

**SETTLEMENT AGREEMENT, RELEASE, ASSIGNMENT,
COVENANT NOT TO SUE AND COVENANT NOT TO
EXECUTE**

This Settlement Agreement, Release, Assignment, Covenant Not to Sue and Covenant Not to Execute ("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 Raymond A. Lamb ("R. Lamb"), R. Patrick Lamb ("Pat Lamb"), Philip A. Lamb ("Phil Lamb"), M. Lynn Crane ("Crane"), Gary A. Dorris ("Dorris"), Gregory J. Smith ("Smith"), and Michael Whalen ("Whalen")(R. Lamb, Pat Lamb, Phil Lamb, Crane, Dorris, Smith, and Whalen are collectively referred to as the "Settling Parties"), on the other hand. Federal Insurance Company ("Federal") is a party to this Agreement as to the obligation to make the Federal Payment as described in paragraph 1 and for purposes of the release set forth in paragraph 10 only. The FDIC-R and the Settling Parties 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 August 26, 2011 ("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), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets; and

WHEREAS, among the assets to which the FDIC-R succeeded were 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, the FDIC-R has asserted claims against the Settling Parties 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, the 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, Federal issued Financial Institutions Portfolio Policy number 6804-3288, with a Policy Period effective from April 9, 2007 to June 9, 2008 ("Federal Policy"), which

provides 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 Settling Parties 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 has accepted the defense of the Settling Parties in connection with the Professional Claims, subject to its reservation of rights; and

WHEREAS, Lloyds of London Catlin Syndicate 2003 ("Catlin") issued Director and Officer and Corporate Securities Liability Insurance Policy number DOP-91825-0608, with a Policy Period effective from June 9, 2008 to June 9, 2009 ("Catlin Policy"), which provides 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 Settling Parties provided notice of the Professional Claims to Catlin under the Catlin Policy, and Catlin has denied coverage under the Catlin Policy for the Professional Claims asserted by the FDIC-R against the Settling Parties; and

WHEREAS, this Agreement is entered into to settle (i) the Professional Claims asserted by the FDIC-R against the Settling Parties, and (ii) the FNB Nevada Lawsuit against the D&O Defendants; and

WHEREAS, the Parties are also entering into this Agreement because of (i) Catlin's refusal to defend, to advance defense costs, and to indemnify the Settling Parties in connection with the Professional Claims and the D&O Defendants in connection with the FNB Nevada Lawsuit, (ii) Catlin's failure to protect the interests of the Settling Parties by failing and refusing to settle the Professional Claims, and (iii) Catlin's failure to protect the interests of the D&O

Defendants by failing and refusing to defend, to advance defense costs, and to indemnify the D&O Defendants in connection with the FNB Nevada Lawsuit; and

WHEREAS, this Agreement is made to protect the Settling Parties and the D&O Defendants and their beneficiaries, heirs, successors, and assignees from further exposure to monetary loss in connection with the Professional Claims and the FNB Nevada lawsuit. The FDIC-R is willing to provide the Settling Parties and the D&O Defendants such protection, under the terms of this Agreement, in consideration of the promises and warranties set forth herein, including the assignment of rights, claims, and causes of action (including defense costs) that the Settling Parties and the D&O Defendants have or may acquire against Catlin and its agents, brokers, employees, officers and any other persons or entities relating to or arising out of any applicable insurance policy or policies, the Professional Claims, the FNB Nevada Lawsuit, the Settlement Judgment (as defined in paragraph 2 herein), or the Settlement Funds (as defined in paragraph 1 herein), including but not limited to all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Catlin's duties to indemnify the Settling Parties for the Professional Claims and the D&O Defendants for any judgment against them in the FNB Nevada Lawsuit, and to settle and pay the Professional Claims on behalf of the Settling Parties, and to settle and pay for the settlement of the FNB Nevada Lawsuit on behalf of the D&O Defendants. This Agreement is entered into under the authority of *Damron v. Sledge*, 105 Ariz. 151, 460 P.2d 997 (1969), and related cases; and

WHEREAS, in reaching this Agreement, the parties have specifically relied upon a letter written on behalf of Catlin by Lisa L. Shrewsberry to Jeanne Deni, Esq., dated June 30, 2010, denying coverage and refusing to defend or indemnify the Settling Parties for the Professional

Claims. The FDIC-R, the Settling Parties and the D&O Defendants believe that the conduct of Catlin is wrongful and violates principles of good faith and fair dealing under Arizona law; 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, assignments, covenants and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the Parties agree, each with the others, as follows:

