiver.

### **ARTICLE III PURCHASE OF ASSETS**

**3.1 Assets Purchased by Agent Bank.** The Agent Bank hereby purchases from the Receiver, and the Receiver hereby sells, assigns, transfers, conveys, and delivers to the Agent Bank, all right, title, and interest of the Receiver in and to all of the following (the “Assets”):

- (a) cash and receivables from depository institutions (including Federal Reserve Banks and Federal Home Loan Banks), including cash items in the process of collection, plus any accrued interest thereon computed to and including Bank Closing;
- (b) loans secured, in whole or in part, by Received Deposits or deposits at other depository institutions, if any;
- (c) Safe Deposit Box business (but not the Safe Deposit Boxes themselves) and safekeeping business, if any, subject to Section 4.2 or 4.3, respectively; and
- (d) overdrafts of customers as of Bank Closing (including but not limited to overdrafts made pursuant to an overdraft protection plan or similar extensions of credit in connection with a deposit account).

**3.2 Asset Purchase Price.** All Assets purchased by the Agent Bank shall be purchased at book value.

**3.3 Manner of Conveyance; Limited Warranty; Nonrecourse; Etc.** THE CONVEYANCE OF ALL ASSETS, INCLUDING REAL AND PERSONAL PROPERTY INTERESTS, PURCHASED BY THE AGENT BANK UNDER THIS AGREEMENT SHALL BE MADE, AS NECESSARY, BY RECEIVER'S DEED OR RECEIVER'S BILL OF SALE, "AS IS", "WHERE IS", WITHOUT RECOURSE AND, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, WITHOUT ANY WARRANTIES WHATSOEVER WITH RESPECT TO SUCH ASSETS, EXPRESS OR IMPLIED, WITH RESPECT TO TITLE, ENFORCEABILITY, COLLECTIBILITY, DOCUMENTATION OR FREEDOM FROM LIENS OR ENCUMBRANCES (IN WHOLE OR IN PART), OR ANY OTHER MATTERS.

**3.4 Puts of Assets to the Receiver.**

(a) **Puts Within 30 Days After the Bank Closing Date.** During the thirty (30)-day period following the Bank Closing Date and only during such period (which thirty (30)-day period may be extended in writing in the sole absolute discretion of the Receiver for any loan), in accordance with this Section 3.4, the Agent Bank shall be entitled to require the Receiver to purchase any loan transferred to the Agent Bank pursuant to Section 3.1(b) which is not fully secured by Received Deposits or deposits at other insured depository institutions due to either insufficient Received Deposit or deposit collateral or deficient documentation regarding such collateral or was made to a borrower who is domicile in a state in which the Agent Bank does not have a retail branch; provided with regard to any loan secured by an Received Deposit, no such purchase may be required until any Deposit setoff determination, whether voluntary or involuntary, has been made; and at the end of the thirty (30)-day period following the Bank Closing Date and at that time only, in accordance with this Section 3.4, the Agent Bank shall be entitled to require the Receiver to purchase any remaining overdraft transferred to the Agent Bank pursuant to 3.1(e) which was not made pursuant to an overdraft protection plan or similar extension of credit.

Notwithstanding the foregoing, the Agent Bank shall not have the right to require the Receiver to purchase any loan if the Agent Bank has:

- (A) made any advance respect to such loan;
- (B) created or permitted to be created any lien on such loan which secures indebtedness for money borrowed or which constitutes a conditional sales agreement, capital lease or other title retention agreement;
- (C) entered into, agreed to make, grant or permit, or made, granted or permitted any modification or amendment to, any waiver or extension with respect to, or any renewal, refinancing or refunding of, such loan or related collateral, including, without limitation, any act or omission which diminished such collateral; or
- (D) sold, assigned or transferred all or a portion of such loan to a third party (whether with or without recourse).

The Agent Bank shall transfer all such loans to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any person claiming by, through or under the Agent Bank with respect to any such loan.

(b) **Puts Prior to the Settlement Date.** During the period from the Bank Closing Date to and including the Business Day immediately preceding the Settlement Date, the Agent Bank shall be entitled to require the Receiver to purchase any Asset which the Agent Bank can establish is evidenced by forged or stolen instruments as of the Bank Closing Date; provided, that, the Agent Bank shall not have the right to require the Receiver to purchase any such Asset with respect to which the Agent Bank has taken any action referred to in Section 3.4(a) with respect to such Asset. The Agent Bank shall transfer all such Assets to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Agent Bank with respect to any such Asset.

