

**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 [REDACTED] 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

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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:

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