1. Settlement Payment.

A. As an essential covenant and condition to this Agreement, Raymond A. Lamb agrees to pay the FDIC-R the sum of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000) ("R. Lamb Payment"), R. Patrick Lamb agrees to pay the FDIC-R the sum of TEN THOUSAND DOLLARS (\$10,000) ("Pat Lamb Payment"), and Federal agrees to pay the FDIC-R the limits of liability under the Federal Policy which remain after paying the Settling Parties' defense costs ("Federal Payment"), and exhausts that Policy. Federal will make an initial payment to FDIC-R in the sum of SEVEN MILLION DOLLARS (\$7,000,000) ("First Federal Payment") and, after a period of time described in paragraph B of this Section, Federal agrees to pay the balance of the Federal Payment to the FDIC-R ("Second Federal Payment"). The First Federal Payment plus the Second Federal Payment plus all of the Settling Parties' defense costs paid by Federal constitute payment in full of the TEN MILLION DOLLARS (\$10,000,000) limits of liability available under the Federal Policy and such amounts will exhaust the Federal Policy. The R. Lamb Payment, the Pat Lamb Payment and the Federal Payment are hereinafter collectively referred to as the "Settlement Funds". The Settlement Funds shall be paid as described in paragraph B.

B. The Settlement Funds shall be paid to FDIC-R in lawful money of the United States of America. The R. Lamb Payment, the Pat Lamb Payment and the First Federal Payment shall be made on the tenth (10th) business day following full execution of this Agreement by all Parties (“First Due Date”). Each such payment shall be delivered by direct wire transfer pursuant to wiring instructions the FDIC-R will provide in writing. The FDIC-R will provide wiring instructions and a taxpayer identification number on or before the date of its execution of the Agreement. The Second Federal Payment shall be made on or before the twenty-fifth (25th) business day after the First Due Date (“Second Due Date”). In the event that the Settlement Funds are not delivered to the FDIC-R on or before the applicable Due Date as described in this paragraph B, interest shall accrue on all unpaid amounts at the rate of 5% per annum from such date until the date of payment; provided, however, the payment of interest shall not apply to Federal.

C. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC-R on or before the applicable Due Date from all Parties as described in paragraph B of this Section, then the FDIC-R, in its sole discretion, shall have the right to enforce this Agreement against any Party that has failed to deliver their share of the Settlement Funds, in which event the non-delivering Party agrees to jurisdiction in the United States District Court for the District of Arizona and agrees to pay all of the FDIC-R’s reasonable attorneys’ fees and costs expended in enforcing the terms of this Agreement

2. Entry of Settlement Judgment Against Phil Lamb and Dorris. The FDIC-R and the D&O Defendants in the FNB Nevada Lawsuit stipulate to the entry of a final and binding judgment in the FNB Nevada Lawsuit in favor of the FDIC-R and against the D&O Defendants

severally each in the amount of \$20 million (“Settlement Judgment”). The Settlement Judgment shall bear post-judgment interest (beginning from the date judgment is entered until payment) pursuant to 28 U.S.C. §1961(a). The Settlement Judgment will dismiss with prejudice the Professional Claims asserted in the FNB Nevada Lawsuit against the D&O Defendants. Upon the execution of this Agreement by all Parties, counsel of record in the FNB Nevada Lawsuit will file the Joint Motion for Entry of Judgment and proposed Final Judgment, attached as Exhibit A. The D&O Defendants agree, after consultation with their attorneys, that the amount of the Settlement Judgment is a reasonable calculation of what a jury might reasonably award the FDIC-R as damages based on the losses claimed in the FNB Nevada Lawsuit. The amount of the Settlement Judgment is approximately twenty percent (20%) of the amount of damages calculated by the FDIC-R and by the Office of the Comptroller of the Currency attributable to the Professional Claims.

3. **Assignment of Claims Against Catlin by R. Lamb, Pat Lamb, Crane, Smith, and Whalen.** In consideration for the releases set forth in paragraph 7, R. Lamb, Pat Lamb, Crane, Smith, and Whalen assign to the FDIC-R all of their rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the Professional Claims, the FNB Nevada Lawsuit, the Settlement Judgment, or the Settlement Funds, including but not limited to all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Catlin’s duties to indemnify the Settling Parties for the Professional Claims and the D&O Defendants for any judgment against them in the FNB Nevada Lawsuit, and to settle and pay the Professional Claims on behalf of the Settling Parties, and to settle and pay for the settlement of the FNB Nevada Lawsuit on behalf of the D&O Defendants. The assignments under this

paragraph do not include any claims against Federal, as all such claims are being extinguished in exchange for the payments made by Federal set forth at Paragraph 1.

