

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is made and entered into by and between the **FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA** (“FDIC-R”), on the one hand, and **SJO CATLIN SYNDICATE 2003 at LLOYD’S** (“Catlin”) on the other hand. FDIC-R and Catlin are sometimes hereinafter collectively referred to as the “Parties” and each of them in the singular as a “Party”. This Agreement is effective as of February 1, 2013 (“Effective Date”).

**WHEREAS**, prior to July 25, 2008, First National Bank of Nevada (“FNB Nevada” or “Bank”) was a depository institution organized and existing under the laws of the United States, and whose deposits were insured by the Federal Deposit Insurance Corporation; and

**WHEREAS**, prior to June 30, 2008, First National Bank of Arizona (“FNB Arizona”) was a depository institution organized and existing under the laws of the United States, and whose deposits were insured by the Federal Deposit Insurance Corporation; and

**WHEREAS**, prior to June 30, 2008, FNB Nevada, FNB Arizona, and First Heritage Bank, NA (“First Heritage”) were wholly owned subsidiaries of First National Bank Holding Company (“First Holding”); and

**WHEREAS**, FNB Arizona merged into FNB Nevada on or about June 30, 2008, and thereafter FNB Nevada continued as a wholly owned subsidiary of First Holding; and

**WHEREAS**, on or about July 25, 2008, the Office of the Comptroller of the Currency closed FNB Nevada, whereupon the Federal Deposit Insurance Corporation was appointed as receiver for FNB Nevada; and

**WHEREAS**, in accordance with 12 U.S.C. § 1821(d), FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets, including but

not limited to, any and all of the Bank's claims, demands, and causes of actions against its former directors, officers and employees arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of FNB Arizona and FNB Nevada; and

**WHEREAS**, FDIC-R asserted claims against certain individuals ("Former Ds&Os") relating to their conduct as former directors and/or officers of FNB Arizona and FNB Nevada up through and including July 25, 2008 ("Professional Claims"); and

**WHEREAS**, on August 23, 2011, FDIC-R filed suit against Philip A. Lamb and Gary A. Dorris ("D&O Defendants") on the Professional Claims styled *Federal Deposit Insurance Corporation, as Receiver for First National Bank of Nevada v Gary A. Dorris and Philip A. Lamb*, in the United States District Court for the District of Arizona in case number 2:11-cv-01652-GMS ("FNB Nevada Lawsuit"); and

**WHEREAS**, on October 13, 2011, the Court in the FNB Nevada Lawsuit entered judgment in favor of FDIC-R and against the D&O Defendants severally, each in the amount of \$20 million ("Settlement Judgment"); and

**WHEREAS**, Federal Insurance Company ("Federal") issued Financial Institutions Portfolio Policy number  with a Policy Period effective from April 9, 2007 to June 9, 2008 ("Federal Policy"), which provided coverage to, among others, directors and officers of FNB Arizona and FNB Nevada according to the terms, provisions and exclusions of the Federal Policy; and

**WHEREAS**, the Former Ds&Os provided notice of the Professional Claims to Federal under the Federal Policy, and Federal acknowledged a potential for coverage subject to its reservation of rights; and

**WHEREAS**, Federal accepted the defense of the Former Ds&Os in connection with the Professional Claims, subject to its reservation of rights; and

**WHEREAS**, Catlin issued Director and Officer and Corporate Securities Liability Insurance Policy number  with a Policy Period effective from June 9, 2008 to June 9, 2009 ("Catlin Policy"), which provided coverage to, among others, directors and officers of FNB Arizona and FNB Nevada according to the terms, provisions and exclusions of the Catlin Policy; and

**WHEREAS**, the Former Ds&Os provided notice of the Professional Claims to Catlin under the Catlin Policy, and Catlin denied coverage under the Catlin Policy for the Professional Claims asserted by FDIC-R against the Former Ds&Os; and

**WHEREAS**, effective August 26, 2011, FDIC-R and the Former Ds&Os entered into an agreement settling (i) the Professional Claims asserted by FDIC-R against the Former Ds&Os, and (ii) the FNB Nevada Lawsuit against the D&O Defendants (such settlements collectively referred to as the "D&O Settlement"); and

