

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of January 30, 2015 (the "Effective Date"), by and between the Federal Deposit Insurance Corporation (the "FDIC") in its capacity as Receiver of Carson River Community Bank (hereinafter "FDIC-R") and James M. Jacobs ("Jacobs"). The FDIC-R and Jacobs are hereinafter referred to as "Settling Parties".

### RECITALS

WHEREAS, Jacobs served as a member of the Board of Directors of the Carson River Community Bank ("Bank") and as a member of the Bank's Senior Loan Committee;

WHEREAS, the Financial Institutions Division of the Nevada Department of Business and Industry closed the Bank on February 26, 2010 and the FDIC-R accepted appointment as the Bank's receiver;

WHEREAS, in accordance with 12 U.S.C. §1821(d), the FDIC-R succeeded to all rights, titles, powers, and privileges of the Bank and its stockholders, accountholders, and depositors;

WHEREAS, on February 22, 2013, the FDIC-R filed suit against Jacobs in a case styled *FDIC v. Jacobs, et al*, 3:13-CV-84 (Dist. Nevada) (the "FDIC-R Lawsuit");

WHEREAS, the FDIC-R seeks tort damages in the FDIC-R Lawsuit against Jacobs;

WHEREAS, this Agreement is entered into to settle the FDIC-R Lawsuit against Jacobs;  
and

WHEREAS, the FDIC-R and Jacobs deem it in their respective best interests to enter into this Agreement to avoid the uncertainty, trouble, risk and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and covenants stated herein, the sufficiency of which consideration is hereby acknowledged, the FDIC-R and Jacobs agree, each with the other, as follows:

**1. Settlement Consideration** As an essential covenant and condition of this Agreement, Jacobs shall pay the FDIC-R the sum of \$100,000 in certified funds ("Settlement Funds") on or before February 27, 2015. The Settlement Funds shall be made payable to the (b)(4) [REDACTED] In addition, Jacobs shall execute and deliver to the FDIC-R the Unconditional Assignment attached as Exhibit A, and Jacobs irrevocably assigns to the FDIC-R all of his rights, interests, claims, defenses, and causes of action (hereinafter collectively "rights") against BancInsure, Inc. its receiver, any state insurance guaranty insurance associations, any insurers or reinsurers, and their respective agents, brokers, employees, and officers with respect to the following matters: (A) any rights arising out of the Policy, including but not limited to Jacobs' right to coverage under Extended Professional Liability Insurance Policy, No. (b)(6) [REDACTED] ("Policy"); (B) any rights arising out of BancInsure's conduct regarding the Policy, including but not limited to, BancInsure's conduct in denying coverage

under the Policy, and BancInsure's refusal to settle and pay on behalf of Jacobs the claims asserted in the FDIC-R notice of claims letter dated January 7, 2013 ("Claims Letter") and the FDIC-R Lawsuit; (C) any rights to insurance coverage or payment for the claims asserted in a lawsuit instituted by BancInsure styled *BancInsure, Inc. v. Jacobs, et al*, 3:13-CV-302 (Dist. Nev.) ("Insurance Coverage Action") and FDIC-R Lawsuit; and (D) any rights to prosecute or defend the Insurance Coverage Action. The foregoing assigned rights are hereinafter referred to as the "Assigned Claims." The FDIC-R shall have sole and unfettered discretion, ownership, and control of the prosecution of the Assigned Claims, including without limitation, the right to settle and dismiss the Assigned Claims. The FDIC-R also may, in its sole discretion, continue to prosecute the Assigned Claims in the name of Jacobs unless otherwise required by federal or state law. The FDIC-R shall have the sole right to select counsel to prosecute the Assigned Claims. The FDIC-R is solely responsible for all efforts relating to the Assigned Claims and all such efforts, fees and costs will be undertaken solely at its own risk and expense.

**2. Release of Jacobs by FDIC-R.** Conditioned upon payment of the Settlement Funds and the execution and delivery of the Unconditional Assignment, and subject to the reservations set forth in paragraph 6, the FDIC-R, on its own behalf, and on behalf of its agents, attorneys, representatives, successors and assigns, releases and discharges Jacobs, and his respective heirs, and 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 Jacobs' functions, duties and actions as a director and/or Senior Loan Committee member of the Bank, including the claims asserted or which could have been asserted in the FDIC-R Lawsuit. This release does not release or discharge Jacobs from his obligations under this Agreement.

**3. Release of FDIC-R by Jacobs.** Conditioned upon payment of the Settlement Funds and execution and delivery of the Unconditional Assignment, Jacobs, on behalf of himself individually, and his respective heirs, executors, administrators, agents, attorneys, representatives, successors and assigns, release and discharge the FDIC-R, and its employees, 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 Jacobs that arise from or relate to the Bank or the FDIC-R Lawsuit. This release does not release or discharge the FDIC-R from its obligations under this Agreement.

**4. Dismissal with Prejudice.** Upon payment of the Settlement Funds and execution and delivery of the Unconditional Assignment, the FDIC-R shall take steps to dismiss Jacobs with prejudice from the FDIC-R Lawsuit and Jacobs shall take steps to dismiss with prejudice his crossclaims against other parties to the FDIC-R Lawsuit.

