

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 21<sup>st</sup> day of September, 2015, by and among the following undersigned parties: The Federal Deposit Insurance Corporation as Receiver for Community Bank & Trust of Cornelia, Georgia ("FDIC-R"); Community Bankshares, Inc. ("Bankshares"); Community Bank & Trust—Alabama ("CBT-AL"); and St. Paul Mercury Insurance Company ("St. Paul"). The FDIC-R, Bankshares, CBT-AL, and St. Paul may be referred to herein individually as a "Party" or collectively as the "Parties."

### RECITALS

#### WHEREAS:

1. Prior to January 29, 2010, Community Bank & Trust of Cornelia, Georgia ("CBT-GA"), was a corporation organized and existing under the laws of the State of Georgia.

2. CBT-GA was closed on January 29, 2010, by the State of Georgia Department of Banking & Finance, which appointed the Federal Deposit Insurance Corporation as Receiver pursuant to 12 U.S.C. § 1821(e). In accordance with 12 U.S.C. § 1821(d), the FDIC-R, as receiver, succeeded to all rights, titles, powers, and privileges of CBT-GA, including those with respect to its assets.

3. Among the assets to which the FDIC-R succeeded were any and all claims, demands, and causes of actions owned by CBT-GA against CBT-GA's financial institution bond insurer(s), including against St. Paul as issuer of the Bond, as that term is defined below.

4. St. Paul issued a Financial Institution Bond bearing Bond Number  (b)(4) (the "Bond") for the bond period of May 30, 2007, to May 30, 2010. The Bond also named Bankshares and CBT-AL as insureds.

5. In May and July 2010, the FDIC-R submitted Proofs of Loss as receiver for CBT-GA seeking coverage under the Bond (the "CBT-GA Proofs of Loss"). In July 2011, Bankshares and CBT-AL submitted a Proof of Loss on their behalf seeking coverage under the Bond (the "CBT-AL Proof of Loss").

6. On July 1, 2011, the FDIC-R filed a complaint against St. Paul in the United States District Court, Northern District of Georgia, Gainesville Division, Civil Action No. 2:11-CV-00167 (the "Pending Litigation"). On October 20, 2011, St. Paul filed a declaratory judgment complaint against Bankshares and CBT-AL in the same court, and that complaint was consolidated into the Pending Litigation by consent order.

7. After mediation, the Parties reached a settlement in principle of all issues relating to the Bond and the Pending Litigation.

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

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

**SECTION I: Payment by St. Paul to FDIC-R, Community Bankshares, and CBT-AL**

- A. The Recitals above are incorporated herein by reference.
- B. As an essential covenant and condition to this Agreement, St. Paul agrees to pay to the FDIC-R the total sum of EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,500,000.00) and to Bankshares and CBT-AL together the total sum of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00) (the "Settlement Funds").

C. No later than September 30, 2015 (the "Payment Due Date"), the Settlement Funds shall be delivered as follows:

(a) the FDIC-R's portion (\$8,500,000) by direct wire transfer to:

**BANK:** Federal Home Loan Bank of New York **ROUTING #:**  (b)(4)

**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 Community Bank & Trust of Cornelia, Georgia No. 10180

2. Asset number:

3. Bond Settlement: *Federal Deposit Insurance Corporation as Receiver of Community Bank & Trust of Cornelia, Georgia v. St. Paul Mercury Insurance Company*, Case No. 2:11-CV-167-RWS (N.D. Ga. 2011); Contact John V. Church, 703-516-1394.

(b)(4) (b)(5) (b) Bankshares' and CBT-AL's portion (\$750,000) by check payable to "Community Bankshares, Inc. and Community Bank & Trust - Alabama" and directed to Mr. William R. Stump, Jr., President & CEO of Community Bankshares, Inc., 201 Broad Street, LaGrange, GA 30241.

D. In the event that the Settlement Funds payable to the FDIC-R are not delivered in full to the FDIC-R as stated above by the Payment Due Date, interest shall accrue on all unpaid accounts at the rate of 5% per annum from such date until the date of payment in full.

E. In the event that the Settlement Funds payable to Bankshares and CBT-AL are not delivered in full to Bankshares and CBT-AL as stated above by the Payment Due Date, interest shall accrue on all unpaid accounts at the rate of 5% per annum from such date until the date of payment in full.

F. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds payable to the FDIC-R 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 payable to the FDIC-R (including all accrued interest) (1) to declare the FDIC-R's obligations pursuant to this Agreement null and void, including without limitation the FDIC-R's release of St. Paul, (2) to extend this Agreement for any period of time until it receives all Settlement Funds payable to the FDIC-R (including all accrued interest), (3) to enforce this Agreement against St. Paul, which agrees to jurisdiction in the United States District Court in the Northern District of Georgia and further agrees to pay all of FDIC-R's reasonable attorney's fees expended in enforcing St. Paul's obligation to pay the Settlement Funds or any part of them, and/or (4) to seek any other relief available to it in law or equity. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not result in the waiver of any of the FDIC-R's rights under this Agreement and shall not prejudice Bankshares' or CBT-AL's right to enforce the terms of this Agreement; provided however, that in the event the FDIC-R declares its obligations pursuant to this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement by St. Paul. The Parties further agree to the jurisdiction of the United States District Court in the Northern District of Georgia to resolve any other disputes related to the enforcement of the terms of this Agreement. In the event the FDIC-R declares the Agreement null and void, the Parties agree that all statutes of limitations or timing defenses with respect to claims under the Bond that the FDIC-R had against St. Paul prior to the date of this Agreement, including those asserted in the Pending Litigation, are tolled from the date of this Agreement until fifteen days after the FDIC-R's obligations pursuant to this Agreement are declared null and void.

G. In addition, and without waiving any other rights that Bankshares and CBT-AL may have, in the event that all Settlement Funds payable to Bankshares and CBT-AL are not received by Bankshares and CBT-AL on or before the Payment Due Date, then Bankshares and CBT-AL, in their sole discretion, shall have the right at any time prior to receipt of all Settlement Funds payable to Bankshares and CBT-AL (including all accrued interest) (1) to declare Bankshares and CBT-AL's obligations pursuant to this Agreement null and void, including without limitation Bankshares and CBT-AL's release of St. Paul, (2) to extend this Agreement for any period of time until they receive all Settlement Funds (including all accrued interest), (3) to enforce this Agreement against St. Paul, which agrees to jurisdiction in the United States District Court in the Northern District of Georgia and further agrees to pay all of Bankshares' and CBT-AL's reasonable attorney's fees expended in enforcing St. Paul's obligation to pay the Settlement Funds or any part of them, and/or (4) to seek any other relief available to them in law or equity. Any decision by Bankshares and CBT-AL to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not result in the waiver of any of Bankshares' or CBT-AL's rights under this Agreement and shall not prejudice the FDIC-R's right to enforce the terms of this Settlement Agreement; provided however, that in the event Bankshares and CBT-AL declare their obligations pursuant to this Agreement null and void, Bankshares and CBT-AL will return all amounts paid to them under this Agreement by St. Paul. The Parties further agree to the jurisdiction of the United States District Court in the Northern District of Georgia to resolve any other disputes related to the enforcement of the terms of this Agreement. In the event Bankshares and CBT-AL declare the Agreement null and void, the Parties agree that all statutes of limitations or timing defenses with respect to claims under the Bond that Bankshares and/or CBT-AL had against St. Paul prior to the date of this Agreement, including those asserted

in the Pending Litigation, are tolled from the date of this Agreement until fifteen days after Bankshares' and CBT-AL's obligations pursuant to this Agreement are declared null and void.

H. Upon receipt of all Settlement Funds and full compliance with the terms of the Agreement by St. Paul, the FDIC-R, Bankshares, CBT-AL, and St. Paul will jointly file a stipulation of voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(ii) that provides the dismissal of the Pending Litigation is with prejudice, and that each party is to bear its own costs and attorney's fees.

## **SECTION II: Releases**

### **A. Release of St. Paul by FDIC-R.**

Effective upon payment by St. Paul of the Settlement Funds due to the FDIC-R, together with any accrued interest, the FDIC-R hereby releases and discharges St. Paul, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, predecessors, successors, and assigns from the FDIC-R's claims under the Bond, including but not limited to any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, known or unknown, in law or in equity, statutory, contractual, non-contractual, or in tort, that the FDIC-R alleged or could have alleged against St. Paul in connection with the CBT-GA Proofs of Loss, or the Pending Litigation, or the Bond, or which the FDIC-R did allege or could have alleged against St. Paul that arise from or relate to any claims asserted by the FDIC-R under the Bond or St. Paul's adjusting of such claims, or otherwise arise from, relate to or concern the Bond or the Pending Litigation, and agrees that any interest it may have under the Bond is extinguished, except as expressly reserved in Paragraphs F and G of this Section II below; provided, that this release shall not extend to or affect any other policy of insurance issued by St. Paul (or any other insurer) other than the Bond, including but

