

UNITED STATE OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of

**CITYFED FINANCIAL
CORPORATION,
Nantucket, MA,**

**A Savings and Loan Holding
Company, and**

**GORDON E. ALLEN,
JOHN W. ATHERTON, JR.,
EDWIN M. HALKYARD,
ALFRED J. HEDDEN,
PETER R. KELLOGG,
WILLIAM A. LIFFERS, and
GILBERT G. ROESSNER,**

**Former Directors of
CITY FEDERAL SAVINGS BANK,
Bedminster, New Jersey**

OTS Order No. AP 94-26

Dated: June 2, 1994

OFFER OF SETTLEMENT BY RESPONDENTS
CITYFED FINANCIAL CORPORATION, GORDON E. ALLEN,
JOHN W. ATHERTON, JR., EDWIN M. HALKYARD, ALFRED J. HEDDEN,
PETER R. KELLOGG, WILLIAM A. LIFFERS, AND GILBERT G. ROESSNER

I.

Respondents CityFed Financial Corporation ("CityFed"), Gordon E. Allen, John W. Atherton, Jr., Edwin M. Halkyard, Alfred J. Hedden, Peter R. Kellogg, William A. Liffers, and Gilbert G. Roessner (collectively, "Respondents") hereby submit this Offer of Settlement ("Offer") to the Office of Thrift Supervision ("OTS"). This Offer is submitted for the sole purpose of disposing of the allegations and issues raised in the Notice of Charges and Hearing for

Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Notice"), OTS Order No. AP 94-26, June 2, 1994, issued by the OTS in this matter.

II.

This Offer is submitted solely for the purpose of terminating this administrative proceeding and shall be null and void and shall not be used in any manner in any proceeding if it is not accepted by OTS as hereinafter set forth.

III.

Solely for the purposes of this proceeding, without admitting or denying the allegations of the Notice in this proceeding, before any taking of any testimony, and without adjudication of any issue of fact or law, Respondents:

- A. Acknowledge service of the Notice;
- B. Admit the jurisdiction of OTS with respect to the matters set forth in the Notice;
- C. Stipulate that the record basis for this proceeding consists of the Notice and this Offer; and
- D. Waive:
 - 1. A hearing,
 - 2. All post-hearing procedures,
 - 3. Entry of findings of fact and conclusions of law,
 - 4. Judicial review of the Order described in Section IV below by any court as provided by 12 U.S.C. § 1818(h) or other challenge to the validity of the Order,

5. Any objection to the staff's participation in OTS's consideration of this Offer, and
6. Any and all claims for fees, costs, or expenses arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 508 and 28 U.S.C. § 2412.

In addition, Respondents stipulate that all sums paid pursuant to the Order described in Section IV below are paid in compromise and settlement of OTS's claim against the Respondents on account of an alleged commitment of CityFed to the Federal Home Loan Bank Board, a predecessor Federal depository institutions regulatory agency, to maintain the capital of City Federal Savings, an insured depository institution, within the meaning of 11 U.S.C. § 365(o) (the "Net Worth Claim"). Respondents further stipulate that if within ninety-six (96) days after the entry of the Order described in Section IV below,

- (a) either CityFed or any of the Individual Respondents has sought protection under the bankruptcy laws, or
- (b) any person has commenced a proceeding against either CityFed or the Individual Respondents seeking the entry of an Order against CityFed or any of the Individual Respondents for relief under any law relating to bankruptcy or insolvency,

and if, in any such bankruptcy or insolvency proceeding, the restitution paid pursuant to the Order described in Section IV below is deemed to constitute a preferential transfer pursuant to 11 U.S.C. § 547 and is therefore disallowed, then CityFed as debtor-in-possession agrees that the FDIC may seek under 11 U.S.C. § 365(o) a setoff or priority payment in the amount of Three Million One Hundred Sixty-Nine Thousand One Hundred Fifteen Dollars (\$3,169,115) on

account of the Net Worth Claim. In the event such setoff or priority payment is allowed, the Settlement shall proceed. In the event that a court of competent jurisdiction disallows the FDIC's claim of setoff or priority payment, the Settlement shall not proceed, all agreements between the Parties made as part of the Settlement shall be null and void (except for those agreements intended to restore the pre-settlement *status quo* among the Parties), and OTS may pursue the Net Worth Claim for the full amount of any alleged deficiency in the regulatory capital or regulatory net worth of City Federal Savings without regard to the amount of the restitution previously agreed to be paid in compromise and settlement.

IV.

