

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION**

<b>In re:</b>	§	
	§	<b>Chapter 11</b>
<b>BRANTLEY LAND &amp; TIMBER COMPANY, LLC,</b>	§	<b>Case No. 15- 20584-JSD</b>
	§	
<b>Debtor.</b>	§	

**AMENDED SETTLEMENT AGREEMENT**

This Settlement Agreement is made and entered into this 16<sup>th</sup> day of December, 2015, by and between R. Michael Souther, the Chapter 11 Trustee (the “Trustee”) of the captioned Bankruptcy Estate of Brantley Land & Timber Company, LLC (Debtor) and State Bank and Trust Company, successor to Security Bank of North Fulton (State Bank).

**Background Facts**

1. On July 16, 2015, Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code §101 *et seq.* (the “**Bankruptcy Code**” or “**Code**”) in the United States Bankruptcy Court, Southern District of Georgia, Brunswick Division (“Petition Date”).
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 151, and 157, and the Local Rules of the District Court.
3. Pursuant to the Court’s ruling of September 10, 2015, R. Michael Souther was appointed as Chapter 11 Trustee in this matter.

**Factual History**

4. The Debtor is a real estate development company which originally developed and held over 1,200 lots in a contiguous development in Brantley County, Georgia, consisting of five

subdivisions – Pine Crest, Fox Ridge, Satilla Plantation, Satilla Pasture, Eagle Crest – with multiple phases. On or about April 25, 2007, Debtor borrowed \$10,000,000.00 from Security Bank of North Fulton (Security Bank), predecessor-in-interest to State Bank, and signed a Secured Promissory Note (the “**Note**”). As security for the Note, Debtor executed a Deed to Secure Debt in favor of Security Bank over the Brantley County property. (the “**Real Estate Development**”). The Deed to Secure Debt and Security Agreement from Brantley Land to Security Bank was recorded on May 4, 2007 in Deed Book 403, Folio 77 – 100 with assignments of promissory notes and deeds to secure debt from third party buyers recorded beginning in Deed Book 403, Page 101 through Deed Book 472, Page 255 in the Office of the Clerk of the Superior Court of Brantley County, Georgia.

5. On or about May 14, 2010, State Bank acquired the loan documents by assignment from the Federal Deposit Insurance Corporation as receiver for Security Bank. A true and correct copy of the Receiver’s Assignment is attached to State Bank’s Motion to Dismiss. (Doc. #104)

6. On July 5, 2011, State Bank obtained a judgment in Fulton County Superior Court against Debtor and its principals in the amount of \$9,672,856.88 plus interest and attorney fees and a Writ of Fieri Facias was entered in the Office of the Clerk of the Superior Court of Fulton County, Georgia on November 26, 2013, at lien number 2794, page 361.

7. a. On July 5, 2011, the Superior Court entered an Order for Appointment of a Receiver and appointed Jerry W. Harper and the accounting firm of Schell & Hogan, LLP, both of Saint Simons Island, Georgia, as Receiver of Brantley Land and Timber Co., LLC and of the Subject Brantley County, Georgia, property with full power and authority to take immediate possession of Brantley Land and its property with full powers of management including powers to engage persons necessary and proper for the administration of Brantley Land. The Receivership Order also directed Brantley Land and its “officers, directors, representatives, agents, employees, members, owners,

accountants, bankers and/or partners, and anyone acting on the behalf of, through or under them... to fully comply with the order and provide the receiver with any information needed.” No bond was required.

b. On August 26, 2011, the Superior Court amended the order to allow the receiver to collect fees and expenses upon approval by the Court from collected sales payments and to require 90 day reports from the receiver with respect to assets, liabilities and costs.

c. On February 23, 2015, the Superior Court amended the order to add the following:

5. Notwithstanding and in addition to the foregoing, the Receiver shall have the full power and authority to file any action under Title 11 of the United States Code, to include §§1101, et seq., a Chapter 11 reorganization or liquidation proceeding by and on behalf of Defendant Brantley Land and Timber, Co., LLC with full power and authority to act on behalf of Defendant Brantley Land and Timber, Co., LLC in its capacity as Debtor/Debtor-in-Possession in said proceedings under Title 11 of the Bankruptcy Code together with all of the attendant powers and obligations under Title 11 as if said Receiver were a managing member or executive officer of said Defendant with the full power and authority of 100% of the members of Defendant by vote and appropriate resolution. The Receiver shall have authority to retain counsel under terms satisfactory to Receiver and to prepare and execute a resolution on behalf of said Defendant approving and authorizing the filing of a bankruptcy petition.

In the event of such a bankruptcy filing, the Receiver shall file, in lieu of the filings required under paragraphs 3. A. and B. of this order, a copy of the bankruptcy petition as filed in a United States Bankruptcy Court together with the monthly operating reports filed with United States Trustee and the Bankruptcy Court in such case as and when they are filed.

8. Following the filing of this Chapter 11 on July 16, 2015, (Doc. #1), the Court appointed R. Michael Souther as Chapter 11 Trustee.

### **Post-Petition Activity**

9. Debtor and State Bank had agreed upon an Interim Consent Order Authorizing use of Cash Collateral prior to the filing of a Motion to Use Cash Collateral of State Bank & Trust Company on August 17, 2015. (Doc. #37). Debtor has been operating under the terms of that agreement with State Bank receiving payments in the amount of \$5,000 per month on the first of each month. The motion was continued and prior to the entry of the Cash Collateral Consent Order, State Bank filed an Objection and Withdrawal of Consent to Use of Cash Collateral (Doc. #100) on November 5, 2015, which objection is pending,

10. On October 1, 2015, the attorneys for the Debtor filed applications for compensation (Doc. #84/87) to which State Bank objected on November 5, 2015 (Doc. #99) which applications are pending.

11. State Bank filed a Motion to Dismiss and Motion for Relief from Stay on November 9, 2015 (Doc. #104) which matter is pending.

### **Compromise**

There have been changes in circumstances which allow the parties to reassess goals and obligations as to the other in the creditor/debtor relationship, and to reach an agreement. In consideration of the payment by Debtor of \$250,000.00 to State Bank to be applied toward the debt owing to it, the Bank will, upon entry of a final Order of this Court approving this compromise and settlement, and upon receipt of those funds:

(1) relinquish its under-secured claim/position in this case by surrendering all of its collateral to the Debtor by and through the execution of all necessary quitclaim deeds, releases, cancellations and/or assignments to be prepared by or on behalf of the Chapter 11 Trustee, to include the cancellation of the security deed held by it and identified as the Deed to

Secure Debt and Security Agreement from Brantley Land to Security Bank recorded on May 4, 2007 in Deed Book 403, Folio 77 – 100 with assignments of promissory notes and deeds to secure debt from buyers recorded beginning in Deed Book 403, Page 101 through Deed Book 472, Page 255 in the Office of the Clerk of the Superior Court of Brantley County, Georgia, and any further collateral documents held by it related Debtor that may hereafter be discovered; State Bank has now satisfied its obligations under its Loss Share Agreement with the FDIC.

(2) amend its claim #3 to convert its claim to a general unsecured claim;

(3) dismiss its Motion to Dismiss Case or in the Alternative for Relief from the Automatic Stay (Doc. #104);

(4) dismiss its Objection and Withdrawal of Consent to Debtor's Use of Cash Collateral (Doc. #100);

(5) dismiss its Objection to the First Application for Attorneys' Fees (Doc. #99) by Debtor's counsel;

(6) waive any objections to an Agreement or the confirmation of a Chapter 11 Plan whereby the Debtor elects to *abandon/quitclaim all of its interests* in any roadways, access easements, or wetlands *to include any redemption rights* titled in Debtor to Brantley County, the Tax Commissioner of Brantley County or any other party approved by the Court either by motion and/or by the terms of a confirmed Chapter 11 Plan or otherwise;

(7) agrees to waive any objections to the abandonment or release of any rights of redemption held by Debtor with respect to any *ad valorem tax sales* or quiet title actions that have been, will, or may be conducted by the Brantley County Tax Commissioner or other governmental body either by motion and/or by the terms of a confirmed Chapter 11 Plan or otherwise *with respect to real property which rights the Debtor intends to release or quitclaim to*

*the Brantley County Tax Commissioner or other appropriate governmental body;*

(8) agrees to waive any objections to the *intended* abandonment or release by Debtor of any rights or entitlements held by any parties as to any lands of Debtor *located in Brantley County, Georgia*, with respect to roads, access, water or riparian rights either by motion and/or by the terms of a confirmed Chapter 11 Plan or otherwise;

(9) release Debtor from the July 5, 2011 judgment State Bank holds against Debtor and others but explicitly retaining its judgment against Rodney A. Cobb, Daniel A. Dukes, and Victor C. Smith; provided however, the said release shall not affect the unsecured claim of State Bank for the entire amount owing to it as of the petition date by Debtor to it (less post-petition payments made by Debtor);

(10) waives any objections it may have to the continued possession and use by Debtor/Debtor-in-Possession of any and all assets transferred, indirectly or directly to Debtor/Debtor-in-possession under the auspices of the Chapter 11 Trustee or under the terms of a confirmed plan, or other approval by the Bankruptcy Court;

(11) will provide Debtor the name of a contact(s) with the State Bank with whom authority is vested to execute documents as may be necessary to fulfill the terms of this Agreement as may be approved by this Bankruptcy Court;

(12) and, except as stated otherwise herein, the rights of State Bank as an unsecured creditor in the case are not affected.

**Execution of this document by the parties shall signify:**

1. That they are each bound to co-operate with each other and the Court to perform all acts necessary to assist the Debtor by and through the Trustee to obtain the Bankruptcy Court's approval without delay or interference.

2. That they request the Bankruptcy Court to: (a) approve this Agreement; (b) determine that the Agreement was made in good faith; and (c) determine that adequate notice of the hearing on this approval of the Agreement was given.

3. That the Approval Order does not become a "Final Order" unless and until: (a) the time to file a timely appeal under Fed.R.Bankr.P. 8002 from the order passes and no such timely appeal is filed, or (b) if a timely appeal is filed, then after all timely filed appeals are dismissed with prejudice or the Approval Order is affirmed on appeal and is not subject to further timely appellate review, whether by appeal, petition for rehearing, petition for certiorari or otherwise.

4. That the payments and all document execution required by this agreement shall be completed within 10 days of the Approval Order becoming final, or as soon thereafter as is practicable.

This 9th day of December, 2015.

Brantley Land & Timber, LLC

By: /s/ R. Michael Souther  
R. Michael Souther  
Chapter 11 Trustee of the  
Bankruptcy Estate of  
Brantley Land & Timber, LLC

and

State Bank & Trust  
Company, successor to  
Security Bank of North  
Fulton

By: /s/ Joseph P. Quirk  
Joseph P. Quirk, Esq.  
Attorney for State Bank &  
Trust Company