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 Receiver for Community National Bank of Sarasota County, Venice, Florida ("FDIC-R"), and Stearns Bank, N.A. ("Stearns") (individually, the FDIC-R, and Stearns may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to August 7, 2009, Community National Bank of Sarasota County ("Bank") was a depository institution organized and existing under the laws of the United States.

On August 7, 2009, 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 law firms and attorneys arising from their performance, nonperformance, and manner of performance of legal services for the Bank.

Before the Bank failed an action was filed in the Circuit Court for Sarasota County, Florida, styled *J. Fred Miller, III and Miller Thoroughbreds, LLC v. Community National Bank of Sarasota County, Case No. 2009-CA-2233NC* ("Miller Action"). The Bank maintained that its former counsel and law firm (collectively "Attorneys") were responsible, in part, for the wrongful conduct alleged in the Miller Action.

On March 10, 2009, the Bank and the Attorneys entered into a Joint Defense Agreement, and in July 2009, entered into an Addendum to Joint Defense Agreement ("Addendum") which provided for the Attorneys' insurer to pay a portion of the reasonable attorneys' fees and costs incurred by the Bank in defending the Miller Action ("Reimbursements").

After the Bank failed, a Revised Addendum to the Joint Defense Agreement ("Revised Addendum") named FDIC-R and Stearns as successors and provided that the terms and conditions of the Joint Defense Agreement and Addendum inured to the benefit of FDIC-R and Stearns.

Reimbursements have been made to and on behalf of the Parties under the Joint Defense Agreement, Addendum, and Revised Addendum and a dispute has arisen between the Parties as to the allocation and distribution of Reimbursements in the amount of Sixty-Seven Thousand Five Hundred Thirty Nine and 89/100 ($67,539.69) that are held in an Escrow Account with Stearns' counsel, Quarles and Brady, LLP ("Escrow Fund").

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

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 February 9, 2015, Stearns agrees to pay the FDIC-R the sum of Twenty-Two Thousand Four Hundred Thirty-Nine and 80/100 ($22,439.80) ("the Settlement Payment") representing the agreed allocation and distribution of the Escrow Fund to FDIC-R.

B. Stearns 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 Stearns.

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)(3); or

2. Enforce this Agreement, in which event Stearns agrees to jurisdiction in United States District Court in the Middle District of Florida 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. Terminate the Agreement, and institute an action on the FDIC-R's claims to the Escrow Fund. Stearns further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree 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.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.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Releases

A. <u>The FDIC-R's Release.</u>

Upon receipt of the Settlement Payment in full and except as provided in Section II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Stearns and its respective 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, belonging to the FDIC-R, that arise from or relate to any paid or unpaid attorneys' fees, costs, or expenses pursuant to the Joint Defense Agreement, Addendum, and Revised Addendum, or that otherwise arise from or relate to the Miller Action, including but not limited to the Escrow Fund.

B. Stearns' Release.

Effective simultaneously with the release granted in Section II.A. above, Stearns, on behalf of itself, and its respective employees, officers, directors, agents, representatives, attorneys, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, 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 any paid or unpaid attorneys' fees, costs, or expenses pursuant to the Joint Defense Agreement, Addendum, and Revised Addendum, or that otherwise arise from or relate to the Miller Action, including but not limited to the Escrow Fund.

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 Stearns 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.

SECTION III: 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 employees, officers, directors, agents, 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 that Party by its counsel.

C. Disposition of Remaining Escrow Fund. The Parties acknowledge and agree that after distribution of the Settlement Payment to FDIC-R, Stearns' counsel, Quarles and Brady, LLP, shall distribute the $45,099.89 remaining in the Escrow Fund to Stearns.

SECTION IV: 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 distribute the Escrow Fund, and to otherwise perform the terms of this Agreement.

SECTION V: Other Matters

A. <u>No Admission of Liability</u>. 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. <u>Execution in Counterparts</u>. 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. <u>Choice of Law</u>. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Florida.

D. <u>Notices</u>. 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:

Barbara Slott Pegg, Counsel
Federal Deposit Insurance Corporation
3501 N. Fairfax Dr. B7062
Arlington, VA 22226
Telephone: (703) 516-5273
(b)(6) [redacted]

If to STEARNS:

Lauren G. Raines, Esq.
Quarles & Brady, LLP
101 East Kennedy Blvd
Suite 3400
Tampa, Florida 33602

Telephone: (813) 387-0270

(b)(6) [redacted]

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 COMMUNITY NATIONAL BANK OF SARASOTA COUNTY

(b)(6)

Date: Feb 9, 2015

BY: [redacted]

TITLE: Counsel II

PRINT NAME: B. Scott Pegg

Date: 2/9/15

STEARNS BANK, N.A.

(b)(6)

BY: [redacted]

TITLE: Florida Market President

PRINT NAME: Thomas G. Zernick