Respondents consent, solely by virtue of this Offer and not by any adjudication on the merits, to the issuance of an order of OTS ("Order") accepting this Offer of Settlement. The Order shall contain the following terms:¹

RESTITUTION

1. CityFed shall pay as restitution (but not as a penalty or fine) the sum of Three Million One Hundred Sixty-Nine Thousand One Hundred Fifteen Dollars (\$3,169,115) in full satisfaction of the Respondents' alleged commitment to maintain or cause to be maintained the capital of City Federal Savings, an insured depository institution. This sum shall be paid by wire transfer to the Federal Deposit Insurance Corporation, as successor to the Resolution Trust Corporation, in its corporate and receivership capacities. This payment and all other aspects of this settlement

¹ Solely by virtue of this Offer and not by an adjudication on the merits, the Order may be used in any proceeding brought by the OTS to enforce the Order; provided, however, that there shall be no use of the Notice in such a proceeding except in connection with a proceeding to enforce paragraph 1 of the Order. The Notice, the Offer, and the Order, or the relief consented to by virtue of the Offer, shall not be used by OTS for any other purpose. The execution of the Settlement Agreement, the payment of the amount set forth in paragraph 1 of the Order, and the other terms and conditions of the Settlement Agreement do not constitute and shall not be deemed by the OTS to constitute evidence of or an admission by Respondents as to any liability, fault, or wrongdoing.

shall be made subject to the terms of a Settlement Agreement, Assignment and Release in the form attached hereto as Exhibit A, which document shall be executed by OTS, the FDIC and the Respondents. The payment called for in this paragraph shall be made by CityFed within twenty-four (24) hours of service of the Order on CityFed and receipt by CityFed of copies of the Settlement Agreement signed by OTS and the FDIC.

MISCELLANEOUS

2. Definition: "Settlement Agreement" means the Agreement entered into by Respondents with the OTS and FDIC which will become effective as of the date the Order is issued.

3. Reference in this Offer or the Order to provisions of statutes, regulations, OTS publications, and regulatory guidelines shall be deemed to include reference to all amendments to such provisions as have been made as of the date of the Order.

4. The section headings in this Offer and in the Order are for convenience only and shall not affect the construction thereof.

5. In case any provision of this Offer or the Order is ruled to be invalid, illegal, or unenforceable by a decision of any court of competent jurisdiction the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, except as specifically provided for in the Settlement Agreement.

6. The terms of this Offer and of the Settlement Agreement shall be deemed to be incorporated into the Order as if set forth separately therein. This Offer, the Settlement Agreement and the Order may be used in any proceeding brought by the OTS to enforce the

Negotiations of the terms of the Order and the Settlement Agreement, including conduct and statements made in connection therewith, shall not be admissible in accordance with Rule 408 of the Federal Rules of Evidence.

Order or in any proceeding by the Respondents to enforce any aspect of the Settlement Agreement.

7. The terms and provisions of the Order shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Offer or the Order, express or implied, shall give any person or entity, other than the parties hereto and their successors, any benefit, legal or equitable right, remedy, claim, nor impose any legal or other restrictions or obligations upon any person or entity that is not a party to the Offer and the Order. This Offer and the Order shall not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any claims in the Notice against any person or entity other than Respondents.

8. The Order and the Settlement Agreement constitute the final disposition of all monetary and non-monetary claims for relief that have been or could have been brought by the OTS against the Respondents in connection with the Notice and any aspect of their participation in the affairs of CityFed or City Federal Savings Bank. All OTS proceedings against the Respondents relating to the Notice, including the Temporary Order to Cease and Desist, OTS Order No. AP 94-27 (June 2, 1994) (the "Temporary Order"), are terminated upon issuance of the Order, and no further proceedings against the Respondents relating to the Notice or any aspect of their participation in the conduct of the affairs of CityFed or City Federal Savings Bank shall be commenced, other than to enforce the terms of the Order; provided, however, that if the restitution paid pursuant to this Order shall be determined to be a preferential transfer pursuant to 11 U.S.C. § 547 and a claim by the FDIC for setoff of the restitution previously received shall be disallowed, then (a) all proceedings against the Respondents relating to the Notice, including the Temporary Order, shall be reinstated, (b) any applicable period of limitations or repose shall be

deemed to have been tolled during the period from the date of the Order through the date of the reinstatement of such proceedings, and (c) the Order shall be of no further force or effect.

9. Within twenty-four hours of receipt by the FDIC of the payment called for in paragraph IV.1., above, OTS shall provide written notification to First Union National Bank ("First Union") that the Temporary Order is no longer in effect, that the Escrow Agreement pursuant to which First Union is holding funds of CityFed is terminated, and that First Union is authorized to release to CityFed all funds of CityFed currently being held by First Union as escrow agent.

10. The Respondents shall execute as part of the Settlement Agreement written releases of the OTS, FDIC, their employees, agents, and attorneys from all claims and counterclaims that have been or may be asserted against them arising out of or in any way related to CityFed or City Federal Savings Bank, including but not limited to the subject matter of this administrative proceeding, including all claims and counterclaims for costs, fees, and sanctions.

11. The OTS shall execute as part of the Settlement Agreement a written release of the Respondents, their employees, agents, and attorneys from all claims and counterclaims that have been or may be asserted against them arising out of or in any way related to CityFed or City Federal Savings Bank, including but not limited to the subject matter of this administrative proceeding, including all claims and counterclaims for costs, fees, and sanctions.

12. The Order is effective upon issuance by the OTS, acting through its authorized representative, as indicated by the date in the caption of the Order.