(c) **Notices to the Receiver.** In the event that the Agent Bank elects to require the Receiver to purchase one or more Assets, the Agent Bank shall deliver to the Receiver a notice (a "Put Notice") which shall include:

- (i) a list of all Assets that the Agent Bank requires the Receiver to purchase; and
- (ii) a statement of the estimated repurchase price, as determined in accordance with Section 3.4(e), of each Asset identified pursuant to (i) above as of the applicable Put Date.

Such notice shall be in the form prescribed by the Receiver or such other form to which the Receiver shall consent. The Agent Bank shall deliver to the Receiver such documents, loan files and such additional information relating to the subject matter of the Put Notice as the Receiver may request and shall provide to the Receiver full access to all other relevant books and records.

(d) **Purchase by Receiver.** The Receiver shall purchase loans that are specified in the Put Notice, and the transfer of such loans shall be effective as of a date determined by the Receiver, which date shall not be later than thirty (30) days after receipt by the Receiver of the loan files with respect to such loans (the "Put Date").

(e) **Purchase Price and Payment Date.** Each loan purchased by the Receiver pursuant to this Section 3.4 shall be purchased at a price equal to the price paid by the Agent Bank for such loan, adjusted for any payments received after Bank Closing. The Receiver shall pay the purchase price determined pursuant to this Section 3.4(e) not later than the twentieth (20th) Business Day following the applicable Put Date, together with interest on such amount at the Settlement Interest Rate for the period from and including such Put Date to and including the day preceding the date upon which payment is made.

(f) **Servicing.** The Agent Bank shall administer and manage any Asset subject to purchase by the Receiver in accordance with usual and prudent banking standards and business practices until such time as such Asset is purchased by the Receiver.

(g) **Reversals**. In the event that the Receiver purchases an Asset that it is not required to purchase pursuant to this Section 3.4, the Agent Bank shall repurchase such Asset from the Receiver at a price computed so as to achieve the same economic result as would apply if the Receiver had never purchased such Asset pursuant to this Section 3.4.

#### **ARTICLE IV ASSUMPTION OF CERTAIN DUTIES AND OBLIGATIONS**

The Agent Bank agrees with the Receiver and the Corporation as follows:

**4.1 Continuation of Banking Business**. The Agent Bank agrees to provide such banking services as it chooses in the trade area of the Failed Bank for a period of thirty (30) days commencing on the first business day after Bank Closing.

**4.2 Agreement with Respect to Safe Deposit Business**. For a period of thirty (30) days commencing on Bank Closing, the Agent Bank agrees to discharge, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to all Safe Deposit Boxes, if any, of the Failed Bank and to maintain all of the necessary facilities for the use of such boxes by the renters thereof, subject to the provisions of the rental agreements between the Failed Bank and the respective renters of such boxes; provided, that the Agent Bank may relocate the Safe Deposit Boxes of the Failed Bank to any office of the Agent Bank located in the trade area of the Failed Bank. At the end of such thirty (30) period, the Agent Bank shall treat any unclaimed safe deposit box in accordance with its normal and customary procedures.

**4.3 Agreement with Respect to Safekeeping Business**. The Agent Bank accepts all securities and other items, if any, held by the Failed Bank in safekeeping for its customers as of the Bank Closing Date. For a period of thirty (30) days following Bank Closing, the Agent Bank assumes and agrees to honor and discharge, the duties and obligations of the Failed Bank with respect to such securities and items held in safekeeping. At the end of such thirty (30) period, the Agent Bank shall treat any unclaimed safekeeping items in accordance with its normal and customary procedures.

**4.4 Agreement with Respect to Certain Existing Agreements**.

(a) Subject to the provisions of Section 4.4(b), with respect to agreements existing as of the Bank Closing Date which provide for the rendering of services by or to the Failed Bank, within thirty (30) days after the Bank Closing Date, the Agent Bank shall give the Receiver written notice specifying whether it elects to assume or not to assume each such agreement. If no such notice is given, the Agent Bank shall be deemed to have not elected to assume such agreement. The Receiver agrees to assign, transfer, convey, and deliver to the Agent Bank all right, title and interest of the Receiver, if any, in and to agreements the Agent Bank assumes hereunder.

