

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into by and between the Federal Deposit Insurance Corporation as Receiver for Williamsburg First National Bank, Kingstree, South Carolina ("FDIC-R"), and Fidelity and Deposit Company of Maryland ("Fidelity") (individually, the FDIC-R and Fidelity may be referred to herein as a "Party" and collectively as the "Parties").

### RECITALS

#### WHEREAS:

Prior to July 23, 2010, Williamsburg First National Bank (WFNB or the "Bank") was a depository institution organized and existing under the laws of the United States;

On July 23, 2010, 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 FDIC-R succeeded were any and all claims, demands, and causes of action against the Bank's financial institution bond insurer, including against Fidelity as issuer of the Bond, as that term is defined below.

On January 31, 2008, Fidelity issued for and on behalf of WFNB and WFNB Bankshares, (b)(4) Inc. Financial Institution Select Bond [redacted] (the "Bond");

The Bank sent a timely notice of loss and the FDIC-R timely submitted a proof of loss and amended proof of loss with supporting documents to Fidelity, seeking coverage under the Bond for net losses sustained of \$1,540,273.47 ("Loss") caused by James R. McDonald ("Principal") which are covered under the Bond ("Claim"); and

In determining the Loss, the FDIC-R applied the full amount of the sales proceeds realized from the sale of collateral for the loans related to the Claim ("Loans") and the full amount of appraised values of collateral not yet sold against the total loss. As such, all value from the collateral

has already been applied to reduce the loss. The only remaining recovery rights related to the Claims are the rights against the individual borrowers of the Loans ("Borrowers"), which Loans are owned by and being administered by an assuming institution ("AI") pursuant to the Purchase and Assumption Agreement dated July 23, 2010. To the extent the FDIC-R receives any future recovery from the AI as a result of the AI's collection efforts against the Borrowers individually (excluding collateral) or from the Principal (including restitution), the net recovery would be subject to the terms of the (Recovery) Section 7 of the Bond.

The Claim is subject to a \$15,000 deductible amount under the Bond.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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. The Recitals above are incorporated herein by reference.
- B. As an essential covenant and condition of this Agreement, Fidelity agrees to pay to the FDIC-R the sum of One Million, Five Hundred and Twenty-five Thousand, Two Hundred and Seventy-three Dollars and 47 Cents (\$1,525,273.47) (the "Settlement Funds").
- C. Within ten business days after the last date this Agreement is signed below (the "Payment Due Date"), the Settlement Funds shall be delivered to the FDIC-R by check payable to the FDIC as Receiver for Williamsburg First National Bank.
- D. Without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds are not received by the FDIC-R on or before 30 days following the Payment Due Date, then the Settlement Funds shall accrue interest at the then current Treasury bill rate until the Settlement Funds are received by the FDIC-R.

## **SECTION II: Releases**

### **A. Release of Fidelity by FDIC-R**

Effective upon receipt in full of the Settlement Funds, plus any accrued interest, except as provided in Paragraph II.D below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Fidelity, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action direct or indirect, in law or equity, that arise from or relate to the Claim. The FDIC-R further agrees that any interest it may have under the Bond is extinguished.

### **B. Release of FDIC-R by Fidelity**

Effective simultaneously with the Release granted in Paragraph II.A above, Fidelity, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates, and reinsurers and their successors and assigns, hereby releases and discharges the FDIC-R and its employees, officers, directors, agents, 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 Claims or the Bond including any rights of subrogation, legal equitable or otherwise except as set out in Paragraph II.C.2 below.

### **C. Waiver of Subrogation by Fidelity**

1. Except as set forth in Paragraph II.C.2 below, Fidelity agrees to and hereby does irrevocably waive any rights of subrogation it may have relating to or arising out of any of the Claims or the Bond ("Rights of Recovery"). Fidelity agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of such Rights of Recovery as it sees fit, in its sole and unfettered discretion. Any future recovery pursuant to such Rights of Recovery shall not modify or otherwise affect the amount of Settlement Funds due under this Agreement and required to be paid by Fidelity.

