SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 4th day of March, 2014, by, between, and among the following undersigned parties:

1. The Federal Deposit Insurance Corporation, as receiver of BankFirst ("FDIC");

2. The Cincinnati Insurance Company ("Cincinnati"); and

3. Various BankFirst directors and officers, including Richard Burnton, Meghan Harris, James Clifford, David King, Tim Kosick and Scott Anderson (the "BankFirst Parties"). (Individually, the FDIC, the BankFirst Parties, or Cincinnati may be referred to herein as "Party" and collectively as the "Parties")

RECITALS

WHEREAS:

Prior to July 17, 2009, BankFirst ("Bank") was a depository institution organized and existing under the laws of South Dakota;

On July 17, 2009, the Bank was closed by the South Dakota Division of Banking 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 various 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;

Cincinnati issued Financial Institutions Blue Chip Policy Number [redacted] (the (b)(4)
"Policy"), which insured the directors and officers of the Bank according to the terms, provisions and conditions of the Policy;

The FDIC has asserted, among other things, that certain loans issued by the Bank were not in compliance with the then applicable lending policy. None of these loans involved any insider preferential treatment of Bank officers and there are no claims by the FDIC of self-dealing by any of the officers.

The FDIC gave notice of claim in March 2010 and urged each recipient to send the notice to Cincinnati before insurance coverage lapsed.

The BankFirst Parties disputed that they are liable for any claim, alleged wrongdoing or alleged misconduct arising out of their performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of the Bank.

The BankFirst Parties tendered the defense of the FDIC's claim to Cincinnati. Cincinnati has determined to enter into a settlement herein with the FDIC, to which the BankFirst Parties have consented.

The BankFirst Parties assert that their consent to this Agreement is not an admission or evidence of liability by any of them regarding any claim, wrongdoing or misconduct alleged by the FDIC.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, distraction, 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

A. As an essential covenant and condition to this Agreement, on behalf of the BankFirst Parties, Cincinnati, agrees to pay the FDIC the sum of Five Million Dollars $5,000,000 ("the Settlement Funds"), not later than thirty (30) calendar days following the execution of an original, or originals in counterpart, of this Agreement by the undersigned Parties. The Settlement Funds shall be delivered to the FDIC by check payable to the Leonard O'Brien client trust account.

B. In the event that the Settlement Funds are not delivered as provided in PARAGRAPH I.A. above, interest shall accrue on all unpaid amounts at the rate of one-year U.S. Treasury bills as reported in the WALL STREET JOURNAL at the end of the last quarter immediately preceding the date of this 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 as provided in PARAGRAPH I.A. above, the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) (i) to declare this Agreement null and void, in which event the BankFirst Parties and Cincinnati shall consent and shall agree that any and all statute of limitations applicable to any claims the FDIC may have against the BankFirst Parties shall be tolled to and including thirty (30) calendar days following the FDIC's declaration that this Agreement is null and void; (ii) to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest); and/or (iii) to enforce this Agreement, in which event the BankFirst Parties and Cincinnati agree to jurisdiction in the United States District Court for the District of Minnesota 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 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 shall return all amounts paid to it under this Agreement.

SECTION II: Releases

A. Release of BankFirst Parties by FDIC.

Effective upon receipt in full of the Settlement Funds plus any accrued interest described in SECTION I above, and except as provided in PARAGRAPH(S) II.I. and II.J. below, the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the BankFirst Parties and each of 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 BankFirst Parties' respective functions, duties and actions as officers, directors and/or employees of the Bank.

B. Release of FDIC by the BankFirst Parties.

Effective simultaneously with the release granted in PARAGRAPH II.A. above, the BankFirst Parties, on behalf of themselves individually, and their respective heirs, executors, administrators, 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 BankFirst Parties' respective functions, duties and actions as officers, directors and/or employees of the Bank or that arise from or relate to the Policy.