(b) The provisions of Section 4.4(a) shall not apply to (i) agreements pursuant to which the Failed Bank provides mortgage servicing for others or mortgage servicing is provided

to the Failed Bank by others, and (ii) consulting, management or employment agreements, if any, between the Failed Bank and its employees or other Persons. Except as otherwise expressly set forth elsewhere in this Agreement, the Agent Bank does not assume any liabilities or acquire any rights under any of the agreements described in this Section 4.4(b).

**4.5 Omitted.**

**4.6 Office Space for Receiver and Corporation.** For the period commencing on the day following Bank Closing and ending on the date the Agent Bank vacates the Bank Premises, the Agent Bank agrees to provide to the Receiver and the Corporation, without charge, adequate and suitable office space (including parking facilities and vault space), furniture, equipment (including photocopying and telecopying machines) and utilities (including local telephone service) at the Bank Premises occupied by the Agent Bank for their use in the discharge of their respective functions with respect to the Failed Bank.

**4.7 Agreement with Respect to Expenses.** Notwithstanding anything to the contrary in this Agreement, for the period of one hundred twenty (120) days commencing the day after Bank Closing, the Corporation or the Receiver agrees to pay all expenses, up to a maximum reimbursement of \$1,000,000, incurred by the Agent Bank in the performance of its duties and obligations under this Agreement for during the period of one hundred twenty (120) days commencing the day after Bank Closing, including, but not limited to, costs associated with obtaining regulatory approval, data processing costs, travel, compensation and all other expenses of personnel of the Agent Bank, postage, overnight delivery, drilling of safe deposit boxes, waived wire transfer fees, legal fees, and interest paid on Transferred Deposits in excess of market rates prior to the time new rates can be set on the data processing system of the Failed Bank by the Agent Bank. Agent Bank shall submit such expenses in accordance with the procedures set forth in Article VII. Any extraordinary expenses incurred by the Agent Bank shall be considered on a case by case basis.

**4.8 Omitted.**

**4.9 Continuing Cooperation.** The parties hereto agree that they will, in good faith and with their best efforts, cooperate with each other to carry out the transactions contemplated by this Agreement and to effect the purposes hereof.

**ARTICLE V  
DUTIES WITH RESPECT TO DEPOSITORS OF THE FAILED BANK**

**5.1 Payment of Checks, Drafts and Orders.** Subject to Section 2.5, the Agent Bank agrees to pay all properly drawn checks, drafts and withdrawal orders of depositors of the Failed Bank presented for payment, whether drawn on the check or draft forms provided by the Failed Bank or by the Agent Bank, to the extent that the Transferred Deposit balances to the credit of the respective makers or drawers transferred to the Agent Bank under this Agreement are sufficient to permit the payment thereof, and in all other respects to discharge, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to the Transferred

Deposit balances due and owing to the depositors of the Failed Bank transferred to the Agent Bank under this Agreement.

**5.2 Certain Agreements Related to Deposits.** Subject to Section 2.2, the Agent Bank agrees to honor the terms and conditions of any written escrow or mortgage servicing agreement or other similar agreement relating to the Transferred Deposits transferred to the Agent Bank pursuant to this Agreement.

**5.3 Notice to Depositors.**

(a) Within seven (7) days after Bank Closing, the Agent Bank shall give (i) notice to depositors of the Failed Bank of the transfer to it of the Transferred Deposits, and (ii) any notice required under Section 2.2, by mailing to each such depositor a notice with respect to such transfer and by advertising in a newspaper of general circulation in the county or counties in which the Failed Bank was located. The Agent Bank agrees that it will obtain prior approval of all such notices and advertisements from counsel for the Receiver and that such notices and advertisements shall not be mailed or published until such approval is received.

(b) The Agent Bank shall give notice by mail to depositors of the Failed Bank concerning the procedures to claim their deposits, which notice shall be provided to the Agent Bank by the Receiver or the Corporation. Such notice shall be included with the notice to depositors to be mailed by the Agent Bank pursuant to Section 5.3(a). Notices required by Sections 5.3(a) and (b) shall be mailed by the Agent Bank not later than seven (7) days after Bank Closing.

(c) If the Agent Bank proposes to charge fees different from those charged by the Failed Bank before it establishes new deposit account relationships with the depositors of the Failed Bank, the Agent Bank shall give notice by mail of such changed fees to such depositors.