**WHEREAS**, as part of the consideration in connection with the D&O Settlement, the Former Ds&Os and the D&O Defendants assigned to FDIC-R all of their respective rights, claims, and causes of action (including defense costs) against Catlin relating to or arising out of the Catlin Policy, the FNB Nevada Lawsuit, the Settlement Judgment or the D&O Settlement ("Assigned Claims"); and

**WHEREAS**, on October 25, 2011, FDIC-R filed suit against Catlin on the Assigned Claims styled *Federal Deposit Insurance Corporation, as Receiver for First National Bank of Nevada v. Syndicate 2003 at Lloyd's*, in the United States District Court for the District of Arizona in case number 2:11-cv-02083-PHX-SMM ("Catlin Lawsuit" or "Action"); and

WHEREAS, the Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, risk and expense of litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the Parties agree, each with the others, as follows:

1. **Settlement Payment.** As an essential covenant and condition to this Agreement, Catlin agrees to pay FDIC-R the sum of **SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000)** in lawful money of the United States of America ("Settlement Payment") within twenty (20) days of the Effective Date ("Due Date"). The Settlement Payment shall be delivered to FDIC-R by direct wire transfer pursuant to wiring instructions the FDIC-R has already provided to Catlin in writing. In the event that the Settlement Payment is not delivered to FDIC-R on or before the Due Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from such date until the date of payment.

2. **Dismissal of the Action.**

A. Upon payment of the Settlement Payment, the Catlin Lawsuit and all "Claims" (as defined below) asserted or which could have been asserted in the Action by the Parties against each other are to be dismissed, with prejudice, each Party to bear its own costs and attorneys' fees, as a matter of settlement and not as an adjudication on the merits. The Order of Dismissal shall also order the Parties to timely comply with their settlement obligations under this Agreement.

B. The term "Claims" is intended to be broadly and comprehensively defined as including any and all manner of civil or regulatory fault or liability whatsoever, whether or not presently asserted, and whether predating this instrument or arising or discovered in the future,

based upon or arising out of (i) the Catlin Policy, (ii) the Insurance Coverage, (iii) Catlin's denial of Insurance Coverage under the Catlin Policy, and (iv) the allegations and causes of action asserted or which could have been asserted by the FDIC and Catlin against each other in the Action, including, but not limited to all conceivable civil, regulatory or statutory causes of action (including but not limited to Breach of Contract, Bad Faith, and Punitive Damages), suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, express or implied warranties, negligence, controversies, agreements, promises, variances, trespasses, personal and economic injuries, damages, costs, expenses, attorneys' fees, judgments, executions, and other obligations whatsoever, in law or in equity associated with the Catlin Policy and the Insurance Coverage, whether or not presently asserted, including Claims that are not accrued or suspected to exist which, if known, would have materially affected the decision to settle the Action. The Parties acknowledge that (i) settlement has been negotiated and this Agreement is being executed with conscious appreciation that unknown, unanticipated and unsuspected Claims are being released, and (ii) the decision to settle may be based upon incomplete or inaccurate information, the risk of which is being expressly assumed. For clarity, the releases herein do not extend to or release any claims or causes of action enjoyed by the FDIC with respect to other Catlin insurance policies or other financial institutions insured by Catlin.

3. **Release of Catlin by FDIC-R.** Upon full execution of this Agreement by the Parties and full receipt of the Settlement Payment by FDIC-R, and in consideration therefor, FDIC-R, for itself and its successors and assigns, hereby releases and discharges Catlin, [redacted] (b)(4)

(b)(4) [redacted] SJOC Catlin Syndicate 2003 at Lloyd's, [redacted] and (b)(4)

(b)(4) [redacted] and their affiliates, parents, subsidiaries, employees, officers, directors,

representatives, agents, attorneys, successors and assigns, from any and all claims, causes of action, damages, personal or economic injuries, rights or liabilities whatsoever, including attorneys fees, costs and litigation expenses, whether grounded in contract, tort, equity or regulatory violation, which are based upon or arise out of the allegations and causes of action asserted or which could have been asserted by FDIC-R in the Catlin Lawsuit (including without limitation all "Claims" as defined in paragraph 2.B). The release in this paragraph 3 does not release or discharge Catlin from its obligations under this Agreement.

