

SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) made subject to approval by the Court, as defined herein, by Joyce W. and Luke Shokere and Michael D. and Sharron Mayo (the “Named Plaintiffs”), individually and as the proposed representatives of the “RFC Settlement Class,” as defined herein, and Residential Funding Company, LLC (“RFC”) on its own behalf and as attorney-in-fact for GMAC Mortgage, LLC (collectively, the “Settling Defendants”), as the assignee(s), owner(s), holder(s), servicer(s) or master servicer(s) of the “RFC Related Loans,” as defined herein. The Named Plaintiffs, the RFC Settlement Class and the Settling Defendants are collectively referred to in this Agreement as the “Parties.”

WHEREAS, the following civil actions are pending in the United States District Court for the Western District of Missouri: (1) *Deanthony Thomas, et al., v. U.S. Bank National Association, N.D.*, Case No. 5:11-cv-06013-SOW; and (2) *Michael D. [and Sharron Mayo] v. GMAC Mortgage, LLC, et al.*, Case No. 4:08-CV-00568-W-DGK (the “Missouri Cases”); and

WHEREAS, the plaintiffs in the Missouri Cases have asserted claims against a number of defendants, including the Settling Defendants, for alleged violations of the Missouri Second Mortgage Loans Act (“MSMLA”), §§ 408.231-408.241 RSMo, and, among other things, seek compensatory and punitive damages and other relief on their own behalf, and on behalf of various classes of consumer borrowers similarly situated as a result of certain loan fees and interest amounts that the plaintiffs contend the Settling Defendants directly or indirectly charged, contracted for or received in connection with approximately 110 “Missouri Second Mortgage Loans,” as defined herein, made to the members of the RFC Settlement Class, and which were purchased by, assigned to, or otherwise acquired or serviced by the Settling Defendants, or any one or more of them; and

WHEREAS, the Settling Defendants deny the claims and causes of action asserted in the

Missouri Cases and deny and dispute that they are in any way liable to the plaintiffs or any of the members of the putative classes of Missouri borrowers in the Missouri Cases; and

WHEREAS, the Settling Defendants nevertheless desire to settle the claims asserted against them in the Missouri Cases on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, and uncertainty of continued litigation, and for the purpose of putting to rest all controversies that have been or could be raised by the Named Plaintiffs and the RFC Settlement Class against the Settling Defendants with respect to the "RFC Related Loans" in the Missouri Cases; and

WHEREAS, Plaintiffs' Counsel and counsel for the Settling Defendants have thoroughly investigated the facts relating to the claims alleged in the Missouri Cases and the events and transactions underlying those claims, through formal and informal discovery, and have made a thorough study of the legal principles applicable to the claims as asserted against the Settling Defendants; and

WHEREAS, Plaintiffs' Counsel and counsel for the Settling Defendants have engaged in extensive arm's length negotiations concerning the settlement of the claims and causes of action asserted against the Settling Defendants in the Missouri Cases; and

WHEREAS, the Parties have reached an agreement, subject to Court approval, to resolve the Missouri Cases as between the Named Plaintiffs and the RFC Settlement Class, on one hand, and the Settling Defendants, on the other hand, in accordance with the terms and conditions set forth herein; and

WHEREAS, the Named Plaintiffs and Plaintiffs' Counsel have concluded that a settlement with the Settling Defendants as stated herein will be fair, just, equitable, reasonable, adequate and in the best interests of the Named Plaintiffs and the RFC Settlement Class based

upon their investigation, study, negotiations and discovery taken in the Missouri Cases, and taking into account the contested issues involved, the expense and time necessary to prosecute each of the Missouri Cases against the Settling Defendants through trial, the delays and the risks and costs of further prosecution of the Missouri Cases against the Settling Defendants, the uncertainties of complex litigation, the benefits to be received pursuant to this Settlement, and the fact that the Named Plaintiffs and the “Non-RFC Plaintiff Borrowers,” as defined herein, will continue to pursue their claims on the “Missouri Second Mortgage Loans” in the Missouri Cases against the defendant lenders, assignees, trustees, trusts and servicers other than the Settling Defendants; and

WHEREAS, the parties have agreed that the Named Plaintiffs will commence a lawsuit in the Circuit Court of Jackson County, Missouri (the “Court”) upon execution of this Agreement in order to consolidate and efficiently resolve the numerous MSMLA claims asserted against the Settling Defendants with respect to the “RFC Related Loans” in the Missouri Cases (the “Litigation”); and

WHEREAS, the Parties acknowledge and agree that this Agreement constitutes a compromise in settlement of the claims and causes of action that have been or could be raised by the Named Plaintiffs and the “RFC Settlement Class Members” against the Settling Defendants and other “Released Persons” as to the “RFC Related Loans” in both of the Missouri Cases and the Litigation, but shall in no way release, discharge or affect the existing or future claims, causes of action, remedies, and/or rights to relief of (1) the Named Plaintiffs and the RFC Settlement Class Members against any person, association or entity other than the Settling Defendants and other “Released Persons”; (2) the “Non-RFC Plaintiff Borrowers,” as defined herein; and (3) any members of the RFC Settlement Class who timely exclude themselves from

the Settlement.

NOW THEREFORE, the Parties, each intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth herein, do hereby agree, subject to approval of the Court of this Agreement, that the "Released Claims," as defined herein, against the "Released Persons, as defined herein, are fully and finally compromised and settled as follows:

1. **Denial of Liability; No Admissions**

The Parties are entering into this Agreement for the sole purpose of resolving vigorously disputed claims that have arisen between them and in the interest of avoiding the burdens, expense, and risk of further litigation. By entering into any preliminary settlement discussions, agreeing to the terms of this Agreement, or seeking the approval of this Settlement, the Parties are not making any admissions or concessions, whatsoever, with respect to any claims or defenses alleged or asserted, or any factual or legal assertions in the Missouri Cases or the Litigation. Neither this Agreement nor any of its terms or provisions nor any of the negotiations between the Parties or their counsel shall be construed as an admission or concession by any of the Parties or their counsel of anything whatsoever, including but not limited to: any alleged violation or breach of contract or duty, any alleged fraud, misrepresentation or deception, or any alleged violation of any federal, state, or local law, rule, regulation, guideline or legal requirement (or any other applicable law, rule, regulation, guideline or legal requirement), the merits of any defenses that the Settling Defendants asserted; or the propriety of class certification of the RFC Settlement Class if the Missouri Cases or Litigation were to be litigated rather than settled. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action

or proceeding to establish: (a) any liability or admission on the part of the Settling Defendants or their respective parent or subsidiary companies, or to establish the existence of any condition constituting a violation of or non-compliance with any federal, state, local or other applicable law, rule, regulation, guideline or other legal requirement; (b) the truth or relevance of any fact alleged by the Named Plaintiffs; (c) the existence of any class alleged by the Named Plaintiffs; (d) the propriety of class certification if the Missouri Cases or Litigation were to be litigated rather than settled; (e) the validity of any claim or any defense that has been or could have been asserted in the Missouri Cases or other litigation; (f) that the consideration to be given to the RFC Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial; or (g) the propriety of class certification in any other proceeding or action. The Parties expressly agree that, in the event the Settlement does not become final and effective in accordance with Paragraph 14 below, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Agreement, or any effort to seek approval of the Agreement, to affect or prejudice any other Party's procedural or substantive rights in any ensuing litigation including, without limitation, any appeal. The Settling Defendants expressly reserve all procedural and substantive rights and defenses to all claims and causes of action and do not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