**5.4 Deposits not Claimed within 30 Days.**

(a) For Transferred Deposit accounts which were not paid out or converted to a new account within thirty (30) days of Bank Closing, the Agent Bank shall either (i) mail a check to each such depositor to the last known address as reflected on the books and records of the Failed Bank; (ii) hold such Transferred Deposit until such time as the Agent Bank must comply with Section 2.4 of this Agreement; or (iii) establish an account with the Agent Bank, to the extent the Agent Bank may legally do so in compliance with all state and federal laws and regulations, on behalf of such depositor and transfer the unclaimed Transferred Deposit into such account. In connection with this Section 5.4(a)(iii), the Agent Bank may rely on the accuracy of the records of the Failed Bank in establishing the accounts and to the extent such records are not accurate, the indemnification provisions of Article X shall apply.

(b) The Agent Bank shall not be responsible for performing any Form 1099 or other income tax informational reporting, or maintaining account records or histories (such as check images, statement images or records of debits or credits) or providing any such account information to depositors, with respect to the Transferred Deposit accounts that were originated by the Failed Bank. The Agent Bank shall perform such obligations only with respect to those deposit accounts

established with the Agent Bank pursuant to Section 5.4(a) above and only on and after the time such deposit accounts are established.

(c) If any amount deposited and credited to a Transferred Deposit Account and paid out to a depositor by the Agent Bank under Section 5.4(a) is later returned, rejected or otherwise not paid to the Agent Bank, the Receiver shall reimburse the Agent Bank for such unpaid amount within ten (10) business days after the Agent Bank provides the Receiver notice thereof together with reasonable documentation of the unpaid amount.

## **ARTICLE VI INITIAL PAYMENT**

On the Payment Date, the Corporation will pay to the Agent Bank an amount equal to the Transferred Deposits less Assets purchased, together with interest on such amount (if the Payment Date is not the day following the day of Bank Closing) from and including the day following Bank Closing to and including the day preceding the Payment Date at the rate per annum provided in Section 7.4.

## **ARTICLE VII ADJUSTMENTS**

**7.1 New Schedule.** It is understood that the descriptions of the Transferred Deposits may not be accurately reflected on one or more schedules provided to the Agent Bank as of Bank Closing. The Receiver, as soon as practicable after Bank Closing, in accordance with the best information then available, shall provide to the Agent Bank an updated schedule reflecting any adjustments of such Transferred Deposits as may be necessary, taking into account differences in accounts, suspense items, unposted debits and credits, and similar adjustments or corrections.

### **7.2 Correction of Errors and Omissions; Expenses.**

(a) In the event any bookkeeping omissions or errors are discovered in preparing any schedules or in completing the transfers contemplated hereby, the parties hereto agree to correct such errors and omissions.

(b) If the Receiver, the Corporation or the Agent Bank discovers at any time subsequent to the Settlement Date that any errors or omissions exist of the type contemplated in Section 7.2(a), or any error with respect to the payment made on Settlement Date, the Receiver, the Corporation and the Agent Bank agree to promptly correct any such errors or omissions, make any payments, and effect any transfers as may be necessary to reflect such correction; provided, that interest shall not be paid with respect to any such payments.

(c) The Agent Bank shall submit its claim for reimbursement of all expenses to which the Agent Bank is entitled to pursuant to Section 4.7, with appropriate supporting documentation, in accordance with the provisions of this Article VII.

**7.3 Payments.** The Receiver agrees to cause to be paid to the Agent Bank, or the Agent Bank agrees to pay to the Corporation, as the case may be, on the Settlement Date, a payment in an amount which reflects net adjustments made on or before the Settlement Date pursuant to Section 7.1 or Section 7.2, plus interest as provided in Section 7.4. The Receiver and the Agent Bank agree to effect on the Settlement Date any additional transfers as may be necessary in accordance with Section 7.1 or Section 7.2.

**7.4 Interest.** Any amounts paid under Section 7.3 shall bear interest for the period from and including the day following Bank Closing to and including the day preceding the payment. The interest rate per annum for the first calendar quarter or portion thereof during which interest accrues shall be the rate determined by the Receiver to be equal to the equivalent coupon issue yield on six (6)-month United States Treasury Bills in effect as of the Bank Closing Date as published in The Wall Street Journal; provided, that if no such equivalent coupon issue yield is available as of the Bank Closing Date, the equivalent coupon issue yield for such Treasury Bills most recently published in The Wall Street Journal prior to the Bank Closing Date shall be used. Thereafter, the rate shall be adjusted to the rate determined by the Receiver to be equal to the equivalent coupon issue yield on such Treasury Bills in effect as of the first day of each succeeding calendar quarter during which interest accrues as published in The Wall Street Journal.

