

Settlement Agreement and Release

This Settlement Agreement and Release ("Agreement"), is made and entered into by, between and among the Federal Deposit Insurance Corporation, as Receiver of Carson River Community Bank, Carson City, Nevada ("FDIC-R"), on the one hand, and Daniel Dykes, Byron Waite, and Richard McCole ("Settling Defendants"), on the other hand.

Recitals

WHEREAS, the Federal Deposit Insurance Corporation ("FDIC") is an instrumentality of the United States, established under the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1833(e);

WHEREAS, Carson River Community Bank, Carson City, Nevada ("Bank") was chartered on October 16, 2006 by the State of Nevada;

WHEREAS, on February 26, 2010, the Nevada Department of Business and Industry, Financial Institutions Division closed the Bank, and the FDIC-R accepted appointment as receiver pursuant to 12 U.S.C. § 1821(c). As set forth in 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC-R succeeded to all rights, titles and privileges of the Bank, and its stockholders, account holders and depositors;

WHEREAS, the Settling Defendants were officers and/or directors of the Bank and also members of the Bank's Senior Loan Committee;

WHEREAS, among the assets to which the FDIC-R succeeded were any and all of the Bank's claims, demands, and causes of action against its former directors, officers and employees arising from the performance, nonperformance and manner of performance of the respective functions, duties and acts as directors and/or officers of the Bank ("Bank's Claims"). Included among the Bank's Claims are claims, demands, and causes of action against the Settling Defendants ("Claims");

WHEREAS, the Settling Defendants and the FDIC-R previously entered into a Tolling Agreement and a First Amended Tolling Agreement (collectively "Tolling Agreement as Amended") to suspend the running of the statute of limitations and any other applicable time bar defenses relating to the Claims;

WHEREAS, the Settling Defendants, and Charlie Glenn ("Glenn") entered into an earlier settlement agreement ("2013 Agreement") with the FDIC-R that was fully executed by all parties by June 13, 2013. A true and correct copy of the 2013 Agreement is attached hereto as Exhibit 1. The 2013 Agreement contemplated that the FDIC-R would assert the Claims against the Settling Defendants, as well as claims against Glenn, by amending its pending lawsuit against James M. Jacobs styled *Federal Deposit Insurance Corporation v. James M. Jacobs*, No. 3:13-CV-00084, in the District of Nevada, Reno Division ("Lawsuit");

WHEREAS, the FDIC-R filed its First Amended Complaint in this Lawsuit on June 13, 2013 to add the Settling Defendants and Glenn to the suit to assert the Claims, as well as claims against Glenn;

WHEREAS, the 2013 Agreement contemplated the FDIC-R, the Settling Defendants, and Glenn would file a joint motion in the Lawsuit seeking determination that the releases granted in the 2013 Agreement were given in good faith to the Settling Defendants and Glenn pursuant to section 17.245 of the Nevada Revised Statutes for the purpose of addressing potential claims for contribution and indemnity that might be asserted against the Settling Defendants and Glenn. Settlement Payments, as defined in the 2013 Agreement, were tendered to counsel for FDIC-R to hold pending a determination of the good faith motion;

WHEREAS, the FDIC-R, the Settling Defendants, and Glenn filed the good faith motion on August 22, 2013. The Court denied the good faith motion by order filed on November 26, 2013;

WHEREAS, the 2013 Agreement provided that if the good faith motion were denied, counsel for the FDIC-R would return the Settlement Payments to the Settling Defendants and Glenn and that the 2013 Settlement Agreement would be of no further force or effect, except that the FDIC could pursue the Claims asserted in the Lawsuit against the Settling Defendants as further described in the 2013 Agreement;

WHEREAS, the FDIC-R returned the Settlement Payments to the Settling Defendants and Glenn and has pursued the Claims in the Lawsuit against the Settling Defendants and Glenn as asserted in the First Amended Complaint;

WHEREAS, the Settling Defendants deny they are liable to the FDIC-R for the Claims asserted against them in the First Amended Complaint;

WHEREAS, prior to the execution of the 2013 Agreement, the FDIC-R and the Settling Defendants provided notice of the Claims to the Settling Defendants' professional liability insurer, BancInsure, Inc., now known as Red Rock Insurance Company ("BancInsure");

WHEREAS, BancInsure denied coverage for the Claims and it was in apparent financial trouble as published news accounts reflected the Oklahoma Department of Insurance sought to place it in receivership;

