

## SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of March 11, 2016 between (a) Plaintiffs Maureen DiLoreti, Lori A. Veltri, and Michael A. Veltri, on their own behalf and on behalf of a Settlement Class (as defined below), and (b) Defendants Countrywide Home Loans, Inc. ("CHL"), Bank of America, N.A. ("BANA"), LandSafe Appraisal Services, Inc. ("LAS"), Edward A. DiPino d/b/a Edward DiPino Appraisal Services, Gregory J. Funari, and Edward S. DiPino d/b/a Edward DiPino Appraisal Services.

### RECITALS

WHEREAS, on February 13, 2014, Plaintiffs filed a putative class action in the Circuit Court for Ohio County, West Virginia, captioned *DiLoreti v. Countrywide Home Loans, Inc.*, Civil Action No. 14-C-42;

WHEREAS, on June 30, 2014, the Bank Defendants removed the case to the United States District Court for the Northern District of West Virginia (the "Court"), whereupon it was captioned as *DiLoreti et al. v. Countrywide Home Loans, Inc. et al.*, No. 5:14-CV-00076-JPB-JES (the "Action");

WHEREAS, on December 4, 2014, Plaintiffs filed an Amended Complaint in the Action (the "Amended Complaint"), asserting statutory and related claims under West Virginia law (i) against all Defendants for "Civil Conspiracy & Joint Venture" (Count I) and "Unconscionable Inducement" in purported violation of W. Va. Code § 46A-2-121(1) (Count III), (ii) against the Bank Defendants for "Influencing Appraisers" in purported violation of W. Va. Code § 31-17-8(m)(2) (Count II), (iii) against the Appraiser Defendants for alleged violations of the West Virginia Real Estate Appraiser Licensing and Certification Act, W. Va. Code §§ 30-38-12(3) and 30-38-17 (Count IV), and "Negligence and Negligence Per Se" (Count V), and (iv) against all Defendants for "Illegal Loans in Excess of Fair Market Value" in purported violation of W. Va. Code § 31-17-8(m)(8) (Count VI);

WHEREAS, with the exception of Plaintiffs' claim for violation of W. Va. Code § 31-17-8(m)(8) (Count VI), all of Plaintiffs' claims were asserted on behalf of a putative class of purportedly similarly situated borrowers;

WHEREAS, on December 15, 2014, the Appraiser Defendants filed answers to the Amended Complaint in the Action, denying any and all liability to Plaintiffs and the putative class and asserting various affirmative defenses;

WHEREAS, on December 18, 2014, the Bank Defendants filed a partial answer to the Amended Complaint in the Action, denying any and all liability to Plaintiffs and the putative class and asserting various affirmative defenses, and a motion to dismiss Counts II and VI;

WHEREAS, by Order dated February 25, 2015, the Court denied the Bank Defendants' motion to dismiss Counts II and VI;

WHEREAS, on March 10, 2015, the Bank Defendants filed an answer to all counts of the Amended Complaint directed to the Bank Defendants in the Action, denying any and all liability to Plaintiffs and the putative class, and asserting various affirmative defenses;

WHEREAS, between December 15, 2014 and September 30, 2015, the Parties engaged in extensive discovery and motion practice concerning Plaintiffs' individual claims and the class action requirements of FED. R. CIV. P. 23;

WHEREAS, between August 1, 2015 and October 23, 2015, the Parties engaged in extensive settlement negotiations, including two day-long mediation sessions, first on August 20, 2015 with Joseph Selep, Esq. of Zimmer Kunz PLLC, and then on October 7, 2015 with the Honorable Benson Everett Legg (D. Md., Ret.);

WHEREAS, Defendants have denied and continue to deny the material allegations in the Amended Complaint, have denied and continue to deny any wrongdoing and any liability to Plaintiffs or any Class Member, in any amount, in connection with the claims asserted in the Action, have denied that class certification is required or appropriate, and contend that they would prevail in the Action;

WHEREAS, Plaintiffs maintain that they and the Class Members would prevail in the Action and that class certification is appropriate;

WHEREAS, Class Counsel has conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the pending and potential claims in the Action, and conducted a further investigation to determine how to best serve the interests of the Settlement Class in the Action, both before commencing the Action, as well as during the litigation of the Action and the negotiation of the Settlement provided for in this Agreement;

WHEREAS, Plaintiffs, individually and on behalf of the Settlement Class, desire to settle the Action and all matters within the scope of the Release set forth herein, having taken into account the risks, delay, and difficulties involved in obtaining and maintaining class certification, establishing liability, the likelihood of recovery in excess of that offered by this Settlement Agreement, the desirability of payment now, and the likelihood that the Action could be protracted and expensive;

WHEREAS, based upon their investigation and consideration of the risks of continuing to litigate this Action, both Plaintiffs and Plaintiffs' Counsel believe that it is desirable and in the best interests of the Settlement Class to enter into this Settlement Agreement;

WHEREAS, although Defendants deny any wrongdoing and any liability to Plaintiffs and the Settlement Class whatsoever, Defendants believe that it is desirable and in their best interest to settle the Action and all matters within the scope of the Release in the manner and upon the terms and conditions provided for in this Settlement Agreement in order to avoid the further expense, inconvenience, uncertainty, and distraction of litigation, and in order to put to rest the statutory and related claims that have been asserted in the Action and/or are within the scope of the Release;

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged herein, Plaintiffs, individually and on behalf of the Settlement Class, and Defendants agree, subject to the approval by the Court of the Settlement, as follows:

## **I. DEFINITIONS**

In addition to the terms defined above, the following terms are used in this Settlement Agreement:

1.01 “Agreement” or “Settlement Agreement” means this Settlement Agreement.

1.02 “Appraisal” means any estimate of value of real property, including any drafts or incomplete versions, electronic versions, or non-identical copies, (a) ordered, used, or obtained by Bank of America from any of the Appraisers or (b) prepared by any of the Appraisers.

1.03 “Appraisal Order Form” means any document used by any of the Bank Defendants to order an Appraisal from any of the Appraisers.

1.04 “Appraiser Defendants” means Edward A. DiPino d/b/a Edward DiPino Appraisal Services, Gregory J. Funari, and Edward S. DiPino d/b/a Edward DiPino Appraisal Services.

1.05 “Appraisers” means Edward A. DiPino, Edward S. DiPino, Gregory J. Funari, Richard Hyett, Edward DiPino Appraisal Services, Yoblinski Appraisal Services, or any current or former employee, agent (alleged or actual), associate, staff member, assistant, intern, apprentice, volunteer, or affiliate of any of the Appraiser Defendants, or any other person affiliated in any manner whatsoever with any of the Appraiser Defendants.

1.06 “Appraisers’ Counsel” means (a) Counsel for the Appraiser Defendants and each and every attorney, law firm, partnership, limited liability partnership, corporation, professional corporation, and other person or entity that was counsel (or acted or purported to act as counsel) for the Appraiser Defendants in the Action; (b) any other current or former law firms, professional legal corporations, partnerships, entities or attorneys that, to the knowledge of Counsel for the Appraiser Defendants as of the date of this Agreement, have represented or purport to represent the Appraiser Defendants with respect to matters within the scope of the Release and/or has or may claim to have a right to any attorneys’ fees or costs in connection with the Action; (c) all current and former predecessors, successors and assigns of any of the foregoing; and (d) each partner, shareholder or other part or full owner of any of the foregoing.

1.07 “Appraiser Released Person” shall have the same meaning as set forth in paragraph 4.02 of this Agreement.

1.08 “Appraiser Releasing Person” shall have the same meaning as set forth in paragraph 4.02 of this Agreement.

1.09 “Attorney Fee/Litigation Cost Award” means the award(s), if any, made to Class Counsel by the Court upon application pursuant to paragraphs 2.20 and 2.21 below.

1.10 “Bank of America” means

- (a) Bank of America, N.A.;
- (b) Bank of America Corporation;
- (c) Countrywide Home Loans, Inc.;
- (d) Countrywide Financial Corporation;

(e) Countrywide Bank, FSB, a former entity having been converted into a National Bank and merged into Bank of America, N.A.;

(f) LandSafe Appraisal Services, Inc.;

(g) all prior, current and subsequent servicers and subservicers of any Class Member's Loan;

(h) all prior, current and subsequent investors, owners, beneficiaries, and other entities with an interest with respect to a Class Member's Loan, including but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal Housing Finance Agency, and any mortgage-backed securities trust; and

(i) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents (alleged or actual), representatives and employees of each of the persons or entities identified in subparagraphs (a)-(h) of this paragraph 1.10.

1.11 "Bank Defendants" means Bank of America, N.A. ("BANA"), Countrywide Home Loans, Inc., ("CHL") and LandSafe Appraisal Services, Inc. ("LAS").

1.12 "Bank Released Person" shall have the same meaning as set forth in paragraph 4.03 of this Agreement.

1.13 "Bank Releasing Person" shall have the same meaning as set forth in paragraph 4.03 of this Agreement.

1.14 "Benefit Check" means the negotiable check(s) to be sent to eligible Class Members pursuant to paragraphs 3.01 through 3.05 below.

1.15 "Class Counsel" means Jason E. Causey of Bordas & Bordas PLLC and Jonathan R. Marshall of Bailey & Glasser LLP.

1.16 "Class Member" means a member of the Settlement Class. When more than one person was obligated on a single Refinance Loan, those persons collectively shall be treated as only one Class Member. In those cases where a Class Member had two or more Refinance Loans potentially qualifying the Class Member for relief under this Agreement, the Class Member shall be treated as a separate Class Member as to each such Loan, unless such loans were taken out by the Class Member as part of the same refinance transaction. In that event, the Class Member shall be treated as a single Class Member as to the subject Refinance Loans.

1.17 "Class Notice" means the mailed notice of this Settlement to each Class Member that is contemplated by this Agreement.

1.18 "Class Period" means the period beginning on the earliest date on which Bank of America made a Refinance Loan to any Class Member and ending on the date of this Agreement.

1.19 “Class Representative Award” means the amount awarded, if any, to the Representative Plaintiffs by the Court upon application pursuant to paragraphs 2.22 and 2.23 below.

1.20 “Consideration” means the amounts to be paid from the Settlement Amount to each eligible Class Member who does not become a Successful Opt-Out in exchange for the Release, as set forth in paragraphs 4.01 to 4.05 below, and in satisfaction of the statutory and related claims alleged in the Action. The amount of the Consideration to be paid from the Settlement Amount to each eligible Class Member shall be determined according to the Updated Payment Schedule and Updated DiPino/Funari Payment Schedule, if applicable, as set forth in paragraphs 3.01 through 3.03 below.

1.21 “Counsel for the Appraiser Defendants” means Bailey & Wyant PLLC (for Edward A. DiPino d/b/a Edward DiPino Appraisal Services), Steptoe & Johnson LLP (for Gregory J. Funari), and Flaherty, Sensabaugh & Bonasso PLLC (for Edward S. DiPino d/b/a Edward DiPino Appraisal Services), and any attorneys, partners, members, shareholders, counsel, associates, affiliates, predecessors, and successors thereof who have represented any of the Appraiser Defendants, including but not limited to Albert C. Dunn, Jr. (of Bailey & Wyant PLLC), Anders W. Lindberg (of Steptoe & Johnson LLP), Kristen Andrews Wilson (of Steptoe & Johnson LLP), Robert James (of Flaherty, Sensabaugh & Bonasso PLLC), and Kyle T. Turnbull (of Flaherty, Sensabaugh & Bonasso PLLC).