## **ARTICLE VIII CONDITION PRECEDENT**

The obligations of the parties to this Agreement are subject to the Receiver and the Corporation having received at or before Bank Closing evidence reasonably satisfactory to each of any necessary approval, waiver, or other action by any governmental authority, the board of directors of the Agent Bank, or other third party, with respect to this Agreement and the transactions contemplated hereby, the closing of the Failed Bank and the appointment of the Receiver, the chartering of the Agent Bank, and any agreements, documents, matters or proceedings contemplated hereby or thereby.

## **ARTICLE IX REPRESENTATIONS AND WARRANTIES OF THE AGENT BANK**

The Agent Bank represents and warrants to the Corporation and the Receiver as follows:

(a) **Corporate Existence and Authority.** The Agent Bank (i) is duly organized, validly existing and in good standing under the laws of its Chartering Authority and has full power and authority to own and operate its properties and to conduct its business as now conducted by it, and (ii) has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Agent Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and the performance of the transactions contemplated hereby.

(b) **Third Party Consents**. No governmental authority or other third party consents (including but not limited to approvals, licenses, registrations or declarations) are required in connection with the execution, delivery or performance by the Agent Bank of this Agreement, other than such consents as have been duly obtained and are in full force and effect.

(c) **Execution and Enforceability**. This Agreement has been duly executed and delivered by the Agent Bank and when this Agreement has been duly authorized, executed and delivered by the Corporation and the Receiver, this Agreement will constitute the legal, valid and binding obligation of the Agent Bank, enforceable in accordance with its terms.

(d) **Compliance with Law**.

(i) The Agent Bank is not in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any State, municipality or other political subdivision or any agency of any of the foregoing, or any court or other tribunal having jurisdiction over the Agent Bank, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of the business of the Agent Bank, or the ownership of the properties of the Agent Bank, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or condition (financial or otherwise) of the Agent Bank or the ability of the Agent Bank to perform, satisfy or observe any obligation or condition under this Agreement.

(ii) Neither the execution and delivery nor the performance by the Agent Bank of this Agreement will result in any violation by the Agent Bank of, or be in conflict with, any provision of any applicable law or regulation, or any order, writ or decree of any court or governmental authority.

## **ARTICLE X INDEMNIFICATION**

**10.1 Indemnification of Indemnitees**. From and after Bank Closing and subject to the limitations set forth in this Section and Section 10.5 and compliance by the Indemnitees with Section 10.2, the Receiver agrees to indemnify and hold harmless the Indemnitees against any and all costs, losses, liabilities, expenses (including attorneys' fees incurred prior to the assumption of defense by the Receiver pursuant to paragraph (d) of Section 10.2), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with claims against any Indemnitee based on liabilities of the Failed Bank that are not assumed by the Agent Bank pursuant to this Agreement or subsequent to the execution hereof by the Agent Bank, which unassumed liabilities remain with the Receiver. Such claims for which indemnification is provided hereunder include those claims set forth in (a) of this Section 10.1, subject to certain exclusions as provided in (b) of this Section 10.1:

(a)

(1) claims based on the rights of any shareholder or former shareholder as such of (x) the Failed Bank, or (y) any Subsidiary or Affiliate of the Failed Bank;

(2) claims based on the rights of any creditor as such of the Failed Bank, or any creditor as such of any director, officer, employee or agent of the Failed Bank, with respect to any indebtedness or other obligation of the Failed Bank arising prior to Bank Closing;

(3) claims based on the rights of any present or former director, officer, employee or agent as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank;

(4) claims based on any action or inaction prior to Bank Closing of the Failed Bank, its directors, officers, employees or agents as such, or any Subsidiary or Affiliate of the Failed Bank, or the directors, officers, employees or agents as such of such Subsidiary or Affiliate;

(5) claims based on any failure or alleged failure (not in violation of law) by the Agent Bank to continue to perform any service or activity previously performed by the Failed Bank which the Agent Bank is not required to perform in accordance with this Agreement;

(6) claims arising from any action or inaction of any Indemnitee which is taken upon the specific written direction of the Corporation or the Receiver, other than any action or inaction taken in a manner constituting bad faith, gross negligence or willful misconduct; and