4. Additional Assignment of Claims Against Catlin by R. Lamb and Pat Lamb.

Separate and apart from the assignments in Paragraph 3 above, R. Lamb and Pat Lamb assign to the FDIC-R all of their rights, claims, and causes of action against Catlin and its agents, brokers employees, officers and all other persons or entities relating to or arising out of the R. Lamb Payment and the Pat Lamb Payment, including but not limited to all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Catlin's duties with respect to the Professional Claims, and specifically the duty to indemnify R. Lamb for the R. Lamb Payment and Pat Lamb for the Pat Lamb Payment. The assignments under this paragraph do not include any claims against Federal, as all such claims are being extinguished in exchange for the payments made by Federal set forth at Paragraph 1.

5. Covenant Not to Execute. In consideration for the assignments set forth in paragraph 6, the FDIC-R and its successors, assignees, agents, and any other person or entity acting on or in the FDIC-R's behalf, covenant and agree not to take any action of any kind to document, record, register as a lien, or collect against the D&O Defendants, the Settlement Judgment or any other judgment or award that results from or arises out of the FNB Nevada Lawsuit or this Agreement; save and except for each of the D&O Defendants' assets consisting of any and all right, title and interest in the Catlin Policy together with all of their respective rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the Professional Claims, the FNB Nevada Lawsuit, the Settlement Judgment, or the Settlement Funds, including but not limited to all statutory rights, contractual rights, and rights

arising in tort or otherwise, relating to Catlin's duties to the Settling Parties with respect to the Professional Claims and the D&O Defendants with respect to the FNB Nevada Lawsuit, specifically including the duty to settle and pay for the settlement of the Professional Claims on behalf of the Settling Parties, and to settle and pay for the settlement of the FNB Nevada Lawsuit on behalf of the D&O Defendants. The FDIC-R will attempt to recover and collect the Settlement Judgment solely and exclusively from Catlin and/or its agents, brokers, employees, officers and any other responsible persons or entities. The FDIC-R is solely responsible for all efforts to collect the Settlement Judgment. The FDIC-R agrees that all such efforts will be undertaken solely at its own risk and expense and that if those efforts are in any way unsuccessful, the FDIC-R shall have no recourse against the D&O Defendants or their attorneys. This covenant not to execute shall be effective immediately after the assignment set forth in paragraph 6 is executed and delivered to the FDIC-R and becomes effective.

6. **Assignment of Claims Against Catlin by Phil Lamb and Dorris.** In consideration for the covenant not to execute set forth in paragraph 5, Phil Lamb and Dorris agree to assign to the FDIC-R all of their rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the Professional Claims, the FNB Nevada Lawsuit, the Settlement Judgment, or the Settlement Funds including but not limited to all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to Catlin's duties to the Settling Parties with respect to the Professional Claim and the D&O Defendants with respect to the FNB Nevada Lawsuit, specifically including the duty to settle and pay for the settlement of the Professional Claims on behalf of the Settling Parties, and to settle and pay for the settlement of the FNB Nevada Lawsuit on behalf of the D&O Defendants. The assignments

in this paragraph 6 will be effective immediately following the entry of the Settlement Judgment and before the covenant not to execute set forth in paragraph 5 is effective. The assignments contemplated under this paragraph do not include any claims against Federal, as all such claims are being extinguished in exchange for the payments made by Federal set forth at Paragraph 1.

7. Release of R. Lamb, Pat Lamb, Crane, Smith, and Whalen by FDIC-R.

Upon execution of this Agreement by each of the Parties and full receipt of all payments due on the First Due Date, as described in paragraph 1 (the R. Lamb Payment, the Pat Lamb Payment and the First Federal Payment), plus any accrued interest, and in consideration therefore, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges R. Lamb, Pat Lamb, Crane, Smith, and Whalen and their respective heirs, executors, administrators, representatives, agents, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of their functions, duties and actions as officers and/or directors of FNB Arizona, FNB Nevada, First Heritage, and First Holding. The release in this paragraph does not release or discharge R. Lamb, Pat Lamb, Crane, Smith, and Whalen from their obligations under this Agreement.

8. Release of FDIC-R by R. Lamb, Pat Lamb, Crane, Smith, and Whalen.

Effective simultaneously with the release granted in Paragraph 7 above, R. Lamb, Pat Lamb, Crane, Smith, and Whalen, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, attorneys, representatives, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, agents, 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 FNB Arizona, FNB Nevada, First Heritage and First Holding. The release in this paragraph does not release or discharge the FDIC-R from its obligations under this Agreement.

