

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for First NBC Bank (“FDIC-R”), and William D. Aaron, Jr, William Carrouche, Herman Moyse III, Grish Roy Pandit, Stephen Petagna, Richard M. Wilkinson, and Ashton J. Ryan Jr. (collectively the “Settling Individual Defendants”), and Zurich American Insurance Company (“Zurich”), Illinois National Insurance Company (“INIC”), Continental Casualty Company (“Continental”), Great American E&S Insurance Company (“Great American”), Federal Insurance Company (“Federal”), U.S. Specialty Insurance Company (“USSIC”), XL Specialty Insurance Company (“XL”), Freedom Specialty Insurance Company (“Freedom”), Markel American Insurance Company (“Markel”), and Berkshire Hathaway Specialty Insurance Company (“BHSI”) (collectively the “Insurers”) (individually, the FDIC-R, the Settling Individual Defendants and the Insurers may be referred to herein as “Party” and collectively as the “Parties”). This Settlement Agreement shall be effective as of the date last executed by any Party (“Effective Date”).

### RECITALS

WHEREAS:

Prior to April 28, 2017, First NBC Bank, New Orleans, Louisiana (“Bank”) was a depository institution organized and existing under the laws of Louisiana, and a subsidiary of First NBC Bank Holding Company (“Holding Company”);

On April 28, 2017, the Louisiana Office of Financial Institutions closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets;

Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against its former directors, officers, and employees arising from

the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

On August 25, 2017 and September 11, 2017, the FDIC-R sent letters demanding payment of civil damages from former directors and officers of the Bank and the Insurers (the "Demand Letters");

The Parties participated in mediations in 2020 and 2023 pursuant to an October 22, 2019 mediation protocol;

On April 21, 2020, the FDIC-R filed a complaint for money damages against the Settling Individual Defendants, each of whom served at various times as a director and/or officer of the Bank, in the lawsuit captioned *Federal Deposit Insurance Corporation as receiver for First NBC Bank v. Ryan et al*, Civil Action No. 20-cv-1253 (E.D. La.) ("FDIC-R Action"). Pursuant to Louisiana Revised Statutes § 22:1269, the FDIC-R Action also asserted claims for damages directly against the Insurers that issued the following liability insurance policies ("Policies") to the Holding Company, which insured the directors and officers of the Bank according to the terms, provisions, and conditions of the Policies:

- (1) Zurich issued a primary insurance policy with Policy Number [b4] and policy limits of \$15,000,000 for the period June 9, 2015 to December 31, 2016 ("2016 Policy Period");
- (2) INIC issued a first-layer excess insurance policy with Policy Number [b4] and policy limits of \$15,000,000 for the 2016 Policy Period;
- (3) Continental issued a second-layer excess insurance policy with Policy Number [b4] and policy limits of \$10,000,000 for the period July 6, 2015 to December 31, 2016;
- (4) Great American issued a third-layer excess insurance policy with Policy Number [b4] and policy limits of 10,000,000 for the period July 6, 2015 to December 31, 2016;
- (5) Federal issued a fourth-layer excess insurance policy with a Policy Number of [b4]

[b4] and policy limits of \$10,000,000 for the period July 6, 2015 to December 31, 2016;

- (6) USSIC issued a primary insurance policy with Policy Number [b4] and policy limits of \$10,000,000 for the period December 31, 2016 to December 31, 2017 (“2017 Policy Period”);
- (7) XL issued a first-layer excess insurance policy with Policy Number [b4] and policy limits of \$10,000,000 for the 2017 Policy Period;
- (8) INIC issued a second-layer excess insurance policy with Policy Number [b4] and policy limits of \$10,000,000 for the 2017 Policy Period;
- (9) Freedom issued a third-layer excess insurance policy with Policy Number [b4] and policy limits of \$10,000,000 for the 2017 Policy Period;
- (10) Markel issued a fourth-layer excess insurance policy with Policy Number [b4] and policy limits of \$5,000,000 for the 2017 Policy Period
- (11) BHSI issued a fifth-layer excess insurance policy with Policy Number [b4] and policy limits of \$5,000,000 for the 2017 Policy Period;
- (12) INIC issued a sixth-layer (Side-A Edge) excess insurance policy with Policy Number [b4] and policy limits of \$5,000,000 for the 2017 Policy Period; and
- (13) USSIC issued a seventh-layer excess insurance policy with Policy Number [b4] and policy limits of \$5,000,000 for the 2017 Policy Period.