## 2. Definitions

As used in this Agreement, the following terms shall be defined as set forth below:

2.1 **Class Counsel.** "Class Counsel" shall mean Plaintiffs' Counsel, Walters Bender Strohhahn & Vaughan, P.C., 2500 City Center Square, 1100 Main Street, Kansas City, Missouri 64105.

2.2 **Class Mail Notice.** “Class Mail Notice” means a document in a form substantially the same as that attached hereto as **Exhibit A**.

2.3 **Court.** “**Court**” means the forum in which the Named Plaintiffs commence the “Litigation” in order to consolidate and efficiently resolve the numerous MSMLA claims asserted against the Settling Defendants with respect to the RFC Related Loans in the “Missouri Cases.”

2.4 **Effective Date.** The “Effective Date” of this Agreement means the date when all of the conditions set forth in Paragraph 14 have occurred and the Settlement thereby becomes effective in all respects.

2.5 **Final Approval Order.** “Final Approval Order” means an Order of the Court in a form substantially the same as that attached hereto as **Exhibit C**, finally approving this Agreement and the Settlement pursuant to Fed.R.Civ.P. 23.

2.6 **Final Hearing Date.** “Final Hearing Date” means the date set by the Court for the hearing on final approval of the Settlement.

2.7 **Final Judgment.** “Final Judgment” means a Judgment of the Court in a form substantially the same as that attached hereto as **Exhibit D**.

2.8 **FirstPlus Bank.** “FirstPlus Bank” means the California industrial loan company that made the Missouri Second Mortgage Loans at issue in the Missouri Case *Deanthony Thomas, et al., v. U.S. Bank National Association, N.D.*, Case No. 5:11-cv-06013-SOW (W.D. Mo.).

2.9 **Missouri Cases.** “Missouri Cases” means the two civil actions pending in the United States District Court for the Western District of Missouri, viz., *Deanthony Thomas, et al., v. U.S. Bank National Association, N.D.*, Case No. 5:11-cv-06013-SOW and *Michael D. Mayo v.*

2.10 **Missouri Second Mortgage Loan.** “Missouri Second Mortgage Loan” means any “Second Mortgage Loan,” as defined in Mo. Rev. Stat. § 408.231.1, secured by a mortgage or a deed of trust on residential real property located in the state of Missouri, that either: (a) was made by “FirstPlus Bank” on or after May 16, 1994; or (b) was purchased by or assigned to “UBS,” and which closed, or was a loan for which any interest was paid, on or after June 20, 2002.

2.11 **Named Plaintiffs.** “Named Plaintiffs” means by Joyce W. Shokere, Luke Shokere, Michael D. Mayo and Sharron Mayo, and any person(s) claiming by, through or under any one or more of them.

2.12 **Net Distributable Settlement Fund.** “Net Distributable Settlement Fund” means the “Net Settlement Fund” less: (a) the amount of any awards for attorney’s fees or attorney compensation approved by the Court and awarded to Plaintiffs’ Counsel, and (b) any interest earned and attributable to the amount of such awards while in escrow.

2.13 **Net Settlement Fund.** “Net Settlement Fund” means the “Settlement Fund” less: (a) the amount of any litigation expenses and/or costs approved by the Court and awarded to Plaintiffs’ Counsel; (b) the amount of any incentive award approved by the Court and paid to the Named Plaintiffs; and (c) any interest earned and attributable to these awards, respectively, while in escrow.

2.14 **Non-RFC Plaintiff Borrowers.** “Non-RFC Plaintiff Borrowers” means the plaintiffs and the members of the “Putative Litigation Classes” who obtained a “Missouri Second Mortgage Loan” that was not an “RFC Related Loan,” as defined below. The Named Plaintiffs, Joyce W. and Luke Shokere and Michael D. and/or Sharron Mayo, are not “Non-RFC Plaintiff

Borrowers.”

2.15 **Plaintiffs’ Counsel.** “Plaintiffs’ Counsel” means, collectively, Walters Bender Strohhahn & Vaughan, P.C., 2500 City Center Square, 1100 Main Street, Kansas City, Missouri 64105.

2.16 **Preliminary Approval Order.** “Preliminary Approval Order” means an Order of the Court preliminarily approving the Settlement, conditionally or preliminarily certifying a class for settlement purposes, directing the issuance of a class notice and scheduling a settlement hearing in accordance with Mo. Rule 52.08, in a form substantially similar to that attached hereto as **Exhibit B**.

2.17 **Putative Litigation Classes.** “Putative Litigation Classes” means the putative classes of Missouri borrowers that the plaintiffs seek to certify as plaintiffs’ classes in the Missouri Cases.

2.18 **Releasers.** “Releasers” means the Named Plaintiffs and all “RFC Settlement Class Members,” and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The Releasers shall not include any of the following: (a) any members of the RFC Settlement Class who opt out of the Settlement in accordance with Paragraph 10 below; (b) any person(s) whom RFC fails to identify as a member of the RFC Settlement Class on **Exhibit E**; and (c) the Non-RFC Plaintiff Borrowers. It is understood that the releases to be given by the Named Plaintiffs and other Releasers shall only release the “Released Persons” from the “Released Claims,” and nothing more, as provided herein.

