

## AGREEMENT

This Agreement is made as of the 28<sup>th</sup> day of June, 2011, by, between, and among the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver of Vineyard Bank, N.A. ("FDIC-R"), Bradley D. Sharp, not individually, but solely as Liquidating Trustee of the Liquidating Trust of Vineyard National Bancorp (the "Liquidating Trustee"), Norman A. Morales ("Morales"), James G. LeSieur, III ("LeSieur"), Frank S. Alvarez ("Alvarez"), Charles L. Keagle ("Keagle"), Joel H. Ravitz ("Ravitz"), David A. Buxbaum ("Buxbaum"), Robin D. Quincey ("Quincey"), Michael D. Cain ("Cain"), Gordon Fong ("Fong"), Lucilio M. Couto ("Couto"), Phillip R. Johnson ("P. Johnson"), Richard S. Hagan ("Hagan"), Sean W. Johnson ("S. Johnson"), David N. Johnson ("D. Johnson"), and St. Paul Mercury Insurance Company ("St. Paul"). For the purposes of clarity, each individual person or entity listed above may be referred to herein as a "Party," and all individual persons and entities to this Agreement may collectively be referred to as the "Parties."

## RECITALS

**WHEREAS**, prior to July 17, 2009, Vineyard Bank, N.A. (the "Bank") was a federally chartered bank operating in the State of California. The Bank was a wholly-owned subsidiary of Vineyard National Bancorp ("Bancorp"), a publicly traded company incorporated under the laws of the State of California;

**WHEREAS**, on July 17, 2009, the Office of the Comptroller of Currency closed the Bank and the FDIC-R was appointed receiver, pursuant to 12 U.S.C. § 1821(c). In accordance with 12 U.S.C. § 1821(c), the FDIC-R, as receiver, succeeded to all rights, titles, powers and privileges of the Bank, including with respect to its assets. Among the assets to which the FDIC-R succeeded were any and all claims, demands, and causes of action against the Bank's former directors, officers and employees arising from the performance, nonperformance and/or manner of performance of their respective functions, duties and acts as the Bank's officers and/or directors;

**WHEREAS**, on July 21, 2009, Bancorp filed a voluntary petition to liquidate its assets pursuant to chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court, Central District of California (the "Bankruptcy Court"), Case No. 09-26401-RN (the "Bankruptcy");

**WHEREAS**, on October 22, 2009, the Bankruptcy Court entered the "Committee Standing Order," granting the Official Committee of Unsecured Creditors of Vineyard National Bancorp (the "Committee") "authority and standing to investigate, bring, maintain and settle to the fullest extent, without further Order of the Court, any and all claims, causes of actions, rights, obligations, offsets, setoffs, and objections ... as a derivative action on behalf of the Debtor and/or the Debtor's estate, for the benefit of the Debtor's creditors, shareholders and other parties in interest;"

**WHEREAS**, on December 22, 2009, the Committee initiated an adversary action in the Bankruptcy against Morales, LeSieur, Alvarez, Keagle, Ravitz, Buxbaum, Quincey, and Cain (the "Adversary Defendants") (the "Lawsuit"). Subsequently a Plan of Liquidation was entered

in the Bankruptcy Court providing that “[t]he Liquidating Trustee shall also be deemed the successor to, assignee of and transferee of the Committee under the Committee Standing Order granting and vesting the Committee with authority and standing to investigate, bring, maintain and settle to the fullest extent the D&O [Director and Officer] Claims.” On August 26, 2010, Bradley D. Sharp was appointed Liquidating Trustee and he became successor to the Committee’s claims against the Adversary Defendants. On December 20, 2010, the Bankruptcy Court entered an Order, pursuant to a joint stipulation by counsel for the Liquidating Trustee and for Cain, dismissing Cain from the Lawsuit. As a result, Cain is not an Adversary Defendant for purposes of this Agreement;

**WHEREAS**, on December 23, 2009, the FDIC-R sent a letter notifying Morales, LeSieur, Alvarez, Keagle, Ravitz, Buxbaum, Cain, Fong, Couto, P. Johnson, Hagan, S. Johnson, and D. Johnson (collectively, the “FDIC-R Target Individuals”) that it was, among other things, investigating possible claims against them for any and all claims, demands, and causes of action arising from the performance, nonperformance and/or manner of performance of their respective functions, duties and acts on behalf of the Bank, its creditors and shareholders (the “FDIC-R Claims”);

