

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE** ("Settlement Agreement") is entered into and made effective as of the \_\_\_ day of April, 2011 ("Effective Date"), by and between the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, OH ("FDIC"), on the one hand, and PCMG, Inc. ("PCMG"), Gregory Fonseca and Stuart Campbell (collectively, Defendants"), on the other hand. The FDIC and Defendants may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

**RECITALS**

1.1 PCMG sold and/or delivered mortgage loans to AmTrust Bank, Cleveland, OH, previously known as Ohio Savings Bank ("AmTrust Bank") pursuant to a Master Broker Agreement dated January 4, 1999 ("Contract").

1.2 Between 2004 and 2007, and pursuant to the terms of the Contract, PCMG sold to AmTrust Bank various residential mortgage loans. A dispute has arisen between the Parties with respect to outstanding demands for repurchase and/or indemnity arising from certain loans sold by PCMG to AmTrust Bank under the Contract.

1.3 On or about April 21, 2009, AmTrust Bank filed a lawsuit entitled *AmTrust Bank v PCMG, Inc, et. al*; Orange County Superior Court Case Number 30-2009-00121914 (hereinafter "Action"). AmTrust Bank asserted causes of action for breach of contract, negligence, and violation of Business & Professions Code § 17200 against PCMG, as well as fraud, fraud by omission, aiding and abetting fraud, negligent misrepresentation, negligence, and breach of fiduciary duty against Gregory Fonseca and Stuart Campbell.

1.4 Thereafter, on or about February 25, 2010, the FDIC as Receiver for AmTrust Bank was substituted as the Plaintiff in the Action.

1.5 Without admitting liability, the Parties desire to and have agreed to settle the Action upon the terms and conditions hereinafter set forth

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

**1.6 Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**1.7 Payment of the Settlement Funds.** By no later than May 1, 2011, Defendants shall pay the total sum of Thirty Five Thousand Dollars (\$35,000.00) (the "Settlement Funds"). The payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number: [REDACTED] Routing Number: [REDACTED] Reference: AmTrust/PCMG Settlement.

(b)(4)

(b)(4)

**1.8 Dismissal of Action.** Within five (5) business days of the FDIC's counsel's receipt of the fully executed Settlement Agreement and Settlement Funds, the FDIC's counsel shall file a Dismissal of the Action.

**1.9** The Parties shall bear their own costs and attorneys' fees incurred in the Action.

#### **RELEASE**

**1.10 Unknown Claims.** Each Party acknowledges that this Settlement 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 the other Party arising from the Action. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

**1.11** Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

**1.12** Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the Action, the claims and causes of action that were or could have been asserted relating to the Action, or any facts or circumstances related to the Action, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether

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that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause

**1.13** Each Party hereby fully, finally, and forever releases and discharges the other Party, and any and all of its respective past, present, and future affiliates, employees, members, partners, joint venturers, independent contractors, attorneys, insurers, investors, successors, assigns, representatives, officers, directors, shareholders, independent contractors, predecessors, successors and assigns, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, and/or employees of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner, the Action, the claims and causes of action that were or could have been asserted relating to the Action, or any facts or circumstances related to the Action. Notwithstanding any other provision in this Settlement Agreement, the FDIC **does not release** claims arising from the 26 mortgage loans sold by PCMG to AmTrust Bank that are identified on Exhibit "1" attached hereto.

**1.14** Notwithstanding any other provision in this Settlement Agreement, this Settlement Agreement does not release, and the FDIC expressly preserves fully and to the same extent as if the Agreement had not been executed any claims against Defendants arising out of existing or failed financial institutions other than AmTrust Bank, Cleveland, OH.

**1.15** Notwithstanding any other provision in this Settlement Agreement, this Settlement Agreement does not release, and the FDIC expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any action taken by any other federal agency. In addition, this Settlement 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 or 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

**1.16 Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

**1.17 No Admission.** It is agreed that no Party hereto admits liability or

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wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims

**1.18 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

**1.19 Governing Law.** The Parties agree to submit to the Courts of the County of Orange, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**1.20 Attorneys' Fees.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief, be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**1.21 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement

**1.22 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**1.23 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understanding the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each Party has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**1.24 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular

**1.25 Counterparts/Execution.** This Settlement Agreement may be executed

in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**1.26 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

**1.27 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**1.28 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**1.29 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties with respect to the Action, and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

For: **The FDIC as Receiver for  
AmTrust Bank, Cleveland, OH**

For: **PCMG, Inc.**

(b)(6)

By:

By:

(b)(6)

Name: Patrick M. McGivick

Name: Stuart N. Campbell

Title: Counsel

Title: President

Date: 5/23/2011

Date: 4/6/11

**Stuart Campbell**

By:

(b)(6)

Date: 4/6/11

**Gregory Fonseca**

By:

(b)(6)

Date: 4/6/11

**Exhibit "1"**

Notwithstanding any other provision in this Settlement Agreement, the FDIC as Receiver for AmTrust Bank, Cleveland, OH **does not release** claims arising from the following 26 mortgage loans sold by PCMG, Inc. to AmTrust Bank:

(b)(6)

Loan	Borrower
(b)(6)	

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## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this 1st day of May, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), and Golden Empire Mortgage, Inc. ("GEM") (individually, the FDIC-R and GEM 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 its assets.

GEM and the Bank entered into a Master Correspondent Loan Purchase Agreement dated March 28, 2007 ("Contract"). Pursuant to the terms of the Contract, GEM sold to the Bank various residential mortgage loans. The Bank's assets now belonging to the FDIC-R include any and all of the Bank's claims, demands, and causes of action, including all of the Bank's claims related to any and all loans originated by GEM, or sold by GEM under the Contract to the Bank ("Loans").

A dispute has arisen between the Parties with respect to claims by the FDIC-R to GEM for repurchase and/or indemnity on certain of the Loans based on alleged breaches of representations and warranties set forth in the Contract (hereinafter any and all present and future

claims by the FDIC-R to GEM under the Contract or otherwise for repurchase or indemnification for losses associated with the Loans is referred to as the "Claims"). 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, on or before fifteen (15) days after this Agreement is signed by both Parties, GEM shall pay the FDIC-R the total sum of Seventy Five Thousand Dollars (\$75,000) (the "Settlement Payment"). The Settlement Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number:  Routing Number:  Reference:  AmTrust/Golden Empire Mortgage Settlement.

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(b)(4)

B. If the FDIC-R does not receive the Settlement Payment in full on or before the date 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. enforce this Agreement and, in such event, GEM agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. declare this Agreement null and void, move to vacate any dismissal order, to which GEM agrees to consent, and institute an action on the FDIC-R's claims; and/or

4. 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-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, or declare the Agreement null and void.

#### **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 arising from the Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not

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know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in PARAGRAPH II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges GEM and its respective employees, officers, directors, shareholders, partners, members, owners, agents, 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 to the facts and circumstances giving rise to the Claims.

B. GEM's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, GEM, 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 its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to GEM, arising out of or relating to the facts and circumstances alleged by 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 GEM 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. Except for the Claims released by Paragraph II.A above, 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, 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 III: Insolvency.**

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

GEM 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 GEM 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(B) above, and/or otherwise permitted by law.

**SECTION IV: Termination.**

In the event the FDIC-R 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-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, May 1, 2012.

**SECTION V: Notices.**

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

If to the FDIC-R:

Michael Delbick  
Mortgage Recovery Law Group  
700 North Brand Boulevard, Suite 830  
Glendale, California 91203

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



If to GEM:

Rick Roper, President  
Golden Empire Mortgage  
1200 Discovery Drive, Suite 300  
Bakersfield, CA 93309

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



with a copy to:

Madison M. Christian  
2625 Townsgate Road, Ste. 330  
Westlake Village, California 91361

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



**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, 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. Specific Representations, Warranties and Disclaimer.

GEM acknowledges that in determining to settle the Claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided by GEM. If GEM failed to disclose, or misrepresented the nature or amount of, 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 GEM as null and void; (b) the FDIC-R may retain the Settlement Payment and apply it to any losses

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resulting from the Loans; (c) the FDIC-R may sue GEM 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 GEM. GEM agrees that if it has failed to disclose, or misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, GEM consents to the reinstatement of FDIC-R's claims and waive any statute of limitations defense that would bar any of the FDIC-R's claims against it.

G. 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, GEM agrees 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 Bank;

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 Bank;

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 Bank, 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 Bank.

H. 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 California, without regard to its conflicts of laws.

I. 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.

J. 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.

K. 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.

L. Accuracy of Recitals. The Parties understand, acknowledge, and agree that the Recitals preceding Section I of this Agreement are true, correct, and accurate in all respects and are incorporated into, and are a material part of this Agreement.

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.

**FDIC as Receiver for AmTrust  
Bank, Cleveland, Ohio**

(b)(6)

By:

Name: Patrick M. McGirk

Title: Counsel

Date: 6/4/2012

**Golden Empire Mortgage, Inc.**

By: Rick L. Roper

Name:

(b)(6)

Title: President

Date: 6-1-12

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of this \_\_\_\_ day of October, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), on the one hand; and Leslie Auzenne, an individual ("Auzenne"); and New Century Appraisals, Inc., a California company ("New Century"), on the other hand. (Individually, the FDIC-R, Auzenne, and New Century 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 its assets.

On or about November 1, 2007, Bank funded two mortgage loans to borrower [redacted] (b)(6)

(b)(6) [redacted] in the collective amount of \$608,000 (the "Loan") in connection with

(b)(6) [redacted] purchase of a residential property located at [redacted] Murrieta, (b)(6)

California (hereinafter the "Transaction"). Auzenne and New Century (collectively "Appraisers") prepared an appraisal in connection with the Transaction (the "Appraisal").

On or about September 28, 2011, FDIC-R filed an action against Appraisers and Ultra Escrow, Inc. in the United States District Court for the Central District of California, Case No.

CV 11-8062 PSG (CWx) (the "District Court Action"), alleging that Appraisers caused damages to the FDIC-R due to their negligent misrepresentation in connection with the Appraisal.

A dispute has arisen between the Parties with respect to claims by the FDIC-R related to Appraisers' actions as alleged in the District Court Action (hereinafter any and all claims by the FDIC-R against Appraisers related to allegations made in the District Court Action are referred to as the "Claims"). Appraisers deny, in their entirety, the Claims made in the District Court Action against Appraisers. 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, within thirty (30) business days following the Court's granting of Appraisers' Application for Determination of Good Faith Settlement, which Appraisers filed on September 26, 2012, and execution of this Agreement by all Parties, Appraisers shall pay the FDIC-R the total sum of One Hundred Thousand Dollars (\$100,000) (the "Settlement Payment"). The Settlement Payment shall be made in the form of a settlement draft, made payable to "Mortgage Recovery Law Group Client Trust Account." The payment shall be delivered to Helen Gaeta, Mortgage Recovery Law Group, 700 North Grand Avenue, Glendale, California 91203.

B. If the FDIC-R does not receive the Settlement Payment in full within the time-frame determined by subparagraphs 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. enforce this Agreement and, in such event, Appraisers agree to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or
3. declare this Agreement null and void, move to vacate any dismissal order, to which Appraisers agree to consent, and institute an action on the FDIC-R's claims, as to which Appraisers waive any and all objections and defenses and covenant and agree not to assert any objections and defenses; and/or
4. 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-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, or declare the Agreement null and void.

**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 arising from the Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, and except as provided in PARAGRAPH ILC., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Appraisers and their respective employees, officers, directors, representatives, heirs, executors, administrators, attorneys, insurers (including but not limited to National Fire Insurance Company of Pittsburgh PA and Chartis Claims, Inc.), 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 to the facts and circumstances giving rise to the Loan, Transaction, Appraisal, and Claims.

B. Appraisers' Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, Appraisers, on behalf of themselves, and their respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Appraisers, arising out of or relating to the facts and circumstances alleged by the Claims.

B. 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 Appraisers 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 any person or entity other than Bank;

b. against any person or entity not 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 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-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.

D. Dismissal.

Upon the FDIC-R's counsel's receipt of the entire Settlement Payment, the FDIC-R shall file a stipulation for dismissal of the District Court Action with prejudice as to the Appraisers only, and each Party shall bear their own costs and fees. The Parties shall cooperate with the FDIC-R to accomplish such stipulation for dismissal.

**SECTION III: Insolvency.**

A. Insolvency.

Appraisers warrant as to payments made by or on his behalf that at the time of such payment, Appraisers 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 Appraisers and not by their 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(B) 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:

Paul Levin  
Mortgage Recovery Law Group  
700 North Brand Boulevard, Suite 830  
Glendale, California 91203  
(818) 630-7900

(b)(6)

If to Appraisers:

Ari L. Markow, Esq.  
Spile, Leff & Goor, LLP  
16501 Ventura Boulevard, Suite 610  
Encino, California 91436  
(818) 784-6899

(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, Appraisers 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 non-privileged 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 Bank;

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

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

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

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 California, 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.

J. 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.

K. 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.

New Century Appraisals, Inc.

Leslie Auzenne

(b)(6)

By:

[Redacted Signature Box]

[Redacted Signature Box]

(b)(6)

Name: LESLIE AUZENNE

Date: 11/8/2012

Title: PRESIDENT/OWNER

Date: 11/8/2012

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

(b)(6)

By:

Name: Patrick M. McQuirk

Title: Counsel

Date: 11/13/2012

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Release ("Agreement") is made this 31<sup>st</sup> day of January, 2013 by, between and among the following undersigned Parties: the Federal Deposit Insurance Corporation, in its capacity as receiver for AmTrust Bank ("FDIC-R"), and Devon McDowell ("McDowell"); both of whom are parties in a case captioned *FDIC as Receiver for AmTrust Bank v. Michael Hodge, et al.*, Case No. 09-CV-3234 in the United States District Court for the Eastern District of New York ("The Litigation").

**RECITALS**

WHEREAS, in July, 2009, AmTrust Bank ("AmTrust") initiated The Litigation against numerous borrowers, its closing attorney James Carroll ("Carroll"), mortgage broker, Link One Mortgage Bankers, LLC, and other individuals and entities alleged to be involved in a purported mortgage fraud scheme concerning twenty (20) loans including claims for conspiracy and fraud against McDowell arising from his actions in obtaining a mortgage loan from AmTrust;

WHEREAS, The Litigation includes claims related to a mortgage loan ("The Mortgage Loan") made by AmTrust for the purported purchase of the property located at  b)(6) Street, Saint Albans, New York ("The Property") by McDowell;

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 AmTrust, including those with respect to its assets and all of AmTrust's claims, demands, and causes of action, including those claims asserted in The Litigation and all claims related to The Property;

WHEREAS, McDowell has denied any wrongdoing in connection with The Litigation and The Property;

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

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

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 The Property 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 I. Payment to the FDIC-R.

A. As an essential covenant and condition to this Agreement, McDowell has agreed to pay the FDIC-R the sum of Twelve Thousand Nine Hundred Sixty-Six Dollars (\$12,966.00) (the "Settlement Payments").

B. Immediately upon execution of this Agreement, McDowell shall deliver the first Four Thousand Dollars of the Settlement Payments to the FDIC-R by check transmitted pursuant to the FDIC-R's written instructions.

C. No later than February 28, 2013, McDowell shall deliver the second payment of Four Thousand Dollars (\$4,000.00) of the Settlement Payments to the FDIC-R by check transmitted pursuant to the FDIC-R's written instructions.

D. No later than July 31, 2013, McDowell shall deliver the third payment of Two

Thousand Five Hundred Dollars (\$2,500.00) of the Settlement Payments to the FDIC-R by check transmitted pursuant to the FDIC-R's written instructions.

E. No later than December 31, 2013, McDowell shall deliver the remaining Two Thousand Four Hundred Sixty-Six Dollars (\$2,466.00) of the Settlement Payments to the FDIC-R by check transmitted pursuant to the FDIC-R's written instructions.

Section 2. Confession of Judgment.

A. As an additional essential covenant and condition to this Agreement, McDowell has agreed to execute and deliver to the FDIC-R an Affidavit of Confession of Judgment, confessing judgment in the FDIC-R's favor for the entire unpaid balance of The Mortgage Loan in the amount of Five Hundred Thirty-Nine Thousand Nine Hundred Forty-Six Dollars and Thirty-One Cents (\$539,946.31).

B. In the event that McDowell fails to make either payment listed in Section 1 above by the applicable deadline, McDowell shall be in default of this Agreement and the FDIC-R shall have the right to obtain a Confession of Judgment against McDowell in the full amount of the unpaid balance of The Mortgage Loan.

C. If the Settlement Payments, or any portion thereof, are not received by the FDIC-R within the deadlines stated in Section 1 of the Agreement, interest upon any unpaid portion of the Settlement Payments will accrue at a rate of 6% per annum commencing on the 31st day after the payments were due.

D. Without waiving any other rights that the FDIC-R may have, in the event that the Settlement Payments, including all accrued interest as may be applicable, are not received by the dates specified in Section 1 of this Agreement, then the FDIC-R shall have the right, in its sole discretion, to enforce this Agreement, and McDowell shall be responsible for the Settlement

Payments, and all fees, including attorney fees, incurred by the FDIC-R in enforcing this Agreement.