(collectively, Zurich, INIC, Continental, Great American, Federal, USSIC, XL, Freedom, Markel, BHSI are referred to as the “Insurers” and individually as “Insurer”)

The Settling Individual Defendants have asserted claims for coverage under the Policies. The Insurers (other than Zurich under Policy Number [b4] and INIC under the \$10,000,000 excess of \$15,000,000 portion of Policy Number [b4]) denied coverage for claims asserted by the FDIC-R against the Settling Individual Defendants. On May 17, 2023, the FDIC-R amended its complaint in the FDIC-R Action further detailing its allegations. The Settling Individual Defendants and Insurers have denied liability in the FDIC-R Action;

Additionally, on January 3, 2022, the Settling Individual Defendants, among others, filed a declaratory action against INIC, Continental, Great American, and Federal (No. 22-cv-0009 (E.D. La.)), seeking a declaration of their rights to coverage for those Policies issued for the 2016 Policy Period, including with regard to claims asserted by the FDIC-R in the FDIC-R Action (“Aaron Declaratory Judgment Action”). On February 14, 2022, the FDIC-R intervened in the Aaron Declaratory Judgment Action. On July 18, 2023, the Settling Individual Defendants, among others, amended the Aaron Declaratory Judgment Action to also seek a declaration of their rights to coverage for the Policies issued for the 2017 Policy Period, including with regard to claims asserted by the FDIC-R in the FDIC-R Action. On July 21, 2023, the Court in the Eastern District of Louisiana consolidated the FDIC-R Action with the Aaron Declaratory Judgment Action (No. 22-cv-0009), which also has been consolidated with other related litigation (the “Consolidated Litigation”);

On July 6, 2022, INIC filed a declaratory judgment action against certain former directors, officers, and employees of the Bank (No. 22-cv-02070 (E.D. La.)) seeking a declaration of its rights and obligations under its policy issued for the 2016 Policy Period, including but not limited to the claims asserted by the FDIC-R in the FDIC-R Action (“INIC Declaratory Judgment Action”). On August 18, 2022, the Court in the Eastern District of Louisiana consolidated the INIC Declaratory Judgment Action with the Aaron Declaratory Judgment Action (No. 22-cv-0009) as part of the Consolidated Litigation. The INIC Declaratory Judgment Action and Aaron Declaratory Judgment Action are collectively referred to herein as the “DJ Actions.”

On December 7, 2023, the FDIC-R Action and DJ Actions were *sua sponte* dismissed without prejudice.

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

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the



undersigned Parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC-R**

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the Effective Date, the Insurers severally shall collectively pay, on their own behalf and on behalf of the Settling Individual Defendants, to the FDIC-R the sum of Twenty-five Million Dollars (\$25,000,000.00) (“the Settlement Payment”) as set forth in Exhibit A to this Agreement. The Settlement Payment shall constitute a debt due and owing the Federal Deposit Insurance Corporation, an agency of the United States, thirty days following the Effective Date. The debt shall be discharged by payment in full to the FDIC-R.

B. The Insurers shall deliver the Settlement Payment to the FDIC-R either by check drawn on a domestic bank (as defined in 31 C.F.R. § 515.320) or electronic funds transfer pursuant to written instructions, including a tax identification number and contact information for an individual who can orally confirm the payment instructions, as set forth in Exhibit B to this Agreement.

C. Each Insurer’s share of the Settlement Payment as set forth in Exhibit A to this Agreement is a several, not joint, payment obligation. Upon payment by each Insurer of its share of the Settlement Payment as set forth in Exhibit A the FDIC-R’s release under Section III.A. and the Insurer’s release under Section III.C. shall be effective as to the Insurer(s) who paid unless (1) the Agreement is not effective and the FDIC-R returns all amounts paid or (2) the FDIC-R terminates this Agreement and returns all amounts paid in accordance with Section I.D.3 below.

D. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the Insurer(s) who failed to make the payment shall be in default of the payment obligations (“Default”) and interest shall accrue at the rate of five percent (5% ) per annum or the rate calculated in accordance with 26 U.S.C. § 6621(a)(2), whichever rate is higher (“Default Interest Rate”) on the unpaid total (i.e. unpaid amount of Settlement Payment together with all accrued interest) until paid in full, and the FDIC-R, in its

sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for any Insurer in Default to make the Settlement Payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above only with respect to unpaid amounts due; or

2. Enforce this Agreement, including without limitation, by FDIC-R's motion to summarily enforce the agreed-upon settlement by the Court entering judgment against the Insurer(s) in Default for breach of the settlement agreement in the amount of the unpaid total (i.e. unpaid amount of Settlement Payment together with all accrued interest) together with the costs of collection and all of the FDIC-R's reasonable attorney's fees and costs incurred in enforcing the terms of this Agreement. In such event, the Insurer(s) in Default waive and covenant not to plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever except the defense of payment of the Settlement Payment, in part or in full, to an action or motion to enforce this Agreement and agree to exclusive jurisdiction and venue in United States District Court for the Eastern District of Louisiana; or

3. Terminate the Agreement by declaring it null and void, move to vacate any dismissal order, to which the Settling Individual Defendants and Insurers agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Individual Defendants and Insurers further agree to waive and covenant to not plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever that did not exist or was otherwise unavailable as of the Effective Date, except the defense of payment of the Settlement Payment, in part or in full. If the FDIC-R exercises its right to terminate this Agreement then the FDIC-R will return to each Insurer within thirty (30) calendar days of termination any and all amounts paid to the FDIC-R by such Insurer under this Settlement Agreement; and/or

4. Seek any other relief available to it in law or equity against any Insurer that has not paid its share of the Settlement Payment.

Any decision by the FDIC-R to extend the time, and any extension of time, under Section

I.C.1 for delivery of the Settlement Payment or any decision by the FDIC-R to accept a portion of the Settlement Payment, and any acceptance of a portion of the Settlement Payment, shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.D.1. through I.D.4. at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

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

Within ten (10) business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a motion for a dismissal with prejudice of the FDIC-R Action (No. 20-cv-1253), and the DJ Actions (Nos. 22-cv-0009 and 22-cv-2070) between and among the Parties pursuant to Fed. R. Civ. P. 41(a)(2) which the undersigned attorneys for all Parties hereto consent with their client's authorization.

## **SECTION III: Releases**

### **A. The FDIC-R's Releases.**

Upon receipt of the Settlement Payment in full and except as provided in Section I.C. and Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges:

1. The Settling Individual Defendants and their respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Individual Defendants' respective functions, duties and actions as directors, officers, and employees of the Bank including without limitation the causes of action alleged or that could have been alleged in the FDIC-R Action, the DJ Actions or the Demand Letters.

2. The Insurers, their respective parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of

action, direct or indirect, in law or in equity, that arise from or relate to: (a) the Policies; (b) the FDIC-R Action; (c) the DJ Actions; (d) the Demand Letters; (e) the facts, circumstances, situations, transactions and/or events underlying the FDIC-R Action, the DJ Actions or the Demand Letters; (f) any claims for coverage arising from the FDIC-R Action, the DJ Actions or the Demand Letters or facts, circumstances, situations, transactions and/or events underlying the FDIC-R Action, the DJ Actions or the Demand Letters; (g) the performance, non-performance or manner of performance of any functions, duties or actions as directors, officers or employees of the Bank by any person insured by the Policies, including the Settling Individual Defendants; and (h) any claims for misrepresentation, fraud, indemnity, contribution, breach of contract, bad faith, breach of duty, negligence or damages of any kind whatsoever arising out of or related to the Policies or the FDIC-R Action, the DJ Actions or the Demand Letters or the facts, circumstances, situations, transactions and/or events underlying the FDIC-R Action, the DJ Actions or the Demand Letters. As part of this release of the Insurers, the FDIC-R agrees that any interest it may have under the Policies is extinguished.

