

SETTLEMENT AGREEMENT

1. Parties. The "Parties" to this Settlement Agreement ("Agreement") are as follows:

- A. Federal Deposit Insurance Corporation, as Receiver for Washington First International Bank ("FDIC");
- B. Washington First Financial Group ("WFFG"), which, at all relevant times, was the holding company of Washington First International Bank (the "Bank");
- C. BancInsure, Inc. ("BancInsure"); and
- D. John Bigovich, Patrick Burke, Paul Fong, Arnold Huang, Elizabeth Huang, Wayne Lau, Charles W. Halcy, Agnes Kwan, and Jerry Matthewson, each of whom are former officers and/or directors of the Bank, and Margaret A. Svare, Personal Representative of the Estate of Robert J. Svare, Deceased, who was a former director of the Bank (collectively, "D&Os").

2. Purposes. The purposes of this Agreement are 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, and also to settle the FDIC's Claims (as defined below) against the D&Os without the need for costly and time-consuming litigation of the FDIC's Claims on the merits and without concessions or 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. (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).
- B. "Policy Limit" means the BancInsure Policy's \$5,000,000 limit of liability.
- C. "FDIC's Claims" means only those claims asserted by the FDIC *against the D&Os* in letters dated May 11, 2011 and July 20, 2012, and in the February 21, 2013, Mediation Statement provided by counsel for the FDIC to counsel for the D&Os and counsel for BancInsure and not any claims against BancInsure regarding insurance coverage.
- D. "Coverage Dispute" means the dispute among the Parties based on or relating to BancInsure's declination of coverage for FDIC's Claims under the BancInsure Policy as first communicated by letter of November 29, 2011, issued by BancInsure's counsel, and all matters that are disputed in the Coverage Action (as defined below) as to whether the BancInsure Policy covers any or all of the D&Os for any or all of FDIC's Claims.
- E. "Coverage Action" means the lawsuit identified in Section 4(B) below, from its filing through Final Resolution (as defined below).

- F. "Coverage Settlement" means a settlement between the FDIC and BancInsure that resolves the Coverage Dispute and all claims in the Coverage Action.
- G. "Effective Date" means May 24, 2013.
- H. "Final Judgment" means the final judgment in the Coverage Action, including the exhaustion of rights of appeal.
- I. "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.
- J. "Remaining Policy Limit" means the remaining BancInsure Policy Limit calculated as follows:
- (1) the \$5,000,000 Policy Limit; minus
 - (2) the sum of all defense costs incurred for the services of counsel for the D&O that are paid or payable by BancInsure pursuant to the BancInsure Policy for the D&Os' defense costs incurred through and including May 24, 2013, which sum shall not exceed \$300,000; minus
 - (3) \$200,000 for BancInsure's contribution to the \$800,000 Initial Settlement Payment pursuant to Section 4(A)(1)(a) below; minus
 - (4) the amount of reasonable defense costs incurred for the services of counsel for the D&Os from May 25, 2013, through the date of execution of this Agreement in connection with this settlement ("Final Defense Settlement Costs").

Thus, in any event, the Remaining Policy Limit shall not be less than \$4,500,000 minus Final Defense Settlement Costs. BancInsure shall notify the FDIC of the exact amount of the Remaining Policy Limit within 60 days of the execution of this Agreement.

4. Terms.

A. Initial Settlement Payment

(1) Within 10 business days after this Agreement is fully executed by the Parties, BancInsure and the D&Os, collectively, on behalf of each of the D&Os, shall pay the FDIC the sum of \$800,000 ("Initial Settlement Payment") as follows:

- (a) BancInsure shall pay the FDIC the amount of \$200,000; and

(b) The D&Os, collectively, shall pay the FDIC the amount of \$600,000.

