

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made as of this 27<sup>th</sup> day of April, 2011, by, between, and among the following undersigned parties:

The Plaintiff, Federal Deposit Insurance Corporation, as receiver of Corn Belt Bank and Trust Company ("FDIC"), and Jeffrey K. Stark, James L. Adkins, B. Stevens Plowman, Larry L. Summers, William R. Wilson, and Noble D. Harrison II (collectively the "Settling Defendants"), and The Ohio Casualty Insurance Company (the "Insurance Company") (individually, the FDIC, the Settling Defendants and the Insurance Company may be referred to herein as "Party" and collectively as the "Parties").

**RECITALS**

**WHEREAS:**

Prior to February 13, 2009, Corn Belt Bank and Trust Company ("Bank") was a depository institution organized and existing under the laws of the State of Illinois;

On February 13, 2009, the Bank was closed by the Illinois Department of Financial and Professional Regulation and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver 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 as receiver succeeded were any and all of the Bank's claims, demands, and causes of actions against its former directors, officers and employees arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of the Bank;

On March 1, 2011, the FDIC filed a complaint for money damages against various Settling Defendants, who had each served at various times as directors and/or officers of the Bank. Those claims for damages are now pending in the United States District Court for the Central District of Illinois, in The Federal Deposit Insurance Corporation v. Stark, et al., Docket

No. 3:11-cv-03060-LBM-BGC (the "D&O Action"). The Settling Defendants have denied liability in the D&O Action.

The Insurance Company issued directors' and officers' liability policy number [redacted] (the "Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policy. The Settling Defendants have made claims under the Policy. On June 14, 2010, the Insurance Company filed a declaratory judgment action against Jeffrey K. Stark, Larry L. Summers, B. Stevens Plowman, William R. Wilson, and Noble D. Harrison II, seeking a declaration of its rights and obligations under the Policy with regard to the claims asserted by FDIC in the D&O Action. That action is now pending in the United States District Court for the Central District of Illinois, in The Ohio Casualty Insurance Company v. Stark, et al., Docket No. 3:10-cv-03139-MPM-BGC ("the Coverage Action").

(b)(4)

The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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, each with the other, as follows:

**SECTION I: Payment to FDIC**

A. As an essential covenant and condition to this Agreement, the Settling Defendants agree to pay the FDIC the sum of \$266,000 and the Insurance Company agrees to pay the FDIC the sum of \$434,000 for a total of \$700,000 ("the Settlement Funds").

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than May 1, 2011, the Settlement Funds shall be delivered to FDIC by check payable to " the Federal Deposit Insurance Corporation or by direct wire transfer into the following designated account:

**BANK:** Federal Home Loan Bank of [redacted]

(b)(2),(b)(4)

**ROUTING #:** [redacted]

(b)(2),(b)(4)

**FOR CREDIT TO: FDIC National Liquidation Account**

(b)(2),(b)(4)

**ACCOUNT #:**

(b)(2)

**OBI: FIN**  Corn Belt Bank and Trust Company; Pittsfield, IL; Contact: Leonard J. DePasquale; 703-562-2063; Professional Liability lawsuit (37100); DIF Fund.

In the event that the Settlement Funds are not delivered to the FDIC by May 1, 2011, interest shall accrue on all unpaid amounts at the rate of 5% per annum from May 1, 2011 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC by May 1, 2011, as a result of the FDIC's failure to execute this Agreement, no interest shall accrue until the day after the FDIC executes the Agreement.

C. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC on or before May 1, 2011, then, with respect to the Party, or Parties, that fail to deliver their share of the Settlement Funds only, the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against the Party or Parties, failing to deliver their share of the Settlement Funds, in which event the non-delivering Party, or Parties, agree to jurisdiction in Federal District Court in the Central District of Illinois and agree to pay all of the FDIC's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void with respect to the non-delivering Party, or Parties, at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC declares this Agreement null and void, the FDIC will return all amounts paid to it under this Agreement by the non-delivering Party, or Parties. In no event shall the FDIC declare this

Agreement null and void with respect to any Party that has delivered its share of the Settlement Fund (including any accrued interest) on or before May 1, 2011. The failure of one Party to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

**SECTION II: Stipulation and Dismissal**

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus any accrued interest, the FDIC shall dismiss the D&O Action and the Insurance Company shall dismiss the Coverage Action. The undersigned parties agree to enter stipulation(s) providing that the dismissal(s) set forth above shall be with prejudice, with each party to bear its own costs as these were originally incurred.

