

## SETTLEMENT AGREEMENT

1. **Parties.** The "Parties" to this Settlement Agreement ("Agreement") are as follows:
  - A. Federal Deposit Insurance Corporation, as Receiver for 1st Pacific Bank of California("FDIC-R");
  - B. BancInsure, Inc. ("BancInsure"); and
  - C. James H. Burgess, Robert P. Cange ("Cange" or "Loan Committee Chairman"), Ronald J. Carlson, Albert Colucci, James G. Knight, M.D., Susan Lew, Albert Logan, Glenn Marshall, Christopher S. McKellar, Larry A. Prosi ("Prosi" or "Chief Operating Officer"), Richard H. Revier ("Revier" or "Chief Credit Officer"), A. Vincent Siciliano ("Siciliano" or "Chief Executive Officer"), and Collette Southwick (collectively, "D&Os"), each of whom are former officers and/or directors of 1st Pacific Bank of California ("1st Pacific" or "Bank").
2. **Purposes.** The purposes of this Agreement are to settle the FDIC-R's Claims (as defined below) against the D&Os and to establish a procedure to resolve the Coverage Dispute (as defined below) that has been raised by BancInsure in an expeditious and mutually agreeable manner, without the need for costly and time-consuming litigation of the FDIC-R's Claims on the merits and without admissions by any Party as to the strengths or weaknesses of the Parties' claims or defenses.
3. **Definitions.**
  - A. "BancInsure Policy" means the Extended Professional Liability Insurance Policy No. P11 (b)(4) [redacted] as issued by BancInsure to the Bank as a Named Insured and under which the D&Os qualify as "Insureds" (as defined in the BancInsure Policy) for the policy periods from October 15, 2008 through October 15, 2009, from October 15, 2009 through November 13, 2009, and from November 13, 2009 through November 13, 2010.
  - B. "FDIC-R's Claims" means only those claims asserted by the FDIC-R against the D&Os in a letter dated October 8, 2010 and the statement of claims attached hereto as Exhibit A, and not any claims against BancInsure regarding insurance coverage.
  - C. "Coverage Dispute" means the dispute among the Parties only as to whether: (1) Section IV (A) (21) of the BancInsure Policy, the Insured v. Insured exclusion, precludes coverage for the D&Os for the FDIC-R's Claims; and (2) the damages sought by the FDIC-R for the FDIC-R Claims fall within the definition of "Loss" in Section III (U) of the BancInsure Policy.
  - D. "Coverage Action" means the lawsuit identified in Section 4(B) below, from its filing through Final Resolution (as defined below).

- E. "Coverage Settlement" means a settlement between the FDIC-R and BancInsure that resolves the Coverage Dispute and all claims in the Coverage Action.
- F. "Final Judgment" means the final judgment in the Coverage Action, including the exhaustion of rights of appeal.
- G. "Final Resolution" means a Final Judgment, a final dismissal with prejudice of the Coverage Action, including the exhaustion of rights of appeal, or a Coverage Settlement.

#### 4. Terms.

##### A. Initial Settlement Payment

(1) Within 10 business days after this Agreement is fully executed by the Parties, Cango, Prosi, Revicr, and Siciliano, collectively, agree to pay the FDIC-R the sum of \$100,000 ("Initial Settlement Payment"). The Parties hereto acknowledge and agree that such payment is solely for the purpose of settling the FDIC-R's Claims and shall not be deemed or constitute an admission by the D&Os or evidence of the D&Os' fault, liability, or wrongdoing. The Initial Settlement Payment and the D&Os' assignment of rights and claims against BancInsure shall constitute the consideration the D&Os are providing for settling the FDIC-R's Claims.

(2) The Initial Settlement Payment is a non-refundable payment that the FDIC-R shall retain under any and all circumstances. Under no circumstances shall BancInsure or any of the D&Os have any right or claim to reimbursement, recoupment, or repayment against the FDIC-R relating to or arising out of all or any part of the Initial Settlement Payment.