not limited to any directors' and officers' liability policy, specifically SelectOne for Community Banks Policy Number  issued by St. Paul for the policy period of May 30, 2007 to May 30, 2010, nor shall it extend to or affect any claims or causes of action under such other St. Paul policies of insurance, including the claims and causes of action asserted in *Federal Deposit Insurance Corporation as Receiver of Community Bank & Trust of Cornelia, Georgia v. Charles M. Miller and Trent D. Fricks*, Case No. 2:12-CV-42 (N.D. Ga. 2012); *St. Paul Mercury Insurance Company v. Charles M. Miller, Trent D. Fricks, and the Federal Deposit Insurance Corp. as Receiver of Community Bank & Trust, Cornelia, Georgia*, Case No. 2:12-CV-225 (N.D. Ga. 2012); and *James H. Harris, Cynthia Epting, and Irma L. Herrin v. Federal Deposit Insurance Corporation, as Receiver of Community Bank & Trust of Cornelia, Georgia, Charles M. Miller, Wes Dodd, Jan Garrison, and Randy Jones*, Case No. 2:10-CV-231 (N.D. Ga. 2010).

It is the intention of FDIC-R, notwithstanding the possibility that FDIC-R or its counsel discovers or gains a more complete understanding of the facts, events or law which, if presently known or fully understood, would have affected the foregoing release, this Agreement shall be deemed to have fully, finally and forever settled any and all claims encompassed by the release set forth herein, without regard to the subsequent discovery or existence of different or additional facts, events or law (other than fraud by another Party to this Agreement).

**B. Release of St. Paul by Bankshares and CBT-AL.**

Effective upon payment by St. Paul of the Settlement Funds due to Bankshares and CBT-AL, together with any accrued interest, Bankshares and CBT-AL, for themselves and their predecessors, successors and assigns, and on behalf of their respective subsidiaries and affiliates, and their respective employees, officers, directors, agents, attorneys, representatives, predecessors, successors and assigns, hereby release and discharge St. Paul, its parents,

subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, attorneys, representatives, predecessors, successors and assigns, from Bankshares' and CBT-AL's claims under the Bond, including but not limited to any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, statutory, contractual, non-contractual, or in tort, that Bankshares, CBT-AL, or both of them alleged or could have alleged against St. Paul in connection with the CBT-AL Proof of Loss, or the Pending Litigation, or the Bond, or which Bankshares, CBT-AL, or both of them did allege or could have alleged against St. Paul that arise from or relate to any claims asserted by Bankshares, CBT-AL, or both of them under the Bond or St. Paul's adjusting of such claims, or otherwise arise from, relate to or concern the Bond or the Pending Litigation, and agree that any interest either of them may have under the Bond is extinguished, except as expressly reserved in Paragraphs F and G of this Section II below; provided, that this release shall not extend to or affect any other St. Paul policy of insurance, including but not limited to any directors' and officers' liability policy, specifically SelectOne for Community Banks Policy Number (b)(4)  issued by St. Paul for the policy period of May 30, 2007 to May 30, 2010, nor shall it extend to or affect any claims or causes of action under such other St. Paul policies of insurance, including the claims and causes of actions asserted in *Federal Deposit Insurance Corporation as Receiver of Community Bank & Trust of Cornelia, Georgia v. Charles M. Miller and Trent D. Fricks*, Case No. 2:12-CV-42 (N.D. Ga. 2012); *St. Paul Mercury Insurance Company v. Charles M. Miller, Trent D. Fricks, and the Federal Deposit Insurance Corp. as Receiver of Community Bank & Trust of Cornelia, Georgia*, Case No. 2:12-CV-225 (N.D. Ga. 2012); and *James H. Harris, Cynthia Epting, and Irma L. Herrin v. Federal Deposit Insurance*



*Corporation, as Receiver of Community Bank & Trust of Cornelia, Georgia, Charles M. Miller, Wes Dodd, Jan Garrison, and Randy Jones, Case No. 2:10-CV-231 (N.D. Ga. 2010).*

Bankshares and CBT-AL acknowledge that (a) they may have sustained damages, expenses and losses in connection with the subject matter of the claims released hereunder which are presently unknown or not suspected and that such damages, expenses and losses, if any, may give rise to additional damages, expenses and losses in the future which are not now anticipated by them, and (b) this Agreement and the foregoing release have been negotiated and agreed upon despite this realization and, being fully advised, expressly waive any and all rights they may have under any statute or common law principle which would limit the effect of the foregoing release to those claims actually known or suspected to exist at the time of the effectiveness of the foregoing release.

It is the intention of Bankshares and CBT-AL, notwithstanding the possibility that Bankshares and CBT-AL or their counsel discover or gain a more complete understanding of the facts, events or law which, if presently known or fully understood, would have affected the foregoing release, this Agreement shall be deemed to have fully, finally and forever settled any and all claims encompassed by the release set forth herein, without regard to the subsequent discovery or existence of different or additional facts, events or law (other than fraud by another Party to this Agreement).