3. All other former directors, officers, and employees of the Bank (collectively, the "Covered Persons") and their respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Covered Persons' respective functions, duties and actions as directors, officers and/or employees of the Bank, including without limitation the causes of action alleged in the FDIC-R Action. This release shall be null and void as to any Covered Person if such Covered Person asserts any claim against the FDIC-R.

B. The Settling Individual Defendants' Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Individual Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns,

hereby release and discharge:

1. The FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Individual Defendants' respective functions, duties and actions as officers and/or directors of the Bank including without limitation the causes of action alleged in the FDIC-R Action, the DJ Actions, or the Demand Letters.

2. The Insurers, their respective parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to: (a) the FDIC-R Action; (b) the DJ Actions; (c) the Demand Letters; (d) the facts, circumstances, situations, transactions and/or events underlying the FDIC-R Action, the DJ Actions or the Demand Letters; (e) any claims for coverage arising from the FDIC-R Action, the DJ Actions or the Demand Letters or facts, circumstances, situations, transactions and/or events underlying the FDIC-R Action, the DJ Actions or the Demand Letters; (f) the performance, non-performance or manner of performance of any functions, duties or actions as directors, officers or employees of the Bank by any person insured by the Policies, including the Settling Individual Defendants; and (g) any claims for misrepresentation, fraud, indemnity, contribution, breach of contract, bad faith, breach of duty, negligence or damages of any kind whatsoever arising out of or related to the Policies or the FDIC-R Action, the DJ Actions or the Demand Letters or the facts, circumstances, situations, transactions and/or events underlying the FDIC-R Action, the DJ Actions or the Demand Letters.

C. The Insurers' Release.

Effective simultaneously with the releases granted in Section III.A. above, the Insurers, for themselves individually and their successors and assigns, and on behalf of their parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents,



representatives, and their successors and assigns, hereby releases and discharges:

1. The FDIC-R and its employees, officers, directors, agents, representatives, attorneys, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to: (a) the Policies; (b) the FDIC-R Action; (c) the DJ Actions; (d) the Demand Letters; and (d) the facts, circumstances, situations, transactions and/or events underlying the FDIC-R Action, the DJ Actions, or the Demand Letters.

2. The Settling Individual Defendants and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to: (a) FDIC-R Action; (b) the DJ Actions; (c) the Demand Letters; (d) the facts, circumstances, situations, transactions and/or events underlying the FDIC-R Action, the DJ Actions or the Demand Letters. Provided, however, nothing in this paragraph (Section III.C.2) is intended to act as a release or waiver of any potential coverage defenses under the Policies, including but not limited to coverage defenses in connection with warranties issued in connection with certain Policies.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC, in any capacity, does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against the Settling Individual Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

#### **SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Individual Defendants are or were shareholders of the Bank or the Holding Company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Individual Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

#### **SECTION V: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party,

and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

#### **SECTION VI: Reasonable Cooperation**

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

#### **SECTION VII: Other Matters**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability, or coverage, or infirmity by any of them regarding any claim or defense, and that this Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Counterparts and Digital Signatures. This Agreement may be executed digitally by DocuSign or similar services which use public key cryptography or by hand, in counterparts by one or more of the Parties, and all such counterparts when so executed shall together constitute one and the same Agreement, as if one document had been signed by all Parties, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement. Signatures delivered via email shall be treated as original signatures for all purposes.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced

according to applicable federal law, or in its absence, the laws of the State of Louisiana. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

D. Notices. Any notices required hereunder shall be sent by nationally recognized overnight delivery service (e.g. FedEx or UPS), and by email, to the following:

If to the FDIC-R:

Douglas Lang  
Counsel, Legal Division  
Federal Deposit Insurance Corporation  
Arlington, VA 22226-3500  
Email: dlang@sgslitigation.com

Andrew Shoemaker  
Paul Schwartz  
Shoemaker Ghiselli + Schwartz, LLC  
1811 Pearl Street  
Boulder, CO 80302  
Email: ashoemaker@sgslitigation.com; pschwartz@sgslitigation.com

If to Settling Individual Defendants William D. Aaron, Jr, William Carrouche, Herman Moyses III, Grish Roy Pandit, and Richard M. Wilkinson:

