

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases ("Agreement") are made this 19<sup>th</sup> day of September 2012 by, between and among the following undersigned Parties: the Plaintiff, Federal Deposit Insurance Corporation, in its capacity as receiver for AmTrust Bank ("FDIC-R") and the Defendant Artisan Mortgage Company, Inc. ("Artisan"), parties in a case captioned *FDIC as Receiver for AmTrust Bank v. Malik, et al.*, Case No: 1:09-CV-04805 (E.D.N.Y.) ("The Litigation").

**RECITALS**

WHEREAS, In November, 2009, AmTrust Bank ("AmTrust") initiated The Litigation against its closing attorney Pankaj Malik, several of its mortgage brokers, and other individuals and entities alleged to be involved in the origination of mortgages using improper flip transactions and straw buyers, including claims against Artisan related to the origination of loan files containing certain misrepresentations;

WHEREAS, on December 4, 2009, AmTrust was closed by the Office of Thrift Supervision 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 and all of the Bank's claims, demands, and causes of action, including those claims asserted in The Litigation;

WHEREAS, Artisan has denied the allegations asserted against it for breach of contract;

WHEREAS, Artisan has provided the FDIC-R with a sworn affidavit and other financial materials to demonstrate that it has limited means from which to pay a judgment;

WHEREAS, the FDIC-R has relied upon the accuracy of the information provided by Artisan regarding its financial condition as a material condition for entering this Settlement Agreement; and

WHEREAS, without any admission of liability by any of the undersigned Parties, the Parties deem it to be in their respective best interests to end their disputes arising out of and related to The Litigation, and avoid further costs and risks associated with The Litigation and enter into this Agreement.

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

Section 1: Payment to the FDIC-R.

A. As an essential covenant and condition to this Agreement, Artisan agrees to pay the FDIC-R the sum of Fifteen Thousand Dollars (\$15,000.00) (the "Settlement Funds") to be paid within 30 days of the execution of this Agreement, together with interest thereon commencing on the 31st day after the execution of this Agreement through the date of payment, at a rate of 6% per annum.

B. Upon the execution of an original, or originals in counterparts, of this Agreement by each of the undersigned Parties, but no later than 30 days after the execution of this

Agreement, Artisan shall deliver the Settlement Funds to the FDIC-R by direct wire transfer into an account designated by FDIC-R or by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R.

C. Without waiving any other rights that FDIC-R may have, in the event that the Settlement Funds, including all accrued interest as may be applicable, are not paid to the FDIC-R by Artisan in the respective amounts described above, and within 30 days of the execution of this Agreement, then the FDIC-R shall have the right, in its sole discretion, prior to the receipt of any delinquent payment by Artisan to declare this Agreement null and void, extend this Agreement for the period of time until the FDIC-R receives all of the Settlement Funds and/or enforce this Agreement. The Parties further acknowledge and consent to the jurisdiction of Magistrate Judge Azrack for enforcement of this Agreement in connection with her continuing role overseeing settlement negotiations related to The Litigation.

Section 2: Artisan's Agreement to Cooperate.

A. As an essential covenant and condition to this Agreement, Artisan agrees to make available a corporate representative, knowledgeable about the Subject Loan transactions and to provide a sworn statement to the FDIC-R regarding the persons, entities, and events involved in the Subject Loan transactions and The Litigation.

B. Artisan further agrees to cooperate fully with the FDIC-R in the ongoing Litigation and any future litigation or other proceedings related to the persons, entities, and events involved in The Litigation, including, if necessary, testifying regarding the persons, entities, and events involved in The Litigation.

Section 3: Stipulations and Dismissals.

Upon execution of this Agreement by each of the undersigned Parties and upon receipt of the Settlement Funds by the FDIC-R in the amount specified in Section 1 above from Artisan, plus any accrued interest pursuant to Section 1A, the FDIC-R shall dismiss with prejudice all of its claims in the Litigation against Artisan. A stipulation of dismissal with prejudice as to these claims shall be prepared by the FDIC-R and executed by Artisan within 30 days after receipt of the sworn statement by the FDIC-R from Artisan.

Section 4: Mutual Releases.

A. Release of Artisan by the FDIC-R.

Effective upon payment of the Settlement Funds in the amount specified in Section 1 above, the FDIC-R hereby releases and discharges Artisan, its insurers, representatives, successors, assigns and attorneys, from any and all claims, demands, obligations, damages, actions, causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R that were asserted in The Litigation, including, without limitation, claims regarding loans for which Pankaj Malik or Malik & Associates, P.C. served as a closing attorney for AmTrust Bank.

B. Release of the FDIC-R by Artisan.

Effective simultaneously with the release in Section 3A above, Artisan on its own behalf, and on behalf of its insurers, representatives, successors, assigns and attorneys hereby releases and discharges the FDIC-R from any and all claims, demands, obligations, damages, actions, causes of action, direct or indirect, in law or in equity, that arise from or relate to the Litigation, including but not limited to any rights of subrogation.

C. Express Reservation of Releases By The FDIC.

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 rights, claims or causes of action:

i. Against any other party in the Litigation not expressly released by this Agreement; and

ii. Which are not expressly released in Section 4A, above.

2. Notwithstanding any other provision of this Agreement, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority to institute administrative enforcement or other proceedings seeking removal, prohibition, civil penalties, restitution or other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person, or which may arise by operation of law, rule, or regulation.

3. Notwithstanding any other provision of this Agreement, this Agreement does not waive any claims which could be brought by the United States through the Department of Justice or the United States Attorney's Office for any 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 5: Representations and Acknowledgments

A. No Admission of Liability. The undersigned Parties each acknowledge and agree

that the matters set forth in this Agreement constitute a settlement and compromise of disputed claims previously defined and that this Agreement is not an admission or evidence of any liability of any of them regarding any claim.

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 a 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, administrators, representatives, successors, assigns and attorneys.

D. Specific Representations Warranties and Disclaimer. Artisan expressly acknowledges that in determining to settle the claims released here, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information in the affidavit submitted. If, in its affidavit, Artisan has failed to disclose any interest, legal, equitable, or beneficial, in any asset, Artisan agrees to cooperate fully with the FDIC-R to transfer its interest in the asset to the FDIC-R and to sign any and all documents necessary to transfer its interest in the asset to the

FDIC-R. Moreover, if, in its affidavit Artisan has failed to disclose any interest, legal, equitable, or beneficial, in any asset, the FDIC-R in its sole discretion, may exercise one or more or all of the following remedies: (a) the FDIC-R may declare the releases granted to Artisan as null and void; (b) the FDIC-R may retain the Settlement Funds; (c) the FDIC may sue Artisan for damages, an injunction, and specific performance for the breach of this agreement; and (d) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against the Artisan. Artisan agrees that if, in its affidavit, it has failed to disclose any interest, legal, equitable, or beneficial, in any asset, Artisan consents to the reinstatement of FDIC-R's claims and waives any statute of limitations that would bar any of the FDIC-R's claims against it.

E. 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 New York.

F. 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 parties to be bound thereby, or by their respective authorized attorneys or other representatives.

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 representative on the dates hereinafter subscribed.

(b)(6)

Date: 9/19/2012

Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

[Redacted Signature Box]

Date: 9/12/12

Artisan Mortgage Company, Inc

By

[Redacted Signature Box]

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