

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into on this 5<sup>th</sup> day of November, 2009 by and between FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA, SUCCESSOR IN INTEREST TO FIRST NATIONAL BANK OF ARIZONA ("FDIC") and JUAN CARLOS LAZCANO ("LAZCANO").

### RECITALS

WHEREAS, FDIC is the plaintiff in a civil action against LAZCANO, among other defendants, presently pending in the United States District Court for the Southern District of Florida (the "Court") bearing case number 08-21769 CIV-Gold/McAliley and styled *Federal Deposit Insurance Corporation, as receiver for First National Bank of Nevada, successor in interest to First National Bank of Arizona v. Juan Carlos Lazcano, et al.* (the "Litigation"); and

WHEREAS, FDIC and LAZCANO (together, the "Parties") desire to resolve their respective claims and defenses that were or could have been asserted in the Litigation without further litigation and have reached an agreement (this "Settlement Agreement") to resolve all claims which were or could have been asserted in the Litigation.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by FDIC and LAZCANO (the "Parties"), it is agreed as follows:

1. **Covenant of Cooperation by Lazcano** As consideration for FDIC entering into this Settlement Agreement, LAZCANO agrees to reasonably cooperate with FDIC and its attorneys, agents, employees and representatives (the "FDIC Parties") with respect to FDIC's remaining claims against other parties to the Litigation. The term "reasonably cooperate" includes, without limitation, LAZCANO'S timely and truthful response to all communications (whether by mail, telephone, electronic mail, or in person) with any FDIC Party; LAZCANO'S agreement to meet with the FDIC Parties as FDIC may reasonably deem necessary in connection with the Litigation; LAZCANO'S truthful testimony at deposition and/or trial; and any other reasonable request made by the FDIC to LAZCANO.

2. **Consent Final Judgment** As further consideration for FDIC entering into this Settlement Agreement, LAZCANO consents to the entry of a final judgment at the conclusion of the Litigation, for which execution will issue pursuant to the terms of this Settlement Agreement, in favor of FDIC and against LAZCANO, in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) (the "Consent Final Judgment").

3. **Event of Default** The failure of LAZCANO to "reasonably cooperate," as set forth in Paragraph 1, above, shall be an event of default under this Settlement Agreement. Notice of Default, if any, shall be sent to LAZCANO at the following address:

JUAN C LAZCANO

(b)(4),(b)(6)



In the event of a default by LAZCANO under this Settlement Agreement, FDIC shall, upon written notice of default and the expiration of a cure period of ten (10) business days beginning upon mailing of notice of default, be entitled to the amendment or vacation of the Consent Final Judgment (if it has already been entered) and the entry of a final judgment in favor of FDIC and against LAZCANO in the amount of Four Hundred Eleven Thousand Six Hundred Fifty Seven and 18/100 Dollars (\$411,657.18), plus interest, court costs and reasonable attorney's fees (the "Default Event Final Judgment").

4. **Release to FDIC** LAZCANO shall, effective upon the execution of this Settlement Agreement, forever release, discharge, acquit, and forgive FDIC, its officers, employees, agents, representatives and assigns from any and all claims, actions, suits, demands, and each of them, if more than one, liabilities, and proceedings both at law and in equity arising from or related to the Litigation, except for any claim or cause of action necessary to enforce the terms of this Settlement Agreement. This release shall be binding upon and inure to the benefit of the Parties, their successors, assigns, and personal representatives.

5. **Representations and Warranties** In order to induce FDIC to execute, deliver, and perform this Settlement Agreement, LAZCANO warrants and represents as follows:

(i) The Settlement Agreement contemplated herein is enforceable against LAZCANO in accordance with its respective terms, subject to applicable bankruptcy and insolvency laws.

(ii) LAZCANO will not and does not intend to file for relief under any provision of the United States Bankruptcy Code, and to the extent an involuntary petition is filed, this Agreement may be revoked at the election of FDIC.

(iii) LAZCANO pledges his continued cooperation and shall execute all other documents and agreements that are reasonably necessary or incidental to fulfill the objectives of this Agreement.

6. **Jurisdiction of Court** The Court shall retain jurisdiction to enforce the terms of this Agreement.

7. **Course of Dealing** No course of dealing between FDIC and LAZCANO shall be effective to amend, modify, or change any provision of this Agreement.

8. **Modifications** This Settlement Agreement may not be amended, modified, or changed in any respect except by agreement in writing signed by FDIC and LAZCANO.

9. **Waiver** No failure on the part of FDIC to exercise or delay in exercising any right granted under this Settlement Agreement or any other agreement shall operate as a waiver

thereof, nor shall any single or partial exercise of any right under this Settlement Agreement limit any further exercise of any right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

10. **Revocation** This Settlement Agreement may be revoked by FDIC in the event any representation or warranty contained herein is found to be false in any material respect.

11. **Attorneys' Fees** In the event either party is required to file an action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to reimbursement for its reasonable attorneys' fees and costs incurred in enforcing its rights under the Settlement Agreement.

12. **Choice of Law** This Agreement shall be governed by and strictly construed in accordance with the laws of the state of Florida. In the event of any litigation arising out of the terms of this Settlement Agreement, the parties agree that venue shall be in Miami-Dade County, Florida.

13. **Integration** THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR ORAL OR WRITTEN, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS AMONG THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

14. **Captions** Paragraphs, titles, or captions are designated for convenience only and shall in no way define, limit, extend, or describe the scope of this Settlement Agreement.

15. **Drafting** Both parties hereto have drafted this document; no party shall be deemed to be the drafter of this Settlement Agreement. LAZCANO hereby acknowledges that he has been advised, and has had the opportunity, to seek the representation of legal counsel.

16. **Execution in Counterparts** This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original but each and all signed counterparts shall be deemed to constitute one and the same instrument.

17. **Jury Trial Waiver** IN CONSIDERATION OF FDIC AGREEING TO ENTER INTO THIS SETTLEMENT AGREEMENT, LAZCANO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS SETTLEMENT AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FDIC ENTERING INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, this Agreement is executed and delivered as of the day and year first above written by:

[Signatures appear on following page]

WITNESSES:

(b)(6)

[Redacted signature box]

Print Name: WILHELMO RUIZ

Print Name: RAMON PONCE DE LEON

[Redacted signature box]

(b)(6)

JUAN CARLOS LAZCANO

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA, SUCCESSOR IN INTEREST TO FIRST NATIONAL BANK OF ARIZONA

(b)(6)

[Redacted signature box]

Print Name: Bob J. Rogers

(b)(6)

[Redacted signature box]

Print Name: Verne Radebusch

(b)(6)

[Redacted signature box]

By:

Print Name: LANA J. Robertson

Title: Resolutions + Receivables Specialist