

This Settlement Agreement (“Agreement”) is entered into between the United States acting through the United States Department of Justice (“Department of Justice”), along with the States of California, Delaware, Illinois, Maryland, and New York, and the Commonwealth of Kentucky, acting through their respective Attorneys General (collectively, “the States”), and Bank of America Corporation, Bank of America, N.A., and Banc of America Mortgage Securities, as well as their current and former subsidiaries and affiliates (collectively, “Bank of America”). The United States, the States, and Bank of America are collectively referred to herein as “the Parties.”

### **RECITALS**

A. The United States Attorney’s Offices for the District of New Jersey, the Western District of North Carolina, the Northern District of Georgia, and the Central District of California conducted investigations of the packaging, origination, marketing, sale, structuring, arrangement, and issuance of residential mortgage-backed securities (“RMBS”) and collateralized debt obligations (“CDOs”) by Bank of America; Countrywide Financial Corporation, Countrywide Home Loans, Inc., and Countrywide Securities Corporation, as well as their current and former subsidiaries and affiliates (collectively, “Countrywide”); Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Mortgage Lending, Inc., and Merrill Lynch Mortgage Investors, Inc., as well as their current and former subsidiaries and affiliates (collectively, “Merrill Lynch”); and First Franklin Financial Corporation, as well as its current and former subsidiaries and affiliates (“First Franklin”). Based on these investigations, the United States believes that there are potential legal claims by the United States against Bank of America, Countrywide, Merrill Lynch and First Franklin for violations of federal law. Furthermore, based on its investigation, the United States Attorney’s Office for the Western District of North Carolina filed a civil action,

*United States v. Bank of America Corp., et al.*, No. 13-cv-446-MOC (W.D.N.C.), against Bank of America seeking a civil monetary penalty pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. § 1833a.

B. The States, based on their independent investigations of the same conduct, believe that there are potential legal claims by California, Delaware, Illinois, Maryland, Kentucky, and New York against Bank of America, Countrywide, Merrill Lynch, and First Franklin for state law violations in connection with the packaging, origination, marketing, sale, structuring, arrangement, and issuance of RMBS and CDOs.

C. The United States Attorney’s Office for the Southern District of New York has conducted investigations of Countrywide and Bank of America’s origination and sale of defective residential mortgage loans to the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, “government-sponsored enterprises” or “GSEs”), including investigating allegations asserted by:

- i. [SEALED];
- ii. [SEALED]; and
- iii. [SEALED].

Based on these investigations, the United States believes that there are potential legal claims by the United States against Bank of America for violations of federal law.

D. The United States Attorney’s Office for the Western District of North Carolina has also conducted an investigation of Bank of America and Countrywide submitting false claims to the Federal Housing Administration (“FHA”), an agency within the United States Department of Housing and Urban Development, including investigating allegations asserted by Mortgage Now, Inc., which filed a complaint on or about June 7, 2012, under the *qui tam*

provisions of the False Claims Act against Bank of America alleging *inter alia*, that Bank of America and Countrywide submitted claims to FHA for reimbursement of amounts Bank of America and Countrywide already had recovered from third-party correspondent lenders. As part of this investigation, the United States Attorney's Office for the Western District of North Carolina examined whether Bank of America settled repurchase claims with Freddie Mac and Fannie Mae concerning residential mortgages for which Bank of America or Countrywide received compensation from third party correspondent lenders that Bank of America did not disclose to Freddie Mac and Fannie Mae.

E. The United States Attorney's Office for the Eastern District of New York has conducted an investigation of Bank of America's origination of loans insured by the FHA from May 1, 2009 through March 31, 2012.

F. The United States Department of Housing and Urban Development has conducted an investigation of Bank of America's performance as Master Subservicer under Contract Number C-OPC-23289 with the Government National Mortgage Association ("Ginnie Mae").