9. **Release of FDIC-R by Phil Lamb and Dorris.** Effective simultaneously with the delivery of the assignments described in Paragraph 6 above, Phil Lamb and Dorris, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, attorneys, representatives, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, agents, 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 FNB Arizona, FNB Nevada, First Heritage, and First Holding. The release in this paragraph does not release or discharge the FDIC-R from its obligations under this Agreement.

10. **Release of Federal by FDIC-R.** Effective simultaneously with the payment of the Second Federal Payment as described in Paragraph 1, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Federal, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, attorneys, 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 the Federal Policy. The FDIC-R agrees that the Federal Policy is exhausted by payment, and any interest the FDIC-R may have under the Federal Policy is extinguished. Federal agrees that it will not seek any form of reimbursement or payment from Catlin in relation to payments Federal has made or will make under the Federal Policy.

11. **Covenants Not to Sue by Settling Parties.** Effective simultaneously with the releases granted in Paragraphs 7, 8 and 9, each of the Settling Parties, on behalf of themselves individually and their respective heirs, executors, administrators, representatives, agents, attorneys, successors and assigns, hereby covenants and agrees not to bring any judicial proceeding or make any claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, including claims for contribution or indemnity that arise from or relate to the performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and/or directors of FNB Arizona, FNB Nevada, First

Heritage, and First Holding against any other Settling Party. This covenant shall not extend to (i) any relationship that is the subject matter of any other written agreement among the Settling Parties who are signatories to such agreement, or (ii) their obligations under this Agreement.

12. Release of Insured Persons Other than the Settling Parties by FDIC-R. The FDIC-R acknowledges that it does not have any claims against any directors, officers, employees, and other individuals who may qualify as Insured Persons under the terms and conditions of the Federal Policy other than the Settling Parties (such Insured Persons other than the Settling Parties hereinafter referred to as “Insured Persons”). Nevertheless, at the request of Federal, the FDIC-R is willing to execute a release of such Insured Persons. Accordingly, effective simultaneously with the releases granted in Paragraphs 7, 8 and 9, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges all Insured Persons, their respective heirs, executors, administrators, representatives, agents, 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, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of their functions, duties and actions as officers and/or directors of FNB Arizona, FNB Nevada, First Heritage, and First Holding.

13. Express Reservations From Releases By FDIC-R.

A. Notwithstanding any other provision herein, by this Agreement the FDIC-R 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:

i. Against the Settling Parties 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, FNB Arizona or FNB Nevada, any other financial institution, or any other person or entity; and

ii. Against any person or entity not released in Paragraphs 7, 8, 9, 10 and 12.

B. Notwithstanding any other provision herein, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and

authority of the Office of the Comptroller of the Currency in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action, including civil money penalties and restitution that relate solely to the conduct of the Settling Parties as officers and/or directors of FNB Arizona, FNB Nevada, First Heritage, and/or First Holding which may arise by operation of law, rule or regulation.

C. Notwithstanding any other provision herein, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through the Department of Justice, including the United States Attorneys' Office for any federal judicial district. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et. seq.*, if appropriate. The FDIC-R specifically warrants and represents, and the Settling Parties will rely upon such representations and warranties, that Bob J. Rogers and Mullin Hoard & Brown LLP are not aware of any pending matters concerning any of the Settling Parties that are the subject of any inquiry or active investigation by the Department of Justice and/or the United States Attorneys' Office.

14. **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, except as may flow from the Settlement Judgment.

15. **Execution in Counterparts.** This Agreement shall not be binding on any Party until signed and delivered by all 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 all 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, each Party shall provide notice of his or her execution of the Agreement to each 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 of each of the other Parties as set forth in paragraph 23.

16. **Binding Effect.** Each of the Parties represent and warrant that they are a party hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

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

18. **Entire Agreement and Amendments.** This Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein, except that the Settling Parties and Federal have entered into a separate agreement among themselves regarding the payment of the Settling Parties' defense costs. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