2.19 **Released Persons.** “Released Persons” shall mean the Settling Defendants, individually and together with the RFC affiliates, parent companies and subsidiaries listed on

**Exhibit G**, Wilmington Trust Company, but solely in its capacity as an assignee, holder, trustee, servicer or master servicer of the RFC Related Loans, and JP Morgan Chase Bank, NA, individually and formerly and as successor to Banc One, NA, Chase Manhattan Bank and others, but solely in its capacity as assignee, holder, trustee, servicer or master servicer of the RFC Related Loans, and each of their past and present officers, directors, shareholders, employees, attorneys (including any consultants hired by counsel), accountants, insurers, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns. Notwithstanding anything in this Agreement to the contrary, the term “Released Persons” **does not include any of the following**: (a) Wilmington Trust Company in its capacity as an assignee, holder, trustee, servicer and/or master servicer of loans other than the RFC Related Loans; (b) JP Morgan Chase Bank, NA, individually and/or formerly and/or as successor to Banc One, NA, Chase Manhattan Bank and others, in its capacity as an assignee, holder, trustee, servicer and/or master servicer of loans other than RFC Related Loans; (c) the “U.S. Bank Defendants,” UBS Real Estate Securities, Inc. (“UBS”), Deutsche Bank National Trust Company, MASTR Specialized Loan Trust 2007-01, or any other current and/or former defendant named in the Missouri Cases (other than RFC and GMAC Mortgage, LLC; (d) any person, association or entity who is not a “Released Person,” including, but not limited to, FirstPlus Bank, Option One Mortgage Corporation or any other lender, mortgage banker, mortgage broker and/or loan originator that solicited or made any of the Missouri second mortgage loans that UBS or the Settling Defendants acquired or serviced; (e) any person, association or entity to whom any of the RFC Related Loans were sold, assigned, transferred and/or conveyed prior to the sale, assignment, transference or conveyance to RFC; (f) any person, association or entity, who is not a Released Person, that serviced any of the RFC Related Loans; (g) any person, association or

entity to whom any of the loans made to any Non-RFC Plaintiff Borrower were sold, assigned or otherwise transferred or conveyed; or (h) any person, association or entity that serviced any of the loans of any of the Non-RFC Plaintiff Borrowers.

**2.20 Released Claims.** “Released Claims” means any and all claims, demands, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, liens, costs, surcharges, losses, attorney’s fees, expenses or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential or punitive damages, as well as any and all claims for treble damages, penalties, attorney’s fees, costs or expenses, whether known or unknown, alleged or not alleged in the Missouri Cases or the Litigation, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, relate to, or arise out of the RFC Related Loans and which any of the Releasers have had, or now have, from the beginning of time up through and including the Effective Date, against the Released Persons (“Claims”), including but not limited to, any and all Claims arising out of or relating to: (1) allegations that were or could have been asserted against the Released Persons in the Missouri Cases or the Litigation in any way relating to the RFC Settlement Class Members’ RFC Related Loans; (2) any activities of the Released Persons with respect to the RFC Related Loans including, without limitation, any alleged representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act, deceptions, acts of unconscionability, unfair business practices, breaches of contract, usury, unfulfilled promises, breaches of warranty or fiduciary duty, conspiracy, excessive fees collected, or violations of any consumer protection statute, any state unfair trade practice statute, or any other body of case,

statutory or common law or regulation, federal or state, including but not limited to the Missouri Second Mortgage Loans Act, Mo.Rev.Stat. § 408.231, *et seq.*, or any other similar state statute; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, 12 C.F.R. part 226; the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, *et seq.*, and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, *et seq.*, and its implementing regulation, 12 C.F.R. part 203; the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.*; and the Federal Trade Commission Act, 15 U.S.C. §§ 45, *et seq.*; and/or (3) any conduct undertaken by any of the Released Persons to defend the Missouri Cases or the Litigation, including but not limited to, any alleged improper discovery conduct and/or any request for sanctions. It is the intention of the Releasors to provide a general release of the Released Claims against the Released Persons; provided, however, that anything in this Agreement to the contrary notwithstanding, the term Released Claims does not include: (1) the claims of the Named Plaintiffs or any other Releasor, whether or not currently asserted in the Missouri Cases or Litigation, against the U.S. Bank Defendants, UBS Real Estate Securities (“UBS”), Deutsche Bank National Trust Company, MASTR Specialized Loan Trust 2007-01, or any other person, association or entity, other than the Released Persons, in connection with the Named Plaintiffs’ and other Releasors’ RFC Related Loans, notwithstanding the fact that the Named Plaintiffs’ and other Releasors’ RFC Related Loans, in whole or in part, were purchased, acquired, held, serviced or master serviced by the Settling Defendants; (2) any and all other claims of any kind

or type by the Named Plaintiffs or any other Releasor against any person, association or entity that is not a Released Person, whether such claims arise out of or relate to a Missouri Second Mortgage Loan, including any RFC Related Loans, and/or some other conduct, transaction, loan or occurrence; (3) any claims of any kind or type by the Named Plaintiffs or any other Releasor against any person, association or entity in connection with any loan and/or loan transaction other than an RFC Related Loan, notwithstanding the fact that the loan, in whole or in part, was purchased by, assigned to, acquired, serviced, or master serviced by RFC and/or any of the other Released Persons; and/or (4) any claims of whatever kind or type by any Non-RFC Plaintiff Borrower and any other person not a Releasor with respect to any Missouri Second Mortgage Loan.

2.21 **RFC.** “RFC” means Residential Funding Company, LLC (f/k/a Residential Funding Corporation).

2.22 **RFC Related Loan.** “RFC Related Loan” means any “Missouri Second Mortgage Loan” that was purchased by, assigned to, serviced by and/or master serviced by RFC.

2.23 **RFC Settlement Class.** “RFC Settlement Class” shall have the meaning set forth in Paragraph 3(a) below.

2.24 **RFC Settlement Class Member.** “RFC Settlement Class Member” means any member of the RFC Settlement Class who does not timely opt out of the Settlement pursuant to Paragraph 9(a) below. If an RFC Settlement Class Member has died, filed for bankruptcy, or otherwise voluntarily or involuntarily transferred his or her rights under an RFC Related Loan, the person’s heir, representative, successor or assign shall be deemed an RFC Settlement Class Member.

2.25 **RFC Settlement Class Member Payment.** “RFC Settlement Class Member

Payment” means the portion of the “Net Distributable Settlement Funds” shown on **Schedule A** to be paid to the respective RFC Settlement Class Member(s) pursuant to the Settlement, plus any interest earned and attributable to such sum while in escrow.

2.26 **Settlement.** “Settlement” means the compromise in settlement memorialized by this Agreement.

2.27 **Settlement Fund.** “Settlement Fund” means the amount to be delivered by RFC in accordance with Paragraph 4(a) below.

2.28 **Settlement Hearing.** “Settlement Hearing” means the hearing on final approval of the partial class action settlement memorialized by this Agreement.

2.29 **Settling Defendants.** “Settling Defendants” means RFC and GMAC Mortgage, LLC, as the assignee(s), holder(s), servicer(s) or master servicer(s) of the RFC Related Loans.