Section 3. McDowell's Transfer of Title to the Property to the FDIC-R.

A. As an essential covenant and condition to this Agreement, McDowell agrees to execute and deliver to the FDIC-R a deed transferring all of his interest, rights, and title to The Property to the FDIC-R in the form and according to the instructions provided to him by the FDIC-R.

Section 4. McDowell's Agreement to Cooperate.

A. As an essential covenant and condition to this Agreement, McDowell agrees to provide a sworn statement to the FDIC-R regarding the persons, entities, and events involved in The Litigation.

B. McDowell further agrees to cooperate fully with the FDIC-R in the ongoing Litigation and any further litigation 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 5. Stipulations and Dismissals.

Upon execution of this Agreement by each of the undersigned Parties, the FDIC-R shall dismiss with prejudice all of its claims in the Litigation against McDowell.

Section 6. Mutual Releases.

A. Release of McDowell by the FDIC-R.

Effective upon receipt of the initial payment of Four Thousand Dollars (\$4,000) of the Settlement Payments, the signed confession of judgment, and the executed deed as specified in Sections 1A, 2, and 3 above, the FDIC-R hereby releases and discharges McDowell, his 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 arise from or relate to The Litigation.

B. Release of the FDIC-R by McDowell.

Effective simultaneously with the release in Section 6A above, McDowell, on his own behalf, and on behalf of his heirs, executors, administrators, representatives, assigns, insurers, 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.

C. Express Reservation of Releases by the FDIC-R.

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 against any other party in the Litigation not expressly released by this Agreement.

Section 7. Representations and Acknowledgements.

A. No Admission of Liability. The Parties each acknowledge and agree that the matters set forth in this Agreement constitute a settlement and compromise of disputed claims and that this Agreement is not an admission of, or evidence of, any liability of any of them regarding any claim.

B. Execution in Counterparts. This Agreement may be executed in counterparts by facsimile or electronically mailed signatures which shall have the same force and effect as original signatures and such counterparts, when taken together, shall constitute one single and binding Agreement.

C. 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.

D. 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.

E. Specific Representations, Warranties, and Disclaimer. McDowell acknowledges that in determining to settle the claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided by McDowell. If McDowell failed to disclose, or misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, McDowell agrees to cooperate fully with the FDIC-R to transfer his interest in the asset to the FDIC-R. Moreover, if McDowell has failed to disclose or materially misstated 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 release granted to McDowell as null and void; (b) the FDIC-R may sue McDowell for damages, an injunction, and specific performance for the breach of this Agreement; and (c) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against McDowell. McDowell agrees that if he has intentionally failed to disclose, or materially misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, McDowell consents to the reinstatement of the FDIC-R's claims and waives any statute of limitations defense that would bar any of the FDIC-R's claims against him.

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.

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.

Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

Date: 2/8/2013

[Redacted Signature Box]

(b)(6)

Devon McDowell

Date: 01/31/13

[Redacted Signature Box]

(b)(6)

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this \_\_\_th day of September, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), on the one hand; and Stewart Title of California, Inc. ("STCA"), on the other hand. (Individually, the FDIC-R and STCA 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 its assets.

On March 23, 2008, Bank funded two mortgage loans to borrower John Corella in the collective amount of \$846,950 (the "Loan") in connection with Corella's purchase of a residential property located at 76-390 Clarke Court, La Quinta, California (hereinafter the "Transaction"). STCA served as the closing agent in connection with the Transaction.

A dispute has arisen between the Parties with respect to claims by the FDIC-R related to STCA's actions in performing closing services regarding the Transaction (hereinafter any and all present and future claims by the FDIC-R against STCA in connection with the Transaction are referred to as the "Claims"). On or about August 22, 2011, the FDIC filed a lawsuit based upon the Claims in the United States District Court for the Central District of California, entitled

*Federal Deposit Insurance Corporation as Receiver for AmTrust Bank vs. Stewart Title of California, Inc.*, Case No. 2:11-cv-06902-DMG (PLA) (hereinafter the "Action").

The Parties engaged in settlement negotiations as a result of the Claims and the Action. 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, within thirty (30) days following STCA's receipt of the FDIC-R's executed counterpart of this Agreement, STCA shall pay the FDIC-R the total sum of One Hundred Eighty-Five Thousand Dollars (\$185,000) (the "Settlement Payment"). The Settlement Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number:  (b)(4)

(b)(4) Routing Number:  Reference: AmTrust/STCA Settlement.

B. If the FDIC-R does not receive the Settlement Payment in full within the time-frame 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. enforce this Agreement and, in such event, STCA agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. declare this Agreement null and void, move to vacate any dismissal order, to which STCA agrees to consent, and institute an action on the FDIC-R's claims, as to which STCA waives any and all objections and defenses and covenant and agree not to assert any objections and defenses; and/or

4. 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-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, or declare the Agreement null and void.

#### **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 arising from the Claims.

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

Upon receipt of the Settlement Payment, and except as provided in PARAGRAPH II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges STCA and its 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-R, arising out of or relating to the Claims. FDIC-R further waives

the provisions of California Civil Code section 1542 so that the releases provided for in this paragraph include any and all unknown 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 to the Claims.

B. STCA's Release.

Effective simultaneously with the release in PARAGRAPH IIA. above, STCA, 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 its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to STCA, arising out of 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 STCA 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 STCA or any other person or entity arising out of any existing or failed financial institutions other than AmTrust Bank;

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

d. 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 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-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. 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.

D. Dismissal.

Upon the FDIC-R's counsel's receipt of the entire Settlement Payment, the FDIC-R shall immediately file a stipulation for dismissal of the District Court Action with prejudice, and each Party shall bear their own costs and fees. STCA shall cooperate with the FDIC-R to accomplish such stipulation for dismissal. FDIC-R shall provide counsel for STCA with a conformed copy of the dismissal as soon as possible.

**SECTION III: Insolvency.**

A. Insolvency.

STCA warrants as to payments made by or on its behalf that at the time of such payment, STCA 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 STCA 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(B) above, and/or otherwise permitted by law.

**SECTION IV: Termination.**

In the event the FDIC-R 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-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Pacific Time, August 28, 2012.

**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-R:

Michael Delbick  
Mortgage Recovery Law Group

700 North Brand Boulevard, Suite 830  
Glendale, California 91203  
(818) 630-7900

(b)(6)

If to STCA:

Skip Cunningham  
Cunningham & Treadwell  
Warner Center Towers  
21800 Oxnard Street, Suite 840  
Woodland Hills, CA 91367

(b)(6)

**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.

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.

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 California, 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.

J. 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.

K. 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.

**Stewart Title of California, Inc.**

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

(b)(6)

By:

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

Name: Loretta Granger-Mediano

Name: \_\_\_\_\_

Title: Senior Vice President

Title: \_\_\_\_\_

Date: 10/30/12

Date: \_\_\_\_\_

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.

J. 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.

K. 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.

**Stewart Title of California, Inc.**

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

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

By:  (b)(6)

Name: \_\_\_\_\_

Name: Samuel B. Lutz

Title: \_\_\_\_\_

Title: Counsel

Date: \_\_\_\_\_

Date: 11/15/2012

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of October 11, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"); 1<sup>st</sup> National Title Insurance Agency, LLC, a Utah limited liability company ("1<sup>st</sup> National"); and Westcor Land Title Insurance Company, a California corporation ("Westcor") (individually, the FDIC-R, 1<sup>st</sup> National and Westcor may be referred to herein as a "Party" and collectively as the "Parties").

**RECITALS**

1. On or about October 29, 2008, AmTrust Bank, Cleveland, Ohio, previously known as Ohio Savings Bank ("Bank"), purchased a loan originated by PrimeLending, A PlainsCapital Company ("PrimeLending") to borrower Magdalena Lozano ("Lozano") in the amount of \$1.5 million (the "Loan") in connection with Lozano's purchase of a residential property located at 12463 North Timberline Drive, Highland, Utah (hereinafter the "Lozano Transaction"). In connection with the Lozano Transaction, 1<sup>st</sup> National served as the closing agent and Westcor furnished a policy of title insurance and a closing protection letter.

2. Prior to December 4, 2009, Bank was a depository institution organized and existing under the laws of the United States.

3. 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 the subject of this Agreement.

4. FDIC-R asserted certain claims against 1<sup>st</sup> National and Westcor, and Westcor cross-claimed against 1<sup>st</sup> National, in that certain lawsuit presently pending in the United States District Court for the District of Utah, Central Division, as Case No. 2:10cv01084 ("Lawsuit").

5. The Parties conducted a mediation on October 11, 2012 before the Honorable Judge Timothy Hanson. The parties resolved their claims that have been or could have been asserted between the Parties in the Lawsuit. The Parties documented the terms of settlement in a signed document dated October 11, 2012 ("Term Sheet").

6. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble and expense of continued 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 as follows:

**I. SETTLEMENT PAYMENT TO FDIC-R**

A. As an essential covenant and condition to this Agreement, on or before thirty days following the date all Parties execute this Agreement ("Settlement Payment Due Date"), 1st National shall pay the FDIC-R the total sum of \$375,000 (the "1<sup>st</sup> National Payment") and Westcor shall pay the FDIC-R the total sum of \$125,000 (the "Westcor Payment"). (The 1<sup>st</sup> National Payment and the Westcor Payment are referred to collectively herein as the "Settlement Payment.") The Settlement Payment shall be made by check payable to "Mortgage Recovery Law Group Client Trust Account" and delivered to 700 N. Brand Boulevard, Suite 830, Glendale, California 91203, Attention Paul Levin, Esq.

B. If the FDIC-R does not receive the Settlement Payment by the 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);
2. Enforce this Agreement and, in such event, 1<sup>st</sup> National and Westcor agree to jurisdiction in Federal District Court in Utah and the defaulting party agrees to pay all of the FDIC-R's reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement;
3. Declare this Agreement null and void as to either or both of Westcor and 1<sup>st</sup> National, and move to vacate any dismissal order, in which case FDIC-R shall return to a non-defaulting payer (Westcor, 1<sup>st</sup> National, or 1<sup>st</sup> National's insurer, as the case may be) any portion of the Settlement Payment that has been paid; and/or
4. 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-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 this Agreement, or declare this Agreement null and void. Although FDIC-R shall have the right to declare this Agreement null and void if the full Settlement Payment is not received, neither Westcor nor 1<sup>st</sup> National (nor 1<sup>st</sup> National's insurer) shall be liable for the default of the other party in paying its share of the Settlement Payment.

C. The Parties are to bear their own respective costs and attorneys' fees in the negotiation, mediation and settlement of the Lawsuit.

D. After receipt and collection of the Settlement Payment checks by Mortgage Recovery Law Group, the Parties shall cause their respective counsel to file with the Court a Stipulated Motion to Dismiss all of Plaintiff's Claims and Westcor's Cross-Claims with Prejudice ("Stipulated Motion") and a proposed Order dismissing with prejudice the FDIC-R's Complaint and Westcor's Cross-Claim against 1st National. The form of the Stipulated Motion

and the proposed Order are attached hereto as **Exhibits A and B**. If a bankruptcy petition or a receivership or similar action has been filed against Westcor, 1<sup>st</sup> National or their insurer, the Lawsuit shall be dismissed only after any Preference claim or action has been resolved to the effect that the FDIC-R retains the full Settlement Amount.

## 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 arising out of or relating to the subject matter of the Lawsuit.

A. The FDIC-R's Release. Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in Section II.D. below, the FDIC-R, for itself and its predecessors, successors and assigns, hereby releases and discharges 1st National and Westcor and their respective employees, managers, members, officers, directors, agents, insurers, lawyers, predecessors, 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 to the subject matter of the Lawsuit.

B. 1st National's Release. Effective simultaneously with the release in Section II.A. above, 1st National, for itself and its predecessors, successors and assigns, hereby releases and discharges the FDIC-R and Westcor, and their respective employees, managers, members, officers, directors, agents, insurers, lawyers, predecessors, 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 1<sup>st</sup> National, arising out of or relating to the subject matter of the Lawsuit.

C. Westcor's Release. Effective simultaneously with the release in Section II.A. above, Westcor, for itself and its predecessors, successors and assigns, hereby releases and discharges the FDIC-R and 1st National, and their respective employees, managers, members, officers, directors, agents, insurers, lawyers, predecessors, 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 Westcor, arising out of or relating to the subject matter of the Lawsuit.

D. 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 1st National, Westcor, 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 any claims not related to the Lawsuit acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank, provided, however, that the claims specifically described in Section II.A. above are hereby released;

b. Against any person or entity not expressly released by the FDIC-R in this Agreement; or

c. Which are not expressly released in Section 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. It being the intent of the parties that the release by the FDIC-R shall be limited to the matters described in Section II.A above, it is agreed that 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.

E. Reservation of Claims. Except as expressly set forth herein, nothing in this Agreement shall be construed as a waiver or release by any Party of any claim or cause of action against any other entity or person not released in Section II.A, B or C above. Without limiting the foregoing, all claims against the Third Party Defendants in the Lawsuit are hereby expressly reserved.

### III. **INSOLVENCY**

#### A. Insolvency.

1. 1st National warrants that the 1<sup>st</sup> National Payment is not made from the property of 1<sup>st</sup> National or of a bankruptcy estate that would result from a bankruptcy filing of 1<sup>st</sup> National within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by 1st National and not by its counsel.

2. Westcor 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 Westcor and not by its counsel.

B. Preferences. If 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 claim or legal action (collectively "Preference"), 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 Section I.B. above, and/or otherwise permitted by law, but only with respect to the entity whose payment was determined to be a Preference. In no event shall Westcor or 1<sup>st</sup> National (or 1<sup>st</sup> National's insurer) be liable for any Preference arising from the payment of the other Party, nor shall FDIC-R be entitled to any remedy as to the Party whose payment is not the subject of a Preference.

#### IV. TERMINATION

If the FDIC-R exercises its right to declare this Agreement null and void as provided in Section II then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the Parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, October 10, 2012, and the Mediation Settlement Term Sheet is agreed to be void.

#### V. NOTICES

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

If to the FDIC-R:

Gary Doctorman  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
(801) 536-6780

(b)(6)

[Redacted]

If to 1st National:

Matthew C. Barneck  
Richards Brandt Miller Nelson  
Wells Fargo Center, 15<sup>th</sup> Floor  
299 South Main Street  
Salt Lake City, UT 84111  
(801) 531-2000

(b)(6) \_\_\_\_\_ [Redacted]

If to Westcor:

Bryce D. Panzer  
Blackburn & Stoll, LC  
257 East 200 South, Suite 800  
Salt Lake City, UT 84111  
(801) 578-3520

(b)(6) \_\_\_\_\_ [Redacted]

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

B. Execution in Counterparts – Electronic Copies. 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. Email or facsimile transmissions of a Party's signed counterpart shall be deemed to constitute the delivery of a signed original counterpart.

C. Binding Effect. All of the undersigned persons represent and warrant that they 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 representatives, predecessors, 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, including but not limited to the Term Sheet. 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, 1st National and Westcor 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.

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 Utah, without regard to its conflicts of laws.

H. 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.

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 their duly authorized representatives as of October 11, 2012.

FDIC as Receiver for AmTrust Bank,  
Cleveland, Ohio

(b)(6)

By:

Name: Patrick M. McGuirk

Title:  Counsel

Date: 1/4/2013

1st National Agency, LLC, a Utah limited  
liability company

(b)(6)

By:

Name: Sax Petter

Title: Manager

Date: 1-9-13

Westcoast Land Title Insurance Company, a  
California corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FDIC as Receiver for AmTrust Bank,  
Cleveland, OH

(b)(6)

By:

[Redacted Signature]

Name: Patrick M. McGuirk

Title: Counsel

Date: 1/4/2015

1st National Agency, LLC, a Utah limited  
liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Westcor Land Title Insurance Company, a  
California corporation

By:

[Redacted Signature]

(b)(6)

Name: PETER A. WALTHER

Title: CLAIMS ADMIN

Date: 01/15/13

GARY E. DOCTORMAN (0895)  
DAVID K. HEINHOLD (11165)  
PARSONS BEHLE & LATIMER  
Attorneys for Plaintiff  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111

(b)(6)

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

---

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
AMTRUST BANK,

Plaintiff,

vs.

1ST NATIONAL TITLE INSURANCE  
AGENCY, LLC, a Utah limited liability  
company, and WESTCOR LAND TITLE  
INSURANCE COMPANY, a California  
corporation,

Defendants.

**STIPULATED MOTION TO DISMISS  
ALL OF PLAINTIFF'S CLAIMS AND  
WESTCOR'S CROSS-CLAIMS WITH  
PREJUDICE**

Case No. 2:10CV01084

Judge Bruce S. Jenkins

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1ST NATIONAL TITLE INSURANCE AGENCY, LLC, a Utah limited liability company, and WESTCOR LAND TITLE INSURANCE COMPANY, a California corporation,

Third-Party Plaintiffs,

v.

MAGDALENA LOZANO, FIDELIS CAPITAL GROUP, LLC, a revoked limited liability company, BRIAN ZIMMERMAN, PAUL HILL, RUSSELL BLACK, RICK WELLS, PEGGY MCKENZIE, DENNIS BERRETT, and DOES 1-20, persons unknown,

Third-Party Defendants.