Nancy Degan  
Brian M. Ballay  
Matthew S. Chester  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
201 St. Charles Avenue, Suite 3600  
New Orleans, LA 70170  
Email: ndegan@bakerdonelson.com; bballay@bakerdonelson.com;  
mchester@bakerdonelson.com

If to Settling Individual Defendant Stephen Petagna:

Richard T. Simmons, Jr.  
3445 North Causeway Blvd., Suite 800  
New Orleans, LA 70002  
Email: rsimmons@hnhlp.com

If to Settling Individual Defendant Ashton J. Ryan, Jr.:

Edward J. Castaing, Jr.  
Edward J. Lilly  
Peter Castaing  
Crull, Castaing & Lilly  
2323 Pan-American Life Center  
601 Poydras Street  
New Orleans, LA 70130  
Email: [ecastaing@cclhlaw.com](mailto:ecastaing@cclhlaw.com)

If to Insurer Zurich American Insurance Company:

John W. Hite  
Salley, Hite, Mercer & Resor LLC  
365 Canal Street  
One Canal Place, Suite 1710  
New Orleans, LA 70130  
Email: [jhite@shmlaw.com](mailto:jhite@shmlaw.com)

If to Insurer Illinois National Insurance Company:

Robert A. Benjamin  
Kaufman Borgeest & Ryan LLP  
875 Third Avenue, 5<sup>th</sup> Floor  
New York, New York 10022  
Email: [rbenjamin@kbrlaw.com](mailto:rbenjamin@kbrlaw.com)

If to Insurer Continental Casualty Company:

Karen Ventrell  
Senior Litigation Attorney  
Corporate Litigation  
CNA  
2020 K Street, NW, Suite 750  
Washington, DC 20006  
[kventrell@cna.com](mailto:kventrell@cna.com)

If to Insurer Great American E&S Insurance Company:

Paul F. Matousek  
Walker Wilcox Matousek LLP  
One North Franklin Street  
Chicago, IL 60606  
[pmatousek@walkerwilcox.com](mailto:pmatousek@walkerwilcox.com)

If to Insurer Federal Insurance Company:



Michael Goodstein  
Bailey Cavaliere LLC  
10 W. Broad Street, Ste. 2100  
Columbus, OH 43215  
Email: mgoodstein@baileycav.com

If to Insurer U.S. Specialty Insurance Company:

Leslie S. Ahari  
Stacey E. Rufe  
Werner Ahari Mangel LLP  
800 Connecticut Ave. NW, Suite 300  
Washington, DC 20006  
Emails: lahari@wam.law; srufe@wam.law

If to Insurer XL Specialty Insurance Company:

Kimberly M. Melvin  
John E. Howell  
Wiley Rein LLP  
2050 M Street NW  
Washington, DC 20036  
Email: kmelvin@wiley.law; jhowell@wiley.law

If to Insurer Freedom Specialty Insurance Company:

Darius N. Kandawalla  
Bailey Cavaliere LLC  
10 W. Broad Street, Ste. 2100  
Columbus, OH 43215  
Email: dkandawalla@baileycav.com

If to Insurer Markel American Insurance Company:

Kimberly M. Melvin  
John E. Howell  
Wiley Rein LLP  
2050 M Street NW  
Washington, DC 20036  
Email: kmelvin@wiley.law; jhowell@wiley.law

If to Insurer BHSI:

Andrew L. Margulis  
Ropers Majeski PC  
750 Third Avenue, 25th Floor  
New York, NY 10017

Email: [andrew.margulis@ropers.com](mailto:andrew.margulis@ropers.com)

E. Entire Agreement and Amendments. This Agreement, including Exhibits, constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings, including but not limited to the Term Sheet signed by the parties on December 6, 2023. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

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

FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR FIRST NBC BANK

Date: 12/22/2023

BY:

**b6**

TITLE:

*Counsel*

PRINT NAME:

*DOUGLAS B. LANG*

**b6**

Date: 12-22-23

WILLIAM D. AARON, JR.