V.

CityFed represents and warrants that this Offer is signed and submitted on its behalf by a duly authorized agent or representative.

The undersigned state that they have read the foregoing Offer and declare that no promise or inducement of any kind has been made by OTS or its staff to induce the undersigned to tender this Offer, and that the submission of this Offer is a free and voluntary act on their part.

This Offer may be simultaneously executed in several counterparts, and all such counterparts shall constitute but one and the same instrument.

CITYFED FINANCIAL CORPORATION
By:

GORDON E. ALLEN

/S/

Its President /

Dated: 5-16-00

Dated: _____

JOHN W. ATHERTON, JR.

EDWIN M. HALKYARD

Dated: _____

Dated: _____

V.

CityFed represents and warrants that this Offer is signed and submitted on its behalf by a duly authorized agent or representative.

The undersigned state that they have read the foregoing Offer and declare that no promise or inducement of any kind has been made by OTS or its staff to induce the undersigned to tender this Offer, and that the submission of this Offer is a free and voluntary act on their part.

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CITYFED FINANCIAL CORPORATION
By:

Its _____
Dated: _____

JOHN W. ATHERTON, JR.

Dated: _____

GORDON E. ALLEN

/S/
Dated: 5/10/00

EDWIN M. HALKYARD

Dated: _____

V.

CityFed represents and warrants that this Offer is signed and submitted on its behalf by a duly authorized agent or representative.

The undersigned state that they have read the foregoing Offer and declare that no promise or inducement of any kind has been made by OTS or its staff to induce the undersigned to tender this Offer, and that the submission of this Offer is a free and voluntary act on their part.

This Offer may be simultaneously executed in several counterparts, and all such counterparts shall constitute but one and the same instrument.

CITYFED FINANCIAL CORPORATION
By: _____

GORDON E. ALLEN

Its _____

Dated: _____

Dated: _____

JOHN W. ATHERTON, JR.

EDWIN M. HALKYARD

/S/

Dated: 5-10-00

Dated: _____

V.

CityFed represents and warrants that this Offer is signed and submitted on its behalf by a duly authorized agent or representative.

The undersigned state that they have read the foregoing Offer and declare that no promise or inducement of any kind has been made by OTS or its staff to induce the undersigned to tender this Offer, and that the submission of this Offer is a free and voluntary act on their part.

This Offer may be simultaneously executed in several counterparts, and all such counterparts shall constitute but one and the same instrument.

CITYFED FINANCIAL CORPORATION
By: _____

Its _____

Dated: _____

GORDON E. ALLEN

Dated: _____

JOHN W. ATHERTON, JR.

EDWIN M. HALKYARD

Dated: _____

/S/

Dated: 5/15/02

ALFRED J. HEDDEN

/S/

Dated: May 11, 2000

WILLIAM A. LIFFERS

Dated: _____

PETER R. KELLOGG

Dated: _____

GILBERT G. ROESSNER

ALFRED J. HEDDEN

Dated: _____

WILLIAM A. LIFFERS

Dated: _____

PETER R. KELLOGG

/S/

Dated: May 10, 1900

GILBERT G. ROESSNER

ALFRED J. HEDDEN

PETER R. KELLOGG

Dated: _____

Dated: _____

WILLIAM A. LIFFERS

GILBERT G. ROESSNER

/S/

Dated: 5/12/2000

ALFRED J. HEDDEN

Dated: _____

WILLIAM A. LIFFERS

Dated: _____

PETER R. KELLOGG

Dated: _____

GILBERT G. ROESSNER

/S/
MAY 10, 2000

SETTLEMENT AGREEMENT, ASSIGNMENT, AND RELEASE

This SETTLEMENT AGREEMENT, ASSIGNMENT, AND RELEASE ("Agreement") is entered into as of this 19th day of May, 2000 by and between the Federal Deposit Insurance Corporation ("FDIC"), as successor to the Resolution Trust Corporation ("RTC"), in its corporate and receivership capacities, the Office of Thrift Supervision of the Department of the Treasury ("OTS"), and CityFed Financial Corporation ("CityFed"), Gordon E. Allen, John W. Atherton, Jr., Edwin M. Halkyard, Alfred M. Hedden, Peter R. Kellogg, William L. Liffers, and Gilbert G. Roessner (collectively, the "Individual Parties"). CityFed was the holding company for City Federal Savings Bank, Bedminster, New Jersey ("City Federal"), and the Individual Parties were directors of City Federal Savings Bank.