**SECTION III: Releases**

A. Release of Individual Settling Defendants by FDIC.

Effective upon receipt in full of the settlement funds plus any accrued interest, and dismissal described in Sections I and II above, and except as provided in Paragraph III.H. below, the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants, and any other directors or officers of the Bank, and their respective heirs, executors, administrators, 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, belonging to the FDIC, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

B. Release of FDIC by the Settling Defendants.

Effective simultaneously with the release granted in Paragraph III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge 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 Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank or that arise from or relate to the policy.

C. Release by Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Paragraph III.B. above, the Settling Defendants, and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge each other 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 performance, nonperformance, or manner of performance of their respective functions, duties and actions as officers and/or directors of the Bank, including without limitation the causes of action alleged in the D&O Action.

D. Release of The Ohio Casualty Insurance Company by FDIC.

Effective simultaneously with the releases granted in Paragraphs III.A. and III.B. above, the FDIC, for itself and its successors and assigns, hereby releases and discharges The Ohio Casualty Insurance Company, 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 in equity, that arise from or relate to the Policy. The FDIC agrees that any interest it may have under the Policy is extinguished.

E. Release of The Ohio Casualty Insurance Company by Settling Defendants.

Effective simultaneously with the releases granted in Paragraphs III.A. and III.B. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge The Ohio Casualty Insurance Company, 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 in equity, that arise from or relate to the Policy. The Settling Defendants agree that any interest they may have under the Policy is extinguished.

F. Release of FDIC by The Ohio Casualty Insurance Company.

Effective simultaneously with the release granted in Paragraph III.D. above, The Ohio Casualty Insurance Company, 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 FDIC, 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 Policy.

G. Release of Settling Defendants by The Ohio Casualty Insurance Company.

Effective simultaneously with the releases granted in Paragraph III.E. above, The Ohio Casualty Insurance Company, 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 each of the Settling Defendants, and their respective heirs, executors, administrators, 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 Policy.

H. Express Reservations From Releases By FDIC.

1. Notwithstanding any other provision, by this Agreement, the FDIC 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 the Settling Defendants 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, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraphs III.A. or III.D. above.

2. Notwithstanding any other provision, 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 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 purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the District of Illinois or any other federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

#### **SECTION IV: Waiver of Dividends**

To the extent, if any, that Settling Defendants are or were shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other pro rata distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

#### **SECTION V: 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 by any of them regarding any 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 of the undersigned persons represents and warrants that they are a party 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, administrators, representatives, successors and assigns.

D. 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 Illinois.

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. 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. Specific Representations Warranties and Disclaimer. The settling parties expressly acknowledge that in determining to settle the claims released here, the FDIC has reasonably and justifiably relied upon the accuracy of financial information in the affidavits submitted. If, in their affidavits the settling parties have failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, the FDIC in its sole discretion, may exercise one or more or all of the following remedies: (a) the FDIC may declare the releases granted to the settling parties as null and void, but only as to the breaching and non-disclosing settling party or parties; (b) the FDIC may retain the Settlement Funds; (c) the FDIC may sue the breaching and non-disclosing settling party or parties for damages, an injunction, and specific performance for the breach of this agreement; and (d) the FDIC may seek to vacate any dismissal order and reinstate the FDIC's claims against the breaching and non-disclosing settling party or parties. The settling parties agree that if, in their affidavits, they have failed to disclose any material



interest, legal, equitable, or beneficial, in any material asset, the settling parties consent to the reinstatement of FDIC's claims against the breaching and non-disclosing settling party or parties and waive any statute of limitations that would bar any of the FDIC's claims against that breaching and non-disclosing settling party or parties.