1.22 “Counsel for the Bank Defendants” means Brooks R. Brown and Keith E. Levenberg of Goodwin Procter LLP and Richard D. Owen and Carrie Goodwin Fenwick of Goodwin & Goodwin LLP.

1.23 “Counsel for the Defendants” means Counsel for the Appraiser Defendants and Counsel for the Bank Defendants, collectively.

1.24 “Court” means the Honorable John Preston Bailey of the United States District Court for the Northern District of West Virginia, or such other judge of the same court to whom the Action may be later assigned.

1.25 “Defendants” means defendants in the Action, including CHL, BANA, LAS, Edward A. DiPino d/b/a Edward DiPino Appraisal Services, Gregory J. Funari, and Edward S. DiPino d/b/a Edward DiPino Appraisal Services.

1.26 “DiPino Group” means the subset of the Class Members who, according to readily accessible records or information of the Appraisers (or any of them) or information otherwise obtained by Plaintiffs’ Counsel, are Class Members on account of (a) an Appraisal performed by Edward A. DiPino, Edward S. DiPino, and/or Edward DiPino Appraisal Services, and (b) obtained by Bank of America in connection with a Refinance Loan at any time during the Class Period. A member of the DiPino Group shall be referred herein to as a “DiPino Group Member.”

1.27 “DiPino/Funari Payment Schedule” means the payment schedule attached hereto as Exhibit A-2.

1.28 “Final Approval” means the last date on which all of the following have occurred:

(a) The Court has issued all necessary orders under FED. R. CIV. P. 23 approving of the Settlement in a manner substantially consistent with the terms and intent of this Agreement;

(b) The Court enters a judgment in favor of Defendants finally approving the Settlement of the Action in a manner substantially consistent with the terms and intent of the Agreement and dismissing the Action with prejudice;

(c) Either: (i) thirty-five (35) days have passed after entry of the Court's judgment finally approving the Settlement of the Action in a manner substantially consistent with the terms and intent of this Settlement Agreement and within such time, no appeal is taken after the Court's judgment finally approving the Settlement of the Action, or (ii) the date after all appellate remedies are exhausted and the Court's judgment is upheld, or not altered in a manner that is substantially inconsistent with the judgment, provided that any change or modification that may increase Defendants' (or any of their) liability or reduce the scope of the Release or of the Class shall be considered as preventing the occurrence of Final Approval; and

(d) No Party with a right to do so has terminated the Agreement.

1.29 "Final Approval Date" means the date upon which Final Approval occurs.

1.30 "Final Approval Order" means the order and judgment of the Court approving the Settlement in a manner substantially consistent with the terms and intent of this Settlement Agreement, and dismissing all claims in the Action with prejudice, as contemplated by this Agreement.

1.31 "Funari Group" means the subset of the Class Members who, according to readily accessible records or information of the Appraisers (or any of them) or information otherwise obtained by Plaintiffs' Counsel, are Class Members on account of (a) an Appraisal performed by Gregory J. Funari (formerly of Yoblinski Appraisal Services), and (b) obtained by Bank of America in connection with a Refinance Loan at any time during the Class Period. A member of the Funari Group shall be referred to herein as a "Funari Group Member."

1.32 "Group Member" means a Class Member who, solely for purposes of distribution of the proceeds of the Appraiser Defendants' Settlement Amount, is also part of either the DiPino Group or the Funari Group.

1.33 "Material Event" means a private lawsuit, or a lawsuit, investigation, order, injunction or restraining order, or any type of formal governmental proceeding or action, civil investigative demand (or similar process), administrative subpoena, or administrative investigation by a federal administrative agency, Board or commission, by the Office of the Comptroller of the Currency, by an administrative agency or attorney general of a State, by the United States Department of Justice, by a court, or by any other law enforcement agency, of which the Defendants are not currently aware (or are not aware is material) and is material to the Defendants in that such event poses a risk of (a) rendering any material aspect of this Settlement impracticable, (b) defeating, restricting, or limiting the scope of the Release; (c) resulting in a substantial alteration or increase in the Defendants' obligations to benefit the persons who are or could qualify as members of the Settlement Class; and/or (d) resulting in penalties to be paid to any state or federal government and/or agency in connection with conduct or omissions by the Defendants in connection with any of the Refinance Loans within the scope of the Release.

1.34 "Party" means either Plaintiffs (or any of them) or Defendants (or any of them), and "Parties" means Plaintiffs and Defendants, collectively.

1.35 "Payment Schedule" means the payment schedule attached hereto as Exhibit A-1.

1.36 "Plaintiffs' Counsel" means (a) Class Counsel and each and every attorney, law firm, partnership, limited liability partnership, corporation, professional corporation, and other person or entity that was counsel (or acted or purported to act as counsel) for Representative Plaintiffs and/or any Class Member in the Action; (b) any other current or former law firms, professional legal corporations, partnerships, entities or attorneys that, to the knowledge of Class Counsel as of the date of this Agreement, have represented or purport to represent Plaintiffs or any Class Member with respect to matters within the scope of the Release and/or has or may claim to have a right to any attorneys' fees or costs in connection with the Action; (c) all current and former predecessors, successors and assigns of any of the foregoing; and (d) each partner, shareholder or other part or full owner of any of the foregoing.

1.37 "Plaintiff Released Person" shall have the same meaning as set forth in paragraph 4.01 of this Agreement.

1.38 "Plaintiff Releasing Person" shall have the same meaning as set forth in paragraph 4.01 of this Agreement.

1.39 "Preliminary Approval" means the order or orders of the Court preliminarily approving the terms and conditions of this Agreement, as contemplated by this Agreement.

1.40 "Preliminary Approval Date" means the date on which the order or orders constituting Preliminary Approval are entered by the Court.

1.41 "Refinance Loan" or "Loan" means a refinance (as opposed to a purchase) mortgage loan made to a Class Member by Bank of America during the Class Period through which he, she, or they paid off an existing mortgage loan secured by property located in West Virginia with a new mortgage loan secured by the same property in connection with which an Appraisal was ordered and performed such that the Class Member may be entitled to relief under this Agreement.

1.42 "Release" means the Releases set forth in paragraphs 4.01 to 4.05 of this Agreement.

1.43 "Released Persons" shall mean the Plaintiff Released Persons, the Appraiser Released Persons, and the Bank Released Persons collectively.

1.44 "Releasing Persons" shall mean the Plaintiff Releasing Persons, the Appraiser Releasing Persons, and the Bank Releasing Persons collectively.

1.45 "Representative Plaintiffs" means the named plaintiffs in the Action, including Maureen DiLoreti, Lori Veltri, and Michael Veltri. For all purposes of this Agreement, excepting where otherwise specifically noted, Lori and Michael Veltri shall constitute a single Representative Plaintiff.

1.46 "Settlement" means the resolution of the statutory and related claims alleged in the Action and the matters within the scope of this Settlement Agreement and the Release set forth herein, as embodied in paragraphs 4.01 to 4.05 of this Agreement, and the completion of all conditions for Final Approval and all requirements set forth in the Final Approval Order.

1.47 “Settlement Administrator” means Garden City Group, LLC or such other *bona fide* person or entity in the business of class action settlement administration mutually agreeable to the Parties and approved by the Court.

1.48 “Settlement Administration Costs” means the costs of administering the Settlement provided for herein to be paid exclusively from (and not in addition to) the Settlement Amount, including but not limited to the costs of mailing the Class Notice to the Class Members, providing the Benefit Check(s) to eligible Class Members who do not become Successful Opt-Outs, and responding to inquiries from Class Members, which costs Settlement Administrator has agreed to cap at \$25,000.

1.49 “Settlement Amount” means the aggregate amount of the maximum sums which the Bank Defendants and the Appraiser Defendants will be obligated to pay if the Settlement Agreement gains Final Approval, which amount is one million six hundred and thirty-eight thousand dollars (\$1,638,000). The Bank Defendants’ share of the Settlement Amount is a maximum of eight hundred and eighty-eight thousand dollars (\$888,000) (the “Bank Defendants’ Settlement Amount”). The Appraiser Defendants’ share of the Settlement Amount is a maximum of seven hundred and fifty thousand dollars (\$750,000) (the “Appraiser Defendants’ Settlement Amount”). Neither the Bank Defendants nor the Appraiser Defendants, under any circumstances, will be obligated to pay more than their respective shares of the Settlement Amount. The Bank Defendants shall, under no circumstances, have any obligation to pay all or any portion of the seven hundred and fifty thousand dollars (\$750,000) due from the Appraiser Defendants (or any of them), and the Appraiser Defendants shall, under no circumstances, have any obligation to pay all or any portion of the eight hundred and eighty-eight thousand dollars (\$888,000) amount due from the Bank Defendants. The seven hundred fifty thousand dollars (\$750,000) amount to be paid by the Appraiser Defendants shall be divided as follows: Edward A. DiPino and Edward S. DiPino shall pay \$450,000, and Gregory J. Funari shall pay \$300,000, and none shall pay a greater share of the Appraiser Defendants’ share of the Settlement Amount than these amounts. The Settlement Amount includes all sums to be paid under this Settlement Agreement, including all Consideration to be paid to eligible Class Members who are not Successful Opt-Outs; the Class Representative Award, if any; the Attorney Fee/Litigation Cost Award, if any; and all Settlement Administration Costs.

1.50 “Settlement Class” or “Class” means all West Virginia residents who, according to readily accessible data and other electronic records of the Bank Defendants, obtained a Refinance Loan from Bank of America during the class period, in connection with which any of the Bank Defendants obtained an Appraisal or Appraisals from any of the Appraisers, and who appear on the Class Member List, as that term is defined in Paragraph 2.02 below.

1.51 “Successful Opt-Out” means a person who timely and validly exercises his or her right to be excluded from the Class, pursuant to paragraph 2.08 below and FED. R. CIV. P. 23, but shall not include (a) persons whose requests for exclusion are challenged by any of the Defendants pursuant to paragraph 2.09 below, and the challenge is not overruled by the Court or withdrawn by such Defendant, as applicable, (b) persons whose communication is not treated as a request for exclusion, pursuant to paragraph 2.08 below, and (c) persons whose requests for exclusion are not valid or are otherwise void pursuant to paragraphs 2.09 and 2.10 below.

1.52 “Updated DiPino/Funari Payment Schedule” means the DiPino/Funari Payment Schedule, after it is updated by the Settlement Administrator in accordance with paragraph 3.01 below to account for the Successful Opt-Outs, if any, the Class Members as to whom a current address has not been identified



by the Settlement Administrator or Class Counsel by the Final Approval Date, if any, the final amount of the Settlement Administration Costs, and the amount of the Class Representative Award, if any, and the amount of the Attorney Fee Litigation Cost Award, if any.

1.53 “Updated Payment Schedule” means the Payment Schedule, as updated by the Settlement Administrator in accordance with paragraph 3.01 below to account for the Successful Opt-Outs, if any, the Class Members as to whom a current address has not been identified by the Settlement Administrator or Class Counsel by the Final Approval Date, if any, the final amount of the Settlement Administration Costs, and the amount of the Class Representative Award, if any, and the amount of the Attorney Fee/Litigation Cost Award, if any.