The FDIC, OTS, CityFed, and the Individual Parties state as follows:

WHEREAS, the FDIC (as successor to the RTC) asserted claims against certain of the Individual Parties in litigation and settled some of those claims in exchange for cash payments and for an assignment of certain of the Individual Parties' claims for indemnification from CityFed (the "Indemnification Claims");

WHEREAS, CityFed has asserted a claim against the United States of America in the United States Court of Federal Claims, No. 95-508C (the "CityFed Goodwill Claim"), and the Court has granted the FDIC's motion to intervene as a plaintiff in the case;

WHEREAS, OTS has asserted a claim for restitution and other relief against CityFed and the Individual Parties in an administrative proceeding styled In the Matter of

CityFed Financial Corporation, OTS Order No. AP 94-26 (June 2, 1994) (the "OTS Proceeding");

WHEREAS, CityFed and the Individual Parties have made an Offer of Settlement (the "Offer of Settlement") to OTS in connection with the OTS Proceedings; and

WHEREAS, the FDIC, OTS, CityFed, and the Individual Parties wish to resolve all disputes and claims (except as specifically excepted herein) among them in order to avoid the expense and risk of additional litigation and controversy;

NOW, THEREFORE, it is stipulated and agreed to by and among the undersigned that in consideration of the mutual covenants herein and for good and valuable consideration, the sufficiency of which is hereby acknowledged:

1. Effective after the passage of ninety-six (96) days from the Effective Date described in paragraph 6 below, provided

- (a) that neither CityFed nor any of the Individual Parties has sought protection under the bankruptcy laws during that ninety-six (96) day period, and
- (b) that no person has commenced a proceeding against either CityFed or the Individual Parties seeking the entry of an Order against CityFed or any of the Individual Parties for relief under any law relating to bankruptcy or insolvency and such proceeding has remained undismissed for a period of thirty (30) days,

and after CityFed's compliance with paragraphs 9 and 10 below, and except as expressly described in this Agreement, the FDIC, for itself, for the receivership estate of City Federal (or any successor of City Federal), and for its or their legal representatives, predecessors, successors, and assigns, and all persons or entities in privity with them,

hereby fully, generally, and unconditionally forever remises, gives up, quit-claims, settles, compromises, releases, acquits, and discharges CityFed, the Individual Parties, and each of them, from any and all claims, suits, controversies, accounts, covenants, promises, judgments, damages, executions, causes of action, rights, duties, expenses, debts, liabilities, demands, obligations, contracts, agreements, costs, and actions of any kind or character, at law or in equity, whether or not well-founded in law or fact, suspected or unsuspected, direct or indirect, which relate to, arise out of, or are in any way connected to the operation of City Federal or any of its subsidiaries or affiliates, in any court, forum, proceeding, or otherwise, from the beginning of the world to the date hereof. The FDIC expressly warrants to CityFed and the Individual Parties that no claims, suits, controversies, accounts, covenants, promises, judgments, damages, executions, causes of action, rights, duties, expenses, debts, liabilities, demands, obligations, contracts, agreements, costs, or actions of any kind or character that are mentioned in this Agreement have been assigned, conveyed, or in any manner whatsoever transferred to any other person or entity.

2. Effective after the passage of ninety-six (96) days from the Effective Date described in paragraph 6 below, provided

- (a) that neither CityFed nor any of the Individual Parties has sought protection under the bankruptcy laws during that ninety-six (96) day period, and
- (b) that no person has commenced a proceeding against either CityFed or the Individual Parties seeking the entry of an Order against CityFed or any of the Individual Parties for relief under any law relating to bankruptcy or

insolvency and such proceeding has remained undismissed for a period of
thirty (30) days

and after CityFed's compliance with paragraphs 9 and 10, and except as expressly described in this Agreement, the OTS, for itself and its legal representatives, predecessors, successors, and assigns, and all persons or entities in privity with them, hereby fully, generally, and unconditionally forever remises, gives up, quit-claims, settles, compromises, releases, acquits, and discharges CityFed, the Individual Parties, their employees, agents, and attorneys, and each of them, from any and all claims, suits, controversies, accounts, covenants, promises, judgments, damages, executions, causes of action, rights, duties, expenses, debts, liabilities, demands, obligations, contracts, agreements, costs, and actions of any kind or character, at law or in equity, whether or not well-founded in law or fact, suspected or unsuspected, direct or indirect, which relate to, arise out of, or are in any way connected to the operation of City Federal or any of its subsidiaries or affiliates, in any court, forum, proceeding, or otherwise, from the beginning of the world to the date hereof. The OTS expressly warrants to CityFed and the Individual Parties that no claims, suits, controversies, accounts, covenants, promises, judgments, damages, executions, causes of action, rights, duties, expenses, debts, liabilities, demands, obligations, contracts, agreements, costs, or actions of any kind or character that are mentioned in this Agreement have been assigned, conveyed, or in any manner whatsoever transferred to any other person or entity.

3. Except for CityFed's Stipulation that it would maintain the net worth of City Federal (which alleged commitment is extinguished as part of this Settlement), by this Agreement, the FDIC and the OTS do not release CityFed or the Individual Parties from

any liability incurred as the maker, endorser, or guarantor of any promissory note or other written evidence of indebtedness owed the FDIC, City Federal, or any other financial institution, or any affiliate, subsidiary, or successor of City Federal or any other financial institution. Further, by this agreement, the FDIC and the OTS do not and cannot release the claims of any other administrative agency, whether local, state, or federal, or of the United States of America acting by or through the United States Department of Justice or the Office of the United States Attorney for any judicial district of the United States. Neither the FDIC nor the OTS is aware of any such claims.