##### B. Coverage Action.

(1) **The Parties' Intent.** In the absence of a Coverage Settlement, the Parties' intent is to resolve the Coverage Dispute in the Coverage Action. As to the Coverage Action, the Parties' intent is that:

(a) the FDIC-R and BancInsure will be the parties and the D&Os will not be joined as parties unless required by the court;

(b) the substance of the FDIC-R's Claims will not be litigated, disputed, or interposed as or in support of a coverage defense in the Coverage Action or in any other action or proceeding;

(c) if it is determined that the BancInsure Policy covers any of the D&Os (or FDIC-R as assignee) for any of the FDIC-R's Claims, BancInsure will pay \$8.25 million to the FDIC-R (the "Policy Payment"); and

(d) if it is determined that the BancInsure Policy does not cover any of the D&Os (or FDIC-R as assignee) for any of the FDIC-R's Claims, BancInsure will have no further obligation to any Party.

(2) **Filing.** Within one calendar year after this Agreement is fully executed by the Parties, the FDIC-R shall file an action in the United States District Court for the Southern District of California, naming BancInsure as a defendant, for the purpose of litigating the Coverage Dispute ("Coverage Action"). In the event the court or the Parties determine that BancInsure is the proper plaintiff to file such action against the FDIC-R to litigate the Coverage Dispute, BancInsure shall, within 14 days of such determination, file the Coverage Action in the United States District Court for the Southern District of California, naming the FDIC-R as a defendant.

(3) **Coverage Action Liability.**

(a) If it is determined in the Coverage Action that the BancInsure Policy covers any of the D&Os (or FDIC-R as assignee) for any of the FDIC-R's Claims, then upon Final Resolution BancInsure will pay the entire exact amount of the Policy Payment to the FDIC-R.

(b) If it is determined in the Coverage Action that the BancInsure Policy does not cover any of the D&Os (or FDIC-R as assignee) for any of the FDIC-R's Claims, then upon Final Resolution BancInsure will have no further liability under the BancInsure Policy.

(c) In any event, the maximum amount of BancInsure's liability is \$8.25 million plus any post-judgment interest that may accrue after the Final Resolution of the Coverage Action as provided in Section 4(C) below.

(d) The Parties agree that, in the absence of a Coverage Settlement, all insurance coverage issues among them relating to the BancInsure Policy shall be adjudicated in the Coverage Action and not in any other forum, action, or proceeding.

(4) **FDIC-R's Claims Will Not Be Litigated.** BancInsure waives all challenges, objections to, and coverage defenses based upon the merits or sufficiency of the FDIC-R's Claims or any element of the FDIC-R's Claims as to any of the D&Os. The FDIC-R's agreement to look only to the Initial Settlement Payment and the BancInsure Policy shall not bar or reduce the FDIC-R's recovery from BancInsure in the Coverage Action. BancInsure stipulates and agrees that it will not contest that: (1) the D&Os each committed a Wrongful Act (as used and defined in the BancInsure Policy); (2) damages for each D&O for the FDIC-R's Claims are in excess of the Policy Payment; and (3) nothing in this Agreement is a defense to coverage. BancInsure also agrees that any requirement of adjudication or judgment against the D&Os establishing a legal obligation to pay is hereby waived and BancInsure covenants not to raise such requirement as a defense in the Coverage Action.