19. **Specific Representations Warranties and Disclaimer.** The Settling Parties expressly acknowledge that in determining to settle the claims here, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information in the affidavits and or R. Lamb's unsworn financial statements submitted. If, in their affidavits or R. Lamb's unsworn financial statements, any of the Settling Parties has failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, such Settling Parties agree to cooperate fully with

the FDIC-R to transfer their interest in such asset to the FDIC-R and to sign any and all documents necessary to transfer their interest in such asset to the FDIC-R. Moreover, if, in their affidavits or R. Lamb's unsworn financial statements any of the Settling Parties has failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, the FDIC-R in its sole discretion, may exercise one or more or all of the following remedies: (i) the FDIC-R may declare any release or covenant not to execute granted to such Settling Parties as null and void; (ii) the FDIC-R may retain the Settlement Funds; (iii) the FDIC-R may sue such of the Settling Parties for damages, an injunction, and specific performance for the breach of this agreement; and (iv) the FDIC-R may seek to reinstate the FDIC-R's claims against such of the Settling Parties. Each of the Settling Parties agree that if, in their respective affidavits or R. Lamb's unsworn financial statements, they have failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, such Settling Parties consent to the reinstatement of FDIC-R's claims and waive any statute of limitations that would bar any of the FDIC-R's claims against them that were otherwise not time barred as of July 21, 2011. However, the exclusive remedy under this paragraph with respect to R. Lamb shall be to enforce the turnover of the materially excluded asset or interest.

20. No Prior Transfer of Claims. Each Settling 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 Catlin Policy or such Party's respective rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the Professional Claims, the FNB Nevada Lawsuit, the Settlement Judgment, or the Settlement Funds, including but not limited to all statutory rights, contractual rights, and rights

arising in tort or otherwise, relating to Catlin's duties to the Settling Parties with respect to the Professional Claims and to the D&O Defendants with respect to the FNB Nevada Lawsuit, specifically including the duty to settle and pay for the settlement of the Professional Claims on behalf of the Settling Parties, and to settle and pay for the settlement of the FNB Nevada Lawsuit on behalf of the D&O Defendants. The FDIC-R warrants and represents that it (i) owns 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 Settling Parties' conduct as officers and/or directors of FNB Arizona, FNB Nevada, First Heritage, and/or First Holding, and (ii) has not assigned, sold, or otherwise transferred or disposed of, and other than as contemplated by this Agreement, will not assign, sell, otherwise transfer or dispose of, any of such claims, demands, obligations, damages, actions, and causes of action, including without limitation the Professional Claims.

21. **Reasonable Cooperation.** The Settling 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. In addition, the Settling Parties will, upon request of the FDIC-R or its attorneys, provide reasonable assistance in all efforts to collect the Settlement Judgment and any other amounts based on the assigned rights, claims, and causes of action, including but not limited to responding to discovery requests, providing access to relevant non-privileged documents, giving truthful affidavits and deposition testimony upon reasonable notice and at convenient locations and times, and testifying truthfully at trial. This Agreement shall not limit or affect the testimony which the Settling Parties give in any proceeding and it is understood and agreed that the Settling

Parties will also refrain from taking any actions that will prejudice the FDIC-R's ability to collect the Settlement Judgment from any responsible party.

22. Advice of Counsel. Each Party hereby acknowledges 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 or her counsel. Furthermore, the Settling Parties and D&O Defendants agree, after consultation with their attorneys, that reasonable and prudent insureds in their position would enter into this Agreement to avoid the risk of liability to the FDIC-R as alleged in the FNB Nevada Lawsuit. Neither the terms of this Agreement nor any judgment entered against the D&O Defendants in the FNB Nevada Lawsuit pursuant to this Agreement are a concession that any of the Settling Parties or the D&O Defendants believe they committed any wrongful act in connection with the Professional Claims as alleged in the FNB Nevada Lawsuit.

23. 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: brogers@fdic.gov

with a copy to:

John M. Brown, Esq.
Email: jmb@mhba.com

To R Lamb:

Robert J. Novak, Esq.
Email: RNovak@jsslaw.com

To Pat Lamb:

Amelia T. R. Starr, Esq.
Email: amelia.starr@davispolk.com

To Phil Lamb and/or Dorris:

Ronald R. Glancz, Esq.
Email: RRGlancz@Venable.com

To Crane and/or Smith and/or Whalen:

D. Jean Veta, Esq.
Email: jveta@cov.com

To Federal:

Allison Rose
allisonrose@chubb.com

24. **Preparation of Agreement.** This Agreement has been prepared by the combined efforts of all the Parties and their respective attorneys. The Parties represent and warrant that each of them has 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.

25. **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.

26. **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.

27. **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.

28. **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: 8-26-2011

By: *Scott Taylor*
Name: V. SCOTT TAYLOR
ATTY-IN-FACT

Date: _____

Raymond R. Lamb

Date: _____

R. Patrick Lamb

Date: _____

Philip A. Lamb

Date: _____

27. 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.

28. 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.