4. By this Agreement, the FDIC and the OTS do not undertake to release or relinquish claims, whether known or unknown to the FDIC or OTS, against any person or entity other than CityFed and the Individual Parties.

5. Except as provided below, CityFed and the Individual Parties, and each of them, for themselves, and for their heirs, executors, administrators, successors in interest, and assigns, hereby fully, generally, and unconditionally forever remise, give up, quit-claim, settle, compromise, release, acquit, and discharge the FDIC and the OTS and their respective predecessors, successors, assigns, officers, agents, employees, servants, attorneys, and other representatives, and all persons or entities in privity with them, and each of them, from any and all claims, suits, controversies, accounts, covenants, promises, judgments, damages, executions, causes of action, rights, duties, expenses, debts, liabilities, demands, obligations, contracts, agreements, costs, and actions of any kind or character, at law or in equity, whether or not well-founded in law or fact, suspected or unsuspected, direct or indirect, which relate to, arise out of, or are in any way connected to the operation of City Federal or any of its subsidiaries or affiliates, in

any court, forum, proceeding, or otherwise, from the beginning of the world to the date hereof, provided, however, that nothing in this sentence or in this Agreement is intended to or shall be deemed to discharge the obligations of (a) the FDIC as receiver for City Federal (or any successor of City Federal) or (b) the receivership estate of City Federal (or any successor to City Federal) to any Individual Parties who have claims against such receivership estate as evidenced by receivership certificates held by such Individual Parties. CityFed and the Individual Parties, and each of them, expressly warrant to the FDIC and the OTS that, except for, and only to the extent of, the assignment of the Indemnification Claims to the FDIC by some of the Individual Parties, no claims, suits, controversies, accounts, covenants, promises, judgments, damages, executions, causes of action, rights, duties, expenses, debts, liabilities, demands, obligations, contracts, agreements, costs, or actions of any kind or character that are mentioned in this Agreement have been assigned, conveyed, or in any manner whatsoever transferred to any other person or entity.

6. This Agreement, when signed by the Parties, shall become effective as of the date on which the Director of OTS shall accept the Offer of Settlement through issuance of an Order Accepting Offer of Settlement as set forth in Part IV of the Offer of Settlement (the "Effective Date"). The form of the Order Accepting Offer of Settlement to be issued by the Director is attached hereto as Exhibit A and incorporated herein by reference. If the Director of OTS does not accept the Offer of Settlement by issuing an Order Accepting Offer of Settlement in the form attached hereto as Exhibit A, this Agreement shall be null and void, and the terms hereof shall be of no force or effect. If CityFed should fail to comply with the terms of the Order Accepting Offer of Settlement,

then this Agreement shall be null and void, and the terms hereof shall be of no force or effect. In addition,

- (a) if either CityFed or any of the Individual Parties shall seek protection under the bankruptcy laws within ninety-six (96) days of the Effective Date, or
- (b) if any person shall commence a proceeding against either CityFed or the Individual Parties seeking the entry of an Order against CityFed or any of the Individual Parties for relief under any law relating to bankruptcy or insolvency and such proceeding shall remain undismissed for a period of thirty (30) days,

then, at the election of FDIC or OTS, this Agreement shall be null and void, and the parties shall retain all of the rights, claims, and causes of action they would have if this Agreement had not been entered into.

7. In the event this Agreement becomes null and void for any reason, the FDIC shall immediately return to CityFed by wire transfer all settlement proceeds paid by CityFed to the FDIC pursuant to the Order Accepting Offer of Settlement and shall immediately return to CityFed all shares of City Federal transferred to the FDIC as part of the settlement.

8. Effective after the passage of ninety-six (96) days from the Effective Date, provided

- (a) that neither CityFed nor any of the Individual Parties has sought protection under the bankruptcy laws during that ninety-six (96) day period, and
- (b) that no person has commenced a proceeding against either CityFed or the Individual Parties seeking the entry of an Order against CityFed or any of the Individual Parties for relief under any law relating to bankruptcy or insolvency

and such proceeding has remained undismissed for a period of thirty (30)

days,

and after CityFed's compliance with paragraphs 9 and 10 below, and except as expressly described in this Agreement, the FDIC shall deliver to CityFed copies of the signed agreements which give rise to the Indemnification Claims, and the FDIC hereby unconditionally assigns, conveys, and transfers to CityFed as of that date all of the FDIC's right, title, and interest in the Indemnification Claims. If CityFed brings any action or otherwise asserts its rights based upon the Indemnification Claims, the FDIC agrees that it will make original documents available if necessary.

