

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is entered into this \_\_\_\_ day of March, 2013, by, between, and among Plaintiff, FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for AMTRUST BANK f/k/a OHIO SAVINGS BANK ("FDIC"), and Defendants, A.J. CAPCO, LLC dba AJ CAPITAL MORTGAGE, AJ CAPCO FUNDING, INC., ANTHONY A. CIAGLIA, and JOSEPH G. CIAGLIA ("Defendants"), for the mutual consideration and purposes herein expressed. (Individually, the FDIC and Defendants may be referred to herein as a "Party," and collectively as the "Parties.")

**PRELIMINARY STATEMENTS**

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

On December 4, 2009, the Office of Thrift Supervision closed AmTrust and appointed the FDIC as its receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC succeeded to all rights, titles, powers, and privileges of AmTrust, including those with respect to its assets.

On January 24, 2002, AmTrust and Defendants entered into a purchase agreement ("Contract") under which AmTrust agreed to purchase loans from the Defendants. AmTrust purchased several loans from Defendants under the Contract which Amtrust claims were originated through fraud, forgery, negligent oversight, and which did not otherwise comply with the Fannie Mae guidelines (which compliance was required by the Contract), and which resulted in defaults. Among the loans purchased by AmTrust from Defendants, and which are the subject

(b)(4),(b) of this litigation, were loan numbers [redacted]  
(6)

(b)(4),(b) [redacted]  
(6)

(b)(4),(b) [redacted] (collectively, the "Loan Transactions").  
(6)

AmTrust demanded that the Defendants repurchase the non-conforming loans, as provided for in the Contract. After the repurchase demand was rejected, AmTrust filed a lawsuit for breach of contract, negligence, concealment, fraud, and declaratory relief (hereinafter any and all present and future claims by the FDIC against Defendants, or any directors, representative, employees, staff, or insurer(s) of A.J. CAPCO, LLC dba AJ CAPITAL MORTGAGE, AJ CAPCO FUNDING, INC., in connection with the Loan Transactions are referred to as the "Claims") in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, entitled *Amtrust Bank fka Ohio Savings Bank v. A.J. Capco LLC dba AJ Capital Mortgage, et al.*, Case No. A554339 (hereinafter referred to as the "Action").

Defendants have responded to Plaintiff's allegations and have generally and specifically denied such allegations and have set forth various affirmative defenses.

After litigating this Action for more than five (5) years, the Parties were ordered to attend a Mandatory Settlement Conference. The Parties engaged in settlement negotiations as a result of the Claims and the Action and reached a settlement agreement to resolve these disputed claims.

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**

A. As an essential covenant and condition to this Agreement, within thirty (30) days following Defendants' insurer, Philadelphia Insurance Companies, receipt of the FDIC's executed counterpart of this Agreement, Defendants shall pay the FDIC the total sum of Three Hundred Ninety-Five Thousand Dollars (\$395,000.00) (the "Settlement Payment"). The Settlement Payment shall be made by check, payable to the FDIC as Receiver for AmTrust

(b)(4) Bank, Tax Identification Number  and sent by overnight delivery to Patrick M. McGuirk, Counsel, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Room B-7004, Arlington, VA 22226.

B. If the FDIC does not receive the Settlement Payment in full within the timeframe determined by subparagraph A above ("Settlement Payment Due Date"), then the FDIC, 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. enforce this Agreement and, in such event, the Parties agree to jurisdiction in Clark County District Court and to pay the prevailing parties' reasonable attorney's fees and costs expended in in such proceeding; or

3. seek any other relief available to it in law or equity. Any extension of time for delivery of the Settlement Payment shall not prejudice the FDIC'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**

Each Party acknowledges that this Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against another Party(ies) arising from the Claims.

A. The FDIC's Release.

Upon receipt of the Settlement Payment, and except as provided in Paragraph II(C), the FDIC, for itself and its successors and assigns, hereby releases and discharges Defendants, their affiliates, management companies, partners, associates, agents and their respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, parents, subsidiaries and affiliates, 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, arising out of or relating to the Claims.

B. Defendants' Release.

Effective simultaneously with the release in Paragraph II(A), above, Defendants, on behalf of themselves, and their respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC, and its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Defendants, arising out of or relating to the Claims.

C. Exceptions to Release by FDIC.

1. Except relating to the claims made herein by Plaintiffs (which are resolved, released and forever discharged as set forth herein, notwithstanding any other provision of this Agreement, the FDIC 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 Defendants 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, AmTrust, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor-in-interest to AmTrust or any person or entity other than AmTrust.

b. against Defendants or any other person or entity arising out of any existing or failed financial institutions other than AmTrust;

c. against any person or entity not expressly released by the FDIC in this Agreement; or

d. which are not expressly released in Paragraph II(A), above.

