

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 30th day of September, 2013, by, between, and among the following undersigned parties: the Federal Deposit Insurance Corporation as Receiver for McIntosh Commercial Bank ("FDIC-R"), and Joseph Mark Brittain ("Brittain"), Smith Welch & Brittain, LLP, and Smith Welch Webb & White, LLC (collectively the "Settling Parties"). The FDIC-R and the Settling Parties may be referred to herein collectively as the "Parties."

RECITALS

WHEREAS:

Prior to March 26, 2010, McIntosh Commercial Bank (the "Bank") was a depository institution organized and existing under the laws of the State of Georgia;

On March 26, 2010, the Bank was closed by the Georgia Department of Banking and Finance and, pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as Receiver 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 as Receiver for McIntosh Commercial Bank succeeded were any and all of the Bank's claims, demands, and causes of actions against its former law firms and lawyers arising from the performance, nonperformance and manner of performance of legal services for the Bank;

On December 16, 2011, the FDIC-R submitted a claim for money damages to the Settling Parties. Brittain and Smith, Welch & Brittain, LLP, had served at various times as attorneys for

the Bank;

The FDIC-R's claims sought damages arising out of an acquisition and development loan (b)(4) the Bank made to [REDACTED] on March 2, 2007. Mark Brittain, a partner at Smith, Welch & Brittain, LLP, represented the Bank in closing the Loan;

The FDIC-R acknowledges that its claim allegedly arises out of the performance, non-performance and manner of performance of legal services by Brittain, both individually and as a partner of Smith Welch & Brittain, LLP. FDIC-R has not asserted claims against any other Smith, Welch & Brittain attorney arising out of the performance, non-performance or manner of performance of legal services to the Bank. FDIC-R acknowledges that Smith Welch Webb & White LLC is a separate legal entity and did not perform any legal services for the Bank;

The Settling Parties have denied liability for the claim asserted by FDIC-R;

ProAssurance provided professional liability insurance to the Settling Parties that afforded coverage for some or all of the claims asserted under policy number [REDACTED] (b)(4) with effective dates from Jan. 8, 2011 to Jan. 8, 2012 ("the Policy"); and,

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of 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, the Settling Parties and their insurer, ProAssurance, collectively, agree to pay the FDIC-R \$790,000.00 USD ("the Settlement Funds").

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement and electronic delivery of same to Settling Parties' counsel, but no later than fifteen (15) business days after said delivery of the original executed Agreement to Settling Parties' counsel ("Payment Due Date"), the Settlement Funds shall be delivered to FDIC-R by direct wire transfer into an account designated by FDIC-R, except that the Settlement Funds shall not be due until fifteen (15) business days after provision of the following information to Settling Parties' counsel: Bank Name, Routing Number, Account Number, and Account Holders Name. In the event that the Settlement Funds are not delivered to the FDIC-R by the Payment Due Date, interest shall accrue daily on all unpaid amounts at the rate of one-year U.S. Treasury notes as reported in the Wall Street Journal at the end of the last quarter immediately preceding the date of this Agreement (June 30, 2013) from the Payment Due Date until the date of payment. If FDIC-R fails to provide said wiring information or fails to provide accurate wiring information, the Payment Due Date shall be extended accordingly by the number of days required to correct the deficient information; and no interest shall accrue until the passage of the extended Payment Due Date.

C. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC-R on or before the Payment Due Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement. against the Settling Parties, in which event the Settling Parties agree to jurisdiction in the United States District Court for the Northern District of Georgia and agree

to pay all of the FDIC-R's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void with respect to the non-delivering Party, or Parties, at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement.

SECTION II: Releases

A. Release of Settling Parties by FDIC-R.

Effective upon receipt in full of the Settlement Funds, plus any accrued interest described in SECTION I.A, and I.B, and except as provided in Paragraph II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Parties and their respective heirs, executors, administrators, representatives, successors and assigns, attorneys, members, shareholders, or partners (including individuals, limited liability corporations or professional corporations), employees, and their insurers (including but not limited to ProAssurance), from any and all claims, damages, actions, and causes of action, in law or in equity, belonging to the FDIC-R and arising from the legal representation of the Bank, including without limitation the causes of action related to the claim described herein or related to the Loan.

B. Release of FDIC-R by the Settling Parties and ProAssurance.

Effective simultaneously with the release granted in PARAGRAPH II.A. above, the Settling Parties and ProAssurance, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release

and discharge 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, belonging to the Settling Parties that arise from or relate to the Bank, the Loan, or the performance, nonperformance, or manner of performance of legal services provided to the Bank by Brittain and/or Smith Welch & Brittain, LLP.

C. Express Reservations From Releases By FDIC-R.

1. Notwithstanding any other provision, by this Agreement the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

a. against the Settling Parties 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 claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. which are not expressly released in Paragraphs II.A and II.B.

2. 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 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.

3. 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, the United States Attorney's Office for the Northern District of Georgia, or any other federal judicial district. In addition, the FDIC-R specifically 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.

SECTION III: Waiver of Dividends

To the extent, if any, that Settling Parties 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 prorata distribution.

SECTION IV: Representations and Acknowledgements

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 that this Agreement is not an admission or evidence of liability by any of them regarding any claim or defense. Further, the Parties acknowledge the Smith, Welch & Brittain, I.L.P, is a separate and distinct legal entity from Smith, Welch, Webb & White, L.L.C.

B. Execution in Counterparts.

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

C. Binding Effect.

Each of the undersigned persons represents and warrants 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. The FDIC-R affirmatively represents and acknowledges the reliance of the Settling Parties on the FDIC-R's assertion that, as of the effective date of the Agreement, it is the owner of the rights, claims or causes of action that are the subject of the releases in paragraph II.A. of this Agreement, and that said rights, claims and causes of action have not been conveyed to any other party previously. 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.

D. 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.

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. 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).

F. Reasonable Cooperation.

The undersigned parties agree to reasonably 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 Action and to otherwise perform the terms of this Agreement.

G. Advice of Counsel.

Each party hereby acknowledges that it 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 or her counsel.

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 MCINTOSH COMMERCIAL BANK

(b)(6)

Date: 9/30/2013 BY:
TITLE: Senior Counsel
PRINT NAME: Dani L. Joseph

(b)(6)

JOSEPH MARK BRITTAIN
Date: 10/3/13 BY:
PRINT NAME: Joseph Mark Brittain

SMITH WELCH & BRITTAIN, LLP

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

do whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

G. Advice of Counsel.

Each party hereby acknowledges that it 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 or her counsel.

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 MCINTOSH COMMERCIAL BANK

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

JOSEPH MARK BRITTAIN

Date: _____ BY: _____
PRINT NAME: _____

SMITH WELCH & BRITTAIN, LLP

(b)(6) Date: 9/30/02 BY:
TITLE: Member
PRINT NAME: A. J. Welch, Jr

SMITH WELCH, WEBB & WHITE, LLC

(b)(6)

Date: 9/28/13

BY:

TITLE: Member

PRINT NAME: A. J. Welch Sr

PROASSURANCE CASUALTY COMPANY, INC.

Date: _____ BY: _____

TITLE: _____

PRINT NAME: _____

SMITH WELCH & BRITTAIN, LLP

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

SMITH WELCH, WEBB & WHITE, LLC

Date: _____ BY: _____
TITLE: _____
PRINT NAME: _____

PROASSURANCE CASUALTY COMPANY, INC.

(b)(6) Date: 9/30/13 BY:

TITLE: Claims Director

(b)(6) PRINT NAME:

J