1.54 As used herein, the plural of any defined term includes the singular thereof and *vice versa*, except where the context requires otherwise. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal holiday, the deadline or date shall be extended to the next day that is not a weekend day or legal holiday.

1.55 Any terms defined in the text of this Agreement shall have the meaning given to those terms in the text. It is the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Agreement.

## II. SETTLEMENT PROCEDURES

### A. Preliminary Approval.

2.01 Within ten (10) days after the execution of this Settlement Agreement by Class Counsel and Defendants, Class Counsel shall move the Court to enter an order for Preliminary Approval substantially in the form of Exhibit B attached hereto (“Preliminary Approval Order”), which order shall (a) preliminarily approve the Settlement memorialized in this Settlement Agreement as fair, reasonable, and adequate, including the material terms of this Agreement; (b) provisionally approve the Settlement Class, as defined herein, for settlement purposes only; (c) conditionally designate Representative Plaintiffs as the representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class; (d) set a date for a final approval hearing (“Court Approval Hearing”); (e) approve the proposed Class Notice in the form attached hereto as Exhibit C and authorize its dissemination to the Class Members; (f) continue the stay of all proceedings and deadlines in the Action, excepting only those proceedings related to the Settlement, pending the Final Approval Hearing; (g) set deadlines consistent with this Agreement for mailing of the Class Notice, the filing of objections, the filing of motions, the submission of requests for exclusion from the Class, and the filing of papers in connection with the Court Approval Hearing; (h) appoint and approve the Settlement Administrator; and (i) prohibit and preliminarily enjoin Representative Plaintiffs, all Class Members (excepting those who are Successful Opt-Outs), Class Counsel, and Plaintiffs’ Counsel from commencing, prosecuting, or assisting in any lawsuit against the Released Persons that asserts or purports to assert matters within the scope of the Release during the time between entry of the Preliminary Approval Order and final determination by the Court regarding whether to finally approve the Settlement in this Action. Defendants agree not to oppose the entry of the Preliminary Approval Order, provided it is substantially in the form of Exhibit B attached hereto. Without implication or limitation, Defendants’ agreement not to oppose the entry of the Preliminary Approval Order shall not be an admission or concession by Defendants (or any of them) that a class was appropriate in the Action or would be

appropriate in any other matter, and/or that any relief was appropriate in the Action, for litigation or for settlement purposes, or would be appropriate in any other matter.

B. Administration.

2.02 Within twenty-eight (28) days of the Preliminary Approval Date, the Bank Defendants shall prepare and provide a list ("Class Member List") identifying the Class Members by name and last known address to the Settlement Administrator and Class Counsel. The Class Member List, as well as the information on the List, shall be obtained from the Bank Defendants' readily accessible electronic records and such other records, if any, as the Bank Defendants may select.

2.03 After delivery of the Class Member List to the Settlement Administrator, the Settlement Administrator shall obtain updates, if any, to the addresses contained therein using (a) information reasonably available from a Lexis-Nexis persons search performed as to each Class Member, (b) information reasonably available from the National Change of Address ("NCOA") database maintained by the United States Postal Service ("Postal Service"), and (c) such additional efforts as the Settlement Administrator reasonably believes are appropriate to identify updated addresses, if any, for each Class Member and/or as the Court may direct.

2.04 No later than fourteen (14) days before the deadline for initial mailing of the Class Notice contemplated under this Agreement:

(a) Representative Plaintiffs and Class Counsel shall state any objections to the Class Member List to the Defendants, in writing, so that such objections can be timely resolved or an extension of the mailing deadline secured pending the resolution of such objections by the Parties or the Court.

(b) Representative Plaintiffs and Class Counsel shall identify all Class Members who are members of either the DiPino Group or the Funari Group and prepare and provide a list of the members of the DiPino Group (the "DiPino Group List") and a list of the members of the Funari Group (the "Funari Group List") (collectively, the "Group Member Lists") to the Settlement Administrator and Counsel for the Defendants. Representative Plaintiffs and Class Counsel shall prepare the Group Member Lists based on any readily available records or information in Representative Plaintiffs' or Class Counsel's possession or in consultation with the Appraiser Defendants. The identification of the DiPino Group Members and the Funari Group Members, as well as the creation of the Group Member Lists, shall be the sole and exclusive responsibility and obligation of Representative Plaintiffs and Class Counsel, and such tasks shall be performed diligently and in good faith. The Parties understand and agree that the Bank Defendants and the Appraiser Defendants shall have no responsibility or liability for the accuracy of the Group Member Lists (or either of them) and/or the inclusion or omission of any Class Member on the Group Member Lists (or either of them). Nothing in this paragraph shall be construed to limit in any way the Release of such claims pursuant to paragraphs 4.01 and 4.03.

2.05 Within forty-nine (49) days after the Preliminary Approval Date, the Settlement Administrator shall mail the Class Notice to each Class Member at the address set forth on the Class Member List, as updated by the Settlement Administrator pursuant to Paragraph 2.03 above. The Settlement Administrator shall have discretion to format the Class Notice in a reasonable manner to minimize mailing or administrative costs.

2.06 If any Class Notice sent under paragraph 2.05 above is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Class Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail within a reasonable time after return. If the returned mail does not reflect a forwarding address, the Settlement Administrator shall have no obligation to re-mail, but shall provide Class Counsel with the names and addresses of the affected Class Members.

2.07 Other than as set forth in this Section II of the Agreement, there shall be no other provision for notice of the Settlement.

2.08 The Class Notice shall inform each Class Member of his or her right to request exclusion from the Class and not to be bound by this Agreement, if, within such time as is ordered by the Court and contained in the Class Notice ("Opt-Out Period"), the Class Member completes and mails a request for exclusion ("Opt-Out") to the Settlement Administrator at the address set forth in the Class Notice. For a Class Member's Opt-Out to be valid and treated as a Successful Opt-Out, it must (a) state his or her full name, address, and telephone number; (b) contain the property address which secures or secured the Refinance Loan as to which the Class Member seeks exclusion; (c) contain the Class Member's personal and original signature or the original signature of a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the Class Member with respect to a claim or right such as those in the Action (*i.e.*, conformed, reproduced, facsimile, or other non-original signatures are not valid); and (d) unequivocally state the Class Member's intent to be excluded from the Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all right to the benefits of the Settlement. In those cases where a Class Member includes persons who were co-obligors on the same Refinance Loan, the Class Member shall be deemed a Successful Opt-Out as to that Refinance Loan only if all obligors elect to opt out. In the event a Class Member is a Class Member as to more than one Refinance Loan and the Opt-Out fails to identify the Refinance Loan(s) as to which the Class Member seeks exclusion, the Opt-Out shall be deemed to apply to the Refinance Loan made first in time and not any other Refinance Loans. No person shall purport to exercise any exclusion rights of any other person, or purport to opt-out Class Members as a group, aggregate, or class involving more than one Class Member or Opt-Out; any such purported Opt-Outs shall be void, and the Class Member(s) that is or are the subject of such purported Opt-Out shall be treated as a Class Member. Opt-Outs for a Class Member may, however, be prepared and mailed by counsel for that Class Member, subject to the other limitations of this paragraph. At the expiration of the Opt-Out Period, Class Counsel, Counsel for the Defendants and the Settlement Administrator shall create a comprehensive list of Successful Opt-Outs and file the list with the Court under seal to protect the privacy interests of the Successful Opt-Outs. The Parties shall, if possible, agree as to whether a communication from a Class Member is a request to Opt-Out. Defendants or Class Counsel may dispute an Opt-Out or purported Opt-Out, and the presentation and resolution of such disputes shall be governed by paragraph 2.09 below.

2.09 Within ten (10) days of the final date for postmarking of Opt-Outs set by the Court, any of the Defendants may challenge any requests for exclusion as not meeting the definition of Successful Opt-Out, by any form of written notice to Class Counsel ("Disputed Opt-Outs"). Such notice of Disputed Opt-Outs shall void any Opt-Outs unless Class Counsel disputes the challenge, in good faith, and in writing to Counsel for the Defendants within five (5) days of the receipt of notice of the Disputed Opt-Outs (or within such additional time as the Parties may agree or the Court may permit). The Court shall have jurisdiction to resolve Disputed Opt-Outs. The Parties agree that any decision by Defendants not to dispute a request for exclusion shall not be a waiver, determination, or preclusive finding against Defendants in any proceeding.

2.10 Any Class Member who is not a Successful Opt-Out, or who otherwise fails to comply with all requirements for opting-out as may be contained in this Agreement, in the Class Notice, or in any order of the Court, shall be bound by this Agreement, this Settlement and the Release. If a Class Member is a Successful Opt-Out, and regardless of whether the Class Member is (or may be) a DiPino Group Member or Funari Group Member, then that Class Member shall be excluded from the Settlement in its entirety, and shall not receive any benefits of the Settlement, including the Benefit Check(s), and will not be bound by the terms of this Settlement Agreement. Any Class Member who is a Successful Opt-Out shall have no standing to object to the Settlement and/or to intervene in the Action.

2.11 Any Class Member who is not a Successful Opt-Out and who wishes to object to the Settlement must provide a written objection to the Settlement ("Objection") to Class Counsel and Counsel for the Defendants, and file the Objection with the Court, on or before the deadline set by the Court for filing Objections. Each Objection must (a) set forth the Class Member's full name, current address, and telephone number; (b) contain the address of the property that secured the Refinance Loan; (c) state that the Class Member objects to the Settlement, in whole or in part; (d) set forth a statement of the legal and/or factual basis for the objection; and (e) provide copies of any documents that the Class Member wishes to submit in support of his or her position. Objections may be served and filed by counsel for a Class Member. Any Class Member who does not submit a timely Objection in complete accordance with this Agreement, the Class Notice, and any order of the Court shall not be treated as having filed a valid Objection to the Settlement.

2.12 Any Class Member who wishes to appear at the Court Approval Hearing, whether *pro se* or through counsel, must file a Notice of Appearance in the Action, take all other actions or make any additional filings as may be required in the Class Notice, or as otherwise ordered by the Court, and provide the Notice of Appearance and other papers to Class Counsel and Counsel for the Defendants within the time set by the Court. No Class Member shall be permitted to raise matters at the Court Approval Hearing that the Class Member could have raised in an Objection or other paper, but failed to do so. Any Class Member who fails to comply with this Agreement, the Class Notice, and any other order of the Court shall be barred from appearing at the Court Approval Hearing.

2.13 Any Class Member who wishes to file a motion in the Action must file his or her motion with the Court, and contemporaneously provide it to Class Counsel and Counsel for the Defendants, within the time set by the Court. Unless the Court directs otherwise, the dates set forth in the Class Notice shall govern the rights of the Class Members.

2.14 Settlement administration shall be conducted by the Settlement Administrator, in combination with the Bank Defendants, except as otherwise provided in this Agreement.