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Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiff, Federal Deposit Insurance Corporation as Receiver of AmTrust Bank ("FDIC-R"), and Defendants, 1<sup>st</sup> National Title Insurance Agency, LLC ("1<sup>st</sup> National") and Westcor Land Title Insurance Company ("Westcor"), through counsel, respectfully request this Court enter the Stipulated Order submitted herewith, which dismisses with prejudice all claims filed by FDIC-R against 1<sup>st</sup> National and Westcor and the cross-claims of Westcor against 1<sup>st</sup> National in this lawsuit with each party bearing its own attorneys' fees and costs.

1<sup>st</sup> National and Westcor do not dismiss any of their respective claims against the Third Party Defendants herein, and all such claims are hereby expressly reserved.

DATED this \_\_ day of January, 2013.

/s/

\_\_\_\_\_  
Gary E. Doctorman  
David K. Heinhold  
PARSONS BEHLE & LATIMER  
Attorneys for the Federal Deposit Insurance  
Corporation as Receiver of AmTrust Bank

/s/

\_\_\_\_\_  
Bryce D. Panzer  
Brett N. Anderson  
Scott R. Taylor  
BLACKBURN & STOLL, LC  
Attorneys for Westcor  
*(Signed with authority of Scott R. Taylor)*

/s/

\_\_\_\_\_  
Matthew C. Barneck  
Chad E. Funk  
RICHARDS BRANDT MILLER NELSON  
Attorneys for 1<sup>st</sup> National  
*(Signed with authority of Matthew C. Barneck)*

**CERTIFICATE OF SERVICE**

I hereby certify that on January \_\_, 2013, I electronically filed the foregoing **Stipulated Motion To Dismiss All Of Plaintiff's Claims And Westcor's Cross-Claims With Prejudice** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Matthew C. Barneck  
Chad E. Funk  
RICHARDS BRANDT MILLER NELSON  
299 South Main Street, 15<sup>th</sup> Floor  
Salt Lake City, Utah 84110-2465

*Attorneys for Westcor Land Title*

Bryce D. Panzer  
Brett N. Anderson  
BLACKBURN & STOLL  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111-2142

*Attorneys for 1<sup>st</sup> National Title Insurance Agency*

John J. Brannelly, Jr. Esq.,  
VANGUARD LEGAL, PLLC  
59 West 9000 South  
Sandy, Utah 84070

*Attorneys for Third-Party Defendant Fidelis Capital Group, LLC*

And that I caused to be mailed the same pleading by first-class mail, postage prepaid, to the following:

Dennis Berrett  
3768 Bari Way  
South Jordan, Utah 84095  
*Third Party Defendant*

Magdalena Lozano  
6125 Copper Crest Drive  
Las Vegas, NV 89130-1999  
*Third Party Defendant*

Peggy McKenzie  
2833 Lance Circle  
Heber, Utah 84032  
*Third Party Defendant*

/s/ Gary E. Doctorman

GARY E. DOCTORMAN (0895)  
 DAVID K. HEINHOLD (11165)  
 PARSONS BEHLE & LATIMER  
 Attorneys for Plaintiff  
 One Utah Center  
 201 South Main Street, Suite 1800  
 Salt Lake City, UT 84111  
 Telephone: (801) 532-1234  
 Facsimile: (801) 536-6111

(b)(6)

---

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**

---

FEDERAL DEPOSIT INSURANCE  
 CORPORATION AS RECEIVER FOR  
 AMTRUST BANK,

Plaintiff,

vs.

1ST NATIONAL TITLE INSURANCE  
 AGENCY, LLC, a Utah limited liability  
 company, and WESTCOR LAND TITLE  
 INSURANCE COMPANY, a California  
 corporation,

Defendants.

**[PROPOSED] ORDER GRANTING  
 STIPULATED MOTION FOR  
 DISMISSAL OF ALL PLAINTIFF'S  
 CLAIMS AND WESTCOR'S CROSS-  
 CLAIMS WITH PREJUDICE**

**AND**

**RESERVATION OF CLAIMS AGAINST  
 THIRD-PARTY DEFENDANTS**

Case No. 2:10CV01084

Judge Bruce S. Jenkins

---

---

IST NATIONAL TITLE INSURANCE AGENCY, LLC, a Utah limited liability company, and WESTCOR LAND TITLE INSURANCE COMPANY, a California corporation,

Third-Party Plaintiffs,

v.

MAGDALENA LOZANO, FIDELIS CAPITAL GROUP, LLC, a revoked limited liability company, BRIAN ZIMMERMAN, PAUL HILL, RUSSELL BLACK, RICK WELLS, PEGGY MCKENZIE, DENNIS BERRETT, and DOES 1-20, persons unknown,

Third-Party Defendants.

---

Based on the Stipulated Motion to Dismissal All of Plaintiff's Claims and Westcor's Cross Claims With Prejudice (the "Motion"), and pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, filed by Federal Deposit Insurance Corporation as Receiver for AmTrust Bank ("FDIC-R"), 1<sup>st</sup> National Title Insurance Agency, LLC ("1<sup>st</sup> National") and Westcor Land Title Insurance Company ("Westcor"), and for good cause appearing:

IT IS ORDERED that:

1. The Motion is GRANTED.
2. All of FDIC-R's claims against 1<sup>st</sup> National and Westcor in this lawsuit are dismissed with prejudice.

3. All of Westcor's cross-claims against 1<sup>st</sup> National in this Lawsuit are dismissed with prejudice.

4. 1<sup>st</sup> National and Westcor do not dismiss any of their respective claims against the Third Party Defendants herein, and all such claims are expressly reserved.

5. Each party will bear its own attorneys' fees and costs incurred in connection with the prosecution and defense of FDIC-R's claims.

DATED this \_\_\_ day of January, 2013.

---

HONORABLE JUDGE BRUCE S. JENKINS  
UNITED STATES DISTRICT COURT JUDGE

Approved as to form this \_\_\_ day of January, 2013.

/s/  
Bryce D. Panzer  
Brett N. Anderson  
Scott R. Taylor  
BLACKBURN & STOLL, LC  
Attorneys for Westcor  
*(Signed with authority of Scott R. Taylor)*

/s/  
Matthew C. Barneck  
Chad E. Funk  
RICHARDS BRANDT MILLER NELSON  
Attorneys for 1<sup>st</sup> National  
*(Signed with authority of Matthew C. Barneck)*

**CERTIFICATE OF SERVICE**

I hereby certify that on January \_\_, 2013, I electronically filed the foregoing **[Proposed] Order Granting Stipulated Motion For Dismissal Of All Plaintiff's Claims And Westcor's Cross-Claims With Prejudice And Reservation Of Claims Against Third-Party Defendants** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Matthew C. Barneck  
Chad E. Funk  
RICHARDS BRANDT MILLER NELSON  
299 South Main Street, 15<sup>th</sup> Floor  
Salt Lake City, Utah 84110-2465

(b)(6) [Redacted]

*Attorneys for Westcor Land Title*

Bryce D. Panzer  
Brett N. Anderson  
BLACKBURN & STOLL  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111-2142

[Redacted]

*Attorneys for 1<sup>st</sup> National Title Insurance Agency*

John J. Brannelly, Jr. Esq.,  
VANGUARD LEGAL, PLLC  
59 West 9000 South  
Sandy, Utah 84070

(b)(6) [Redacted]

*Attorneys for Third-Party Defendant Fidelis Capital Group, LLC*

And that I caused to be mailed the same pleading by first-class mail, postage prepaid, to:

Dennis Berrett  
3768 Bari Way  
South Jordan, Utah 84095  
*Third Party Defendant*

Magdalena Lozano  
6125 Copper Crest Drive  
Las Vegas, NV 89130-1999  
*Third Party Defendant*

Peggy McKenzie  
2833 Lance Circle  
Heber, Utah 84032  
*Third Party Defendant*

/s/ Gary E. Doctorman

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this 30<sup>th</sup> day of January, 2013, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, f/k/a Ohio Savings Bank ("FDIC-R"); MHS CONTRACTING, INC. ("MHS"), and BEST TRUSS COMPANY ("BEST") (Individually, the FDIC-R, MHS, and BEST and 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 its assets.

A dispute has arisen between the Parties with respect to claims by the FDIC-R related to the Defendants' MHS, BEST, ALL MIAMI CONSTRUCTION, INC. ("ALL MIAMI") and REMBERTO CONTRERAS ("CONTRERAS") (collectively referred to as "DEFENDANTS") services and construction of a bank branch building in Sunrise, Florida, as alleged in the Circuit Court action in the 17<sup>th</sup> Judicial Circuit, in and for Broward County, Florida, Case No. 08-054859-04 (the "Claims").

FDIC-R has represented that it is the exclusive holder of all Claims, notwithstanding its sale of the Bank's assets to New York Community Bank, and that there are no other unasserted causes of action or claims related to the Sunrise Bank branch building owned or claimed by

AmTrust Bank that have not been assigned to FDIC-R and that have not been asserted in the instant action.

The Parties engaged in settlement negotiations as a result of the Circuit Court action. The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation, without the admission of any wrongdoing.

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, MHS, by and through its insurance carrier, shall pay to the FDIC-R the total sum of Sixty-Two Thousand Five Hundred Dollars (\$62,500) (the "MHS Settlement Payment"). MHS shall satisfy its payment obligation by rendering its payment on or before 30 days after the signing of this Settlement and Release Agreement.

B. In addition, also as an essential covenant and condition to this Agreement, on or before 30 days after the signing of this Settlement and Release Agreement, BEST, by and through its insurance carriers, shall pay to the FDIC-R the total sum of Three Hundred Thirty-Seven Thousand Five Hundred Dollars (\$337,500) (the "BEST Settlement Payment"). (The MHS Settlement Payment and the BEST Settlement Payment are referred to collectively herein as the "Settlement Payment"). The Settlement Payment shall be made by a check made payable to "FDIC as Receiver of AmTrust Bank" and shall include reference to "Sunrise Bank Branch" in the memorandum.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the dates determined by subparagraphs A and B above ("Settlement Payment Due Date"), then the FDIC-R, in its sole discretion, shall have the right as to the defaulting settling party(ies) only:

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 § 55.03, Florida Statutes; or

2. enforce this Agreement and, in such event, Defendants agree to jurisdiction in the 17<sup>th</sup> Judicial Circuit, in and for Broward County, Florida and the prevailing party in any such action shall be entitled to attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. declare this Agreement null and void, move to vacate any dismissal order, to which Defendants agree to consent, and institute an action on the FDIC-R's Claims; and/or

4. 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-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, or declare the Agreement null and void.

## 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 arising from the Claims.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, and except as provided in PARAGRAPH II.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Defendants and their respective employees, officers, directors, representatives, insurers, re-insurers, heirs, executors, administrators, agents, attorneys, 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 to the facts and circumstances giving rise to the Claims, including but not limited to those actually brought or those that could have been brought in Case Number 08-054859-04.

B. MHS's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, MHS, on behalf of itself, and its respective employees, officers, directors, representatives, insurers, re-insurers, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R and BEST, and their employees, officers, directors, representatives, agents, attorneys, successors and assigns, from any and all claims belonging to MHS or its insurers, arising out of or relating to the facts and circumstances alleged by the Claims, including but not limited to those actually brought or those that could have been brought in Case Number 08-054859-04.

C. BEST's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, BEST, on behalf of itself, and its respective employees, officers, directors, representatives, insurers, re-insurers, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R and MHS, and their employees, officers, directors, representatives, agents, attorneys, successors and assigns, from any and all claims belonging to BEST or its insurers, arising out of

or relating to the facts and circumstances alleged by the Claims, including but not limited to those actually brought or those that could have been brought in Case Number 08-054859-04.

D. 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 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-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, that the FDIC has jurisdiction over. Nothing in these documents or the subject litigation is intended to submit the Defendants, or signatories to this settlement and release agreement, to the supervisory or regulatory authority of the FDIC.

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 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.

E. Dismissal of Action. Upon the timely receipt and clearance of all payments due pursuant to Paragraph 1 above, counsel for Plaintiff shall thereupon file a Motion for Final Order of Dismissal, which the parties hereto stipulate should be granted without necessity of a hearing, and providing for the entry of a Final Order of Dismissal of this action, approving this Agreement, and dismissing the action with prejudice, with each party to bear its respective attorneys' fees and costs. In relation to the Final Order of Dismissal, the parties hereto acknowledge and agree that any unasserted claims, if any, including claims for attorney's fees, by Defendants which did not participate in mediation or this Agreement shall also be deemed dismissed, with prejudice, based upon the lack of record activity by such Defendants, and failure to appear at mediation as ordered by the Court.

### SECTION III: Insolvency.

A. Insolvency.

MHS warrants as to payments made on its behalf by its insurer, that at the time of such payment MHS' insurer 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 MHS and its insurer, and not by its counsel.

BEST warrants as to payments made on its behalf by its insurers, that at the time of such payment BEST's insurers are 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 BEST and its insurers, 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: Termination.**

In the event the FDIC-R 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-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time on the date this Settlement Agreement was executed.

**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-R:

William J. Cea, Esq.  
Mark J. Stempler, Esq.  
Becker & Poliakoff, P.A.  
625 N. Flagler Drive, 7<sup>th</sup> FL  
West Palm Beach, Florida 33401  
(561)655-5444



(b)(6)

If to MHS:

Jeffrey W. Johnson, Esq.  
Michael Wargo, Esq.  
Johnson Law Group  
1900 N.W. Corporate Boulevard, Suite 450  
Boca Raton, Florida 33431  
Telephone: 561-994-9433

(b)(6)

[Redacted]

to BEST:

Robert Fitzsimmons, Esq.  
Rumberger, Kirk & Caldwell, P.A.  
Brickell Bayview Centre  
80 Southwest 8th Street, Suite 3000  
Miami, Florida 33130-3037  
Telephone: 305-995-5425

(b)(6)

[Redacted]

And,

Jed Frankel, Esq.  
Eisinger Brown, Lewis & Frankel, P.A.  
Presidential Circle, Suite 265-S  
4000 Hollywood Boulevard  
Hollywood, Florida 33021  
Telephone: 954-894-8000

(b)(6)

[Redacted]

**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, 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. Choice of Law.

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

G. 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.

H. 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.

I. 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.

**FDIC as Receiver for AmTrust  
Bank, Cleveland, Ohio**

**Counsel for FDIC-R (approval as  
to form)**

(b)(6)  
By: \_\_\_\_\_

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

Name: Patrick M. McGwirk

Name: William J. Coe

Title: Counsel

Date: 1/23/2013

Date: January 14, 2013

(b)(6)

(b)(6)

**MHS CONTRACTING, INC.**  
Corporation

By:

Name: Scott T. Krueck

Title: Dir

Date: 1/29/13

**BEST TRUSS COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ACTIVE 439704\_1

(b)(6)

**Counsel for MHS (approval as to form)**

By:

(b)(6)

Name: Johnson

Date: 1/29/13

(b)(6)

**Counsel for BEST (approval as to form)**

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

Name: \_\_\_\_\_

Date: \_\_\_\_\_

(b)(6)

**BEST TRUSS COMPANY**

By:

[Redacted]

Name:

M. J. MENENDEZ

Title:

GEN. MGR.

Date:

1/30/13

(b)(6)

Counsel for BEST (approval as to form)

By:

[Redacted]

Name:

Adilia C. Hedges

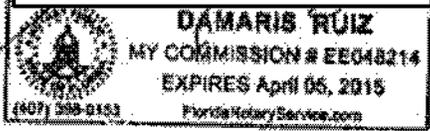
Date:

2/4/13

(b)(6)

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[Redacted]



1/30/2013 Sworn to and subscribed before me by Manuel J. Menendez who is personally known to me.

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases ("Agreement") are made this 6<sup>th</sup> day of October 2012 by, between and among the following undersigned Parties: the Plaintiff, Federal Deposit Insurance Corporation, solely in its limited capacity as receiver for AmTrust Bank ("FDIC-R") (which does not include the Federal Deposit Insurance Corporation, generally or in any other capacity, nor does it include agencies and departments of the United States government, including without limitation, the United States Department of Justice) and the Defendants James G. Carroll and the Law Office of James G. Carroll, P.C. (collectively, the "Carroll Defendants"), parties in a case captioned *FDIC as Receiver for AmTrust Bank v. Hodge, et al.*, Case No: 09-CV-3234 in the United States District Court for the Eastern District of New York ("The Litigation").

**RECITALS**

WHEREAS, In July, 2009, AmTrust Bank ("AmTrust") initiated The Litigation against the Carroll Defendants, several of its mortgage brokers, and other individuals and entities alleged to be involved in a purported mortgage fraud scheme concerning twenty (20) loans including claims for legal malpractice, breach of fiduciary duty and conversion against the Carroll Defendants arising from their actions as closing attorney for AmTrust;

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 AmTrust, including those with respect to its assets and all of AmTrust's claims, demands, and causes of action, including those claims asserted in The Litigation;

WHEREAS, the Carroll Defendants have denied the allegations asserted against them for legal malpractice, breach of fiduciary duty, and conversion;

WHEREAS, the Carroll Defendants have provided the FDIC-R with sworn affidavits and other financial materials to demonstrate that they have limited means from which to pay a judgment;

WHEREAS, the FDIC-R has relied upon the accuracy of the information provided by the Carroll Defendants regarding their 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 as follows:

Section 1: Payment to the FDIC-R.