(2) The Initial Settlement Payment is a non-refundable payment that the FDIC 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 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 and BancInsure will be the parties and the D&O's will not be joined as parties unless required by the court;

(b) neither the FDIC's Claims nor any element of the FDIC's Claims against the D&Os will 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 for any of the FDIC's Claim, BancInsure will pay the entire Remaining Policy Limit to the FDIC; and

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

(2) **Filing.** Within 120 calendar days after this Agreement is fully executed by the Parties, the FDIC shall file an action in the United States District Court for the Western District of Washington, 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 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 Western District of Washington, naming the FDIC 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 for any of the FDIC's Claim, BancInsure will pay the entire exact amount of the Remaining Policy Limit to the FDIC.

(b) If it is determined in the Coverage Action that the BancInsure Policy does not cover any of the D&Os for any of the FDIC's Claims, BancInsure will have no further liability under the BancInsure Policy.

(c) In any event, the maximum amount of BancInsure's liability (in addition to its \$200,000 portion of the Initial Settlement Payment) is the Remaining Policy Limit.

(4) **FDIC's Claims Will Not Be Litigated.** BancInsure waives all challenges, objections to, and coverage defenses based upon the merits or sufficiency of the FDIC's Claims or any element of the FDIC's Claims as to any of the D&Os. Neither the FDIC's covenants not to sue or execute on the assets of the D&Os, nor the Initial Settlement Payment, shall bar or reduce the FDIC'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's Claims are in excess of the Remaining Policy Limits, and; (3) the covenants in this Agreement are not a defense to coverage.

(5) **D&Os' Assignment to FDIC.** To advance the purposes of this Agreement, the D&Os hereby assign all of their rights, title and interest with respect to the BancInsure Policy and any and all claims for coverage thereunder or related thereto to the FDIC (the "D&Os' Assignment"). The FDIC 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) **Parties.**

(a) **The Parties' Intent and Agreement.** The Parties' intend and hereby agree that the FDIC and BancInsure will be the only parties, and that the D&Os will not be parties in the Coverage Action.

(b) **If Court Requires Joinder of D&Os.** In light of the D&Os' Assignment to the FDIC and the Parties' express intent and agreement in subsection (a) immediately 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 agrees 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 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 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 Western District of Washington refuses to hear the Coverage Action, whether based on issues of jurisdiction or otherwise, the FDIC shall file the Coverage Action in the King County Superior Court for the State of Washington. If it is determined that BancInsure is the proper party to file such action, then BancInsure shall file the Coverage Action within 14 days of such determination.

(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 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. The 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 prevails in the Coverage Action or if the FDIC and BancInsure enter into a Coverage Settlement, the FDIC 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 Remaining Policy Limits or a Coverage Settlement amount. Therefore, the Parties agree that Section 5(A) of this Agreement shall not be admissible, relevant, or considered in determining coverage under the BancInsure Policy or in the Coverage Action.

(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 agrees not to assert an extra-contractual or bad faith claim against BancInsure and agrees that the maximum amount of BancInsure's liability (in addition to its \$200,000 portion of the Initial Settlement Payment) to the FDIC is the Remaining Policy Limit;

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 or state rules of civil procedure.

(10) **Forum.** 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.

C. **FDIC's Recovery Sources.** Pursuant to this Agreement, the FDIC agrees to look only to the Initial Settlement Payment and the BancInsure Policy and the BancInsure Policy Limit to satisfy the FDIC's Claims.

D. **Payment Timing; Enforcement of Final Judgment or Coverage Settlement.** In the event the FDIC prevails in the Coverage Action or the FDIC and BancInsure settle by entering into a Coverage Settlement, BancInsure shall pay the Remaining Policy Limit 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 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 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 Remaining Policy Limits. In the event that the FDIC 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.

E. **Release of FDIC.** Effective as of the Effective Date, the D&Os, on behalf of themselves individually and their respective heirs, executors, administrators, agents, representatives, successors, and assigns hereby release and discharge the FDIC 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 equity, that arise from or relate to the Bank or the FDIC's Claims, except those claims, counter-claims, or defenses that arise out of claims against the D&Os that are expressly reserved in Section 5(I) below.

