

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this 5th day of March, 2014, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R") and Commonwealth Land Title Insurance Company ("Commonwealth"). The FDIC-R and Commonwealth each 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 ("AmTrust"), was a depository institution organized and existing under the laws of the United States.

On December 4, 2009, the Office of Thrift Supervision closed the Bank 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 the Bank's claims, demands, and causes of action that are subject to this Agreement;

On October 8, 2008, AmTrust filed a lawsuit against Commonwealth in an action now captioned FDIC as Receiver for AmTrust Bank v. Commonwealth, Case No: 1:08-cv-02390 in the United States District Court for the Northern District of Ohio (the "Lawsuit"). AmTrust asserted claims for breach of contract and bad faith against Commonwealth (the "Claims") in connection with the alleged failure to honor title insurance policies for two residential mortgage loans (the "Subject Loans"). Commonwealth has denied all of the allegations of the Claims asserted against it.

One of the Subject Loans related to the purported purchase of the property located at [redacted] (b)(4),(b)(6)

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

(b)(4),(b)(6) assigned the loan number [redacted] (the "[redacted] Loan"). The other Subject Loan was related to

(b)(4),(b)(6) the purchase of the property located at [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] being loan number [redacted] (the "[redacted] Loan").

The Parties now deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further 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, Commonwealth shall pay the FDIC-R the total sum of Three Hundred Twelve Thousand Five Hundred Dollars (\$312,500.00) (the "Settlement Payment"). The Settlement Payment shall be made by check made payable to the FDIC as Receiver for AmTrust Bank.

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 at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. extend the period of time for payment, including interest accruing from the relevant Settlement Payment Due Date through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(3); or

2. enforce this Agreement and, in such event, Commonwealth agrees to jurisdiction in Federal District Court in the Northern District of Ohio 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. terminate this Agreement, move to vacate any dismissal order, to which Commonwealth agrees to consent, and re-institute an action on the FDIC-R's claims Commonwealth further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive all objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; 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: Assignment of Title Claims.

As an essential covenant and condition to this Agreement, the FDIC-R assigns to

Commonwealth any and all rights the FDIC-R has or may have had to pursue a claim under the

(b)(4),(b) ALTA title policy related to the [redacted] Loan, under policy number [redacted] dated August (b)(4)
(6)

21, 2003, and the ALTA title policy related to the [redacted] loan, under policy number (b)(4),(b)
(6)

(b)(4) [redacted] dated April 20, 2003.

SECTION III: Releases.

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 successors and assigns, hereby releases and discharges Commonwealth and its insurers, employees, officers, directors, representatives, heirs, executors, administrators, 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 Claims asserted in the Lawsuit and

(b)(4) ~~ALTA title policies numbered [] and []~~

B. Commonwealth's Release.

Effective simultaneously with the release in PARAGRAPH III.A. above, Commonwealth, on behalf of itself and its respective insurers, employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R, and its insurers, attorneys, employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Commonwealth, arising out of or relating to the Claims asserted in this Lawsuit.

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 Commonwealth, 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, AmTrust, other financial institutions, or any other person or entity, including without limitation any claims

acquired by FDIC-R as successor in interest to AmTrust or any person or entity other than AmTrust;

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 III.A above.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that 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 department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et. seq.*, if appropriate.

SECTION IV: Dismissal of Lawsuit.

Within thirty (30) days of receipt of the Settlement Payment, the FDIC-R shall file a notice of dismissal with prejudice of the Lawsuit.

If to the FDIC-R:

William W. Jacobs
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114
216) 408-3837

(b)(6)

[Redacted]

If to Commonwealth:

David A. Freeburg, Esq.
McPadden & Freeburg Co. L.P.A.
6690 Beta Drive, Suite 320
Mayfield Village, Ohio 44143

(b)(6)

[Redacted]

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 Claims in the Lawsuit, 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.

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 Ohio, without regard to its conflicts of laws.

H. Jurisdiction to Enforce.

The Parties consent and agree to the continuing jurisdiction of the United States District Court for the Northern District of Ohio for actions necessary to enforce the terms of this Agreement.

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. No Confidentiality.

The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

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**

**Commonwealth Land Title Insurance
Company**

(b)(6)

By:

[Redacted Signature Box]

By:

[Redacted Signature Box]

(b)(6)

Name: Patrick M. McGuirk

Name: Cynthia Baines

Title: Counsel

Title: VP. Senior Claims Counsel

Date: 3/5/2014

Date: 2/25/2014