A. As an essential covenant and condition to this Agreement, the Carroll Defendants, who are defended in The Litigation through its professional liability insurer, American Guarantee & Liability Insurance Company ("AGLIC") under Policy No  agree to pay the FDIC-R the sum of Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) (the "Settlement Funds") in complete and final settlement of the claims asserted against the Carroll Defendants in The Litigation in consideration of this Agreement.

(b)(4)

B. Upon the execution of an original, or originals in counterparts, of this Agreement and a Joint Stipulation of Dismissal with Prejudice ("Stipulation of Dismissal") by each of the undersigned Parties, but no later than 30 days after the execution of both this Agreement and the Stipulation of Dismissal, the Carroll Defendants shall deliver the Settlement Funds to the FDIC-R by check drawn upon a depository institution acceptable to FDIC-R. The FDIC-R and the Carroll Defendants shall defer from filing the Stipulation of Dismissal and agree not to file such until after the Carroll Defendants have delivered the Settlement Funds to the 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 the Carroll Defendants 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 the Carroll Defendants 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.

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Section 2: Stipulations and Dismissals.

Upon execution of this Agreement by each of the undersigned Parties, the FDIC-R shall dismiss with prejudice all of its claims in The Litigation against the Carroll Defendants. A Stipulation of Dismissal as to these claims shall be prepared and executed by the FDIC-R and the Carroll Defendants. Within thirty (30) days of the Carroll Defendants' receipt of the executed Stipulation of Dismissal with Prejudice, the Carroll Defendants shall deliver the Settlement Funds to the FDIC-R in the manner prescribed in Section 1B of this Agreement. Thereafter, the Carroll Defendants shall file the Stipulation of Dismissal, provided however, that the Carroll

Defendants shall defer from filing the Stipulation of Dismissal and agree not to file such until after the Carroll Defendants have delivered the Settlement Funds to the FDIC-R.

Section 3: Mutual Releases.

A. Release of the Carroll Defendants 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 the Carroll Defendants, their insurer, AGLIC, 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 or could have been asserted in The Litigation.

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

Effective simultaneously with the release in Section 3A above, the Carroll Defendants on their own behalf, and on behalf of their insurer, AGLIC, representatives, successors, assigns and attorneys hereby release and discharge 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-R.

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 against any other party in the Litigation not expressly released by this Agreement.

Section 4: 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. The Carroll Defendants acknowledge that in determining to settle the claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided by the Carroll Defendants. If the Carroll Defendants intentionally failed to disclose, or intentionally misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, the Carroll Defendants agree to cooperate fully with the FDIC-R to transfer their interest in the asset to the FDIC-R and to sign any and all documents necessary to transfer their interest in the asset to the FDIC-R. Moreover, if the Carroll Defendants have intentionally failed to disclose or materially

misstated 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 release granted to the Carroll Defendants as null and void; (b) the FDIC-R may sue the Carroll Defendants for damages, an injunction, and specific performance for the breach of this Agreement; and (c) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against the Carroll Defendants. The Carroll Defendants agree that if they have intentionally failed to disclose, or intentionally materially misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, the Carroll Defendants consent to the reinstatement of FDIC-R's claims and waives any statute of limitations defense that would bar any of the FDIC-R's claims against them.

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.

Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

(b)(6)

Date: 10/5/2012

The Law Office of James G. Carroll, P.C.

Date 9/4/12

By

(b)(6)

James G. Carroll

Date 9/4/12

By

(b)(6)

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of this 13th day of September, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"); Whitmore Brewster, an individual ("Brewster"); and United American Mortgage Corporation, a California Corporation ("UAMC"). (Individually, the FDIC-R, Brewster, and UAMC 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 its assets.

On or about October 25, 2006, Bank funded a mortgage loan to borrower [redacted] in (b)(6) the amount of \$600,000 (the "Loan") in connection with [redacted] purchase of a residential (b)(6) (b)(6) property located at [redacted] San Clemente, California (hereinafter the "Transaction"). Brewster prepared an appraisal in connection with the Transaction, while UAMC brokered the Loan to Bank in connection with the Transaction. (Brewster and UAMC are collectively referred to herein as "Defendants".)

On or about March 7, 2012, FDIC-R filed an action against Defendants in the United States District Court for the Central District of California, Case No. SA CV 12-358 JVS (JPRx)

(the "District Court Action"), alleging that Brewster caused damages to the FDIC-R due to his breach of contract and negligent misrepresentation, and further alleging that UAMC caused damages to the FDIC-R due to its breach of contract.

A dispute has arisen between the Parties with respect to claims by the FDIC-R related to Defendants' actions as alleged in the District Court Action (hereinafter any and all claims by the FDIC-R against Defendants related to allegations made in the District Court Action are referred to as the "Claims"). 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, UAMC shall pay the FDIC-R the total sum of Sixty Thousand Dollars (\$60,000) (the "UAMC Settlement Payment"). UAMC shall satisfy its payment obligation by rendering six installment payments as follows: a first payment in the amount of Ten Thousand Dollars (\$10,000) to be paid on or before October 1, 2012, followed by five (5) additional payments, each in the amount of Ten Thousand Dollars (\$10,000), to be paid on or before the first day of the next five consecutive months, beginning on November 1, 2012 and concluding on March 1, 2013.

B. In addition, also as an essential covenant and condition to this Agreement, on or before October 1, 2012, Brewster shall pay the FDIC-R the total sum of Sixty Five Thousand Dollars (\$65,000) (the "Brewster Settlement Payment"). (The UAMC Settlement Payment and

the Brewster Settlement Payment are referred to collectively herein as the "Settlement Payment"). The Settlement Payment shall be made either by: a) check made payable to "FDIC as Receiver of AmTrust Bank" and shall include reference to "Brewster" in the memorandum, or b) wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account,"

(b)(4) Account Number:  Routing Number:  Reference: AmTrust/Brewster (b)(4)

Settlement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the dates determined by subparagraphs A and B 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. enforce this Agreement and, in such event, Defendants agree to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. declare this Agreement null and void, move to vacate any dismissal order, to which Defendants agree to consent, and institute an action on the FDIC-R's claims, as to which Defendants waive any and all objections and defenses and covenant and agree not to assert any objections and defenses; and/or

4. 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-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, or declare the Agreement null and void.

D. In addition, if the FDIC-R does not receive the UAMC Settlement Payment in full on or before the dates determined by subparagraph B above, then the FDIC-R, in its sole discretion, shall also have the right to enforce a stipulated judgment against UAMC in the amount of One Hundred Thousand Dollars (\$100,000) less any settlement payments made by UAMC following execution of this Settlement Agreement. In the instance that the FDIC-R pursues a stipulated judgment against UAMC for UAMC's failure to fully and timely pay in full the UAMC Settlement Payment, UAMC agrees not to oppose the entry or enforcement of the stipulated judgment and further agrees to compensate the FDIC-R for all costs, fees, and other expenses incurred in entering and enforcing this stipulated judgment. The FDIC-R agrees not to file any stipulated judgment against UAMC without first providing UAMC with notice of non-payment and allowing UAMC fourteen (14) business days from the date such notice is sent to cure non-payment. Any obligations by the FDIC-R to provide notice of non-payment will be satisfied by delivering notice of non-payment to UAMC's counsel via email or first class mail at the address designated in Section V below.

#### **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 arising from the Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those damages. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, and except as provided in PARAGRAPH II.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Defendants and their 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 to the facts and circumstances giving rise to the Claims.

B. Brewster's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, Brewster, on

behalf of himself, and his respective employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Brewster, arising out of or relating to the facts and circumstances alleged by the Claims.

C. UAMC's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, UAMC, 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 its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to UAMC, arising out of or relating to the facts and circumstances alleged by the Claims.

D. 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 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-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 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-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.

E. Dismissal.

Upon the FDIC-R's counsel's receipt of the entire Settlement Payment, the FDIC-R shall file a stipulation for dismissal of the District Court Action with prejudice, and each Party shall bear their own costs and fees. Such dismissal shall include dismissal of any and all cross-claims filed in the District Court Action. The Parties shall cooperate with the FDIC-R to accomplish such stipulation for dismissal.

**SECTION III: Insolvency.**

A. Insolvency.

Brewster warrant as to payments made by or on his behalf that at the time of such payment, Brewster is not insolvent nor will the payment made by or on his behalf render him

insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by Brewster and not by his counsel.

UAMC warrants as to payments made by or on its behalf that at the time of such payment, UAMC 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 UAMC 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: Termination.**

In the event the FDIC-R 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-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Pacific Time, August 14, 2012.

**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-R:

Michael Delbick  
Mortgage Recovery Law Group

700 North Brand Boulevard, Suite 830  
Glendale, California 91203  
(818) 630-7905

(b)(6) [Redacted]

If to Brewster:

Frederick S. Reisz  
Meyers McConnell Reisz Siderman  
11859 Wilshire Blvd., 4th Floor  
Los Angeles, CA 90025  
(310) 312-0772

(b)(6) [Redacted]

If to UAMC:

Dan Carlton  
Law Offices of Daniel C. Carlton  
19700 Fairchild Road, Suite 280  
Irvine, CA 92612  
(949) 757-0707

(b)(6) [Redacted]

**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, 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, Defendants 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 Bank;

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 Bank;

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 Bank, 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 Bank.

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 California, 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.

J. 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.

K. 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.

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

**Counsel for FDIC-R (approval as to form)**

(b)(6)

By:

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

Name: Patrick M. McGurk

Name: \_\_\_\_\_

Title: Counsel

Date: \_\_\_\_\_

Date: 10/1/2012

**United American Mortgage Corporation**

**Counsel for UAMC (approval as to form)**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

J. 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.

K. 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.

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

**Counsel for FDIC-R (approval as to form)**

(b)(6)

By:

By:

(b)(6)

Name: Patrick M. McGinck

Name: Michael Delbrick

Title: Counsel

Date: 10/1/12

Date: 10/1/2012

**United American Mortgage Corporation**

**Counsel for UAMC (approval as to form)**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

J. 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.

K. 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.

**FDIC as Receiver for AmTrust  
Bank, Cleveland, Ohio**

**Counsel for FDIC-R (approval as  
to form)**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**United American Mortgage  
Corporation**

**Counsel for UAMC (approval as  
to form)**

(b)(6)

By:

By:

(b)(6)

Name: AL W. HENSLING

Name: DANIEL C. CARLTON

Title: PRESIDENT

Date: 9/21/12

Date: 9-17-12

Whitmore Brewster

(b)(6)

[Redacted Signature]

Date: 9-29-12

Counsel for Brewster (approval  
as to form)

(b)(6)

[Redacted Signature]

By:

Name: FREDERICK PERIN

Date: 09/27/12

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this \_\_\_ day of December, 2011, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), and Amerisave Mortgage Corporation ("Amerisave") (individually, the FDIC-R and Amerisave 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 its assets.

Amerisave and the Bank entered into a Master Correspondent Loan Purchase Agreement dated August 20, 2003 ("Contract"). Pursuant to the terms of the Contract, Amerisave sold to the Bank various residential mortgage loans. The Bank's assets now belonging to the FDIC-R include any and all of the Bank's claims, demands, and causes of action, including all of the Bank's claims related to any and all loans Amerisave sold under the Contract to the Bank ("Loans").

A dispute has arisen between the Parties with respect to claims by the FDIC-R to Amerisave for repurchase and/or indemnity on certain of the Loans based on alleged breaches of representations and warranties set forth in the Contract (hereinafter any and all present and future

claims by the FDIC-R to Amerisave under the Contract of an obligation to repurchase or indemnify for losses associated with the Loans is referred to as the "Claims"). 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, on or before thirty (30) days following the date the FDIC-R executes this agreement, Amerisave shall pay the FDIC-R the total sum of One Hundred Ninety-Nine Thousand Five Hundred Dollars (\$199,500) (the "Settlement Payment"). The Settlement Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number:  (b)(4)

(b)(4) Routing Number:  Reference: AmTrust/Amerisave Settlement.

B. If the FDIC-R does not receive the Settlement Payment in full on or before the date 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. enforce this Agreement and, in such event, Amerisave agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's

reasonable attorney's fees and costs expended in enforcing the terms of this Agreement;  
or

3. declare this Agreement null and void, move to vacate any dismissal order, to which Amerisave agrees to consent, and institute an action on the FDIC-R's claims, as to which Amerisave waives any and all objections and defenses and covenant and agree not to assert any objections and defenses; and/or

4. 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-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, or declare the Agreement null and void.

#### **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 arising from the Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer additional damages arising out of the Claims, the claims and causes of action that were or could

have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those damages.

Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in PARAGRAPH II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Amerisave 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 to the facts and circumstances giving rise to the Claims.

B. Amerisave's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, Amerisave, 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 its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Amerisave, arising out of or relating to the facts and circumstances alleged by 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 Amerisave 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 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-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.

Amerisave warrants as to payments made by or on its or 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 Amerisave 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: Termination.**

In the event the FDIC-R 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-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, December 1, 2011.

**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-R:

Michael Delbick  
Mortgage Recovery Law Group  
700 North Brand Boulevard, Suite 830  
Glendale, California 91203  
(818) 630-7905

(b)(6)

If to Amerisave:

Mark Lively, EVP, Credit Risk  
3350 Peachtree Rd. NE, Suite 1000/ 10th Floor  
Atlanta, GA 30326  
404-424-0681

(b)(6)

**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, 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. Specific Representations, Warranties and Disclaimer.

Amerisave acknowledges that in determining to settle the Claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided by Amerisave. If Amerisave failed to disclose, or misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, Amerisave 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 Amerisave 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 Amerisave as null and void; (b) the FDIC-R may retain the Settlement Payment; (c) the FDIC-R may sue Amerisave 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 Amerisave. Amerisave agrees that if it has failed to disclose, or misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, Amerisave consents to the reinstatement of FDIC-R's claims and waive any statute of limitations defense that would bar any of the FDIC-R's claims against it.

G. 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, Amerisave agrees 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 Bank;

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 Bank;

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 Bank, 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 Bank.

H. 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 California, without regard to its conflicts of laws.

I. 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.

J. 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.

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K. 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.

**FDIC as Receiver for AmTrust  
Bank Cleveland, Ohio**

**Amerisave Mortgage Corporation**

By:

(b)(6)  
(b)(6)

[Redacted Signature Box]

Name: Patrick M. McGivick

Name: MARK A. LIVELY

Title: Counsel

Title: EVP CREDIT RISK

Date: 1/11/12

Date: 01/09/2012

**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]

(b)(6)

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of this \_\_\_ day of June, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), and Equity Title Agency, Inc. ("Equity Title") (individually, the FDIC-R and Equity Title 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.

On or about October 25, 2006, AmTrust funded two loans to borrower [redacted] in (b)(6) a total amount of \$647,500 (collectively, the "Loans") in connection with [redacted] purchase of a (b)(6) residential property located at [redacted] Scottsdale, Arizona 85254 (hereinafter (b)(6) the [redacted] Transaction"). Equity Title served as the closing agent in connection with the [redacted] (b)(6) Transaction.

A dispute has arisen between the Parties with respect to claims by the FDIC-R related to Equity Title's actions in performing closing services regarding the [redacted] Transaction (hereinafter (b)(6) any and all present and future claims by the FDIC-R against Equity Title in connection with the (b)(6) [redacted] Transaction are referred to as the "Claims") On or about February 10, 2012, the FDIC filed

a lawsuit based upon the Claims in the United States District Court for the District of Arizona, entitled *Federal Deposit Insurance Corporation as Receiver for AmTrust Bank of Cleveland, Ohio. vs. Equity Title Agency, Inc.*, Case No. 2:12-cv-00284-GMS (hereinafter the "Action").

The Parties engaged in settlement negotiations as a result of the Claims and the Action. 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, on or before thirty (30) days following the date the FDIC-R returns a fully executed copy of this agreement to Equity Title, Equity Title shall pay the FDIC-R the total sum of Seventy Five Thousand Dollars (\$75,000) (the "First Payment"). In addition, also as an essential covenant and condition to this Agreement, on or before sixty (60) days following the date the FDIC-R returns a fully executed copy of this agreement to Equity Title, Equity Title shall pay the FDIC-R the total sum of Seventy Five Thousand Dollars (\$75,000) (the "Second Payment"). (The First Payment and the Second Payment are referred to collectively herein as the "Settlement Payment"). The Settlement Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number:  Routing Number:  (b)(4) Reference: AmTrust/Equity Title Settlement.

B. If the FDIC-R does not receive the Settlement Payment in full on or before the date 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. enforce this Agreement and, in such event, Equity agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or
3. declare this Agreement null and void, move to vacate any dismissal order, to which Equity Title agrees to consent, and institute an action on the FDIC-R's claims, as to which Equity Title waives any and all objections and defenses and covenant and agree not to assert any objections and defenses; and/or
4. 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-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, or declare the Agreement null and void.

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

## **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 arising from the Claims.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in PARAGRAPH II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Equity Title and its respective employees, officers, directors, shareholders, 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 to the Claims.