2. For those loans that fall within the Single Family Shared Loss Agreement under the Purchase and Assumption Agreement ("SFSLA"), the FDIC-R will pay to Fidelity any

recoveries it receives from the AI as a result of the AI's collection efforts against the Borrowers individually (net of any and all reasonable attorneys' fees and reasonable expenses incurred in connection with such recovery) to Fidelity up to the amount of the Settlement Funds, as provided herein. Within 90 days of the Termination Date of the SFSLA or the Closing Date of the Termination Agreement if the SFSLA is terminated before the Termination Date, the FDIC will review the asset level data for each of the Loans falling within the SFSLA and determine the total amount of recoveries paid to the FDIC-R attributable to collections from the Borrowers during the period from January 1, 2015 through the termination of the SFSLA, inclusive ("Recoveries"). (Amounts recovered from the disposition of the collateral for the Loans are not Recoveries). The FDIC-R will also determine any losses that it paid to the AI for the Loans under the SFSLA which exceed the losses estimated in exhibit A, attached hereto ("Excess Losses"). To the extent that any Recoveries exceed any Excess Losses, the FDIC will pay to F&D all Recoveries up to an amount not exceeding \$1,525,273.47. In the event that the SFSLA is terminated prior to the time specified in the SFSLA, by agreement or otherwise, the FDIC will exercise reasonable business judgment to allocate the portion of the termination payment applicable to each Loan for the purpose of determining Excess Losses.

3. In the event that the Principal is convicted of a criminal offense arising out of the Loss paid by Fidelity pursuant hereto, the FDIC-R acknowledges that Fidelity will be entitled to receive any restitution payments made by the Principal for the Loss ordered by the court pursuant to 18 U.S.C. § 3664(j)(1). The Parties agree that the FDIC-R is entitled to any recovery in excess of the Settlement Funds.

D. Express Reservations from Releases by FDIC-R

1. Notwithstanding any other provision contained in this Agreement, the FDIC-R 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 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 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 in this Agreement; and

c. under or relating to any policy of insurance issued by Fidelity (or any other insurer) other than the Bond; and

d. which are not expressly released in Paragraph II.A above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not waive or release any claims which could be brought by any person or entity other than the FDIC-R, including without limitation by the United States through either the Department of Justice, the United States Attorney's Office for the District of South Carolina or any other federal judicial district, or by any other agency or instrumentality of the United States government. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 USC § 3663, et. seq., if appropriate.

### **SECTION III: Representations and Acknowledgements**

#### **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 that this Agreement is not an admission or evidence of liability regarding any claim. The Parties further acknowledge and agree that Fidelity's actions and payment hereunder are limited to the particular facts and

circumstances of this claim only, and do not in any manner whatsoever modify any of the terms of the Bond, or serve as precedent on any other current or future claim.

**B. 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.

**C. Binding Effect**

Each Party represents and warrants that they 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.

**D. Choice of Law**

This Agreement shall be interpreted, construed and enforced according to the applicable federal law, or in its absence, the laws of the state of South Carolina.

**E. Entire Agreement and Amendments**

This Agreement constitutes the entire Agreement and understanding between the 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).

**F. Reasonable Cooperation**

The undersigned Parties agree to cooperate in good faith to effectuate all of 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.

G. 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 or her counsel.

H. No Confidentiality

The Parties acknowledge and agree that this Agreement is a public document that will need to be disclosed pursuant to 12 U.S.C. § 1821(s) and other applicable laws and regulations.

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

**FEDERAL DEPOSIT INSURANCE CORPORATION**

(b)(6)

Date:

3/19/15

BY:

[Redacted Signature Box]

TITLE:

Counsel

PRINT NAME:

Howard B. Klein

**FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND**

(b)(6)

Date:

3/11/15

BY:

[Redacted Signature Box]

TITLE:

Asst. V. P.

PRINT NAME:

Robert L. Lawrence