2.15 The Settlement Administration Costs shall be paid exclusively from, and not in addition to, the Settlement Amount.

2.16 For a period of one hundred eighty (180) days after the Final Approval Date, the Settlement Administrator shall maintain an address to receive inquiries with respect to the Settlement. The Parties, Class Counsel, and the Settlement Administrator shall, subject to the provisions of paragraphs 6.09 and 6.10 below and any order of the Court, have the right to respond to verbal or written inquiries initiated by individual Class Members concerning the Settlement at any time. Counsel for the Defendants shall also have the right to respond to verbal or written inquires directed to them by individual Class Members. To the

extent Counsel for the Defendants respond to such inquiries in writing, Counsel for the Defendants will make a good faith effort to copy Class Counsel on any written communications made to Class Members about the Settlement.

2.17 Defendants shall provide, or cause the Settlement Administrator to provide on the Defendants' behalf, notice of the Settlement to the appropriate state or federal officials in accordance with the Class Action Fairness Act of 2005 ("CAFA"). See 28 U.S.C. § 1715. The Parties agree that Defendants are permitted to provide such notice as required by law and that any notice by Defendants shall be done to effectuate the Settlement and shall not be considered a breach of this Agreement or any other agreement of the Parties.

C. Final Approval.

2.18 At the time appointed by the Court, Representative Plaintiffs and Class Counsel shall move the Court to enter a Final Approval Order substantially in the form of Exhibit D attached hereto, which order shall (a) finally approve the Settlement as fair, reasonable, and adequate; (b) give the terms of the Settlement final and complete effect; (c) find that all requirements of statute, rule, and state and federal Constitutions necessary to effectuate this Settlement have been met and satisfied; and (d) otherwise enter final judgment of dismissal on the merits and with prejudice in the Action. Defendants agree not to oppose the entry of the Final Approval Order, provided it is substantially in compliance with the form of Exhibit D attached hereto. Without implication or limitation, Defendants' agreement not to oppose the entry of the Final Approval Order shall not be an admission or concession by Defendants that a class was appropriate in the Action, for litigation or settlement purposes, or would be appropriate in any other matter, and/or that any relief was appropriate in the Action or would be appropriate in any other matter.

2.19 The Final Approval Order, or a separate order, shall be entered providing that Representative Plaintiffs, all Class Members (excepting those who are Successful Opt-Outs), Class Counsel, and Plaintiffs' Counsel shall be enjoined from commencing, prosecuting, or assisting in any lawsuit, administrative action, or any judicial or administrative proceeding against the Released Persons that asserts or purports to assert matters within the scope of the Release and judgment in the Action.

2.20 At the time appointed by the Court, and no later than fourteen (14) days before the deadline for the filing of Objections to the Settlement set by the Court, Representative Plaintiffs and Class Counsel may, subject to the limitations set forth in this paragraph and paragraph 2.21 below, make written application to the Court for an award of attorneys' fees not to exceed thirty-three percent (33%) of the Settlement Amount and actual litigation costs incurred in the prosecution of the Action not to exceed twenty thousand dollars (\$20,000), both to be paid from, and not in addition to, the Settlement Amount. Defendants agree only not to file a written opposition to such application, provided that it is in accord with the limitations set forth in this paragraph. Without implication of limitation, Defendants' agreement not to file a written opposition shall not be construed as an admission, agreement, or concession by Defendants (or any of them) that the attorneys' fees or litigation costs applied for by Class Counsel are reasonable and/or appropriate. The Parties agree that the Court (and only the Court) shall determine the amount, if any, of the Attorney Fee/Litigation Cost Award in this Action.

(A) Class Counsel agree that any application made pursuant to this paragraph will not seek an amount in excess of thirty-three percent (33%) of the Settlement Amount for attorneys' fees or an amount in excess of twenty thousand dollars (\$20,000) for litigation costs actually incurred in the prosecution of the

Action. The Attorney Fee/Litigation Cost Award, if any, made by the Court upon application pursuant to this paragraph 2.20 shall be paid from, and not in addition to, the Settlement Amount.

(B) In the event the Court awards less than thirty-three percent (33%) of the Settlement Amount in attorneys' fees as part of the Attorney Fee/Litigation Cost Award, the difference between thirty-three percent (33%) of the Settlement Amount and the amount of the fees portion of the Court's Attorney Fee/Litigation Cost Award shall remain as part of the Settlement Amount and be subject to distribution according to the terms of the Agreement. In the event the Court awards less than twenty thousand dollars (\$20,000) of the Settlement Amount in litigation costs actually incurred in the prosecution of the Action as part of the Attorney Fee/Litigation Cost Award, the difference between twenty thousand dollars (\$20,000) and the amount of the costs portion of the Court's Attorney Fee/Litigation Cost Award shall remain as part of the Settlement Amount and be subject to distribution according to the terms of the Agreement.

(C) In the event the Court's Attorney Fee/Litigation Cost Award exceeds thirty-three percent (33%) of the Settlement Amount plus twenty thousand dollars (\$20,000), Representative Plaintiffs and Plaintiffs' Counsel (i) expressly disclaim any and all right to collect the excess or any portion of the excess; (ii) agree, upon demand, to execute a release of any person's or entity's obligations to pay such sums; and (iii) agree that the amount of an Attorney Fee/Litigation Cost Award in excess of thirty-three percent (33%) of the Settlement Amount plus twenty thousand dollars (\$20,000) shall remain as part of the Settlement Amount and be subject to distribution according to the terms of this Agreement.

2.21 Defendants shall have no liability to (a) Class Counsel, (b) Plaintiffs' Counsel, (c) any attorney or law firm associated with Class Counsel or party to any agreement (written or oral) with Class Counsel with respect to the prosecution of this Action or any lawsuit against any person or entity concerning or relating to the Refinance Loans, and/or (d) any other person or entity for attorneys' fees or actual litigation costs relating to the Action and/or the Settlement other than as provided for in this Agreement. In the event that a lawyer, law firm, or other person or entity (other than Class Counsel) seeks an award of attorneys' fees, costs, expenses or other sums in connection with the Action or the Settlement, Defendants' attorneys' fees and costs incurred in connection with any such effort or other attempt to obtain any award, as well as any award resulting from any such effort or other attempt shall be deducted from the Settlement Amount so as to ensure that Defendants' respective shares of the Settlement Amount are not, under any circumstances, in excess of the one-time eight hundred eighty-eight thousand dollars (\$888,000) (for the Bank Defendants) and seven hundred fifty thousand dollars (\$750,000) (for the Appraiser Defendants) payments set forth above.

2.22 At the time appointed by the Court, and no later than fourteen (14) days before the deadline for the filing of Objections to the Settlement set by the Court, Representative Plaintiffs and Class Counsel may, subject to the limitations set forth in paragraphs 2.23 and 2.24 below, make written application to the Court for a Class Representative Award in an aggregate amount not to exceed ten thousand dollars (\$10,000) (five thousand dollars (\$5,000) for Michael A. and Lori A. Veltri and five thousand dollars (\$5,000) for Maureen Diloreti). To the extent approved, such an award shall be paid exclusively from, and not in addition to, the Settlement Amount.

2.23 Representative Plaintiffs and Class Counsel agree that any application made pursuant to paragraph 2.22 above will not seek an aggregate amount in excess of ten thousand dollars (\$10,000) to be paid to Representative Plaintiffs exclusively from, and not in addition to, the Settlement Amount. Defendants agree not to oppose, or cause to be opposed, any such application provided that it is in accord

with the limitations set forth in this paragraph and paragraph 2.22 above. Without implication of limitation, Defendants' agreement not to file a written opposition shall not be construed as an admission, agreement, or concession by Defendants (or any of them) that the Class Representative Award is reasonable and/or appropriate. The Parties agree that the Court (and only the Court) shall determine the amount, if any, of the Class Representative Award in this Action.

2.24 Representative Plaintiffs and Class Counsel understand and agree that the Court may deny the application for a Class Representative Award or award an aggregate amount less than ten thousand dollars (\$10,000). Representative Plaintiffs further agree that their agreement to this Settlement is not conditioned upon the possibility of receiving a Class Representative Award in any amount, and represent that they support this Settlement even in the absence of a Class Representative Award. Representative Plaintiffs and Class Counsel agree that the application for the Class Representative Award will be based upon the work performed by, and risks undertaken by, the Representative Plaintiffs in the prosecution of this Action. Representative Plaintiffs and Class Counsel further agree and represent that the filing of an application for a Class Representative Award is not a condition of Representative Plaintiffs' decision to support the Settlement or to provide testimony in support of the Settlement.

2.25 In the event that the Court denies, in whole or in part, (a) any application made by Class Counsel pursuant to paragraph 2.20 above; and/or (b) any application made by Representative Plaintiffs and Class Counsel pursuant to paragraph 2.22 above, the remainder of the terms of this Agreement shall remain in effect and such denial or partial denial shall not provide any basis for Class Counsel or Representative Plaintiffs to seek to terminate or void this Agreement.

2.26 The Parties understand and agree (and, to the extent necessary, shall advise the Court) that no Final Approval Order may issue until at least ninety (90) days after the date all notices required under paragraph 2.17 above are served upon the appropriate state and/or federal officials under 28 U.S.C. § 1715.

2.27 At the Court Approval Hearing, Representative Plaintiffs and Class Counsel shall present sufficient evidence to support the entry of a Final Approval Order, and shall present such evidence as they deem appropriate to support any applications for an Attorney Fee/Litigation Cost Award and/or a Class Representative Award.

2.28 The Parties and Class Counsel agree that Representative Plaintiffs and Class Counsel will submit to Counsel for the Defendants drafts of any motions, memoranda or other materials Representative Plaintiffs and/or Class Counsel intends to submit to the Court at least five (5) days prior to the date any such motion, memoranda or other materials are to be filed with the Court. The Defendants (or any of them) shall have the right to provide reasonable, good-faith comments on such motions, memoranda, or other materials to the extent any of them deem it necessary, in their sole discretion, to protect their interests in the Settlement.

2.29 If and when the Court gives Final Approval to the Settlement, the Action shall be dismissed with prejudice, with all Parties to bear his, her, or its own costs and attorneys' fees not otherwise awarded.

