

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.

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

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 I.I.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
(818) 630-7905

(b)(6)

If to GEM:

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

(b)(6)

with a copy to:

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

(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

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**

Golden Empire Mortgage, Inc.

(b)(6)

By:

[Redacted Signature Box]

Name:

Patrick M. McGirk

Title:

Counsel

Date:

6/4/2012

By:

[Redacted Signature Box]

Name:

Paul L. Rosen

Title:

President

Date:

6-1-12

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