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**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made as of this \_\_\_ day of \_\_\_, 2011, by, between, and among the following undersigned parties: the Federal Deposit Insurance Corporation, as receiver of Neighborhood Community Bank ("FDIC"), and Joseph Mark Brittain and Smith Welch & Brittain, LLP (collectively the "Settling Defendants"). The FDIC and the Settling Defendants may be referred to herein collectively as the "Parties".

**RECITALS**

WHEREAS:

Prior to June 26, 2009, Neighborhood Community Bank (the "Bank") was a depository institution organized and existing under the laws of Georgia;

On June 26, 2009, the Bank was closed by the Commissioner of Banking for the State of Georgia, 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 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 Feb. 7, 2011, the FDIC filed a complaint for money damages against the Settling Defendants, who had served at various times as attorneys for the Bank. Those claims for damages are now pending in the United States District Court for the Northern District of Georgia, in FEDERAL DEPOSIT INSURANCE CORPORATION, in its Capacity as Receiver

of Neighborhood Community, Plaintiff v. JOSEPH MARK BRITTAIN, and SMITH, WELCH & BRITTAIN, LLP, Defendants; CIVIL ACTION FILE NO. 1:11-CV-0372-HLM (the "Action");

In the Action, the FDIC sought damages arising out of commercial acquisition and development loans the Bank made to three borrowers: Orchard Road, LLC on Feb. 27, 2006; Rogers Road LLC on July 27, 2006; and West Panola, LLC on May 21, 2007 (the three loans are referred to collectively as "the Loans"). The Settling Parties represented the Bank in closing the Loans. The FDIC acknowledges that its claims allegedly arise out of the performance, non-performance and manner of performance of legal services by Brittain, both individually and as a partner of Smith Welch and Brittain LLP, and FDIC 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.

ProAssurance Casualty Company ("ProAssurance") provided professional liability insurance to the Settling Defendants that afforded coverage for some or all of the claims in the Action under policy number  with effective dates from Jan. 8, 2009 to Jan. 8, 2010 ("the Policy"). The Settling Defendants have denied liability for the claims asserted in the Action;

(b)(4)

The undersigned 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 of which consideration is hereby acknowledged, the undersigned parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC**

A. As an essential covenant and condition to this Agreement, the Settling Defendants and

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ProAssurance, collectively, agree to pay the FDIC the following sums: \$250,000 USD for the claims for damages relating to the loan to Orchard Road, LLC; \$1,085,000 USD for the claims relating to the loan to Rogers Road LLC; and \$465,000 USD for the claims relating to the loan to West Panola, LLC. The collective amount of these payments and the total amount the Settling Defendants and ProAssurance shall pay is \$1,800,000.00 USD ("the Settlement Funds"). Payment of the Settlement Funds shall be by wire transfer, with wiring costs to be borne by the Settling Defendants. It is understood and agreed that the Settling Defendants have agreed to pay the Settlement Funds in settlement of disputed claims, and the payment thereof, while ending the Action, does not constitute payment of the entire loss suffered by the FDIC in any one of the Loans, or in the Loans collectively.

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 Defendants' counsel, but no later than fifteen (15) days after said delivery of the executed Agreement to Settling Defendants' counsel ("Payment Due Date"), the Settlement Funds shall be delivered to FDIC by direct wire transfer into an account designated by FDIC. In the event that the Settlement Funds are not delivered to the FDIC 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 (Sept. 30, 2011) from the Payment Due Date until the date of payment.

C. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds are not received by the FDIC on or before the Payment Due Date, then the FDIC, in its sole discretion, shall have the right 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

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Funds (including all accrued interest), and/or shall have the right to enforce this Agreement. Any decision by the FDIC 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 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 declares this Agreement null and void, the FDIC will return all amounts paid to it under this Agreement.

**SECTION II: Stipulation and Dismissal**

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus any accrued interest, the FDIC shall dismiss the Action. The undersigned parties agree to enter stipulation(s) providing that the dismissal(s) set forth above shall be with prejudice, with each party to bear its own costs as these were originally incurred.

**SECTION III: Releases**

A. Release of Settling Defendants by FDIC.

Effective upon receipt in full of the Settlement Funds, plus any accrued interest, and except as provided in PARAGRAPH III.C., the FDIC hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, 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 and arising from the operations of the Bank, including without limitation the causes of action alleged in the Action.

B. Release of FDIC by the Settling Defendants and ProAssurance.

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the

Settling Defendants and ProAssurance, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC, and its employees, officers, directors, representatives, attorneys, and assigns, from any and all claims, damages, actions, and causes of action, in law or in equity, belonging to the Settling Defendants and arising from the operations of the Bank.

C. Express Reservations From Releases By FDIC.

1. Notwithstanding any other provision, by this Agreement the FDIC 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 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, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank;

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

c. which are not expressly released in PARAGRAPHS III.A and III.C.

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

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of Justice, the United States Attorney's Office for the Northern District of Georgia, or any other federal judicial district. In addition, the FDIC 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 IV: Waiver of Dividends**

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or Newnan Coweta Bancshares, Inc., and by virtue thereof are or may have been entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank, or to proceeds from any litigation that has been or could be brought 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 FDIC or the United States Government in connection with the Bank, its conservatorship or receivership, they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

#### **SECTION V: 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.

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

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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. FDIC represents and warrants 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 III.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. Insurance Coverage

As of the date of this Agreement, the best calculable estimate by ProAssurance of the limits remaining as of the time of mediation is \$2.405 million. ProAssurance has provided documentation to the FDIC to demonstrate the accuracy of this figure and ProAssurance

represents in good faith that the actual remaining proceeds of the policy as of the mediation date were not materially different from \$2.405 million. Neither SWB nor Brittain makes any representation or warranty in regard to ProAssurance's disclosure regarding insurance coverage. ProAssurance agrees to indemnify and hold harmless SWB or Brittain for any loss, cost or expense arising out of any alleged misrepresentation by ProAssurance of the amount of insurance coverage herein.

G. 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 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.

H. 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 NEIGHBORHOOD COMMUNITY BANK**

(b)(6)

Date: 12/12/11

[Redacted Signature Box]

TITLE: Counsel

PRINT NAME: Barry H. Gottfried

**JOSEPH MARK BRITTAIN**

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

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

**SMITH WELCH & BRITTAIN, LLP**

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

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

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

**PROASSURANCE CASUALTY COMPANY**

(b)(6)

Date: 12/13/11

TITLE:  Director of claims

PRINT NAME: Jonathan Whitman

JOSEPH MARK BRITTAIN

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

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

SMITH WELCH & BRITTAIN, LLP

(b)(6)

Date: 12/12/11 BY:

TITLE: <sup>(b)</sup><sub>(6)</sub> Member

PRINT NAME: A. S. Welch Jr

PROASSURANCE CASUALTY COMPANY

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

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

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

(b)(6)

**JOSEPH MARK BRITTAIN**

Date: 12/12/11 BY:

PRINT NAME: Joseph Mark Brittain

**SMITH WELCH & BRITTAIN, LLP**

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

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

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

**PROASSURANCE CASUALTY COMPANY**

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

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

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