

TOLLING AGREEMENT

This Tolling Agreement is entered into as of this 31st day of October, 2011, by and between the Federal Deposit Insurance Corporation (FDIC) and Capitol National Bank, Lansing, MI (Bank).

RECITALS

WHEREAS, on November 20, 2009, Commerce Bank of Southwest Florida, Fort Myers, Florida (Commerce) failed and caused a loss to the FDIC; and

WHEREAS, at the time of its failure, the FDIC alleges Commerce was controlled by Capitol Bancorp, Ltd., Lansing, Michigan, a bank holding company (BHC); and

WHEREAS, at the time of Commerce's failure, BHC controlled, directly or indirectly, Bank; and

WHEREAS, the FDIC alleges that pursuant to 12 U.S.C. § 1815(e)(8), Bank and Commerce were commonly controlled at the time of the failure of Commerce; and

WHEREAS, pursuant to 12 U.S.C. § 1815(e)(1)(A), at the time of Commerce's failure, the FDIC alleges that the Bank incurred a cross-guarantee liability to the FDIC in connection with the FDIC's actual and anticipated losses in connection with Commerce's failure ("Cross-Guaranty Liability"); and

WHEREAS, the initial period for the FDIC to assess Cross-Guaranty Liability against Bank expires on November 19, 2011;

WHEREAS, a successful assessment of Cross-Guaranty Liability against Bank would diminish the capital of Bank and may, depending on the amount of any

final assessment, cause Bank to be required to be placed into receivership by its chartering authority;

WHEREAS, the FDIC has requested the Bank to extend the statute of limitations period in which the FDIC may attempt to assess Cross-Guaranty Liability to allow time for the FDIC and Bank to reach a settlement of the potential liability in lieu of an assessment of any such liability; and

WHEREAS, the Bank desires to extend the statute of limitations period in which the Bank or BHC may take action against the FDIC to recover any and all damages suffered by the Bank or BHC relating to the FDIC's actions against the Bank and/or BHC in connection with the FDIC's allegations that pursuant to 12 U.S.C. § 1815(e)(8), Bank and Commerce were commonly controlled at the time of the failure of Commerce (the "Bank Actions").

NOW THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Bank and FDIC, through their duly authorized representatives, stipulate and agree as follows:

1. Bank agrees that, as to any actions regarding the Cross-Guaranty Liability as to which limitations have not elapsed, Bank agrees to toll limitations until November 19, 2013.

2. The FDIC agrees that, as to any actions as to which limitations have not elapsed as of the date of this Tolling Agreement, including, without limitation, the Bank Actions, the FDIC agrees to toll limitations for the same amount of time that this Tolling Agreement is effective.

3. This Tolling Agreement is not intended as, and shall not be construed as, an admission of liability by any party, including the right to contest the legality

of conducting any hearing on Cross-Guaranty Liability, and all such parties continue to reserve all rights, causes of action and defenses available to them, as such rights apply to this particular matter, and any other matter involving the Bank, BHC or any of their successors and assigns.

4. This Tolling Agreement may be modified, amended, or supplemented only by a written instrument signed by both parties.

5. This Tolling Agreement shall be binding upon the Bank. BHC is an intended third party beneficiary of this Agreement and entitled to specifically enforce the provisions of this Agreement.

6. This Tolling Agreement may be executed in counterparts. Facsimile signatures will be acceptable.

7. The Tolling Agreement is effective as of the date signed by the Bank's counsel or representative.

8. This Agreement does not affect or alter the terms, conditions or reservations of rights of Capitol Bancorp, Ltd. and the FDIC as set forth in the Agreement executed between them dated October 18, 2011.

9. Notices pursuant to this Tolling Agreement shall be given as follows:

To the FDIC: Sam Ozeck
Federal Deposit Insurance Corporation
Legal Division
1776 F St NW
F-2042
Washington, D.C. 20429

To Bank: Brian English, General Counsel
Capitol Bancorp, Ltd.
200 North Washington Ave.; Ste. 320
Lansing, Michigan 48933
(517) 371-5561

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have executed and delivered this Tolling Agreement.

FEDERAL DEPOSIT INSURANCE CORPORATION

CAPITOL NATIONAL BANK
LANSING, MICHIGAN

By: _____
Timothy Divis
Chicago Regional Counsel

_____/s/_____
Paula D. Cunningham
President & CEO

Date: _____

Date: 10/31/11

By _____/s/_____
Sandra L. Thompson
Director, Division of Risk Management
Supervision

Date: 11/16/11

Concur:

By: _____/s/_____
Michael H. Krimminger
General Counsel

Date: 11/18/11