2.30 **Settling Defendants’ Counsel.** “Settling Defendants’ Counsel” means Bryan Cave, LLP, 1200 Main Street, Suite 3500, Kansas City, Missouri 64105

2.31 **UBS.** “UBS” means UBS Real Estate Securities, Inc., the defendant in the Missouri Case *Michael D. Mayo v. GMAC Mortgage, LLC, et al.*, Case No. 4:08-CV-00568-W-DGK.

2.32 **U.S. Bank Defendants.** “U.S. Bank Defendants” means U.S. Bank National Association, U.S. Bank National Association ND, and Wilmington Trust Company in its capacity as assignee, owner, holder, agent, trustee, servicer or master servicer of loans other than the RFC Related Loans, each being identified individually and together with any joint or respective officers, directors, trustees, agents, parents, subsidiaries, affiliates, predecessors, successors or assigns.

3. Certification of the RFC Settlement Class

a. The Named Plaintiffs shall file a motion requesting that the Court approve a settlement for a class of persons for purposes of settlement only (referred to herein as the “RFC Settlement Class”), defined as follows:

All persons who obtained a “Second Mortgage Loan,” as defined in Mo.Rev.Stat. § 408.231.1, that was secured by a mortgage or a deed of trust on residential real property located in the state of Missouri, and that:

- (1) was made by FirstPlus Bank (f/k/a Citizens Thrift and Loan Association) on or after May 16, 1994 and was thereafter purchased by, assigned to, serviced by or master serviced by Residential Funding Company, LLC (f/k/a Residential Funding Corporation); or
- (2) was purchased by or assigned to UBS Real Estate Securities, Inc. and either closed on or after June 20, 2002, or was a loan for which interest was paid on or after June 20, 2002, and which was thereafter purchased by, assigned to, serviced by or master serviced by Residential Funding Company, LLC (f/k/a Residential Funding Corporation) or GMAC Mortgage, LLC (formerly GMAC Mortgage Corporation).

b. A list of all members of the RFC Settlement Class is attached hereto as **Exhibit E**. **Exhibit E** shall be filed under seal to protect the privacy of the names and addresses of the members of the RFC Settlement Class.

c. If this Agreement is not approved by the Court pursuant to the proposed Final Approval Order and Final Judgment, or if for any reason this Settlement fails to become effective pursuant to Paragraph 14, this Agreement, the conditional settlement class certification provided herein, the Settlement (including any modifications made with the consent of the Parties), and any action(s) taken or to be taken in connection therewith, shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated, the Parties shall be restored to their respective positions existing prior to the execution of this Agreement, and the Parties’ rights and obligations with respect to the use of this Agreement and the settlement contemplated hereby will be subject to Paragraphs 1 and 19(m)

hereof. In addition, neither this Agreement, the preliminary certification of the RFC Settlement Class, the Preliminary Approval Order, nor any other document relating in any way to any of the foregoing, shall be relied on, referred to or used in any way for any purpose in connection with any further proceedings in the Missouri Cases, the Litigation or any related proceeding. In such case, or in the event that this Agreement shall terminate or the settlement embodied herein does not become effective for any reason, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, who shall be restored to their respective positions existing prior to the execution of this Agreement, and any Party may reassert their claims against the other Party or Parties as provided in Paragraph 15 and in such event, evidence relating to the Agreement, and all negotiations, shall not be discoverable or admissible in the Missouri Cases, the Litigation, or otherwise.

4. **Settlement Consideration and Distribution of the Settlement Fund to the RFC Settlement Class Members**

a. Within three (3) business days after entry of the Final Approval Order and receipt by Settling Defendants' Counsel in writing of appropriate wiring instructions and a completed W-9 Tax Form from Plaintiffs' Counsel, RFC shall deliver \$2,460,845.91, subject to Paragraph 4(d) below (the "Settlement Fund") to the Escrow Agent, as defined below, by wire transfer at its own expense.

b. The Settlement Fund shall be wired into an interest-bearing escrow account that the Parties shall establish, pursuant to mutually agreeable terms, at Missouri Bank & Trust, 1044 Main Street, Kansas City, Missouri, or some other insured depository institution in Missouri selected by Plaintiffs' Counsel (the "Escrow Agent"). All interest earned on the Settlement Fund while in escrow shall be added to and included within the definition of "Settlement Fund" and shall be allocated to the persons identified on **Schedules A-1 and A-2** in proportion to his, her or

their share of the Net Distributable Settlement Fund. The Settlement Fund, including any interest earned in escrow, shall be returned to RFC in the event that the Settlement is rescinded, terminated, vacated, or the Effective Date does not arrive for any other reason. The Settlement Fund while in the escrow account shall be invested in a manner that generates the highest return that can be obtained without risk to the principal.

c. The Parties' escrow agreement shall provide that the Settlement Fund will be released to Plaintiffs' Counsel from escrow the first business day after the Effective Date. Plaintiffs' Counsel, subject to such supervision and direction of the Court as may be necessary, shall be responsible for and shall administer and oversee the distribution of the Settlement Fund, Net Settlement Fund, and Net Distributable Settlement Fund in accordance with the terms of this Agreement and **Schedules A-1 and A-2**, which shall also be filed under seal to protect the privacy of the RFC Settlement Class.

d. If any member(s) of the RFC Settlement Class timely opt out and exclude themselves from the Settlement, the name(s) of the "opt out" class member(s) shall be removed from **Schedules A-1 or A-2** and the portion of the Net Distributable Settlement Fund attributable to said "opt outs" shall remain a part of the Net Distributable Settlement Fund and will be reallocated to the RFC Settlement Class Members pro rata. The Parties shall submit any required revisions to **Schedules A-1 or A-2** to the Court under seal prior to the Final Hearing Date.

e. The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the RFC Settlement Class electing to opt out or exclude themselves from the Settlement pursuant to Sub-Paragraph 4(d), or for any other reason.

f. Upon release of the Settlement Fund by the escrow agent to Plaintiffs' Counsel, Plaintiffs' Counsel shall calculate the Net Settlement Fund and Net Distributable Settlement