B. Equity Title's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, Equity Title, on behalf of itself, and its respective employees, officers, directors, shareholders, representatives, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Equity Title, arising out of 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 Equity Title 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.

**D. Exceptions to Release by Equity Title.**

1. Notwithstanding any other provision of this Agreement, Equity Title 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 FDIC-R 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 Equity Title, or any other person or entity, including without limitation any claims acquired by Equity Title;

b. against any person or entity not expressly released by Equity Title in this Agreement; or

c. which are not expressly released in PARAGRAPH II.B. above.

### **SECTION III: Insolvency.**

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

Equity Title warrants as to payments made by or on its or 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 Equity 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: Termination.**

In the event the FDIC-R 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-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, June 1, 2012.

**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-R:

Michael Delbick  
Mortgage Recovery Law Group  
700 North Brand Boulevard, Suite 830  
Glendale, California 91203  
(818) 630-7905

(b)(6)

If to Equity Title:

Ari Ramras  
Ramras Legal, PLC  
5090 N. 40th St., Suite 165  
Phoenix, Arizona 85018  
(602) 734-0179

(b)(6)

**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, 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. 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 Arizona, without regard to its conflicts of laws.

G. 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.

H. 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.

I. 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.

**FDIC as Receiver for AmTrust  
Bank, Cleveland, Ohio**

**Equity Title Agency, Inc.**

(b)(6)

By:

[Redacted Signature Box]

By:

[Redacted Signature Box]

(b)(6)

Name: Patrick M. McGwick

Name: Margaret Gibbons

Title: Counsel

Title: Vice President

Date: 7/3/2012

Date: June 27, 2012

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases ("Agreement") is made this \_\_\_\_\_ day of May, 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 Acorn Funding Group, Inc. ("Acorn"); both of whom are parties in a case captioned *FDIC, as Receiver for AmTrust Bank v. Pankaj Malik, et al.*, Case No: 09-cv-4805 (E.D.N.Y.) ("The Litigation").

**RECITALS**

WHEREAS, In November, 2009, AmTrust Bank initiated The Litigation against its closing attorney Pankaj Malik, various 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 Acorn for breach of contract related to one such mortgage;

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; and

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

WHEREAS, Acorn 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 Acorn 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, Acorn has agreed to pay the FDIC-R the sum of Seventeen Thousand Dollars (\$17,000.00) (the "Settlement Funds").

B. Within 30 days of the execution of the Agreement, Acorn shall deliver the first Five Thousand Dollars (\$5,000.00) of 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. No later than December 31, 2012, Acorn shall deliver the remaining Twelve Thousand Dollars (\$12,000.00) of 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.

Section 2. Confession of Judgment.

A. As an additional essential covenant and condition to this Agreement, Acorn has agreed to execute and deliver to the FDIC-R an Affidavit of Confession of Judgment, confessing judgment in the FDIC-R's favor for the sum of One Hundred Thousand Dollars (\$100,000).

B. In the event that Acorn fails to make either payment listed in Section 1 above by the applicable deadline, Acorn shall be in default of this Agreement and the FDIC-R shall have the right to obtain a Confession of Judgment against Acorn in order to recover the amount of One Hundred Thousand Dollars, less any Settlement Funds already paid to the FDIC-R.

C. If the Settlement Funds, or any portion thereof, are not received by the FDIC-R within the deadlines stated in Section 1 of the Agreement, interest upon any unpaid portion of the Settlement Funds will accrue at a rate of 6% per annum commencing on the 31st day after the funds were due.

D. Without waiving any other rights that the FDIC-R may have, in the event that the Settlement Funds, including all accrued interest as may be applicable, are not received by the dates specified in Section 1 of this Agreement, then the FDIC-R shall have the right, in its sole discretion, to enforce this Agreement, and Acorn shall be responsible for the sum of One Hundred Thousand Dollars (\$100,000), and all fees, including attorney fees, incurred by the FDIC-R in enforcing the 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 3. Acorn's Agreement to Cooperate.

Acorn 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 4. Stipulations and Dismissals.

Upon execution of this Agreement by each of the undersigned Parties, the FDIC-R shall dismiss with prejudice all of its claims in the Litigation against Acorn, and those claims related to the loans identified in the release at Section 5A below. A stipulation of dismissal with prejudice as to these claims shall be prepared by the FDIC-R and executed by Acorn within 30 days after receipt of this settlement agreement by the FDIC-R from Acorn.

Section 5. Mutual Releases.

A. Release of Acorn by the FDIC-R.

Effective upon receipt of the sworn statement specified in Section 1 above, the FDIC-R hereby releases and discharges Acorn, 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 arise from or relate to The Litigation, that arise from or relate to the loan for borrower [redacted], for the

property located at [redacted] Rosedale, NY (the [redacted] Loan"), or that arise from or relate to the loan for borrower [redacted] loan [redacted] for the property located at [redacted] Far Rockaway, NY (the [redacted] Loan").

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

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

B. Release of the FDIC-R by Acorn.

Effective simultaneously with the release in Section 5A above, Acorn, 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, the Royal Loan or the Smulowitz Loan.

C. Express Reservation of Releases By The 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 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 5A, 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 6. 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 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. Acorn acknowledges that in determining to settle the claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided by Acorn. If Acorn misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, Acorn 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 Acorn has intentionally failed to disclose or materially misstated 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 release granted to Acorn as null and void; (b) the FDIC-R may sue Acorn for damages, an injunction, and specific performance for the breach of this Agreement; and (c) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against Acorn. Acorn agrees that if it has intentionally failed to disclose, or materially misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, Acorn consents to the reinstatement of FDIC-R's claims and waives any statute of limitations defense 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 along with the Affidavit of Confession of Judgment described in Section 2 constitute 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.

Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

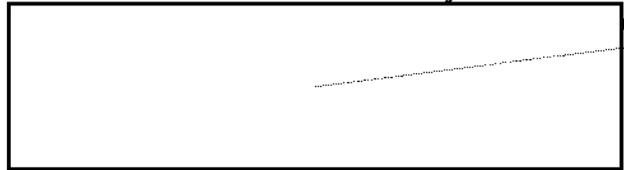
(b)(6)

Date: 6/22/2012



Acorn Funding Group, Inc.

Date: 6/13/2012



(b)(5)

11664003

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X	
FEDERAL DEPOSIT INSURANCE CORPORATION	: Index No.
AS RECEIVER FOR AMTRUST BANK,	:
	:
Plaintiff,	:
	:
- against -	:
	:
ACORN FUNDING GROUP, INC.	: AFFIDAVIT OF
	: CONFESSION
Defendant.	: <u>OF JUDGMENT</u>
	:
-----X	

STATE OF NEW YORK    )  
                                  )ss.:  
COUNTY OF QUEENS    )

I, William Korman, being duly sworn, state:

1. I am the [president/CEO/Controlling Member] and the owner of \_\_\_% of the outstanding shares of stock of Acorn Funding Group, Inc. ("Acorn").

(b)(6) 2. I reside at

3. As [the president, CEO, and sole shareholder of Acorn], I have authority to enter into agreements on behalf of Acorn.

4. Acorn is a defendant named in the case of Federal Deposit Insurance Corporation as Receiver for AmTrust Bank v. Pankaj Malik, *et al.*, in the United States District Court for the Eastern District of New York, case number 09-cv-4805 (the "Malik Litigation").

5. Acorn entered into Settlement Agreement and Mutual Release dated May \_\_, 2012 with the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank (the "FDIC-

R"), the plaintiff in the Malik Litigation, to resolve all pending claims between me and the FDIC-R in the Malik Litigation.

6. Pursuant to the Settlement Agreement and Mutual Release, Acorn is obligated to make payments to the FDIC-R totaling \$17,000.00, as follows: \$5,000.00 no later than June \_\_, 2012, and \$12,000.00 no later than December 31, 2012. In the event that Acorn should default on any payment as such payment becomes due, Acorn shall be responsible to the FDIC-R for the amount of One Hundred Thousand Dollars (\$100,000) less any payments already made.

7. I hereby confess judgment on behalf of Acorn pursuant to CPLR 3218 in favor of the FDIC-R in the amount of One Hundred Thousand Dollars (\$100,000) less any amount already paid to the FDIC-R as set forth in Paragraph 5 and authorize the FDIC-R to enter judgment for that amount against me in the event that I should default on any payment under the terms outlined in Paragraph 5.

8. No part of this obligation has been paid, although payment has been demanded.

9. This confession of judgment is for an obligation due or to become due to the FDIC-R arising from and out of the Settlement Agreement and Mutual Release.

Acorn Funding Group, Inc.

By:

[Redacted Signature Box]

(b)(6)

Its:

*President*

Date:

*6/13/2012*

Sworn to before me this  
day of May, 2012

\_\_\_\_\_  
Notary Public

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases (“Agreement”) are made this \_\_\_\_\_ day of \_\_\_\_\_ 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 NMR Advantage Abstract, Ltd. (“NMR”), 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, and Malik & Associates, P.C. (the Malik Defendants”) 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 NMR related to the issuance of title insurance and title commitments for such mortgages and the failure to file mortgages and deeds;

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, NMR has denied the allegations asserted against it for breach of contract, breach of fiduciary duty, and negligence; 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, Chartis Insurance, Inc. as insurer for NMR agrees to pay the FDIC-R the sum of Two-Hundred Fifty Thousand Dollars (\$250,000.00) (the "Settlement Funds") to be paid within 60 days of the date of this Agreement on behalf of NMR. The Settlement Funds shall be made payable to FDIC as Receiver for

(b)(4) AmTrust Bank, account number [redacted] and sent to counsel for FDIC-R at P.O. Box 971774, Dallas, Texas 75397-1774; or, for overnight delivery to: JPMorgan Chase (TX1-0006), Attn: FDIC Receivership Lock Box #971774, 14800 Frye Road, 2nd Floor, Fort Worth, Texas 76155. The Parties further agree that the Settlement Funds shall be allocated to the losses

(b)(6) sustained by the FDIC-R for the [redacted] loan for the property located at [redacted] (b)(6)

(b)(6) [redacted]

B. 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 NMR in the respective amounts described above, and within 60 days of the execution of this Agreement, then the FDIC-R shall have the right to enforce this Agreement before Magistrate

Judge Azrack in connection with her continuing role in the settlement of this matter in connection with The Litigation.

Section 2: Agreement to Cooperate.

A. As an essential covenant and condition to this Agreement, NMR agrees to make available a corporate representative, knowledgeable about the  Loan and to provide a (b)(6) sworn statement to the FDIC-R regarding the persons, entities, and events involved in that transaction and The Litigation.

B. NMR further agrees to cooperate fully with the FDIC-R in the ongoing Litigation and any future litigation 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.

C. FDIC\_R agrees not to cooperate with or assist the Malik Defendants in any manner to pursue indemnification or other claims pending or asserted in the Litigation against NMR, its agents, principals, or employees..

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 NMR the FDIC-R shall dismiss with prejudice all of its claims in the Litigation against NMR. A stipulation of dismissal with prejudice as to these claims shall be prepared by the FDIC-R and executed by NMR within 30 days after receipt of the Settlement Funds by the FDIC-R from NMR.

Section 4: Mutual Releases.

A. Release of NMR 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 NMR, its agents, employees, insurers, representatives, successors, assigns and attorneys, and Chartis Insurance Inc., 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: (i) were asserted in The Litigation; or (ii) arise out of any loan for which the Malik Defendants served as a closing attorney for AmTrust Bank.

B. Release of the FDIC-R by NMR.

Effective simultaneously with the release in Section 3A above, NMR 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-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 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.

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 not 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 person 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, insurers, and attorneys.

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 New York.

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

F. 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.

Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

(b)(6)

Date:

6/26/2012

[Redacted Signature Box]

NMR Advantage Abstract, Ltd.

Date:

6/25/12

By:

[Redacted Signature Box]

(b)(6)

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases ("Agreement") is made this <sup>AS OF</sup> 15<sup>th</sup> day of May, 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 SI Mortgage Company ("SI Mortgage"); both of whom are parties in a case captioned *FDIC, as Receiver for AmTrust Bank v. Pankaj Malik, et al.*, Case No: 09-cv-4805 (E.D.N.Y.) ("The Litigation").

**RECITALS**

WHEREAS, In November, 2009, AmTrust Bank initiated The Litigation against its closing attorney Pankaj Malik, various 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 SI Mortgage for breach of contract related to one such mortgage;

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; and

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

WHEREAS, SI Mortgage 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 SI Mortgage 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, SI Mortgage has agreed to pay the FDIC-R the sum of Two Hundred Thousand Dollars (\$200,000.00) (the "Settlement Funds").

B. Following the execution of the Agreement, SI Mortgage shall deliver the payment of 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 according to the schedule in Section 1. C., infra, below.

C. Beginning on October 1, 2012, on the first day of each quarter thereafter (January 1, April 1, July 1 and October 1), SI Mortgage shall make installment payments of Twelve

Thousand Five Hundred Dollars (\$12,500.00) of 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, provided, however, that as long as a payment of at least \$5,000 is made during a quarter, and further provided that as long as at the end of each successive one-year period ending on October 1, S.I. Mortgage has made payments of at least \$50,000 per year for four successive years, S.I. Mortgage shall not be in default of its payment obligations pursuant to this Agreement. SI Mortgage shall make payments of not less than \$50,000 annually, paid over four years, until the entire Settlement Funds have been paid.

Section 2. Confession of Judgment.

A. As an additional essential covenant and condition to this Agreement, SI Mortgage has agreed to execute and deliver to the FDIC-R an Affidavit of Confession of Judgment, in the form of the Cognovit Note attached, confessing judgment in the FDIC-R's favor for the sum of Five Hundred Ten Thousand Dollars (\$510,000.00).

B. In the event that SI Mortgage fails to make any of the payments described in Section 1 above by the applicable deadlines, SI Mortgage shall be in default of this Agreement and the FDIC-R shall have the right to obtain a Confession of Judgment against SI Mortgage in order to recover the amount of Five Hundred Ten Thousand Dollars, less any Settlement Funds already paid to the FDIC-R.

C. If the Settlement Funds, or any portion thereof, are not received by the FDIC-R within the deadlines stated in Section 1 of the Agreement, interest upon any unpaid portion of the Settlement Funds will accrue at a rate of 6% per annum commencing on the 31st day after the funds were due.

D. Without waiving any other rights that the FDIC-R may have, in the event that the Settlement Funds, including all accrued interest as may be applicable, are not received by the dates specified in Section 1 of this Agreement, then the FDIC-R shall have the right, in its sole discretion, to enforce this Agreement, and SI Mortgage shall be responsible for the sum of Five Hundred Ten Thousand Dollars (\$510,000), and all fees, including attorney fees, incurred by the FDIC-R in enforcing the 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 3. Stipulations and Dismissals.

Upon execution of this Agreement by each of the undersigned Parties, the FDIC-R shall dismiss with prejudice all of its claims in the Litigation against SI Mortgage. The FDIC-R shall prepare and execute a stipulation of dismissal with prejudice as to these claims within 30 days after receipt of the initial payment of the Settlement Funds by SI Mortgage.

Section 4. Mutual Releases.

A. Release of SI Mortgage by the FDIC-R.

Effective upon receipt of the initial payment of Settlement Funds specified in Section 1 above, the FDIC-R hereby releases and discharges SI Mortgage, 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 arise from or relate to The Litigation.

B. Release of the FDIC-R by SI Mortgage.

Effective simultaneously with the release in Section 5A above, SI Mortgage, 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.

C. Express Reservation of Releases By The 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 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 5A, 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 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. SI Mortgage acknowledges that in determining to settle the claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided by SI Mortgage. If SI Mortgage failed to disclose, or misrepresented the nature or amount of, any interest, legal,

equitable, or beneficial, in any asset, SI Mortgage 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 SI Mortgage has intentionally failed to disclose or materially misstated 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 release granted to SI Mortgage as null and void; (b) the FDIC-R may sue SI Mortgage for damages, an injunction, and specific performance for the breach of this Agreement; and (c) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against SI Mortgage. SI Mortgage agrees that if it has intentionally failed to disclose, or materially misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, SI Mortgage consents to the reinstatement of FDIC-R's claims and waives any statute of limitations defense 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 along with the Affidavit of Confession of Judgment described in Section 2 constitute 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.

Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

(b)(6)

Date: August 15, 2012

[Redacted Signature Box]

SI Mortgage Company.

Date: AUG. 9, 2012

[Redacted Signature Box]

(b)(6)

**COGNOVIT NOTE**

SI Mortgage Company ("SI Mortgage"), the undersigned, of 51650 Oro Road, Shelby Township, Michigan, 48315, hereby promises to pay to the order of the Federal Deposit Insurance Corporation in its capacity as receiver for AmTrust Bank ("FDIC-R"), the sum of Five Hundred Ten Thousand Dollars (\$510,000.00) as provided by the Settlement Agreement and Mutual Releases ("Settlement Agreement") executed by SI Mortgage and FDIC-R and dated June 3<sup>rd</sup>, 2012.