G. Bank of America, Countrywide, Merrill Lynch, and/or certain affiliates thereof have resolved claims filed by the Federal Deposit Insurance Corporation ("FDIC") as Receiver for 1st Pacific Bank of California, the FDIC as Receiver for Affinity Bank, the FDIC as Receiver for CF Bancorp, the FDIC as Receiver for Citizens National Bank, the FDIC as Receiver for Colonial Bank, the FDIC as Receiver for Eurobank, the FDIC as Receiver for First Banking Center, the FDIC as Receiver for First Dupage Bank, the FDIC as Receiver for Franklin Bank, S.S.B., the FDIC as Receiver for Guaranty Bank, the FDIC as Receiver for Horizon Bank, the FDIC as Receiver for Imperial Capital Bank, the FDIC as Receiver for Independent Bankers Bank, the FDIC as Receiver for Los Padres Bank, the FDIC as Receiver for Palos Bank & Trust

Co., the FDIC as Receiver for Prosperan Bank, the FDIC as Receiver for SCB Bank, the FDIC as Receiver for Security Savings Bank, the FDIC as Receiver for ShoreBank, the FDIC as Receiver for Statewide Bank, the FDIC as Receiver for Strategic Capital Bank, the FDIC as Receiver for United Western Bank, F.S.B., the FDIC as Receiver for USA Bank, the FDIC as Receiver for Venture Bank, and the FDIC as Receiver for Warren Bank (the FDIC in its capacity as receiver for each of the Failed Banks referred to as “FDIC-R”), and claims filed by Bank of America, N.A. The terms of the resolution of those claims are memorialized in a separate agreement, attached hereto as Exhibit A.

H. Bank of America and Merrill Lynch have reached an agreement in principle to resolve claims by the United States Securities and Exchange Commission (“SEC”). The terms of the resolution of those claims are reflected in separate documents, attached hereto as Exhibit B.

I. Bank of America acknowledges the facts set out in the Statement of Facts set forth in Annex 1, attached hereto and hereby incorporated.

J. In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

### **TERMS AND CONDITIONS**

1. **Payment.** Bank of America shall pay a total amount of \$9,650,000,000.00 to resolve pending and potential legal claims in connection with the Covered Conduct, as defined below (the “Settlement Amount”), of which \$5,020,000,000.00 shall be paid as a civil monetary penalty. As set out in Paragraph 1(A)(i), \$5,000,000,000.00 of the Settlement Amount will be paid as a penalty recovered pursuant to FIRREA, 12 U.S.C. § 1833a. The remainder will be paid as set out in Paragraphs 1(A)(ii) to 1(A)(ix), and Paragraphs 1(B) to 1(G). As set out in the

settlement documents attached hereto as Exhibit B, \$20,000,000.00 of the Settlement Amount will be paid as a penalty in connection with the claims referenced in Recital Paragraph H.

A. Within sixty (60) days of receiving written payment processing instructions from the Department of Justice, Office of the Associate Attorney General, Bank of America shall pay \$8,216,840,000.00 of the Settlement Amount by electronic funds transfer to the Department of Justice.

- i. \$5,000,000,000.00, and no other amount, is a civil monetary penalty recovered pursuant to FIRREA, 12 U.S.C. § 1833a. It will be deposited in the General Fund of the United States Treasury.
- ii. \$, and no other amount, is in settlement of the claims of the United States identified in Recital Paragraph C and *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America.
- iii. \$, and no other amount, is in settlement of the claims of the United States identified in Recital Paragraph C and *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America.
- iv. \$, and no other amount, is in settlement of the claims of the United States identified in Recital Paragraph D and *United States ex rel. Mortgage Now, Inc. v. Bank of America*, No. 12-cv-00360 (W.D.N.C.).
- v. \$, and no other amount, is in settlement of the claims of the United States identified in Recital Paragraph C and *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America.
- vi. \$, and no other amount, is in settlement of Bank of America's submission of claims through December 31, 2013 for FHA loans originated by Bank of

America or Countrywide on or after May 1, 2009. Any amount that FHA receives will be deposited into the Federal Housing Administration's Capital Reserve Account.

vii. \$, and no other amount, is in settlement of potential contractual claims related to Bank of America's and Countrywide's performance as Master Subservicer under Contract Number C-OPC-23289 with Ginnie Mae. Any amount that Ginnie Mae receives will be deposited into the Government National Mortgage Association's Financing Account.

viii. \$, is paid by Bank of America in settlement of the claims of the FDIC identified in Recital Paragraph G, pursuant to the settlement agreement attached hereto as Exhibit A, the terms of which are not altered or affected by this Agreement.

ix. \$, and no other amount, is paid by Bank of America in settlement of the claims of the SEC identified in Recital Paragraph H, pursuant to the settlement documents attached hereto as Exhibit B, the terms of which are not altered or affected by this Agreement.