Fund and distribute the Net Distributable Settlement Fund, plus any interest earned on said fund while in escrow, to the RFC Settlement Class Members (i.e., those members of the RFC Settlement Class, if any, who did not timely opt out) in the amounts and to the addresses shown on **Schedules A-1 and A-2**, or as the Court may otherwise determine and approve. Such distributions to the RFC Settlement Class Members are referred to and defined as the “RFC Settlement Class Member Payments.” Plaintiffs’ Counsel shall distribute the RFC Settlement Class Member Payments to the RFC Settlement Class Members within 30 days of the Effective Date by checks mailed to the RFC Settlement Class Members or, in the event of a RFC Settlement Class Member bankruptcy under Chapter 7, to the Chapter 7 bankruptcy trustee for said RFC Settlement Class Member, with notice of said mailing to said RFC Settlement Class Member. Plaintiffs’ Counsel will re-mail any returned checks to any new address disclosed. To the extent any check is returned a second time, Plaintiffs’ Counsel shall undertake reasonable efforts to locate a current address for said RFC Settlement Class Member. If any RFC Settlement Class Member refuses to accept receipt of an RFC Settlement Class Member Payment check, or does not cash an RFC Settlement Class Member Payment check within 30 days of receipt, Plaintiffs’ Counsel shall undertake reasonable efforts to locate and/or contact the RFC Settlement Class Member and inquire about receiving and/or cashing the check. Within 210 days of the Effective Date, Plaintiffs’ Counsel shall file a report with the Court confirming that the entirety of the Net Distributable Settlement Funds/RFC Settlement Class Member Payments were distributed to the RFC Settlement Class Members pursuant to the original or any revised **Schedules A-1 or A-2** and checks cashed or, if such a confirmation cannot be provided, outlining the steps that remain to distribute any unclaimed portion of the Net Distributable Settlement Funds to the RFC Settlement Class Members. Plaintiffs’ Counsel shall reallocate the

amounts of any unclaimed checks to the paid RFC Settlement Class Members pro rata based on their allocable share of their total paid distributions of claimed checks at such time as Plaintiffs' Counsel determines appropriate in their sole discretion, but which in any event shall be prior to the expiration of any period of escheatment.

g. Plaintiffs' Counsel shall be responsible for preparing, filing and addressing any requisite IRS Form 1099s. RFC Settlement Class Members shall be responsible for any taxes due or any tax liability arising out of the distribution of the Settlement Funds.

h. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to or arising out of the investment, allocation or distribution of the Settlement Funds, the determination, administration, calculation, or payment of claims, the payment or withholding of taxes, or any losses incurred in connection therewith.

i. Any RFC Settlement Class Member who receives a payment pursuant to the Settlement shall be solely responsible for distributing or allocating such payment between or among all co-borrowers on his, her, or their RFC Related Loan, regardless of whether a payment check has been made out to all or only some of the RFC Settlement Class Members' co-borrowers.

j. No person shall have any claim against the Released Persons, Plaintiffs' Counsel, or any agent designated pursuant to this Agreement based upon any distributions made substantially in accordance with this Agreement or any Orders of the Court.

**5. Incentive Award and Attorney's Fees and Costs**

a. The Named Plaintiffs may petition the Court for the payment of an incentive award in a total amount not to exceed \$3,500.00 in recognition of services rendered for the benefit of the RFC Settlement Class during and throughout the course of the Missouri Cases

and/or Litigation. Any such incentive award shall be in addition to the amount to be paid on the Named Plaintiffs' individual claims. The amount of any incentive award approved by the Court, and any interest attributable to said amount while in escrow, shall be deducted from the Settlement Fund to determine the "Net Settlement Fund" from which any award of attorney's fees to Plaintiffs' Counsel shall be deducted before the balance is distributed to the RFC Settlement Class Members as the "Net Distributable Settlement Fund" in accordance with **Schedules A-1 and A-2**. The Settling Defendants will not object to the Named Plaintiffs applying to the Court for and/or receiving an incentive award in the above-stated amount. To the extent the Court approves an incentive award in an amount less than the not to exceed amount stated above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Fund.

b. Plaintiffs' Counsel and/or the Named Plaintiffs may petition the Court for an award of litigation expenses and/or court costs not to exceed \$8,275.36. The amount of any such award, and any interest attributable to said amount(s) while in escrow, shall also be deducted from the Settlement Fund to determine the Net Settlement Fund from which any award of attorney's fees to Plaintiffs' Counsel shall be deducted before the balance is distributed to the RFC Settlement Class Members as the "Net Distributable Settlement Fund" in accordance with **Schedules A-1 and A-2**. The Settling Defendants will not object to Plaintiffs' Counsel and/or the Named Plaintiffs applying to the Court for, and receiving, an award of expenses and/or costs in the above amount. To the extent the Court awards expenses and/or costs in an amount that is less than the not to exceed amount stated above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Fund.

c. Plaintiffs' Counsel and/or the Named Plaintiffs may also petition the Court for an award of attorney's fees not to exceed forty percent (40%) of the Net Settlement Fund, which award of attorney's fees is estimated to be \$979,628.21 if the Court approves the award as proposed. The amount of any such fee award approved by the Court, and any interest attributable to said amount while in escrow, shall be deducted from the Net Settlement Fund to determine the Net Distributable Settlement Fund and the individual RFC Settlement Class Member Payments. The Settling Defendants will not object to Plaintiffs' Counsel and/or the Named Plaintiffs applying to the Court for, and receiving, an award of attorney's fees in the above amount. To the extent the Court awards attorney's fees in an amount that is less than the not to exceed amount stated above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Distributable Settlement Fund.

d. Except as provided in this Paragraph 5, each Party shall bear its own attorney's fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Missouri Cases and the Litigation, and specifically, without limitation, the Settling Defendants shall bear no other attorney's fees, court costs or expenses.

6. **Releases**

a. On the Effective Date, in exchange for the agreement by RFC to make available and pay the Settlement Fund pursuant to the terms and conditions of this Agreement, and for other good and valuable consideration, Releasers, by operation of this Release and the judgment set forth in the Final Order and Judgment, shall be deemed without further action by any person or the Court (i) to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the Released Persons of and from any and all Released Claims; (ii)

to have consented to dismiss with prejudice the Released Claims of the Releasers against the Released Persons in the Missouri Cases and Litigation; and (iii) to be forever barred and enjoined from instituting or further prosecuting in any forum whatsoever including, but not limited to, any state, federal, or foreign court, or regulatory agency, the Released Claims. The Parties agree that the Released Persons will suffer irreparable harm if any RFC Settlement Class Member takes action inconsistent with this Paragraph 6(a), and that, in such event, the Released Persons may seek an injunction as to such action without further showing of irreparable harm.

b. The Releasers acknowledge and agree that they are aware that they may hereafter discover material or immaterial facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Releases, but that it is their intention to, and they do hereby, upon the Effective Date of this Agreement, fully, finally and forever settle and release each and every of the Released Persons from each and every Released Claim, known or unknown, suspected or unsuspected, accrued or not accrued, contingent or matured, which now exist, may hereafter exist, or may heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

c. Subject to Court approval, each RFC Settlement Class Member shall be bound by this Agreement and all of their claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Litigation or the Settlement in the form of the Class Mail Notice or otherwise. The Releases and agreements contained in this Paragraph 6 shall apply to and bind all RFC Settlement Class Members, including those RFC Settlement Class Members whose Class Mail Notices are returned as undeliverable, and those for whom no current address can be found, if any.