In the event that SI Mortgage fails to make any payment as required by the Settlement Agreement, SI Mortgage hereby authorizes any attorney at law to appear in any court of record in the United States, to waive the issuing and service of process, and to confess a judgment against SI Mortgage for Five Hundred Ten Thousand Dollars (\$510,000.00), less any amount that SI Mortgage has already paid to FDIC-R pursuant to the Settlement Agreement, plus costs and attorney fees. SI Mortgage hereby gives its attorney full power and authority to perform every act necessary to exercise this power and to secure the entry of judgment against SI Mortgage. SI Mortgage acknowledges that, by signing this Cognovit Note, it is giving up its right to notice and a court trial prior to the entry of a court judgment against it on this obligation.

Dated: AUG. 9, 2012, at SHELBY TOWNSHIP, MI

**SI MORTGAGE COMPANY**

(b)(6) \_\_\_\_\_  
(b)(6) \_\_\_\_\_  
By: \_\_\_\_\_ RAJEEV GANDHI  
Title: \_\_\_\_\_ President

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases ("Agreement") are made this 13<sup>th</sup> day of July 2012 by, between and among the following undersigned Parties: the Plaintiff, Federal Deposit Insurance Corporation, solely in its limited capacity as receiver for AmTrust Bank ("FDIC-R") (which does not include the Federal Deposit Insurance Corporation, generally or in any other capacity, nor does it include agencies and departments of the United States government, including without limitation, the United States Department of Justice) and the Defendants Pankaj Malik ("Malik") and Malik & Associates, P.C. ("Malik Firm") (collectively, the "Malik Defendants"), parties in a case captioned *FDIC as Receiver for AmTrust Bank v. Malik, et al.*, Case No: 1:09-CV-04805 in the United States District Court for the Eastern District of New York ("The Litigation").

**RECITALS**

WHEREAS, In November, 2009, AmTrust Bank ("AmTrust") initiated The Litigation against the Malik Defendants, several of its mortgage brokers, and other individuals and entities alleged to be involved in a purported mortgage fraud scheme concerning twenty-six (26) loans including claims for legal malpractice, breach of fiduciary duty and conversion against the Malik Defendants arising from their actions as closing attorney for AmTrust;

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 AmTrust, including those with respect to its assets and all of AmTrust's claims, demands, and causes of action, including those claims asserted in The Litigation;

WHEREAS, the Malik Defendants have denied the allegations asserted against them for legal malpractice, breach of fiduciary duty, and conversion;

WHEREAS, the Malik Defendants have provided the FDIC-R with sworn affidavits and other financial materials to demonstrate that they have limited means from which to pay a judgment;

WHEREAS, the FDIC-R has relied upon the accuracy of the information provided by the Malik Defendants regarding their 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 as follows:

Section 1: Payment to the FDIC-R.

A. As an essential covenant and condition to this Agreement, the Malik Defendants, who are defended in The Litigation through its professional liability insurer, American Guarantee & Liability Insurance Company ("AGLIC") under Policy No.  agree (b)(4) to pay the FDIC-R the sum of One Million Four Hundred Thousand Dollars (\$1,400,000.00) (the "Settlement Funds") in complete and final settlement of the claims asserted against the Malik Defendants in The Litigation in consideration of this Agreement.

B. Upon the execution of an original, or originals in counterparts, of this Agreement and a Joint Stipulation of Dismissal with Prejudice ("Stipulation of Dismissal") by each of the undersigned Parties, but no later than 30 days after the execution of both this Agreement and the Stipulation of Dismissal, the Malik Defendants shall deliver the Settlement Funds to the FDIC-R by check drawn upon a depository institution acceptable to FDIC-R. The FDIC-R and the Malik Defendants shall defer from filing the Stipulation of Dismissal and agree not to file such until after the Malik Defendants have delivered the Settlement Funds to the 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 the Malik Defendants 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 the Malik Defendants 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: Stipulations and Dismissals.

Upon execution of this Agreement by each of the undersigned Parties, the FDIC-R shall dismiss with prejudice all of its claims in The Litigation against the Malik Defendants. A Stipulation of Dismissal as to these claims shall be prepared and executed by the FDIC-R and the Malik Defendants. Within thirty (30) days of the Malik Defendants' receipt of the executed Stipulation of Discontinuance of The Litigation with Prejudice, the Malik Defendants shall deliver the Settlement Funds to the FDIC-R in the manner prescribed in Section 1B of this

Agreement. Thereafter, the Malik Defendants shall file the Stipulation of Dismissal, provided however, that the Malik Defendants shall defer from filing the Stipulation of Dismissal and agree not to file such until after the Malik Defendants have delivered the Settlement Funds to the FDIC-R.

Section 3: Mutual Releases.

A. Release of the Malik Defendants 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 the Malik Defendants, their insurer, AGLIC, 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 or could have been asserted in The Litigation.

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

Effective simultaneously with the release in Section 3A above, the Malik Defendants on their own behalf, and on behalf of their insurer, AGLIC, representatives, successors, assigns and attorneys hereby release and discharge 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-R.

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 against any other party in the Litigation not expressly released by this Agreement.

Section 4: 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. The Malik Defendants acknowledge that in determining to settle the claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided by the Malik Defendants. If the Malik Defendants intentionally failed to disclose, or intentionally misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, the Malik Defendants agree to cooperate fully with the FDIC-R to transfer their interest in the asset to the

FDIC-R and to sign any and all documents necessary to transfer their interest in the asset to the FDIC-R. Moreover, if the Malik Defendants have intentionally failed to disclose or materially misstated 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 release granted to the Malik Defendants as null and void; (b) the FDIC-R may sue the Malik Defendants for damages, an injunction, and specific performance for the breach of this Agreement; and (c) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against the Malik Defendants. The Malik Defendants agree that if they have intentionally failed to disclose, or intentionally materially misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, the Malik Defendants consent to the reinstatement of FDIC-R's claims and waives any statute of limitations defense that would bar any of the FDIC-R's claims against them.

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.

Federal Deposit Insurance Corporation, as Receiver for AmTrust Bank

(b)(6)

Date:

7/13/2012

[Redacted Signature Box]

Malik & Associates, P.C.

Date

7/2/12

By

[Redacted Signature Box]

(b)(6)

Pankaj Malik

Date

7/2/12

By

[Redacted Signature Box]

(b)(6)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR AMTRUST BANK,

Case No.: 09-cv-4805  
(KAM) (JMA)

*Plaintiff,*

-against-

**STIPULATION OF  
DISCONTINUANCE  
WITH PREJUDICE**

PANKAJ MALIK, et al.,

*Defendants,*

X  
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IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the parties and attorneys of record in the above-entitled action, that whereas no party is an infant, incompetent person for whom a committee has been appointed, or conservatee, and no person not a party has interest in the subject matter of this action, the above-entitled action is hereby discontinued with prejudice as against the Defendants PANKAJ MALIK and MALIK & ASSOCIATES, P.C.

Dated: New York, New York  
July 12, 2012

FURMAN KORNFELD & BRENNAN LLP

THOMPSON HINE LLP

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

A. Michael Furman, Esq.  
Izabell Lemkhen, Esq.  
*Attorneys for Defendants*  
PANKAJ MALIK and MALIK &  
ASSOCIATES, P.C.  
61 Broadway, 26<sup>th</sup> Floor  
NY, NY 10006  
Tel: (212) 867-4100  
Fax: (212) 867-4118  
File No.:

By:

William W. Jacobs, Esq.  
*Attorney for Plaintiff*  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114  
Tel: (216) 566-5533

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**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of this 15<sup>th</sup> day of September, 2011, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), and PrimeLending, a PlainsCapital Company ("PrimeLending") (FDIC-R and PrimeLending may each be referred to herein as a "Party" and collectively as the "Parties").

**WHEREAS:**

On December 4, 2009, the Office of Thrift Supervision closed AmTrust Bank, Cleveland, Ohio, previously known as Ohio Savings Bank (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 its assets.

On or about July 26, 2010, FDIC-R initiated a lawsuit entitled *Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland Ohio v. Daniel Koenn, an individual, and PrimeLending, a Plains Capital Company*, United States District Court Case Number CV10-5528-RGK (VBKx) (hereinafter, the "Action"). On or about May 12, 2011, the FDIC-R filed the First Amended Complaint in the Action, which asserted a claim for relief for breach of contract against PrimeLending.

In the Action, FDIC-R alleged that PrimeLending and the Bank entered into a Master Correspondent Loan Purchase Agreement dated May 8, 2007 (the "Contract").

In the Action, FDIC-R further alleged that, pursuant to the terms of the Contract, PrimeLending delivered to the Bank the following residential mortgage loans: a mortgage loan to  in the principal amount of \$620,000 (the  Loan") which was secured

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by a deed of trust recorded against the real property located at [redacted] Pomona, CA; (b)(6)

(b)(6) and two mortgage loans to [redacted] in the principal amounts of \$545,600 and \$136,400

(b)(6) (collectively, the [redacted] Loan") which were secured by deeds of trust recorded against the real

(b)(6) property located at [redacted] Pomona, CA.

In the Action, FDIC-R asserted that, pursuant to the Contract, PrimeLending was obligated to indemnify FDIC-R for certain deficiencies relating to the [redacted] Loan and the (b)(6)

(b)(6) [redacted] Loan.

PrimeLending denies the cause of action alleged against it in the Action.

To avoid the expense and uncertainty of continued litigation, the Parties desire to enter into this Agreement.

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, on or before September 19, 2011, PrimeLending shall pay to the FDIC-R the total sum of Four Hundred Seventy Five Thousand Dollars and no/cents (\$475,000.00) (the "Settlement Payment"). The Settlement Payment shall be made by wire transfer made payable to "Mortgage Recovery

Law Group Client Trust Account," Account Number: [redacted] Routing Number: (b)(4)

(b)(4) [redacted] Reference: PrimeLending Settlement.

B. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subparagraph A above ("Settlement Payment Due Date"), interest shall accrue at

the rate of 5% per annum, until the date of full payment. In addition, if the FDIC-R does not receive the Settlement Payment in full on or before the Settlement Payment Due Date, 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); and/or
2. enforce this Agreement and, in such event, Primelending agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; and/or
3. declare this Agreement null and void, move to vacate any dismissal order, to which Primelending agrees to consent, and re-institute the Action on the FDIC-R's claims; and/or
4. seek any other relief available to it in law or equity.

**SECTION II: Stipulation and Dismissal.**

At any time after FDIC-R receives the fully-executed Agreement and full Settlement Payment, plus any accrued interest if applicable, PrimeLending's counsel may instruct the FDIC-R's counsel to file a Stipulation of Dismissal of the Action, with prejudice (the "Stipulation"), with each party to bear its own costs and attorneys' fees. Upon receipt of such instruction from PrimeLending's counsel, the FDIC-R's counsel shall file the Stipulation within five (5) business days.

At the request of PrimeLending, the FDIC-R agrees to delay the filing of the Stipulation

of Dismissal of the Action so as to allow PrimeLending time to subpoena third parties for deposition in the Action, including but not limited to [redacted] PrimeLending agrees to take reasonable steps to subpoena any third parties for deposition as soon as possible in light of the deadlines associated with the November 15, 2011 trial date. PrimeLending further agrees that if such depositions are not completed in time for the FDIC-R to avoid costs associated with trial-related deadlines or court appearances, or if the court so instructs, the FDIC-R is entitled to file the Stipulation of Dismissal of the Action with prejudice after providing PrimeLending five (5) business days notice. The FDIC-R agrees to provide to PrimeLending any non-privileged documents produced by [redacted] to the FDIC-R in connection with the Action.

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**SECTION III: Releases.**

Each Party acknowledges that this Agreement applies to all claims or causes of action for all 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 the other Party relating to the [redacted] Loan or [redacted] Loan or arising from the [redacted] Loan or [redacted] Loan. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

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Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer

(b)(6) additional damages relating to the [ ] Loan or [ ] Loan or arising out of the [ ] Loan (b)(6)

(b)(6) or [ ] Loan, including relating to claims and causes of action that were or could have been

(b)(6) asserted relating to the [ ] Loan or [ ] Loan, or any facts or circumstances related to the

(b)(6) [ ] Loan or [ ] Loan, that Party will not be able to make any claim against the other

Party for those damages, injuries, or loss. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in PARAGRAPH III.C., the FDIC-R, for itself and its employees, successors, and assigns hereby releases and discharges PrimeLending and its respective employees, officers, directors, representatives, heirs, executors, administrators, attorneys, shareholders, affiliates (including, but not limited to, PlainsCapital Bank and PlainsCapital Corporation), 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 (hereinafter, "Claims") arising out of, or relating

(b)(6) to, the [ ] Loan and the [ ] Loan.

B. PrimeLending's Release.

Effective simultaneously with the release in PARAGRAPH III.A. above, PrimeLending, on behalf of itself and its respective employees, officers, directors, representatives, heirs, executors, administrators, attorneys, shareholders, affiliates, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, heirs,

executors, administrators, attorneys, shareholders, affiliates, successors and assigns, from any

and all Claims arising out of, or relating to, the [ ] Loan and [ ] Loan.

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C. Exceptions to Release by FDIC-R.

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:

1. against Primelending arising out of any transactions or loans not relating to the [ ] Loan and [ ] Loan, including transactions or loans which arose out of any other existing or failed financial institutions other than AmTrust Bank; and
2. which are not expressly released in PARAGRAPH III.A. above.

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D. Limitations on Release.

1. 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 and/or the United States Attorney's Office for any federal judicial district. Should the Department of Justice and/or the United States Attorney bring such a claim, the FDIC-R 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, subject to offset by the Settlement Payment described in PARAGRAPH I.A. above.

2. This Agreement is binding on the Federal Deposit Insurance Corporation in its capacity as Receiver for AmTrust Bank, Cleveland, Ohio. Therefore, where the Federal Deposit Insurance Corporation is not acting in its capacity as Receiver for AmTrust Bank, Cleveland, Ohio, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation.

**SECTION V: Insolvency.**

A. Insolvency.

PrimeLending 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 PrimeLending 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.B. above, and/or otherwise permitted by law.

**SECTION VI: Termination.**

In the event the FDIC-R exercises its right to declare this Agreement null and void as provided herein in PARAGRAPH I.B.3, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, August 25, 2011.

**SECTION VII: 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:

Vanessa H. Widener  
Anderson, McPharlin & Connors LLP  
444 South Flower Street, 31st Floor  
Los Angeles, CA 90071-2901

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Direct: (213) 236-1613  
Main Phone: (213) 688-0080  
Main Fax: (213) 622-7594

If to Primelending:

Robert Beall, Esq.  
Brian Farrell, Esq.  
Sheppard Mullin Richter & Hampton LLP  
650 Town Center Dr., 4<sup>th</sup> Floor  
Costa Mesa, CA 92626  
(p) (714) 513-5100  
(f) (714) 513-5130

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**SECTION VIII: 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, employees, 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, Primelending agrees to cooperate fully with the FDIC-R in

connection with an action that is expressly required of PrimeLending 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 (if relating to an action expressly required of PrimeLending under this Agreement) shall consist of:

- a. producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R to be relevant to the Bank;
- b. making themselves available upon request by the FDIC-R at reasonable times and places for interviews regarding facts relevant to the Bank;
- c. appearing to testify, upon request by the FDIC-R on matters related to the Bank, without the necessity of subpoena;
- d. signing truthful affidavits upon request by the FDIC-R, regarding any matter relevant to the Bank.

H. 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 California, without regard to its conflicts of laws.

I. 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.

J. 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.

K. 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.

[SIGNATURES ON FOLLOWING PAGE]

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.

Approved as to form and content:

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

**Primelending, a Plains Capital Company**

(b)(6) By:

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

Name: Patrick M. McGruick

Name: \_\_\_\_\_

Title: Counsel

Title: \_\_\_\_\_

Date: 9/16/11

Date: \_\_\_\_\_

Approved as to form:   
DATED: September 15, 2011

**ANDERSON, McPHARLIN & CONNERS LLP**

(b)(6) \_\_\_\_\_

VVanessa H. Widener  
Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio

DATED: September \_\_\_\_, 2011

**SHEPPARD, MULLIN, RICHTER & HAMPTON LLC**

By: \_\_\_\_\_  
**Robert Beall**  
Attorneys for Defendant Primelending, a Plains Capital Company

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.

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

**PrimeLending, a Plains Capital Company**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By:

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Name: SCOTT BROWN

Title: VICE PRESIDENT

Date: 4-15-11

Approve as to form and content:

DATED: September \_\_, 2011

ANDERSON, McPHARLIN & CONNERS LLP

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

Vanessa H. Widener

Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio

DATED: September 16, 2011

SHEPPARD MULLIN RICHTER HAMPTON LLC

(b)(6)

By:

Robert Beall

Attorneys for Defendant PrimeLending, a Plains Capital Company

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases (“Agreement”) is made this 10th day of January, 2011 by, between and among the Federal Deposit Insurance Corporation, in its capacity as receiver for AmTrust Bank (“FDIC-R”), Commonwealth Land Title Insurance Company (“Commonwealth”), Icon Title Agency LLC (“Icon”) (Commonwealth and Icon, together, the “Settling Defendants”), and Jan Kiderman, an individual. Each of FDIC-R, Icon and Commonwealth are parties in a case captioned *FDIC as Receiver for AmTrust Bank v. The Mortgage Zone Inc., et al.*, Case No: 2:08-CV-03369 (E.D.N.Y.) (“The Litigation”).