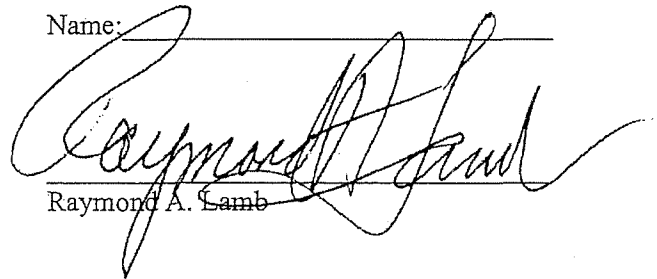
**FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
FIRST NATIONAL BANK OF NEVADA**

Date: _____

By: _____

Name: _____

Date: August 26, 2011


Raymond A. Lamb

Date: _____

R. Patrick Lamb

Date: _____

Philip A. Lamb

Date: _____

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

Date: _____

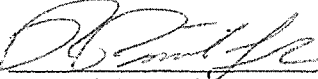
By: _____

Name: _____

Date: _____

Raymond R. Lamb

Date: 8/26/11



R. Patrick Lamb

Date: _____

Philip A. Lamb

Date: _____

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

Date: _____

By: _____

Name: _____

Date: _____

Raymond R. Lamb

Date: _____

R. Patrick Lamb


Date: 8-25-11



Philip A. Lamb

Date: _____

26 August 2011


M. Lynn Crane

Date: _____

Gary A. Dorris

Date: _____

Gregory J. Smith

Date: _____

Michael Whalen

FEDERAL INSURANCE COMPANY


Date: _____

By: _____

Name: _____

M. Lynn Crane

Date: 8-26-11



Gary A. Dorris

Date: _____

Gregory J. Smith

Date: _____

Michael Whalen

FEDERAL INSURANCE COMPANY

Date: _____

By: _____

Name: _____

M. Lynn Crane

Date: _____

Gary A. Derris

Date: 8-26-2011

Gregory J. Smith

Date: _____

Michael Whalen

FEDERAL INSURANCE COMPANY

Date: _____

By: _____

Name: _____

M. Lynn Crane

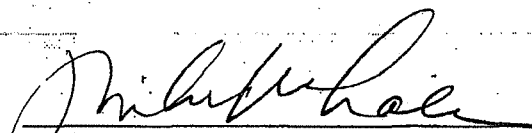
Date: _____

Gary A. Dorris

Date: _____

Gregory J. Smith

Date: August 26, 2011



Michael Whalen

FEDERAL INSURANCE COMPANY

Date: _____

By: _____

Name: _____

M. Lynn Crane

Date: _____

Gary A. Dorris

Date: _____

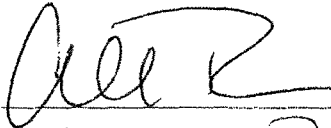
Gregory J. Smith

Date: _____

Michael Whalen

FEDERAL INSURANCE COMPANY

Date: 8/26/11

By: 
Name: ALLISON ROSE

**EXHIBIT A TO
SETTLEMENT AGREEMENT,
RELEASE, ASSIGNMENT,
COVENANT NOT TO SUE AND
COVENANT NOT TO EXECUTE**

FEDERAL DEPOSIT INSURANCE CORP.

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Attorneys for Federal Deposit Insurance Corporation,
as Receiver for First National Bank of Nevada

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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

Plaintiff,

v.

GARY A. DORRIS, an individual;
and PHILIP A. LAMB, an
individual,

Defendants.

Case No. 2:11-cv-01652-GMS

JOINT MOTION FOR ENTRY
OF JUDGMENT

This case arises out of the failure of First National Bank of Nevada. The Federal Deposit Insurance Corporation, as receiver of First National Bank of Nevada (“FDIC Receiver”) has filed herein its complaint alleging breaches of fiduciary duty and acts of negligence and gross negligence in connection with the defendants’ roles as officers and directors of First National Bank of Arizona and First National Bank of Nevada (“Complaint”).¹

Defendants have filed an answer herein in which they deny the allegations in the Complaint.

Lloyds of London Catlin Syndicate 2003 (“Catlin”) has denied coverage, refused to defend, to advance defense costs, to indemnify, or to consider settlement of the claims brought against defendants in this action. Plaintiff and defendants have therefore entered into a Settlement Agreement, Assignment, Release and Covenant Not to Execute under the authority of *Damron v. Sledge*, 105 Ariz. 151, 460 P.2d 997 (1969), and related cases. Even though in their answer defendants have denied any liability to FDIC Receiver, defendants consent to the entry of the judgments described below for the purpose of compromising disputed claims.