### **III. SETTLEMENT BENEFITS**

3.01 Subject to the terms and conditions of this paragraph 3.01 and except as otherwise provided in this Agreement, each Class Member who does not become a Successful Opt-Out shall be sent

a Benefit Check payable exclusively from the Bank Defendants' Settlement Amount in the applicable amount set forth in the Payment Schedule. Further, and subject to the terms and conditions of this paragraph 3.01 and except as otherwise provided in this Agreement, each member of the DiPino Group who does not become a Successful Opt-Out and each member of the Funari Group who does not become a Successful Opt-Out shall be sent an additional Benefit Check payable exclusively from the Appraiser Defendants' Settlement Amount in the applicable amount set forth on the DiPino/Funari Payment Schedule. The Parties anticipate that the Benefit Checks available to each Class Member from the Bank Defendants' Settlement Amount will be no less than the applicable amounts set forth in the Payment Schedule, and that the additional Benefit Checks available to the members of the DiPino Group and to the members of the Funari Group will be no less than the applicable amounts set forth on the DiPino/Funari Payment Schedule. The Parties further understand and agree that the amounts set forth in the Payment Schedule and the DiPino/Funari Payment Schedule assume that the Settlement Administrator and/or Class Counsel are able to identify a current address for each Class Member, that there are no Successful Opt-Outs, that the Settlement Administration Costs are not less than twenty-five thousand dollars (\$25,000), that the Class Representative Award is ten thousand dollars (\$10,000), and that the Attorney Fee/Litigation Cost Award is thirty-three percent (33%) of the aggregate Settlement Amount plus twenty thousand dollars (\$20,000). For purposes of calculating and updating the Payment Schedule and DiPino/Funari Payment Schedule in the event one or more of these assumptions is not correct, the Parties agree that the amount of the Class Representative Award, if any, and Settlement Administration Costs shall be divided equally between the Bank Defendants' Settlement Amount and the Appraiser Defendants' Settlement Amount. The Parties further agree that, within five (5) business days after the Final Approval Date, the Settlement Administrator shall provide Class Counsel and Counsel for the Defendants with (a) a final calculation of the Settlement Administration Costs incurred to date and reasonably anticipated by the Settlement Administrator to be incurred to complete the remaining administration activities in connection with the Settlement; and (b) an Updated Payment Schedule and Updated DiPino/Funari Payment Schedule accounting for the Successful Opt-Outs, if any, the Class Members as to whom a current address has not been identified by the Settlement Administrator or Class Counsel by the Final Approval Date, if any, the final amount of the Settlement Administration Costs, and the amount of the Class Representative Award, if any, and the amount of the Attorney Fee/Litigation Cost Award, if any. The Updated Payment Schedule and Updated DiPino/Funari Payment Schedule shall provide, to the extent practicable, for distribution of the full amount of the Settlement Amount remaining, after deduction of the final Settlement Administration Costs and Class Representative and Attorney Fee/Litigation Cost Awards, if any, made by the Court, to each eligible Class Member who is not a Successful Opt-Out. The Parties shall state any objections to the final Settlement Administration Cost calculation, Updated Payment Schedule, and/or Updated DiPino/Funari Payment Schedule no later than two (2) business days after receipt from the Settlement Administrator. In the event of any such objection(s), Class Counsel and Counsel for the Defendants shall meet and confer in a good faith effort to resolve the objection and, if such efforts are not successful, promptly submit the matter to the Court for resolution. No Benefit Checks shall be distributed to eligible Class Members pending the Court's resolution of any objections to the final Settlement Administration Cost calculation, Updated Payment Schedule, and/or Updated DiPino/Funari Payment Schedule. The total amount to be paid under this Agreement shall in no event exceed the amount of the Settlement Amount remaining after accounting for the Settlement Administration Costs, Class Representative Award, if any, and the Attorney Fee/Litigation Cost Award, if any. In the event the Updated Payment Schedule and/or Updated DiPino/Funari Payment Schedule would, for any reason, cause the aggregate amount of the Benefit Checks distributed to Class Members who are not Successful Opt-Outs, plus the aggregate amount of the Settlement Administration Costs, Class Representative Award, if any, and the Attorney Fee/Litigation Cost Award, if any, to exceed the Settlement Amount, then the amount of the Benefit Check(s) to be paid to each Class Member who is



not a Successful Opt-Out shall be reduced by such equal amount as is necessary to cause the Settlement Amount not to be exceeded.

3.02 The Consideration and Benefit Checks available to eligible Class Members who do not submit a Successful Opt-Out, as well as Defendants' payment of (a) the Attorney Fee/Litigation Cost Award, if any, (b) the Class Representative Award, if any, (c) the Settlement Administration Costs, and (d) other benefits in this Agreement, shall be the sole benefits in exchange for the Release and consideration for this Settlement. There shall be no interest accrued, owing, or paid on the Settlement Amount, the Benefit Checks, the Consideration, or any amount or other benefit under the Settlement, notwithstanding any judgment, principle, or statute that may provide otherwise.

3.03 Notwithstanding paragraphs 3.01 and 3.02 above and any other provisions of this Settlement Agreement, no Benefit Check shall be provided (a) from the Bank Defendants' Settlement Amount or the Appraiser Defendants' Settlement Amount to any Class Member whose Class Notice is returned by the Postal Service as undeliverable without a forwarding address on the face of the returned mail; (b) as to whom the Settlement Administrator does not identify, or Class Counsel does not provide the Settlement Administrator, with a current address for that Class Member prior to the Final Approval Date; and (c) who does not otherwise make themselves known to Class Counsel and/or the Settlement Administrator and provide a current address prior to the Final Approval Date. Any Consideration not provided to a Class Member pursuant to this paragraph (or because the Class Member is a Successful Opt-Out) shall remain as part of the Settlement Amount and be distributed according to the terms of this Agreement.

3.04 Within ten (10) business days after the Final Approval Date or the Court's resolution of any objections to the final Settlement Administration Cost calculation, and/or Updated Payment Schedule or the Updated DiPino/Funari Payment Schedule made pursuant to paragraph 3.01 above, whichever is later, the Settlement Administrator shall establish an account (the "Payment Account") for the payment of the Benefit Check(s) to eligible Class Members, the Class Representative Award, if any, to Representative Plaintiffs, the Attorney Fee/Litigation Cost Award, if any, to Plaintiffs' Counsel, and the remaining Settlement Administration Costs, if any. The Bank Defendants shall fund the Payment Account with the Bank Defendants' Settlement Amount within fifteen (15) business days after the Final Approval Date or the Court's resolution of any objections to the final Settlement Administration Cost calculation and/or Updated Payment Schedule or Updated DiPino/Funari Payment Schedule made pursuant to paragraph 3.01 above, whichever is later. The Appraiser Defendants shall separately fund the Payment Account with the Appraiser Defendants' Settlement Amount within fifteen (15) business days after the Final Approval Date or the Court's resolution of any objections to the final Settlement Administration Cost calculation and/or Updated Payment Schedule or Updated DiPino/Funari Payment Schedule made pursuant to paragraph 3.01 above, whichever is later.

3.05 Subject to the terms and conditions of this Agreement, within thirty (30) business days after the Final Approval Date or the Court's resolution of any objections to the final Settlement Administration Cost calculation and/or Updated Payment Schedule or Updated DiPino/Funari Payment Schedule made pursuant to paragraph 3.01 above, whichever is later, the Settlement Administrator shall mail or otherwise provide the Benefit Checks as follows:

- (A) The Settlement Administrator shall provide a Benefit Check payable from the Bank Defendants' portion of the Settlement Amount in the amount set forth in the Updated

Payment Schedule to each eligible Class Member who is not a Successful Opt-Out and for whom a current address has been identified by the processes set forth in this Agreement. Such Benefit Checks shall be drawn on the Payment Account and the Settlement Administrator shall mail each Benefit Check to the address provided for each eligible Class Member on the Class Member List or, if applicable, to any updated address provided to and/or obtained by the Settlement Administrator and/or Class Counsel prior to the Final Approval Date. No additional addresses for Class Members shall be accepted by the Settlement Administrator after the Final Approval Date.

- (B) The Settlement Administrator shall provide an additional Benefit Check payable from the Appraiser Defendants' portion of the Settlement Amount in the amount set forth in the Updated DiPino/Funari Payment Schedule to each eligible Class Member who is not a Successful Opt-Out, for whom a correct address has been identified by the processes set forth in this Agreement, and whose name appears on the DiPino Group List or Funari Group List. Such additional Benefit Checks shall be drawn on the Payment Account, and the Settlement Administrator shall mail each additional Benefit Check to the address provided for each Group Member on the Group Member Lists or, if applicable, to any updated address provided to and/or obtained by the Settlement Administrator and/or Class Counsel prior to the Final Approval Date. No additional addresses for Group Members shall be accepted by the Settlement Administrator after the Final Approval Date.
- (C) All Benefit Checks issued pursuant to this paragraph shall be void if not negotiated within one hundred eighty (180) calendar days of their date of issue, and shall contain a legend to that effect. Benefit Checks issued pursuant to this paragraph that are not negotiated within one hundred eighty (180) calendar days of their date of issue shall not be reissued. In entering into this Settlement Agreement, Representative Plaintiffs and Class Counsel agree, on behalf of all Class Members and the Class, that those Class Members who do not negotiate Benefit Checks within one hundred eighty (180) calendar days of their date of issue shall completely and irrevocably waive and release (on their own behalf and any other person or entity claiming through them) any rights or entitlement to receive the Consideration from the Settlement, to the maximum extent permitted by law, and that those Class Members shall have no recourse against Defendants and/or the Settlement Administrator.

3.06 If a Class Member is a Successful Opt-Out, then that Class Member shall be excluded from the Settlement, shall not receive any benefits of the Settlement (including any Benefit Check(s) available to Class Members who are not Successful Opt-Outs), and shall not be bound by the terms of this Settlement Agreement.

3.07 The Settlement Administrator shall not be permitted to distribute separate Benefit Checks to co-obligors who are entitled to relief under this Agreement on account of the same Refinance Loan, but, in such cases, shall distribute only one Benefit Check (or, in the event the Class Member is also part of the DiPino Group or Funari Group, two Benefit Checks) payable jointly to all such Class Members on a Refinance Loan. In the event the Settlement Administrator determines co-obligors on the same loan have different mailing addresses, the Settlement Administrator shall mail the Benefit Check to only one address selected in its discretion.. The Defendants and the Settlement Administrator shall have no liability to any co-

obligor arising from any claim regarding the division of the benefits, or negotiation, of a Benefit Check among co-obligors on the same Refinance Loan.

3.08 Subject to the terms and conditions of this Agreement, within twenty (20) business days after the Final Approval Date or the Court's resolution of any objections to the final Settlement Administration Cost calculation and/or Updated Payment Schedule or DiPino/Funari Updated Payment Schedule made pursuant to paragraph 3.01 above, whichever is later, and upon determining that the Bank Defendants have fully funded the Payment Account with the Bank Defendants' Settlement Amount, minus any amounts paid by them to the Settlement Administrator (pursuant to paragraph 3.04 above) and that the Appraiser Defendants have fully funded the Payment Account with the Appraiser Defendants' Settlement Amount, minus any amounts paid by them to the Settlement Administrator (pursuant to paragraph 3.04 above), the Settlement Administrator shall pay, from the Payment Account, the Attorney Fee/Litigation Cost Award in the amount, if any, ordered by the Court, up to a maximum amount of thirty-three percent (33%) of the Settlement Amount plus twenty thousand dollars (\$20,000), to Class Counsel by check or by wire transfer to an account specified by Class Counsel. Class Counsel shall provide the Settlement Administrator with the name of the account payable and, if directed by the Settlement Administrator, with written wiring instructions for such transfer, no later than ten (10) business days after the Final Approval Date. Defendants shall have no liability to Class Counsel and/or Plaintiffs' Counsel arising from any claim regarding the division of any Attorney Fee/Litigation Cost Award between and among Class Counsel or Plaintiffs' Counsel. For purposes of preparing the Updated Payment Schedule and Updated DiPino/Funari Payment Schedule, the Parties agree that fifty-four percent (54%) of the Attorney Fee/Litigation Cost Award, if any, shall be allocable to the Bank Defendants' Settlement Amount and the remaining forty-four percent (46%) allocable to the Appraiser Defendants' Settlement Amount.