(b)(6) **WHEREAS**, by letters dated December 30, 2008 and June 29, 2009 from Bancorp Chief Executive Officer and Bank President [redacted] to St. Paul and others, Bancorp and the Bank purported to provide notice of various circumstances under SelectOne for Community Banks Policy No. [redacted] issued by St. Paul to Bancorp and the Bank (the “St. Paul Policy”). In or around January 19, 2010, the Office of the Comptroller of the Currency (“OCC”) issued a subpoena to testify and produce documents to Morales. And, by letter dated February 24, 2010 to Morales, the OCC alleged various wrongdoing against Morales and invited a response to the allegations from Morales (the Lawsuit, the FDIC-R Claims and the matters referred to in this paragraph are collectively referred to as the “Claims”);

(b)(4) **WHEREAS**, St. Paul issued the St. Paul Policy to Bancorp, and to the Bank as a named insured, covering, among other things, certain specified claims against the officers and directors of Bancorp and the Bank. The St. Paul Policy was Bancorp’s and the Bank’s primary Director and Officer liability insurance coverage for the period from December 31, 2007 through December 31, 2008, with a \$15,000,000 policy year limit of liability; and it was Bancorp’s and the Bank’s primary Director and Officer liability insurance coverage for the period from December 31, 2008 through December 31, 2009, with a \$5,000,000 policy year limit of liability;

(b)(4) **WHEREAS**, National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) issued to Vineyard National Bancorp an Excess Insurance Policy, Policy No. [redacted] (b)(4) [redacted] for the original Policy Period December 31, 2007 to December 31, 2008, which Policy Period was extended by endorsement to December 31, 2009 (“National Union Policy”). The National Union Policy has an aggregate Limit of Liability of \$5,000,000 excess of (i) \$15,000,000 in Total Underlying Limits for all Claims first made on or after December 31, 2007 and prior to December 31, 2008 and (ii) \$5,000,000 in Total Underlying Limits for all Claims first made on or after December 31, 2008;

WHEREAS, Lexington Insurance Company ("Lexington") issued to Vineyard Bank and Vineyard National Bancorp an Excess Directors and Officers Insurance and Company Reimbursement Policy, Policy No. [REDACTED] for the policy period August 22, 2008 to December 31, 2008 ("Lexington Policy"). The Lexington Policy has an aggregate limit of liability of \$5,000,000 excess of \$20,000,000 in underlying limits;

WHEREAS, XL Specialty Insurance Company ("XL") issued Policy No. [REDACTED] to Bancorp, and to the Bank as a named insured, covering, among other things, specified claims against the officers and directors of Bancorp and the Bank. XL Policy No. [REDACTED] was second excess to the St. Paul Policy and the National Union Policy for the period December 31, 2008 through December 31, 2009. *XL is not a party to this Agreement or in any way a beneficiary of this Agreement or any provisions herein;*

WHEREAS, the FDIC-R, Liquidating Trustee, St. Paul, National Union, XL, the Adversary Defendants and FDIC-R Target Individuals engaged in a mediation process before the Honorable Layn Phillips (Ret.), including exchange of documents, multiple briefings and submissions, and four separate days of mediation. As part of the mediation, the Parties (but not XL), reached an agreement for resolution of the Claims as set forth herein;

NOW, THEREFORE, the FDIC-R, Liquidating Trustee, St. Paul, the Adversary Defendants and FDIC-R Target Individuals, in consideration of the promises, covenants, agreements, payments and releases and/or covenants not to execute described herein, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

**Section 1: Bankruptcy Court Approval**

A condition precedent to the rights and obligations set forth in this Agreement is the Liquidating Trustee presenting this Agreement the terms set forth herein to the Bankruptcy Court pursuant to Bankruptcy Rule 9019. The parties to this Agreement acknowledge that the Liquidating Trustee has been given express authority by the Bankruptcy Court to "settle to the fullest extent, without further Order of the Court" this matter, but agree that in abundance of caution that a Bankruptcy Rule 9019 motion will be filed with the Bankruptcy Court as soon as practicable, but in no event later than 10 calendar days after full execution of this Agreement.