¹ First National Bank of Arizona was merged into First National Bank of Nevada on or about June 30, 2008, less than thirty days before First National Bank of Nevada failed.

Pursuant to the parties' settlement agreement, FDIC Receiver, and Philip A. Lamb and Gary A. Dorris, have stipulated to entry of the following several judgments (both such judgments hereinafter collectively "Final Judgment"): a judgment in the amount of TWENTY MILLION DOLLARS (\$20,000,000) (plus post-judgment interest) against defendant Philip A. Lamb, and a judgment in the amount of TWENTY MILLION DOLLARS (\$20,000,000) (plus post-judgment interest) against defendant Gary A. Dorris. FDIC Receiver, and Philip A. Lamb and Gary A. Dorris, agree that the amounts stipulated in the Final Judgments are reasonable calculations of what a jury might reasonably award plaintiff as damages based on the allegations of the Complaint.

As part of the parties' settlement, defendants have agreed that once the Final Judgment is entered herein, defendants will assign to FDIC Receiver all of defendants' rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of (i) any applicable insurance policy or policies, (ii) the claims made by FDIC Receiver against certain former directors and/or officers of FNB Arizona and FNB Nevada up through and including July 25, 2008, and/or (iii) this lawsuit (all as more fully described in the parties' settlement agreement) ("Assigned Claims"). In consideration for

these assignments, and effective after such assignments have been delivered to FDIC Receiver, FDIC Receiver has agreed not to take any action of any kind to assign, document, record, register as a lien, or collect against defendants, the Final Judgment; save and except for each of the defendant's assets consisting of any and all right, title and interest in the Catlin Policy together with all of their respective rights, claims, and causes of action in the Assigned Claims. FDIC Receiver will thereafter dismiss this suit with prejudice.

Because Catlin has denied coverage, it cannot intervene in this lawsuit to challenge the terms of the stipulated judgment. *Mora v. Phoenix Indem. Ins. Co.*, 196 Ariz. 315, 319-20, 996 P.2d 116, 120-21 (App. 1999)(when an insurer denies coverage, it asserts that the policy does not apply to the litigation and therefore "no policy reason justifies allowing it to intervene and help determine the outcome of the litigation"). Indeed, Catlin is not entitled to notice of the *Damron* settlement. *Holt v. Utica Mut. Ins. Co. v. Paynter*, 122 Ariz. 198, 202, 593 P.2d 948, 952 (App. 1979).² Catlin can assert any objections to the judgment in response to plaintiff's effort to collect the judgment. *Parking Concepts, Inc. v. Tenney*, 207 Ariz. 19, 22

² Defendants and others provided Catlin with timely notice of the director and officer claims being made by FDIC Receiver in connection with First National Bank of Arizona and First National Bank of Nevada. Defendants and others gave Catlin at least two opportunities to provide a defense to the FDIC Receiver's claims. On both occasions, Catlin rejected the insureds' request for coverage and a defense, and reaffirmed its denial of coverage.

fn. 3, 83 P.3d 19, 22 fn. 3 (2004). This court can therefore enter the stipulated Final Judgment in the form attached. The proposed Final Judgment is a complete and final judgment addressing all claims against all defendants. Plaintiff and all defendants, by joining in this motion, agree to the form of the accompanying judgment.

The parties stipulate to the entry of judgment on the following terms:

(1) In favor of plaintiff and against defendant Gary A. Dorris on plaintiff's first and second claims for relief set forth in the Complaint, in the amount of TWENTY MILLION DOLLARS (\$20,000,000), to bear post-judgment interest (beginning from the date judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

(2) In favor of plaintiff and against defendant Philip A. Lamb on plaintiff's first and second claims for relief set forth in the Complaint, in the amount of TWENTY MILLION DOLLARS (\$20,000,000), to bear post-judgment interest (beginning from the date judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

(3) The judgments against the defendants are several and no amount recovered by plaintiff on the judgment against one of the defendants shall be credited on the judgment against the other defendant.

(4) Plaintiff will bear the costs of court.

Respectfully submitted _____, 2011.

By: _____

**FEDERAL DEPOSIT INSURANCE
CORPORATION**

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*Counsel for Federal Deposit Insurance
Corporation, as Receiver for First National
Bank of Nevada*

By: _____

VENABLE LLP

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Arizona Bar Number 024697

*Counsel for Defendants Philip A. Lamb and
Gary R. Dorris*

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

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

Plaintiff,

v.

GARY A. DORRIS, an individual;
And PHILIP A. LAMB, an
Individual,

Defendants.