(5) **D&Os' Assignment to FDIC-R.** For valuable consideration, receipt of which is hereby acknowledged by the D&Os, and to advance the purposes of this Agreement, in addition to the Initial Settlement Payment, upon execution of this Agreement, the D&Os hereby irrevocably assign to the FDIC-R all of their rights, title and interest with respect to the BancInsure Policy and any and all claims for coverage relating to or arising out of the BancInsure Policy, the FDIC-R Claims, and/or the Coverage Action including but not limited to all statutory rights, contractual rights, and rights arising in tort or otherwise, relating to BancInsure's duties to indemnify the D&Os for the FDIC-R Claims and to settle and pay the FDIC-R Claims in exchange for the FDIC-R's agreement not to pursue any further recovery for the FDIC-R's Claims from the D&Os assets other than the BancInsure Policy (the "D&Os' Assignment"). The FDIC-R hereby accepts the D&Os' Assignment and assumes all rights, title and interest of the D&Os with respect to the BancInsure Policy and any all claims for coverage thereunder or related thereto. BancInsure hereby consents to the D&Os' Assignment. The Parties hereby waive any requirement in Section X (I) or any other section of the BancInsure Policy that any consent to assignment be endorsed on the BancInsure Policy. The Parties stipulate that the D&Os' Assignment satisfies any requirement in Section X (I) or any other section of the BancInsure Policy that BancInsure consent or consent in writing to this assignment. The D&Os' Assignment and/or the Initial Settlement Payment shall not reduce the amount of loss otherwise included in the definition of "Loss" in Section III (U) or any other section of the BancInsure Policy. No Party shall challenge or object to the D&Os' Assignment in any manner or for any reason whatsoever, and each Party hereby waives all challenges and objections to the D&Os' Assignment.

(6) **If Court Requires Joinder of D&Os.** In light of the D&Os' Assignment to the FDIC-R and the Parties' express intent and agreement in subsection (B)(1)(a) above, the Parties agree that the D&Os do not need to be joined or named as parties to the Coverage Action to resolve the Coverage Dispute. If, however, a court determines that the D&Os must be joined or named as nominal parties in the Coverage Action because they are found to be necessary, indispensable, or required parties, or otherwise, the D&Os hereby consent to be joined or named as nominal parties for that purpose and hereby agree to accept service of the complaint and other pleadings and papers through the D&Os' counsel and in accordance with the notice provision in Section 5(B) below, without the need for the filing party to incur the cost of personal service. To the extent that the D&Os are joined or named in the Coverage Action, BancInsure acknowledges that Section X (D) of the BancInsure Policy has no bearing upon, and the BancInsure Policy shall not bar, such joinder or naming.

(7) **Additional Waivers, Service, State Court Fallback.** Neither BancInsure nor the FDIC-R shall challenge or object to the other Party's participation in the Coverage Action based on subject matter jurisdiction, standing, or on any other basis, and BancInsure and the FDIC-R hereby waive all such potential challenges and objections. The defendant named in the Coverage Action hereby agrees to accept service of the complaint through its counsel and in accordance with the notice provision below, without the need for the filing party to incur the cost of personal service. In the event that, for any reason, the United States District Court for the Southern District of California refuses to hear the Coverage

Action, whether based on issues of jurisdiction or otherwise, the FDIC-R shall file the Coverage Action in the San Diego County Superior Court for the State of California.

(8) **Written Agreement and Adjudication Policy Requirements; Inadmissibility and Irrelevance of Section 5(A) of This Agreement.** The Parties agree that the D&Os and the FDIC-R have fully satisfied Section X (D)(1) of the BancInsure Policy and that this Agreement constitutes the written agreement referenced in Section X (D)(1) of the BancInsure Policy. Any requirement of an adjudication against the D&Os before an action is taken against BancInsure is hereby waived by the Parties. BancInsure hereby expressly acknowledges and agrees that no part of Section X (D) of the BancInsure Policy shall be asserted as a defense in or to the Coverage Action and also expressly acknowledges that, if the FDIC-R prevails in the Coverage Action or if the FDIC-R and BancInsure enter into a Coverage Settlement, the FDIC-R shall not be required to file an action against the D&Os or to otherwise establish any liability or damages against the D&Os in the Coverage Action or otherwise to obtain the Policy Payment or a Coverage Settlement amount.

