

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 18th day of December, 2013, by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation, as receiver of AmTrust Bank ("FDIC-R"), and Stewart Title Guaranty Company ("the "Settling Defendant") (the FDIC-R and the Settling Defendant may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS, prior to December 4, 2009, AmTrust Bank ("Bank") was a depository institution organized and existing under the laws of the United States;

WHEREAS, on December 4, 2009, the Bank was closed by the Office of Thrift Supervision ("OTS") and pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R as receiver succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

WHEREAS, On July 9, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendant. Those claims for damages are now pending in the United States District Court for the Southern District of Florida in the matter of *FDIC-R v. Stewart Title Guaranty Company*, Case No. 12-cv-10062 (the "Action"). The Settling Defendant has denied liability for the FDIC-R's claims.

The Settling Defendant deems it is in its 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-R

A. As an essential covenant and condition to this Agreement, the Settling Defendant agrees to pay the FDIC-R the sum of \$1,750,000 ("the Settlement Amount") to Welbaum Guernsey's Trust Account on or before January 18, 2014, in settlement of the Action.

B. 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 the date set forth in Paragraph I.A., then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds 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, and/or shall have the right to enforce this Agreement against the Settling Defendant, in which event the Settling Defendant agrees to jurisdiction in Federal District Court in Florida and agrees 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 Settling Defendant 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 by the Settling Defendant. In no event shall the FDIC-R declare this Agreement null and void if the Settling Defendant has delivered the Settlement Funds on or before the date set forth in Paragraph I.A.

SECTION II: Stipulation and Dismissal

Within three (3) days of execution of this Agreement by each of the undersigned Parties, the FDIC-R 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 Defendant by FDIC-R.

Effective upon receipt in full of the settlement funds and dismissal described in SECTION(S) I and II above, the FDIC-R, for itself, its successors and assigns, hereby releases and discharges Settling Defendant and its respective parents, subsidiaries, affiliates, heirs, executors, administrators, representatives, all current and former employees and personnel, agents, 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 FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Settling Defendant's functions, duties and actions as title insurer and/or issuer of closing protection letters to the Bank, including without limitation the causes of action alleged in the Action.

B. Release of FDIC-R by the Settling Defendant. The Settling Defendant, for itself, its predecessors, successors, assigns, all current and former employees and personnel, attorneys, officers, directors, stockholders, parent corporations, subsidiary corporations, affiliates, agents, and representatives, hereby remises, releases, acquits, satisfies, and forever discharges FDIC-R and its respective predecessors, successors, assigns, all current and former employees and personnel, attorneys, officers, directors, stockholders, parent corporations, subsidiary corporations, affiliates, agents, insurers and representatives, from any and all liability and from any and all causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands of whatever name or nature in any manner arisen, in law or in equity, whether known or unknown, whether accrued or unaccrued, and whether sounding in contract, tort, statute or otherwise, derived from, based upon, or arising out of the claims and allegations set forth in the Action.

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 Defendant 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;

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

c. which are not expressly released in Paragraphs III.A, above.

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 Southern District of Florida 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 V: Representations and Acknowledgements

A. No Admission of Liability. The 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.

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 Party they are signing for, 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 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 Florida.

E. Reasonable Cooperation. The 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.

F. Authority to Act. FDIC-R and the Settling Defendant represent and warrant that their respective signatories have full authority to execute 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 its counsel.

H. 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).

I. Paragraph Headings. Paragraph headings contained in this Agreement are inserted solely as reference aids for the ease and convenience of the reader; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions or any other aspect of this Agreement.

J. Singular and Plural. As used in this Agreement, the singular or plural shall be deemed to include the other whenever the context so indicates or requires.

K. Invalid Provisions. If any provision of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, but shall be construed as if such provision had never been contained herein.

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.

Date: _____

FEDERAL DEPOSIT INSURANCE CORPORATION

BY:

TITLE: *FOIA ORR Specialist*

PRINT NAME: *Thomas M. Rupp*

(b)(6)

Date: _____

STEWART TITLE GUARANTY COMPANY

BY:

TITLE: *Sr VP Chief Litigation Counsel*

PRINT NAME: *Pamela Butler O'Brien*

(b)(6)