Date: \_\_\_\_\_

WILLIAM CARROUCHE

Date: \_\_\_\_\_

HERMAN MOYSE III

Date: \_\_\_\_\_

GRISH ROY PANDIT

Date: \_\_\_\_\_

RICHARD M. WILKINSON

Date: \_\_\_\_\_

STEPHEN PETAGNA

Date: \_\_\_\_\_

ASHTON J. RYAN Jr.

Date: \_\_\_\_\_

\_\_\_\_\_  
**WILLIAM D. AARON, JR.**

Date: 12/22/23

**b6**

\_\_\_\_\_  
**WILLIAM CARROUCHE**

Date: \_\_\_\_\_

\_\_\_\_\_  
**HERMAN MOYSE III**

Date: \_\_\_\_\_

\_\_\_\_\_  
**GRISH ROY PANDIT**

Date: \_\_\_\_\_

\_\_\_\_\_  
**RICHARD M. WILKINSON**

Date: \_\_\_\_\_

\_\_\_\_\_  
**STEPHEN PETAGNA**

Date: \_\_\_\_\_

\_\_\_\_\_  
**ASHTON J. RYAN Jr.**



Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: 12/23/23

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

WILLIAM D. AARON, JR.

WILLIAM CARROUCHE

**b6**

HERMAN MOYSE III

GRISH ROY PANDIT

RICHARD M. WILKINSON

STEPHEN PETAGNA

ASHTON J. RYAN Jr.

Date: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM D. AARON, JR.

Date: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM CARROUCHE

Date: \_\_\_\_\_

\_\_\_\_\_  
HERMAN MOYSE III

Date: Dec 27/2023

**b6**  
\_\_\_\_\_  
GRISH ROY PANDIT

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD M. WILKINSON

Date: \_\_\_\_\_

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STEPHEN PETAGNA

Date: \_\_\_\_\_

\_\_\_\_\_  
ASHTON J. RYAN Jr.

Date: \_\_\_\_\_

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**WILLIAM D. AARON, JR.**

Date: \_\_\_\_\_

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**WILLIAM CARROUCHE**

Date: \_\_\_\_\_

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**HERMAN MOYSE III**

Date: \_\_\_\_\_

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**GRISH ROY PANDIT**

Date: 12/22/2023

**b6**  
\_\_\_\_\_  
**RICHARD M. WILKINSON**

Date: \_\_\_\_\_

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**STEPHEN PETAGNA**

Date: \_\_\_\_\_

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**ASHTON J. RYAN Jr.**

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Date: 12/22/23

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Date: \_\_\_\_\_

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Date: \_\_\_\_\_

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**GRISH ROY PANDIT**

Date: \_\_\_\_\_

\_\_\_\_\_  
**RICHARD M. WILKINSON**

Date: \_\_\_\_\_

\_\_\_\_\_  
**STEPHEN PETAGNA**

Date: 12/22/23

**b6**



Date: 1/10/2024

**ZURICH AMERICAN INSURANCE COMPANY**

BY: b6

TITLE: AVP, Claims Team Hwy

PRINT NAME: Gail Sider

**ILLINOIS NATIONAL INSURANCE COMPANY BY  
AIG CLAIMS, INC.**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**CONTINENTAL CASUALTY COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**GREAT AMERICAN E&S INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**FEDERAL INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

ZURICH AMERICAN INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

ILLINOIS NATIONAL INSURANCE COMPANY BY  
AIG CLAIMS, INC.

Date: 12/22/23

BY:

**b6**

TITLE: VP - Financial Institutions Claims

PRINT NAME: Rick Meyer

CONTINENTAL CASUALTY COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

GREAT AMERICAN E&S INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

FEDERAL INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**ZURICH AMERICAN INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**ILLINOIS NATIONAL INSURANCE COMPANY BY  
AIG CLAIMS, INC.**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**CONTINENTAL CASUALTY COMPANY**

Date: January 3, 2024

BY:

**b6**

TITLE: AVP Claims, Financial Institutions/Public Company D&O

PRINT NAME: Kimberly Fandrey

**GREAT AMERICAN E&S INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**FEDERAL INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**ZURICH AMERICAN INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**ILLINOIS NATIONAL INSURANCE COMPANY BY  
AIG CLAIMS, INC.**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**CONTINENTAL CASUALTY COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**GREAT AMERICAN E&S INSURANCE COMPANY**

Date: 12/22/2023

BY:

**b6**

TITLE: Vice President-Claims/Compliance

PRINT NAME: Kathleen Van Deven

**FEDERAL INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

ZURICH AMERICAN INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

ILLINOIS NATIONAL INSURANCE COMPANY BY  
AIG CLAIMS, INC.