F. **Covenant Not To Execute against D&Os.** As part of this Agreement, and coupled with and in consideration of the D&Os' Assignment to the FDIC and this Agreement, the FDIC covenants and agrees not to take any action of any kind to document, record, register as a lien or collect against the D&Os, or their respective spouses, heirs, legal representatives, attorneys, agents, or assigns, any judgment or award that results from or arises out of the FDIC's Claims or the Coverage Action, save and except for the D&Os' obligation to pay timely \$600,000 of the Initial Settlement Payment, to execute the D&Os' Assignment to the FDIC, and to otherwise comply with their obligations under this Agreement. The FDIC will attempt to recover and collect the Remaining Policy

Limit solely and exclusively from BancInsure and its successors, receivers, and assigns. If the FDIC does not prevail in the Coverage Action, the FDIC shall have no recourse against the D&Os or their respective spouses, heirs, legal representatives, attorneys, agents, or assigns for the FDIC's Claims. BancInsure agrees that nothing in this section 4(F) shall provide a defense or otherwise impair the FDIC's right to litigate the Coverage Action to Final Judgment and, if successful, to recover the Remaining Policy Limits.

G. **Covenant Not To Sue D&Os.** As provided in Section 4(B)(6) above, the Parties agree that the D&Os do not need to be joined or named as parties to the Coverage Action. Except as provided or permitted in connection with the Coverage Action in Section 4(B) of this Agreement or in the FDIC's Reservation of Claims in Section 5(I) of this Agreement, the FDIC and BancInsure, on behalf of itself and its successors, receivers, and assigns, hereby covenant and agree not to bring any judicial proceeding or make any claims, demands, 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's right to litigate the Coverage Action to Final Judgment and, if successful, to recover the Remaining Policy Limits.

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's Claims; and (2) they will not assert that they have tendered any other claims for coverage under the BancInsure Policy, other than the FDIC's Claims; and (3) they will not tender any other claims for coverage under the BancInsure Policy.

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. 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: James B. Davidson
Lori Irish Bauman
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-3280

(b)(6)



If to the D&Os: Thomas A. Sterken
Juli E. Farris
Keller Rohrback, LLP
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052

(b)(6)



If to BancInsure: Loren D. Podwill
Margaret Van Valkenburg
Bullivant Houser Bailey PC
300 Pioneer Tower, 888 SW Fifth Avenue
Portland, OR 97204-2089

(b)(6)



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 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.

- 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 Washington. 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 Western District of Washington and, to the extent that an action must be filed in the King County Superior Court for the State of Washington, the Parties consent to venue and personal jurisdiction in that location.
- I. **FDIC Reservation of Claims.** Notwithstanding any other provision, by this Agreement the FDIC does not release, and expressly preserves fully, and to the same extent as if this Agreement had not been executed, any claims or causes of action: against any of the D&Os personally 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 the FDIC, the Bank, other financial institutions or any other person or entity. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the FDIC in its corporate capacity, or in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule, or regulation. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office in any federal judicial district. In addition, the FDIC expressly reserves the right 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.

- 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. **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.
- M. **Reasonable Cooperation.** The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry of any documents necessary to perform the terms of this Agreement.

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

**FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
WASHINGTON FIRST INTERNATIONAL
BANK**

By: (b)(6)
Howard B. Klein,
Counsel, Professional Liability Unit,
Legal Division,
Federal Deposit Insurance Corporation

**WASHINGTON FIRST FINANCIAL
GROUP**

By: _____
Arnold Huang, Chairman
Washington First Financial Group

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By: _____
Howard B. Klein,
Counsel, Professional Liability Unit,
Legal Division,
Federal Deposit Insurance Corporation

**WASHINGTON FIRST FINANCIAL
GROUP**

By:
Arnold Huang, Chairman
Washington First Financial Group

(b)(6)

BANCINSURE, INC.

By:

[Redacted Signature]

(b)(6)

James N. Cross,
Vice President, Claims,
Bancinsure, Inc.

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Representative of the Estate of Robert
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(b)(6)

APPROVED AS TO FORM:

ATER WYNNE LLP

By

 (b)(6)
James B. Davidson
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Robert J. Svare, Deceased

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