B. \$, and no other amount, will be paid by Bank of America to the State of California pursuant to Paragraph 8, below, and the terms of written payment instructions from the State of California, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of California, Office of the Attorney General.

C. \$, and no other amount, will be paid by Bank of America to the State of Delaware pursuant to Paragraph 9, below, and the terms of written payment instructions from the State of

Delaware, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of Delaware, Office of the Attorney General.

D. \$, and no other amount, will be paid by Bank of America to the State of Illinois pursuant to Paragraph 10, below, and the terms of written payment instructions from the State of Illinois, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of Illinois, Office of the Attorney General.

E. \$, and no other amount, will be paid by Bank of America to the Commonwealth of Kentucky pursuant to Paragraph 11, below, and the terms of written payment instructions from the Commonwealth of Kentucky, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the Commonwealth of Kentucky, Office of the Attorney General.

F. \$, and no other amount, will be paid by Bank of America to the State of Maryland pursuant to Paragraph 12, below, and the terms of written payment instructions from the State of Maryland, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of Maryland, Office of the Attorney General.

G. \$300,000,000.00, and no other amount, will be paid by Bank of America to the State of New York pursuant to Paragraph 13, below, and the terms of written payment instructions from the State of New York, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of New York, Office of the Attorney General.

2. **Consumer Relief.** In addition, Bank of America shall provide \$7,000,000,000.00 worth of consumer relief as set forth in Annex 2, attached hereto and hereby incorporated as a term of this Agreement, to remediate harms resulting from the alleged unlawful conduct of Bank of America. The value of consumer relief provided shall be calculated and enforced pursuant to the terms of Annex 2. An independent monitor will determine whether Bank of America has satisfied the obligations contained in Annex 2 (such monitor to be Eric Green), and Bank of America will provide the Monitor with all documentation the Monitor needs to do so, excluding all privileged information. All costs associated with said Monitor shall be borne solely by Bank of America; notwithstanding the fact that Bank of America bears the costs associated with the Monitor, the Monitor shall be fully independent of Bank of America. Bank of America will refrain from retaining the Monitor to represent Bank of America in any capacity prior to two years after the date upon which Bank of America satisfies the Consumer Relief obligations set forth in Annex 2. Bank of America will also refrain from engaging the Monitor as a mediator in any matter to which Bank of America is a party until Bank of America satisfies the Consumer Relief obligations set forth in Annex 2. Bank of America shall also pay \$490,160,000.00 (such amount to be referred to as the “Total Tax Relief Payment Amount”) of the Settlement Amount, in addition to the \$7,000,000,000.00 worth of consumer relief, for the payment of consumer tax liability as a result of consumer relief as set forth in Annex 3, attached hereto and incorporated as a term of this Agreement. Such \$490,160,000.00 will be deposited into an escrow account (such account to be referred to as the “Tax Relief Payment Account”) that is a Qualified Settlement Fund in accordance with Treasury Regulation 1.458B-1(a), and all aspects of the payments therefrom shall be handled by the Monitor provided for herein and shall not be the responsibility of Bank of America.

3. **Covered Conduct.** “Covered Conduct” as used herein is defined as:

A. The creation, origination, pooling, structuring, arranging, formation, packaging, marketing, underwriting, sale, or issuance prior to January 1, 2009 by the Released Entities (as defined further below) of the RMBS and CDOs identified in Annex 4, attached hereto and hereby incorporated. Covered Conduct includes representations, disclosures, or non-disclosures to RMBS investors about, or made in connection with, the underlying residential mortgage loans, where the representation, disclosure, or non-disclosure involves information about or obtained during the process of originating, acquiring, securitizing, underwriting, or servicing residential mortgage loans in the RMBS identified in Annex 4. Covered Conduct also includes representations, disclosures, or non-disclosures made in connection with the activities set forth above about the CDOs identified in Annex 4, attached hereto and hereby incorporated. Covered Conduct as set forth in this Paragraph 3(A) does not include: (i) representations or non-disclosures made in connection with the trading of RMBS or CDOs, except to the extent that the representations, disclosures, or non-disclosures are in the offering materials for the underlying RMBS or CDOs listed in Annex 4, attached hereto and hereby incorporated; (ii) any conduct where Bank of America, Countrywide, Merrill Lynch, and First Franklin acted only in the role of trustee; or (iii) the servicing of residential mortgage loans, except representations or non-disclosures to investors in the RMBS listed in Annex 4 about servicing, or information obtained in the course of servicing, such loans.

