

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 10th day of January, 2014, by, between, and among the following undersigned parties:

The Plaintiff, Federal Deposit Insurance Corporation as receiver of AmTrust Bank ("FDIC-R"), on the one hand, and Diane Ryan, Mathews Appraisal Services, Inc. (collectively, "the Ryan Defendants"), and Mark L. Pelletier, South Florida Valuation Services, Inc. (collectively, "the Pelletier Defendants") (collectively, the Ryan Defendants and the Pelletier Defendants may be referred to herein as the "Settling Defendants") (individually, the FDIC-R and the Settling Defendants 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.

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.

Among the assets to which the FDIC-R as receiver succeeded were the Bank's claims, demands, and causes of actions against third party appraisers. On December 3, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendants. Those claims for damages are now pending in the United States District Court for the Southern District of Florida in *FDIC v. Mathews, et. al.*, Case No. 9:12-cv-81296-DMM (the "Action"). The Settling Defendants have denied liability for the FDIC-R's claims.

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-R

A. As an essential covenant and condition to this Agreement, the Settling Defendants, collectively, agree to pay the FDIC-R the sum of \$225,000.00 ("the Settlement Funds"), as follows: (1) \$112,500 by or on behalf of the Ryan Defendants and (2) \$112,500 by or on behalf of the Pelletier Defendants.

B. Within thirty (30) days of the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, the Settlement Funds shall be delivered to FDIC-R by check made payable to the Welbaum Guernsey Client Trust Account and delivered to counsel for the FDIC-R.

In the event that the Settlement Funds are not delivered to the FDIC-R (or its counsel) within thirty (30) days of the execution of this Agreement by each Party, interest shall accrue on all unpaid amounts at the rate of 5% per annum beginning on the 31st day after the Agreement has been executed by all Parties 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 (including all accrued interest) are not received by the FDIC-R within 30 days of execution of this Agreement by all Parties, then with respect to the Party, or Parties, that fail to deliver their share of the Settlement Funds only, 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 Party or Parties failing to deliver their share of the Settlement Funds, in which event the non-delivering Party, or Parties, agree to jurisdiction in Federal District Court in the Southern District of Florida and agree to pay, in addition to the unpaid Settlement Funds, reasonable costs and fees incurred by the FDIC-R in enforcing this Agreement. The failure of one Party to deliver

its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, the FDIC-R shall dismiss the Action with prejudice. The undersigned Parties agree to enter a stipulation providing that the dismissal set forth above shall be with prejudice, with each party to bear its own attorney's fees and costs as these were originally incurred.

SECTION III: Releases

A. Release of Individual Settling Defendants by FDIC-R.

Effective upon receipt in full of the settlement funds and dismissal described in SECTIONS I and II above, and except as provided in PARAGRAPH III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, counsel, insurers, 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 Settling Defendants respective appraisals and the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as appraisers related to the loan at issue in the Action, including without limitation the causes of action alleged in the Action.

B. Release of FDIC-R by the Settling Defendants.

Effective simultaneously with the release granted in PARAGRAPH III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as

appraisers related to the loan at issue in the Action including without limitation the causes of action alleged 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 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 Paragraph 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-R 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 IV: 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.

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 Parties 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. 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 Florida.

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 attorneys or other representatives.

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 conclude the Action, and to otherwise perform the terms of 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 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 AmTrust Bank

Diane Ryan

(b)(6)

By:

[Redacted Signature]

Name:

Samuel B. Lutz

Date:

Title:

Counsel

Date:

1/10/2014

Mathews Appraisal Services, Inc.

Mark Pelletier

By:

[Redacted Signature]

(b)(6)

Name:

Date:

1/08/2014

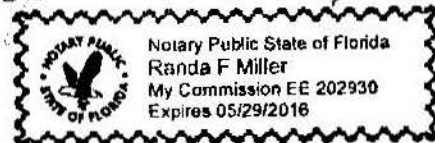
Title:

STATE OF FLORIDA
COUNTY OF PALM BEACH

Date:

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 7TH DAY OF JANUARY, 2014, BY MARK PELLETIER, WHO IS PERSONALLY KNOWN TO ME.

NOTARY PUBLIC: [Signature]



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.

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**Federal Deposit Insurance
Corporation as Receiver for
AmTrust Bank**

Diane Ryan

By: _____
Name: _____
Title: _____
Date: _____




(b)(6)

Date: 1/8/2014

Mathews Appraisal Services, Inc.

Mark Pelletier

(b)(6) 
By: _____
Name: Diane Ryan
Title: Owner/President
Date: 1/8/2014

Date: _____