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

**6. Reservations from Release**

- A. The FDIC-R expressly preserves fully and to the same extent as if the Agreement had not been executed, rights to sue upon any claims or causes of action: (a) against any 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 the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank; and (b) against any person or entity not expressly subject to the covenant in this Agreement.
- B. Notwithstanding any other provision, this Agreement does not preclude any claims or actions that could be brought by any agency or instrumentality of the United States government, other than the FDIC-R.
- C. To the extent, if any, that Jacobs is or was a shareholder of the Bank and by virtue thereof is or may have been entitled to a dividend, payment, or other prorata distribution upon resolution of the receivership of the Bank, Jacobs hereby knowingly assigns 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.

**7. Recitals.** The Recitals are incorporated into and constitute a part of this Agreement.

**8. Execution in Counterparts.** This Agreement shall not be binding on any party until signed and delivered by all Settling Parties; provided, however, it 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 Settling 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.

**9. Binding Effect.** The FDIC-R and Jacobs 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 Settling Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

**10. 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 Nevada.

**11. Entire Agreement and Amendments.** This Agreement, including exhibits, constitutes the entire agreement and understanding between the FDIC-R and Jacobs concerning

the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Settling Parties, or by their respective authorized attorney(s) or other representative(s).

**12. No Prior Transfer of Claims.** The FDIC-R warrants and represents that it (i) owns the claims asserted against Jacobs in the FDIC-R Lawsuit, and (ii) has not assigned, sold, or otherwise transferred or disposed of any of those claims.

**13. Reasonable Cooperation.** The Settling 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 perform the terms of this Agreement.

**14. Advice of Counsel.** Each party hereby acknowledges that such party has consulted with or has had the opportunity to consult with counsel prior to executing this Agreement.

**15. Notices.** Any notices relating to or arising out of this Agreement shall be sent by regular mail and 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.  
Senior Attorney  
Professional Liability Unit, Legal Division  
Federal Deposit Insurance Corporation  
1601 Bryan Street  
Room 15068  
Dallas, Texas 75201

(b)(6)

with a copy to:

Joel R. Hogue, Esq.  
Sprouse Shrader Smith PLLC  
701 S. Taylor, Suite 500  
Amarillo, TX 79101

(b)(6)

**To James M. Jacobs:**

(b)(6)

16. **Preparation of Agreement.** This Agreement has been prepared by the combined efforts of the Settling Parties and their respective attorneys. The Settling 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.

17. **Costs and Expenses.** All costs and expenses incurred in closing and carrying out the transactions contemplated by this Agreement shall be borne by the respective party incurring such costs and expenses.

18. **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.

19. **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.

20. **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 attorneys' fees and costs incurred in connection with any such lawsuit or proceeding, throughout trial and all appeals.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement to be effective as of the Effective Date.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR  
CARSON RIVER COMMUNITY BANK**

(b)(6)

Date: January 30, 2015

By:

Printed Name Robert S. Stockton

Title Resolutions & Closings Manager

(b)(6)

Date: 1/30/2015

By:

James M. Jacobs

APPROVED AS TO FORM AND CONTENT:

Date: 1/30/15

SPROUSE SHRADER SMITH, PLLC

By

[Redacted Signature]

(b)(6)

Joel R. Hogue  
Attorney for Federal Deposit Insurance  
Corporation, as Receiver of Carson River  
Community Bank

RED ROCK INSURANCE COMPANY f/k/a BANCINSURE, in Receivership  
3613 NW 56, Suite 330  
Oklahoma City, Oklahoma 73112

**UNCONDITIONAL ASSIGNMENT**

In consideration of \$1.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, James Jacobs, hereinafter referred to as "Claimant", does hereby grant, bargain, sell, convey and unconditionally assign to the Federal Deposit Insurance Corporation, as Receiver of Carson River Community Bank, hereinafter referred to as "Agent", all of his right, title, and interest in and to Claimant's claim against Red Rock Insurance Company, in Receivership, and Claimant does hereby authorize the Receiver to deal directly with the Agent in this matter, and the Receiver is hereby relieved of any and all duties to deal with Claimant relative to this claim, and the Receiver may deal with the Agent in all matters relating to this claim.

\_\_\_\_\_  
Claimant

STATE OF \_\_\_\_\_ )  
  )  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
2015 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

( S E A L )

Commission Expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

RED ROCK INSURANCE COMPANY f/k/a BANCINSURE, in Receivership  
3613 NW 56, Suite 330  
Oklahoma City, Oklahoma 73112

**UNCONDITIONAL ASSIGNMENT**

In consideration of \$1.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, James M. Jacobs, hereinafter referred to as "Claimant", does hereby grant, bargain, sell, convey and unconditionally assign to the Federal Deposit Insurance Corporation, as Receiver of Carson River Community Bank, hereinafter referred to as "Agent", all of his right, title, and interest in and to Claimant's claim against Red Rock Insurance Company, in Receivership, and Claimant does hereby authorize the Receiver to deal directly with the Agent in this matter, and the Receiver is hereby relieved of any and all duties to deal with Claimant relative to this claim, and the Receiver may deal with the Agent in all matters relating to this claim.

(b)(6)

[Redacted Signature Box]  
Claimant

STATE OF Nevada )  
COUNTY OF Washoe )

This instrument was acknowledged before me on this 30<sup>th</sup> day of January, 2015 by James Jacobs.

(b)(6)

[Redacted Notary Signature Box]  
Notary Public

(SEAL)

Commission Expires: 11-5-15  
Commission No.: 91-2702-2