B. Covered Conduct includes the administration of RMBS and CDOs identified in Annex 4, attached hereto and hereby incorporated, as of the Execution Date, to the extent such administration relates to any actions or inactions with respect to representation and warranties or the cure, substitution, or repurchase (or failure to do or seek any of the same) of residential

mortgage loans. Covered Conduct includes representations, disclosures, or non-disclosures to trustees made in connection with the activities set forth above about the residential mortgage loans included in the RMBS identified in Annex 4, attached hereto and hereby incorporated.

C. The underwriting and origination of residential mortgage loans by Bank of America and Countrywide that were sold by Bank of America and Countrywide prior to December 31, 2013 to the GSEs, including the appraisal of properties in connection with the origination of such residential mortgage loans, and representations by Bank of America and Countrywide made prior to December 31, 2013 to the GSEs regarding the underwriting, origination, and quality control with respect to those residential mortgage loans.

D. The repurchase, investigation, and reporting obligations of Bank of America, Countrywide, and First Franklin from January 1, 2006 to December 31, 2013, under the representations and warranties contained in the GSE Seller/Servicer Guide with respect to concurrent residential mortgage loans.

E. The origination, including the appraisal of properties in connection with the origination of such residential mortgage loans, underwriting, quality control, and endorsement of single-family residential mortgage loans by Bank of America and Countrywide, as set forth more fully in Annex 1, originated on or after May 1, 2009, on which claims were submitted on or before December 31, 2013 to the FHA.

F. All claims as alleged in the following actions relating to the Covered Conduct described in Paragraphs 3(A)-3(E), *supra*:

- i. *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;

- ii. *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;
- iii. *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America; and
- iv. *United States ex rel. Mortgage Now, Inc. v. Bank of America*, No. 12-cv-00360 (W.D.N.C.), relating to the submission of claims by Bank of America or Countrywide on or before December 31, 2013 to FHA for residential mortgages that: (i) Bank of America or Countrywide acquired from third party correspondent lenders and (ii) Bank of America or Countrywide received any form of compensation from third party correspondent lenders that was not disclosed to FHA. Covered Conduct relating to this matter also includes Bank of America settling repurchase claims with Freddie Mac and Fannie Mae concerning residential mortgages for which Bank of America or Countrywide received compensation from third party correspondent lenders in connection with actual or anticipated losses on those mortgages that Bank of America did not disclose to Freddie Mac and Fannie Mae. Notwithstanding anything to the contrary, all conduct described in this Paragraph 3(F)(iv) shall be deemed Covered Conduct under this Agreement.

G. Bank of America's and Countrywide's performance as Master Subservicer under Contract Number C-OPC-23289, with Ginnie Mae for the period March 1, 2009 through August 31, 2014.

H. The underwriting and origination of residential mortgage loans, including the appraisal of properties in connection with the origination of such residential mortgage loans, by Bank of America, Countrywide, Merrill Lynch, and First Franklin that were securitized by non-governmental entities in private label securitizations prior to January 1, 2009.

4. **Cooperation.** Until the date upon which all investigations and any prosecution arising out of the Covered Conduct are concluded by the Department of Justice, whether or not they are concluded within the term of this Agreement, Bank of America shall, subject to applicable laws or regulations: (a) cooperate fully with the Department of Justice (including the Federal Bureau of Investigation) and any other law enforcement agency designated by the Department of Justice regarding matters arising out of the Covered Conduct; (b) assist the Department of Justice in any investigation or prosecution arising out of the Covered Conduct by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use its best efforts to secure the attendance and truthful statements or testimony of any officer, director, agent, or employee of any of the entities released in Paragraph 5 at any meeting or interview or before the grand jury or at any trial or other court proceeding regarding matters arising out of the Covered Conduct; and (d) provide the Department of Justice, upon request, all non-privileged information, documents, records, or other tangible evidence regarding matters arising out of the Covered Conduct about which the Department or any designated law enforcement agency inquires.

5. **Releases by the United States.** Subject to the exceptions in Paragraph 15 (“Excluded Claims”), and conditioned upon Bank of America’s full payment of the Settlement Amount and Bank of America’s agreement, by executing this Agreement, to satisfy the terms in Paragraph 2 (“Consumer Relief”) and Paragraph 4 (“Cooperation”), the United States fully and finally

releases Bank of America, Countrywide, Merrill Lynch, and First Franklin, (“Released Entities”) and each of their respective successors and assigns:

- a. For the Covered Conduct contained in Paragraphs 3(A), 3(B), 3(C), 3(D), 3(E), and 3(F) from any civil claims the United States has for the Covered Conduct arising under FIRREA, 12 U.S.C. § 1833a; the False Claims Act, 31 U.S.C. §§ 3729, *et seq.*; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, *et seq.*; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.*; the Injunctions Against Fraud Act, 18 U.S.C. § 1345; common law theories of negligence, gross negligence, indemnification, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, and aiding and abetting any of the foregoing; or that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45.
  - b. For the Covered Conduct contained in Paragraph 3(H) from any civil claims the United States has for the Covered Conduct arising under FIRREA, 12 U.S.C. § 1833a.
6. **Releases by the FHA.** Subject to the exceptions in Paragraph 15 (“Excluded Claims”), and conditioned upon Bank of America’s full payment of the Settlement Amount relating to the submission of claims to the FHA (\$) and Bank of America’s agreement, by executing this Agreement, to satisfy the terms in Paragraph 2 (“Consumer Relief”) and Paragraph 4 (“Cooperation”), the United States Department of Housing and Urban Development, acting on behalf of FHA, fully and finally releases the Released Entities and their successors and assigns

from any monetary administrative claim the FHA has for the Covered Conduct described in Paragraphs 3(E) and 3(F), *supra*.

7. **Releases by the Ginnie Mae.** Subject to the exceptions in Paragraph 15 (“Excluded Claims”), and conditioned upon: (i) Bank of America’s full payment of the Settlement Amount relating to Ginnie Mae (\$) and (ii) Bank of America’s agreement, by executing this Agreement, to satisfy the terms in Paragraph 2 (“Consumer Relief”) and Paragraph 4 (“Cooperation), the United States Department of Housing and Urban Development, acting on behalf of Ginnie Mae, fully and finally releases the Released Entities and their successors and assigns from any civil or administrative monetary claim Ginnie Mae has against Bank of America for the Covered Conduct contained in Paragraph 3(G) under the common law theory of breach of contract.

8. **Releases by the California Attorney General.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned upon Bank of America’s full payment of the Settlement Amount (of which \$ will be paid to the Office of the California Attorney General, in accordance with written payment instructions from the California Attorney General, to remediate harms to the State, pursuant to California Government Code §§ 12650-12656 and 12658, allegedly resulting from unlawful conduct of the Released Entities), the California Attorney General fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that the California Attorney General has authority to bring, including but not limited to: California Corporate Securities Law of 1968, Cal. Corporations Code § 25000 *et seq.*, California Government Code §§ 12658 and 12660 and California Government Code §§ 12650-12656, common law theories of negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The

California Attorney General executes this release in her official capacity and releases only claims that the California Attorney General has the authority to release for the Covered Conduct contained in Paragraph 3(A). The California Attorney General agrees that no portion of the funds in this paragraph is received as a civil penalty or fine, including, but not limited to any civil penalty or fine imposed under California Government Code § 12651. The California Attorney General and Bank of America acknowledge that they have been advised by their attorneys of the contents and effect of Section 1542 of the California Civil Code (“Section 1542”) and hereby expressly waive with respect to this Agreement any and all provisions, rights, and benefits conferred by Section 1542.

9. **Releases by the State of Delaware.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which \$ will be paid to the State of Delaware, in accordance with written payment instructions from the State of Delaware, Office of the Attorney General, to remediate harms to the State allegedly resulting from unlawful conduct of the Released Entities), the Delaware Department of Justice fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that it has authority to bring, including but not limited to: 6 Del. C. Chapter 12 (the Delaware False Claims and Reporting Act), 6 Del. C. §§ 2511 *et seq.* (the Delaware Consumer Fraud Act), 6 Del. C. Chapter 73 (the Delaware Securities Act), and common law theories of negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The payment to the State of Delaware shall be used, to the maximum extent possible, for purposes of providing restitution and remediating harms to the State and its communities allegedly resulting

from unlawful conduct of the Released Entities, including efforts to address the mortgage and foreclosure crisis, financial fraud and deception, and housing-related issues. The State of Delaware agrees that no portion of the funds in this paragraph is received as a civil penalty or fine, including, but not limited to any civil penalty or fine imposed under 6 Del. C. § 1201 or § 2522.

