

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Century Security Bank (“FDIC-R”), and Defendants Gary K. McClung, Michelle R. Prater, Nicholas Ceto Jr., Spencer G. Chang, Alicia T. Chau, and Robert Y. Lee (collectively the “Settling Defendants”) (individually, the FDIC-R and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

WHEREAS:

Prior to March 19, 2010, Century Security Bank (“Bank”) was a depository institution organized and existing under the laws of Georgia.

On March 19, 2010, the Georgia Department of Banking and Finance closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the Bank’s potential claims, demands, and causes of action against its former directors, officers, and employees arising from the performance, nonperformance, and manner of performance of their respective functions, duties and acts as directors, officers, and employees of the Bank;

On March 14, 2014, the FDIC-R filed a complaint for money damages against the Settling Defendants, each of whom served at various times as a director and/or officer of the Bank. Those claims for damages are now pending in the United States District Court for the Northern District of Georgia in FDIC as Receiver for Century Security Bank v. McClung, et al, Case No. 1:14-cv-00763-LMM (“D&O Action”).

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC-R**

A. As an essential covenant and condition to this Agreement, on or before thirty (30) calendar days following counsel for the Settling Defendants' receipt of this Agreement signed by all the undersigned Parties, the Settling Defendants agree to pay or cause to be paid to the FDIC-R the sum of \$1,550,000.00 ("the Settlement Payment").

B. The Settling Defendants shall deliver or cause the delivery of the Settlement Payment to the FDIC-R by direct wire transfer into an account designated by FDIC-R. The transfer should be made to:

BANK: Federal Home Loan Bank of New York

ROUTING #:

FOR CREDIT TO: FDIC National Liquidation Account

ACCOUNT #:

New York Main Office

101 Park Avenue

New York, NY 10178-0599

212-681-6000

212-441-6890 Fax

OTHER BENEFICIARY INFORMATION (OBI):

1. FDIC as Receiver of Century Security Bank, Financial Institution No. 10198

2. Asset number if available:

3. D&O Settlement FDIC-R Century Security Bank v. McClung, et al, No. 1:14-cv-00763-LMM (N.D. Ga.)

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) on or before the date determined by subsection A above, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the 31<sup>st</sup> day after execution of the Agreement until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the

right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or

2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in United States District Court for the Northern District of Georgia and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants and Insurer further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

#### **SECTION II: Stipulation and Dismissal**

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a notice of stipulation of dismissal, in the form attached hereto as Exhibit A, in the D&O Action.

### **SECTION III: Releases**

#### **A. The FDIC-R's Releases.**

Upon receipt of the Settlement Payment in full and except as provided in Sections III.C. and D. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants and their respective heirs, executors, trustees, administrators, representatives, insurers, 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' respective functions, duties and actions as officers and/or directors of the Bank including without limitation the causes of action alleged in the D&O Action.

#### **B. The Settling Defendants' Release.**

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, trustees, administrators, agents, representatives, insurers, attorneys, successors, and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank including without limitation the causes of action alleged in the D&O Action.

#### **C. Exceptions from Releases by FDIC-R.**

1. Notwithstanding any other provision of this Agreement, the FDIC-R 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:

a. Against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or

indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. §

6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et seq., if appropriate.

D. Express Reservation of Rights Relating to Financial Institution Bond.

1. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall release or prejudice the rights of St. Paul Mercury Insurance Company or any other underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to bring any claims by way of subrogation to the claims of the FDIC-R, against (a) any directors, officers, or employees of the Bank, including but not limited to the Settling Defendants, in their capacities as directors, officers, or employees of the Bank or in any other capacity, or (b) any other individual or entity.

2. Nothing herein shall be construed to admit the existence of, or to establish,

any claim or cause of action on the part of St. Paul Mercury Insurance Company or any other bond underwriter by way of subrogation to claims of the FDIC-R that would not exist had this Agreement not been executed.

3. Nothing in this Agreement, including Section III.A. above, shall release or prejudice the rights of the FDIC-R, St. Paul Mercury Insurance Company or any other insurer or entity with respect to the fidelity bond claim set forth in a notice dated May 12, 2008, and a proof of loss submitted on or about August 11, 2010, under St. Paul Mercury Insurance

(b)(4) Company Financial Institution Bonds No. [ ] and [ ] effective February 22, (b)(4) 2007. Nothing in this paragraph shall be construed as an admission of liability of any of the Settling Defendants, or of the viability of any potential claims asserted in the fidelity bond claim.

#### **SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Defendants 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 distributions, or proceeds.

#### **SECTION V: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties 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, trustees, administrators, representatives,

successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it: (1) has consulted with and obtained the advice of counsel of their choice prior to executing this Agreement; (2) has had this Agreement explained to that Party by his, her or its counsel; and (3) is fully satisfied with the legal representation furnished to him, her or it by respective counsel.

C. Financial Disclosure Representation. Each Settling Defendant has submitted financial information to the FDIC-R including personal financial statements and herein affirms that his/her financial information was true and accurate as of the date of its submission. Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the financial information submitted by the Settling Defendants. The FDIC-R has no obligation to independently verify the completeness or accuracy of that financial information. If the FDIC-R establishes via a final adjudication in an appropriate judicial forum that a Settling Defendant failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Defendant agrees to cooperate fully with the FDIC-R to provide updated financial information and to pay to the FDIC-R the lesser of (1) the value of the Settling Defendant's undisclosed material interest in such asset(s); or (2) the amount of unpaid damages alleged against that Settling Defendant.