WHEREAS, during the time the FDIC-R, the Settling Defendants, and Glenn were finalizing the details and documentation surrounding the 2013 Settlement Agreement, the FDIC-R, the Settling Defendants, and Glenn learned that BancInsure initiated a declaratory judgment action on June 7, 2013 against the Settling Defendants, Glenn, and James M. Jacobs for the purpose of seeking a determination that BancInsure had no coverage obligations to them. The BancInsure declaratory judgment suit is styled as follows: *BancInsure, Inc. v. Jacobs, et al*, No. 3:13-CV-302, in the District of Nevada, Reno Division ("BancInsure Lawsuit");

WHEREAS, because the Settling Defendants and Glenn had an interest in seeking coverage from BancInsure but had little financial resources to do so and because the FDIC-R had an interest in the court's determination of the effect of policy provisions at issue in the BancInsure Lawsuit and recovering from BancInsure for damages sustained as alleged in the First Amended Complaint, the FDIC-R, the Settling Defendants, and Glenn entered into an Addendum to Settlement Agreement and Release ("Addendum") whereby the Settling

Defendants and Glenn unequivocally assigned to the FDIC-R certain insurance rights to the FDIC-R so that the FDIC-R might seek a coverage determination in the BancInsure Lawsuit and both the FDIC-R, Settling Defendants and Glenn might benefit from a favorable coverage determination. A true and correct copy of the Addendum is attached hereto as Exhibit 2;

WHEREAS, the Settling Defendants have previously supplied to the FDIC-R sworn statements of their financial condition and recent tax returns reflecting limited resources with which to satisfy judgments;

WHEREAS, this Agreement is entered into to settle the Claims asserted in the Lawsuit by the FDIC-R against the Settling Defendants;

WHEREAS, the FDIC-R and the Settling Defendants are also entering this Agreement because of (i) BancInsure's refusal to defend, to advance defense costs, and to indemnify the Settling Defendants in connection with the Claims asserted against them; (ii) BancInsure's failure to protect the interests of the Settling Defendants by failing and refusing to settle the Claims asserted against them; and (iii) BancInsure's initiation of the BancInsure Lawsuit;

WHEREAS, this Agreement is also made to protect the Settling Defendants and their beneficiaries, heirs, and assigns from liability for the Claims. The FDIC-R is willing to provide the Settling Defendants such protection, under the terms of this Agreement, in consideration of the promises, undertakings, covenants, releases, representations, and warranties set forth herein.

Terms of Agreement

NOW, THEREFORE, in consideration of the promises, undertakings, covenants, releases, representations, and warranties stated herein, the sufficiency of which consideration is hereby acknowledged, the FDIC-R and the Settling Defendants agree, each with the others, as follows:

1. Settlement Payments. As an essential covenant and condition to this Agreement, the Settling Defendants agree to pay to the FDIC-R the following sums of money:

Daniel Dykes	\$10,000
Byron Waite	\$7,500
Richard McCole	\$7,500

Such funds shall be hereinafter referred to as the "Settlement Payments." The Settlement Payments shall be made following execution of the Agreement by all of the Settling Defendants and the FDIC-R, but in any event no later than April 29, 2014 ("Due Date"). Such Settlement Payments shall be delivered by direct wire transfer pursuant to wiring instructions the FDIC-R will provide in writing for deposit into the client trust account of the FDIC-R's counsel ("FDIC Counsel"), or by certified or cashiers' check payable to Sprouse Shrader Smith Client Trust Account. In addition to the Settlement Payments, the Settling Defendants shall execute the assignment of insurance rights ("Assignment") in the form attached hereto as Exhibit 3 and deliver the executed Assignment to counsel for the FDIC-R by the Due Date. Should any one or more of the Settling Defendants fail to deliver his or their share of the Settlement Payments

and their respective Assignments by the Due Date, the FDIC-R shall return such of the Settlement Payments as have been received and the Settlement Agreement shall be of no further force or effect, except that the FDIC-R may pursue the Claims against the Settling Defendants consistent with the Tolling Agreement as Amended, as modified by the Agreement and the FDIC-R may keep the Assignments as have been executed and delivered to counsel for the FDIC-R and such Assignments shall be effective notwithstanding any other provision contained in this Agreement.

2. Release of Settling Defendants by FDIC-R. Conditioned upon payment of the Settlement Payments and delivery of the Assignments, the FDIC-R, on its own behalf, and on behalf of its agents, attorneys, representatives, successors and assigns, releases and discharges the Settling Defendants, and their respective heirs, executors, administrators, agents, attorneys, 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-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendants' functions, duties and actions as officers and/or directors of the Bank, including the claims asserted or which could have been asserted in the Lawsuit. This release does not release or discharge the Settling Defendants from their obligations under this Agreement.

3. Release of FDIC-R by Settling Defendants. Conditioned upon payment of the Settlement Payments, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, attorneys, representatives, successors and assigns, release and discharge the FDIC-R, and its employees, officers, directors, representatives, agents, 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, belonging to the Settling Defendants that arise from or relate to the Bank or the Lawsuit. This release does not release or discharge the FDIC-R from its obligations under this Agreement.