(7) claims based on the rights of any depositor of the Failed Bank whose deposit has been accorded "withheld payment" status and/or returned to the Receiver or the Corporation in accordance with Section 2.5 and/or has become an "unclaimed deposit" or has been returned to the Receiver or the Corporation in accordance with Section 2.4;

(b) provided, that, with respect to this Agreement, except for paragraphs (6) and (7) of this Section 10.1(a), no indemnification will be provided under this Agreement for any:

(1) claims with respect to any liability or obligation of the Failed Bank that is expressly assumed by the Agent Bank pursuant to this Agreement or subsequent to the execution hereof by the Agent Bank or any Subsidiary or Affiliate of the Agent Bank;

(2) claims with respect to any liability of the Failed Bank to any present or former employee as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank, which liability is expressly assumed by the Agent Bank pursuant to this Agreement or subsequent to the execution hereof by the Agent Bank or any Subsidiary or Affiliate of the Agent Bank;

(3) claims based on the failure of any Indemnitee to seek recovery of damages from the Receiver for any claims based upon any action or inaction of the Failed Bank, its directors, officers, employees or agents as fiduciary, agent or custodian prior to Bank Closing;

(4) claims based on any violation or alleged violation by any Indemnitee of the antitrust, branching, banking or bank holding company or securities laws of the United States of America or any State thereof;

(5) claims based on the rights of any present or former creditor, customer, or supplier as such of the Agent Bank or any Subsidiary or Affiliate of the Agent Bank;

(6) claims based on the rights of any present or former shareholder as such of the Agent Bank or any Subsidiary or Affiliate of the Agent Bank regardless of whether any such present or former shareholder is also a present or former shareholder of the Failed Bank;

(7) claims which could have been enforced against any Indemnitee had the Agent Bank not entered into this Agreement;

(8) claims based on any liability for taxes or fees assessed with respect to the consummation of the transactions contemplated by this Agreement, including without limitation any subsequent transfer of any Transferred Deposit to any Subsidiary or Affiliate of the Agent Bank;

(9) except as expressly provided in this Article X, claims based on any action or inaction of any Indemnitee after Bank Closing, and nothing in this Agreement shall be construed to provide indemnification for (i) the Failed Bank, (ii) any Subsidiary or Affiliate of the Failed Bank, or (iii) any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates; provided, that the Corporation, in its discretion, may provide indemnification hereunder for any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates who is also or becomes a director, officer, employee or agent of the Agent Bank or its Subsidiaries or Affiliates;

(10) claims or actions which constitute a breach by the Agent Bank of the representations and warranties contained in Article X; and

(11) claims based on, related to or arising from any asset, including a loan, acquired or liability assumed by the Agent Bank, other than pursuant to this Agreement.

**10.2 Conditions Precedent to Indemnification.** It shall be a condition precedent to the obligation of the Receiver to indemnify any Person pursuant to this Article X that such Person shall, with respect to any claim made or threatened against such Person for which such Person is or may be entitled to indemnification hereunder:

(a) give written notice to the Regional Counsel (Litigation Branch) of the Corporation in the manner and at the address provided in Section 12.7 of such claim as soon as practicable after such claim is made or threatened;

(b) provide to the Receiver such information and cooperation with respect to such claim as the Receiver may reasonably require;

(c) cooperate and take all steps, as the Receiver may reasonably require, to preserve and protect any defense to such claim;

(d) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Receiver the right, which the Receiver may exercise in its sole discretion, to conduct the investigation, control the defense and effect settlement of such claim, including without limitation the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of any such claim, all of which shall be at the expense of the Receiver; provided, that the Receiver shall have notified the Person claiming indemnification in writing that such claim is a claim with respect to which the Person claiming indemnification is entitled to indemnification under this Article X, and provided further that the Receiver may not settle such claim without the Agent Bank's prior consent, which consent will not be unreasonably withheld;

(e) not incur any costs or expenses in connection with any response or suit with respect to such claim after the Receiver has assumed the defense thereof, unless such costs or expenses were incurred upon the direction of the Receiver; provided, that the Receiver shall not be obligated to reimburse the amount of any such costs or expenses unless such costs or expenses were incurred upon the direction of the Receiver;

(f) not release or settle such claim or make any payment or admission with respect thereto, unless the Receiver consents in writing thereto, which consent shall not be unreasonably withheld; provided, that the Receiver shall not be obligated to reimburse the amount of any such settlement or payment unless such settlement or payment was effected upon the written direction of the Receiver; and

(g) take reasonable action as the Receiver may request in writing as necessary to preserve, protect or enforce the rights of the indemnified Person against any Primary Indemnitor.