C. Release by BankFirst Parties of Each Other.

Effective simultaneously with the releases granted in PARAGRAPH II.B. above, the BankFirst Parties, 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, directors and/or employees of the Bank.

D. Release of Cincinnati by FDIC.

Effective simultaneously with the releases granted in PARAGRAPHS II.A. and II.B. above, the FDIC, for itself and its successors and assigns, hereby releases Cincinnati, 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 coverage provided under the Policy. The FDIC agrees that, when this release becomes effective, any interest it may have under the Policy is extinguished. Excluded from the scope of this release are any rights and interests the FDIC may have against Cincinnati that arise or relate to coverage provided under that certain Depository Institutions Blanket Bond No. [redacted] (the (b)(4) "Fidelity Bond").

E. Release of Cincinnati by BankFirst Parties.

Effective simultaneously with the releases granted in PARAGRAPHS II.A. and II.B. above, the BankFirst Parties, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge Cincinnati, its parents, subsidiaries, affiliates and reinsurers, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that are based upon or relate to claims that have been released by the FDIC pursuant to this Agreement, including but not limited to contractual or extracontractual claims based upon the handling, defense, or resolution of claims released by the FDIC. This release, however, shall not affect Cincinnati's obligations with respect to reasonable and necessary Defense Costs incurred by the BankFirst Parties through counsel retained to defend against the FDIC released claims, which retention was previously consented to by Cincinnati.

F. Release of FDIC by Cincinnati.

Effective simultaneously with the release granted in PARAGRAPH II.D. above, Cincinnati, 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 coverage provided under the Policy.

G. Release of BankFirst Parties by Cincinnati.

Effective simultaneously with the releases granted in PARAGRAPH II.E. above, Cincinnati, 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 BankFirst Parties, 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 are based upon or relate to claims that have been released by the FDIC pursuant to this Agreement.

H. <u>Release of Other Insureds by the FDIC</u>.

Effective simultaneously with the release granted in Paragraph II.A. above, and except as provided in Paragraph II.I. below, the FDIC, for itself and its successors and assigns, hereby releases and discharges all other former directors, officers and employees of the Bank insured under the Policy (the "Other Insureds") and each of 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 at any time from or relate to, the performance, nonperformance, or manner of performance of the Other Insured's respective functions, duties and actions as directors, officers, and/or employees of the Bank. This release shall be null and void as to any Other Insured that asserts any claim against the FDIC arising out of matters pertaining to the Bank.

I. <u>Express Reservations From Releases By FDIC</u>.

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 BankFirst 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, 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 II.A. or II.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 Districts of Minnesota, South Dakota, or any other federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution associated with any criminal conduct, if any, pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

J. Express Reservation of Rights Under Bond.

1. Notwithstanding any other provision, nothing in this Agreement shall release or prejudice the rights or claims of the FDIC under the terms of the Fidelity Bond issued by Cincinnati under which the Bank is an insured.

2. Notwithstanding any other provision, nothing in this Agreement shall release or prejudice the rights or claims of Cincinnati, under the terms of the Fidelity Bond issued by Cincinnati under which the Bank is insured.

3. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of Cincinnati, under the terms of the Fidelity Bond issued by

Cincinnati under which the Bank is insured, or any other bond underwriter by way of subrogation to claims of the FDIC, that would not exist had this Agreement not been executed.

SECTION III: Waiver of Dividends

To the extent, if any, that BankFirst Parties 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 IV: Waiver of Dividends and Proceeds from Litigation

To the extent, if any, that BankFirst Parties are or were shareholders of the Bank and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Home Loan Bank Board, Office of Thrift Supervision, Office of the Comptroller of Currency, Resolution Trust Corporation, Federal Deposit Insurance Corporation, Federal Reserve Board, the Federal Savings and Loan Insurance Corporation Resolution Fund or the United States government in connection with the Bank, its conservatorship or receivership; 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 distributions, or such proceeds.

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, alleged wrongdoing or alleged misconduct.

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 Minnesota.

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. Reasonable Cooperation.