3.09 Subject to the terms and conditions of this Agreement, within twenty (20) business days after the Final Approval Date or the Court's resolution of any objections to the final Settlement Administration Cost calculation and/or Updated Payment Schedule or Updated DiPino/Funari Payment Schedule made pursuant to paragraph 3.01 above, whichever is later, and upon determining that the Bank Defendants have fully funded the Payment Account with the Bank Defendants' Settlement Amount, minus any amounts paid by them to the Settlement Administrator (pursuant to paragraph 3.04 above) and that the Appraiser Defendants have fully funded the Payment Account with the Appraiser Defendants' Settlement Amount, minus any amounts paid by them to the Settlement Administrator (pursuant to paragraph 3.04 above), the Settlement Administrator shall pay, from the Payment Account, the Class Representative Award in the amount, if any, ordered by the Court (up to a maximum aggregate amount of ten thousand dollars (\$10,000)) by check or by wire transfer to an account specified by Class Counsel. Class Counsel shall provide the Settlement Administrator with the name of the account payable and, if directed by the Settlement Administrator, with written wiring instructions for such transfer, no later than ten (10) business days after the Final Approval Date. Defendants shall have no liability to Representative Plaintiffs, Class Counsel, or Plaintiffs' Counsel arising from any claim regarding the delivery or payment of the Class Representative Award by Class Counsel or Plaintiffs' Counsel to Representative Plaintiffs or the division of the Class Representative Award between and among Representative Plaintiffs. In advance of the payments contemplated under paragraph 3.08 above and this paragraph 3.09, Class Counsel and Representative Plaintiffs agree to provide Defendants with completed copies of Internal Revenue Service Form W-9, on the currently effective form, and understand that no Attorney Fee/Litigation Cost Award or Class Representative Award will be issued without such W-9 forms. For purposes of preparing the Updated Payment Schedule and Updated DiPino/Funari Payment Schedule, the Parties Agree that the Class

Representative Award, as well as the Settlement Administration Costs, shall be allocable equally as between the Bank Defendants' Settlement Amount and the Appraiser Defendants' Settlement Amount.

3.10 Upon completion of administration of this Settlement, the Settlement Administrator may disburse to itself from the Payment Account the final Settlement Administration Cost amount agreed to by the Parties or, in the absence of agreement, determined by the Court pursuant to paragraph 3.01 above. In no circumstances, however, shall the Settlement Administrator disburse to itself any amount greater than the maximum Settlement Administration Costs contemplated under this Agreement.

3.11 Defendants' and the Settlement Administrator's respective obligations with respect to funding and creating the Payment Account for the distribution of Benefit Checks, the Attorney Fee/Litigation Cost Award, if any, and the Class Representative Award, if any, and distributing such funds, shall be performed in good faith. So long as they do, Defendants and the Settlement Administrator shall not be liable for erroneous, improper, or inaccurate distribution, and the Release (as embodied in paragraphs 4.01 to 4.05 of this Agreement) and any judgment shall be effective as of the Final Approval Date as to Representative Plaintiffs, Class Counsel, Plaintiffs' Counsel, and every Class Member (excepting those who are Successful Opt-Outs) notwithstanding any such error and regardless whether such error is corrected.

3.12 All monies that might in the future be paid to any Class Member are not vested, or otherwise monies in which the Class Member has an enforceable legal, tangible, or intangible interest, and instead shall remain the sole and exclusive property of Defendants (to the extent of their respective contributions to the Settlement Amount and, in the event any portion of those contributions is disbursed pursuant to this Agreement, in the same percentage as their respective contributions to the Settlement Amount in any remaining amounts) unless and until all conditions precedent to payment under this Agreement are met, the monies are paid, and the Benefit Checks are timely negotiated. In order to give effect to the Parties' intention, and to the maximum extent permitted by law, no person, entity, or governmental body shall have any rights to Benefit Checks that are not timely negotiated, to any sum that would have been paid if Benefit Checks had been timely negotiated, or to any portion of the Benefit Checks whether claimed, unclaimed, negotiated or not negotiated, and/or in any sums which might have been paid to Class Members. The Parties further agree that the amount of any Benefit Checks not timely negotiated shall be donated to a mutually agreeable *cy pres* recipient, to be used by such recipient solely to provide financial literacy education to homebuyers and persons refinancing mortgage loans in West Virginia.

3.13 The maximum aggregate amount the Bank Defendants shall be obligated to pay under this Agreement, if it gains Final Approval, is eight hundred eighty-eight thousand dollars (\$888,000), and the maximum aggregate amount the Appraiser Defendants shall be obligated to pay, if it gains Final Approval, is seven hundred fifty thousand dollars (\$750,000). The Bank Defendants have (and shall have) no obligations to pay any sums for or on account of the Appraiser Defendants under any circumstances, and the Appraiser Defendants have (and shall have) no obligations to pay any sums for or on behalf of the Bank Defendants under any circumstances. The Parties further agree that, in the event a court determines or otherwise issues an order or opinion that there should be any money paid from the Settlement Amount, or from any other source, by Defendants (or any of them) other than to (a) eligible Class Members (who are not Successful Opt-Outs); (b) Class Counsel, as an Attorney Fee/Litigation Cost Award ordered by the Court; (c) Representative Plaintiffs, as a Class Representative Award ordered by the Court; and (d) the Settlement Administrator for Settlement Administration Costs, this Settlement and Agreement shall be void.

#### IV. RELEASES

4.01 Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, Representative Plaintiffs and each Class Member who is not a Successful Opt-Out, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, next friends, joint tenants, tenants in common, tenants by the entirety, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and each of them (collectively and individually, the "Plaintiff Releasing Persons"), will be deemed to have completely released and forever discharged Bank of America, the Appraisers, and each and every one of their past, present, and future parents, predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the "Plaintiff Released Persons"), from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including, without limitation, (i) those known or unknown or capable of being known, (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any of the Plaintiff Released Persons, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until the Final Approval Date (collectively, the "Released Rights"), that arise out of and/or concern (a) Released Rights that were asserted, or attempted to be asserted, in the Action; (b) conduct, acts, and/or omissions (alleged or actual) by any of the Plaintiff Released Persons arising from or relating in any manner to the Appraisals or the Appraisal Order Forms associated with any of the Refinance Loans; (c) conduct, acts, and/or omissions (alleged or actual) by any of the Plaintiff Released Persons arising from or relating in any manner to ordering any Appraisals from any of the Appraisers at any time; (d) conduct, acts, and/or omissions (alleged or actual) by any of the Plaintiff Released Persons arising from or relating in any manner to communicating target values, sales prices, loan amounts, owner's estimates of value, or any other loan information whatsoever to any of the Appraisers at any time; (e) conduct, acts, and/or omissions (alleged or actual) by any of the Plaintiff Released Persons arising from or relating in any manner to influencing or attempting to influence the Appraisers in performing Appraisals at any time; (f) conduct, acts, and/or omissions (alleged or actual) by any of the Plaintiff Released Persons arising from or relating in any manner to any Appraisals performed by the Appraisers at any time; (g) any practice, policy, and/or procedure (alleged or actual) of any of the Plaintiff Released Persons concerning Appraisals, ordering Appraisals, performing Appraisals, or providing Appraisal values; (h) conduct, acts and/or omissions (alleged or actual) by any of the Plaintiff Released Persons relating to the charging, collection, or allocation of any fees, charges, credits, or payments on any Appraisals ordered from the Appraisers at any time; (i) all claims that were or could have been asserted in the Action arising from or relating in any manner to any conduct, act and/or omissions (alleged or actual) by any of the Plaintiff Released Persons with respect to an Appraisal, the ordering of an Appraisal, the performance of an Appraisal, the results of an Appraisal or the use of any Appraisal (or any portion thereof); (j) all claims asserted in the Action; (k) any claim or theory that any act or omission by the Defendants (or any of them) in connection with either ordering Appraisals from the Appraisers or any valuation services performed by the Appraisers violates any statute, regulation, law and/or contract; (l) any claim or theory that Bank of America is liable, whether directly or indirectly, for the conduct, acts and/or omissions of the Appraisers and/or any other party or entity in connection with ordering Appraisals from the Appraisers or any valuation services performed by the Appraisers; (m) any claim or theory that the Appraisers are liable, whether directly or indirectly, for the conduct, acts and/or omissions of Bank of America and/or any other party or entity in connection with the Released Rights that

were asserted, or attempted to be asserted, or could have been asserted in the Action; (n) any claim or theory that any Class Member was improperly included or omitted as a member of the Funari Group and/or DiPino Group; and (o) any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions described in this paragraph 4.01 (a)-(n) above. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion.

4.02 Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, the Appraiser Defendants, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, next friends, legal representatives, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (collectively and individually, the "Appraiser Releasing Persons"), will be deemed to have completely released and forever discharged Bank of America and each of its past, present, and future parents, predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the "Appraiser Released Persons"), from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, contribution, obligations, or liabilities of any and every kind, that arise from or relate in any way to this Action, this Settlement, and any of the matters described in paragraph 4.01 above, or which in any way involve a claim or theory that the Appraiser Released Persons shall have any liability or responsibility whatsoever for any expenses or liability incurred by the Appraiser Releasing Persons. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion.

4.03 Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, Bank of America, the Bank Defendants, and each of its past, present, and future parents, predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the "Bank Releasing Persons") will be deemed to have completely released and forever discharged the Appraisers, the Appraiser Defendants, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, next friends, legal representatives, attorneys, insurers, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (the "Bank Released Persons") from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, contribution, obligations, or liabilities of any and every kind, that arise from or relate in any way to this Action, this Settlement, and any of the matters described in paragraph 4.01 above, or which in any way involve a claim or theory that the Bank Released Persons shall have any liability or responsibility whatsoever for any expenses or liability incurred by the Bank Releasing Persons. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion.

4.04 In addition to the provisions of paragraphs 4.01, 4.02 and 4.03 above, the Releasing Persons hereby expressly agree that, upon Final Approval, each will waive and release any and all provisions, rights, and benefits conferred either (a) by Section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, or principle of common law, which is similar,

comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims released pursuant to paragraphs 4.01, 4.02 or 4.03 above. Section 1542 of the California Civil Code reads:

Section 1542. General Release; extent. 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.

Whether a beneficiary of California law or otherwise, each of the Releasing Persons acknowledges that he or she may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraphs 4.01, 4.02 and 4.03 above, but each of those individuals expressly agree that, upon entry of the final judgment contemplated by this Settlement Agreement, he, she, and they shall have waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the claims released pursuant to paragraphs 4.01, 4.02 and 4.03 above, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

4.05 Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, the undersigned Class Counsel, for themselves, Plaintiffs' Counsel, and each of his, her or their present and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), experts, representatives, employees and affiliates ("Attorney Releasers"), unconditionally and irrevocably remise, waive, satisfy, release, acquit, and forever discharge each of the Defendants and the Released Persons from any and all right, lien, title, or interest in any attorneys' fee or award or any claim for reimbursement of costs in connection with the Action or the Released Rights, except as provided herein.

## **V. REPRESENTATIONS AND WARRANTIES**

5.01 In addition to the provisions hereof, this Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Fed. R. Civ. P. 23. Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Representative Plaintiffs and Class Counsel represent and warrant to Defendants that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. This includes the obligation to (a) oppose non-meritorious objections and to defend the Agreement and the Settlement before the Court and on appeal, if any; (b) seek approval of this Agreement and of the Settlement by the Court; (c) move for the entry of the orders identified in paragraphs 2.01 and 2.18 above; and (d) join in the entry of such other orders or revisions of orders or notices, including the orders and notices attached hereto, as are required by Defendants, subject to Representative Plaintiffs' consent, not to be unreasonably withheld or delayed.

