

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of this 28<sup>th</sup> day of August, 2013, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), on the one hand, and Genuine Title, LLC ("Genuine Title"), and First American Title Insurance Company ("First American") on the other hand, (individually, the FDIC-R, Genuine Title, and First American may be referred to herein as a "Party" and collectively as the "Parties").

**WHEREAS:**

Prior to December 4, 2009, AmTrust Bank, Cleveland, Ohio, previously known as Ohio Savings Bank ("Bank"), was a depository institution organized and existing under the laws of the United States.

On December 4, 2009, the Office of Thrift Supervision closed the Bank and appointed the Federal Deposit Insurance Corporation as its 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 the claims which are subject to this Agreement.

Between July and November, 2007, AmTrust funded a series of mortgage loan transactions involving the following named borrowers:

Borrower	Address	Loan Amount	Closing Date
(b)(4),(b)(6)			

Genuine Title performed title, closing, and escrow services, while First American issued title insurance and Closing Protection Letters in connection with these transactions (collectively, the "Transactions)."

A dispute has arisen between the Parties with respect to claims by the FDIC-R related to Genuine Title and First American's actions in the Transactions (hereinafter any and all present and future claims by the FDIC-R against Genuine Title and First American in connection with the Transactions are referred to as the "Claims"). The FDIC-R has asserted the Claims against Genuine Title and First American in a civil action captioned *Federal Deposit Insurance Corporation, as Receiver for AmTrust Bank, Plaintiff, v. Genuine Title, LLC, et al., Defendants* Case No. 1:12-02277 in the United States District Court, Northern District of Ohio, Eastern Division (the "Pending Action"). The Parties engaged in settlement negotiations as a result of the Claims. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of 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, Genuine Title shall pay the FDIC-R the total sum of Two Hundred Fifty Thousand (\$250,000) (the "Settlement Payment"). The Settlement Payment shall be made by Genuine Title as follows: (i) an initial payment of One Hundred Thousand Dollars (\$100,000) (the "Initial Payment," which shall be made on or before thirty (30) days following the date on which the FDIC-R executes this Agreement); and (ii) the balance of One Hundred Fifty Thousand Dollars (\$150,000) shall be

payable in fifteen (15) monthly installments of Ten Thousand Dollars (\$10,000) each paid on the first of each month following the Initial Payment (the "Monthly Payments"). All payments shall be in the form of a check made payable to "RJ Landau Partners Client Trust Account," mailed to RJ Landau Partners PLLC, Attn: Richard J. Landau, Esq. 5340 Plymouth Rd., Suite 200, Ann Arbor, Michigan 48105, Reference: AmTrust/Genuine Title Settlement and transmitted in a manner to ensure delivery on or before the due date for each of the Monthly Payments. If Genuine Title makes all payments on time, then there shall be no interest, and no other charges charged to or owed by Genuine Title to FDIC-R.

B. It is expressly understood that the Settlement Payment is being made to partially compensate FDIC-R for the losses that it has alleged it has sustained in conjunction with each of the Transactions, with the exception of the Transaction involving [redacted] for the property

(b)(4),(b)(6)

(b)(4),(b)(6) located at [redacted] Shaker Heights, OH (the "[redacted] Transaction"). While FDIC-R is providing Genuine Title and First American with a release of all the "Claims"

(b)(4),(b)(6)

(b)(4),(b)(6) including those "Claims" related to the [redacted] Transaction, no portion of the Settlement Payment shall be applied to the losses FDIC-R has allegedly sustained in connection with the

(b)(4),(b)(6) "Claim" arising out of the [redacted] Transaction.

C. If the FDIC-R does not receive either the Initial Payment or the Monthly Payments contemplated by § I.A., in full on or before the date(s) determined by subparagraph A above ("Settlement Payment Due Date"), then the FDIC-R, in its sole discretion, shall have the right to:

1. extend the period of time for payment, including interest accruing from the Settlement Payment Due Date through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(b)(3); or

