

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“*Settlement Agreement*”) is entered into by and among (a) *Plaintiffs* (as defined in Paragraph 1.14 below) in the litigation entitled *Joseph Henry and Michael Malinky vs. Bank of America, National Association*, Second Circuit Docket No. 10-2515-CV, District Docket No. 01-CV-1681 (the “*Action*”), for themselves and on behalf of the *ESOP* (as defined in Paragraph 1.8 below), and (b) the *Defendant* (as defined in Paragraph 1.4 below), in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

WHEREAS, *Plaintiffs* brought the *Action* asserting claims of breach of fiduciary duty under *ERISA* and under applicable state law against *Defendant* and others; and

WHEREAS, the *Action* is currently pending only against *Defendant*; and

WHEREAS, the *Parties* (as defined in Paragraph 1.12 below) have voluntarily agreed to the *Settlement* memorialized in this *Settlement Agreement*.

NOW, THEREFORE, without any admission or concession on the part of the *Plaintiffs* of any lack of merit of the *Action*, and without any admission or concession on the part of *Defendant* as to the merit of the *Action*, it is hereby STIPULATED AND AGREED, by and among the *Parties*, through their respective attorneys, subject to approval of the *Court* pursuant to applicable law, in consideration of the benefits flowing to the *Parties* from the *Settlement Agreement*, that all *Released Claims* (as defined in Paragraph 1.17 below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. Definitions.

As used in this *Settlement Agreement*, italicized and capitalized terms and phrases not otherwise defined herein have the meanings provided below:

1.1. “*Action*” has the meaning set forth in the first paragraph of this *Settlement Agreement*.

1.2. “*Affected Participants*” means all persons who are participants in the *ESOP*, and all persons who were participants or beneficiaries in the *ESOP* at any time from and after January 1, 1994, including, without limitation, any such participant or beneficiary that previously claimed or received benefits.

1.3. “*Court*” means the United States District Court for the Northern District of New York.

1.4. “*Defendant*” means the Bank of America, National Association, previously identified as U.S. Trust Company of California, N.A., and any other predecessors in interest.

1.5. “*Defendant’s Released Claims*” shall have the meaning set forth in Paragraph 4

1.6. “*Defendant Releasees*” means the *Defendant*, and its respective *Representatives* (as defined in Paragraph 1.19 below), successors, assigns, parents, subsidiaries, directors, officers, attorneys, underwriters, insurers and agents.

1.7. “*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder, and court decisions interpreting such Act or regulations.

1.8. “*ESOP*” means the Employee Stock Ownership Plan sponsored by Champlain Enterprises, Inc. d/b/a CommutAir.

1.9. “*Final*” means, with respect to any judicial ruling, order or judgment, that the ruling, order or judgment has been entered on the *Court’s* docket, provided that if a timely objection to such ruling, order or judgment has been filed by a *Party*, such ruling, order or judgment shall not be *Final* until the period for any appeals, petitions, motions for reconsideration, rehearing, or *certiorari* or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a *Review Proceeding*, or, if a *Review Proceeding* has been timely initiated, that there has occurred a full and final disposition of any such *Review Proceeding* without a reversal or any material modification, including the exhaustion of proceedings in any remand and/or subsequent appeal after remand.

1.10. “*Financial Institution*” shall have the meaning set forth in Paragraph 6.1.

1.11. “*Independent Fiduciary*” means Jonathan Cocks as duly appointed independent fiduciary of the ESOP.

1.12. “*Parties*” means the *Plaintiffs*, and the *Defendant*. “*Party*” means any one of these Parties.

1.13. “*Person*” means an individual, partnership, corporation, governmental entity or any other form of entity or organization. “*Persons*” means more than one such *Person*.

1.14. “*Plaintiffs*” means Joseph Henry and Michael Malinky.

1.15. “*Plaintiffs’ Counsel*” means (a) Keller Rohrback, P.L.C., (b) Devine, Markovits & Snyder, LLP; and (c) Shayne Nichols LLC.