4. Covenants Not to Sue by Settling Defendants. Conditioned upon payment of the Settlement Payments and receipt of the Assignments, the Settling Defendants, on behalf of themselves individually and their respective heirs, executors, administrators, representatives, agents, attorneys, successors and assigns, hereby covenant and agree not to bring any judicial proceeding or make any claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, including claims for contribution or indemnity 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.

5. Settlement with Jacobs or Glenn. If the FDIC-R negotiates a settlement with non-settling defendant Jacobs or Glenn, the FDIC will use its best efforts to obtain an express release by Jacobs or Glenn of all claims against the Settling Defendants for contribution and indemnity.

6. Dismissal with Prejudice. Upon payment of the Settlement Payments and receipt of the Assignments, the FDIC-R shall take steps to seek leave to file its Second Amended

Complaint (and in so doing seek an order of dismissal with prejudice of the FDIC-R's Claims against the Settling Defendants), in substantially the form attached hereto as Exhibit 4. Each party will bear their own costs and attorney's fees associated with the Lawsuit. If the Court should deny the FDIC-R's request to dismiss the Claims with prejudice against the Settling Defendants, the FDIC-R shall return the Settlement Payments and the FDIC-R may continue to pursue its Claims against the Settling Defendants in the Lawsuit and this Agreement shall be of no further force and effect, except that the FDIC-R may retain the Assignments and such Assignments shall be effective notwithstanding any other provision contained in the Agreement.

7. **Disputed Claims.** This Agreement is a compromise of disputed claims. Nothing in this Agreement is an admission of liability by the Settling Defendants, and nothing in this Agreement may be interpreted as an admission of liability.

8. **Express Reservations by FDIC-R.** (a) Nothing contained in this Agreement shall be interpreted to release the Settling Defendants for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC-R, the Bank, any other financial institution, or any other person or entity; and

(b) Notwithstanding any other provision herein, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of any other federal or state regulatory institution in the exercise of its supervisory or regulatory authority or as diminishing its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action, including civil money penalties and restitution that relate solely to the conduct of the Settling Defendants as officers and/or directors of the Bank which may arise by operation of law, rule or regulation. The FDIC-R specifically warrants and represents, and the Settling Defendants will rely upon such representations and warranties, that FDIC attorney Bob J. Rogers and FDIC Counsel are not aware of any inquiry or active investigation of the Settling Defendants by the FDIC, in its supervisory or regulatory capacity. The five-year statute of limitations governing the bringing of an enforcement action by the FDIC is found at 28 U.S.C. §2462 and all actions and inactions of the Settling Defendants described in the Claims occurred more than five years ago.

(c) Notwithstanding any other provision herein, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through the Department of Justice, including the United States Attorney's office for any federal judicial district. The FDIC-R specifically warrants and represents, and the Settling Defendants will rely upon such representations and warranties, that Bob J. Rogers and FDIC Counsel are not aware of any pending matters concerning any of the Settling Defendants that are the subject of any inquiry or active investigation by the Department of Justice and/or the United States Attorney's office.

(d) Notwithstanding any other provision herein, this Agreement does not purport to waive or release, or intend to waive or release, any claims which could be brought by the FDIC-R against any other individual or entity, including without limitation, non-settling defendants Jacobs or Glenn, and the FDIC-R expressly reserves such claims.

(e) 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 prorata distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC-R any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

9. Financial Representations. The Settling Defendants represent and warrant that their financial condition has not changed in a material way since the tender of their sworn financial statements to the FDIC-R. The Settling Defendants expressly acknowledge that in determining to settle the claims herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information in the sworn financial statements submitted.

10. Cooperation. The Settling Defendants 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 perform the terms of this Agreement. In addition, the Settling Defendants agree to cooperate with the FDIC-R, by appearing voluntarily at depositions, hearings, or trials as requested by the FDIC-R in connection with the Lawsuit. The Settling Defendants also agree to make themselves available for interviews by the FDIC-R, upon reasonable notice and at locations reasonably convenient to the Settling Defendants, for the purpose of assisting the FDIC-R in pursuit of the Lawsuit. The FDIC-R, will reimburse the Settling Defendants for reasonable travel expenses.

11. Good Faith. The parties agree that this Agreement is entered into in good faith given the potential liability of the Settling Defendants, their individual financial resources, and the circumstances surrounding BancInsure's denial of coverage.

12. Execution in Counterparts. This Agreement may be executed in one or more counterparts and delivered by facsimile or email, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party subscribed thereto upon execution by all parties to this Agreement. Such counterparts when so executed shall together constitute the final Agreement. Photocopies and/or facsimile and/or e-mail transmissions of original signatures shall be considered in all respects equivalent to original signatures.

