

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 9th day of May, 2012, by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation, in its capacity as Receiver of First State Bank of Altus, Oklahoma ("FDIC"), and Andrews Davis, a Professional Corporation, D. Joe Rockett, and Matthew H. Griffith (collectively the "Settling Defendants"), and Oklahoma Attorneys Mutual Insurance Company ("OAMIC") (individually, the FDIC, the Individual Defendants and the Insurance Company may be referred to herein as "Party" and collectively as the "Parties").

### RECITALS

#### WHEREAS:

A. Prior to July 31, 2009, First State Bank of Altus, Oklahoma ("Bank") was a depository institution organized and existing under the laws of Oklahoma. On July 31, 2009, the Bank was closed by the Oklahoma State Banking Department and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as Receiver 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 as Receiver succeeded were any and all of the Bank's claims, demands, and causes of actions against its former attorneys arising from the performance, nonperformance, and manner of performance of legal services for the Bank.

B. On October 26, 2011, the FDIC filed a complaint for money damages against the Settling Defendants, claiming that they had served as attorneys of the Bank and had breached certain duties to the Bank. *Federal Deposit Insurance Corporation, in its capacity as Receiver of First State Bank of Altus, Oklahoma v. Andrews Davis, a Professional Corporation, D. Joe Rockett, and Matthew H. Griffith*, Case No. CIV-11-1221-JWL (W.D. Okla.) (the "Lawsuit"). The Settling Defendants have denied liability in the Lawsuit.

C. OAMIC issued Lawyers Professional Liability Policy Number  (the "Policy"), which insured the Settling Defendants according to the terms, provisions and conditions of the Policy. The Settling Defendants have made claims under the Policy.

(b)(4)

D. The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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**

A. As an essential covenant and condition to this Agreement, OAMIC, as insurer for the Settling Defendants, agrees to pay the FDIC the sum of Six Hundred Thousand Dollars (\$600,000) ("the Settlement Funds"). The Settling Defendants consent to this payment. Time is of the essence in this Agreement.

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than May 15, 2012, the Settlement Funds shall be delivered to FDIC by direct wire transfer into an account designated by FDIC in Exhibit A hereto. In the event that the Settlement Funds are not delivered to the FDIC by May 15, 2012, interest shall accrue on all unpaid amounts at the rate of 5% per annum from May 15, 2012 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC by May 15, 2012 as a result of the FDIC's failure to execute this Agreement, no interest shall accrue until the day after the FDIC executes this Agreement.

C. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds are not received by the FDIC on or before May 15, 2012, then the FDIC, in its sole discretion, shall have the right at any time to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against the Settling Defendants and OAMIC, in which event each of them agrees to

jurisdiction in the United States District Court for the Western District of Oklahoma and agrees to pay all of the FDIC's reasonable attorney's fees expended in enforcing the terms of this Agreement.

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

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus any accrued interest, the parties to the Lawsuit shall file therein a stipulation of dismissal with prejudice, with each party to bear its own attorney's fees and costs.

### **SECTION III: Releases**

#### **A. Release of Settling Defendants by FDIC.**

Effective upon receipt in full of the Settlement Funds plus any accrued interest and dismissal described in SECTIONS I and II above, and except as provided in PARAGRAPH III.C below, the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, successors, assigns, attorneys, members, shareholders, partners, employees, and their insurers (including but not limited to OAMIC) from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, at law or in equity, belonging to the FDIC, that arise from or relate to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties, and actions as attorneys for the Bank, including without limitation the causes of action known and unknown that were or could have been alleged in the Lawsuit.

#### **B. Release of FDIC by the Settling Defendants and OAMIC.**

Effective simultaneously with the release granted in PARAGRAPH III.A above, the Settling Defendants and OAMIC, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors, and assigns, hereby release and discharge FDIC, 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, the causes of action alleged in the Lawsuit, or the Policy.

C. Express Reservations From Releases By FDIC.

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

a. against any of the Settling 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, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released in this Agreement;

and

c. which are not expressly released in Paragraphs III.A above.

Similarly, the Settling Defendants do not release, and expressly preserve fully and to the same extent as if the Agreement had not been executed, any defenses, counterclaims, and rights they may have to any of the causes of actions described in subparts (a) through (c) above.

2. Notwithstanding any other provision, the FDIC by and through this Agreement cannot, and thus does not, purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the Western District of Oklahoma, or any other federal judicial district. In addition, the FDIC 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.

## SECTION V: Representations and Acknowledgements

A. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this Agreement.

B. Binding Effect. Each of the undersigned persons represents and warrants 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.

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 Oklahoma.

D. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties concerning the matters set forth herein. 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).

E.. Reasonable Cooperation. The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

F. Advice of Counsel. Each party hereby acknowledges that 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, her, or its counsel.

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 OF FIRST STATE BANK OF ALTUS,  
OKLAHOMA

(b)(6)

Date: 5/9/12



TITLE: Counsel

PRINT NAME: Barry H. Gottfried

ANDREWS DAVIS, P.C.

(b)(6)

(b)(6)

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

BY:

(b)(6)

TITLE:

*President*

(b)(6)

PRINT NAME:

*David Romero*

(b)(6)

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

D. JOE ROCKETT

(b)(6)

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

MATTHEW H. GRIFFITH

OKLAHOMA ATTORNEYS MUTUAL INSURANCE  
COMPANY

(b)(6)

Date: 5/7/12

BY:  (b)(6)

TITLE: SENIOR VICE-PRESIDENT

PRINT NAME: WILLIAM R. BANDI



**EXHIBIT A**

**WIRING INSTRUCTIONS**

(b)(2),(b)(4)

(b)(2),(b)(4) **BANK:** Federal Home Loan Bank of [REDACTED]

(b)(2),(b)(4) **ROUTING #:** [REDACTED]

(b)(2),(b)(4) **FOR CREDIT TO:** FDIC National Liquidation Account

(b)(2),(b)(4) **ACCOUNT #:** [REDACTED]

(b)(2),(b)(4) **OBI:** [REDACTED]; First State Bank of Altus, Altus, OK

(b)(2),(b)(4) **Contact:** Barry H. Gottfried, 703-562-2519; Professional Liability (37100)

(b)(4) **DIF Fund, Asset No.:** [REDACTED]

(b)(4) **Tax ID Number:** [REDACTED]