G. Reasonable Cooperation.

1. The undersigned 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 D&O Action, the Coverage Action, and to otherwise perform the terms of this Agreement.

2. Further, the Individual Defendants agree to cooperate fully with the FDIC in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC, without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to the Bank;

b. making themselves available upon request by the FDIC at reasonable times and places for interviews regarding facts, as determined by the FDIC in its sole discretion, to be relevant to the Bank;

c. appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC in its sole discretion, to be relevant to the Bank.

H. 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.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK**

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

(b)(6)

Date: April 27, 2011

B [Redacted Signature]

TITLE: Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

Date: April \_\_, 2011

\_\_\_\_\_

BY: JEFFREY K. STARK

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: JAMES L. ADKINS

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: B. STEVENS PLOWMAN

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: LARRY L. SUMMERS

PRINT NAME:

Date: April \_\_, 2011

BY: WILLIAM R. WILSON

PRINT NAME:

Date: April \_\_, 2011

BY: NOBLE D. HARRISON II

PRINT NAME:

THE OHIO CASUALTY INSURANCE COMPANY

BY:

[Redacted]

TITLE:

*Assistant Vice President*

PRINT NAME:

*Bob O'Brien*

(b)(6)

Date: April 21, 2011

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

(b)(6)

Date: April 27<sup>th</sup>, 2011

[Redacted Signature]

TITLE: Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

(b)(6)

Date: April 27<sup>th</sup>, 2011

[Redacted Signature]

BY: JEFFREY K. STARK

PRINT NAME: Jeffrey K. Stark

Date: April \_\_, 2011

\_\_\_\_\_

BY: JAMES L. ADKINS

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: B. STEVENS PLOWMAN

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: LARRY L. SUMMERS

PRINT NAME:

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

(b)(6)

Date: April 27<sup>th</sup> 2011

[Redacted Signature]

TITLE: Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

Date: April \_\_, 2011

\_\_\_\_\_

BY: JEFFREY K. STARK

PRINT NAME:

(b)(6)

Date: April 27<sup>th</sup> 2011

[Redacted Signature]

(b)(6) BY: JAMES L. ADKINS

PRINT NAME: JAMES L. ADKINS

Date: April \_\_, 2011

\_\_\_\_\_

BY: B. STEVENS PLOWMAN

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: LARRY L. SUMMERS

PRINT NAME:

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

(b)(6)

Date: April 27<sup>th</sup>, 2011

[Redacted Signature]

TITLE: ~~Counsel~~, FDIC

PRINT NAME: Leonard J. DePasquale

Date: April \_\_, 2011

\_\_\_\_\_

BY: JEFFREY K. STARK

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: JAMES L. ADKINS

PRINT NAME:

(b)(6)

Date: April 27, 2011

[Redacted Signature]

BY: B. STEVENS PLOWMAN

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: LARRY L. SUMMERS

PRINT NAME:

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

(b)(6)

Date: April 27<sup>th</sup>, 2011

[Redacted Signature]

TITLE: Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

Date: April \_\_, 2011

\_\_\_\_\_

BY: JEFFREY K. STARK

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: JAMES L. ADKINS

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_

BY: B. STEVENS PLOWMAN

PRINT NAME:

(b)(6)

Date: April 27, 2011

[Redacted Signature]

BY: LARRY L. SUMMERS

PRINT NAME:



(b)(6)



Date: April 27, 2011

BY: WILLIAM R. WILSON

PRINT NAME: WILLIAM R. WILSON

Date: April \_\_, 2011

BY: NOBLE D. HARRISON II

PRINT NAME:

THE OHIO CASUALTY INSURANCE COMPANY

Date: April \_\_, 2011

BY:

TITLE:

PRINT NAME:

Date: April \_\_, 2011

\_\_\_\_\_  
BY: WILLIAM R. WILSON

PRINT NAME:



(b)(6)

Date: April <sup>17<sup>th</sup></sup> \_\_, 2011

BY: NOBLE D. HARRISON II

PRINT NAME: *NOBLE D. HARRISON II*

THE OHIO CASUALTY INSURANCE COMPANY

Date: April \_\_, 2011

BY:

TITLE:

PRINT NAME: