

## 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 Charlie Glenn, 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. A true and correct copy of the Tolling Agreement as Amended is attached hereto as Exhibit A;

**WHEREAS**, the FDIC-R intends to assert the Claims against the Settling Defendants based on their actions and inactions up through and including February 26, 2010 in a lawsuit styled, *Federal Deposit Insurance Corporation v. James M. Jacobs*, No. 3:13-CV-00084, in the District of Nevada, Reno Division, or another judicial proceeding as may be necessary, ("Lawsuit") consistent with the Tolling Agreement as Amended, as modified by this Agreement. A draft of the complaint asserting the Claims against the Settling Defendants and non-settling defendant James M. Jacobs ("Jacobs") is attached hereto as Exhibit B ("Amended Complaint");

**WHEREAS**, the FDIC-R asserts that the Settling Defendants are jointly and severally liable, along with Jacobs, for the Claims alleged in the Amended Complaint in the approximate amount of \$3,500,000 associated with the following loan transactions: [REDACTED]

(b)(4)

(b)(4) [REDACTED] In addition, the FDIC-R asserts that Glenn, McCole, and Waite are jointly and severally liable in the approximate amount of \$600,000 associated with the [REDACTED] loan transaction as set forth in the Amended Complaint;

**WHEREAS**, the Settling Defendants deny they are liable to the FDIC-R for the Claims set forth in the Amended Complaint;

**WHEREAS**, prior to the execution of this Agreement, the FDIC-R and the Settling Defendants provided notice of the Claims to the Settling Defendants' professional liability insurer, BancInsure, Inc. ("BancInsure");

**WHEREAS**, BancInsure denied coverage for the Claims and it is in apparent financial trouble as recent published news accounts reflect the Oklahoma Department of Insurance seeks to place it in receivership;

**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 to be 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 apparent financial trouble; and

**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:

**I. Lawsuit.** The FDIC-R has or will file a pleading substantially in the form of Exhibit B asserting the Claims in the Lawsuit against the Settling Defendants. The Settling Defendants, through their attorneys, agree to accept service of the Amended Complaint. The Settling Defendants also agree that the FDIC-R may file a motion for leave to amend the complaint to add them as parties, as may be necessary, and the filing of the Amended Complaint

as permitted by an order of the court granting the motion to amend, shall be deemed to have been filed on the Effective Date as defined in the Tolling Agreement as Amended (i.e. February 22, 2013). Should the court deny the motion to amend the complaint to add the Settling Defendants as parties, the Settling Defendants agree that any separate judicial proceeding commenced within thirty (30) days after denial of the motion to amend the complaint shall be deemed to have been commenced on the Effective Date as defined in the Tolling Agreement as Amended (i.e. February 22, 2013). The intent of this provision is to assure that the commencement of any action to assert the Claims shall not be time barred so long as the FDIC-R complies with the provisions of this paragraph.

**2. 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:

Charlie Glenn	\$12,500
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 June 13, 2013. ("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"). FDIC Counsel shall hold the Settlement Payments pending the court's determination that the releases granted by the FDIC-R to the Settling Defendants were given in good faith as further described in paragraph 3 below. Should any one or more of the Settling Defendants fail to deliver his or their share of the Settlement Payments 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.

**3. Good Faith Determination.** The FDIC-R and the Settling Defendants shall file a joint motion seeking determination that the releases granted herein by the FDIC-R were given in good faith to the Settling Defendants pursuant to section 17.245 of the Nevada Revised Statutes. The joint motion shall address both claims for contribution and indemnity. If the court determines the releases granted by the FDIC-R were given in good faith, FDIC Counsel is authorized and directed to remit the Settlement Payments to the FDIC-R. If the court denies the joint motion as to any of the Settling Defendants, FDIC-Counsel shall return the Settlement Payments to the Settling Defendants entitled to same and the Agreement shall be of no further force or effect, except that the FDIC may pursue the Claims against the Settling Defendants consistent with the Tolling Agreement as Amended, as modified by the Agreement. Notwithstanding that the good faith determination shall be presented as a joint motion, the FDIC-R shall bear the expense associated with the preparation of the joint motion. To the extent permitted by the court, the FDIC-R will take the lead in presenting evidence at a hearing on the joint motion. The Settling Defendants will cooperate and provide reasonable assistance in connection with the joint motion and hearing, including but not limited to their appearance and testimony at the hearing.

4. **Release of Settling Defendants by FDIC-R.** Conditioned upon payment of the Settlement Payments and upon the court's determination that the releases granted by the FDIC-R were given in good faith as provided in paragraph 3 above, 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. The Settlement Payments shall be allocated to the [REDACTED]

(b)(4) and [REDACTED] loan transactions. This release does not release or discharge the Settling Defendants from their obligations under this Agreement.

5. **Release of FDIC-R by Settling Defendants.** Conditioned upon payment of the Settlement Payments and upon the court's determination that the releases granted by the FDIC-R were given in good faith as provided in paragraph 3 above, 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.

6. **Covenants Not to Sue by Settling Defendants.** Conditioned upon payment of the Settlement Payments and upon the court's determination that the releases granted by the FDIC-R were given in good faith as provided in paragraph 3 above, 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.

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

8. **Dismissal with Prejudice.** Upon payment of the Settlement Payments and upon the court's determination that the release or releases were given in good faith as provided in paragraph 3 above, the FDIC-R shall take steps necessary to dismiss the Lawsuit with prejudice against the Settling Defendants. Each party will bear their own costs and attorney's fees associated with the Lawsuit.

9. **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.

10. **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 defendant Jacobs, 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.

**11. 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.

**12. 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.

**13. 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 and financial instability.

**14. 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.

**15. 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.

**16. 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.

**17. 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).

**18. No Prior Transfer of Claims.** 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.

**19. 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.

**20. 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:  (after June 30, 2013)

**To: Daniel Dykes, Byron Waite and Richard McCole**

John Bley

(b)(6) Email:

**To: Charlie Glenn**

S. Brett Sutton

(b)(6) Email:

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**THE REST OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

Signed this 13 day of June, 2013

JOHN LAPEAU

(b)(6)

By

[Redacted Signature]

Signed this \_\_\_ day of \_\_\_\_\_, 2013

CHARLIE GLENN

Signed this \_\_\_ day of \_\_\_\_\_, 2013

DANIEL DYKES

Signed this \_\_\_ day of \_\_\_\_\_, 2013

BYRON WAITE

Signed this \_\_\_ day of \_\_\_\_\_, 2013

RICHARD MCCOLE

APPROVED:

(b)(6)

[Redacted Signature]

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

JOHN BLEY, ATTORNEY FOR DANIEL DYKES, BYRON WAITE,  
AND RICHARD MCCOLE

S. BRETT SUTTON, ATTORNEY FOR CHARLIE GLENN

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

By \_\_\_\_\_

(b)(6)

Signed this 12<sup>th</sup> day of June, 2013

CHARLIE GLENN

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

DANIEL DYKES

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

BYRON WAITE

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

RICHARD MCCOLE

APPROVED:

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

JOHN BLEY, ATTORNEY FOR DANIEL DYKES, BYRON WAITE,  
AND RICHARD MCCOLE

(b)(6)

S. BRETT SUTTON, ATTORNEY FOR CHARLIE GLENN

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013 \_\_\_\_\_  
By \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013 \_\_\_\_\_  
CHARLIE GLENN

(b)(6) \_\_\_\_\_  
Signed this 12<sup>th</sup> day of June, 2013   
DANIEL DYKES

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013 \_\_\_\_\_  
BYRON WAITE

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013 \_\_\_\_\_  
RICHARD MCCOLE

APPROVED:

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

(b)(6) 

JOHN BLEY, ATTORNEY FOR DANIEL DYKES, BYRON WAITE,  
AND RICHARD MCCOLE

S. BRETT SUTTON, ATTORNEY FOR CHARLIE GLENN

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

By \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

CHARLIE GLENN

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

DANIEL DYKES

(b)(6)

Signed this 10 day of JUNE, 2013

BYRON WAITE

(b)(6)

Signed this 10 day of JUNE, 2013

RICHARD MCCOLE

APPROVED:

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

\_\_\_\_\_  
JOHN BLEY, ATTORNEY FOR DANIEL DYKES, BYRON WAITE,  
AND RICHARD MCCOLE

\_\_\_\_\_  
S. BRETT SUTTON, ATTORNEY FOR CHARLIE GLENN

**TOLLING AGREEMENT**

This tolling agreement ("Agreement") is made and entered into by and between the Federal Deposit Insurance Corporation, as receiver for Carson River Community Bank, Carson City, Nevada ("FDIC-R"), on the one hand, and Daniel Dykes ("Dykes"), Byron Waite ("Waite"), Richard McCole ("McCole"), and Charlie Glenn ("Glenn"), on the other hand. Dykes, Waite, McCole, and Glenn are referred to collectively as "Ds&Os". FDIC-R and the Ds&Os are sometimes hereinafter collectively referred to as the "Parties" and each of them in the singular as a "Party". This Agreement is effective as of February 22, 2013 ("Effective Date").

WHEREAS, Carson River Community Bank ("Carson River") was a state nonmember bank whose deposits were insured by the Federal Deposit Insurance Corporation; and

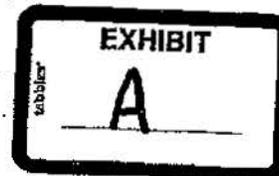
WHEREAS, on or about February 26, 2010, the Nevada Financial Institutions Division closed Carson River, whereupon the Federal Deposit Insurance Corporation was appointed as receiver for Carson River; and

WHEREAS, on January 20, 2011, the FDIC-R obtained an order of investigation relating to Carson River pursuant to the Federal Deposit Insurance Act, 12 U.S.C. §1818(n) and 12 U.S.C. §1821(d)(2)(I); and

WHEREAS, the FDIC-R asserts it has claims as Carson River's receiver against the Ds&Os relating to their conduct as former directors or officers of Carson River up through and including February 26, 2010 ("Professional Claims"); and

WHEREAS, the Ds&Os fully and completely deny there is any basis for the Professional Claims; and

WHEREAS, the Parties are attempting to meet and confer regarding the Professional Claims; and



WHEREAS, the FDIC-R and the Ds&Os believe it would be mutually beneficial to relieve any time pressure associated with such meeting and also to delay the commencement of any judicial proceedings between them to allow, among other things, an opportunity for appropriate consideration, dialogue and analysis.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the FDIC-R and the Ds&Os agree as follows:

1. Unless notice is provided as set forth in paragraph 3, the forbearance period set forth in paragraph 2 of this Agreement shall terminate on April 30, 2013. The date of such termination is referred to hereinafter as the "Termination Date."

2. Prior to the Termination Date, the FDIC-R shall not commence any judicial proceeding against the Ds&Os arising out of the Professional Claims and the Ds&Os shall not commence any judicial proceeding against the FDIC-R ("Forbearance Period"), except as provided for in paragraph 3 below.

3. During the Forbearance Period, the FDIC-R reserves the right to file any of the Professional Claims against any of the Ds&Os after providing fourteen (14) days prior notice to each Party against whom the claims are to be filed.

4. Any judicial proceeding commenced on or before the 14th calendar day following the Termination Date by the FDIC-R against the Ds&Os on the Professional Claims, shall be treated for purposes of any statute of limitation, statute of repose, or other defense based on the passage of time as though such proceeding had been commenced on the Effective Date; and if such a proceeding is commenced on or before the 14th calendar day following the Termination Date, then the Ds&Os shall not use the passage of time from the Effective Date through and including the date such proceeding was commenced in calculating the applicability of any statute of limitation, statute of repose, or other defense based on the passage of time. If no judicial proceeding is commenced on or before the 14th calendar day following the Termination Date, then this paragraph shall be of no force or effect for any purpose whatsoever, and any limitations period that would have passed in the absence of this Agreement shall be deemed to have expired.

5. Other than the defenses based upon the passage of time, this Agreement shall not prejudice any defenses or counterclaims which may be asserted by the Ds&Os, or any one of them, in connection with any judicial proceeding initiated by the FDIC-R against the Ds&Os, nor shall anything in this Agreement prejudice any Party's ability to move to dismiss any judicial proceeding initiated against it. This Agreement shall not in any way operate to shorten any applicable statute of limitation.

6. Notwithstanding the above, this Agreement shall not apply to, affect, or delay in any way any currently pending or future action(s) arising out of any due and unpaid promissory notes, guarantees, or similar evidences of contractual indebtedness executed by any of the Ds&Os, nor shall this Agreement apply to, affect, or delay in any way currently pending or future regulatory enforcement proceedings or criminal proceedings, if any, or any action brought by any governmental agency other than the FDIC in connection with any institution which is or was insured by the FDIC-R, including without limitation, Carson River.

7. Nothing in this Agreement shall be construed as reviving or restoring any rights, claims, or causes of action that the FDIC-R or the Ds&Os may have had that were already barred by statute, common law, equity, or otherwise on or before the Effective Date, whether such bar arose from the passage of time or for any other reason.

8. Any responsive pleading and/or counterclaim served in a judicial proceeding commenced in compliance with this Agreement shall be treated, for purposes of any statute of limitation, statute of repose, or other defense based on the passage of time, as though it had been filed and served on the Effective Date so long as such responsive pleading and/or counterclaim is served before the expiration of the latest of (a) the time period designated by applicable law for the service of such responsive pleadings and/or counterclaims; or (b) the time period set by order of the court for the service of such responsive pleadings and/or counterclaims; or (c) a stipulation of the Parties governing the time for serving such responsive pleadings and/or counterclaims; or (d) 30 calendar days after the date of service of the complaint, statement of claim or other pleading to which the responsive pleading and/or counterclaim responds.

9. By entering into this Agreement, no Party has waived or limited any rights, claims, causes of action or defenses available under any applicable provision of law, except as expressly provided herein.

10. The execution of this Agreement is not, and shall not operate as an admission of liability, wrongdoing, or responsibility either by the FDIC-R or by the Ds&Os, and nothing herein shall prejudice or affect any rights or liabilities of either Party hereto, except as expressly provided herein.

11. The Parties each represent and warrant that (a) they are authorized to enter into this Agreement, (b) the person signing this Agreement on behalf of such Party is authorized to do so, and (c) they intend this Agreement to be valid, binding, and enforceable in accordance with its terms.

12. The Parties each acknowledge that this Agreement was drafted jointly by them.

13. The provisions of this Agreement shall be binding and effective with respect to any successor of the FDIC-R or of any of the Ds&Os.

14. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and any prior oral or written statements concerning such subject matter are merged herein, for all purposes and are of no further force and effect.

15. This Agreement shall not be modified except by express written agreement signed on behalf of each of the Parties.

16. 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 Rogers, Esq.

Email:

(b)(6)

with a copy to:

Joel R. Hogue, Esq.

Email:

(b)(6)

To Daniel Dykes:

Email:

(b)(6)

To Byron Waitt:

Email:

(b)(6)

To Richard McCole:

Email:

(b)(6)

To Charlie Glenn:

Email:

(b)(6)

17. Nothing in this Agreement shall be read as reducing the time within which the FDIC may bring any suit or claim.

18. This Agreement shall be binding on the FDIC-R and such Ds&Os as sign and deliver the Agreement; 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 Parties subscribed thereto. Photocopies and/or facsimile and/or e-mail transmissions of original signatures shall be considered in all respects equivalent to original signatures.

19. This Agreement shall be interpreted under federal law or, in the absence of such law, under the substantive law of the Nevada. This paragraph shall apply only to disputes arising out of this Agreement and shall not be construed to modify any choice of law provision or analysis otherwise applicable in any other dispute between the Parties, and each Party reserves the right to assert that other state or federal law may apply to such other potential disputes.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR CARSON RIVER BANK

Date: 2/22/13

By: 

(b)(6)

One of Its Attorneys

DANIEL DYKES

Date: 2/20/13

By: 

(b)(6)

BYRON WAITE

\*Date: 2-21-13

\*By: 

(b)(6)

RICHARD MCCOLE

Date: 2-20-13

By: 

(b)(6)

CHARLIE GLENN

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

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

(b)(6)

APPROVED AS TO FORM AND CONTENT:



Date: 2/20/2013

John Bley, attorney for Daniel Dykes, Byron Waite and Richard McCole

19. This Agreement shall be interpreted under federal law or, in the absence of such law, under the substantive law of the Nevada. This paragraph shall apply only to disputes arising out of this Agreement and shall not be construed to modify any choice of law provision or analysis otherwise applicable in any other dispute between the Parties, and each Party reserves the right to assert that other state or federal law may apply to such other potential disputes.

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

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

By: \_\_\_\_\_  
One of Its Attorneys

**DANIEL DYKES**

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

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

**BYRON WAITE**

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

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

**RICHARD MCCOLE**

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

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

**CHARLIE GLENN**

Date: 2-21-2013

By: 

(b)(6)

**APPROVED AS TO FORM AND CONTENT:**

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

**John Bley, attorney for Daniel Dykes,  
Byron Waite and Richard McCole**

## FIRST AMENDED TOLLING AGREEMENT

This First Amended Tolling Agreement ("Amended Agreement") is made and entered into by and between the Federal Deposit Insurance Corporation, as receiver for Carson River Community Bank, Carson City, Nevada ("FDIC-R"), on the one hand, and Daniel Dykes ("Dykes"), Byron Waite ("Waite"), Richard McCole ("McCole"), and Charlie Glenn ("Glenn"), on the other hand. Dykes, Waite, McCole, and Glenn are referred to collectively as "Ds&Os". FDIC-R and the Ds&Os are sometimes hereinafter collectively referred to as the "Parties" and each of them in the singular as a "Party". This Amended Agreement is effective as of February 22, 2013 ("Effective Date").

WHEREAS, Carson River Community Bank ("Carson River") was a state nonmember bank whose deposits were insured by the Federal Deposit Insurance Corporation; and

WHEREAS, on or about February 26, 2010, the Nevada Financial Institutions Division closed Carson River, whereupon the Federal Deposit Insurance Corporation was appointed as receiver for Carson River; and

WHEREAS, on January 20, 2011, the FDIC-R obtained an order of investigation relating to Carson River pursuant to the Federal Deposit Insurance Act, 12 U.S.C. §1818(h) and 12 U.S.C. §1821(d)(2)(I); and

WHEREAS, the FDIC-R asserts it has claims as Carson River's receiver against the Ds&Os relating to their conduct as former directors or officers of Carson River up through and including February 26, 2010 ("Professional Claims"); and

WHEREAS, the Ds&Os fully and completely deny there is any basis for the Professional Claims; and

WHEREAS, the Parties entered into a Tolling Agreement, effective February 22, 2013, to suspend the running of any applicable statutes of limitation, statutes of repose, or other defense based upon the passage of time in order to allow time to meet and confer regarding the Professional Claims; and

WHEREAS, the Parties have met and conferred regarding the Professional Claims and made progress toward reaching a resolution of the Professional Claims; and

WHEREAS, the FDIC-R and the Ds&Os believe it would be mutually beneficial to relieve any time pressure associated with efforts to document and obtain final approval for a settlement of the Professional Claims and by this Amended Agreement intend to continue and extend the Tolling Agreement pursuant to the terms set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the FDIC-R and the Ds&Os agree as follows:

1. The FDIC-R shall forbear commencement of any judicial proceeding against the Ds&Os, or any of them, until after May 17, 2013 ("Forbearance Period").

2. Any judicial proceeding commenced after the Forbearance Period, but on or before June 14, 2013, by the FDIC-R against the Ds&Os, or any of them, on the Professional Claims, shall be treated for purposes of any statute of limitation, statute of repose, or other defense based on the passage of time as though such proceeding had been commenced on the Effective Date; and if such a proceeding is commenced after the Forbearance Period, but on or before June 14, 2013, then the Ds&Os, or any of them, shall not use the passage of time from the Effective Date through and including the date such proceeding was commenced in calculating the applicability of any statute of limitation, statute of repose, or other defense based on the passage of time. If no judicial proceeding is commenced by the FDIC-R against the Ds&Os on or before June 14, 2013, then this paragraph shall be of no force or effect for any purpose whatsoever, and any limitations period that would have passed in the absence of this Amended Agreement shall be deemed to have expired.

3. Other than the defenses based upon the passage of time, this Amended Agreement shall not prejudice any defenses or counterclaims which may be asserted by the Ds&Os, or any of them, in connection with any judicial proceeding initiated by the FDIC-R against the Ds&Os, nor shall anything in this Amended Agreement prejudice any Party's ability to move to dismiss any judicial proceeding initiated against it. This Amended Agreement shall not in any way operate to shorten any applicable statute of limitation.

4. Notwithstanding the above, this Amended Agreement shall not apply to, affect, or delay in any way any currently pending or future action(s) arising out of any due and unpaid promissory notes, guarantees, or similar evidences of contractual indebtedness executed by any of the Ds&Os, nor shall this Amended Agreement apply to, affect, or delay in any way currently pending or future regulatory enforcement proceedings or criminal proceedings, if any, or any action brought by any governmental agency other than the FDIC in connection with any institution which is or was insured by the FDIC-R, including without limitation, Carson River.

5. Nothing in this Amended Agreement shall be construed as reviving or restoring any rights, claims, or causes of action that the FDIC-R or the Ds&Os may have had that were already barred by statute, common law, equity, or otherwise on or before the Effective Date, whether such bar arose from the passage of time or for any other reason.

6. Any responsive pleading and/or counterclaim served in a judicial proceeding commenced in compliance with this Amended Agreement shall be treated, for purposes of any statute of limitation, statute of repose, or other defense based on the passage of time, as though it had been filed and served on the Effective Date so long as such responsive pleading and/or counterclaim is served before the expiration of the latest of (a) the time period designated by applicable law for the service of such responsive pleadings and/or counterclaims; or (b) the time period set by order of the court for the service of such responsive pleadings and/or counterclaims; or (c) a stipulation of the Parties governing the time for serving such responsive pleadings and/or counterclaims; or (d) 30 calendar days after the date of service of the complaint, statement of claim or other pleading to which the responsive pleading and/or counterclaim responds.

7. By entering into this Amended Agreement, no Party has waived or limited any rights, claims, causes of action or defenses available under any applicable provision of law, except as expressly provided herein.

8. The execution of this Amended Agreement is not, and shall not operate as an admission of liability, wrongdoing, or responsibility either by the FDIC-R or by the Ds&Os, and

nothing herein shall prejudice or affect any rights or liabilities of either Party hereto, except as expressly provided herein.

9. The Parties each represent and warrant that (a) they are authorized to enter into this Amended Agreement, (b) the person signing this Amended Agreement on behalf of such Party is authorized to do so, and (c) they intend this Amended Agreement to be valid, binding, and enforceable in accordance with its terms.

10. The Parties each acknowledge that this Amended Agreement was drafted jointly by them.

11. The provisions of this Amended Agreement shall be binding and effective with respect to any successor of the FDIC-R or of any of the Ds&Os.

12. This Amended Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and any prior oral or written statements concerning such subject matter are merged herein for all purposes and are of no further force and effect. It is the intention of the Parties, however, that the Tolling Agreement is extended and continued consistent with the terms of this Amended Agreement.

13. This Amended Agreement shall not be modified except by express written agreement signed on behalf of each of the Parties.

14. Any notices relating to or arising out of this Amended 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 Rogers, Esq.

Email:

(b)(6)

with a copy to:

Joel R. Hogue, Esq.

Email:

(b)(6)

**To Daniel Dykes:**

(b)(6) Email:

**To Byron Waiter:**

(b)(6) Email:

**To Richard McCole:**

(b)(6) Email:

**To Charlie Glenn:**

(b)(6) Email:

15. Nothing in this Amended Agreement shall be read as reducing the time within which the FDIC may bring any suit or claim.

16. This Amended Agreement shall be binding on the FDIC-R and such Ds&Os as sign and deliver the Amended Agreement; 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 Parties subscribed thereto. Photocopies and/or facsimile and/or e-mail transmissions of original signatures shall be considered in all respects equivalent to original signatures.

17. This Amended Agreement shall be interpreted under federal law or, in the absence of such law, under the substantive law of the Nevada. This paragraph shall apply only to disputes arising out of this Amended Agreement and shall not be construed to modify any choice of law provision or analysis otherwise applicable in any other dispute between the Parties,

and each Party reserves the right to assert that other state or federal law may apply to such other potential disputes.

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

Date: May 9, 2013

By:   
One of Its Attorneys

(b)(6)

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

\_\_\_\_\_  
Daniel Dykes

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

\_\_\_\_\_  
Byron Waite

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

\_\_\_\_\_  
Richard McCole

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

\_\_\_\_\_  
Charlie Glenn

**APPROVED AS TO FORM AND CONTENT:**

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

\_\_\_\_\_  
**John Bley, attorney for Daniel Dykes,  
Byron Waite and Richard McCole**

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

\_\_\_\_\_  
**Brett Sutton or Don Pool, attorney for  
Charlie Glenn**

and each Party reserves the right to assert that other state or federal law may apply to such other potential disputes.

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

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

By: \_\_\_\_\_  
One of Its Attorneys

(b)(6)

Date: 5/10/2013

[Redacted Signature]

Daniel Dykes

(b)(6)

Date: 5-10-2013

[Redacted Signature]

Byron Waite

(b)(6)

Date: 5/10/2013

[Redacted Signature]

Richard McCole

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

\_\_\_\_\_  
Charlie Glenn

**APPROVED AS TO FORM AND CONTENT:**

(b)(6)

Date: 5/10/2013

[Redacted Signature]

John Bley, attorney for Daniel Dykes,  
Byron Waite and Richard McCole

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

\_\_\_\_\_  
Brett Sutton or Don Pool, attorney for  
Charlie Glenn

and each Party reserves the right to assert that other state or federal law may apply to such other potential disputes.

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

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

By: \_\_\_\_\_  
One of Its Attorneys

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

\_\_\_\_\_  
Daniel Dykes

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

\_\_\_\_\_  
Byron Waite

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

\_\_\_\_\_  
Richard McCole

Date: 5/7/13

\_\_\_\_\_ (b)(6)

\_\_\_\_\_  
Charlie Glenn

**APPROVED AS TO FORM AND CONTENT:**

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

\_\_\_\_\_  
John Bley, attorney for Daniel Dykes,  
Byron Waite and Richard McCole

Date: 5-13-13

\_\_\_\_\_ (b)(6)

\_\_\_\_\_  
Brett Sutton on Don Pool, attorney for  
Charlie Glenn