5.02 Representative Plaintiffs and Class Counsel represent and warrant that any Attorney Fee/Litigation Cost Award they may seek upon application to the Court pursuant to paragraph 2.20 above shall include all attorneys' fees and litigation costs that Representative Plaintiffs, Plaintiffs' Counsel, and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged

or actual), representatives, employees, and affiliates of Plaintiffs' Counsel and Class Counsel, seek or may have any right or claim to in connection with the Action and the Released Rights.

5.03 Representative Plaintiffs and Class Counsel represent and warrant that other than "Plaintiffs' Counsel," as that term is defined above, there are no persons (natural or legal) having any interest in any award of attorneys' fees, expenses, or litigation costs in connection with the Action.

5.04 Representative Plaintiffs, Class Counsel, and Defendants represent and warrant that he, she, it, or they have full authorization and capacity to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of a Party, entity, or other person(s) covenants, warrants, and represents that he, she, or it has been fully authorized to do so by that Party, entity, or other person(s). Representative Plaintiffs, Class Counsel, and Defendants represent and warrant that he, she, it, or they intend to be bound fully by the terms of this Agreement.

5.05 Representative Plaintiffs, Class Counsel (for themselves and Plaintiffs' Counsel), and Defendants represent and warrant that they have not, nor will they, unless expressly authorized to do so by the terms of this Agreement, (a) attempt to void this Agreement in any way; (b) Opt-Out of the Settlement under this Agreement; (c) solicit or encourage in any fashion Class Members to Opt-Out; or (d) solicit or encourage in any fashion any effort by any person (natural or legal) to object to the Settlement under this Agreement.

5.06 Class Counsel and Plaintiffs' Counsel represent and warrant that, subject to and consistent with Rule 5.6 of West Virginia's Rules of Professional Conduct, they (a) have no current client with an appraisal-related claim against any of the Bank Defendants of the type alleged in the Action that has not already been filed and served on the Bank Defendants (or any of them), and (b) have no present intention to seek out or solicit former or current borrowers with residential mortgage loans made and/or serviced by the Bank Defendants, or former or current borrowers who obtained Appraisals from any of the Appraisers, to pursue individual or class claims against the Bank Defendants or the Appraiser Defendants with respect to matters within the scope of the Release, as embodied in paragraphs 4.01 to 4.05 above, or which in any way involve a claim that the Appraisals were improper, improperly obtained, or unlawful in any way, or caused any residential mortgage loan to be improper, improperly induced, or unlawful in any way. The Parties understand and agree that nothing in this Paragraph imposes or shall be construed to prohibit or restrict Class Counsel and/or Plaintiffs' Counsel from representing persons who seek representation for such claims subsequent to the date of this Agreement. Further, the Parties understand and agree that any provision of this Paragraph is void to the extent it is determined, by way of a final (non-appealable) decision of a court of competent jurisdiction or a formal opinion of a West Virginia State Bar, to conflict with the West Virginia Rules of Professional Conduct.

5.07 Class Counsel and Plaintiffs' Counsel represent and warrant that they do not represent any current client with any claim against any Released Person that has, as of the date of this Agreement, not been filed and served upon the Released Person.

5.08 All parties to this Agreement represent and warrant that, following the Final Approval Date, they will comply with the terms of the Protective Order entered by the Court in the Action on January 20, 2015 (ECF No. 69) relating to the return or destruction of all documents and other discovery materials designated as Confidential by Defendants (or any of them). Representative Plaintiffs, Plaintiffs' Counsel, the Appraiser Defendants, Appraisers' Counsel, the Bank Defendants, Counsel for the Bank Defendants



further represent and warrant that they will not use or seek to use (a) any confidentially designated discovery obtained from another party in the Action and/or (b) the fact or content of the Settlement in this Action in connection with any other claim, action, or litigation against any Released Person (excepting only actions to enforce or construe this Agreement). The Parties understand and agree that subsection (a) of this Paragraph shall not apply to a Party's use of discovery that such Party itself produced and designated confidential in the Action.

5.09 Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Defendants represent and acknowledge to Representative Plaintiffs that they will not oppose the Settlement, Preliminary Approval and/or Final Approval, provided that the Preliminary Approval Order and Final Approval Order sought by Plaintiffs and Class Counsel are substantially in the forms of Exhibits B and D attached hereto, respectively.

5.10 If any person, legal or natural, breaches the terms of any of the representations and warranties in this Section V, the Court shall retain jurisdiction over this matter to entertain actions by a Party against such person for breach and/or any Party's request for a remedy for such breach.

5.11 Class Counsel represent and warrant to Defendants that they have the authority to execute this Agreement on behalf of Plaintiffs, themselves, and Plaintiffs' Counsel, and thereby to bind Plaintiffs, themselves, and Plaintiffs' Counsel to all terms and conditions of this Agreement, and, subject to Court approval, to bind all non-opting-out Class Members to the terms and conditions of this Agreement. Class Counsel further agrees that, prior to Final Approval, Class Counsel will deliver to Defendants a written confirmation executed by each of Plaintiffs' Counsel that (a) Class Counsel had the actual authority to execute this Agreement on behalf of Plaintiffs' Counsel and bind each of them to the terms and conditions of this Agreement and/or that such Plaintiffs' Counsel ratify the execution of this Settlement Agreement by Class Counsel, and (b) Plaintiffs' Counsel agree to be bound by all terms and conditions of this Agreement that concern Plaintiffs' Counsel. Class Counsel and Counsel for the Defendants further agree that said written confirmation may be contained as part of an affidavit or declaration filed and executed by Plaintiffs' Counsel (or any of them) in support of an application under paragraph 2.20 above for an Attorney Fee/Litigation Cost Award.

## **VI. MISCELLANEOUS PROVISIONS**

6.01 Except as specified herein, this Agreement and the Settlement provided for herein shall not be effective until the Final Approval Date. Until that time, and except as otherwise specifically provided for in this Agreement, Defendants shall have no obligation to pay or set aside any monies due or potentially due under the terms of this Agreement.

6.02 This Agreement reflects, among other things, the compromise and settlement of disputed claims and defenses among the Parties hereto, and nothing in this Agreement or any action taken to effectuate this Agreement is intended to be an admission or concession of liability of any Party or third party or of the validity of any claim. Defendants deny the allegations in the Action, and contend that their conduct has been entirely lawful and proper.

6.03 This Agreement is entered into only for purposes of settlement. In the event that Final Approval of this Agreement and this Settlement does not occur for any reason, this Agreement shall

become null and void. In that event, the Parties shall be absolved from all obligations under this Agreement, and this Agreement, any draft thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Agreement shall have no effect and shall not be admissible evidence for any purpose. In addition, in that event, the status of the Action shall revert to the state it was in prior to settlement, the pleadings shall revert to that date, and the agreements contained herein shall be null and void, shall not be cited or relied upon as an admission as to the Court's jurisdiction or the propriety of class certification, and the Parties shall have all rights, claims, and defenses that they had or were asserting as of the date of this Agreement.

6.04 Nothing shall prevent Representative Plaintiffs or the Defendants (or any of them) from appealing any denial by the Court of Final Approval of this Settlement, and the Parties agree that, in the event of such an appeal, the case will be stayed pending the resolution of any such appeal. The Parties agree they will continue to support and advocate for approval of the Settlement on appeal or in post-appeal proceedings, if there is such an appeal, to the same extent as they are bound herein to do so while the Action is before the Court. In the event such an appeal results, by order of the appellate court or by an order after remand or a combination thereof, in the entry of an order(s) whereby the Settlement is approved in a manner substantially consistent with the substantive terms and intent of this Settlement Agreement, and dismissing all claims in the Action with prejudice, and otherwise meeting the substantive criteria of this Agreement for approval of the Settlement, such order shall be treated as a Final Approval Order.

6.05 The Parties agree that all negotiations, statements, proceedings, and other items related to this Agreement are for settlement purposes only, and shall not be offered or be admissible in evidence by or against any other Party or cited or referenced by Plaintiffs, Plaintiffs' Counsel, Counsel for the Defendants, or Defendants in any other action or proceeding against Defendants or Plaintiffs except to enforce the Agreement.

6.06 This Agreement shall be terminable at the option of the Bank Defendants or Appraiser Defendants (a) in the event the Court fails to enter the orders contemplated by paragraphs 2.01 and 2.18 above, or does so in a form materially different from the forms contemplated by this Agreement; (b) if the Agreement becomes null and void in accordance with paragraph 6.03 above; (c) if the Court or any other court permits a person or persons to Opt-Out as a representative, or otherwise to exercise or preserve the Opt-Out, or substantive rights, of others; (d) if the Court fails to approve this Agreement as written and agreed to by the Parties, including but not limited to a failure to approve the Preliminary Approval Order or the Final Approval Order; (e) in the case of a Material Event; (f) if the Attorney Fee/Litigation Cost Award and/or Class Representative Award, if any, made by the Court is greater than the maximum amount of each award Class Counsel and Representative Plaintiffs may apply for under paragraphs 2.20 and 2.22 of this Agreement; (g) if Class Counsel fails to provide the written confirmation required under paragraph 5.11 above prior to Final Approval; or (h) as otherwise provided in this Agreement. This Agreement shall also be terminable at the option of the Bank Defendants if Class Members relating to more than five percent (5%) of the Refinance Loans become Successful Opt-Outs. In the event a termination option arises, the Bank Defendants or the Appraiser Defendants shall exercise the option by the later of twenty (20) days after the events giving rise to the termination right or Final Approval.

6.07 The Agreement also shall be terminable upon the mutual agreement of the Representative Plaintiffs and Defendants.

6.08 If this Agreement is terminated pursuant to its terms, or if Final Approval does not occur, or if this Agreement is not approved in full, then any and all orders vacated or modified as a result of this Agreement shall be reinstated, and any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated *nunc pro tunc*.

6.09 Representative Plaintiffs and Class Counsel shall not (a) issue, or otherwise cause to be issued, any press release, advertisement, Internet posting (except that Class Counsel can list the Action as a settled case on its website with a brief description of the claims asserted) or similar document concerning the Action and/or the facts and circumstances that were the subject of, or disclosed in discovery in, the Action, excepting only such documents created and disbursed as part of the Class Notice or (b) make extrajudicial statements or seek media interviews concerning: (i) the Action; (ii) the facts and circumstances that were the subject of, or disclosed in discovery in the Action; and/or (iii) the Settlement of the Action, excepting only that such statements may be made to individual Class Members in one-on-one communications or as part of the Class Notice. This provision shall in no way limit Class Counsel from discussing the legal issues raised in the Action.

6.10 The Parties agree that nothing in this Agreement shall be construed to prohibit communications between Defendants and the Released Persons, on the one hand, and Class Members, on the other hand, in the regular course of Defendants' and the Released Persons' businesses.

