

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by and between the Federal Deposit Insurance Corporation as Receiver for Integra Bank, N.A. (“FDIC-R”) and the Fidelity and Deposit Company of Maryland (“F&D”) (individually, the FDIC-R and F&D may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

#### WHEREAS:

Prior to July 29, 2011, Integra Bank, N.A. (“Bank”) was a depository institution organized and existing under the laws of the State of Indiana.

On July 29, 2011, the Office of 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.

F&D issued a Financial Institution Select Bond, Number  for the period (b)(4) July 1, 2007 to July 1, 2010 (“Bond”).

On February 11, 2011, the Bank and its holding company, Integra Bank Corporation (“IBC”), filed suit against F&D. This lawsuit is now pending in the U.S. District Court for the Southern District of Indiana in *FDIC as Receiver for Integra Bank N.A. v. Fidelity & Deposit Co. of Maryland*, Case No. 3:11-cv-00019-RLY-WGH (S.D. Ind.) (the “Bond Action”). F&D has denied liability in the Bond Action.

On August 23, 2011, the FDIC-R was substituted for the Bank as a plaintiff in the Bond Action, and on August 26, 2011, Deborah J. Caruso, as Chapter 7 Trustee for IBC (“IBC Trustee”) was substituted for IBC as a plaintiff in the Bond Action. On August 15, 2012, the

FDIC-R filed a Supplemental Complaint, and on August 27, 2012, the IBC Trustee filed a stipulation of dismissal of its alleged claims in the Bond Action as abandoned.

On July 25, 2014, the FDIC-R filed an action in the U.S. District Court for the Southern District of Indiana against certain former Bank directors and officers that is now pending as *FDIC as Receiver for Integra Bank N.A. v. Michael Vea, et al.*, Case No. 3:14-cv-00104-RLY-WGH (S.D. Ind.) (the “D&O 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 FDIC-R**

A. As an essential covenant and condition of this Agreement and in consideration for the releases set forth in Section III, F&D agrees to pay the FDIC-R the sum of SEVEN MILLION TWO HUNDRED AND TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$7,225,000.00) (the “Settlement Payment”). The Settlement Payment shall be made to the FDIC-R within thirty (30) calendar days after both Parties sign the Agreement. The parties agree that time is of the essence with respect to the obligation to make the Settlement Payment.

B. F&D shall deliver the Settlement Payment to the FDIC-R by direct check. The check shall be payable to Federal Deposit Insurance Corporation as Receiver for Integra Bank, N.A. The check shall be delivered to:

L. Anthony Lehr  
Counsel, Professional Liability Unit  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive., # B-7008

Arlington, Virginia 22226

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by Section I.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 to:

1. Extend the period of time for the Settlement Payment;
2. Enforce this Agreement, in which event F&D agrees to jurisdiction in United States District Court for the Southern District of Indiana and to pay all of the FDIC-R's reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement;
3. Terminate the Agreement, move to vacate any dismissal order, to which F&D agrees to consent, and reinstitute any action on the FDIC-R's claims. In the event that the FDIC-R reinstates the Bond Action, the reinstated action shall, for all purposes, be treated as though filed on February 11, 2011; 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.

## **SECTION II: Stipulation of Dismissal**

Within ten (10) 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 as Exhibit A.

## **SECTION III: Releases**

### **A. The FDIC-R's Release.**

Upon receipt of the Settlement Payment in full as provided in Section I, and except as

provided in Section III.D, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges F&D, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors, and assigns (collectively, the “F&D 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 in any way to

(b)(6) (1) any act, error or omission of [redacted] (2) the loans

identified in the Supplemental Complaint, (3) the Bond, (4) the allegations in the Supplemental Complaint, and (5) the Bond Action. As part of this release of F&D, the FDIC-R agrees that any interest it has or may have under the Bond is extinguished.

B. F&D’s Release.

Effective simultaneously with the release granted in Section III.A. above, F&D, for itself and its successors and assigns, and on behalf of the F&D 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 in any way to

(b)(6) (1) any act, error or omission of [redacted] (2) the loans

identified in the Supplemental Complaint, (3) the Bond, (4) the allegations in the Supplemental Complaint, and (5) the Bond Action.