10. **Releases by the State of Illinois.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which \$ will be paid to the State of Illinois, Office of the Attorney General, in accordance with the written payment instructions from the State of Illinois, Office of the Attorney General, to remediate harms to the State allegedly resulting from unlawful conduct of the Released Entities), the Illinois Attorney General of the State of Illinois fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that it has authority to bring or compromise, including but not limited to: Illinois Securities Law of 1953, 815 Ill. Comp. Stat. 5/1 *et seq.*, and common law theories of negligence, gross negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The State of Illinois agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

11. **Releases of the Commonwealth of Kentucky.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which \$ will be paid to the Commonwealth of Kentucky, in accordance with written payment instructions from the Commonwealth of Kentucky, Office of the Attorney General, to remediate harms to the State allegedly resulting from allegedly unlawful

conduct of the Released Entities), the Attorney General of the Commonwealth of Kentucky fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that it has the authority to bring or compromise, including but not limited to under: KRS 292.310-292.480 (Kentucky Securities Act), 367.110-367.300 (Kentucky Consumer Protection Act), and common law theories of negligence, gross negligence, recklessness, willful misconduct, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, gross negligence, recklessness, willful misconduct, and aiding and abetting or conspiracy regarding any of the foregoing, as well as claims of unfair, abusive, or deceptive practices. The Commonwealth of Kentucky agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

12. **Releases of the State of Maryland.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which \$ will be paid to the State of Maryland, in accordance with written payment instructions from the State of Maryland, Office of the Attorney General, to remediate harms to the State allegedly resulting from unlawful conduct of the Released Entities), the Attorney General of the State of Maryland ("Maryland Attorney General") fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that the Maryland Attorney General has authority to bring, including but not limited to: Maryland Securities Act, Md. Code Ann., Corps. & Assn's, §§ 11-101 *et seq.*, Maryland Consumer Protection Act, Com. Law §§ 13-101 *et seq.*, statutes and regulations in the nature of the False Claims Act or similar Laws, and common law theories of negligence, gross negligence, recklessness, willful misconduct, payment by mistake, unjust enrichment, money had

and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, indemnification, contribution, restitution, rescission, and aiding and abetting or conspiracy claims regarding any of the foregoing, as well as claims of unfair, abusive, or deceptive practices, but excluding any liability arising under the tax provisions of the Maryland Code and any claims that may arise in any non-enforcement legal action related to any Maryland governmental entity in its capacity as an investor. The Maryland Attorney General executes this release in his official capacity and releases only claims that the Maryland Attorney General has the authority to release for the Covered Conduct. The payment to the State of Maryland shall be made to the Maryland Attorney General, which shall hold the monies and distribute them as directed by the Maryland Attorney General for restitution to certain investors, including state and local governmental entities, and for costs incurred in connection with restitution, with any remaining funds to be credited to the Mortgage Loan Servicing Practices Settlement Fund to be used in accordance with Maryland law. The State of Maryland agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

13. **Releases by the State of New York.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which \$300,000,000.00 will be paid to the State of New York, in accordance with written payment instructions from the State of New York, Office of the Attorney General, to remediate harms to the State allegedly resulting from unlawful conduct of the Released Entities), the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York, fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that it has authority to bring, including but not limited to any such claim under: New York General

Business Law Article 23A, New York Executive Law § 63(12), and common law theories of negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The payment to the State of New York shall be used, to the maximum extent possible, for purposes of redeveloping and revitalizing housing and home ownership and rebuilding communities in the State, and for programs intended to avoid preventable foreclosures, to ameliorate the effects of the foreclosure crisis, to provide funding for housing counselors and legal assistance, housing remediation and anti-blight projects, to enhance housing code compliance efforts aimed at addressing blight and disinvestment, and to enhance efforts to remediate the effects of financial fraud or unfair or deceptive acts or practices. The State of New York agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

14. **Releases by the FDIC and the SEC.** The release of claims by the FDIC and the SEC are contained in separate settlement documents with Bank of America, attached as Exhibits A and B. Any release of claims by the FDIC and the SEC are governed solely by those separate settlement documents.

