

## **SETTLEMENT AND RELEASE AGREEMENT**

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

The Federal Deposit Insurance Corporation as Receiver for First National Bank, Edinburg, Texas (“FDIC-R”), and Dwayne Bair, Robert Gandy III, Oscar Garza Jr., Arcadio (Felo) Guerra, Michael McCarthy, Jack McClelland, Saul Ortega, The Estate of Joe P. Pritchett and Jana L. Bickham, independent executrix of the Estate of Joe P. Pritchett, David Rogers III, and David Rogers Jr. (collectively the “Settling Individuals”) (individually, the FDIC-R and the Settling Individuals may be referred to herein as “Party” and collectively as the “Parties”).

### **RECITALS**

WHEREAS:

Prior to September 13, 2013, First National Bank, Edinburg, Texas (“Bank”) was a depository institution organized and existing under the laws of the United States;

On September 13, 2013, the Office of the Comptroller of the Currency closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against its former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

The FDIC-R has asserted claims, among others, against the Settling Individuals, each of whom served at various times as a director and/or officer of the Bank. The Settling Individuals deny liability for the claims.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty 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 undersigned Parties agree, each with the other, as follows:

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

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following the date the FDIC-R executes this Agreement (“Settlement Payment Date”), the Settling Individuals, jointly and severally, agree to pay the FDIC-R the sum of One Million, Five hundred thousand dollars (\$1.5 million) (“the Settlement Payment”).

B. The Settling Individuals shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R by notice to the attorneys for the Settling Individuals or by certified or cashier’s check drawn upon a depository institution acceptable to FDIC-R.

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) by the Settlement Payment Date, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the Settlement Payment Date until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A 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)(2); or

2. Enforce this Agreement, in which event the Settling Individuals agree to jurisdiction in United States District Court for the Northern 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. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.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.C.2 through I.C.3 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

## **SECTION II: Releases**

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

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Individuals and their respective heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Individuals' respective functions, duties and actions as officers and/or directors of the Bank.

### **B. The Settling Individuals' Release.**

Effective simultaneously with the release granted in Section II.A. above, the Settling Individuals, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, 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 Bank or to the performance, nonperformance, or manner of performance of the Settling Individuals' respective functions, duties and actions as officers and/or directors of the Bank.

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

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

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

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

D. Express Reservation of Rights of Bond Carrier.

1. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall release or prejudice the rights of Certain Underwriter's at Lloyd's London or any other underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to bring any claims by way of subrogation to the claims of the FDIC-R, against (a) any directors, officers, or employees of the Bank, including but not limited

to the Settling Individuals, in their capacities as directors, officers, or employees of the Bank or in any other capacity, or (b) any other individual or entity.

2. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of Certain Underwriter's at Lloyd's London or any other bond underwriter by way of subrogation to claims of the FDIC-R, that would not exist had this Agreement not been executed.

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

To the extent, if any, that Settling Individuals 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, Settling Individuals 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 IV: 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.

C. Financial Disclosure Representation. Each Settling Individual has submitted financial information to the FDIC-R including a personal financial statement and herein affirms that his or her financial information was true and accurate as of the date indicated thereon. Each Settling Individual expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Individuals. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Individual failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Individual agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of the Settling Individual's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Individual.

#### **SECTION V: Reasonable Cooperation**

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

B. The Settling Individuals agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. Producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;
2. Appearing as requested by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;
3. Testifying as requested by the FDIC-R, without the necessity of a subpoena, in any matter relevant to the Bank, as determined by the FDIC-R;

4. Signing truthful affidavits, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

**SECTION VI: 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: Robert J. Gibson  
Federal Deposit Insurance Corporation  
1601 Bryan Street  
Dallas, TX 75201  
  
(972) 761-8163

If to the Settling Individuals:

William D. Sims, Jr.  
Vinson & Elkins LLP  
Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
Dallas, TX 75201-2975  
Phone: 214.220.7715  
Fax: 214.999.7715

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Email:

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,  
EDINBURG, TEXAS

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Date: July 7, 2016

By: Robert Gibson   
Title: Counsel, Legal Division

SETTLING INDIVIDUALS:

(b)(6)

Date: 7/8/16

Dwayne Bait



(b)(6)

Date: 7/7/16



Robert Gandy III

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

Oscar Garza Jr.

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

Arcadio (Felo) Guerra

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

Michael McCarthy

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

Jack McClelland

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

Saul Ortega

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

David Rogers Jr.

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

Jana L. Bickham  
Independent Executrix Estate of Joe P. Pritchett

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

David Rogers III

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

Robert Gandy III

Date: 7-12-16



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Arcadio (Felo) Guerra

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Arcadio (Felo) Guerra

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Date: 7-7-2016



Michael McCarthy

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Jack McClelland

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Saul Ortega

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Independent Executrix Estate of Joe P. Pritchett

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Jack McClelland

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Date: 7/15/2014



Saul Ortega

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David Rogers Jr.

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Jana L. Bickham  
Independent Executrix Estate of Joe P. Pritchett

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David Rogers III

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David Rogers Jr.

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Jana L. Bickham  
Independent Executrix Estate of Joe P. Pritchett

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Date: 7-12-2016  
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