**10.3 Indemnification of Corporation and Receiver.** From and after Bank Closing, the Agent Bank agrees to indemnify and hold harmless the Corporation and the Receiver and their respective directors, officers, employees and agents from and against any and all costs, losses, liabilities, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any of the following:

(a) claims based on any and all liabilities or obligations of the Failed Bank expressly assumed by the Agent Bank in this Agreement or subsequent to the execution hereof in writing by the Agent Bank or any Subsidiary or Affiliate of the Agent Bank, whether or not any such liabilities subsequently are sold and/or transferred, other than any claim based upon any action or inaction of any Indemnitee as provided in paragraph (6) or (7) of Section 10.1(a); and

(b) claims based on any act or omission of any Indemnitee, other than any action or inaction of any Indemnitee as provided in paragraph (6) or (7) of Section 10.1(a).

**10.4 Obligations Supplemental.** The obligations of the Receiver, and the Corporation as guarantor in accordance with Section 10. 6, to provide indemnification under this Article X are to supplement any amount payable by any Primary Indemnitor to the Person indemnified under this Article X. Consistent with that intent, the Receiver agrees only to make payments pursuant to such indemnification to the extent not payable by a Primary Indemnitor. If the aggregate amount of

payments to the Indemnitee by the Receiver, or Corporation as guarantor in accordance with Section 10.6, and all Primary Indemnitors with respect to any item of indemnification under this Article X exceeds the amount payable with respect to such item, such Person being indemnified shall notify the Receiver thereof and, upon the request of the Receiver, shall promptly pay to the Receiver, or the Corporation as appropriate, the amount of the Receiver's (or Corporation's) payments to the extent of such excess.

**10.5 Criminal Claims.** Notwithstanding any provision of this Article X to the contrary, in the event that any Person being indemnified under this Article X shall become involved in any criminal action, suit or proceeding, whether judicial, administrative or investigative, the Receiver shall have no obligation hereunder to indemnify such Person for liability with respect to any criminal act or to the extent any costs or expenses are attributable to the defense against the allegation of any criminal act, unless (i) the Person is successful on the merits or otherwise in the defense against any such action, suit or proceeding, or (ii) such action, suit or proceeding is terminated without the imposition of liability on such Person.

**10.6 Limited Guaranty of the Corporation.** The Corporation hereby guarantees performance of the Receiver's obligation to indemnify the Agent Bank as set forth in this Article X. It is a condition to the Corporation's obligation hereunder that the Agent Bank shall comply in all respects with the applicable provisions of this Article X. The Corporation shall be liable hereunder only for such amounts, if any, as the Receiver is obligated to pay under the terms of this Article X but shall fail to pay. Except as otherwise provided above in this Section 10.6, nothing in this Article X is intended or shall be construed to create any liability or obligation on the part of the Corporation, the United States of America or any department or agency thereof under or with respect to this Article X, or any provision hereof, it being the intention of the parties hereto that the obligations undertaken by the Receiver under this Article X are the sole and exclusive responsibility of the Receiver and no other Person or entity.

**10.7 Subrogation.** Upon payment by the Receiver, or the Corporation as guarantor in accordance with Section 10.6, to any Indemnitee for any claims indemnified by the Receiver under this Article X, the Receiver, or the Corporation as appropriate, shall become subrogated to all rights of the Indemnitee against any other Person to the extent of such payment.

## **ARTICLE XI MISCELLANEOUS**

**11.1 Entire Agreement.** This Agreement embodies the entire agreement of the parties hereto in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties.

**11.2 No Other Assets Purchased or Liabilities Assumed.** Except as specifically provided for in this Agreement, the Agent Bank does not assume any liability, or purchase any assets, of the Failed Bank.

**11.3 Headings.** The headings and subheadings of the Table of Contents, Articles and Sections contained in this Agreement, except the terms identified for definition in Article I and elsewhere in this Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

**11.4 Counterparts.** This Agreement may be executed in any number of counterparts and by the duly authorized representative of a different party hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

**11.5 GOVERNING LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE MAIN OFFICE OF THE FAILED BANK IS LOCATED.

**11.6 Successors.** All terms and conditions of this Agreement shall be binding on the successors and assigns of the Receiver, the Corporation and the Agent Bank. Except as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any Person other than the Receiver, the Corporation and the Agent Bank any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of the Receiver, the Corporation and the Agent Bank and for the benefit of no other Person.