**RECITALS**

WHEREAS, in August 2008, AmTrust Bank (“AmTrust” or the “Bank”) commenced The Litigation against numerous borrowers, its closing attorney Dean Reskakis, its mortgage broker The Mortgage Zone Inc., and other individuals and entities alleged to be involved in the origination of mortgages using improper flip transactions and straw buyers, including claims against Icon and Commonwealth related to the issuance of title insurance and title commitments for such mortgages; and

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. Among the assets to which the FDIC-R succeeded were any and all of the Bank’s claims, demands, and causes of action, including those claims asserted in The Litigation; and

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

WHEREAS, Icon has denied the allegations asserted against it for breach of fiduciary duty and for negligence; 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, 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 the other, as follows:

Section 1. Payment to the FDIC-R.

A. As an essential covenant and condition to this Agreement, Icon has agreed to pay the FDIC-R the sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00), and Commonwealth has agreed to pay the FDIC-R the sum of Fifty Thousand Dollars (\$50,000.00) (the "Settlement Funds") within 30 days of the execution of the Agreement..

B. Within 30 days of the execution of the Agreement, the Settling Defendants shall deliver their respective Settlement Funds, as detailed above, to the FDIC-R by direct wire transfer into an account designated by FDIC-R or by check transmitted pursuant to FDIC-R's written instructions. If the Settlement Funds, or any portion thereof, are not received by the FDIC-R within 30 days of execution of the Agreement, interest upon any unpaid portion of the Settlement Funds will accrue at a rate of 6% per annum commencing on the 31st day after execution of the Agreement through the date of full payment.

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 received by the FDIC-R within 30 days of the execution of this Agreement, then the FDIC-R shall have the right, in its sole discretion, to enforce this Agreement, and the defaulting party shall be responsible for its portion of the Settlement Funds, and all fees, including attorney fees, incurred by the FDIC-R in enforcing the agreement. The parties further acknowledge and consent to the jurisdiction of Magistrate Judge Cott for enforcement of this Agreement in connection with his continuing role in the settlement of this matter and of the litigation styled *Executive Risk Indemnity Inc. v. Icon Title Agency, LLC*, Case No: 1:10 CV 02483 (S.D.N.Y.).

Section 2. 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, the FDIC-R shall dismiss with prejudice all of its claims in the Litigation against Commonwealth and Icon; Commonwealth shall dismiss with prejudice all of its claims against the FDIC-R and Icon; and Icon shall dismiss with prejudice all of its claims against the FDIC-R and Commonwealth. A stipulation of dismissal with prejudice as to these claims shall be prepared and executed by the FDIC-R, Commonwealth, and Icon within 30 days after receipt of the Settlement Funds by the FDIC-R, and filed with the court thereafter.

Section 3. Limited Mutual Releases.

A. Release of the Settling Defendants and Jan Kiderman by the FDIC-R.

Effective upon receipt of the Settlement Funds by the FDIC-R in the amount specified in Section 1, the FDIC-R (the "Releaser"), hereby knowingly and voluntarily waives, discharges and releases forever Icon and Commonwealth, including their related companies,

predecessors, successors, predecessor and successor entities, subsidiaries, affiliates, directors, officers, employees, attorneys, insurers, agents and assigns, and Jan Kiderman individually, his heirs, executors, administrators, representatives, attorneys, successors and assigns, (collectively the "Releasees") from any and all actions, causes of action, suits, debts, dues, sum of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever in law or equity, including attorneys fees', disbursements, claims for sanctions and rights of subrogation, which against the Releasees, the Releasor ever had, now has or hereinafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date hereof, limited to any and all claims solely related to the allegations and claims made by FDIC-R in The Litigation and arising out of the specific facts and specific circumstances alleged in The Litigation.

B. Release of the FDIC-R by Settling Defendants and Jan Kiderman.

Effective simultaneously with the release in Section 3A, each of the Settling Defendants on its own behalf, and on behalf of each of the Settling Defendants' their related companies, predecessor and successor entities, subsidiaries, affiliates, directors, officers, employees, shareholders, owners, partners, agents, insurers, representatives, agents, attorneys, successors and assigns, and Jan Kiderman individually, his heirs, executors, administrators, representatives, attorneys, successors and assigns, (collectively, the "Releasors"), all hereby knowingly and voluntarily waive, discharge and release forever the FDIC-R (the "Releasee") from any and all actions, causes of action, suits, debts, dues, sum of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever in law or equity, including

attorneys fees', disbursements, claims for sanctions and rights of subrogation, which against the Releasees, the Releasor ever had, now has or hereinafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date hereof, limited to any and all claims solely related to the allegations and claims made by the FDIC-R in The Litigation and arising out of the specific facts and specific circumstances alleged in the Litigation.

C. Release of Icon and Jan Kiderman by Commonwealth.

Effective simultaneously with the release granted in Section 3A, Commonwealth, its insurers, representatives, agents, attorneys, successors and assigns (the "Releasor") hereby releases and discharges Icon, its insurers, representatives, agents, attorneys, successors and assigns, Jan Kiderman individually, his heirs, executors, administrators, representatives, attorneys, successors and assigns (collectively, the "Releasee"), from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, which against the Releasee, the Releasor ever had or now has, limited to any and all claims solely related to claims made by the FDIC-R in The Litigation, with respect to the properties detailed in FDIC-R's claims in The Litigation.

Icon and Jan Kiderman acknowledge that this Agreement, and specifically this Release, is limited to The Litigation. Icon and Jan Kiderman acknowledge that there may be additional claims made by Commonwealth related to Icon's and Jan Kiderman's actions but unrelated to the specific claims made by the FDIC-R in The Litigation. This Agreement and Release does not in any way affect Commonwealth's right, if any, to pursue such claims against Icon and Jan Kiderman, or Icon's and Jan Kiderman's rights to defend against such claims.

D. Release of Commonwealth by Icon and Jan Kiderman.

Effective simultaneously with the release granted in Section 3A above, Icon, its insurers, representatives, agents, attorneys, successors and assigns, and Jan Kiderman individually, his heirs, executors, administrators, representatives, attorneys, successors and assigns, (collectively, the "Releasers"), hereby release and discharge Commonwealth, related companies, predecessors, successors, predecessor and successor entities, assigns, subsidiaries, affiliates, directors, officers, employees, attorneys, insurers and agents, (the "Releasee"), from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, which against the Releasee, the Releaser ever had or now has, limited to any and all claims solely related to claims made by the FDIC-R in The Litigation, with respect to the properties detailed in the FDIC-R's Claims in The Litigation.

E. Express Reservation of Claims By The FDIC-R

Notwithstanding any other provision of 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/or
- ii. Which are not expressly released in Section 3A.

F. Express Reservation of Claims By Commonwealth

Notwithstanding any other provision of this Agreement, Commonwealth 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/or
- ii. Which are not expressly released in Section 3B and/or 3C.

Section 4. 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 and that this Agreement is not an admission or evidence of any 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 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 insurers, representatives, agents, heirs, executors, administrators, attorneys, 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 New York.

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

F. 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, her, or its 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.

Federal Deposit Insurance Corporation as  
Receiver for AmTrust Bank

Date: January 10, 2011

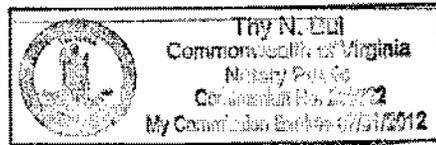
By

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SWORN TO BEFORE ME and subscribed in my presence this 10<sup>th</sup> day of  
January, 2011.

(b)(6)

Notary Public



Commonwealth Land Title Insurance  
Company

Date January 10, 2011

By

[Redacted Signature]

(b)(6)

DAVID GOLB  
Sr. Vice President

SWORN TO BEFORE ME and subscribed in my presence this 10<sup>th</sup> day of  
January, 2011.

[Redacted Signature]

(b)(6)

Notary Public/  
JENNIFER S. CLARK  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 12/27/2014

Icon Title Agency, LLC

Date January 13, 2011

By

(b)(6)

*Jan ROBERMAN, Marketing Member*

SWORN TO BEFORE ME and subscribed in my presence this 13<sup>th</sup> day of January 2011.

Notary Public

(b)(6)

VERONICA TORRES  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01T08086265  
QUALIFIED IN KINGS COUNTY  
COMMISSION EXPIRES OCTOBER 15, 2013

Jan Kiderman

(b)(6)



Date: January 13, 2011

SWORN TO BEFORE ME and subscribed in my presence this 13<sup>th</sup> day of January, 2011.

Notary Public



(b)(6)

VERONICA TORRES  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01T08085285  
QUALIFIED IN KINGS COUNTY  
COMMISSION EXPIRES OCTOBER 15, 2013

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Release ("Agreement") is made this 17<sup>th</sup> day of August, 2012 by, between and among the following undersigned Parties: the Federal Deposit Insurance Corporation, in its capacity as receiver for AmTrust Bank ("FDIC-R"), and Jordan S. Katz ("Katz") and Law Offices of Jordan S. Katz, P.C. ("Katz, PC").

**RECITALS**

WHEREAS, in August, 2008, AmTrust Bank ("AmTrust") initiated litigation against numerous borrowers, its closing attorney Dean Reskakis ("Reskakis"), its mortgage broker, The Mortgage Zone Inc., and other individuals and entities alleged to be involved in the origination of mortgages using improper flip transactions and straw buyers in a case captioned *FDIC, as Receiver for AmTrust Bank v. The Mortgage Zone Inc., et al.*, Case No: 2:08-CV-03369 (E.D.N.Y.) ("The Litigation").

WHEREAS, The Litigation includes claims related to a mortgage loan made by AmTrust for the purported purchase of the property located at  in Howard Beach, NY (b)(6) ("The Property") by Nicola Hurry ("Hurry");

WHEREAS, on June 16, 2009, the United States District Court for the Eastern District of New York granted AmTrust an equitable lien (the "Lien") on The Property.

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 AmTrust, including those with respect to its assets and all of AmTrust's claims, demands, and causes of action, including those claims related to The Property;

WHEREAS, the FDIC-R represents and warrants that it is the current holder of the promissory note and mortgage executed by Hurry in connection with the mortgage loan and that neither the promissory note nor the mortgage have been assigned, sold, tendered, transferred, pledged or the like;

WHEREAS, in connection with the mortgage loan to Hurry for the purchase of The Property, Reskakis made an unsolicited deposit of \$211,067.05 into Katz, PC's bank account (the "Disbursement Funds"), even though neither Katz, PC nor Katz had anything whatsoever to do with Hurry's purchase of the property;

WHEREAS, neither Katz, PC nor Katz are parties to The Litigation;

WHEREAS, Katz and Katz, PC have denied any wrongdoing in connection with The Property and the Disbursement Funds;

WHEREAS, the FDIC-R has provided Katz, PC with written documentation of the Disbursement Funds and requested that Katz, PC return in full the Disbursement Funds to the FDIC-R;

WHEREAS, Katz, PC has acknowledged receipt of the Disbursement Funds;

WHEREAS, Katz, PC has retained an expert to perform a forensic examination of Katz, PC's account where the Disbursement Funds were deposited for the purpose of determining if the Disbursement Funds were or were not validly transferred out of the Katz, PC account (the "Forensic Examination"); 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 enter into this Agreement concerning disputes arising out of and related to the Disbursement Funds.

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:

1. Within one week of the complete execution and delivery of this Agreement, Katz, PC shall return the Disbursement Funds in the amount of \$211,067.05 payable to and delivered 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 and mailed to: counsel for FDIC-R at P.O. Box 971774, Dallas, Texas 75397-1774; or, for overnight delivery to: JPMorgan Chase (TX1-0006), Attn: FDIC Receivership Lock Box #971774, 14800 Frye Road, 2nd Floor, Fort Worth, Texas 76155 (hereafter, the "Katz PC Payment").

2. If the Katz PC Payment is not made within one week of the complete execution and delivery of this Agreement, this Agreement shall be deemed cancelled, void and of no force or effect.

3. Release of Katz and Katz PC by the FDIC-R. Effective upon the receipt of the Disbursement Funds by the FDIC-R, the FDIC-R hereby releases and discharges Katz, Katz, PC, (the "Releasees") and each of their constituent members, principals, partners, heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which the FDIC-R ever had, now has, or hereafter can, shall or may have against the Releasees for any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Agreement limited to the claims which arise from or related to 1306 Myrtle Avenue, Howard Beach, New York and/or the

unsolicited deposit of \$211,067.05 by Dean Reskakis into the bank account of Katz, PC. This Agreement does not release any other person or entity other than Releasees nor does this Agreement release any claims other than the claims identified herein.

4. Release of the FDIC-R by Katz and Katz PC. Effective simultaneously with the release in Section 3 above, Katz and Katz PC, on their own behalves, and on behalf of their heirs, executors, administrators, representatives, assigns, insurers, and attorneys, hereby release and discharge 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 Property or the Disbursement Funds, except that the FDIC-R is not released from any claim by Katz and/or Katz PC against FDIC-R which is based upon the FDIC-R's breach of any of FDIC-R's representations and warranties made in this Agreement.

5. No Admission of Liability. The Parties each acknowledge and agree that the matters set forth in this Agreement constitute a settlement and compromise of disputed claims and that this Agreement is not an admission of, or evidence of, any liability of any of them regarding any claim.

6. Execution in Counterparts. This Agreement may be executed in counterparts by facsimile or electronically mailed signatures which shall have the same force and effect as original signatures and such counterparts, when taken together, shall constitute one single and binding Agreement.

7. 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.

8. 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.

9. For the period of seven days, from the date when this Agreement becomes effective to the date that the Katz PC Payment is made, or if not made, the date when this Agreement is canceled, FDIC-R shall not commence any action or like proceeding against Katz and/or Katz, PC.

10. The "WHEREAS" provisions of this Agreement are contractual obligations and are not merely recitals.

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.

Federal Deposit Insurance Corporation, as Receiver for AmTrust Bank

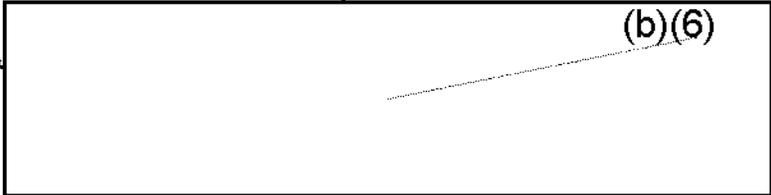
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Date: 8/7/2012

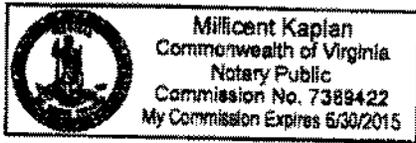


COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON

On 7 AUG, 2012, before me personally came Patrick M. McGarrick counsel to the Federal Deposit Insurance Company, to me known, and known to me to be the individual(s) described in and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.



(b)(6)



Jordan S. Katz

Date \_\_\_\_\_

\_\_\_\_\_  
Jordan S. Katz, Esq.  
Personally and on Behalf of the Law Office of  
Jordan S. Katz, P.C.

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2012, before me personally came \_\_\_\_\_, personally and on behalf of the Law Office of Jordan S. Katz, P.C., to me known, and known to me to be the individual(s) described in and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary

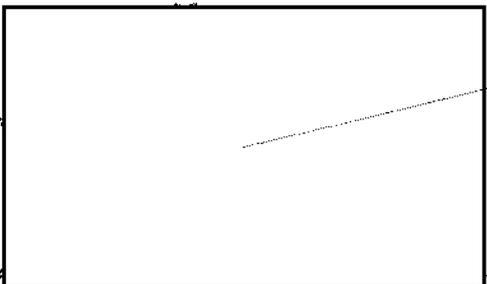
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representative on the dates hereinafter subscribed.

Federal Deposit Insurance Corporation, as Receiver for AmTrust Bank

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2012, before me personally came \_\_\_\_\_, an officer of Federal Deposit Insurance Company, to me known, and known to me to be the individual(s) described in and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.

Jor  (b)(6)

Date 8/13/12

Jordan S. Katz, Esq.  
Personally and on Behalf of the Law Office of  
Jordan S. Katz, P.C.

STATE OF New York  
COUNTY OF Suffolk

On 8-13, 2012, before me personally came Jordan S. Katz, personally and on behalf of the Law Office of Jordan S. Katz, P.C., to me known, and known to me to be the individual(s) described in and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.

 (b)(6)

**LESA BAGLIONE**  
Notary Public, State of New York  
No. 01346171788  
Qualified in Suffolk County  
Commission Expires July 31, 2013

**SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases ("Agreement") is made this 12<sup>th</sup> day of August, 2011 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 Nicola A. Hurry ("Hurry"); both of whom are parties in a case captioned *FDIC, as Receiver for AmTrust Bank v. The Mortgage Zone Inc., et al.*, Case No: 208-CV-03369 (E.D.N.Y.) ("The Litigation").

