

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this \_\_\_\_th day of December, 2013, by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation, as receiver of AmTrust Bank ("FDIC-R"), on the one hand, and Group One Mortgage, Inc., ("the Settling Defendant") (individually, the FDIC-R and the Settling Defendant may be referred to herein as "Party" and collectively as the "Parties").

### RECITALS

#### WHEREAS:

Prior to December 4, 2009, AmTrust Bank ("Bank") was a depository institution organized and existing under the laws of the United States;

On December 4, 2009, the Bank was closed by the Office of Thrift Supervision ("OTS") and pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R as receiver 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 as receiver succeeded were the Bank's claims, demands, and causes of actions arising out of mortgage loans submitted for purchase or funding by mortgage brokers;

On December 3, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendant and Robert Bashwiner (collectively, "Defendants"), which complaint was amended on February 15, 2013 and again on May 28, 2013. Those claims for damages are now pending in the United States District Court for the Southern District of Florida in *FDIC v. Group One Mortgage, Inc., et. al.*, Case No. 9:12-cv-81300-KAM (the "Action"). The Defendants have denied all liability for the FDIC-R's claims, specifically including without limitation, any allegation of wrongdoing made by the FDIC-R concerning the loan that is the subject of the Action, which such allegations are not evidence or proof of any of the matters asserted.

The undersigned Parties deem it in their best interests to enter into this Agreement to

avoid the uncertainty, trouble, 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. The foregoing premises are incorporated as terms of this Agreement.
- B. As an essential covenant and condition to this Agreement, the Settling Defendant agrees to pay the FDIC-R the sum of \$200,000.00 ("the Settlement Funds"), as a full and final settlement for all claims, compensatory damages, statutory damages, attorneys' fees and any other damages of any nature.
- C. Within forty five (45) days of the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than February 15, 2014, the Settlement Funds shall be delivered to FDIC-R by check made payable to the Welbaum Guernsey Client Trust Account and delivered to record counsel for the FDIC-R. Receipt of the Settlement Funds by record counsel for the FDIC-R shall be deemed receipt by the FDIC-R.
- D. In the event that the Settlement Funds are not delivered to the FDIC-R (or its counsel) by February 15, 2014, interest shall accrue on all unpaid amounts at the rate of 5% per annum from January 31, 2014 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R by February 15, 2014, as a result of the FDIC-R's failure to execute this Agreement, no interest shall accrue until the first business day following the date this Agreement is executed by the FDIC-R and a copy is delivered to record counsel for the Settling Defendant.
- E. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC-R by the close of business on February 15, 2014, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds to declare this Agreement null

and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds, and/or shall have the right to enforce this Agreement against the Settling Defendant, except however, the provisions of this section, I(E), shall not apply if the failure to pay the Settlement Funds is due to the FDIC-R's failure to sign this Agreement.

## **SECTION II: Stipulation and Dismissal**

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus accrued interest, if any, the FDIC-R shall dismiss the Action. The undersigned Parties agree to enter a stipulation providing that the dismissal set forth above shall be with prejudice, with each party to bear its own attorney's fees and costs as these were originally incurred, and that all pending motions shall be denied as moot.

## **SECTION III: Releases**

### **A. Release of Defendants by FDIC-R.**

Effective upon receipt in full of the Settlement Funds plus accrued interest, if any, and dismissal described in SECTIONS I and II above, and except as provided in PARAGRAPH III.D., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Defendants (*i.e.*, Settling Defendant and Robert Bashwiner), and their respective heirs, executors, personal representatives, beneficiaries, administrators, representatives, agents, attorneys, assigns, insurers, successors, predecessors, officers, directors, shareholder, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the performance, nonperformance, or manner of performance of the Defendants' respective functions, duties and actions in brokering the loan at issue in the Action, including without limitation the causes of action alleged in the Action.

### **B. Release of FDIC-R by the Settling Defendant.**

Effective simultaneously with the release granted in PARAGRAPH III.A., and except as provided in PARAGRAPH III.D., the Defendants (*i.e.*, Settling Defendant and Robert Bashwiner), on behalf of themselves individually, and their respective heirs, executors,

administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Defendants' respective functions, duties and actions in brokering the loan at issue in the Action, including without limitation the causes of action alleged in the Action.

D. Express Reservations From Releases.

1. Notwithstanding any other provision, by this Agreement, the neither party releases, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims, causes of action and defenses:

a. arising out of any liability incurred, if any, by the Settling Defendant (including, but not limited to, Robert Bashwiner) as a 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 in this Agreement; and

c. which are not expressly released in Paragraph III.A or III.B., above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC-R in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this 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, the United States Attorney's Office for the Southern District of Florida

or any other 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 IV: Representations and Acknowledgements**

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 that this Agreement is not an admission or evidence of liability by any of them regarding any claim, and that Defendants (including the Settling Defendant and Robert Bashwiner) expressly deny any and all liability for the conduct alleged in the Action, and expressly deny any and all wrongdoing with respect to the loan at issue in the Action. The Settling Defendant has agreed to settle and pay the Settlement Funds for prudent business purposes and to avoid the cost, expense and disruption associated with continued and protracted litigation.

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. Any signature evidenced by pdf or facsimile shall have the same legal force and effect as an original ink of the same signature.

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 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, 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 Florida.

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

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 conclude the Action, and to otherwise perform the terms of this Agreement.

G. Forum Selection: The Parties agree that any suit or litigation arising from or in connection with this Agreement or the enforcement of its terms shall be brought exclusively in the Federal District Court in the Southern District of Florida.

H. Attorneys' Fees: In the event of litigation or arbitration in connection with the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to the payment of its attorneys' fees, costs and expenses incurred in connection therewith.

I. 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 representatives on the dates hereinafter subscribed.

Federal Deposit Insurance  
Corporation as Receiver for  
AmTrust Bank

(b)(6)

By:

[Redacted Signature]

Name: Patrick M. McGuirk

Title: Counsel

Date: 12/12/2013

Group One Mortgage, Inc.

(b)(6)

By:

[Redacted Signature]

Name: Lori A. Hetzel

Title: President

Date: 12/16/13