7. **Representations and Stipulations**

a. The Settling Defendants, and each of them, represent, warrant and declare that: (i) they have acted in good faith and have used their best efforts in identifying the members of the RFC Settlement Class and in producing the loan documents and loan payment and payoff information on which the distribution of the individual RFC Settlement Class Member Payments shown on **Schedules A-1 and A-2** is based; and (ii) based on said best efforts, there are no members of the RFC Settlement Class other than those identified on **Exhibit E**.

b. The parties jointly stipulate and agree that neither this Agreement nor a Party's decision to negotiate and/or execute the Agreement can be used to show or establish that a Party's conduct during the Litigation, including that of counsel, gives rise to or constitutes a waiver of the attorney-client, common interest or joint defense privilege or work product doctrines.

c. Plaintiffs' Counsel represent and warrant to the Settling Defendants that they have not been retained by any existing client or contacted by any potential client to commence a new lawsuit or pursue any claims or right of relief against the Settling Defendants with respect to any of the Released Claims and that they have not been informed of an intention on the part of any member of the RFC Settlement Class to opt out of the Settlement. In addition, Plaintiffs' Counsel agree that they will not solicit the right to legally represent any person, including any member or members of the RFC Settlement Class who opt(s) out of the RFC Settlement Class and Settlement, with respect to the Released Claims, but this agreement does not (and shall not) in any way prohibit or restrict Plaintiffs' Counsel from undertaking such representation if requested by any such person or persons.

8. **Commencement of the Litigation**

The Parties agree that the Named Plaintiffs shall commence a class action lawsuit against

the Settling Defendants in the Circuit Court of Jackson County, Missouri (the "Litigation") upon execution of the Agreement. The Settling Defendants agree that they shall not seek to remove the Litigation to federal court or encourage others to do so. The Litigation shall be the vehicle through which the numerous MSMLA claims being asserted against the Settling Defendants in the Missouri Cases with respect to the RFC Related Loans can be consolidated and thereby efficiently and expeditiously settled and resolved pursuant to the terms and conditions of this Agreement.

9. **Preliminary Approval Order**

The Parties shall promptly move the Court in the Litigation for a Preliminary Approval Order substantially similar to **Exhibit B** that accomplishes the following:

- a. Certifying the proposed RFC Settlement Class pursuant to Mo. Rule 52.08 for settlement purposes;
- b. Preliminarily approving the Agreement as fair, reasonable and adequate under Mo. Rule 52.08 subject to a final determination by the Court;
- c. Approving the appointment of the Named Plaintiffs as representatives of the RFC Settlement Class for settlement purposes;
- d. Approving the appointment of Plaintiffs' Counsel as counsel for the RFC Settlement Class for settlement purposes;
- e. Approving a form of mailed notice substantially similar to the Class Mail Notice attached as **Exhibit A** to be sent to the members of the RFC Settlement Class;
- f. Directing Plaintiffs' Counsel to mail the Class Mail Notice promptly after entry by the Court of the Preliminary Approval Order to the RFC Settlement Class by first-class mail to the last known address of such persons;

g. Establishing a procedure for members of the RFC Settlement Class to opt out and setting a date, approximately thirty (30) days after the mailing of the Class Mail Notice, after which no member of the RFC Settlement Class shall be allowed to opt out of the RFC Settlement Class;

h. Establishing a procedure for “RFC Settlement Class Members” to appear at the Fairness Hearing and/or object to the Settlement and setting a date, approximately thirty (30) days after the mailing of the Class Mail Notice, after which no “RFC Settlement Class Members” shall be allowed to object; and

i. Establishing a procedure for “RFC Settlement Class Members” to intervene in the Litigation and setting a date, approximately thirty (30) days after the mailing of the Class Mail Notice, after which no “RFC Settlement Class Members” shall be allowed to intervene; and

j. Scheduling a hearing on final approval of the Settlement and Agreement;

k. Staying the Litigation until further order of the Court, other than as may be necessary to effectuate the Settlement and carry out the terms of the Agreement or the responsibilities related or incidental thereto;

l. Holding that the Litigation and claims asserted therein shall not in any way stay, bar, preclude, abate or otherwise operate as any sort of adjudication of the claims of the Named Plaintiffs and/or the RFC Settlement Class Members against any person, association or entity other than the Settling Defendants including, without limitation, the claims currently asserted in the Missouri Cases pursuant to the Missouri Second Mortgage Loans Act, §§ 408.231-408.241 RSMo, against the assignees and servicers of the Missouri Second Mortgage Loans, other than the Settling Defendants.

m. Containing such other and further provisions consistent with the terms and

provisions of this Agreement as the Court may deem advisable.

**10. Opt Outs/Exclusion from the Settlement**

a. Procedure for Opt Outs. The deadline for exclusion requests shall be set forth in the Preliminary Approval Order. Any exclusion request (opt out) must be in writing and include the name, address, telephone number, and last four digits of the Social Security Number of each individual seeking to opt out and a statement that the individual is a member of the RFC Settlement Class and that he or she and all co-borrowers named on the individual's promissory note is (are) seeking exclusion for the Settlement. Any exclusion request must be personally signed by each person (borrower) who signed the promissory note in connection with the subject RFC Related Loan, unless such person is deceased or legally incompetent. In the event a person who signed the promissory note is deceased or legally incompetent, the personal representative or guardian of such person must sign the exclusion request and present written proof of such representative capacity to sign. Any exclusion request must include a reference to the Litigation: "Shokere v. Residential Funding Company, LLC, Case No. \_\_\_\_\_" and be mailed to:

R. Frederick Walters  
Walters Bender Strohbehn & Vaughan, P.C.  
2500 City Center Square  
1100 Main Street  
Kansas City, MO 64105  
(on behalf of the RFC Settlement Class)

and

Irvin Belzer  
Bryan Cave, LLP  
1200 Main, Suite 3500  
Kansas City, Missouri 64105  
(on behalf of the Settling Defendants)

To be considered timely and effective, an exclusion request must be received on or before the date established by the Court in the Preliminary Approval Order. No person may opt out of the

Settlement by having an actual or purported agent or attorney submit an exclusion request on said person's behalf. Nor may an exclusion request be submitted or made on behalf of any group of persons. Each member of the RFC Settlement Class who does not submit an exclusion request substantially in compliance with this Paragraph 10 shall be included in the RFC Settlement Class and be deemed an "RFC Settlement Class Member," with a capital "M" as defined herein. For purposes of determining timeliness, an exclusion request shall be deemed to have been submitted when received by either Class Counsel or Settling Defendants' Counsel. On or before the date of the Final Approval Hearing, Class Counsel shall provide the Court with a list of all persons who have timely and adequately filed a request to be excluded from the Settlement.