**C. Release of FDIC-R by St. Paul.**

Effective simultaneously with the release granted in paragraph A of this Section II above, St. Paul, for itself and its predecessors, successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, attorneys, representatives, predecessors, successors and assigns, hereby releases and discharges

the FDIC-R and its employees, officers, directors, agents, representatives, predecessors, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of actions, direct or indirect, known or unknown, in law or in equity, statutory, contractual, non-contractual, or in tort, that arise from or relate to the CBT-GA Proofs of Loss, or the Pending Litigation, or the Bond, including but not limited to any rights of subrogation, legal, equitable, or otherwise, except as expressly reserved in paragraphs F and G of this Section II below; provided that this release shall not extend to or affect any policy of insurance issued by St. Paul (or any other insurer), other than the Bond, including but not limited to SelectOne for Community Banks Policy Number  issued by St. Paul for the policy period of May 30, 2007 to May 30, 2010, nor shall it extend to or affect any claims or causes of action under such other St. Paul policies of insurance, including but not limited to any claims or causes of action asserted in *Federal Deposit Insurance Corporation as Receiver of Community Bank & Trust of Cornelia, Georgia v. Charles M. Miller and Trent D. Fricks*, Case No. 2:12-CV-42 (N.D. Ga. 2012); *St. Paul Mercury Insurance Co. v. Charles M. Miller, Trent D. Fricks, and the Federal Deposit Insurance Corporation, as Receiver of Community Bank & Trust of Cornelia, Georgia*, Case No. 2:12-CV-225 (N.D. Ga. 2012); and *James H. Harris, Cynthia Epting, and Irma L. Herrin v. Federal Deposit Insurance Corp. as Receiver of Community Bank & Trust of Cornelia, Georgia, Charles M. Miller, Wes Dodd, Jan Garrison, and Randy Jones*, Case No. 2:10-CV-231 (N.D. Ga. 2010).

It is the intention of St. Paul, notwithstanding the possibility that St. Paul or its counsel discovers or gains a more complete understanding of the facts, events or law which, if presently known or fully understood, would have affected the foregoing release, this Agreement shall be deemed to have fully, finally and forever settled any and all claims encompassed by the release

set forth herein, without regard to the subsequent discovery or existence of different or additional facts, events or law (other than fraud by another Party to this Agreement).

**D. Release of Bankshares and CBT-AL by St. Paul.**

Effective simultaneously with the release granted in paragraph B of this Section II above, St. Paul, for itself and its predecessors, successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, attorneys, representatives, predecessors, successors and assigns, hereby releases and discharges Bankshares and CBT-AL, and their respective subsidiaries and affiliates, and their respective employees, officers, directors, agents, attorneys, representatives, predecessors, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of actions, direct or indirect, in law or in equity, statutory, contractual, non-contractual, or in tort, that arise from or relate to the CBT-AL Proof of Loss, the Pending Litigation, and/or the Bond, including but not limited to any rights of subrogation, legal, equitable, or otherwise, except as expressly reserved in paragraphs F and G of this Section II below; provided that this release shall not extend to or affect any policy of insurance issued by St. Paul (or any other insurer), other than the Bond, including but not limited to SelectOne for Community Banks Policy Number (b)(4)  issued by St. Paul for the policy period of May 30, 2007 to May 30, 2010, nor shall it extend to or affect any claims or causes of action under such other St. Paul policies of insurance, including but not limited to any claims or causes of action asserted in *Federal Deposit Insurance Corporation as Receiver of Community Bank & Trust of Cornelia, Georgia v. Charles M. Miller and Trent D. Fricks*, Case No. 2:12-CV-42 (N.D. Ga. 2012); *St. Paul Mercury Insurance Company v. Charles M. Miller, Trent D. Fricks, and the Federal Deposit Insurance Corporation, as Receiver of Community Bank & Trust, Cornelia, Georgia*, Case No. 2:12-CV-

225 (N.D. Ga. 2012); and *James H. Harris, Cynthia Epting, and Irma L. Herrin v. Federal Deposit Insurance Corp. as Receiver of Community Bank & Trust of Cornelia, Georgia, Charles M. Miller, Wes Dodd, Jan Garrison, and Randy Jones*, Case No. 2:10-CV-231 (N.D. Ga. 2010).

St. Paul acknowledges that (a) it may have sustained damages, expenses and losses in connection with the subject matter of the claims released hereunder which are presently unknown or not suspected and that such damages, expenses and losses, if any, may give rise to additional damages, expenses and losses in the future which are not now anticipated by it, and (b) this Agreement and the foregoing release have been negotiated and agreed upon despite this realization and, being fully advised, expressly waives any and all rights it may have under any statute or common law principle which would limit the effect of the foregoing release to those claims actually known or suspected to exist at the time of the effectiveness of the foregoing release.

