

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank (“FDIC-R”), and the Defendants Terrance G. Broom and B&B Appraisal, Inc. (collectively the “Settling Defendants”), (individually, the FDIC-R and the Settling Defendants 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 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 actions that are subject to this Agreement;

On December 3, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendants and others. Those claims for damages are now pending in the United States District Court for the District of Colorado in *FDIC v. Broom*, Case Number 12-cv-03145-PAB-MFH (the “Action”). The Settling Defendants have denied liability in the Action.

The undersigned Parties 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 May 21, 2014, the Settling Defendants, jointly and severally, agree to pay the FDIC-R the sum of \$97,500 (“the Settlement Payment”), or within thirty days of receiving the Tax Identification No. for the Mortgage Recovery Law Group Client Trust Account, whichever is later.

B. The Settling Defendants shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the Mortgage Recovery Law Group Client Trust Account or by certified or cashier’s check drawn upon a depository institution acceptable to FDIC-R and made payable to the Mortgage Recovery Law Group Client Trust Account.

In the event that the Settlement Funds are not delivered to the FDIC-R (or its counsel) by June 25, 2014, interest shall accrue on all unpaid amounts at the rate of 5% per annum from June 25, 2014 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC-R by June 25, 2014, as a result of the FDIC-R’s failure to execute this Agreement, no interest shall accrue until five days after the FDIC-R executes the Agreement and provides it to the Settling Defendants (or its counsel).

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, 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 the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment; or
2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in United States District Court in Colorado 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 the Agreement, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and re-institute the action on the FDIC-R’s claims. The Settling Defendants further agree to waive any statute of limitations that would bar any of the

FDIC-R's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed, although it is specifically agreed that the Settling Defendants would retain all of their rights and defenses which existed prior to this Agreement; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

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

Within ten business days after the latter of (1) full execution of this Agreement by each of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by all Parties hereto, in the Action.

#### **SECTION III: Releases**

##### **A. The FDIC-R's Releases.**

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants and their respective heirs, executors, trustees, administrators, officers, employees, agents, representatives, insurers, successors, and assigns, 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, which were or could have been brought in the Action, whether known or unknown.

##### **B. The Settling Defendants' Release.**

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, attorneys, insurers, successors, and assigns, hereby

release and discharge the FDIC-R, and its employees, officers, directors, representatives, attorneys, 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 Settling Defendants' respective functions, duties and actions as alleged in the Action.

C. Exceptions from Releases 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 the Settling Defendants 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 such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. against any person or entity not expressly released by the FDIC-R in this Agreement.

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 Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

#### **SECTION IV: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties 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.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, 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 her counsel.

#### **SECTION V: Reasonable Cooperation**

A. The 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.

#### **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 except to enforce its terms.

B. FDIC-R and its agents have investigated the conduct of the Settling Defendants with respect to the subject matter of the Complaint filed by FDIC-R in the Action and is aware of no other claims, including any claims of the type referenced in Section III. C, above, which

FDIC-R may own against the Settling Defendants with respect to the subject matter of the Complaint.

C. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

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.

E. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

Paul A. Levin, Esq.  
Mortgage Recovery Law Group,  
700 N. Brand Blvd., Suite 830  
Glendale, CA 91203  
(818) 630-7901

(b)(6)

If to the Settling Defendants:

Jason D. Melichar, Esq.  
Wilson Elser Moskowitz Edelman & Dicker LLP  
1512 Larimer Street Suite 550  
Denver, CO 80202  
(303) 572-5320

(b)(6)

With a courtesy copy to:

Keith Boughton, Esq.  
Elder & Phillips, P.C.  
562 White Avenue  
Grand Junction, CO 81501  
(970) 243-0946

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 and supersedes any prior agreements or understandings. This Agreement may

not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

G. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation 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.

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
AMTRUST BANK

(b)(6) Date: 6/9/2014 By:   
Title: Counsel  
Print Name: Patrick M. McGuirk

B&B APPRAISAL, INC.

(b)(6) Date: 6/20/14 By:   
Title: President  
Print Name: Mary Jane Broom

TERRANCE G. BROOM

(b)(6) Date: 6/20/14 By:   
Print Name: Terrance G. Broom