

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the Federal Deposit Insurance Corporation as Receiver for Franklin Bank, S.S.B. (“FDIC-R”), and National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) (the FDIC-R and National Union may be referred to herein individually as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to November 7, 2008, Franklin Bank, S.S.B. (“Bank”), was a depository institution organized and existing under the laws of the State of Texas.

National Union issued a Financial Institution Bond, bond number to the Bank, (b)(4) for the period April 30, 2007, to April 30, 2008 (“Bond”), which insured the Bank according to the terms, provisions, and conditions of the Bond.

On April 17, 2008, the Bank sent to National Union a notice of loss under the Bond (“Notice”), which claim was designated as Claim No. (“Claim”). On January 13, (b)(4) 2009, the Bank submitted to National Union a proof of loss with respect to the Claim (“Proof of Loss”).

On November 7, 2010, the Texas Banking Department 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 any and all claims, demands, and causes of action against insurance carriers, including National Union, that issued any Financial Institution Bonds to the Bank.

On October 24, 2014, the FDIC-R filed suit against National Union to recover on the Claim. That lawsuit is now pending in the United States District Court for the Eastern District of Virginia in *FDIC as Receiver for Franklin Bank v. National Union Fire Insurance Company of Pittsburgh, Pa.*, Case No. 1:14-cv-1408 (E.D. Va.) (the "Bond Action"). National Union has denied liability in the Bond Action.

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 as follows:

SECTION I: Payment to the FDIC-R

- A. The Recitals above are incorporated by Reference.
- B. As an essential covenant and condition of this Agreement and as consideration for the releases set forth in Section III of this Agreement, National Union agrees to pay the FDIC-R the sum of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$2,400,000.00) (the "Settlement Payment"). The Settlement Payment shall be made to the FDIC-R within thirty (30) calendar days after both Parties sign the Agreement and the FDIC-R delivers its signed Agreement to National Union (the "Payment Due Date").
- C. On or before the Payment Due Date, National Union shall deliver the Settlement Payment to the FDIC-R by check made payable to "FDIC," to this lockbox:

JPMorgan Chase (TX1-0006)

ATTN: FDIC Receivership Lock Box # [REDACTED] (b)(4)

14800 Frye Road 2nd Floor

Fort Worth TX 76155

The check or accompanying stub will contain this information: Fund 10021, Asset

(b)(5) [REDACTED], Contact Jan Hamrick, (972) 761-8111. The transmittal letter accompanying the check shall reference this information: OTHER BENEFICIARY INFORMATION (OBI): Fund

(b)(5) 10021, Asset [REDACTED], Franklin Bank Bond Settlement Funds, Contact DRR Investigations – Jan Hamrick, (972) 761-8111

D. If the FDIC-R does not receive the Settlement Payment in full on or before the Payment Due Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full to:

1. Extend the period of time for the Settlement Payment;
2. Enforce this Agreement, in which event National Union agrees to jurisdiction in the United States District Court for the Eastern District of Virginia;
3. Terminate the Agreement, move to vacate any dismissal order, to which National Union agrees to consent, and reinstitute any action on the FDIC-R's claims. National Union further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and to waive all objections, defenses, claims or counterclaims, and covenants and agrees 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.D.1 for the 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.D.2 through I.D.4 at any time prior to receipt of the Settlement Payment in full.

SECTION II: Stipulation of Dismissal

Within three (3) business days after receipt of the Settlement Payment in full, the FDIC-R shall file in the Bond Action a Stipulation of Dismissal with Prejudice in the form attached hereto as Exhibit A.

SECTION III: Releases

A. The FDIC-R's Release of National Union.

Effective upon its receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges National Union, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors, and assigns (collectively, the "National Union Released Parties"), 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 Notice, the Proof of Loss, the Claim, National Union's adjusting of the Claim, the Bond, or the Bond Action (including all claims that were asserted in the Bond Action). As part of this release of National Union and the National Union Released Parties, the FDIC-R agrees that any interest it has or may have under the Bond is extinguished.