It is the intention of St. Paul, notwithstanding the possibility that St. Paul or its counsel discovers or gains a more complete understanding of the facts, events or law which, if presently known or fully understood, would have affected the foregoing release, this Agreement shall be deemed to have fully, finally and forever settled any and all claims encompassed by the release set forth herein, without regard to the subsequent discovery or existence of different or additional facts, events or law (other than fraud by another Party to this Agreement).

**E. Participation Agreements.**

Nothing contained in this Agreement, except the releases of St. Paul, shall be construed as impairing or otherwise affecting the rights of the FDIC-R, Bankshares, or CBT-AL under the Participation Agreements identified in the CBT-AL Proof of Loss (the "Participation Agreements"), including but not limited to the FDIC-R's and CBT-AL's pro rata participation

interests in the loans, notes, or properties securing the indebtedness referenced in the Participation Agreements and/or CBT-AL's right to receive its pro rata percentage of payments pursuant to the Participation Agreements. Further, nothing contained in this Agreement shall be construed as a release or waiver of any rights or claims that the FDIC-R, Bankshares, or CBT-AL may have against any nonparty to this Agreement related to the Participation Agreements.

**F. Priority of Subrogation for FDIC-R, Bankshares, and CBT-AL as to St. Paul.**

(b)(4) **1. Participated [redacted] Loans.** St. Paul agrees that FDIC-R, Bankshares, and CBT-AL together shall have first priority to any rights of subrogation or recovery against nonparties to this Agreement relating to FDIC-R's, Bankshares', and CBT-AL's interest in CBT-GA Loan Nos. [redacted] (the "Participated [redacted] (b)(4) [redacted] Loans")<sup>1</sup> that are the subject of the FDIC-R's, Bankshares', and CBT-AL's claims under the Bond (the "[redacted] Participation Claims"), including without limitation those rights involving the underlying properties, assets, or losses described in the claims under the Bond and all rights to recovery thereof (the "FDIC-R and CBT-AL Shared Rights of Recovery"). St. Paul agrees that the FDIC-R, Bankshares, and/or CBT-AL may retain, sell, or transfer the FDIC-R and CBT-AL Shared Rights of Recovery as they see fit, in their sole discretion, and the FDIC-R, Bankshares, and/or CBT-AL may retain the proceeds (if any) thereof until such time as the [redacted] Participation Claims have been paid in full, with credit given for the amount paid by St. Paul pursuant to this Agreement. FDIC-R, St. Paul, Bankshares, and (b)(4) CBT-AL acknowledge that the [redacted] Participation Claims relating to R. Randal Jones

<sup>1</sup> FDIC-R and CBT-AL share ownership interests in the Participated [redacted] Loans pursuant to the Participation Agreements, which provide that CBT-AL is entitled to a pro rata percentage of payments received by the FDIC-R with respect to the Participated [redacted] Loans, including but not limited to a pro rata percentage of any proceeds from the sale, liquidation, exchange, or substitution of the properties securing the Participated [redacted] Loans. (b)(4)

total \$1.62 million, subject to reduction to the extent of the collateral held by FDIC-R (and before St. Paul's payments pursuant to this Agreement). After the [redacted] Participation (b)(4) Claims and FDIC-R's Other Claims (as defined in paragraph F.2. below) have been paid in full, net of the amount of St. Paul's payments pursuant to this Agreement and net of the proceeds of (b)(4) any collateral securing the [redacted] Participation Claims and/or the FDIC-R's Other Claims, respectively, after allowance for all reasonable expenses of liquidating such collateral, St. Paul shall be entitled to any remaining or additional proceeds from the FDIC-R and CBT-AL Shared Rights of Recovery.

2. **FDIC-R's Other Claims in the Pending Litigation.** St. Paul agrees that FDIC-R shall have first priority to any rights of subrogation or recovery against nonparties to this Agreement relating to all claims asserted by the FDIC-R in the Pending Litigation other than (b)(4) the Participated [redacted] Loans (the "FDIC-R's Other Claims"), including without limitation those rights involving the underlying properties, assets, or losses described in the claims under the Bond and all rights to recovery thereof ("CBT-GA Rights of Recovery"). St. Paul agrees that the FDIC-R may retain, sell, or transfer the CBT-GA Rights of Recovery as it sees fit, in its sole discretion, and retain the proceeds (if any) thereof until such time as FDIC-R's Other Claims have been paid in full, with credit given for the amount paid by St. Paul pursuant to this Agreement. FDIC-R and St. Paul acknowledge that the FDIC-R's Other Claims relating to R. Randal Jones total \$27.18 million, subject to reduction to the extent of the collateral held by FDIC-R (and before St. Paul's payment pursuant to this Agreement). After (b)(4) the FDIC-R's Other Claims and the [redacted] Participation Claims have been paid in full, net of the amount of St. Paul's payments pursuant to this Agreement and net of the proceeds of (b)(4) any collateral securing the [redacted] Participation Claims and/or the FDIC-R's Other

Claims, respectively, after allowance for all reasonable expenses of liquidating such collateral, St. Paul shall be entitled to any remaining or additional proceeds from the CBT-GA Rights of Recovery.

