

SETTLEMENT AND ASSIGNMENT AGREEMENT

This Settlement and Assignment Agreement ("Agreement") is entered into as of January 23, 2013, by FDIC-R in its capacity as Receiver of Elizabeth State Bank (hereinafter, "FDIC-R"), on the one hand, and Craig Campbell, Dennis Guenzler, Patricia Schaible and Marvin Wurster (hereinafter the "Former Directors and Officers") on the other hand. FDIC-R and the Former Directors and Officers are sometimes collectively referred to herein as the "Parties" and singularly as a "Party."

RECITALS

WHEREAS, the Former Directors and Officers are former directors and officers of The Elizabeth State Bank ("Elizabeth"); and

WHEREAS, the FDIC-R has asserted claims against the Former Directors and Officers, including claims set forth in a letter dated September 6, 2012 (incorporated by reference herein), that include claims which the Parties believe and contend are covered as "Wrongful Acts", and which the Parties believe and contend were made in the policy period of the Directors and Officers Insurer as described hereinafter, (the "FDIC-R Claims"); and

WHEREAS, upon the information and belief of the Parties, Terrapin Bancorp, Inc., the parent company of Elizabeth, had purchased an Extended Professional Liability Insurance Policy from BancInsure for the period from December 31, 2008 to December 31, 2011, Policy No. (hereinafter the "BancInsure Policy"); and

WHEREAS, upon the information and belief of the Parties, the Former Directors and Officers are insureds under the BancInsure Policy; and

WHEREAS, the Former Directors and Officers have heretofore tendered to BancInsure the potentially covered FDIC-R Claims, and nevertheless, BancInsure has denied The Former Directors and Officers' demands for coverage for the FDIC-R's Claims and has refused to protect the interests of the Former Directors and Officers by refusing to pay for the Former Directors and Officers' defense costs or indemnify them for costs or loss incurred in connection with the FDIC-R's Claims, thereby exposing the Former Directors and Officers to great personal financial risk; and

WHEREAS, the Former Directors and Officers deny the allegations the FDIC-R has made against them, but recognize that the FDIC-R has stated a colorable claim against them; and

WHEREAS, the Former Directors and Officers recognize that the FDIC-R seeks substantial monetary damages from them in connection with the FDIC-R's Claims, which exceed the aggregate limits of liability of the BancInsure Policy; and

WHEREAS, the Parties to this Agreement wish to resolve and settle their sharply contested claims and avoid further cost, including costly litigation; and

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WHEREAS, the parties participated in settlement discussions, which resulted in the negotiation in good faith and at arms-length of the terms herein; and

WHEREAS, the Parties have reached an agreement to resolve the FDIC-R's Claims against the Former Directors and Officers;

NOW, THEREFORE, in consideration of and in reliance upon the recitals, mutual covenants, promises, obligations and understandings contained in this Agreement, and other good and valuable consideration, and intending to be legally bound thereby, the Former Directors and Officers and FDIC-R mutually agree as follows:

1. **Settlement Amount.** The FDIC-R agrees to accept a total of two million dollars (\$2,000,000) in settlement of all of the FDIC-R's Claims against the Former Directors and Officers, payable from the BancInsure Policy (the "Settlement Amount"). The Former Directors and Officers agree that the Settlement Amount is fair and reasonable and consistent with what a reasonably prudent insured would have paid to settle the FDIC-R's Claims.

2. **Covenant To Satisfy Settlement Amount Solely From Insurance Proceeds.** The FDIC-R agrees that in exchange for the Former Directors and Officers' Assignment of Rights as set forth in Paragraph 5 below, the FDIC-R will pursue collection of the Settlement Amount solely from the BancInsure Policy, and not from any other personal assets of the Former Directors and Officers.

3. **Covenant Not to Sue.** Subject only to the exception set forth in paragraph 6.5, below, the FDIC-R, for itself, successors and assigns, hereby stipulates, promises and covenants, not to pursue any known or unknown claims against the Former Directors and Officers arising from their duties as directors and officers of Elizabeth, including but not limited to any known or unknown claims arising out of or related to the FDIC-R's Claims.

