

**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 statutory successor to the Resolution Trust Corporation ("FDIC"), and Gene E. Phillips ("Phillips") (individually, the FDIC and Phillips may be referred to herein as "Party" and collectively as the "Parties").

**RECITALS**

**WHEREAS:**

On October 21, 1994, the FDIC and Phillips executed a Settlement Agreement (that agreement and any documents executed in connection therewith are referred to as the "Settlement") that resolved the professional liability claims and causes of action that FDIC possessed against Phillips associated with San Jacinto Savings Association, F.A. ("San Jacinto"), Lincoln Savings and Loan Association, F.A. ("Lincoln"), Commonwealth Federal Savings and Loan Association ("Commonwealth"), and CorEast Savings Bank ("CorEast"). Individually and collectively, San Jacinto, Lincoln, Commonwealth, and CorEast are referred to herein as the "Legacy Entities."

Pursuant to the terms of the Settlement, Phillips, William S. Freidman ("Freidman"), Syntek West, Inc. ("Syntek"), and the May Trust jointly and severally promised to pay the FDIC the sum of twenty million dollars (\$20,000,000.00). The FDIC disputes that Phillips has made all of the required payments to fulfill his obligations under the Settlement.

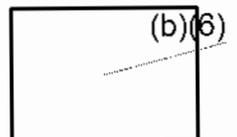
The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of litigation to resolve this matter.

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)

(b)(6)



days following the date on which FDIC has executed this Agreement, Phillips will pay the FDIC the sum of one million dollars (\$1,000,000.00) ("the Settlement Payment").

B. The Settlement Payment to the FDIC shall be made by direct wire transfer into an account designated by the FDIC by notice to Phillips. The FDIC shall provide all necessary payment instructions no later than five days after full execution of this Agreement by all Parties.

C. Subject to and without waiving the requirements set forth in Section I.A above, if the FDIC does not receive the Settlement Payment on or before the date determined by Section I.A above, then the FDIC, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment to:

1. Extend the period of time for the Settlement Payment; or
2. Enforce this Agreement, in which event Phillips agrees to jurisdiction in the United States District Court for the District of Columbia; or
3. Terminate the Agreement, or
4. 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's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of the Settlement Payment in full.

## **SECTION II: Releases**

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

Upon receipt of the Settlement Payment in full as provided in Section I, and except as provided in Section II.C, the FDIC, for itself and its successors and assigns, hereby releases and discharges Phillips, Syntek, and the May Trust, and their respective employees, officers, directors, heirs, executors, trustees, administrators, representatives, successors, and assigns (individually and collectively the "Phillips Released Parties"), 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, that arise from or relate to: (i) the Legacy Entities with respect to the Settlement, and (ii)



the performance, nonperformance, or manner of performance of their obligations under the Settlement, including any further payment obligations under the Settlement..

**B. The Settling Defendants' Release.**

Effective simultaneously with the release granted in Section II.A above, Phillips, Syntek, and the May Trust, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, successors, and assigns, hereby release and discharge the FDIC, 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 Settlement.

**C. Exceptions from Releases by FDIC.**

1. Notwithstanding any other provision of this Agreement, the FDIC 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 Phillips, Syntek, or the May Trust or any other person or entity for liability (except as released in this Agreement), if any, incurred as the maker, endorser, or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC, other financial institutions, or any other person or entity including without limitation any such claims acquired by FDIC as successor in interest to any failed financial institution (except as released in this Agreement or the Settlement); and

b. Against any person or entity not expressly released by the FDIC 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 FDIC in the exercise of its supervisory or regulatory authority or diminishing 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 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 III: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Phillips, Syntek, and the May Trust are or were shareholders of San Jacinto, Lincoln, Commonwealth, or CorEast or their holding companies, if any and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of these receivership or proceeds in any litigation that has been or could be brought against the FDIC in any capacity or against the United States based on or arising out of, in whole or in part, the closing of San Jacinto, Lincoln, Commonwealth or CorEast, or any alleged acts or omissions by the FDIC in any capacity, the United States government, or any agency or department of the United States government in connection with these aforementioned failed financial institutions, their conservatorship, or receivership, Phillips, Syntek, and the May Trust hereby knowingly assign to the FDIC any and all rights, titles, and interest in and to any and all such dividends, payments, other distributions, and 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.

#### **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 of the Agreement, and to otherwise perform the terms of this Agreement, including, without limitation, the release of any judgments or liens relating to the Settlement.

#### **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 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:

Richard S. Gill  
Counsel, Federal Deposit Insurance Corporation  
3501 Fairfax Drive, VS-B-7020  
Arlington, Virginia 22226-3500

(b)(6) [redacted]

and

If to the Settling Defendants:

Henry W. Simon  
4409 Overton Crest Street  
Fort Worth, Texas 76109

(b)(6) [redacted]

E. Entire Agreement and Amendments. This Agreement and the Settlement as modified hereby constitute the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. The Parties specifically disclaim reliance on any statements, representations, or promises made by any of the Parties prior to the execution of the Agreement which are not specifically stated in the Agreement. The Agreement may not be amended or modified, nor any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s) or other representatives(s).

F. Titles and Captions. All section titles and captions contained in the Agreement are for the convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge this Agreement shall not be confidential, and nothing in the Agreement prohibits the FDIC or the Parties from disclosing its terms.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly appointed representatives on the dates hereinafter subscribed.

[redacted] (b)(6)

FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(6) Date: 12-10-15

BY:   
Richard Gill

TITLE: Counsel

PRINT NAME: Richard S. Gill

(b)(6) Date: 12-17-15

BY:   
Gene E. Phillips

PRINTED NAME: Gene E. Phillips

REE  
D.E.P.