

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 National Bank of Edinburg, Texas (“FDIC-R”); Progressive Casualty Insurance Company (“Progressive”); and BD Texas, LLC, JJJ Walker, LLC, Renaissance Properties of Texas, LLC, Priya Properties, LLC, Dynafab USA, LLC, and KW Hospital Acquisitions, LLC (the “LTHM Plaintiffs”) (FDIC-R, Progressive, and LTHM Plaintiffs are collectively referred to as the “Parties.”).

RECITALS

WHEREAS:

On September 13, 2013, the Office of the Comptroller of the Currency closed First National Bank of Edinburg, Texas (“FNB” or “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 Progressive, its former insurer, related to Progressive’s denial of coverage under the Bank’s Directors & Officers Liability Policy No. (the (b)(4) “Policy”);

Prior to September 13, 2013, FNB was a depository institution organized and existing under the laws of the United States;

On August 21, 2012, prior to the Bank’s failure, FNB sued defendant Progressive in the case styled, *First National Bank of Edinburg v. Progressive Casualty Insurance Company*, civil

action no. 7:12-CV-00358 (S.D. Tex.) (the "Litigation") for Progressive's denial of coverage under the Policy;

Progressive's denial of coverage related to claims asserted against the Bank by the LTHM Plaintiffs in the case styled, *JJJJ Walker, LLC, et al. v. First National Bank, et al.*, cause no. 2010-41034 in the 281st Judicial District Court, Harris County, Texas ("LTHM Lawsuit");

On January 28, 2013, the LTHM Plaintiffs and FNB reached a settlement of the claims asserted in the LTHM Lawsuit (the "FNB Settlement Agreement");

On November 12, 2013, each of the six LTHM Plaintiffs filed a Proof of Claim with the FDIC-R claiming an interest in the Policy stemming from the FNB Settlement Agreement;

On November 27, 2013, the LTHM Plaintiffs collectively filed a Motion for Leave to Intervene in the Litigation to assert their alleged interest in the Policy stemming from the FNB Settlement Agreement;

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 and LTHM Plaintiffs

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement, Progressive agrees to pay the sum of \$575,000 to resolve the Litigation and the FDIC-R's claims under the Policy ("Settlement Payment").

B. Progressive shall deliver 50 percent (\$287,500) of the Settlement Payment

directly to the FDIC-R by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R, or wire transfer with notice to the attorneys for Progressive.

C. In order to fulfill in full any and all obligations owed by Bank and/or FDIC-R under the terms of the FNB Settlement Agreement, Progressive shall deliver the remaining 50 percent (\$287,500) of the Settlement Payment to the trust account of McWhorter, Cobb & Johnson L.L.P. for the benefit of the LTHM Plaintiffs by check or direct wire transfer or by certified or cashier's check drawn upon a depository institution acceptable to LTHM Plaintiffs.

D. In the event that the Settlement Payment is not delivered to the FDIC-R and LTHM Plaintiffs (through their counsel) on or before thirty (30) calendar days following the date that this Agreement is executed, interest shall accrue on all unpaid amounts at the rate of 5% per annum from that date until the date of payment.

E. If the FDIC-R and LTHM Plaintiffs do not receive the Settlement Payments in full on or before the date determined by subsection D, above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or
2. Enforce this Agreement, in which Progressive agrees to jurisdiction in United States District Court in the Southern District of Texas and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or
3. Terminate the Agreement, move to vacate any dismissal order to which

Progressive agrees to consent, and institute an action on the FDIC-R's claims. Progressive further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.E.1 for delivery of the Settlement Payment or 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.E.2 through I.E.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within seven business days after the execution of this Settlement Agreement by all Parties, LTHM Plaintiffs shall dismiss or take steps to unfile or withdraw their Motion for Leave to Intervene in *First National Bank of Edinburg v. Progressive Casualty Insurance Company*, civil action no. 7:12-CV-00358 (S.D. Tex.). Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payments, plus any accrued interest, LTHM Plaintiffs will send a certified letter addressed to the FDIC as Receiver for First National Bank, Edinburg, Texas at 1601 Bryan Street, Dallas, Texas 75201, notifying the FDIC-R of LTHM Plaintiffs withdrawal of all Proofs of Claim filed with the FDIC-

(b)(4) R, including: (i) as to JJJ Walker, LLC, [redacted] (ii) as to DYNAFAB USA, LLC,
(b)(4) [redacted]; (iii) as to Renaissance Properties of Texas, LLC, [redacted] (b)(4)
(b)(4) (iv) as to Priya Properties LLC, [redacted] (v) as to BD Texas, LLC, [redacted] (b)(4)

Within ten 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 stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the action bearing the caption *First National Bank of Edinburg v. Progressive Casualty Insurance Company*, civil action no. 7:12-CV-00358 (S.D. Tex.).

SECTION III: Releases

A. The FDIC-R's Release.

Upon Progressive's full payment of the Settlement Payment in accordance with Section I, *supra*, and except as provided in Section III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Progressive and its 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 the Policy. As part of this release of Progressive, the FDIC-R agrees that any interest it may have under the Policy is extinguished. The FDIC-R and LTHM Plaintiffs also acknowledge that certain releases were contained in the FNB Settlement Agreement between the LTHM Plaintiffs and FNB, and nothing in this Agreement should be construed to obviate or modify such releases.