2. in the event Genuine Title fails to make any Monthly Payments on or before the due dates set forth above, Genuine Title's failure to pay shall be considered an event of default. Upon receiving notice of an event of default, Genuine Title shall have no more than 7 (seven) days from the date of such notice of default to cure by making the required payment. Notice of default shall be deemed adequate if served by U.S. Mail certified, return receipt requested to Genuine Title, 11155 Dolfield Blvd #100, Owings Mills, MD 21117, and also to Genuine Title's current counsel of record, John C. Weisensell, Bernlohr, Niekamp & Weisensell, LLP, The Nantucket Building, 23 S. Main Street, Third Floor, Akron, Ohio 44308. Genuine Title hereby agrees that if it fails to cure within this period, FDIC-R shall be entitled to entry of a Consent Judgment against Genuine Title in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) less any payments made hereunder including the Initial Payment and any Monthly Payments, with statutory interest on the unpaid balance from September 12, 2012. Genuine Title expressly consents to entry of the Consent Judgment as set forth above without notice of presentment, objections to form waived, provided solely that the FDIC-R presents to the Court a copy of this Agreement and an affidavit stating the fact of Genuine Title's non-payment and proof of service of the notice of default; and/or

3. seek any other relief available to it in law or equity;

4. in any event, FDIC-R's remedy shall be limited to pursuit of a judgment, and payment of the judgment, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) (less any payments made), plus statutory interest.

Any extension of time for delivery of the Settlement Payment shall not prejudice the FDIC-R's right to take other action or seek any relief during or after such period of extension, including the right to bring an action to enforce the Agreement.

## **SECTION II: Releases.**

### **A. The FDIC-R's Release.**

Effective upon the execution of this Agreement and receipt by the FDIC-R of the Initial Payment, and except as provided in PARAGRAPH II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges: (i) Genuine Title and its respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to the FDIC-R, arising out of or relating in any manner to the failure of the Bank or the activities of the FDIC-R in connection therewith, including without limitation, the Claims; and (ii) First American and its respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to the FDIC-R, arising out of the Transactions, including without limitation the Claims; and, (iii) Genuine Title and its respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to the FDIC-R, arising out of the Transactions. Upon execution of this Agreement, the parties shall file a stipulated entry of dismissal, with prejudice, of the Pending Action as against Genuine Title and First American,

provided however, that such stipulation shall provide for the Court to retain jurisdiction solely for purposes of entering the Consent Judgment, if necessary; and,

B. Genuine Title and First American's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above: (i) Genuine Title, for itself and its successors and assigns, hereby releases and discharges: (a) the FDIC-R and its respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to Genuine Title arising out of or relating in any manner to the failure of the Bank or the activities of the FDIC-R in connection therewith, including without limitation those arising out of the Transactions or relating to the Claims; and (b) First American and its respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, from any and all claims, demands, contracts, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to Genuine Title arising out of the Transactions or relating to the Claims; and (ii) First American, on behalf of itself, and its respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R and Genuine Title and their employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, actions or causes of action belonging to First American, arising out of the Transactions or relating to the Claims.

C. Exceptions to Release by FDIC-R.

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

a. against Genuine Title and First American, 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 by the FDIC-R in this Agreement; or

c. which are not expressly released in PARAGRAPH II.A. 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 brought on behalf of another failed institution or any claims which 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 governmental entity. 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 III: Insolvency.**

A. Insolvency.

Genuine Title warrants as to payments made by or on its behalf that at the time of such payment, it is not insolvent nor will the payment made by or on its behalf render it insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by Genuine Title and not by its counsel.

B. Preferences.

In the event that the FDIC-R is required to return any portion of the Settlement Payment due to a final order by a court that the transfer of the Settlement Payment or any portion thereof constituted a preference, voidable preference, fraudulent transfer or similar transaction, then, in its sole discretion, the FDIC-R may, without waiver of any other rights it may have in law or equity, pursue any of the rights and remedies set forth in paragraph I(C) above, and/or otherwise permitted by law.

**SECTION IV: Notices.**

Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and may also be sent by email, to the following:

If to the FDIC-R:

Richard J. Landau  
RJ Landau Partners PLLC  
5340 Plymouth Rd., Suite 200  
Ann Arbor, MI 48105  
(734) 865-1585

(b)(6)





If to Genuine Title:

John C. Weisensell  
Bernlohr, Nickamp & Weisensell, LLP  
The Nantucket Building  
23 S. Main Street, Third Floor  
Akron, Ohio 44308  
330-434-1000

(b)(6)

If to First American:

Clair E. Dickinson  
Brouse McDowell  
388 South Main Street  
Suite 500  
Akron, OH 44311-4407  
330-434-4842

(b)(6)

**SECTION V: Other Matters.**

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 defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party hereto, except to enforce its terms.