4. **Release of FDIC-R by Catlin.** Effective simultaneously with the release granted in Paragraph 3 above, Catlin, on behalf of itself and its employees, officers, directors, representatives, agents, attorneys, successors and assigns, hereby releases and discharges FDIC-R, and its employees, officers, directors, representatives, agents, attorneys, successors and assigns, from any and all claims, causes of action, damages, personal or economic injuries, rights or liabilities whatsoever, including attorneys fees, costs and litigation expenses, whether grounded in contract, tort, equity or regulatory violation, which are based upon or arise out of the allegations and causes of action asserted or which could have been asserted by FDIC-R, or which were asserted or could have been asserted by Catlin, in the Catlin Lawsuit (including without limitation all "Claims" as defined in paragraph 2.B). The release in this paragraph 4 does not release or discharge FDIC-R from its obligations under this Agreement.

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

6. **Execution in Counterparts.** This Agreement shall not be binding on either Party until signed and delivered by both Parties; provided, however, it may be executed in one or more counterparts and delivered by facsimile or email, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party subscribed thereto upon execution by both Parties to this Agreement. Such counterparts when so executed shall together constitute the final Agreement. Photocopies and/or facsimile and/or e-mail transmissions of original signatures shall be considered in all respects equivalent to original signatures. On the date of execution of this Agreement, both Parties shall provide notice of their execution of the Agreement to the other Party by sending or arranging to be sent an e-mail attaching a copy of the signed Agreement to the e-mail address for the attorney for such Party as set forth in paragraph 14 below.

7. **Binding Effect.** Both Parties represent and warrant that they are a party hereto or are authorized to sign this Agreement on behalf of such 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 successors and assigns.

8. **Choice of Law.** This Agreement shall be interpreted, construed and enforced according to the laws of the State of Arizona.

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



10. **No Prior Transfer of Claims.** Each Party warrants and represents that such Party has not assigned, sold, or otherwise transferred or disposed of, and will not assign, sell, otherwise transfer or dispose of, any interest in the claims settled and/or released pursuant to this Agreement.

11. **Reasonable Cooperation.** 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 perform the terms of this Agreement.

12. **Advice of Counsel.** Both Parties hereby acknowledge that such Party 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, her or its counsel. Furthermore, the Parties agree, after consultation with their attorneys, that reasonable and prudent parties in their position would enter into this Agreement to avoid the risks and uncertainty of litigation.

13. **Notices.** Any notices relating to or arising out of this Agreement shall be sent by e-mail, shall be considered delivered when received by the Party to whom it was sent, and shall be addressed to the following recipients:

**To the FDIC-R:**

Bob Rogers, Esq.

Email:

with a copy to:

John M. Brown, Esq.

Email:

**To Catlin:**

Mark Breitenbach



(b)(6) Email:

with a copy to:

Timothy J. Thomason, Esq.

(b)(6) Email:

14. **Preparation of Agreement.** This Agreement has been prepared by the combined efforts of both Parties and their respective attorneys. The Parties represent and warrant that both of them have had the unfettered opportunity to fully consult with an attorney of their own choice. This Agreement shall, therefore, be construed without regard to the authorship of the language and without any presumption or interpretation or construction in favor of any person, entity or Party.

15. **Costs and Expenses.** All costs and expenses incurred in closing and carrying out the transactions contemplated by this Agreement shall be borne by the respective Party incurring such costs and expenses.

16. **Survival.** All representations and warranties made herein shall continue and survive the execution of this Agreement, and remain binding upon the person or persons making the representation or warranty, even after this Agreement is executed.


17. **Severability.** In the event that any provision of this Agreement is declared or deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

18. **Nondisclosure.** Outside counsel for FDIC-R shall not publish on its website or in marketing materials, or otherwise disclose to any third parties any information about the terms and amount of this settlement.

19. Attorneys' Fees. If any lawsuit is brought to enforce any term or provision of this Agreement, or in connection with any dispute arising from or relating to this Agreement or to the alleged breach of this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs incurred in connection with any such lawsuit or proceeding, throughout trial and all appeals.


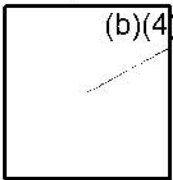
FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR  
FIRST NATIONAL BANK OF NEVADA

Date: 2-04-2013

By:  (b)(6)  
Name: Frank Campaigne

SJO CATLIN SYNDICATE 2003 at  
LLOYD'S

Date: 31 Jan 2013

By: STOOD Executor CLAIMS Counsel  
Name:  (b)(6)  
HANKLIN F. BASS  
 (b)(4)