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

CONTINENTAL CASUALTY COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

GREAT AMERICAN E&S INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT

FED

BY:

TITLE:

PRINT NAME:

**b6**

OMPANY

Date: 12/22/23

TITLE: *President and President*  
PRINT NAME: *Richard L. Brown*

Date: 12/22/23

U.S. SPECIALTY INSURANCE COMPANY

**b6**

TITLE: *Authorized Representative*  
PRINT NAME: *Dennis B. McGoldrick*

XL SPECIALTY INSURANCE COMPANY

Date: \_\_\_\_\_

BY:  
TITLE:  
PRINT NAME:

FREEDOM SPECIALTY INSURANCE COMPANY

Date: \_\_\_\_\_

BY:  
TITLE:  
PRINT NAME:

MARKEL INSURANCE COMPANY

Date: \_\_\_\_\_

BY:  
TITLE:  
PRINT NAME:

BERKSHIRE HATHAWAY SPECIALTY  
INSURANCE COMPANY

Date: \_\_\_\_\_

BY:  
TITLE:  
PRINT NAME:

**U.S. SPECIALTY INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**XL SPECIALTY INSURANCE COMPANY**

Date: 12/26/2023

BY:

TITLE: Senior Claims Specialist

PRINT NAME: Melissa Morais

**b6**

898A470FD4A04FD

**FREEDOM SPECIALTY INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**MARKEL INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**BERKSHIRE HATHAWAY SPECIALTY  
INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

U.S. SPECIALTY INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

XL SPECIALTY INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

FREEDOM SPECIALTY INSURANCE COMPANY

Date: 12/22/23

BY:

**b6**

TITLE: Director, Specialty & Professional Claims

PRINT NAME: Brian Oubre

MARKEL INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

BERKSHIRE HATHAWAY SPECIALTY  
INSURANCE COMPANY

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:



Date: \_\_\_\_\_

**U.S. SPECIALTY INSURANCE COMPANY**

BY:

TITLE:

PRINT NAME:

Date: \_\_\_\_\_

**XL SPECIALTY INSURANCE COMPANY**

BY:

TITLE:

PRINT NAME:

Date: \_\_\_\_\_

**FREEDOM SPECIALTY INSURANCE COMPANY**

BY:

TITLE:

PRINT NAME:

Date: 1/4/24

<sup>(America)</sup>  
**MARKEL INSURANCE COMPANY**  
*by Markel Service, Incorporated*

BY:

**b6**

TITLE: *Director/SE Counsel*

PRINT NAME: *Joseph J. Macchiarola*

Date: \_\_\_\_\_

**BERKSHIRE HATHAWAY SPECIALTY  
INSURANCE COMPANY**

BY:

TITLE:

PRINT NAME:

**U.S. SPECIALTY INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**XL SPECIALTY INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

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PRINT NAME:

**FREEDOM SPECIALTY INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**MARKEL INSURANCE COMPANY**

Date: \_\_\_\_\_

BY:

TITLE:

PRINT NAME:

**BERKSHIRE HATHAWAY SPECIALTY  
INSURANCE COMPANY**

Date: 12/22/2023

BY:

**b6**

TITLE: Senior Complex Claims Director

PRINT NAME: Cory Kerger

**SIGNATURES OF COUNSEL FOR PURPOSES OF FED. R. CIV. P. 41(A)(2)  
DISMISSAL:**

**b6**

Counsel for FDIC-R

Counsel for William D. Aaron, Jr, William Carrouche,  
Herman Moyse III, Grish Roy Pandit, and Richard M.  
Wilkinson

Counsel for Stephen Petagna

Counsel for Ashton J. Ryan Jr.