B. Progressive's Release.

Effective simultaneously with the releases granted in Section III. A. and C., Progressive, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and its successors and assigns, hereby releases and discharges the FDIC-R and the

LTHM Plaintiffs, and their 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 the Policy.

C. LTHM Plaintiffs' Release.

Effective simultaneously with the releases granted in Section III. A., above, and upon Progressive's full payment of the Settlement Payment in accordance with Section I, *supra.*, each of the LTHM Plaintiffs, for themselves and their successors and assigns, and on behalf of their parents, subsidiaries, affiliates and reinsurers, and any successors and assigns, hereby release and discharge the FDIC-R and Progressive, and their respective 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 in any way to the Litigation or paragraph 3 of the FNB Settlement Agreement. LTHM Plaintiffs also hereby, upon execution of this Agreement and upon receipt of payment in full of the Settlement Payment, withdraw and release the FDIC-R from all Proofs of Claim filed with the FDIC-R, including: (i) as to JJJ Walker, LLC, [redacted] (ii) as (b)(4) (b)(4) to DYNAFAB USA, LLC, [redacted]; (iii) as to Renaissance Properties of Texas, (b)(4) LLC, [redacted] (iv) as to Priya Properties LLC, [redacted] (v) as to BD (b)(4) (b)(4) Texas, LLC, [redacted] and (vi) as to KW Hospital Acquisition, LLC, [redacted] (b)(4) (b)(6) [redacted]

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of 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:

a. Against Progressive 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 Progressive and/or any of the LTHM Plaintiffs are or were shareholders of the Bank or its 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. Progressive and the LTHM Plaintiffs 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

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.

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 infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final 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.

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 Texas.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

(b)(6) _____
John T. Cox III

LYNN TILLOTSON PINKER & COX, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201

If to Progressive:

(b)(6) _____
John C. Riddle

STRASBURGER & PRICE, LLP
901 Main Street, Suite 4400
Dallas, Texas 75202

If to LTHM Plaintiffs:

(b)(6) _____
R. Michael McCauley, Jr.

MCWHORTER, COBB & JOHNSON, L.L.P.
1722 Broadway (79401)
P. O. Box 2547
Lubbock, Texas 79408

E. Entire Agreement and Amendments. This Agreement 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. 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 NATIONAL BANK OF
EDINBURGH

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PROGRESSIVE CASUALTY INSURANCE COMPANY

(b)(6)

Date: 4/4/14

BY: 

TITLE: Casualty Specialist Sr

PRINT NAME: Lawrence D. Leeders

BD TEXAS, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

JJJ WALKER, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

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 NATIONAL BANK OF
EDINBURGH

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PROGRESSIVE CASUALTY INSURANCE COMPANY

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

BD TEXAS, LLC

(b)(6) _____
Date: 4/2/14

BY: _____

TITLE: MANAGER

PRINT NAME: RILEY HAGAN III

JJJ WALKER, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

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 NATIONAL BANK OF
EDINBURGH

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PROGRESSIVE CASUALTY INSURANCE COMPANY

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

BD TEXAS, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

UJ WALKER, LLC

Date: 4-4-14

BY:  _____

TITLE: manager

PRINT NAME: Grey Walker

(b)(6)

RENAISSANCE PROPERTIES OF TEXAS, L.L.C.

b)(6)

Date: 4/2/2014

BY: _____



TITLE: _____

Manager

PRINT NAME: _____

Robert A. Maurin, III

PRIYA PROPERTIES, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DYNAFAB USA, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

KW HOSPITAL ACQUISITIONS, LLC

Date: .. _____

BY: _____

TITLE: _____

PRINT NAME: _____

RENAISSANCE PROPERTIES OF TEXAS, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PRIYA PROPERTIES, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DYNAFAB USA, LLC

(b)(6)

Date: _____

BY: _____

TITLE: MANSUNG MELTZER

PRINT NAME: RAJAL A. GOMEZ

KW HOSPITAL ACQUISITIONS, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

RENAISSANCE PROPERTIES OF TEXAS, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PRIYA PROPERTIES, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

DYNAFAB USA, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

KW HOSPITAL ACQUISITIONS, LLC

Date: 4/2/14

BY: Kailee Wong (b)(6)

TITLE: Manager

PRINT NAME: Kailee Wong

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 NATIONAL BANK OF
EDINBURGH

(b)(6)

Date: 31 MAR 2014

BY:

[Redacted Signature Box]

TITLE: Senior Attorney

PRINT NAME: David C. Joseph

PROGRESSIVE CASUALTY INSURANCE COMPANY

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

BD TEXAS, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

JJJ WALKER, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

RENAISSANCE PROPERTIES OF TEXAS, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

PRIYA PROPERTIES, LLC

(b)(6)

Date: 2/16/14

BY: 

TITLE: Manager

PRINT NAME: RASA TAJWARI MD

DYNAFAB USA, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

KW HOSPITAL ACQUISITIONS, LLC

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____