15. **Excluded Claims.** Notwithstanding the releases in Paragraphs 5-14 of this Agreement, or any other term(s) of this Agreement, the following claims are specifically reserved and not released by this Agreement:

- a. Any criminal liability;
- b. Any liability of any individual;
- c. Any liability of any person or entity other than the Released Entities and their successors and assigns;

- d. Any liability arising under Title 26 of the United States Code (the Internal Revenue Code);
- e. Any liability arising under Title XI of the Kentucky Revised Statutes.
- f. Any liability to or claims of the FDIC (in its capacity as a corporation, receiver, or conservator) and the SEC, except as expressly set forth in the separate agreements with those entities;
- g. Any claim related to compliance with the National Mortgage Settlement (“NMS”), or to compliance with the related agreements reached between the settling banks and individual states;
- h. Any liability to, or claims brought by, the Federal Reserve Board and its member institutions, and/or by the United States Department of the Treasury;
- i. Any liability to, or claims brought by, the Department of Veterans Affairs relating to whole loans insured, guaranteed, or purchased by the Department of Veterans Affairs;
- j. Any liability to, or claims brought by, Fannie Mae or Freddie Mac relating to whole loans insured, guaranteed, or purchased by Fannie Mae or Freddie Mac;
- k. Any administrative liability, including the suspension and debarment rights of any federal agency, except to the extent expressly released in Paragraphs 6 and 7;
- l. Any liability based upon obligations created by this Settlement Agreement;
- m. Any liability for the claims or conduct alleged in the following *qui tam* actions, and no setoff related to amounts paid under this Agreement shall be applied to any recovery in connection with any of these actions:

- (i) *United States ex rel. O'Donnell v. Bank of America Corp. et al.*, No. 12-cv-1422 (S.D.N.Y.);
  - (ii) *United States ex rel. Adams, et al. v. Aurora Loan Servs. LLC et al.*, No. 11-cv-00535 (D. Nev.) & 14-15031 (9th Cir.);
  - (iii) *United States, et al. ex rel. Szymoniak v. American Home Mortgage Servicing, Inc., et al.*, No. 10-cv-01465-JFA (D.S.C.), and *United States ex rel. Szymoniak v. ACE Securities Corp., et al.*, No. 13-cv-464-JFA (D.S.C.), to the extent any claims survive dismissal;
  - (iv) *United States ex rel. Fisher v. Bank of America, N.A.*, No. 13-cv-01913-TPG (S.D.N.Y.);
  - (v) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;
  - (vi) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;
  - (vii) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;
  - (viii) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;
  - (ix) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;
  - (x) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;
  - (xi) *In re [CONFIDENTIAL]*;
  - (xii) *United States ex rel. Armendariz v. Wiles, et al.*, No. 14-cv-00551 (D.D.C.); and
  - (xiii) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America.
- n. Any dispute, claim, or defense which may arise between any Relator and Bank of America in the matters identified in Paragraph 3(F) regarding attorneys' fees, expenses and costs of the Relator under 31 U.S.C. § 3730(d).

- o. Any liability arising under: the Fair Housing Act; the Equal Credit Opportunity Act; the Home Mortgage Disclosure Act; or any other statute or law that prohibits discrimination because of race, color, national origin, gender, disability, or any other protected status.
- p. Any claims related to the alleged manipulation of the London Interbank Offered Rate or other currency benchmarks.

16. **Releases by Bank of America.** Bank of America and any current or former affiliated entity and any of its respective successors and assigns fully and finally releases the United States and the States, and their officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Bank of America has asserted, could have asserted, or may assert in the future against the United States and the States, and their officers, agents, employees, and servants, related to the Covered Conduct to the extent released hereunder and the investigation and civil prosecution to date thereof.