**b6**

Counsel for Zurich American Insurance Company

Counsel for Illinois National Insurance Company

Counsel for Continental Casualty Company

Counsel for Great American E&S Insurance Company

Counsel for Federal Insurance Company

Counsel for U.S. Specialty Insurance Company

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bert Benjamin, KBR  
nce Company

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Counsel for Federal Insurance Company

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Counsel for U.S. Specialty Insurance Company



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Counsel for U.S. Specialty Insurance Company

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Counsel for Great American E&S Insurance Company

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Counsel for Federal Insurance Company

**b6**

\_\_\_\_\_  
Counsel for U.S. Specialty Insurance Company

**b6**

Insurance Company

Counsel for Freedom Specialty Insurance Company

**b6**

Insurance Company

Counsel for Berkshire Hathaway Specialty Insurance Company

Counsel for XL Specialty Insurance Company

**b6**

Counsel for Freedom Specialty Insurance Company

Counsel for Market American Insurance Company

Counsel for Berkshire Hathaway Specialty Insurance  
Company

Counsel for XL Specialty Insurance Company

Counsel for Freedom Specialty Insurance Company

Counsel for Markel American Insurance Company

**b6**

Counsel for Berkshire Hathaway Specialty Insurance Company

**EXHIBIT A**

<b>Insurer</b>	<b>Policy No.</b>	<b>Settlement Contribution</b>
USSIC	<b>b4</b>	\$6,000,000.00
XL		\$8,000,000.00
INIC		\$5,000,000.00
Freedom		\$2,000,000.00
Markel		\$250,000.00
BHSI		\$250,000.00
Continental		\$1,166,666.67
Great American		\$1,166,666.67
Federal		\$1,166,666.67
<b>Settlement Amount</b>		<b>\$25,000,000.00</b>



**EXHIBIT B: PAYMENT INSTRUCTIONS**

**FDIC-R TAX IDENTIFICATION NUMBER: 20-4267219**

WIRE TRANSFER	
BANK	Federal Home Loan Bank of New York
ROUTING #	b5
FOR CREDIT TO	FDIC National Liquidation Account
ACCOUNT #	b5 New York Main Office 101 Park Avenue New York, New York 10178-0599 212-681-6800 212-441-6890 (Fax)
OTHER BENEFICIARY INFORMATION (OBI)	
RECVR FUND NUMBER (CODE)	10526
ASSET ID NUMBER	b5
IIC CONTACT INFORMATION	Sarah Rayfield Contact #: 571-618-6211
TRANSACTION DESCRIPTION	Settlement Proceeds - D & O Tower Contribution

ACH PAYMENT	
BENEFICIARY BANK NAME	Federal Home Loan Bank of New York
ABA\ROUTING TRANSIT NUMBER (RTN)	b5
BENEFICIARY	FDIC
BENEFICIARY ACCOUNT NUMBER	b5
BENEFICIARY ACCOUNT TITLE	National Receivership Account
ACCOUNT TYPE	DDA
OTHER BENEFICIARY INFORMATION (OBI)	
RECVR FUND NUMBER (CODE)	10526
ASSET ID NUMBER	b5
IIC CONTACT INFORMATION	Sarah Rayfield Contact #: 571-618-6211
TRANSACTION DESCRIPTION	Settlement Proceeds - D & O Tower Contribution



<b>CHECK PAYMENT</b>	
FOR MAIL	
FDIC P.O. BOX 971774 Dallas, Texas 75397-1774	
FOR OVERNIGHT DELIVERY TO LOCK BOX	
JPMorgan Chase (TX1-0006) ATTN: FDIC Receivership Lock Box# 971774 14800 Frye Road, 2 <sup>nd</sup> Floor Fort Worth, Texas 76155	
<b>OTHER MAIL INFORMATION TO BE INCLUDED WITH CHECK PAYMENT</b>	
RECVR FUND NUMBER (CODE)	10526
ASSET ID NUMBER	<b>b5</b>
IIC CONTACT INFORMATION	Sarah Rayfield Contact #: 571-618-6211
TRANSACTION DESCRIPTION	Settlement Proceeds - D & O Tower Contribution