**Section 2: Joint Payment to FDIC-R and Liquidating Trustee**

A. As an essential covenant and condition to this Agreement, within thirty (30) days after the later of (i) the date of entry of an Order by the Bankruptcy Court, pursuant to Bankruptcy Rule 9019, approving the terms of the Liquidating Trustee's settlement as set forth herein, (ii) entry of an Order by the Bankruptcy Court affirming the Liquidating Trustee's sole discretion and authority to enter into this Agreement without further order of court, or (iii) the expiration of any applicable appeal period if an objection to the 9019 motion is filed and overruled: St. Paul shall pay to the FDIC-R and Liquidating Trustee, jointly, the sum of \$5,692,826.31 by way of wire transfer to the Stahl Cowen Crowley Addis, LLC Client Trust Account. After receipt of payment, funds will be disbursed to the Liquidating Trustee and to the FDIC-R as set forth in the Allocation Agreement between those parties. The wiring instructions

are as follows: The Private Bank and Trust Company, Routing [REDACTED] Account No. [REDACTED] Account Name "Stahl Cowen Crowley Addis, LLC." Said payment shall: (1) fully exhaust the St. Paul Policy for the period December 31, 2008 through December 31, 2009, and (2) constitute full resolution of any and all obligations of St. Paul under the St. Paul Policy as set forth herein, including without limitation any and all obligations for the period December 31, 2007 through December 31, 2008.

B. As an essential covenant and condition to this Agreement, within thirty (30) days after the later of (i) the date of entry of an Order by the Bankruptcy Court, pursuant to Bankruptcy Rule 9019, approving the terms of the Liquidating Trustee's settlement as set forth herein, (ii) entry of an Order by the Bankruptcy Court affirming the Liquidating Trustee's sole discretion and authority to enter into this Agreement without further order of court, or (iii) the expiration of any applicable appeal period if an objection to the 9019 motion is filed and overruled: the Adversary Defendants and the FDIC-R Target Individuals shall cause National Union to pay to the FDIC-R and Liquidating Trustee, jointly, the sum of \$5,000,000 by way of check to the Stahl Cowen Crowley Addis, LLC Client Trust Account. After receipt of payment, funds will be disbursed to the Liquidating Trustee and to the FDIC-R as set forth in the Allocation Agreement between those parties. The check shall be made payable to "Stahl Cowen Crowley Addis, LLC." The check shall be sent to Stahl Cowen Crowley Addis, LLC, 55 West Monroe Street, Suite 1200, Chicago, Illinois 60603, attention [REDACTED]. The payment described in Section 2B shall: (1) exhaust the National Union Policy and (2) constitute full resolution of any and all obligations of National Union under the National Union Policy. Collectively the payments referred to in Section 2A and 2B are referred to as the "Settlement Funds." If either St. Paul or National Union fails to make its payment as specified in Section 2A or 2B above, then this Agreement shall be null and void. If one, but not both, of St. Paul or National Union makes its payment and the other does not, then the funds paid shall be returned as soon as practicable unless otherwise agreed to in writing by the funding insurer, the FDIC-R, the Liquidating Trustee, the Adversary Defendants, and the FDIC-R Target Individuals.

### **Section 3: Agreement by Liquidating Trustee to Use Best Efforts**

The Liquidating Trustee agrees to use his best efforts to obtain a release of St. Paul, National Union, Lexington, the Adversary Defendants and the FDIC-R Target Individuals from XL in connection with any resolution reached with XL, whether by settlement or otherwise.

### **Section 4: Releases By and Between the FDIC-R and the FDIC-R Target Individuals**

#### **A. Release of FDIC-R Target Individuals by the FDIC-R**

Effective upon payment of the Settlement Funds specified in Section 2 above, the FDIC-R, for itself and its agents successors and assigns, hereby releases and discharges each of the FDIC-R Target Individuals, along with any and all other officers and directors of the Bank and their attorneys and all Insureds, as defined in the St. Paul Policy (collectively, "FDIC-R Released Individuals"), from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, belonging to the FDIC-R, that arise from or relate to (1) the performance, nonperformance and/or manner of performance of the FDIC-R Released Individuals' respective functions, duties and actions at the Bank and/or

Bancorp, (2) the fact that any FDIC-R Released Individual is or was an officer, director, employee, attorney, agent or representative of the Bank, and/or (3) the Insureds, as defined in the St. Paul Policy, in their capacities as Insureds. For the purposes of clarity and certainty, this release is applicable to, and includes each of the FDIC-R Released Individuals themselves as well as each and every of their respective heirs, executors, administrators, representatives, successors and assigns.

**B. Express Reservation of Rights of Bond Carriers**

Notwithstanding any other provision, nothing in this Agreement shall release or prejudice the rights of any fidelity bond carrier, or underwriter of any financial institution bond, fidelity bond, or banker's blanket bond (collectively "Underwriter") on which the Bank is an insured, to bring any claims by way of subrogation to the claims of the FDIC-R. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of any bond carrier or Underwriter by way of subrogation to claims of the FDIC, that would not exist had this Agreement not been executed.

**C. Release of FDIC-R by the FDIC-R Target Individuals**

Effective simultaneously with the release granted in Section 4A above, the FDIC-R Target Individuals, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the FDIC-R and its employees, officers, directors, attorneys, agents, 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, that arise from or relate to, the Bank or the performance, nonperformance, or manner of performance of the FDIC-R Target Individuals' respective functions, duties and actions as officers and/or directors of the Bank that relate to the St. Paul Policy, the National Union Policy, or the Lexington Policy.

**Section 5: Covenant Not To Execute by the Liquidating Trustee, and Release of the Liquidating Trustee by the Adversary Defendants and Assignment of Claims**

**A. Covenant Not To Execute against the Adversary Defendants and FDIC-R Target Individuals by the Liquidating Trustee**

It is expressly understood by and between the Liquidating Trustee and the Adversary Defendants that nothing in this Agreement shall serve in any way as a release, compromise, agreement, or settlement of any kind of the claims the Liquidating Trustee is asserting against the Adversary Defendants in the Lawsuit. It is also expressly understood and stated herein that nothing in this Agreement in any way indicates the solicitation, assistance or active participation in any way of the Adversary Defendants or FDIC-R Target Individuals in the Lawsuit other than in an adverse manner to the Liquidating Trustee. Subject to and conditioned upon these understandings, effective upon and in exchange for (i) payment of the Settlement Funds specified in Section 2 above and (ii) contemporaneously with the Adversary Defendants granting the Liquidating Trustee an Assignment of Rights as described in Section 5B below, the Liquidating Trustee covenants and agrees that he shall not execute any judgment, award, settlement or compromise reached in the Lawsuit individually against the Adversary Defendants or FDIC-R

Target Individuals or any other Insured, as defined in the St. Paul Policy. Consistent with the Assignment of Rights set forth in Section 5B below, the Liquidating Trustee shall seek to execute any judgment, award, settlement or compromise reached in the Lawsuit against the Adversary Defendants, or any one of them, solely against XL, as the second excess insurance carrier of Director and Officer liability insurance for the policy year December 31, 2008 through December 31, 2009. Regardless of whether the Liquidating Trustee is successful in executing any judgment, award, settlement or compromise against XL in the Lawsuit, any amendments thereto, or any future litigation of any kind relating to Bancorp or Bank, he will make no effort and have no right to collect any part of any such judgment, award, settlement or compromise individually from any Adversary Defendant, any FDIC-R Target Individual, or any other Insured, as defined in the St. Paul Policy. Nothing in this Agreement in any way is intended to, nor does it, adversely affect the Liquidating Trustee's claims in the Lawsuit or its ability to enforce a judgment against XL, regardless of policy limits.

**B. Release of the Liquidating Trustee and Assignment of Claims to the Liquidating Trustee by the Adversary Defendants and FDIC-R Target Individuals**

Effective simultaneously with the effectiveness of the Covenant Not to Execute described in Section 5A above, the Adversary Defendants and the FDIC-R Target Individuals, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns: (i) hereby release and discharge the Liquidating Trustee and his attorneys, agents, 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, that arise from or relate to the allegations made in the Lawsuit or that relate to the Liquidating Trustee, Bancorp or the Bancorp estate in any way, provided, however, that this release shall not extend to any claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Liquidating Trustee's breach of any conditions, obligations or covenants under this Agreement; and (ii) expressly assign their rights and interests that they have or may have at any point against XL under XL Policy No. [REDACTED] for XL's failure to effectuate a reasonable settlement and to recover resulting extracontractual damages from XL in the event that a final judgment is taken by the Liquidating Trustee against the Adversary Defendants, FDIC-R Target Individuals, or any one of them individually in the Lawsuit.

**Section 6: Release of St. Paul**

Effective upon payment by St. Paul of the Settlement Funds specified in Section 2A above, the FDIC-R, the Liquidating Trustee, the Adversary Defendants and the FDIC-R Target Individuals ("the St. Paul Releasers"), on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, among other things, acknowledge that St. Paul has exhausted the St. Paul Policy for the policy year December 31, 2008 through December 31, 2009, and hereby fully release and forever discharge St. Paul and its parents, direct and indirect subsidiaries, affiliates, and their respective employees, officers, directors, agents, partners, attorneys, shareholders, insurers, reinsurers, representatives, successors and assigns (the "St. Paul Releasees"), from any and all actual or potential claims, demands, obligations, damages, actions and causes of action, suits, claims for sums of money,

contracts, controversies, agreements, costs, attorneys' fees, expenses, damages, awards, judgments, and demands whatsoever, in law or in equity, known or unknown, now existing or hereafter arising, whether contractual, extra-contractual, in tort or otherwise, direct or indirect, asserted or unasserted, that the St. Paul Releasers had, have, or may have in the future against the St. Paul Releasees arising out of or related to (i) the St. Paul Policy; (ii) the Claims; (iii) the settlement; and (iv) the St. Paul Releasees' investigation, evaluation, or handling of the Claims and settlement, or alleging any "bad faith" or breach of any oral or written promise or obligation, or breach of any duty grounded in law or in contract relating to the Claims or the St. Paul Policy. Nothing in this Section 6 shall affect any claims that the FDIC-R may have against any other insurance policy issued by St. Paul to the Bank or Bancorp or any defenses that St. Paul may have under any such other insurance policy.

As part of this Agreement and in exchange for the above release and other representations, releases and warranties contained in this Agreement, St. Paul agrees not to seek any reimbursement or payment from any of the Adversary Defendants, the FDIC-R Released Individuals or any of their counsel for any part of the payment St. Paul is making pursuant to Section 2A of this Agreement or any other defense costs or other payments it has made under the St. Paul Policy.

#### **Section 7: Releases of National Union and Lexington**

Effective upon payment of the Settlement Funds specified in Section 2B above, the FDIC-R and Liquidating Trustee on behalf of themselves, and, as applicable, their respective employees, heirs, executors, administrators, officers, directors, agents, representatives, successors and assigns, hereby release National Union and Lexington and their respective predecessors and successors in interest, their respective former, present, and future affiliates, subsidiaries, parents, divisions, joint venturers, associates, representatives, owners, shareholders, insurers, reinsurers, principals, and their respective former, present, and future employees, officers, directors, shareholders, representatives, attorneys, agents, servants and persons acting by, through, under or in concert with all of the foregoing, and each of them of and from any and all suits, claims for sums of money, contracts, controversies, agreements, costs, attorneys' fees, expenses, damages, awards, judgments, and demands whatsoever, in law or in equity, known or unknown, now existing or hereafter arising, whether contractual, extra-contractual, in tort or otherwise, direct or indirect, asserted or unasserted, that now exist, may exist, claim to have existed, ever formerly existed, or may at any time in the future be acquired based upon: (i) the National Union Policy; (ii) the Lexington Policy; (iii) the Claims; (iv) the settlement and the matters released in connection therewith, (v) the investigation, evaluation, or handling of the Claims and settlement, or alleging any "bad faith" or breach of any oral or written promise or obligation, or breach of any duty grounded in law or in contract relating to the Claims or the National Union Policy or the Lexington Policy; and/or (vi) any other claim based upon any of the alleged acts, failures to act, omissions, misrepresentations, facts, events, transactions, statements, and occurrences or other subject matters which either were or could have been set forth, alleged, embraced, complained of or otherwise referred to in the Claims or in any action which could have been consolidated or coordinated with the Claims. Nothing in this Section 7 shall affect any claims that the FDIC-R may have against any other insurance policy issued by National Union or Lexington to the Bank or Bancorp, except for a policy affording coverage to

the Insureds, as defined in the St. Paul Policy, or any defenses that National Union or Lexington may have under any such other insurance policy.

**Section 8: Express Reservations From Releases by the FDIC-R**

- A. Notwithstanding any other provision contained in this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:
  - (1) Against the FDIC-R Target Individuals or any other person for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or other evidence of indebtedness payable or owed by them or any of them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the Federal Deposit Insurance Corporation in its corporate capacity ("FDIC-C") or as successor in interest to the Bank or any person or entity other than the Bank; and
  - (2) Against any person or entity not expressly released in this Agreement.
- B. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction of the FDIC-C in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or other administrative enforcement action which may arise by operation of law, rule or regulation.
- C. Notwithstanding any other provision contained in this Agreement, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the OCC or the United States through either the Department of Justice, the United States District Attorney's Office for the Central District of California or any other federal judicial district. In addition, the right of the FDIC-R to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate, also is not waived or released.
- D. The FDIC-R represents and warrants that as of the date of this Agreement that it has not transferred any claim, cause of action or other right that would be released hereunder if such claim, cause of action or right had not been previously transferred by the FDIC-R prior to the date of this Agreement, and to that end the FDIC-R and FDIC-R Target Individuals agree that the release set forth in Section 4A above is a full and complete release of all such claims, causes of action and rights.
- E. The releases herein shall not affect any other actions between the FDIC-R and the Liquidating Trustee, including, but not limited to, claims between the FDIC-R and the Liquidating Trustee relating to the Settlement Payments and any other actions currently asserted or that may be asserted in the Bankruptcy.



#### **Section 9: California Civil Code Section 1542**

The Parties acknowledge that they are familiar with California Civil Code Section 1542, which reads that: "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 MUST HAVE MATERIALLY AFFECTED HIS OR SETTLEMENT WITH THE DEBTOR."

Each of the Parties acknowledges that such Party may have sustained damages in connection with the Claims that are presently unknown and unsuspected, and that such damages as the Party may have sustained in connection with the Claims might give rise to additional damages in the future. Nevertheless, each of the Parties acknowledges that this Agreement has been negotiated and agreed upon in light of such possible damages and each Party expressly waives any and all rights under California Civil Code Section 1542 and under any other federal or state statute or law of similar effect in connection with the Claims. Each Party acknowledges and agrees that this waiver is an essential and material term of this Agreement, and that, without such waiver, this Agreement would not have been entered.

#### **Section 10: Waiver of Dividends**

To the extent, if any, that the FDIC-R Target Individuals are or were depositors, creditors and/or shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment or other pro-rata 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.

#### **Section 11: Waiver of Unsecured Claims**

To the extent, if any, that the Adversary Defendants are or purport to be creditors of any kind of Bancorp or its estate, including, but not limited to, as Bancorp shareholders, they knowingly and expressly waive any such claims against the Liquidating Trust, Bancorp, or Bancorp's estate in the Bankruptcy, specifically including any Proofs of Claim filed by or for the direct benefit of the Adversary Defendants in the Bankruptcy.

#### **Section 12: Miscellaneous Representations and Acknowledgements**

A. **No Admission of Liability** Each of the Parties to this Agreement agree and acknowledge that nothing herein shall constitute an admission or evidence of liability by himself or itself or by any other Party to this Agreement, provided however, that nothing in the foregoing shall in any way affect the validity of the other agreements set forth in this Agreement. This Agreement shall not be construed as an admission of coverage on the part of St. Paul, National Union or Lexington.

B. **Execution in Counterparts** This Agreement may be executed in counterparts by the Parties and all such counterparts when so executed shall together constitute one final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, whether by hand, express delivery, facsimile or pdf electronic

signature, shall be deemed a complete original, binding the signing Party upon execution by all other Parties to this Agreement.

C. **Binding Effect** Each of the Parties represents and warrants that they are a Party to this Agreement and that they are authorized to sign this Agreement on behalf of themselves or the respective Party for which they are signing, 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 signatories and their respective heirs, executors, administrators, representatives, successors, parents, subsidiaries, and assigns.

D. **Specific Representations and Warranties** The Adversary Defendants severally, but not jointly, warrant, swear and affirm that all financial information in the financial statements prepared by them and presented to the FDIC-R were true and correct at the time of presentation to the FDIC-R. FDIC-R has relied on the truth and accuracy of this financial information in entering into this Agreement.

E. **Reasonable Cooperation** The signatories to this Agreement agree to cooperate in good faith to effectuate all of the terms of this Agreement.

F. **Choice of Law** This Agreement shall be interpreted, construed and enforced according to the applicable federal law or, in its absence or inapplicability, the laws of the State of California.