b. Effect of Opt Outs. If class member opt outs result in the exclusion from the Settlement of more than two (2)% of the number of loans that would otherwise be included in the Settlement, RFC, for itself and the Settling Defendants, in its sole discretion, may rescind this Agreement, in which event each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement and any orders entered in connection therewith shall be vacated, rescinded, canceled, and annulled. If the Settling Defendants exercise this option, the Parties shall return to the status quo in the Missouri Cases, the Litigation shall be dismissed without prejudice by consent of the Parties as if the Parties had never entered into this Agreement or commenced the Litigation, and any Party may reassert their claims against the other Party or Parties as provided in Paragraph 15. In addition, and in such event, this Agreement and all negotiations, court orders and proceedings relating thereto, shall be without prejudice to the rights of the Parties, and each of them, and evidence of or relating to the Agreement and all negotiations shall not be admissible or discoverable in the Missouri Cases or

otherwise. The Settling Defendants must exercise their option pursuant to this Paragraph 10(b) at least ten (10) business days prior to the Final Hearing Date, by giving written notice of such exercise to Plaintiffs' Counsel.

c. Bankruptcy Trustees. In instances where a member of the RFC Settlement Class has filed for bankruptcy under Chapter 7 after obtaining his, her, or their RFC Related Loan, if the member of the RFC Settlement Class opts out of the Settlement, the Chapter 7 bankruptcy trustee shall be deemed to have opted out of the Settlement. Conversely, if the Chapter 7 bankruptcy trustee opts out of the Settlement, the member of the RFC Settlement Class shall be deemed to have opted out of the Settlement. If neither the member of the RFC Settlement Class nor the Chapter 7 bankruptcy trustee opts out of the Settlement, both shall be bound by the Release provisions of Paragraph 6.

#### **11. Objections to the Settlement/Intervention**

a. Procedure for Objections. Any RFC Settlement Class Member who wishes to object to the Settlement or to the incentive awards or the awards of expenses, costs or attorney's fees must file a written notice of objection with the Court as provided below (the "Notice of Objection") on or before the date established by the Court in the Preliminary Approval Order. For purposes of determining timeliness, a Notice of Objection shall be deemed to have been submitted when filed with the Clerk of the Court. Copies of the Notice of Objection must be also mailed to the following on or prior to the date established by the Court in the Preliminary Approval Order, which shall be no later than thirty (30) days prior to the Final Hearing Date:

R. Frederick Walters  
Walters Bender Strohbehn & Vaughan, P.C.  
2500 City Center Square  
1100 Main Street  
Kansas City, MO 64105  
(on behalf of the U.S. Bank Direct Loans)

Settlement Class)

and

Irvin Belzer  
Bryan Cave, LLP  
1200 Main, Suite 3500  
Kansas City, Missouri 64105  
(on behalf of the Settling Defendants)

The Notice of Objection must be in writing, and shall specifically include:

- (i) The name, address, and telephone number of the class member filing the objection;
- (ii) A statement of each objection asserted;
- (iii) A detailed description of the facts underlying each objection;
- (iv) Any loan documents in the possession or control of the objector and relied upon by the objector as a basis for the objection;
- (v) If the objector is represented by counsel, a detailed description of the legal authorities supporting each objection;
- (vi) If the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts;
- (vii) If the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documents by attaching them to the objection and provide any other evidence that the objector intends to present;
- (viii) A statement of whether the objector intends to appear at the hearing;
- (ix) A copy of any exhibits which the objector may offer during the hearing; and
- (x) A reference to the Litigation (i.e., *Shokere v. Residential Funding Company, LLC*, Case No. \_\_\_\_\_.”

Attendance at the final hearing is not necessary. Any RFC Settlement Class Member who does not make his or her objection in the manner provided above shall be deemed to have waived such objection and shall forever be foreclosed and barred from making any objection to the fairness,

adequacy, or reasonableness of the Settlement or to any provision of this Agreement.

b. Intervention. Any RFC Settlement Class Member who wishes to intervene in the Litigation must file and serve his or her motion to intervene with the Court in accordance with the Missouri Rules of Civil Procedure on or before the date prescribed in the Preliminary Approval Order.

## **12. Final Approval Order and Final Judgment**

a. The Named Plaintiffs and Plaintiffs' Counsel agree that they will request the Court to enter, after the hearing on final approval of this Agreement, a Final Approval Order substantially in the form attached as **Exhibit C**. In accordance with **Exhibit C**, the Final Approval Order will certify the RFC Settlement Class and find that the Settlement and this Agreement are fair, reasonable, and adequate and in the best interests of the RFC Settlement Class. The Final Approval Order will require the Parties to carry out the provisions of this Agreement.

b. The Named Plaintiffs and Plaintiffs' Counsel agree that they will request the Court to enter a Final Judgment in the Litigation in a form substantially the same as that attached as **Exhibit D** after the Final Approval Hearing. In accordance with **Exhibit D**, the Final Judgment will dismiss all claims and motions of the RFC Settlement Class Members pending against the Settling Defendants in the Litigation on the merits and with prejudice as to the Releasers, declare that the RFC Settlement Class Members are bound by the Releases set forth in Paragraph 6 of this Agreement as of the Effective Date, hold that the dismissal of the Litigation and claims asserted therein shall not in any way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of the claims of the Named Plaintiffs and/or the RFC Settlement Class Members against any person, association or entity other than the

Settling Defendants and other “Released Persons” as defined in Paragraph 2.19 of the Agreement including, without limitation, the claims currently asserted in the Missouri Cases pursuant to the Missouri Second Mortgage Loans Act, §§ 408.231-408.241 RSMo, against the assignees and servicers of the Missouri Second Mortgage Loans, other than the Settling Defendants, and reserve continuing jurisdiction over the enforcement of this Agreement, the administration and distribution of the Settlement Funds and, if necessary, vacating and/or setting aside the Final Judgment in the event the Settlement does not (or cannot) become effective pursuant to Paragraph 14 below.

**13. Certifications to the Court**

a. On or before the Final Hearing Date, Plaintiffs’ Counsel shall file with the Court in the Litigation an affidavit verifying that the court-approved Class Mail Notices have been sent by first-class mail.

b. On or before the Final Hearing Date, Plaintiffs’ Counsel shall file with the Court an affidavit verifying that they have complied with the procedures described in Paragraph 17(a) with respect to all Class Mail Notices returned as undeliverable.