(9) **Waiver of Attorneys' Fees, Costs, and Extra-Contractual Claims.** The Parties shall bear their own attorney's fees and costs for the Coverage Action. The FDIC-R agrees not to assert an extra-contractual or bad faith claim against BancInsure and agrees that the maximum amount of BancInsure's liability to the FDIC-R is \$8.25 million plus any post-judgment interest that may accrue after the Final Resolution of the Coverage Action as provided in Section 4(C) below; provided, however, that nothing in this Agreement shall limit the Parties' rights to request or the court's right to impose sanctions under Rule 11 of the applicable federal rules of civil procedure or similar federal or state rules, and any sanctions imposed on BancInsure shall be separate from and in addition to the Policy Payment amount and will not reduce the maximum amount of BancInsure's liability.

C. **Payment Timing; Enforcement of Final Judgment or Coverage Settlement.** In the event the FDIC-R prevails in the Coverage Action or the FDIC-R and BancInsure settle by entering into a Coverage Settlement, BancInsure shall pay the Policy Payment within 30 days of Final Judgment or, if applicable, shall pay the Coverage Settlement amount within 30 days of the execution of the Coverage Settlement agreement. Interest shall accrue on the amount of any Final Judgment or settlement not paid within said 30-day period at the rate of 10% per annum. If BancInsure fails to timely make payment as set forth above, then the FDIC-R shall be entitled to file a direct action for breach of contract and/or any other appropriate claim against BancInsure to enforce the Final Judgment or Coverage Settlement, and the FDIC-R shall not be required to file an action against the D&Os or to otherwise establish any liability against them in order to obtain the Policy Payment. In the event that the FDIC-R files such a direct action against BancInsure to enforce the Final Judgment or Coverage Settlement, the prevailing party shall be entitled to costs and reasonable attorney's fees.

D. **Release of FDIC-R.** Effective as of the Effective Date, the D&Os, on behalf of themselves individually and their respective heirs, executors, trustees, administrators, agents, representatives, attorneys, successors, and assigns, hereby release and discharge the FDIC-R

and its employees, officers, directors, agents, representatives, 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, that arise from or relate to the Bank or the FDIC-R's Claims, except (1) those claims, counter-claims, or defenses that arise out of claims against the D&Os that are expressly reserved in Section 5(I) below, or (2) an action for declaratory relief to interpret or enforce this Agreement.

- E. **Release of BancInsure by the D&Os.** Except for those rights, title, and interests assigned by the D&Os to the FDIC-R, those claims, counter-claims, or defenses that arise out of claims that are reserved by BancInsure (if any) against the D&Os, an action to interpret or enforce this Agreement, or as otherwise provided in this Agreement, the D&Os, on behalf of themselves individually and their respective heirs, executors, administrators, agents, representatives, successors, and assigns hereby release and discharge BancInsure and its employees, officers, directors, agents, representatives, successors, and assigns from any and all claims, demands, obligations, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Bank, the BancInsure Policy, or the FDIC-R's Claims.

Waiver of Statutory Rights by the D&Os: In addition to the preceding paragraph, the D&Os hereby acknowledge that they may hereafter discover facts different from, or in addition to, those which they now claim or believe to be true with respect to the claims released herein, and agree that this Agreement shall be and remain effective in all respects notwithstanding the discovery of such different or additional facts. In furtherance of the releases set forth herein, the D&Os hereby acknowledge that they are knowingly and voluntarily waiving their rights under Section 1542 of the California Civil Code to the full extent that they may lawfully waive all such rights and benefits pertaining only to the subject matters released herein, and the consequence of such waiver has been explained to them by their counsel and/or advisors. The D&Os acknowledge that they are familiar with the provisions of California Civil Code Section 1542, which provides:

*A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MIGHT HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.*

- F. **No Contribution by D&Os.** Pursuant to this Agreement, the FDIC-R agrees to look only to the Initial Settlement Payment, and to the BancInsure Policy and the Policy Payment to satisfy the FDIC-R's Claims. The Parties acknowledge and agree that except for payment of the Initial Settlement Payment and the D&Os' Assignment, the D&Os shall not under any circumstances be required to contribute to any Coverage Settlement, judgment, or other form of payment, including payment for indemnification, to the FDIC-R, BancInsure, or to any related party, arising from or in any way related to the FDIC-R's Claims. The FDIC-R will attempt to recover and collect the Policy Payment solely and exclusively from BancInsure and its successors, receivers, and assigns. BancInsure agrees that nothing in this

Section 4(F) shall provide a defense or otherwise impair the FDIC-R's right to litigate the Coverage Action to Final Judgment and, if successful, to recover the Policy Payment.