#### **SECTION VI: Reasonable Cooperation**

A. 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 conclude the D&O Action, and to otherwise perform the terms of this Agreement.

B. The Settling Defendants agree to reasonably cooperate fully with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. Producing all documents requested in writing by the FDIC-R, without the

necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;

2. Appearing as requested by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;

3. Testifying as requested by the FDIC-R, without the necessity of a subpoena, in any matter relevant to the Bank, as determined by the FDIC-R;

4. Signing truthful affidavits, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

C. The cooperation described in Sections VI.A and VI.B is not, and should not be construed to be, a waiver of any right or privilege the Settling Defendants may have under the Constitutions and Laws of the United States and the State of Georgia.

#### **SECTION VII: Other Matters**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party or any released party except to enforce its terms. The Settling Defendants expressly deny any liability regarding the FDIC-R's claims.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

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

D. Notices. Any notices required hereunder shall be sent by registered mail, first



class, return receipt requested, and by email, to the following:

If to the FDIC-R:

David L. Turner, Esq.  
Schulten Ward & Turner, LLP  
20 Peachtree Street, Suite 2700  
Atlanta, GA 30303

(b)(6)

Tel. 404-688-6800; Email:

And

John V. Church, Counsel  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive, Room VS-B-7056  
Arlington, VA 22226

(b)(6)

Tel. 703-516-1394; Email:

If to the Settling Defendants:

Jason S. Bell, Esq.  
Smith, Gambrell & Russell, LLP  
Promenade II, Suite 3100  
1230 Peachtree Street NE  
Atlanta, GA 30309-3592

(b)(6)

Tel. 404-815-3619; Email:

Attorneys for Settling Defendants McClung, Ceto, Chang, Chau and Lee

James E. Connelly  
Womble, Caryle, Sandridge & Rice, LLP  
271 17<sup>th</sup> Street, Suite 2400  
Atlanta, GA 30363-1017

(b)(6)

Tel. 404-888-7496; Email:

Attorney for Settling Defendant Michelle Prater

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed

by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR CENTURY SECURITY BANK

Date: <u>September 18, 2015</u>	BY: <u>[Redacted]</u> (b)(6)
	TITLE: <u>Counsel</u>
	PRINT NAME: <u>Ben Krowicki</u>
Date: _____	_____
	GARY K. MCCLUNG
Date: _____	_____
	MICHELLE R. PRATER
Date: _____	_____
	NICHOLAS CETO, JR.
Date: _____	_____
	SPENCER G. CHANG
Date: _____	_____
	ALICIA T. CHAU
Date: _____	_____
	ROBERT Y. LEE

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

(b)(6)

Date: 6.8.2015

[Redacted Signature]

GARY K. McCLUNG

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

MICHELLE R. PRATER

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

NICHOLAS CETO, JR.

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

SPENCER G. CHANG

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

ALICIA T. CHAU

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

ROBERT Y. LEE

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

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

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

GARY K. MCCLUNG

(b)(6)

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

[Redacted Signature]

MICHELLE R. PRATER

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

NICHOLAS CETO, JR.

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

SPENCER G. CHANG

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

ALICIA T. CHAU

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

ROBERT Y. LEE

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BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

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

\_\_\_\_\_  
GARY K. MCCLUNG

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

\_\_\_\_\_  
MICHELLE R. PRATER

(b)(6)

Date: 05/22/2015

\_\_\_\_\_  
\_\_\_\_\_  
NICHOLAS CETO, JR.

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

\_\_\_\_\_  
SPENCER G. CHANG

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

\_\_\_\_\_  
ALICIA T. CHAU

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

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Date: \_\_\_\_\_ BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Date: \_\_\_\_\_ GARY K. MCCLUNG

Date: \_\_\_\_\_ MICHELLE R. PRATER

Date: \_\_\_\_\_ NICHOLAS CETO, JR.

(b)(6) Date: 5/26/2015 \_\_\_\_\_  
SPENCER G. CHANG

Date: \_\_\_\_\_ ALICIA T CHAU

Date: \_\_\_\_\_ ROBERT Y LEE

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BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

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

\_\_\_\_\_  
GARY K. MCCLUNG

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

\_\_\_\_\_  
MICHELLE R. PRATER

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

\_\_\_\_\_  
NICHOLAS CETO, JR.

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

\_\_\_\_\_  
SPENCER G. CHANG

(b)(6)

Date: 5/27/15

\_\_\_\_\_  
[Redacted Signature Box]  
ALICIA T. CHAU

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

\_\_\_\_\_  
ROBERT Y. LEE

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PRINT NAME: \_\_\_\_\_

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

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GARY K. MCCLUNG

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

\_\_\_\_\_  
MICHELLE R. PRATER

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

\_\_\_\_\_  
NICHOLAS CETO, JR.

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

\_\_\_\_\_  
SPENCER G. CHANG

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

\_\_\_\_\_  
ALICIA T. CHAU

Date: 5/25/2015

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ROBERT Y. LEE

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