9. As of the Effective Date, CityFed hereby assigns, conveys, and transfers to the FDIC as successor to the RTC, in its corporate and receivership capacities, as successor in interest to City Federal Savings Bank, all of CityFed's right, title and interest in the CityFed Goodwill Claim, and CityFed also hereby releases, waives, and abandons any claim it may have as a shareholder of City Federal to any distribution that may ever occur as a result of the statutory receivership and priority distribution scheme applicable to assets of or recoveries on behalf of City Federal. The assignments, releases and other matters set forth in the preceding sentence are conditioned on this Settlement Agreement remaining in force and effect after the passage of ninety-six (96) days from the Effective Date, following which they shall be unconditional. Within five business days after the Effective Date, CityFed shall convey all of the stock of City Federal (by delivery of stock certificates, or absent such certificates, by the execution of conveyance documents satisfactory to the FDIC) to the FDIC as successor to the RTC, in its corporate and receivership capacities, and as successor in interest to City Federal Savings Bank. This

conveyance shall be subject to the FDIC's obligation in paragraph 6 to re-convey the stock to CityFed should this Settlement Agreement become null and void.

10. CityFed shall join with the FDIC, within five business days after the Effective Date, in the filing of a motion in the United States Court of Federal Claims to

- (a) dismiss CityFed's complaint in No. 95-508C with prejudice;
- (b) amend the caption of the case to reflect that the FDIC is the sole remaining plaintiff; and
- (c) request that the Court place this case at the end of the trial docket of the final "wave" of Winstar-related cases.

In the event this Settlement Agreement is declared null and void, CityFed shall have the right to withdraw its consent to the joint motion, and the FDIC agrees to join with CityFed in requesting the reversal of any relief granted by the Court in response to the joint motion. It is expressly understood that the FDIC and the OTS shall not be responsible for any costs, expenses, fees, or other assessments incurred by CityFed with respect to the CityFed Goodwill Claim or the assignment thereof.

11. The undersigned agree to utilize their best efforts, including all steps and efforts contemplated by this Agreement and any other steps and efforts which may become reasonably necessary to effectuate this Agreement at the earliest practicable date.

12. This Agreement represents the entire agreement and understanding between the parties hereto regarding the subject hereof. No amendment, modification, or waiver of this Agreement shall be valid unless it is in writing and signed by all of the parties hereto.

13. By this Agreement, no party admits or concedes any allegation of wrongdoing or liability on any claim that is the subject of this Agreement or any responsibility for damages, restitution or penalties, or for any other relief of any kind or nature whatsoever on any such claim asserted against them. By this Agreement, the FDIC and the OTS do not admit or concede that any allegation of wrongdoing or liability on any claim that is the subject of this Agreement was without merit, nor do CityFed and the Individual Respondents admit or concede that any such allegation had merit. Further, CityFed and the Individual Respondents do not concede the validity of any charge, claim or allegation that was made or could have been made by OTS or FDIC with respect to any claim that is the subject of this Agreement, and the FDIC and the OTS do not concede the validity of any defense or responsive allegation that was made or could have been made by CityFed or the Individual Parties with respect to any claim that is the subject of this Agreement.

14. The undersigned represent that they are fully authorized to enter into the terms and conditions of, and to execute and be bound by, this Agreement.

15. The undersigned acknowledge:

- (a) that they are represented by counsel;
- (b) that they have read this Agreement in its entirety;
- (c) that they understand the terms of the Agreement;
- (d) that the Agreement shall be binding upon his, its, or their heirs, executors, administrators, successors in interest, and assigns;
- (e) that they sought advice from counsel as they deemed necessary in order to understand the meaning of the Agreement;

(f) that their counsel have satisfactorily explained to them the terms of this Agreement; and

(g) that they have entered into this Agreement voluntarily and with full knowledge of the effects thereof.

15. This Agreement and the terms contained herein, their scope, and their interpretation shall be subject to, governed by, and construed according to applicable federal law or in its absence, according to the laws of the State of New Jersey.

16. This Agreement may simultaneously be executed in several counterparts, and all such counterparts shall constitute one single instrument.

FEDERAL DEPOSIT INSURANCE
CORPORATION,

OFFICE OF THRIFT
SUPERVISION

By: /S/
Its COUNSEL

By: /S/
Its DEPUTY DIRECTOR

CITYFED FINANCIAL CORPORATION

GORDON E. ALLEN

By: _____
Its _____

JOHN W. ATHERTON, JR.

EDWIN M. HALKYARD

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FEDERAL DEPOSIT INSURANCE
CORPORATION,

OFFICE OF THRIFT
SUPERVISION

By: _____
Its _____

By: _____
Its _____

CITYFED FINANCIAL CORPORATION

GORDON E. ALLEN

By: /S/
Its President
5-16-00

JOHN W. ATHERTON, JR.

EDWIN M. HALKYARD

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15. This Agreement and the terms contained herein, their scope, and their interpretation shall be subject to, governed by, and construed according to applicable federal law or in its absence, according to the laws of the State of New Jersey.

16. This Agreement may simultaneously be executed in several counterparts, and all such counterparts shall constitute one single instrument.

FEDERAL DEPOSIT INSURANCE
CORPORATION,

OFFICE OF THRIFT
SUPERVISION

By: _____
Its _____

By: _____
Its _____

CITYFED FINANCIAL CORPORATION

GORDON E. ALLEN

By: _____
Its _____

/S/ _____
5/10/00

JOHN W. ATHERTON, JR.