- G. **FDIC-R's Covenant Not To Sue D&Os.** Upon execution of this Agreement and receipt of the Initial Settlement Payment in full, except as provided in Sections 4(B)(6) and 5(I), the FDIC-R and BancInsure, each on behalf of itself and its successors, receivers, and assigns, hereby covenant and agree not to bring any judicial proceeding relating to the FDIC-R's Claims or make or bring any new claims, demands, judicial proceedings, obligations, damages, actions, or causes of action, direct or indirect, in law or in equity, including, among other things, any claims for contribution or indemnity against the D&Os or their respective spouses, heirs, legal representatives, attorneys, agents, or assigns 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 or for any claims for refunds, reimbursements, or other repayments to BancInsure under or arising out of the BancInsure Policy. This covenant not to sue does not apply to an action to interpret or enforce this Agreement. BancInsure agrees that nothing in this section 4(G) shall provide a defense or otherwise impair the FDIC-R's right to litigate the Coverage Action to Final Judgment and, if successful, to recover the Policy Payment.
- H. **Coverage Defenses Not Created or Supported by Agreement.** Notwithstanding any other provision in this Agreement, the Parties agree that this Agreement does not create, revive, provide any ground or basis for, or constitute any evidence of any coverage defense.
- I. **D&O Agreement.** As part of and in further consideration for this Agreement, the D&Os warrant and agree, collectively and individually, that: (1) they are not aware of any other claims or potential claims against them, other than the FDIC-R's Claims; (2) they will not assert that they have tendered any other claims for coverage under the BancInsure Policy, other than the FDIC-R's Claims; (3) they will not tender any other claims for coverage under the BancInsure Policy; and (4) they have not sold, transferred or assigned any of their rights or claims against BancInsure except in this Settlement Agreement.

**5. Additional Provisions.**

- A. **No Admission of Liability by D&Os.** The Parties each acknowledge and agree that this Agreement and all negotiations, discussions, and proceedings, including mediations, in connection with this settlement shall not be deemed or constitute an admission by the D&Os or evidence of the D&Os' fault, liability, or wrongdoing, including Exhibit A attached hereto. The Parties agree that this Agreement is being entered into in good faith settlement of the FDIC-R's Claims against the D&Os. BancInsure agrees that this Section 5(A) does not create or give rise to any coverage defense in the Coverage Action and does not affect coverage under the BancInsure Policy, in the Coverage Dispute, or in the Coverage Action.
- B. **Notice.** All notices required to be given under this Agreement shall be in writing and delivered to the addresses set forth below.

If to FDIC-R:            Robert S. Lawrence

Callahan & Blaine  
3 Hutton Centre Drive, Ninth Floor  
Santa Ana, CA 92707

(b)(6)

If to the D&Os:

Jeffrey A. Tisdale  
Tisdale & Nicholson LLP  
2029 Century Park East, Suite 900  
Los Angeles, CA 90067

(b)(6)

Stanley H. Shure  
Law Offices of Stanley H. Shure  
2355 Westwood Blvd. #374  
Los Angeles, CA 90064

(b)(6)

Email:

If to BancInsure:

Edward F. Donohue III  
Hinshaw & Culbertson LLP  
1 California Street, Suite 1800  
San Francisco, CA 94111