**R E C I T A L S**

WHEREAS, In August, 2008, AmTrust Bank initiated The Litigation against numerous borrowers, its closing attorney Dean Reskakis, its mortgage broker, The Mortgage Zone Inc., and other individuals and entities alleged to be involved in the origination of mortgages using improper flip transactions and straw buyers, including claims against Hurry for fraud and breach of contract related to one such mortgage;

WHEREAS, Hurry has denied the allegations asserted against her for fraud and breach of contract;

WHEREAS, Hurry has provided the FDIC-R with a sworn affidavit and other financial materials to demonstrate that she is indigent and unable to pay a judgment;

WHEREAS, the FDIC-R has relied upon the accuracy of the information provided by Hurry regarding her financial condition; 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. Hurry's Agreement to Cooperate.

A. As an essential covenant and condition to this Agreement, Hurry agrees to provide a sworn statement to the FDIC-R regarding the persons, entities, and events involved in the Litigation.

B. Hurry further agrees to cooperate fully with the FDIC-R in the ongoing Litigation and any future litigation 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 2. Stipulations and Dismissals.

Upon execution of this Agreement by each of the undersigned Parties, the FDIC-R shall dismiss with prejudice all of its claims in the Litigation against Hurry. The FDIC-R shall prepare and execute a stipulation of dismissal with prejudice as to these claims within 30 days after receipt of the sworn statement by Hurry.

Section 3. Mutual Releases.

A. Release of Hurry by the FDIC-R.

Effective upon receipt of the sworn statement specified in Section 1 above, the FDIC-R hereby releases and discharges Hurry, her 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 arise from or relate to The Litigation.

B. Release of the FDIC-R by Hurry.

Effective simultaneously with the release in Section 3A above, Hurry, on her own behalf, and on behalf of her heirs, executors, administrators, representatives, assigns, insurers, 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.

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 3A, 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 4. 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 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. Hurry acknowledges that in determining to settle the claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided Hurry. If Hurry failed to disclose, or misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, Hurry 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 Hurry 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 release granted to Hurry as null and void; (b) the FDIC-R may sue Hurry for damages, an injunction, and specific performance for the breach of this Agreement; and (c) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against Hurry. Hurry agrees that if she has failed to disclose, or misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, Hurry consents to the reinstatement of FDIC-R's claims and waives any statute of limitations defense that would bar any of the FDIC-R's claims against her.

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.

Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

(b)(6)

Date:

8/12/2011

[Redacted Signature Box]

Nicola Hurry

Date \_\_\_\_\_

\_\_\_\_\_

11605699

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.

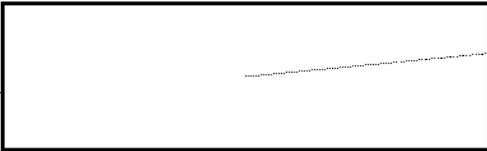
Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

Date: \_\_\_\_\_

\_\_\_\_\_

Nicola Hurry

Date 8/12/2011

\_\_\_\_\_  \_\_\_\_\_

(b)(6)

11605699

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of this 18<sup>th</sup> day of January, 2012, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), and Paramount Equity Mortgage, Inc. ("PEM") (individually, the FDIC-R and PEM 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 its assets.

PEM and the Bank entered into a Master Correspondent Loan Purchase Agreement dated January 11, 2006 ("Contract"). Pursuant to the terms of the Contract, PEM sold to the Bank various residential mortgage loans. The Bank's assets now belonging to the FDIC-R include any and all of the Bank's claims, demands, and causes of action, including all of the Bank's claims related to any and all loans PEM sold under the Contract to the Bank ("Loans").

A dispute has arisen between the Parties with respect to claims by the FDIC-R to PEM for repurchase and/or indemnity on certain of the Loans based on alleged breaches of representations and warranties set forth in the Contract (hereinafter any and all present and future claims by the FDIC-R against PEM under the Contract of an obligation to repurchase or

indemnify for losses associated with the Loans is referred to as the "Claims"). 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, on or before February 10, 2012, PEM shall pay the FDIC-R the total sum of Two Hundred Thousand Dollars (\$200,000) (the "Settlement Payment"). The Settlement Payment shall be due on or before either: (1) February 10, 2012; or, (2) five (5) business days following PEM's actual receipt of a copy of this Agreement which has been signed by an authorized representative of the FDIC-R, whichever date shall last occur. The Settlement Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number:

(b)(4)  Routing Number  Reference: AmTrust/Paramount Equity Mortgage Settlement.

B. If the FDIC-R does not receive the Settlement Payment in full on or before the date 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. enforce this Agreement and, in such event, PEM agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. declare this Agreement null and void, move to vacate any dismissal order, to which PEM agrees to consent, and institute an action on the FDIC-R's claims, as to which PEM waives any and all objections and defenses and covenant and agree not to assert any objections and defenses; and/or

4. 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-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, or declare the Agreement null and void.

#### **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 arising from the Claims. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer

additional damages arising out of the Claims, the claims and causes of action that were or could have been asserted relating to the Claims, or any facts or circumstances related to the Claims, that Party will not be able to make any claim against the other Party for those damages.

Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in PARAGRAPH II.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges PEM 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 to the facts and circumstances giving rise to the Claims.

B. PEM's Release.

Effective simultaneously with the release in PARAGRAPH II.A. above, PEM, 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 its employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to PEM, arising out of or relating to the facts and circumstances alleged by 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 PEM 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 (for the avoidance of doubt, the provisions of this paragraph II(C)1(a) do not apply to or concern any or all of the following: (i) any Loan endorsed by PEM as part of the sale of that Loan pursuant to the Contract; and/or (ii) any guarantee given by PEM or any of its employees, officers, directors, representatives, successors or assigns in connection with the Contract);

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; or

d. arising out of any existing or failed financial institutions other than the Bank.

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, 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 III: Insolvency.**

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

PEM warrants as to payments made by or on its or 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 PEM 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: Termination.**

In the event the FDIC-R 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-R, the parties to this Agreement shall be deemed to have  
reverted to their respective status as of 5:00 p.m. Eastern Time, December 1, 2011.

**SECTION V: Notices.**

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

If to the FDIC-R:

Michael Deibick  
Mortgage Recovery Law Group  
700 North Brand Boulevard, Suite 830  
Glendale, California 91203  
(818) 630-7905

(b)(6) [Redacted]

If to PEM:

Matt Dawson, EVP  
Paramount Equity Mortgage, Inc.  
4202 Douglas Blvd, Suite 100  
Granite Bay, CA 95746

(b)(6) [Redacted]

**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, 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, PEM agrees 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.

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 California, 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.

**FDIC as Receiver for AmTrust  
Bank, Cleveland, Ohio**

**Paramount Equity Mortgage, Inc.**

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

By:  (b)(6)

Name: \_\_\_\_\_

Name:  (b)(6)

Title: \_\_\_\_\_

Title: EVP

Date: \_\_\_\_\_

Date: 2/8/2012

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.

**FDIC as Receiver for AmTrust  
Bank Cleveland Ohio**

**Paramount Equity Mortgage, Inc.**

(b)(6)

By:

[Redacted Signature Box]

By:

\_\_\_\_\_

Name:

Patrick M. McGuirk

Name:

\_\_\_\_\_

Title:

Counsel

Title:

\_\_\_\_\_

Date:

February 9, 2012

Date:

\_\_\_\_\_

**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.

Federal Deposit Insurance Corporation, as  
Receiver for AmTrust Bank

(b)(6)

Date:

9/19/2012

Artisan Mortgage Company, Inc

Date

9/12/12

By

(b)(6)

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of this 15<sup>th</sup> day of September, 2011, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R"), and PrimeLending, a PlainsCapital Company ("PrimeLending") (FDIC-R and PrimeLending may each be referred to herein as a "Party" and collectively as the "Parties").

**WHEREAS:**

On December 4, 2009, the Office of Thrift Supervision closed AmTrust Bank, Cleveland, Ohio, previously known as Ohio Savings Bank (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 its assets.

On or about July 26, 2010, FDIC-R initiated a lawsuit entitled *Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland Ohio v. Daniel Koenn, an individual, and PrimeLending, a Plains Capital Company*, United States District Court Case Number CV10-5528-RGK (VBKx) (hereinafter, the "Action"). On or about May 12, 2011, the FDIC-R filed the First Amended Complaint in the Action, which asserted a claim for relief for breach of contract against PrimeLending.

In the Action, FDIC-R alleged that PrimeLending and the Bank entered into a Master Correspondent Loan Purchase Agreement dated May 8, 2007 (the "Contract").

In the Action, FDIC-R further alleged that, pursuant to the terms of the Contract, PrimeLending delivered to the Bank the following residential mortgage loans: a mortgage loan to  in the principal amount of \$620,000 (the  Loan") which was secured

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by a deed of trust recorded against the real property located at [redacted] Pomona, CA; (b)(6)

(b)(6) and two mortgage loans to [redacted] in the principal amounts of \$545,600 and \$136,400

(b)(6) (collectively, the [redacted] Loan") which were secured by deeds of trust recorded against the real

(b)(6) property located at [redacted] Pomona, CA.

In the Action, FDIC-R asserted that, pursuant to the Contract, PrimeLending was obligated to indemnify FDIC-R for certain deficiencies relating to the [redacted] Loan and the (b)(6) [redacted] Loan.

PrimeLending denies the cause of action alleged against it in the Action.

To avoid the expense and uncertainty of continued litigation, the Parties desire to enter into this Agreement.

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, on or before September 19, 2011, PrimeLending shall pay to the FDIC-R the total sum of Four Hundred Seventy Five Thousand Dollars and no/cents (\$475,000.00) (the "Settlement Payment"). The Settlement Payment shall be made by wire transfer made payable to "Mortgage Recovery Law Group Client Trust Account," Account Number: [redacted] Routing Number: (b)(4) [redacted] Reference: PrimeLending Settlement.

B. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subparagraph A above ("Settlement Payment Due Date"), interest shall accrue at

the rate of 5% per annum, until the date of full payment. In addition, if the FDIC-R does not receive the Settlement Payment in full on or before the Settlement Payment Due Date, 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); and/or
2. enforce this Agreement and, in such event, Primelending agrees to jurisdiction in Federal District Court in California and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; and/or
3. declare this Agreement null and void, move to vacate any dismissal order, to which Primelending agrees to consent, and re-institute the Action on the FDIC-R's claims; and/or
4. seek any other relief available to it in law or equity.

**SECTION II: Stipulation and Dismissal.**

At any time after FDIC-R receives the fully-executed Agreement and full Settlement Payment, plus any accrued interest if applicable, PrimeLending's counsel may instruct the FDIC-R's counsel to file a Stipulation of Dismissal of the Action, with prejudice (the "Stipulation"), with each party to bear its own costs and attorneys' fees. Upon receipt of such instruction from PrimeLending's counsel, the FDIC-R's counsel shall file the Stipulation within five (5) business days.

At the request of PrimeLending, the FDIC-R agrees to delay the filing of the Stipulation

of Dismissal of the Action so as to allow PrimeLending time to subpoena third parties for deposition in the Action, including but not limited to [redacted] PrimeLending agrees to take reasonable steps to subpoena any third parties for deposition as soon as possible in light of the deadlines associated with the November 15, 2011 trial date. PrimeLending further agrees that if such depositions are not completed in time for the FDIC-R to avoid costs associated with trial-related deadlines or court appearances, or if the court so instructs, the FDIC-R is entitled to file the Stipulation of Dismissal of the Action with prejudice after providing PrimeLending five (5) business days notice. The FDIC-R agrees to provide to PrimeLending any non-privileged documents produced by [redacted] to the FDIC-R in connection with the Action.

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**SECTION III: Releases.**

Each Party acknowledges that this Agreement applies to all claims or causes of action for all 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 the other Party relating to the [redacted] Loan or [redacted] Loan or arising from the [redacted] Loan or [redacted] Loan. Each Party hereby expressly waives application of *California Civil Code §1542* and any other similar statute or rule.

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Each Party certifies that they have read and understood the following provisions of *California Civil Code §1542*, which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges that the significance and consequence of its waiver of *California Civil Code §1542* is that even if any Party should eventually suffer

(b)(6) additional damages relating to the [ ] Loan or [ ] Loan or arising out of the [ ] Loan (b)(6)

(b)(6) or [ ] Loan, including relating to claims and causes of action that were or could have been

(b)(6) asserted relating to the [ ] Loan or [ ] Loan, or any facts or circumstances related to the

(b)(6) [ ] Loan or [ ] Loan, that Party will not be able to make any claim against the other

Party for those damages, injuries, or loss. Furthermore, each Party acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in PARAGRAPH III.C., the FDIC-R, for itself and its employees, successors, and assigns hereby releases and discharges PrimeLending and its respective employees, officers, directors, representatives, heirs, executors, administrators, attorneys, shareholders, affiliates (including, but not limited to, PlainsCapital Bank and PlainsCapital Corporation), 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 (hereinafter, "Claims") arising out of, or relating

(b)(6) to, the [ ] Loan and the [ ] Loan.

B. PrimeLending's Release.

Effective simultaneously with the release in PARAGRAPH III.A. above, PrimeLending, on behalf of itself and its respective employees, officers, directors, representatives, heirs, executors, administrators, attorneys, shareholders, affiliates, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, representatives, heirs,

executors, administrators, attorneys, shareholders, affiliates, successors and assigns, from any

and all Claims arising out of, or relating to, the [ ] Loan and [ ] Loan.

(b)(6)

(b)(6)

C. Exceptions to Release by FDIC-R.

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:

1. against Primelending arising out of any transactions or loans not relating to the [ ] Loan and [ ] Loan, including transactions or loans which arose out of any other existing or failed financial institutions other than AmTrust Bank; and
2. which are not expressly released in PARAGRAPH III.A. above.

(b)(6)

D. Limitations on Release.

1. 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 and/or the United States Attorney's Office for any federal judicial district. Should the Department of Justice and/or the United States Attorney bring such a claim, the FDIC-R 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, subject to offset by the Settlement Payment described in PARAGRAPH I.A. above.

2. This Agreement is binding on the Federal Deposit Insurance Corporation in its capacity as Receiver for AmTrust Bank, Cleveland, Ohio. Therefore, where the Federal Deposit Insurance Corporation is not acting in its capacity as Receiver for AmTrust Bank, Cleveland, Ohio, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation.

**SECTION V: Insolvency.**

A. Insolvency.

PrimeLending 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 PrimeLending 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.B. above, and/or otherwise permitted by law.

**SECTION VI: Termination.**

In the event the FDIC-R exercises its right to declare this Agreement null and void as provided herein in PARAGRAPH I.B.3, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, August 25, 2011.

**SECTION VII: 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:

Vanessa H. Widener  
Anderson, McPharlin & Connors LLP  
444 South Flower Street, 31st Floor  
Los Angeles, CA 90071-2901

(b)(6)

Direct: (213) 236-1613  
Main Phone: (213) 688-0080  
Main Fax: (213) 622-7594

If to Primelending:

Robert Beall, Esq.  
Brian Farrell, Esq.  
Sheppard Mullin Richter & Hampton LLP  
650 Town Center Dr., 4<sup>th</sup> Floor  
Costa Mesa, CA 92626  
(p) (714) 513-5100  
(f) (714) 513-5130

(b)(6)

**SECTION VIII: 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, employees, 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, Primelending agrees to cooperate fully with the FDIC-R in

connection with an action that is expressly required of PrimeLending 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 (if relating to an action expressly required of PrimeLending under this Agreement) shall consist of:

- a. producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R to be relevant to the Bank;
- b. making themselves available upon request by the FDIC-R at reasonable times and places for interviews regarding facts relevant to the Bank;
- c. appearing to testify, upon request by the FDIC-R on matters related to the Bank, without the necessity of subpoena;
- d. signing truthful affidavits upon request by the FDIC-R, regarding any matter relevant to the Bank.

H. 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 California, without regard to its conflicts of laws.

I. 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.

J. 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.

K. 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.

[SIGNATURES ON FOLLOWING PAGE]

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.

Approved as to form and content:

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

**Primelending, a Plains Capital Company**

(b)(6) By:

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

Name: Patrick M. McGruick

Name: \_\_\_\_\_

Title: Counsel

Title: \_\_\_\_\_

Date: 9/16/11

Date: \_\_\_\_\_

Approved as to form:   
DATED: September 15, 2011

**ANDERSON, McPHARLIN & CONNERS LLP**

(b)(6)

**Vanessa H. Widener**  
Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio

DATED: September \_\_\_\_, 2011

**SHEPPARD, MULLIN, RICHTER & HAMPTON LLC**

By: \_\_\_\_\_  
**Robert Beall**  
Attorneys for Defendant Primelending, a Plains Capital Company

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.

**FDIC as Receiver for AmTrust Bank, Cleveland, Ohio**

**PrimeLending, a Plains Capital Company**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By:

(b)(6)

Name: SCOTT BROWN

Title: VICE PRESIDENT

Date: 4-15-11

Approve as to form and content:

DATED: September \_\_, 2011

ANDERSON, McPHARLIN & CONNERS LLP

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

Vanessa H. Widener

Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio

DATED: September 16, 2011

SHEPPARD MULLIN RICHTER HAMPTON LLC

(b)(6)

By:

Robert Beall

Attorneys for Defendant PrimeLending, a Plains Capital Company