1. The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement perform the terms of this Agreement.

2. Further, the BankFirst Parties 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.

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. Termination of Tolling Agreement. Effective upon receipt in full of the Settlement Funds plus any accrued interest described in Section I above, this Agreement shall

constitute a Notice of Termination of that certain Tolling Agreement dated July 10, 2012 between the FDIC and BankFirst Parties, which Tolling Agreement shall be hereby terminated.

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: 3/4/2014 BY: [redacted]

TITLE: COUNSEL, FDIC

PRINT NAME: THOMAS J. O'BRIEN

Date: ____________ RICHARD BURNTON

____

Date: ____________ JAMES CLIFFORD

____

Date: ____________ MEGHAN HARRIS

____

Date: ____________ DAVID KING

____

Date: ____________ TIMOTHY KOSIEK

____

Date: ____________ SCOTT ANDERSON

____

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FEDERAL DEPOSIT INSURANCE CORPORATION

Date:____________ BY:____________________

TITLE:____________________

PRINT NAME:____________________

Date: 2-27-14 RICHARD BURNTON

(b)(6) [redacted]

Date:____________ JAMES CLIFFORD

____

Date:____________ MEGHAN HARRIS

____

Date:____________ DAVID KING

____

Date:____________ TIMOTHY KOSIEK

____

Date:____________ SCOTT ANDERSON

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FEDERAL DEPOSIT INSURANCE CORPORATION

Date:____________ BY:____________________

TITLE:____________________

PRINT NAME:____________________

Date:____________ RICHARD BURNTON

____

Date: February 28, 2014 JAMES CLIFFORD

(b)(6) [redacted]

Date:____________ MEGHAN HARRIS

____

Date:____________ DAVID KING

____

Date:____________ TIMOTHY KOSIEK

____

Date:____________ SCOTT ANDERSON

____

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FEDERAL DEPOSIT INSURANCE CORPORATION

Date: ______________ BY: ______________

TITLE: ______________

PRINT NAME: ______________

Date: ______________ RICHARD BURNTON

____

Date: ______________ JAMES CLIFFORD

____

Date: 2·26·14 MEGHAN HARRIS

(b)(6) [redacted]

Date: ______________ DAVID KING

____

Date: ______________ TIMOTHY KOSIEK

____

Date: ______________ SCOTT ANDERSON

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FEDERAL DEPOSIT INSURANCE CORPORATION

Date:__________ BY:__________

TITLE:__________

PRINT NAME:__________

Date:__________ RICHARD BURNTON

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Date:__________ JAMES CLIFFORD

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Date:__________ MEGHAN HARRIS

____

Date: 02-28-2014 DAVID KING

(b)(6) [redacted]

Date:__________ TIMOTHY KOSIEK

____

Date:__________ SCOTT ANDERSON

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FEDERAL DEPOSIT INSURANCE CORPORATION

Date:__________ BY:__________

TITLE:__________

PRINT NAME:__________

Date:__________ RICHARD BURNTON

____

Date:__________ JAMES CLIFFORD

____

Date:__________ MEGHAN HARRIS

____

Date:__________ DAVID KING

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Date: 2-27-14 TIMOTHY KOSIEK

(b)(6) [redacted]

Date:__________ SCOTT ANDERSON

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FEDERAL DEPOSIT INSURANCE CORPORATION

Date:________________ BY:________________

TITLE:________________

PRINT NAME:________________

Date:________________ RICHARD BURNTON

____

Date:________________ JAMES CLIFFORD

____

Date:________________ MEGHAN HARRIS

____

Date:________________ DAVID KING

____

Date:________________ TIMOTHY KOSIEK

____

Date: 2-26-14 SCOTT ANDERSON

(b)(6) [redacted]

(b)(6) Date: March 4, 2014

CINCINNATI INSURANCE COMPANY

BY: [redacted]

TITLE: Manager-Executive Risk Claims

PRINT NAME: Constance S. Hennigan