- C. **Power and Authority to Execute Settlement Agreement.** Each Party represents, warrants, and agrees that he, she, or it has the power and authority to enter into and perform this Agreement. Each Party further represents, warrants, and agrees that he, she, or it has not assigned or transferred any claim, demand, action, cause of action, or right encompassed within this Agreement, other than the D&Os' assignment to the FDIC-R in this Agreement. Each person signing this Agreement on behalf of an entity represents, warrants and agrees that he or she has the power and authority to execute this Agreement on behalf of such entity.
- D. **Joint Drafting.** The Parties each acknowledge that this Agreement was drafted jointly by them and, therefore, if any court of competent jurisdiction finds a portion or portions of this Agreement ambiguous, this Agreement shall not be construed for one party and against another.
- E. **Integration Clause.** The provisions of this Agreement comprise all of the terms, conditions, agreements, and representations of the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements, arrangements, and understandings, if any, relating to the subject matter hereof and may be amended only by an instrument in writing executed jointly by the Parties. All representations and promises made by any party to another, whether in writing or orally, concerning the subject matter of this Agreement are understood by the Parties to be merged into this Agreement. All rights and obligations under this Agreement survive closing and do not merge in any judgment entered in the Coverage Action.



- F. **Severability.** If any portion or portions of this Agreement is or are held by a court of competent jurisdiction to conflict with any federal, state, or local law, and as a result such portion or portions are declared to be invalid and of no force and effect in such jurisdiction, all remaining provisions of this Agreement shall otherwise remain in full force and effect and shall be construed as if such valid portion or portions has not been included herein.
- G. **Execution; Facsimile Signatures; Counterparts.** This Agreement may be executed by means of facsimile or scanned and e-mailed, and each copy of this Agreement bearing the facsimile transmitted or scanned and e-mailed signature of each Party or, in the case of an entity, its authorized representative, shall be deemed an original. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- H. **Governing Law, Venue, and Jurisdiction.** This Agreement shall be governed by federal law and, to the extent that state law applies, the laws of the State of California. As to both the Coverage Action and any dispute that may arise relating to or arising out of this Agreement, the Parties consent to venue and personal jurisdiction in the United States District Court for the Southern District of California and, to the extent that an action must be filed in the San Diego County Superior Court for the State of California, the Parties consent to venue and personal jurisdiction in that location.
- I. **FDIC-R Reservation of Claims.**
- (1) Notwithstanding any other provision of this Agreement, the FDIC-R expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action against the D&Os 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-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank.
- (2) Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.
- (3) Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered

restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

- J. **Careful Review and Understanding of Agreement.** The Parties represent that they have carefully read this Agreement and understand its terms and conditions without reservation. The Parties acknowledge that they have consulted with legal counsel of their choice regarding this Agreement and have not relied on any representations or statement of any other Party or counsel for any other Party with respect to the subject matter of this Agreement.
- K. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, legal representatives, attorneys, shareholders, officers, directors, employees, agents, divisions, parent companies, subsidiaries, affiliated corporations, successors, receivers, and assigns.
- L. **Financial Disclosure Representation.** Each of the D&Os has submitted financial information to the FDIC-R including sworn personal financial statements and herein affirms that his/her financial information is true and accurate as of the date of this agreement. Each of the D&Os expressly acknowledges that, in determining to settle the claims herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the D&Os. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a D&O failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that D&O agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of the D&O's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that D&O.
- M. **Reasonable Cooperation.**
- (1) The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Settlement 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 Settlement Agreement.
  - (2) Further, the D&Os agree to cooperate fully with the FDIC-R and BancInsure in connection with any action required under this Agreement, including the prosecution of the Coverage Action. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by BancInsure and/or by the FDIC-R pursuant to the FDIC-R's internal guidelines and policy for such reimbursement. Such cooperation shall consist of:
    - (a) ~~producing all non-privileged documents requested by the FDIC-R or BancInsure, without the necessity of subpoena, as determined by the FDIC-R and/or BancInsure to be relevant to the Coverage Action;~~

- (b) making themselves available upon request by the FDIC-R and/or BancInsure at reasonable times and places for interviews regarding facts, as determined by the FDIC-R or BancInsure, to be relevant to the Bank;
- (c) appearing to testify upon request by the FDIC-R and/or BancInsure in the Coverage Action without the necessity of subpoena;
- (d) signing truthful affidavits upon request by the FDIC-R and/or BancInsure regarding any matter, as determined by the FDIC-R or BancInsure, to be relevant to the Coverage Action.