**11.7 Modification; Assignment.** No amendment or other modification, rescission, release, or assignment of any part of this Agreement shall be effective except pursuant to a written agreement subscribed by the duly authorized representatives of the parties hereto.

**11.8 Notice.** Any notice, request, demand, consent, approval or other communication to any party hereto shall be effective when received and shall be given in writing, and delivered in person against receipt therefor, or sent by certified mail, postage prepaid, courier service, telex or facsimile transmission to such party (with copies as indicated below) at its address set forth below or at such other address as it shall hereafter furnish in writing to the other parties. All such notices and other communications shall be deemed given on the date received by the addressee.

**Agent Bank**

SunTrust Bank  
303 Peachtree Street, Northeast

Omni National Bank,  
Atlanta, GA

8<sup>th</sup> Floor  
Atlanta, Georgia 30308

Attention: Mark Rogers

with a copy to: Curt Phillips, 36<sup>th</sup> Floor

**Receiver and Corporation**

Federal Deposit Insurance Corporation,  
Receiver of Omni National Bank, Atlanta, Georgia  
1601 Bryan St.  
Dallas, Texas 75201

Attention: Settlement Manager

with copy to: Regional Counsel (Litigation Branch)

**and with respect to notice under Article XI:**

Federal Deposit Insurance Corporation  
Receiver of Omni National Bank, Atlanta, Georgia  
1601 Bryan St.  
Dallas, Texas 75201

Attention: Regional Counsel (Litigation Branch)

**11.9 Manner of Payment.** All payments due under this Agreement shall be in lawful money of the United States of America in immediately available funds as each party hereto may specify to the other parties; provided, that in the event the Receiver or the Corporation is obligated to make any payment hereunder in the amount of \$25,000.00 or less, such payment may be made by check.

**11.10 Costs, Fees and Expenses.** Except as otherwise specifically provided herein, each party hereto agrees to pay all costs, fees and expenses which it has incurred in connection with or incidental to the matters contained in this Agreement, including without limitation any fees and disbursements to its accountants and counsel.

**11.11 Waiver.** Each of the Receiver, the Corporation and the Agent Bank may waive its respective rights, powers or privileges under this Agreement; provided, that such waiver shall be in writing; and further provided, that no failure or delay on the part of the Receiver, the Corporation or the Agent Bank to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege by the Receiver, the Corporation, or the Agent Bank under this Agreement, nor will any

such waiver operate or be construed as a future waiver of such right, power or privilege under this Agreement.

**11.12 Severability.** If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

**11.13 Term of Agreement.** This Agreement shall continue in full force and effect until the sixth (6th) anniversary of Bank Closing. Provided, however, the receivership of the Failed Bank may be terminated prior to the expiration of the term of this Agreement; in such event, the guaranty of the Corporation, as provided in and in accordance with the provisions of Section 11.6 shall be in effect for the remainder of the term. Expiration of the term of this Agreement shall not affect any claim or liability of any party with respect to any (i) amount which is owing at the time of such expiration, regardless of when such amount becomes payable, (ii) breach of this Agreement occurring prior to such expiration, regardless of when such breach is discovered: or (iii) claim for indemnification made on or prior to the sixth anniversary of Bank Closing.

**11.14 Survival of Covenants, Etc.** The covenants, representations, and warranties in this Agreement shall survive the execution of this Agreement and the consummation of the transactions contemplated hereunder.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
RECEIVER OF OMNI NATIONAL BANK,  
ATLANTA, GEORGIA**

*Redacted*

BY: \_\_\_\_\_  
Arthur R. Cook  
TITLE: Receiver-in-Charge

*Redacted*

**FEDERAL DEPOSIT INSURANCE CORPORATION**

*Redacted*

BY: \_\_\_\_\_  
Arthur R. Cook  
TITLE: Attorney-in-Fact

*Redacted*

**SUNTRUST BANK**

*Redacted*

BY: \_\_\_\_\_  
Mark Rogers  
TITLE: Senior Vice President

*Redacted*

**SCHEDULE 2.1 - RECEIVED DEPOSITS TRANSFERRED**