

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

This Settlement Agreement and Mutual Releases ("Agreement") are made this 22nd day of March 2013 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 Defendant Morningstar Abstract, LLC ("Morningstar"), 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 Morningstar, several of AmTrust's mortgage brokers, its closing attorney, and other individuals and entities alleged to be involved in a purported mortgage fraud scheme concerning twenty (20) loans, including claims for conspiracy, fraud and negligence against Morningstar arising from its actions as title agent;

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, Morningstar has denied all allegations asserted against it in the Litigation;

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, Morningstar agrees to pay the FDIC-R the sum of Three Hundred Thousand Dollars (\$300,000.00) (the "Settlement Funds") to be paid within 30 days of execution by all parties of this Agreement. The FDIC-R and Morningstar agree that the Settlement Funds shall be allocated to the losses sustained by the FDIC-R relating to the following Subject Loans: (1) borrower [redacted] loan [redacted] (b)(4),(b)(6) [redacted] Jamaica, NY; (2) borrower [redacted] loan [redacted] [redacted] (b)(4),(b)(6) [redacted] Laurelton, NY; (3) borrower [redacted] loan [redacted] [redacted] Jamaica, NY; and (b)(4),(b)(6) (4) borrower [redacted] loan [redacted] [redacted] Hempstead, NY.

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, Morningstar 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 are not paid to the FDIC-R by Morningstar 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 Morningstar, 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.

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

Section 3: Mutual Releases.

A. Release of Morningstar 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 Morningstar, its representatives, officers, directors, employees, shareholders, members, successors, assigns attorneys and insurers, 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, including those that were asserted or could have been asserted in The Litigation, including, but not limited to, any rights of subrogation.

B. Release of the FDIC-R by Morningstar.

Effective simultaneously with the release in Section 3A above, Morningstar on its own behalf, and on behalf of its 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 those that were asserted or could have been asserted in 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. 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

[Redacted Signature Box]

(b)(6)  
Date: 3/22/2013

Morningstar Abstract, LLC

Date 3/20/13

By  (b)(6)