EDWIN M. HALKYARD

(f) that their counsel have satisfactorily explained to them the terms of this Agreement; and

(g) that they have entered into this Agreement voluntarily and with full knowledge of the effects thereof.

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GORDON E. ALLEN

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Its _____

JOHN W. ATHERTON, JR.

EDWIN M. HALKYARD

/S/
5/15/00

ALFRED J. HEDDEN

PETER R. KELLOGG

/S/

May 11, 2000

WILLIAM A. LIFFERS

GILBERT G. ROESSNER

ALFRED J. HEDDEN

PETER R. KELLOGG

/S/

May 10, 1900

WILLIAM A. LIFFERS

GILBERT G. ROESSNER

ALFRED J. HEDDEN

PETER R. KELLOGG

WILLIAM A. LIFFERS

GILBERT G. ROESSNER

/S/

5/12/2000

ALFRED J. HEDDEN

PETER R. KELLOGG

WILLIAM A. LIFFERS

GILBERT G. ROESSNER

/S/

MAY 10, 2000

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UNITED STATE OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of)

CITYFED FINANCIAL)
CORPORATION,)
Nantucket, MA,)

A Savings and Loan Holding)
Company, and)

GORDON E. ALLEN,)
JOHN W. ATHERTON, JR.,)
EDWIN M. HALKYARD,)
ALFRED J. HEDDEN,)
PETER R. KELLOGG,)
WILLIAM A. LIFFERS, and)
GILBERT G. ROESSNER,)

Former Directors of)
CITY FEDERAL SAVINGS BANK,)
Bedminster, New Jersey)

Case No: OTS Order No. AP 94-27
Dated: June 2, 1994

OTS Order No. AP 2000- 3

Dated: May 19, 2000

OPINION AND ORDER ACCEPTING
OFFER OF SETTLEMENT BY RESPONDENTS
CITYFED FINANCIAL CORPORATION, GORDON E. ALLEN,
JOHN W. ATHERTON, JR., EDWIN M. HALKYARD, ALFRED J. HEDDEN,
PETER R. KELLOGG, WILLIAM A. LIFFERS, AND GILBERT G. ROESSNER

WHEREAS, the Office of Thrift Supervision ("OTS") has issued a Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Notice"), OTS Order No. 94-26, June 2, 1994, against Respondents CityFed Financial Corporation ("CityFed"), Gordon E. Allen, John W. Atherton, Jr., Edwin M. Halkyard, Alfred J. Hedden, Peter R. Kellogg, William A. Liffers, and

Gilbert G. Roessner (collectively, "Respondents") arising out of the CityFed's Stipulation that it would maintain the net worth of City Federal Savings, Bedminster, New Jersey; and

WHEREAS, the Respondents have submitted an Offer of Settlement ("Offer") in the above-captioned proceeding. Upon consideration, the OTS has determined to accept the Offer.¹ Solely on the basis of the consent evidenced by the Offer, the OTS HEREBY ORDERS THAT:²

RESTITUTION

1. CityFed shall pay as restitution (but not as a penalty or fine) the sum of Three Million One Hundred Sixty-Nine Thousand One Hundred Fifteen Dollars (\$3,169,115) in full satisfaction of the Respondents' alleged commitment to maintain or cause to be maintained the capital of City Federal Savings, an insured depository institution. This sum shall be paid by wire transfer to the Federal Deposit Insurance Corporation, as successor to the Resolution Trust Corporation, in its corporate and receivership capacities. This payment and all other aspects of this settlement are subject to the terms of a Settlement Agreement, Assignment and Release in the form attached hereto as Exhibit A, which document has been executed by OTS, the FDIC and the Respondents. The payment called for in this paragraph shall be made by CityFed within twenty-four (24) hours

¹ In the Offer, solely for the purposes of this proceeding, without admitting or denying the allegations of the Notice in this proceeding, before any taking of any testimony, and without adjudication of any issue of fact or law, Respondents acknowledge service of the Notice; admit the jurisdiction of OTS with respect to the matters set forth in the Notice; stipulate that the record basis for this proceeding consists of the Notice and the Offer; and waive a hearing, all post-hearing procedures, entry of findings of fact and conclusions of law, judicial review of this Order by any court as provided by 12 U.S.C. § 1818(h) or other challenge to the validity of this Order, any objection to the staff's participation in OTS's consideration of the Offer, and any and all claims for fees, costs, or expenses arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 508 and 28 U.S.C. § 2412.