**14. Effectiveness of Settlement Agreement**

a. The “Effective Date” of this Agreement shall be the date when each and all of the following conditions have occurred, at which point the Settlement shall be deemed effective in all respects:

i This Agreement has been signed by the Named Plaintiffs, the Settling Defendants, Plaintiffs’ Counsel, and Settling Defendants’ Counsel;

ii. A Preliminary Approval Order has been entered by the Court in a form substantially similar to that attached as **Exhibit B**, granting preliminary approval of this

Agreement, and approving a form of Class Mail Notice, as provided in Paragraph 9;

iii. The Court-approved Class Mail Notice has been duly mailed to the RFC Settlement Class as ordered by the Court;

iv. A Final Approval Order has been entered by the Court in a form substantially similar to that attached as **Exhibit C** as provided in Paragraph 12(a);

v. A Final Judgment has been entered by the Court, in a form substantially similar to that attached as **Exhibit D**, as provided in Paragraph 12(b);

vi. The Final Approval Order and the Final Judgment entered as provided in Paragraphs 12(a) and 12(b) have become final because of (a) the expiration of the time for appeals therefrom without any appeal having been taken or, (b) if review of the order, or any portion thereof, is sought by any person, the matter has been fully and finally resolved by the appellate court(s) and the time for seeking any higher level of appellate review has expired;

vii. An order finally approving a settlement as to the Settling Defendants and a final judgment as to the Settling Defendants have been entered by each of the respective courts in each of the cases listed in **Exhibit F**, in forms substantially similar to the exemplar exhibits attached to the settlement agreements with the Settling Defendant(s) in those cases; and

viii. Each of the orders finally approving a settlement as to the Settling Defendants and the final judgments as to the Settling Defendants described in Paragraph 14(a)(vii) have become final because of (a) the expiration of the time for appeals therefrom without any appeal having been taken or, (b) if review of any such order, or any portion thereof, is sought by any person, the matter has been fully and finally

resolved by the appellate court(s) and the time for seeking any higher level of appellate review has expired.

b. If any material portion of the Agreement, the Final Approval Order, or the Final Judgment is vacated, voided, modified, or otherwise altered by the Court or on appeal, any Party may, in its sole discretion, within seven (7) calendar days of such ruling, declare that the Agreement has failed to become effective and in such circumstances the Agreement shall cease to be of any force and effect as provided in Paragraph 15.

c. If for any reason the Settlement does not (or cannot) become effective pursuant to this Paragraph 14 by the day which is 3 years after the date of the latest final approval of the settlement of a case listed in **Exhibit F**, any Party in its, her or their sole discretion, by giving written notice to Plaintiffs' Counsel or Settling Defendants' Counsel, as the case may be, within three (3) days of said date, may rescind this Agreement and the Settlement, in which event each and every obligation under the Agreement shall cease to be of any force and effect, as provided in Paragraph 15.

**15. Failure of Condition**

If, for any reason, this Agreement fails to become effective as provided in Paragraphs 3(c), 10(b) and/or 14, each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement, any dismissal entered pursuant to this Agreement, the Final Judgment and any orders entered in connection with the Settlement, dismissal order or Final Judgment, shall be vacated, rescinded, canceled, annulled and deemed "void" and/or "no longer equitable" and/or set aside for a reason that otherwise "justifies relief" for purposes of Mo. Rule 74.06 and/or Fed.R.Civ.P. 60(b) and the Parties shall be returned to the status quo prior to entering into this Agreement with respect to the claims and defenses and other aspects of the

Missouri Cases as if this Agreement had never been entered into and the Litigation had never been filed, except that the provisions of Paragraphs 1 and Paragraph 19(m) hereof shall survive and remain binding on the Parties and effective in all respects regardless of the reasons for such failure of condition and any Party may reassert their claims against the other Party or Parties in the Missouri Cases; provided, however, that if at such time either of the Missouri Cases is or has been terminated or otherwise concluded, or if the Named Plaintiff(s) and/or the RFC Settlement Class Members are otherwise precluded from reasserting their claims against the Settling Defendants in either of the Missouri Cases after requesting the Court to allow them to do so, then such Named Plaintiff(s) and RFC Settlement Class Members may commence a new lawsuit or proceeding against the Settling Defendants, or any of them, to pursue the claims and causes of action that they are currently asserting in the Missouri Cases as if the claims had been reasserted in the Missouri Cases as stated and intended herein; provided further, however, that any such re-commenced lawsuit or proceeding shall be filed in the United States District Court for the Western District of Missouri. In such event, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all parties hereto, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Missouri Cases or otherwise.

**16. Stay and Dismissal of the Missouri Cases**

a. The Parties agree that within five (5) business days of the execution of this Agreement by all Parties, they will file a motion to stay *Deanthony Thomas, et al., v. U.S. Bank National Association, N.D.*, Case No. 5:11-cv-06013-SOW, with respect to the Settling Defendants pending the effectiveness of the settlement memorialized in the Agreement. The Parties further agree that if such stay is not entered, or is entered but expires or is lifted prior to

the Effective Date of this Agreement, they will cooperate to request extensions of time to postpone all deadlines for litigation activity required in *Deanthony Thomas, et al., v. U.S. Bank National Association, N.D.*, Case No. 5:11-cv-06013-SOW, with respect to the Settling Defendants in an effort to provide that no such deadlines occur prior to the Effective Date of this Agreement.

b. The Parties agree that if RFC and/or GMAC Mortgage, LLC, is reinstated as a defendant in *Michael D. Mayo v. GMAC Mortgage, LLC, et al.*, Case No. 4:08-CV-00568-W-DGK, within five (5) business days they will file a motion to stay that case with respect to the Settling Defendants pending the effectiveness of the settlement memorialized in the Agreement. The Parties further agree that if such stay is not entered, or is entered but expires or is lifted prior to the Effective Date of this Agreement, they will cooperate to request extensions of time to postpone all deadlines for litigation activity required in *Michael D. Mayo v. GMAC Mortgage, LLC, et al.*, Case No. 4:08-CV-00568-W-DGK, with respect to the Settling Defendants in an effort to provide that no such deadlines occur prior to the Effective Date of this Agreement.

c. The Parties agree that within five (5) business days of the Effective Date of this Agreement, they will file the motion(s), notice(s), or stipulation(s) necessary to voluntarily dismiss the Missouri Cases as against the Settling Defendants “with prejudice,” with each Party to bear its own costs, and/or otherwise request the courts in the Missouri Cases to approve the dismissal of the Named Plaintiffs’ and RFC Settlement Class Members’ claims against the Settling Defendants as provided herein.

## 17. Class Notice Forms

a. **Exhibit E** constitutes a list of the members of the RFC Settlement Class to whom notice pursuant to this Agreement shall be provided. Prior to mailing, Plaintiffs’ Counsel will