17. **Waiver of Potential FDIC Indemnification Claims by Bank of America.** Bank of America hereby irrevocably waives any right that it otherwise might have to seek (and in any event agrees that it shall not seek) any form of indemnification, reimbursement or contribution from the FDIC in any capacity, including the FDIC in its Corporate Capacity or the FDIC in its Receiver Capacity for any payment that is a portion of the Settlement Amount set forth in Paragraph 1 of this Agreement or of the Consumer Relief set forth in Paragraph 2 of this Agreement, including payments to the United States, the States, and the SEC made pursuant to Paragraphs 1 and 2 of this Agreement.

18. **Waiver of Potential Defenses by Bank of America.** Bank of America and any current or former affiliated entity (to the extent that Bank of America retains liability for the Covered Conduct associated with such affiliated entity) and any of their respective successors and assigns waive and shall not assert any defenses Bank of America may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

19. **Unallowable Costs Defined.** All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Bank of America, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- a. the matters covered by this Agreement;
- b. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- c. Bank of America's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- d. the negotiation and performance of this Agreement; and
- e. the payment Bank of America makes to the United States pursuant to this Agreement, are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

20. **Future Treatment of Unallowable Costs.** Unallowable Costs will be separately determined and accounted for by Bank of America, and Bank of America shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

21. **Miscellaneous.**

- a. This Agreement is intended to be for the benefit of the Parties only and does not create any third-party rights.
- b. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey.
- c. The Parties acknowledge that this Agreement is made without any trial or adjudication or finding of any issue of fact or law, and is not a final order of any court or governmental authority.
- d. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
- e. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.
- f. Nothing in this Agreement in any way alters the terms of the NMS, or Bank of America's obligations under the NMS.
- g. Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for the purposes of the Internal Revenue laws, Title 26 of the United States Code.

- h. For the purposes of construing the Agreement, this Agreement shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any dispute.
- i. This Agreement, including all Annexes and Exhibits attached hereto, shall not apply to, or be used in, *United States ex rel. O'Donnell v. Bank of America Corp., et al.*, No. 12-cv-1422 (S.D.N.Y.).
- j. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.
- k. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
- l. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
- m. This Agreement is binding on Bank of America's successors, transferees, heirs, and assigns.
- n. All parties consent to the disclosure to the public of this Agreement by Bank of America, the United States, the States, the FDIC, and the SEC whose separate settlement agreements are referenced herein and attached as exhibits to this Agreement.
- o. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

For the United States:

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TONY WEST

Associate Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Phone: (202) 514-9500

Dated: \_\_\_\_\_

For Bank of America Corporation:

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Dated: \_\_\_\_\_

For the Department of Housing and Urban Development

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Carol J. Galante  
Assistant Secretary for Housing FHA  
Commissioner  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW  
Washington, DC 20410  
Tel: 202-708-2601  
Fax: 202-708-2580

For the Department of Housing and Urban Development

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Theodore W. Tozer  
President  
Government National Mortgage Association  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW  
Washington, DC 20410  
Tel: 202-708-0926  
Fax: 202-485-0206

For the California Department of Justice:

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KAMALA D. HARRIS  
California Attorney General  
California Department of Justice  
455 Golden Gate, Suite 1000  
San Francisco, CA 94102  
Phone: (415) 703-5500

Dated: \_\_\_\_\_

For the State of Delaware:

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JOSEPH R. BIDEN, III  
Attorney General for the State of Delaware  
Delaware Department of Justice  
Carvel State Office Building  
820 N. French Street  
Wilmington, DE 19801  
Phone: (302) 577-8338

Dated: \_\_\_\_\_

For the State of Illinois:

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LISA MADIGAN  
Attorney General State of Illinois  
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Springfield, IL 62706  
Phone: (217) 782-1090

Dated: \_\_\_\_\_

For the Commonwealth of Kentucky:

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JACK CONWAY  
Attorney General of Kentucky  
State Capitol, Suite 118  
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Frankfort, KY 40601  
Phone: (502) 696-5643

Dated: \_\_\_\_\_

For the State of Maryland:

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Melanie Senter Lubin  
Securities Commissioner  
Office of the Attorney General of Maryland, Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202

Dated: \_\_\_\_\_

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Douglas F. Gansler  
Attorney General  
Office of the Attorney General of Maryland  
200 St. Paul Place  
Baltimore, Maryland 21202

Dated: \_\_\_\_\_

For the State of New York:

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ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
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New York, NY 10271  
Phone: (212) 416-8000

Dated: \_\_\_\_\_