² Solely by virtue of the Offer and not by an adjudication on the merits, this Order may be used in any proceeding brought by the OTS to enforce the Order; provided, however, that there shall be no use of the Notice in such a proceeding except in connection with a proceeding to enforce paragraph 1 of this Order. The Notice, the Offer, and this Order, or the relief consented to by virtue of the Offer, shall not be used by OTS for any other purpose. The execution of the Settlement Agreement, the payment of the amount set forth in paragraph 1 of this Order, and the other terms and conditions of the Settlement Agreement do not constitute and shall not be deemed by the OTS to constitute evidence of or an admission by Respondents as to any liability, fault, or wrongdoing. Negotiations of the terms of this Order and the Settlement Agreement, including conduct and statements made in connection therewith, shall not be admissible in accordance with Rule 408 of the Federal Rules of Evidence.

of service of this Order on CityFed and receipt by CityFed of copies of the Settlement Agreement signed by OTS and the FDIC.

MISCELLANEOUS

2. Definition: "Settlement Agreement" means the Agreement entered into by Respondents with the OTS and FDIC which will become effective as of the date this Order is issued.

3. Reference in the Offer or this Order to provisions of statutes, regulations, OTS publications, and regulatory guidelines shall be deemed to include reference to all amendments to such provisions as have been made as of the date of this Order.

4. The section headings in the Offer and in this Order are for convenience only and shall not affect the construction thereof.

5. In case any provision of the Offer or this Order is ruled to be invalid, illegal, or unenforceable by a decision of any court of competent jurisdiction the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, except as specifically provided for in the Settlement Agreement.

6. The terms of the Offer and of the Settlement Agreement shall be deemed to be incorporated into this Order as if set forth separately therein. The Offer, the Settlement Agreement and this Order may be used in any proceeding brought by the OTS to enforce this Order or in any proceeding by the Respondents to enforce any aspect of the Settlement Agreement.

7. The terms and provisions of this Order shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest. Nothing in the Offer or this Order, express or implied, shall give any person or entity, other than the parties hereto and their

successors, any benefit, legal or equitable right, remedy, claim, nor impose any legal or other restrictions or obligations upon any person or entity that is not a party to the Offer and this Order. The Offer and this Order shall not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any claims in the Notice against any person or entity other than Respondents.

8. This Order and the Settlement Agreement constitute the final disposition of all monetary and non-monetary claims for relief that have been or could have been brought by the OTS against the Respondents in connection with the Notice and any aspect of their participation in the affairs of CityFed or City Federal Savings Bank. All OTS proceedings against the Respondents relating to the Notice, including the Temporary Order to Cease and Desist, OTS Order No. AP 94-27 (June 2, 1994) (the "Temporary Order"), are terminated upon issuance of this Order, and no further proceedings against the Respondents relating to the Notice or any aspect of their participation in the conduct of the affairs of CityFed or City Federal Savings Bank shall be commenced, other than to enforce the terms of this Order; provided, however, that if the restitution paid pursuant to this Order shall be determined to be a preferential transfer pursuant to 11 U.S.C. § 547 and a claim by the FDIC for setoff of the restitution previously received shall be disallowed, then (a) all proceedings against the Respondents relating to the Notice, including the Temporary Order, shall be reinstated, (b) any applicable period of limitations or repose shall be deemed to have been tolled during the period from the date of this Order through the date of the reinstatement of such proceedings, and (c) this Order shall be of no further force or effect.

9. Within twenty-four hours of receipt by the FDIC of the payment called for in paragraph 1. above, OTS shall provide written notification to First Union National Bank ("First Union") that the Temporary Order is no longer in effect, that the Escrow Agreement pursuant to

which First Union is holding funds of CityFed is terminated, and that First Union is authorized to release to CityFed all funds of CityFed currently being held by First Union as escrow agent.

10. The Respondents shall execute as part of the Settlement Agreement written releases of the OTS, FDIC, their employees, agents, and attorneys from all claims and counterclaims that have been or may be asserted against them arising out of or in any way related to CityFed or City Federal Savings Bank, including but not limited to the subject matter of this administrative proceeding, including all claims and counterclaims for costs, fees, and sanctions.

11. The OTS shall execute as part of the Settlement Agreement a written release of the Respondents, their employees, agents, and attorneys from all claims and counterclaims that have been or may be asserted against them arising out of or in any way related to CityFed or City Federal Savings Bank, including but not limited to the subject matter of this administrative proceeding, including all claims and counterclaims for costs, fees, and sanctions.

12. This Order is effective upon issuance by the OTS, acting through its authorized representative, as indicated by the date in the caption of this Order.

Dated: May 18th 2020.

/S/

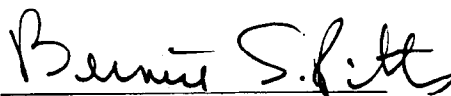
Richard M. Riccobono
Deputy Director
Office of Thrift Supervision

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2000, a copy of the foregoing OTS Order No. AP 2000-3 was served by hand delivery, facsimile, and first class mail on the following:

Richard C. Stearns, Esq.
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Frank J. Eisenhart, Esq.
Dechert, Price & Rhoads
1775 Eye Street, N.W.
Washington, D.C. 20006-2401

A handwritten signature in black ink, reading "Bernice S. Pitts". The signature is written in a cursive style with a horizontal line underneath the name.

Bernice S. Pitts
Secretary for Adjudicatory Proceedings
Office of Thrift Supervision