G. **Advice of Counsel** Each Party hereby acknowledges that he/she/it has consulted with and obtained the advice of counsel prior to executing this Agreement and that this Agreement has been fully explained to that Party by his/her/its counsel. Each Party further acknowledges that he/she/it is voluntarily entering into this Agreement as a result of arms-length negotiations and that in executing this Agreement he/she/it is relying solely upon his/her/its own judgment, belief and knowledge, and the advice and recommendations of his/her/its own independently selected counsel, concerning the nature, extent and duration of his/her/its rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, he/she/it has not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omissions pertaining to any of the foregoing matters by any party to this Agreement. Each Party therefore assumes the risk of mistake as to facts or law.

H. **Time is of the Essence** Time is of the essence in this Agreement, including, specifically, the Liquidating Trustee's presentation of the Bankruptcy Rule 9019 motion and, thereafter, payment of the Settlement Funds to the FDIC-R and Liquidating Trustee on or before the date due.

I. **Construction** None of the Parties to this Agreement shall be considered to be the drafter of this Agreement or any provision hereof, for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

(b)(6)

Date: 7-5-11

By: [Redacted]

Title: Senior Attorney

Print Name: Tasneem Dohadwala

**LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST OF VINEYARD NATIONAL BANCORP**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bradley D. Sharp

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Norman A. Morales

Date: \_\_\_\_\_

\_\_\_\_\_  
James G. LeSieur, III

Date: \_\_\_\_\_

\_\_\_\_\_  
Frank S. Alvarez

Date: \_\_\_\_\_

\_\_\_\_\_  
Charles L. Keagle

Date: \_\_\_\_\_

\_\_\_\_\_  
Joel H. Ravitz

Date: \_\_\_\_\_

\_\_\_\_\_  
David A. Buxbaum

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST OF VINEYARD NATIONAL BANCORP**

(b)(6) Date: 7-5-11  
By:   
Bradley D. Sharp, Trustee

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_  
Norman A. Morales

Date: \_\_\_\_\_  
James G. LeSieur, III

Date: \_\_\_\_\_  
Frank S. Alvarez

Date: \_\_\_\_\_  
Charles L. Keagle

Date: \_\_\_\_\_  
Joel H. Ravitz

Date: \_\_\_\_\_  
David A. Buxbaum

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST OF VINEYARD NATIONAL BANCORP**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Bradley D. Sharp

**ST. PAUL MERCURY INSURANCE COMPANY**

(b)(6) Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: *Managing Director - Community Bank Claims*  
Print Name: *Timothy C. Krsul*

Date: \_\_\_\_\_  
Norman A. Morales

Date: \_\_\_\_\_  
James G. LeSieur, III

Date: \_\_\_\_\_  
Frank S. Alvarez

Date: \_\_\_\_\_  
Charles L. Keagle

Date: \_\_\_\_\_  
Joel H. Ravitz

Date: \_\_\_\_\_  
David A. Buxbaum

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST OF VINEYARD NATIONAL BANCORP**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Bradley D. Sharp

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

(b)(6)

Date: 6/30/11  
\_\_\_\_\_  
Norman A. Morales

Date: \_\_\_\_\_  
\_\_\_\_\_  
James G. LeSieur, III

Date: \_\_\_\_\_  
\_\_\_\_\_  
Frank S. Alvarez

Date: \_\_\_\_\_  
\_\_\_\_\_  
Charles L. Keagle

Date: \_\_\_\_\_  
\_\_\_\_\_  
Joel H. Ravitz

Date: \_\_\_\_\_  
\_\_\_\_\_  
David A. Buxbaum

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

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By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

**LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST OF VINEYARD NATIONAL BANCORP**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Bradley D. Sharp

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Norman A. Morales

(b)(6)

Date: 6/29/11

James G. LeSieur, III

Date: \_\_\_\_\_

Frank S. Alvarez

Date: \_\_\_\_\_

Charles L. Keagle

Date: \_\_\_\_\_

Joel H. Ravitz

Date: \_\_\_\_\_

David A. Buxbaum

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

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Print Name: \_\_\_\_\_

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Date: \_\_\_\_\_

By: \_\_\_\_\_

Bradley D. Sharp

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Norman A. Morales

Date: \_\_\_\_\_

James G. LoSieur, III

(b)(6)

Date: 6/30/11

Frank S. Alvarez

Date: \_\_\_\_\_

Charles L. Keagle

Date: \_\_\_\_\_

Joel H. Ravitz

Date: \_\_\_\_\_

David A. Buxbaum



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**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

**LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST OF VINEYARD NATIONAL BANCORP**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Bradley D. Sharp

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Norman A. Morales

Date: \_\_\_\_\_

James G. LeSieur, III

Date: \_\_\_\_\_

Frank S. Alvarez

(b)(6) Date: 6/29/11

[Redacted Signature]

Charles L. Keagle *U*

Date: \_\_\_\_\_

Joel H. Ravitz

Date: \_\_\_\_\_

David A. Buxbaum

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

**LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST OF VINEYARD NATIONAL BANCORP**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bradley D. Sharp

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Norman A. Morales

Date: \_\_\_\_\_

\_\_\_\_\_  
James G. LeSieur, III

Date: \_\_\_\_\_

\_\_\_\_\_  
Frank S. Alvarez

Date: \_\_\_\_\_

\_\_\_\_\_  
Charles L. Keagle

(b)(6) Date: JUNE 30, 2011

\_\_\_\_\_  
Joel H. Ravitz

Date: \_\_\_\_\_

\_\_\_\_\_  
David A. Buxbaum

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**LIQUIDATING TRUSTEE OF THE LIQUIDATING TRUST OF VINEYARD NATIONAL BANCORP**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Bradley D. Sharp

**ST. PAUL MERCURY INSURANCE COMPANY**

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_  
Norman A. Morales

Date: \_\_\_\_\_  
James G. LeSieur, III

Date: \_\_\_\_\_  
Frank S. Alvarez

Date: \_\_\_\_\_  
Charles L. Keagle

Date: \_\_\_\_\_  
Joel H. Ravitz

(b)(6) Date: 6/20/11  
David A. Buxbaum

(b)(6)

Date: 06.29.2011



Robin D. Quincey

Date: \_\_\_\_\_

Michael D. Cain

Date: \_\_\_\_\_

Gordon Fong

Date: \_\_\_\_\_

Lucilio M. Couto

Date: \_\_\_\_\_

Phillip R. Johnson

Date: \_\_\_\_\_

Richard S. Hagan

Date: \_\_\_\_\_

Sean W. Johnson

Date: \_\_\_\_\_

David N. Johnson

Date: \_\_\_\_\_

Robin D. Quincey

(b)(6)

Date: 6/29/11

[Redacted]

Michael D. Cain

(b)(6)

Date: 6/29/11

[Redacted]

Gordon Fong

(b)(6)

Date: 6/29/11

[Redacted]

Lucilio M. Couto

(b)(6)

Date: 6/29/11

[Redacted]

Phillip R. Johnson

Date: \_\_\_\_\_

Richard S. Hagan

Date: \_\_\_\_\_

Sean W. Johnson

Date: \_\_\_\_\_

David N. Johnson

Date: \_\_\_\_\_  
Robin D. Quincey

Date: \_\_\_\_\_  
Michael D. Cain

Date: \_\_\_\_\_  
Gordon Fong

Date: \_\_\_\_\_  
Lucilio M. Couto

Date: \_\_\_\_\_  
Phillip R. Johnson

(b)(6) Date: 6-28-11 \_\_\_\_\_  
Richard S. Hagan

Date: \_\_\_\_\_  
Sean W. Johnson

Date: \_\_\_\_\_  
David N. Johnson

Date: \_\_\_\_\_

Robin D. Quincey

Date: \_\_\_\_\_

Michael D. Cain

Date: \_\_\_\_\_

Gordon Fong

Date: \_\_\_\_\_

Lucilio M. Couto

Date: \_\_\_\_\_

Phillip R. Johnson

Date: \_\_\_\_\_

Richard S. Hagan

(b)(6)

Date: 28 June, 2011

Sean W. Johnson

Date: \_\_\_\_\_

David N. Johnson

Date: \_\_\_\_\_

Robin D. Quincey

Date: \_\_\_\_\_

Michael D. Cain

Date: \_\_\_\_\_

Gordon Fong

Date: \_\_\_\_\_

Luellio M. Couto

Date: \_\_\_\_\_

Phillip R. Johnson

Date: \_\_\_\_\_

Richard S. Hagan

Date: \_\_\_\_\_

Sean W. Johnson

(b)(6)

Date: 6/28/11

David N. Johnson