4. **FDIC-R's Claims Against Third Parties.** The FDIC-R, for itself, successors and assigns, does hereby further stipulate, promise and covenant, as to the Former Directors and Officers in all capacities, that, in the event the FDIC-R has brought or brings in the future any action against a person or entity not a party to this Agreement (a "Third Party") and, in that action, there is a finding that the Former Directors and Officers bears a proportionate share of liability for the claims that the FDIC-R asserts against the Third Party, the FDIC-R will not seek to recover from the Third Party more than the Third Party's aggregate proportional share of liability. Further, in the event that the FDIC-R resolves its claims against the Third Party pursuant to settlement, the FDIC-R, for itself, successors and assigns, does hereby further stipulate, promise and covenant, as to The Former Directors and Officers that the FDIC-R will use its best efforts to secure a release of The Former Directors and Officers from the Third Party with respect to The Former Directors and Officers' proportionate share of liability, if any, for the claims that FDIC-R asserted against the Third Party.

5. **Assignment of Rights.** Except as provided below, the Former Directors and Officers hereby agree to relinquish, surrender, transfer, convey, and assign to FDIC-R any and all rights, title, and interest that the Former Directors and Officers have or may have to assert a cause of action against BancInsure for declaratory relief, breach of contract, breach of the covenant of

good faith and fair dealing, tortious breach of the covenant of good faith and fair dealing, bad faith, and punitive damages for the failure of BancInsure to pay the Settlement Amount ("The Assigned Claims"). The Assigned Claims shall not include any claims arising out of the failure of BancInsure to pay the unreimbursed, reasonable defense costs incurred by the Former Directors and Officers related to this settlement, all of which are hereby expressly retained by the Former Directors and Officers, provided that the FDIC-R shall have the right to compel a release of such claims at any time up to the time the Former Directors and Officers obtain an award against BancInsure, in exchange for the payment of all such unreimbursed defense costs and fees plus interest at the legal rate. At the sole expense of FDIC-R, the FDIC-R may prosecute, defend, control, settle or compromise any and all of The Assigned Claims, in the name of the FDIC-R, as assignee of the Former Directors and Officers. This Settlement and Assignment shall be effective as to the FDIC-R and each of the Former Officers and Directors who enter into this agreement regardless of the failure, declination or refusal of the other Former Officers and Directors to do so.

6. Assistance and Cooperation.

- 6.1 The Former Directors and Officers agree to assist and to cooperate reasonably with FDIC-R in and through the prosecution of any claim, lawsuit or other proceeding against BancInsure on The Assigned Claims. The Former Directors and Officers shall take no action to impede, prevent or otherwise impair the prosecution of such claim, lawsuit or other proceeding.
- 6.2 The Former Directors and Officers agree to execute all papers reasonably required and to take all reasonable actions that may be necessary for the FDIC-R to bring a claim, lawsuit or other proceeding against BancInsure on The Assigned Claims, including but not limited to, attendance and participation with truthful testimony, witness interviews, depositions, hearings, trials and other preparation sessions, review, preparation and execution of written affidavits, production of all relevant non-privileged documents and records, securing and giving of evidence, cooperation and assistance in identifying and obtaining attendance of witnesses, and such other assistance and things as may be reasonably necessary to enable FDIC-R to prosecute effectively The Assigned Claims. FDIC-R, as assignee of the Former Directors and Officers, shall have the right to select counsel to commence and prosecute any claim, lawsuit or other proceeding brought against BancInsure on The Assigned Claims. At FDIC-R's sole cost and expense (including with respect to any attorneys' or experts' fees, costs, sanctions or cost awards), FDIC-R shall direct, supervise, manage and have complete and exclusive control of the prosecution of such claim, lawsuit or other proceeding.
- 6.3 The FDIC-R shall reimburse reasonable costs incurred by the Former Directors and Officers incurred in connection with fulfilling the obligations set forth in paragraphs 6.1 and 6.2, subject to a maximum total of \$10,000 in the aggregate.