(b)(4) 3. [redacted] and [redacted] Loans. St. Paul agrees that (b)(4), (b)(6)  
Bankshares and CBT-AL shall have first priority to any rights of subrogation or recovery against  
nonparties to this Agreement relating to Bankshares and CBT-AL's interest in the [redacted] (b)(4)  
(b)(4), (b)(6) [redacted] and [redacted] loan participations that are the subject of Bankshares and  
CBT-AL's claims under the Bond ("Bankshares and CBT-AL's Claims Relating to [redacted] (b)(4)  
(b)(4), (b)(6) and [redacted]), including without limitation those rights involving the underlying properties,  
assets, or losses described in the claims under the Bond and all rights to recovery thereof  
(b)(4), (b)(6) ("CBT-AL Rights of Recovery Relating to [redacted]"). St. Paul agrees that  
Bankshares and/or CBT-AL may retain the proceeds (if any) received in connection with the  
retention, sale, or transfer of the CBT-AL Rights of Recovery Relating to [redacted] (b)(4), (b)(6)  
(b)(4), (b)(6) [redacted] until such time as Bankshares and CBT-AL's Claims Relating to [redacted] (b)(4), (b)(6)  
(b)(4), (b)(6) [redacted] have been paid in full, with credit given for the amount paid by St. Paul pursuant to this  
Agreement. St. Paul, Bankshares, and CBT-AL acknowledge that Bankshares and CBT-AL's  
(b)(4), (b)(6) Claims Relating to [redacted] total \$2,521,497.24 (and before St. Paul's  
payment pursuant to this Agreement). After the [redacted] Participation Claims and (b)(4)  
(b)(4), (b)(6) Bankshares and CBT-AL's Claims Relating to [redacted] have  
been paid in full, and after the FDIC-R's Other Claims also have been paid in full, net of the  
amount of St. Paul's payments pursuant to this Agreement and net of the proceeds of any  
(b)(4) collateral securing the [redacted] Participation Claims and/or the FDIC-R's Other Claims,  
respectively, after allowance for all reasonable expenses of liquidating such collateral, St. Paul

shall be entitled to any remaining or additional proceeds from the CBT-AL Rights of Recovery

(b)(4),(b) Relating to [redacted] St. Paul acknowledges and further agrees that it does  
(6)

not have any rights of subrogation or recovery with respect to any interest of the FDIC-R in the

(b)(4) [redacted] Loan (Loan No. [redacted]) and [redacted] Loan (Loan (b)(4), (b)  
(6)

(b)(4) No. [redacted]) pursuant to the Participation Agreements.

**G. Express Reservations From Releases.**

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

a. against any person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note, loan participation, or indebtedness payable or owed by such person or entity to the FDIC-R, CBT-GA, other financial institutions, or any other person or entity, including without limitation any claims acquired by the FDIC-R as successor in interest to CBT-GA or any person or entity other than CBT-GA;

b. against any person or entity not expressly released in this Agreement;

c. under or relating to any policy of insurance issued by St. Paul (or any other insurer), other than the Bond, including but not limited to SelectOne for Community Banks

(b)(4) Policy Number [redacted] issued by St. Paul for the policy period of May 30, 2007, to May 30, 2010, and also including but not limited to the claims and causes of actions asserted in *Federal Deposit Insurance Corporation as Receiver of Community Bank & Trust of Cornelia, Georgia v. Charles M. Miller and Trent D. Fricks*, Case No. 2:12-CV-42 (N.D. Ga. 2012); *St. Paul Mercury Insurance Company v. Charles M. Miller, Trent D. Fricks, and the Federal Deposit Insurance Corporation, as Receiver of Community Bank & Trust, Cornelia, Georgia,*



Case No. 2:12-CV-225 (N.D. Ga. 2012); and *James H. Harris, Cynthia Epting, and Irma L. Herrin v. Federal Deposit Insurance Corp. as Receiver of Community Bank & Trust of Cornelia, Georgia, Charles M. Miller, Wes Dodd, Jan Garrison, and Randy Jones*, Case No. 2:10-CV-231 (N.D. Ga. 2010); or

d. which are not expressly released in paragraph A of Section II, above.