13. Binding Effect. Each of the parties represent and warrant 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.

14. Choice of Law. This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Nevada and federal law, as applicable.

15. Entire Agreement and Amendments This Agreement constitutes the entire agreement and understanding between and among the 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).

16. **No Prior Transfer of Claims.** Except for the assignments of rights against BancInsure to the FDIC-R, each Settling Defendant warrants and represents that such party has not assigned, sold, or otherwise transferred or disposed of, and will not assign, sell, otherwise transfer or dispose of, any interest in such party's rights, claims, and causes of action against BancInsure and its agents, brokers, employees, officers and all other persons or entities relating to or arising out of any applicable insurance policy or policies, the Claims or the Lawsuit, including but not limited to all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to BancInsure's duties to the Settling Defendants with respect to the Claims asserted against the Settling Defendants and with respect to the Lawsuit. The FDIC-R warrants and represents that it (i) owns 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 Settling Defendants' conduct as officers and/or directors of the Bank, and (ii) has not assigned, sold, or otherwise transferred or disposed of, and will not assign, sell, otherwise transfer or dispose of, any of the such claims, demands, obligations, damages, actions, and causes of action, including without limitation the Claims asserted against the Settling Defendants.

17. **Advice of Counsel.** Each party hereby acknowledges that such party 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 counsel. Furthermore, the Settling Defendants agree, after consultation with their attorneys, that reasonable and prudent defendants in their position would enter into this Agreement to avoid the risk of liability to the FDIC-R in connection with the Claims asserted against the Settling Defendants.

18. **Notices.** Any notices relating to or arising out of this Agreement shall be sent by e-mail, shall be considered delivered when received by the Party to whom it was sent, and shall be addressed to the following recipients:

To the FDIC-R:

Bob J. Rogers, Esq.

(b)(6) Email:

with a copy to

Joel R. Hogue, Esq.

(b)(6) Email:

To: Daniel Dykes, Byron Waite and Richard McCole

Daniel Dykes

(b)(6)

Richard McCole

(b)(6)

Byron Waite

(b)(6)

19. Preparation of Agreement. This Agreement has been prepared by the combined efforts of all the parties and their respective attorneys. The parties represent and warrant that each of them has had the unfettered opportunity to fully consult with an attorney of their own choice. This Agreement shall, therefore, be construed without regard to the authorship of the language and without any presumption or interpretation or construction in favor of any person, entity or party.

20. Costs and Expenses. All costs and expenses incurred in connection with this Agreement, as well as all costs and expenses incurred in connection with the closing and carrying out the transactions contemplated by this Agreement shall be borne by the respective party incurring such costs and expenses.

21. Survival. All representations and warranties made herein shall continue and survive the execution of this Agreement, and remain binding upon the person or persons making the representation or warranty, even after this Agreement is executed.

22. Severability. In the event that any provision of this Agreement is declared or deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

23. Attorneys' Fees. If any lawsuit is brought to enforce any term or provision of this Agreement, or in connection with any dispute arising from or relating to this Agreement or to the alleged breach of this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorney's fees and costs incurred in connection with any such lawsuit or proceeding, throughout trial and all appeals.

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FEDERAL DEPOSIT INSURANCE CORPORATION, AS
RECEIVER OF CARSON RIVER COMMUNITY BANK

Signed this _____ day of _____, 2014

By _____

(b)(6)

Signed this 25th day of April, 2014

[Redacted Signature]

DANIEL DYKES

Signed this 25th day of APRIL, 2014

[Redacted Signature]

(b)(6)

BYRON WAITE

(b)(6)

Signed this 25th day of April, 2014

[Redacted Signature]

RICHARD MCCOLE

APPROVED:

JOEL R. HOGUE, ATTORNEY FOR THE FEDERAL DEPOSIT
INSURANCE CORPORATION, AS RECEIVER OF CARSON RIVER
COMMUNITY BANK

FEDERAL DEPOSIT INSURANCE CORPORATION, AS
RECEIVER OF CARSON RIVER COMMUNITY BANK

(b)(6)

Signed this 25th day of April, 2014

[Redacted Signature]

By P. Steve Stockton,
Resolutions and Closings Manager

Signed this _____ day of _____, 2014

DANIEL DYKES

Signed this _____ day of _____, 2014

BYRON WAITE

Signed this _____ day of _____, 2014

RICHARD MCCOLE

APPROVED:

(b)(6)

[Redacted Signature]

JOEL M. HOGUE, ATTORNEY FOR THE FEDERAL DEPOSIT
INSURANCE CORPORATION, AS RECEIVER OF CARSON RIVER
COMMUNITY BANK