- 6.4 The Former Directors and Officers make no representations or warranties with respect to the validity of The Assigned Claims or the FDIC-R's ability to recover on The Assigned Claims. Thus, subject only to the exception set forth in paragraph 6.5, the FDIC-R agrees to bear the full and sole risk that the FDIC-R does not recover from BancInsure on The Assigned Claims.
- 6.5 In the event that the FDIC-R is unable to recover on The Assigned Claims for the sole reason that the assignment provided for hereunder is ineffective to permit the FDIC-R to recover from BancInsure on The Assigned Claims, then, as of the date that a court or other tribunal makes or renders a final judgment incorporating such a determination ("Contingent Event Date"): (i) this Agreement, other than the provisions of this paragraph and paragraph 8, shall be null and void, (ii) nothing herein shall be admissible by any Party in any action between the FDIC-R and any of The Former Directors and Officers, and (iii) this Agreement shall in all respects be entitled to the protections of Federal Rule of Evidence 408. However, if the FDIC-R thereafter files the FDIC-R's Claims, the FDIC-R agrees that its monetary damages on those claims as against The Former Directors and Officers may be recovered only from BancInsure and not from any other assets of The Former Directors and Officers. The Assignment provided in this Agreement shall be deemed as ineffective solely on the basis expressly set forth in this Section 6.5 and shall not be deemed ineffective on the basis of policy defenses asserted by BancInsure, including but not limited to policy terms, conditions and exclusions, other than those policy defenses, if any, resulting from execution of this Agreement.
- 6.6 The Former Directors and Officers Marvin Wurster and Patricia Schaible appoint Donald Q. Manning, Esq. as their representative and attorney-in-fact to communicate and coordinate with the FDIC-R in connection with this Agreement and any claim, lawsuit or other proceeding contemplated herein.
- 6.6 The FDIC-R hereby appoints Robert R. Furnier of The Furnier Law Group LLC as its representative and attorney-in-fact to communicate and coordinate with the Former Directors and Officers in connection with this Agreement and any claim, lawsuit or other proceeding contemplated herein.

7. Court Approval. This Agreement is not effective unless and until all of the following have occurred:

- a) To the extent Craig L. Campbell is a party to this agreement, The United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court") has entered an order in the proceedings captioned *In re Craig L. Campbell and Kim Ann Webster-Campbell*, Case No. 10 B 50562 which permits the FDIC-R and the Former Directors and Officers to enter into and implement this Agreement and allows the FDIC-R to enforce the Assigned Claims against BancInsure notwithstanding the effect, if any of the automatic stay under 11 U.S.C. § 362

subject to any modifications approved by the Parties ("Order Approving Settlement and Abandonment"); and

- b) To the extent Craig L. Campbell is a party to this Agreement, the time to commence an appeal of the Order Approving Settlement and Abandonment pursuant to Rule 8002(a) of the Federal Rules of Bankruptcy Procedure has run without any notice of appeal having been filed, or if a notice of appeal has been timely filed, such appeal has been fully and finally resolved with the Order Approving Settlement and Abandonment remaining in force and effect in a form satisfactory to the FDIC-R.
- c) In the event Craig L. Campbell is not a party to this agreement, this Agreement shall be effective upon execution by the remaining parties.

8. Contingent Tolling Agreement. In the event that Craig L. Campbell is a party to this Agreement, if the Bankruptcy Court enters the Order Approving Settlement and Abandonment in accordance with the provisions of paragraph 7.a above, and, thereafter, the circumstances set forth in paragraph 6.5 come to pass, then the time period between the date of this Agreement until the Contingent Event Date (the "Tolling Period") shall not be counted in determining the time in which the FDIC-R is required by any applicable statute of limitations, statute of repose, laches or other time-based defenses to file the FDIC-R's Claims against The Former Directors and Officers. The Former Directors and Officers agree that they will not plead, argue, or otherwise assert that any of the Tolling Period should be included in the calculation of any time limit or limitation period that might otherwise be applicable to the re-filing of the FDIC-R's Claims against The Former Directors and Officers.

9. Miscellaneous Provisions

- 9.1 The Agreement affects the settlement of disputed claims. Nothing contained herein should be construed as an admission by the Parties as to the merits of any of their claims or defenses that could be asserted against each other. In addition, nothing in this Agreement, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be: (a) offered or received against the FDIC-R or The Former Directors and Officers in any litigation between the FDIC-R and any of The Former Directors and Officers as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by the FDIC-R or The Former Directors and Officers with respect to the truth of any fact alleged by either Party against the other or the validity of any claim that has been or could have been asserted by the FDIC-R in any litigation involving both the FDIC-R and The Former Directors and Officers, or the deficiency of any claim or defense that has been or could have been asserted by the FDIC-R in any litigation involving both the FDIC-R and The Former Directors and Officers, or of any liability, negligence, fault, or wrongdoing on the part of The Former Directors and Officers; (b) offered or received in any litigation between the FDIC-R and The Former Directors and Officers against The Former Directors and

Officers as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any action or inaction by The Former Directors and Officers; (c) offered or received in any litigation between the FDIC-R and The Former Directors and Officers against The Former Directors and Officers as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against The Former Directors and Officers, in any other civil proceeding between the FDIC-R and The Former Directors and Officers, or in any criminal or administrative action or proceeding; provided, however, The Former Directors and Officers may refer to the Agreement to effectuate the liability protection granted them hereunder; or (d) construed against any Party in any litigation between the FDIC-R and The Former Directors and Officers as an admission or concession that the consideration to be given and received hereunder represents the amount which could be or would have been recovered after trial.