2. Notwithstanding any other provision contained in this Agreement, Bankshares and CBT-AL do not release, and expressly preserve fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

a. against any person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note, loan participation, or indebtedness payable or owed by such person or entity to Bankshares, CBT-AL, or either of them, other financial institutions, or any other person or entity;

b. against any person or entity not expressly released in this Agreement;

c. under or relating to any policy of insurance issued by St. Paul (or any other insurer), other than the Bond, including but not limited to SelectOne for Community Banks Policy Number  issued by St. Paul with an effective date of May 30, 2007 to May

(b)(4) 30, 2010, and also including but not limited to the claims and causes of actions asserted in *Federal Deposit Insurance Corporation as Receiver of Community Bank & Trust of Cornelia, Georgia v. Charles M. Miller and Trent D. Fricks*, Case No. 2:12-CV-42 (N.D. Ga. 2012); *St. Paul Mercury Insurance Company v. Charles M. Miller, Trent D. Fricks, and the Federal Deposit Insurance Corporation, as Receiver of Community Bank & Trust, Cornelia, Georgia*, Case No. 2:12-CV-225 (N.D. Ga. 2012); and *James H. Harris, Cynthia Epting, and Irma L. Herrin v. Federal Deposit Insurance Corp. as Receiver of Community Bank & Trust of Cornelia,*

Georgia, Charles M. Miller, Wes Dodd, Jan Garrison, and Randy Jones, Case No. 2:10-CV-231 (N.D. Ga. 2010); or

d. which are not expressly released in paragraph B of Section II, above.

3. Notwithstanding any other provision, by this Agreement, St. Paul 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 any person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note, loan participation, or indebtedness payable or owed by such person or entity to St. Paul;

b. against any person or entity not expressly released in this Agreement;

c. under or relating to any policy of insurance issued by St. Paul (or any other insurer), other than the Bond, including but not limited to SelectOne for Community Banks

(b)(4) Policy Number  issued by St. Paul with an effective date of May 30, 2007 to May 30, 2010, and also including but not limited to the claims and causes of actions asserted in *Federal Deposit Insurance Corporation as Receiver of Community Bank & Trust of Cornelia, Georgia v. Charles M. Miller and Trent D. Fricks*, Case No. 2:12-CV-42 (N.D. Ga. 2012); *St. Paul Mercury Insurance Company v. Charles M. Miller, Trent D. Fricks, and the Federal Deposit Insurance Corporation, as Receiver of Community Bank & Trust, Cornelia, Georgia*, Case No. 2:12-CV-225 (N.D. Ga. 2012); and *James H. Harris, Cynthia Epting, and Irma L. Herrin v. Federal Deposit Insurance Corp. as Receiver of Community Bank & Trust of Cornelia, Georgia, Charles M. Miller, Wes Dodd, Jan Garrison, and Randy Jones*, Case No. 2:10-CV-231 (N.D. Ga. 2010); or

d. which are not expressly released in paragraphs C or D of Section II, or subordinated in paragraph F of Section II, above.

4. Notwithstanding any other provision, this Agreement does not waive any claims or actions that could be brought by any agency or instrumentality of the United States government other than the FDIC-R.

5. 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.

6. 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.

### **SECTION III: Representations and Acknowledgements**

A. **Ownership of the Claims.** The Parties hereby represent and warrant that they have not transferred, assigned, released, or otherwise compromised any rights or claims released herein. The FDIC-R represents and warrants it is the sole owner of the claims asserted in the CBT-GA Proofs of Loss. Bankshares and CBT-AL each represents and warrants that it is the

owner of the claims asserted in the CBT-AL Proofs of Loss. St. Paul represents and warrants that it owns the rights released herein on its behalf and has not assigned, sold, or transferred any of such rights to any other person or entity.

B. No Additional Actions. St. Paul hereby agrees that it will not bring, file, or otherwise pursue any claims against any Party in relation to the Bond, including any claims for indemnity or subrogation, other than to enforce its rights under this Agreement.

C. No Admission of Liability. The undersigned Parties each acknowledges and agrees that the matters set forth in this Agreement constitute the settlement and compromise of a disputed claim and that this Agreement is not an admission or evidence of liability by any of them regarding any claim nor is it intended to be, nor shall it be construed as, an interpretation of the Bond or any other insurance policy. This Agreement shall not be used as evidence, or in any other manner, before any court or any proceeding to create, prove, or interpret the obligations or alleged obligations of St. Paul under the Bond to any Party or non-party to this Agreement. Except as provided above, the Parties may use the Agreement in any other proceeding to the extent deemed relevant and admissible by a court and may use this Agreement in any manner as may be necessary to enforce the terms of the Agreement.

D. Cooperative Drafting. The Parties to this Agreement have participated jointly in the negotiation and preparing of this Agreement. Accordingly, the Parties agree not to assert that any other party is the sole or principal drafter of the Agreement. The Parties also agree not to assert that any canon of construction applicable to sole or principal drafters should be applied against any other party.