6.11 Representative Plaintiffs, Class Counsel, the Appraiser Defendants, Counsel for the Appraiser Defendants, and Counsel for the Bank Defendants shall not produce or provide to any governmental body or agency, administrative body or agency, regulator, Board or commission, attorney general of a State, the United States Department of Justice, or any other government or law enforcement agency or body any discovery materials or other documents obtained from other parties (or any of them) in the Action unless required to do so by law and after reasonable notice to the party or parties from whom such documents were obtained in advance of any production such that the parties (or any of them) may seek a court order or other relief precluding or preventing production.

6.12 This Agreement is intended to and shall be governed as a contract executed under the laws of the State of West Virginia.

6.13 The terms and conditions set forth in this Agreement constitute the complete and exclusive agreement between the Parties hereto, and may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement. Any modification of the Agreement must be confirmed and executed in writing by all Parties and served upon Counsel for the Defendants and Class Counsel.

6.14 This Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

6.15 This Agreement shall inure to the benefit of the Released Persons and the heirs, successors, and assigns of each Released Person, and each and every one of the Released Persons shall be deemed to be intended third-party beneficiaries of this Agreement and, once approved by the Court, of the Settlement.

6.16 The waiver by one Party of any provision, right, or condition of this Agreement shall not be deemed a waiver of any other provision, right, or condition of this Agreement. The waiver by one Party of

any remedies or recourse that Party may have in the event of a breach by another Party of any provision of this Agreement shall not be deemed a waiver of any remedy or recourse that Party may have in the event of a breach of any other provision of this Agreement.

6.17 This Agreement, and the Settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence, or support a contention that (a) the Bank Defendants, the Appraiser Defendants and/or any of the Released Persons acted illegally, improperly, or in breach of law, contract, ethics, or proper conduct; and/or (b) class certification is required or appropriate in any future lawsuit against the Bank Defendants (or any of them), the Appraiser Defendants (or any of them), and/or any of the Released Persons.

6.18 This Agreement shall become effective upon its execution by Class Counsel and Defendants, except for those provisions that require approval from the Court to be effective (and those provisions shall become effective upon their approval by the Court). Representative Plaintiffs shall thereafter execute this Agreement promptly, and may execute this Agreement in a counterpart. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

6.19 No representations or advice regarding the tax consequences of this Agreement have been made by any Party. The Parties further understand and agree that each Party, each Class Member and each of Class Counsel and Plaintiffs' Counsel shall be responsible for his, her, its, or their own taxes, if any, resulting from this Agreement and any payments made pursuant to this Agreement.

6.20 The Parties agree that any Class Member who is in active bankruptcy proceedings or previously was a party to bankruptcy proceedings during the Class Period may only participate in the Settlement subject to applicable bankruptcy law and procedures. Defendants are under no obligation to notify any bankruptcy court that has, had, or may have jurisdiction over such Class Member's bankruptcy proceedings or any trustee or examiner appointed in such Class Member's bankruptcy proceedings of this Agreement or the benefits conferred by the Agreement and the Settlement.

6.21 Each Class Member agrees that, if he, she, or they are in active bankruptcy proceedings or previously was a party to a bankruptcy proceeding during the Class Period, and either the claims asserted in this Action or the benefits payable under this Agreement are or may be part of the Class Member's bankruptcy estate and not the property of the Class Member, the Class Member will (a) advise the bankruptcy trustee of this Agreement and the benefits conferred by the Agreement and Settlement, in time for the trustee to exercise any rights or object to the Settlement, (b) comply with any direction from his, her, or their bankruptcy trustee with respect to this Settlement and the benefits conferred by the Agreement and the Settlement, and (c) in the event of any disagreement with the direction of the bankruptcy trustee, seek relief from the appropriate bankruptcy court (without the involvement of any other party to this Agreement). The Parties further agree that any disputes concerning the rights of the bankruptcy estate to the proceeds of any Settlement Payment or Class Representative Award shall be adjudicated by the Bankruptcy Court. The Settlement Administrator shall follow any direction of the Bankruptcy Court with respect to the proceeds of any Settlement Payment or Class Representative Award. In the event the Bankruptcy Court issues any order or orders that do more than adjudicate the proceeds of any Settlement Payment or Class Representative Award, and such order or orders are material in Defendants' judgment exercised in good faith, Defendants shall have the right to terminate this Agreement.

6.22 Under no circumstances shall the Settlement or Agreement or the Release be deemed to alter, amend, or change the terms and conditions of any mortgage loan to which any Class Member is or was a party, or to provide a defense to any such loan, including but not limited to a defense based on the so-called "one action" rule, nor shall the Settlement or the Agreement or the Release be deemed to have any effect in any bankruptcy case, in any foreclosure proceeding, or in any other action involving a Class Member hereto, nor shall the Settlement Agreement create or be construed as evidence of any violation of law or contract, including claims under the Truth in Lending Act or the Real Estate Settlement Procedures Act; in the event this Agreement is so construed as to a particular Class Member, it can be declared by Defendants to be null and void as to that Class Member only (and in such latter event, the Release as to that Class Member shall also be void). Representative Plaintiffs and the Settlement Class expressly covenant and agree, as a material inducement to Defendants, and recognizing the practical difficulties faced by Defendants in ongoing or future matters, that each of them waive and forever relinquish any rights or entitlement they may possess or come to possess (other than as set forth herein) to have Defendants or the Released Persons amend, alter, or revise proofs of claims, rights, demands, suits, or other claims made (or to be made) in order to reflect the benefit of the Benefit Checks provided or to be provided or to reflect the other terms of this Agreement and the Settlement.

6.23 Although the Court shall enter a judgment, the Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Agreement. In the event any proceeding is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other(s) damages arising from any breach of the Agreement, and his, her, or its reasonable attorneys' fees and costs incurred therein. Further, if a Class Member or Defendant takes any action or position, after the Final Approval Date, in any lawsuit (including the Action) that causes any Party to seek relief, intervention, or ruling by this Court to enforce, interpret, or protect the Settlement, this Agreement, or any of its orders subsequent hereto (including the Preliminary Approval Order or the Final Approval Order), the Court shall retain jurisdiction over this matter to entertain motions or requests by that Party for an award of damages and attorneys' fees against such Class Member.

6.24 Defendants and Representative Plaintiffs acknowledge that they have been represented and advised by independent legal counsel throughout the negotiations that have culminated in the execution of this Agreement, and that they have voluntarily executed the Agreement with the consent of and on the advice of counsel. The Parties have negotiated and reviewed fully the terms of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGES]



IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have entered into this Settlement Agreement on the date first above written, and have executed this Settlement Agreement on the date indicated below each respective signature.

**REPRESENTATIVE PLAINTIFFS:**

**Maureen DiLoreti**

\_\_\_\_\_  
Maureen DiLoreti

Date: \_\_\_\_\_

**REPRESENTATIVE PLAINTIFF**

**Lori A. Veltri**

\_\_\_\_\_  
Lori A. Veltri

Date: 3-11-2016

**REPRESENTATIVE PLAINTIFF**

**Michael A. Veltri**

\_\_\_\_\_  
Michael A. Veltri

Date: 3-11-2016

**REPRESENTATIVE PLAINTIFF**

**PLAINTIFFS' COUNSEL:**

**Jason E. Causey, Esq.**

\_\_\_\_\_  
Jason E. Causey, Esq.

Date: \_\_\_\_\_

**BORDAS & BORDAS PLLC**  
1358 National Road,  
Wheeling, WV 26003

**Jonathan R. Marshall, Esq.**

\_\_\_\_\_  
Jonathan R. Marshall, Esq.

Date: \_\_\_\_\_

**BAILEY & GLASSER LLP**  
209 Capitol Street  
Charleston, WV 25301

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have entered into this Settlement Agreement on the date first above written, and have executed this Settlement Agreement on the date indicated below each respective signature.

**REPRESENTATIVE PLAINTIFFS:**

**PLAINTIFFS' COUNSEL:**

**Maureen DiLoreti**

**Jason E. Causey, Esq.**

*Maureen DiLoreti*

Maureen DiLoreti

\_\_\_\_\_  
Jason E. Causey, Esq.

Date: 3-11-2016

Date: \_\_\_\_\_

**REPRESENTATIVE PLAINTIFF**

**BORDAS & BORDAS PLLC**

**Lori A. Veltri**

1358 National Road,  
Wheeling, WV 26003

\_\_\_\_\_  
Lori A. Veltri

**Jonathan R. Marshall, Esq.**

Date: \_\_\_\_\_  
**REPRESENTATIVE PLAINTIFF**

\_\_\_\_\_  
Jonathan R. Marshall, Esq.

**Michael A. Veltri**

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael A. Veltri


**BAILEY & GLASSER LLP**

209 Capitol Street  
Charleston, WV 25301

Date: \_\_\_\_\_  
**REPRESENTATIVE PLAINTIFF**

**DEFENDANTS:**


**COUNTRYWIDE HOME LOANS, INC.**

  
By: \_\_\_\_\_  
Title: Associate General Counsel  
Date: March 8, 2016

**EDWARD A. DIPINO D/B/A EDWARD DIPINO APPRAISAL SERVICES.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_


**BANK OF AMERICA, N.A.**

  
By: \_\_\_\_\_  
Title: Associate General Counsel  
Date: March 8, 2016

**EDWARD S. DIPINO D/B/A EDWARD DIPINO APPRAISAL SERVICES**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LANDSAFE APPRAISAL SERVICES, INC.**

  
By: \_\_\_\_\_  
Title: Associate General Counsel  
Date: March 8, 2016

**GREGORY J. FUNARI**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**DEFENDANTS:**

**COUNTRYWIDE HOME LOANS, INC.**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**EDWARD A. DIPINO D/B/A EDWARD DIPINO  
APPRAISAL SERVICES.**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**BANK OF AMERICA, N.A.**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_


**EDWARD S. DIPINO D/B/A EDWARD DIPINO  
APPRAISAL SERVICES**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**LANDSAFE APPRAISAL SERVICES, INC.**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**GREGORY J. FUNARI**

  
\_\_\_\_\_  
By:  
Title:  
  
Date: 3/23/2016

**DEFENDANTS:**

**COUNTRYWIDE HOME LOANS, INC.**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**EDWARD A. DIPINO D/B/A EDWARD DIPINO  
APPRAISAL SERVICES.**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**BANK OF AMERICA, N.A.**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**EDWARD S. DIPINO D/B/A EDWARD DIPINO  
APPRAISAL SERVICES**

*Edward A Dipino*  
\_\_\_\_\_  
By:  
Title:  
  
Date: *3-21-2016*

**LANDSAFE APPRAISAL SERVICES, INC.**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**GREGORY J. FUNARI**

\_\_\_\_\_  
By:  
Title:  
  
Date: \_\_\_\_\_

**DEFENDANTS:**

**COUNTRYWIDE HOME LOANS, INC.**

**EDWARD A. DIPINO D/B/A EDWARD DIPINO APPRAISAL SERVICES.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*Edward A. Dipino*  
By: \_\_\_\_\_  
Title: *Appraiser*  
Date: *April 7, 2016*

**BANK OF AMERICA, N.A.**

**EDWARD S. DIPINO D/B/A EDWARD DIPINO APPRAISAL SERVICES**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LANDSAFE APPRAISAL SERVICES, INC.**

**GREGORY J. FUNARI**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_