C. Waiver of Subrogation by F&D.

1. F&D agrees to and hereby does irrevocably waive any rights under Section 7 of the Bond and any rights of subrogation or recovery it may have relating to the Bond (“Rights of Recovery”), including, without limitation, any rights arising from F&D’s payment of the Settlement Payment or involving any act, error, or omission of [redacted] (b)(6)

(b)(6) [redacted] the loans identified in the Supplemental Complaint, the D&O Action, or the proceeding captioned *In re Pearlman*, 6:07-bk-00761-KSJ. F&D does hereby assign, transfer, and convey to the FDIC-R any of its rights, claims, title, and interest as to any Rights of Recovery. F&D agrees that the FDIC-R may retain, sell, transfer, or otherwise dispose of any Rights of Recovery as it sees fit, in its sole discretion, and retain the proceeds (if any) thereof.

D. Exceptions from Release 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 rights, claims, or causes of action:

a. against F&D, the F&D 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 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 the Bank.

b. against F&D or the F&D Released Parties for any claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, including but not limited to claims relating to the D&O Action, other than 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 in any way to (1) any act, error or omission of [redacted] (b)(6)

(b)(6) [redacted] (2) the loans identified in the Supplemental Complaint, (3) the Bond, (4) the allegations in the Supplemental Complaint, or (5) the Bond Action;

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

d. which are not expressly released in Section III.A above.

2. 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.

4. 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.

5. Notwithstanding any other provision of this Agreement, the provisions in Sections III.D.1.a, III.D.2, and III.D.4 shall not operate to reinstate or revive any claims of the FDIC-R against F&D for loss sustained by Integra as a result of or in connection with (1) any act, error or (b)(6) omission of  (2) the loans identified in the Supplemental Complaint, (3) the Bond, (4) the allegations in the Supplemental Complaint, and (5) the Bond Action.

#### **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 that 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. 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.

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

C. 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 Indiana.

D. 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:

L. Anthony Lehr  
Counsel, Federal Deposit Insurance Corporation  
3501 Fairfax Drive, # B-7008  
Arlington, Virginia 22226

(b)(6) [Redacted]

and

Antony S. Burt  
David C. Giles  
Schiff Hardin LLP  
233 South Wacker Drive  
Chicago, Illinois 60606

(b)(6) [Redacted]

If to F&D:

Scott L. Schmookler  
Regina A. Ripley  
Gordon & Rees LLP  
One North Franklin, Suite 800  
Chicago, IL 60606

(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. 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, and as F&D deems appropriate.

In witness whereof, the Parties hereto have caused this Agreement to be executed by each of them by their duly authorized representative on the date hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR  
INTEGRA BANK, N.A.**

Date: 2-27-15

BY:

[Redacted Signature Box]

(b)(6)

TITLE: Counsel /

PRINT NAME: L. Anthony Lehr

Agreed to as to Form:

BY:

[Redacted Signature Box]

(b)(6)

David C. Giles

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

Date: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Agreed to as to Form:

BY:

[Redacted Signature Box]

(b)(6)

Scott L. Schmookler

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In witness whereof, the Parties hereto have caused this Agreement to be executed by each of them by their duly authorized representative on the date hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR  
INTEGRA BANK, N.A.**

Date: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: Counsel

PRINT NAME: L. Anthony Lehr

Agreed to as to Form:

BY: \_\_\_\_\_

[Redacted Signature]

(b)(6)

David C. Giles

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

Date: March 3, 2015

BY: \_\_\_\_\_

[Redacted Signature]

(b)(6)

TITLE: Vice President, Claims

PRINT NAME: James J. Real

Agreed to as to Form:

BY: \_\_\_\_\_

[Redacted Signature]

(b)(6)

Scott L. Schmookler

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION**

<b>THE FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Integra Bank, N.A.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	<b>Case No. 3:11-cv-00019-RLY-WGH</b>
	)	
<b>FIDELITY AND DEPOSIT COMPANY OF MARYLAND,</b>	)	<b>Hon. Richard L. Young, U.S.D.J.</b>
	)	
<b>Defendant.</b>	)	<b>Hon. William G. Hussmann, U.S.M.J.</b>

**STIPULATION TO DISMISS**

Plaintiff Federal Deposit Insurance Corporation as Receiver for Integra Bank, N.A. (“FDIC-Receiver”), and Defendant Fidelity and Deposit Company of Maryland (“F&D”), stipulate to a dismissal with prejudice of all of the FDIC-Receiver’s claims against F&D in this action, each party to bear its own costs.

/s/ Regina A. Ripley

Scott L. Schmookler  
Regina A. Ripley

GORDON & REES, LLP  
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**EXHIBIT A**