CASE NO. 2:11-cv-01652-GMS

* * * * *

FINAL JUDGMENT

On this date the Court considered the Joint Motion for Entry of Judgment ("Motion") filed herein by Plaintiff and Defendants. Having considered the pleadings and evidence before the Court, the Court finds as follows:

1. The Federal Deposit Insurance Corporation, as receiver of First National Bank of Nevada ("FDIC Receiver") has filed herein its complaint alleging breaches of fiduciary duty and acts of negligence and gross negligence in connection with Defendants' roles as officers and directors of First National Bank of Arizona and First National Bank of Nevada ("Complaint").
2. Defendants have filed an answer herein in which they deny the allegations in the Complaint.

3. Lloyds of London Catlin Syndicate 2003 ("Catlin") has denied coverage, refused to defend, to advance defense costs, to indemnify, or to consider settlement of the claims brought against Defendants in this action.

4. Plaintiff and Defendants have therefore entered into a settlement agreement pursuant to which their answer notwithstanding, the Defendants consent to the entry of the following several judgments for the purpose of compromising disputed claims: a judgment in the amount of TWENTY MILLION DOLLARS (\$20,000,000) (plus post-judgment interest) against defendant Philip A. Lamb, and a judgment in the amount of TWENTY MILLION DOLLARS (\$20,000,000) (plus post-judgment interest) against defendant Gary A. Dorris (such judgments are hereinafter collectively referred to as the "Stipulated Judgments").

5. The amounts of the Stipulated Judgments are reasonable calculations of what a jury might reasonably award Plaintiff as damages based on the allegations of the Complaint.

6. Further, as part of the parties' settlement, Defendants have agreed that once the Stipulated Judgments are entered herein, Defendants will assign to Plaintiff all of their rights, claims, and causes of action against Catlin and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of (i) any applicable insurance policy or policies, (ii) the claims made by FDIC Receiver against certain former directors and/or officers of First National Bank of Arizona and First National Bank of Nevada up through and including July 25, 2008, and/or (iii) this lawsuit, (all as more fully described in the

parties' settlement agreement) ("Assigned Claims"). In consideration for these assignments, and effective after such assignments have been delivered to Plaintiff, and said Plaintiff has agreed not to take any action of any kind to assign, document, record, register as a lien, or collect against defendants, the Stipulated Judgments; save and except for each of the defendant's assets consisting of any and all right, title and interest in the Catlin Policy together with all of their respective rights, claims, and causes of action in the Assigned Claims ("FDIC Covenant"). Plaintiff will thereafter dismiss this suit, which includes all of the Plaintiff's claims against Defendants related to their conduct as former directors and/or officers of First National Bank of Arizona and First National Bank of Nevada up through and including July 25, 2008, with prejudice.

7. The parties' settlement is reasonable.

8. The Stipulated Judgments will be complete and final judgments addressing all claims against all defendants.

9. The Motion is well taken and should be **GRANTED**.

IT IS THEREFORE ORDERED and ADJUDGED as follows:

A. Judgment is entered in this matter in favor of Plaintiff against Defendant Gary A. Dorris on Plaintiff's first and second claims for relief set forth in the Complaint, in the amount of TWENTY MILLION DOLLARS (\$20,000,000), to bear post-judgment interest (beginning from the date this judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

B.. Judgment is entered in this matter in favor of Plaintiff against Defendant Philip A. Lamb on Plaintiff's first and second claims for relief set forth

in the Complaint, in the amount of TWENTY MILLION DOLLARS (\$20,000,000), to bear post-judgment interest (beginning from the date this judgment is entered until payment) pursuant to 28 U.S.C. § 1961(a).

C. The judgments against Defendants are several, and no amount recovered by Plaintiff on the judgment against one of the Defendants shall be credited on the Judgment against the other Defendant.

D. Plaintiff FDIC shall not assign or, upon the FDIC Covenant becoming effective, execute on the Stipulated Judgment except as to each of the defendant's assets consisting of any and all right, title and interest in the Catlin Policy together with all of their respective rights, claims, and causes of action in the Assigned Claims.

E. Upon the assignment of the Assigned Claims to Plaintiff by Defendants, the FDIC Covenant shall become effective.

F. Within ten (10) days after the FDIC Covenant becomes effective, Plaintiff shall file herein its motion for order of dismissal of this case with prejudice.

G. This Judgment is subject to the further jurisdiction of this Court pending the Plaintiff's resolution of the Assigned Claims against Catlin.

H. Plaintiff shall pay all court costs.

SIGNED and ENTERED this _____ day of _____, 2011.

United States District Judge