2. Except relating to the claims made herein by Plaintiff (which are resolved, released and forever discharged as set forth herein), notwithstanding any other provision of this Agreement, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the FDIC 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. Except relating to the claims made herein by Plaintiff (which are resolved, released and forever discharged as set forth herein), 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, the United States Attorney's Office for any federal judicial district. In addition, the FDIC 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.

D. Dismissal.

Upon the FDIC's receipt of the entire Settlement Payment, counsel for the FDIC shall immediately file a stipulation for dismissal of the Action with prejudice, and each Party shall bear their own costs and fees. Defendants shall cooperate with the FDIC to accomplish such

stipulation for dismissal. The FDIC shall provide counsel for Defendants with a conformed copy of the dismissal as soon as possible.

### **SECTION III: Insolvency**

#### **A. Insolvency.**

Defendants warrant as to payments made by or on their behalf that at the time of such payment, the insurer(s) of Defendants are not insolvent nor will the payment made by or on their behalf render them insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by Defendants and not by their counsel.

#### **B. Preferences.**

In the event that the FDIC 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 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(B) above, and/or otherwise permitted by law.

### **SECTION IV: Termination.**

In the event the FDIC exercises its right to declare this Agreement null and void as provided herein, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC, the Parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m., Pacific Time, February 6, 2013.

**SECTION V: 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:

Gregg A. Hubley, Esq.  
**PITE DUNCAN, LLP**  
701 East Bridger Avenue, Suite 700  
Las Vegas, Nevada 89101  
Facsimile: (702) 685-6342

(b)(6) Email:

If to the Defendants:

Thomas J. Lincoln, Esq.  
**LINCOLN, GUSTAFSON & CERCOS**  
3960 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169  
Facsimile: (702) 257-2203

(b)(6) Email:

It shall be the responsibility of each Party to give written notice of any change of address for purpose of notice per this Agreement.

**SECTION VI: 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, parents, subsidiaries, 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.

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.

G. Choice of Law.

This Agreement shall be interpreted, construed and enforced according to the laws of the State of Nevada.

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.

**AGREED TO and MADE EFFECTIVE as of the date of this agreement, by and between the following Parties:**

**[SIGNATURE PAGES TO FOLLOW]**

DATED this 11<sup>th</sup> day of April, 2013.

FDIC as Receiver for AMTRUST  
BANK

[Redacted Signature Box] (b)(6)

By:

Name: Patrick M. McGuirk

Title: Counsel

STATE OF VIRGINIA )  
 ) ss:  
COUNTY OF ARLINGTON )

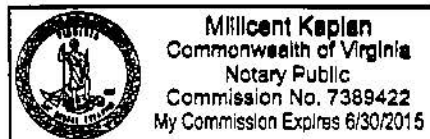
On April 11, 2013 before me, Millicent KAPLAN, (name of Notary), a Notary Public, personally appeared Patrick M. McGuirk, as Counsel (title) of the FDIC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledgement to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Redacted Signature Box]

(Signature)

(Seal)





DATED this 2 day of ~~March~~<sup>April</sup>, 2013.

~~AJ CAPCO FUNDING, INC.~~

By:

[Redacted Signature]

(b)(6)

Name: Anthony Ciaglia

Title: President

STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF CLARK     )

On April 2 before me, Yesenia Pastrano, (name of Notary), a Notary Public, personally appeared Anthony Ciaglia, as President (title) of AJ Capco Funding, Inc., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledgement to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

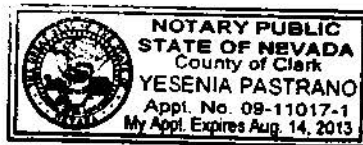
WITNESS my hand and official seal.

(b)(6)

[Redacted Signature]

(Signature)

(Seal)



DATED this 2 day of ~~March~~ <sup>April</sup>, 2013.

By: ANTHONY A. CIAGLIA  
[Redacted Signature] (b)(6)  
Name: Anthony Ciaglia

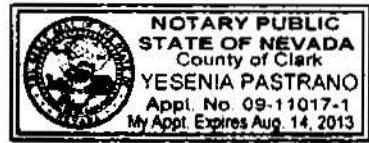
STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF CLARK     )

On April 2 before me, Yesenia Pastrano, (name of Notary), a Notary Public, personally appeared Anthony A. Ciaglia, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledgement to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(b)(6) [Redacted Signature]

(Seal)



DATED this 2 day of ~~March~~ <sup>April</sup>, 2013.

JOSEPH G. CIAGLIA

By:  (b)(6)

Name: Joseph Ciaglia

STATE OF NEVADA     )  
                                          ) ss:  
COUNTY OF CLARK    )

On April 2 before me, Yesenia Pastrano, (name of Notary), a Notary Public, personally appeared Joseph G. Ciaglia, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledgement to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(b)(6)

(Seal)