- 9.2 This Agreement is fully integrated and contains the entire agreement and understanding between the Parties concerning the subject matter hereof. It fully supersedes any prior oral or written negotiations, proposed agreements, agreements, or understandings between FDIC-R, on the one hand, and The Former Directors and Officers, on the other hand, concerning the subject matter hereof. No change or modification or termination of this Agreement shall be valid unless contained in writing and signed by the FDIC-R and The Former Directors and Officers, through their representatives and attorneys-in-fact referenced in Paragraphs 6.6 and 6.7 hereto.
- 9.3 The Former Directors and Officers' obligations under this Agreement shall continue until such time as a full and final adjudication of the FDIC-R's claim, lawsuit, or other proceeding against BancInsure has been achieved or upon receipt of written notice from FDIC-R that such claim, lawsuit or other proceeding has been resolved.
- 9.4 The FDIC-R and The Former Directors and Officers each agree to meet and confer in good faith to resolve any disagreements over the terms of this Agreement or any provisions thereof. If the meet and confer is not successful, the FDIC-R and The Former Directors and Officers agree to binding, non-appealable arbitration in Chicago, Illinois, under the auspices of JAMS under its Streamlined Arbitration Rules and Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The FDIC-R and The Former Directors and Officers agree that the above controversy will be submitted to one arbitrator, and the arbitrator shall apply Illinois law without regard to its choice of law or conflicts of law provisions. Unless otherwise ordered by the arbitrator, the prevailing party will be awarded the costs of the arbitration and attorneys' fees incurred in connection with the arbitration.

- 9.5 This Agreement and the provisions and negotiations of this Agreement shall be confidential and subject to all applicable privileges and immunities, including without limitation the mediation privilege, common interest privilege and attorney work product doctrine. No Party shall provide any of the contents of this Agreement to anyone, unless provision is required by order of a court, an arbitration panel, or a governmental body, or is consented to by agreement in writing of all Parties hereto, except that this Agreement may be disclosed (i) to auditors and attorneys of the Parties and the Parties' affiliates, (ii) to any insurer who issued a policy provided by Terrapin Bancorp, Inc. or Elizabeth State Bank and covering the Former Directors and Officers, including BancInsure, (iii) in such circumstances as counsel for the FDIC-R may advise is necessary or prudent to prosecute the claim, lawsuit or other proceeding against BancInsure or to comply with any other applicable legal requirement, and (iv) to the Bankruptcy Court.
- 9.6 This Agreement shall be binding upon, and inure to the benefit of, the Parties, and each of them, and to each of their successors, heirs, trustees, beneficiaries, assigns and legal representatives.
- 9.7 Each Party will bear its own costs incurred in the negotiation of this Agreement.
- 9.8 The terms and language of this Agreement are the result of negotiations between the Parties and their respective counsel, who have cooperated in its drafting and preparation. There shall be no presumption that any ambiguities in this Agreement should be resolved against any Party.
- 9.9 Each of the Parties represents and warrants that he, she or it enters into this Agreement with the benefit of the advice of his, her or its respective legal counsel. Each of the Parties has carefully read and fully understands all of the provisions of this Agreement, and each Party is entering into this Agreement voluntarily and without coercion.
- 9.10 Each of the Parties further represents and warrants that he, she or it is relying upon his, her or its own judgment, and that no promises or representations have been made to induce that Party's execution of this Agreement, other than those set forth expressly in the Agreement.
- 9.11 This Agreement may be executed in counterparts, all of which together shall constitute one agreement. Facsimile signatures shall be considered the same as originals.

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IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective on the date as of which all Parties have executed the Agreement:

**FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR ELIZABETH STATE BANK**

(b)(6)

[Redacted Signature]

J. S. Tonkinson, Counsel

Date: *January 23, 2013*

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective on the date as of which all Parties have executed the Agreement:

FORMER DIRECTORS AND OFFICERS

(b)(6)



Date: 1-22-13

Craig L. Campbell

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective on the date as of which all Parties have executed the Agreement:

(b)(6)

[Redacted Signature]

Marvin Wurster

Date: 12-27-12

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective on the date as of which all Parties have executed the Agreement:

(b)(6)

[Redacted Signature]

Patricia Schaible

Date: 12/27/12

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective on the date as of which all Parties have executed the Agreement.

(b)(6)

[Redacted Signature]

DATE: 1-8-13

Dennis Gunder