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.

All of the undersigned persons represent and warrant 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. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, representatives, attorneys, successors and assigns.

D. Entire Agreement.

This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. No representations, warranties or inducements have been made to or relied on by any Party concerning this Agreement and its exhibits other than those contained therein.

E. Amendments.

This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing by the Party or Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Reasonable Cooperation.

1. 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 perform the terms of this Agreement.

2. Further, Genuine Title and First American agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation

that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Claims;

b. making themselves available upon request by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Claims;

c. appearing to testify, upon request by the FDIC-R, in any matter determined by the FDIC-R in its sole discretion, to be related to the Claims, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC-R, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Claims.

G. Choice of Law.

This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the internal laws of the State of Ohio, without regard to its conflicts of laws.

H. Advice of Counsel.

Each Party hereby acknowledges that he or 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 its counsel.

I. Title and Captions.

All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

J. Authorship/Construction.

This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any party by reason of which party drafted it.

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:

BERNLOHR, NIEKAMP & WEISENSELL,  
LLP

(b)(6) \_\_\_\_\_  
APPROVED AS TO FORM

By: \_\_\_\_\_

JOHN C. WEISENSELL  
Attorney for Defendant GENUINE TITLE,  
LLC

DATE:

BROUSE MCDOWELL

APPROVED AS TO FORM

By: \_\_\_\_\_

CLAIR E. DICKINSON  
Attorney for Defendant FIRST AMERICAN  
TITLE INSURANCE COMPANY

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DATE:

BERNLOHR, NIEKAMP & WEISENSELL,  
LLP

APPROVED AS TO FORM

By: \_\_\_\_\_

JOHN C. WEISENSELL  
Attorney for Defendant GENUINE TITLE,  
LLC

DATE:

BROUSE MCDOWELL

APPROVED AS TO FORM

By: \_\_\_\_\_

CLAIR E. DICKINSON  
Attorney for Defendant FIRST AMERICAN  
TITLE INSURANCE COMPANY

(b)(6)

DATE:

RJ LANDAU PARTNERS, PLLC

APPROVED AS TO FORM

By: \_\_\_\_\_  
RICHARD J. LANDAU  
Attorney for Defendant FEDERAL DEPOSIT  
INSURANCE CORPORATION

DATE:

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
AMTRUST BANK

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name and Title*

DATE:

GENUINE TITLE, LLC

(b)(6)

By: \_\_\_\_\_  
*Signature*

*Jim Lukensberg Pres*  
\_\_\_\_\_  
*Print Name and Title*

DATE:

FIRST AMERICAN TITLE INSURANCE  
COMPANY

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name and Title*

DATE:

RJ LANDAU PARTNERS, PLLC

APPROVED AS TO FORM

By:

\_\_\_\_\_  
RICHARD J. LANDAU  
Attorney for Defendant FEDERAL DEPOSIT  
INSURANCE CORPORATION

DATE:

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
AMTRUST BANK

By:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name and Title*

DATE:

GENUINE TITLE, I.I.C

By:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name and Title*

DATE: *Nov. 11, 2013*

FIRST AMERICAN TITLE INSURANCE  
COMPANY

By:

(b)(6)  
\_\_\_\_\_  
*Signature*

*Sharon M. Burke, Senior Claims Counsel*  
\_\_\_\_\_  
*Print Name and Title*

DATE: 11/25/13

APPROVED AS TO FORM

RJ LANDAU PARTNERS, PLLC

(b)(6)

By:

RICHARD J. LANDAU

Attorney for Defendant FEDERAL DEPOSIT INSURANCE CORPORATION

DATE:

11/8/13

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR AMTRUST BANK

(b)(6)

By:

Signature

*Patrick M. McGuirk, Counsel*  
Print Name and Title

DATE:

GENUINE TITLE, LLC

By:

Signature

Print Name and Title

DATE:

FIRST AMERICAN TITLE INSURANCE COMPANY

By:

Signature

Print Name and Title