B. National Union's Release of the FDIC-R.

Effective simultaneously with the release granted in Section III.A. above, National Union, for itself and its successors and assigns, and on behalf of the National Union Released Parties, hereby releases and discharges the FDIC-R and its 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 Notice, the Proof of Loss, the Claim, the Bond, or the Bond Action.

C. Exceptions from Releases by the 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 rights, claims, or causes of action:

a. against National Union, the National Union Released 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 the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank;

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

c. that are not expressly released in Section III.A. above.

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 3363, et seq., if appropriate.

SECTION IV: Representations and Acknowledgements

A. Authorized Signatories. Each of the undersigned persons represents and warrants that he or she is authorized to sign this Agreement on behalf of the respective Party on behalf of whom he or she is signing, and that he or she has 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.

B. 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 the Party by its counsel.

SECTION V: 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 conclude the Bond Action and to otherwise perform the terms of this Agreement.

SECTION VI: Other Matters

A. Ownership of Bond Claim. The FDIC-R represents and warrants that it is the sole owner of the Claim. The FDIC-R understands and agrees that this representation is a material portion of the consideration provided to National Union in this Agreement.

B. Assignment

Pursuant to Section 7 of the Bond, and subject to Section III of this Agreement and receipt of the Settlement Payment by the FDIC-R, the FDIC-R assigns to National Union, and National Union is subrogated to, all rights, claims, and actions the FDIC-R may have against Kamran Khan, Vijay Taneja, and any other persons, firms, corporations, or entities, except for former officers, directors, employees, agents, or affiliates of the Bank, arising from the Claim, limited to the extent of the amount of the Settlement Payment and subject to the provisions of Section 7 of the Bond.

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

D. No Precedential Value. The undersigned Parties each acknowledge and agree that neither this Agreement nor the handling of the Claim shall set precedent with any other claim under a policy or bond issued by National Union, its parents, subsidiaries, or affiliates.

E. Binding Effect. This Agreement is intended to confer rights and benefits only on the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, representatives, members, alter egos, and related entities.

Except as otherwise expressly provided herein, no person or entity other than the Parties shall have any rights under this Agreement.

F. Confidential Materials. National Union may retain possession of any and all documents produced to it by the FDIC-R in connection with the Claim; however, National Union shall not publish such documents or disclose them to any other person, except as may be necessary in connection with any claim National Union may pursue pursuant to the assignment in Section VI.B. above, or as may be permitted under the Confidentiality Agreement between the FDIC-R and Chartis Claims, Inc., effective December 1, 2010 (the "Confidentiality Agreement"). Upon the conclusion of any claim that National Union may pursue related to the Claim, or if National Union decides not to pursue such a claim, National Union shall maintain or dispose of all documents produced to it by the FDIC-R in connection with the Claim, as provided under the Confidentiality Agreement.

G. Attorney's Fees. Each Party shall bear all of its attorney's fees and costs with respect to the Notice, the Proof of Loss, the Claim, the Bond, or the Bond Action. However, in the event of litigation in connection with or concerning this Agreement, the prevailing party shall be entitled to recover all reasonable costs and expenses incurred by that Party.

H. 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. A copy of this Agreement shall be treated as an original.

I. 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.

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

If to the FDIC-R:

Stephen J. Kott
Counsel, Federal Deposit Insurance Corporation
3501 Fairfax Drive, V5-B-7016
Arlington, VA 22226

(b)(6) _____ [Redacted]

and

Bruce E. Alexander
Weiner Brodsky Kider PC
1300 19th Street, NW, 5th Floor
Washington, DC 20036

(b)(6) _____ [Redacted]

If to National Union:

Sam H. Poteet, Jr. Esq.
Justin D. Wear, Esq.
Manier & Herod
One Nashville Place
150 Fourth Avenue North, Suite 2200
Nashville, TN 37219

(b)(6) _____ [Redacted]

K. 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).

L. 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.

M. No Confidentiality. All 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 by their authorized representatives on the date hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR
FRANKLIN BANK, S.S.B.**

Date: December 14, 2015

BY: (b)(6)

TITLE: Counsel

PRINT NAME: Stephen J. Kott

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

Date: December __, 2015

BY: _____

TITLE: _____

PRINT NAME: _____