N. **Attorney's Fees for Interpretation or Enforcement.** Notwithstanding any other provision of this Agreement, in any proceeding to interpret or enforce this Agreement, the party prevailing in that proceeding shall be entitled to his, her, or its reasonable attorney's fees and costs, in addition to any other such relief granted. Any award of attorney's fees and costs imposed on BancInsure shall be separate from and in addition to the Policy Payment amount and will not reduce the maximum amount of BancInsure's liability.

O. **Effective Date.** The Parties agree that this Agreement shall be effective only upon full payment of the Initial Settlement Payment and execution by all of the Parties.

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

**FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR 1ST  
PACIFIC BANK OF CALIFORNIA**

By:  (b)(6)

Samuel B. Lutz  
Counsel  
Legal Division, Professional Liability Unit  
Federal Deposit Insurance Corporation

**BANCINSURE, INC.**

By: \_\_\_\_\_  
James N. Cross  
Vice President, Claims  
BancInsure, Inc.

\_\_\_\_\_  
**JAMES H. BURGESS**

- (b) making themselves available upon request by the FDIC-R and/or BancInsure at reasonable times and places for interviews regarding facts, as determined by the FDIC-R or BancInsure, to be relevant to the Bank;
- (c) appearing to testify upon request by the FDIC-R and/or BancInsure in the Coverage Action without the necessity of subpoena;
- (d) signing truthful affidavits upon request by the FDIC-R and/or BancInsure regarding any matter, as determined by the FDIC-R or BancInsure, to be relevant to the Coverage Action.

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CORPORATION, AS RECEIVER FOR 1ST  
PACIFIC BANK OF CALIFORNIA**

By: \_\_\_\_\_  
 Samuel B. Lutz  
 Counsel  
 Legal Division, Professional Liability Unit  
 Federal Deposit Insurance Corporation

**BANCINSURE, INC.**

(b)(6)

By:  \_\_\_\_\_  
 James N. Cross  
 Vice President, Claims  
 BancInsure, Inc.

**JAMES H. BURGESS**

- (b) making themselves available upon request by the FDIC-R and/or BancInsure at reasonable times and places for interviews regarding facts, as determined by the FDIC-R or BancInsure, to be relevant to the Bank;
- (c) appearing to testify upon request by the FDIC-R and/or BancInsure in the Coverage Action without the necessity of subpoena;
- (d) signing truthful affidavits upon request by the FDIC-R and/or BancInsure regarding any matter, as determined by the FDIC-R or BancInsure, to be relevant to the Coverage Action.

N. **Attorney's Fees for Interpretation or Enforcement.** Notwithstanding any other provision of this Agreement, in any proceeding to interpret or enforce this Agreement, the party prevailing in that proceeding shall be entitled to his, her, or its reasonable attorney's fees and costs, in addition to any other such relief granted. Any award of attorney's fees and costs imposed on BancInsure shall be separate from and in addition to the Policy Payment amount and will not reduce the maximum amount of BancInsure's liability.

O. **Effective Date.** The Parties agree that this Agreement shall be effective only upon full payment of the Initial Settlement Payment and execution by all of the Parties.

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

**FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR 1ST  
PACIFIC BANK OF CALIFORNIA**

By: \_\_\_\_\_  
Samuel B. Lutz  
Counsel  
Legal Division, Professional Liability Unit  
Federal Deposit Insurance Corporation

**BANCINSURE, INC.**

By: \_\_\_\_\_  
James N. Cross  
Vice President, Claims  
BancInsure, Inc.

\_\_\_\_\_

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