E. Execution in Counterparts. This Agreement may be executed with facsimile signatures and 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 original document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery (electronic or otherwise), shall be deemed a complete original, binding the Party or Parties subscribed thereto upon the execution by all Parties to this Agreement.

F. **Binding Effect.** Each of the undersigned persons represents and warrants that he or she is authorized to sign this Agreement on behalf of the respective Party for which he or she is signing, with 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 insurers, agents, heirs, executors, administrators, representatives, attorneys, successors and assigns.

G. **No Confidentiality.** The Parties acknowledge and agree 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.

H. **Construction.** The descriptive headings of this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

I. **Notices.** If any Party is required to give notice to another Party under this Agreement, such notice shall be (i) delivered personally, (ii) sent by Federal Express (or another recognized overnight or two-day carrier) requesting next or second business day delivery, (iii) sent by facsimile, (iv) sent by United States certified or registered mail, postage prepaid, return receipt requested, or (v) sent by email with a confirmation to be sent the same day by one of the methods enumerated above. Any such notice shall be deemed given when (i) so delivered personally, (ii) if sent by express courier, one or two business days (as the case may be) following delivery to the courier, (iii) on the date sent by facsimile or email, with confirmation of

transmission, if sent during normal business hours of the recipient, or, if not, then on the next business day, or (iv) if sent by certified or registered mail, five business days after the date of deposit in the United States mail to the respective address of the Party as set forth below, with copies sent to the persons indicated below:

To the FDIC:

Steven L. Hoard, Esq.  
Mullin, Hoard, Brown, LLP  
P.O. Box 31656  
Amarillo, Texas 79120  
Facsimile: (806) 372-5086  
Email:

(b)(6)

and Federal Deposit Insurance Corporation  
3501 Fairfax Dr.  
Arlington, VA 22226  
Attn: John V. Church, Esq.  
Rm VS-B-7056.  
Facsimile: (703) 516-5445

Email:

(b)(6)

To Bankshares and CBT-AL:

Julie A. Lierly, Esq.  
Kilpatrick, Townsend & Stockton LLP  
1100 Peachtree St., Suite 2800  
Atlanta, Georgia 30309  
Facsimile: (404) 815-6555  
E-mail:

(b)(6)

and William R. Stump, Jr.  
Community Bankshares, Inc.  
201 Broad St.  
LaGrange, GA 30241  
Facsimile: (706) 845-0014  
E-Mail:

(b)(6)

To St. Paul Mercury Insurance Co.:

Gregory R. Veal, Esq.  
Bovis, Kyle, Burch & Medlin, LLC  
200 Ashford Ctr. N., Ste. 500  
Atlanta, Georgia 30338  
Facsimile: (770) 668-0878  
E-mail:

(b)(6)

and Donna E. Williams  
St. Paul Travelers  
1000 Windward Concourse, Ste. 100  
Alpharetta, Georgia 30005  
Facsimile: (770) 570-4180  
E-Mail:

(b)(6)

or to such other address as the recipient Party has specified by prior written notice to the sending Party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

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

K. **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).

L. **Reasonable Cooperation.** The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their respective 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.

M. **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 its counsel.

N. **Authority to Settle.** The FDIC-R, Bankshares, CBT-AL, and St. Paul, respectively, each warrants and represents that the Recitals set forth above are material, true and accurate and that it has the full right, power, and specific authority to enter into, execute, and consummate this Agreement.

O. **Severability.** If any provision of this Agreement or the application of any provision herein to any person or circumstance is held invalid or unenforceable, only that provision shall be affected, and the remainder of this Agreement (and the application of such provision to other persons or circumstances) shall remain in full force and effect.

P. No Waiver. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Q. No Benefit to Third Parties. This Agreement is intended to confer rights and benefits only on the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR COMMUNITY BANK & TRUST  
OF CORNELIA, GEORGIA

(b)(6) Date: 9/21/2015

BY: [Redacted]  
TITLE: COUNSEL - Legal Division  
PRINT NAME: JOHN V. CHUACH

[SIGNATURES CONTINUED ON FOLLOWING PAGE]



(b)(6)

Date:

12/1/2015

COMMUNITY BANKSHARES, INC.

BY:

[Redacted Signature]

TITLE: PRESIDENT & CEO

PRINT NAME: WILLIAM R. STUMP, JR.

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

(b)(6)

COMMUNITY BANK & TRUST—ALABAMA

Date: 9-22-15

BY:   
TITLE: TRD. & CEO  
PRINT NAME: DAVE G. BEVANT

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

ST. PAUL MERCURY INSURANCE COMPANY

(b)(6)

Date: 9/22/15

BY:   
TITLE: Claim Executive  
PRINT NAME: Donna Williams