1.16. “*Plan of Allocation*” means the plan of allocation to be jointly submitted by *Plaintiffs*

and the *Independent Fiduciary* to the *Court* for its approval.

1.17. “*Released Claims*” shall have the meaning set forth in Paragraph 4.

1.18. “*Releases*” means the releases set forth in Paragraph 4.

1.19. “*Representatives*” means, with respect to any *Party* such *Party*’s current and past partners, attorneys, trustees, fiduciaries, administrators, directors, officers, affiliates, agents and representatives and employees.

1.20. “*Settlement*” means the settlement to be consummated under this *Settlement Agreement*.

1.21. “*Settlement Fund*” means a qualified settlement fund established by *Plaintiffs’ Counsel* at the *Financial Institution*.

2. Court Approval of the Settlement.

2.1. Preliminary Approval. The Parties shall promptly move the *Court* for entry of an order preliminarily approving the *Settlement*, which (a) provides for notice of the *Settlement* to be provided to the *Affected Participants* (“the *Notice*”); (b) finds that the *Notice* fairly and adequately: (i) describes generally the terms and effect of this *Settlement Agreement*; (ii) gives notice of the time and place of the final fairness hearing; and (iii) describes how the recipients of the *Notice* may object to entry of the *Judgment*; and (c) finds that *Plaintiffs’* proposed manner of communicating the *Notice* to the *Persons* to whom notice will be given, consisting of mailing thereof to the last known address of each such person as reflected in the records of the *ESOP*, and the publication of such *Notice* on a website identified therein, is the best notice practicable

under the circumstances.

2.2. Final Approval. Attached hereto as Exhibit A is the proposed form of the judgment (the “*Judgment*”) which the *Parties* shall request the *Court* enter at the conclusion of its final fairness hearing. The *Parties* shall cooperate in good faith, including taking all steps and efforts contemplated by this *Settlement Agreement* and any other steps or efforts that may become necessary by order of the *Court* (unless such order materially modifies the terms of this *Settlement Agreement*), to carry out this *Settlement Agreement*. The *Settlement* shall become effective upon the *Judgment* becoming *Final*.

3. Settlement Consideration.

Defendant agrees to deposit into the *Settlement Fund* the sum of \$2,000,000 (the “*Settlement Amount*”) in full satisfaction of the claims asserted against it in this *Action*. Such deposit shall be made no later than 10 business days after the execution of this *Settlement Agreement*. Under no circumstances shall *Defendant* be required to pay more than the *Settlement Amount* and upon payment of the *Settlement Amount* all *Defendant’s* payment obligations under this *Agreement* shall be satisfied and discharged in full.

4. Releases.

Upon the *Settlement* becoming *Final*, (a) each of the *Plaintiffs*, *Affected Participants*, and the *ESOP* (subject to review and approval by the *Independent Fiduciary*), and their *Representatives*, heirs, executors, administrators, agents, assigns, successors, and predecessors, absolutely and unconditionally release and forever discharge each of the *Defendant Releasees*, from all claims of any nature whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement of fees, litigation costs, injunction, declaration, contribution,

indemnification or any other type or nature of legal or equitable relief), whether accrued or not, whether known, unknown, or unsuspected, in law or equity, other than claims arising under this *Settlement Agreement* or relating specifically to enforcement of the *Judgment* (the “*Released Claims*”); (b) the *Defendant* absolutely and unconditionally releases and forever discharges each of the *Plaintiffs*, *Affected Participants*, the *ESOP*, and their respective *Representatives* from all claims of any nature whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), whether accrued or not, whether known, unknown, or unsuspected, in law or equity, other than claims arising under this *Settlement Agreement* or under the *Judgment* (“*Defendant’s Released Claims*”). To further effectuate the foregoing *Releases*, it is acknowledged that the *Judgment* shall provide for the dismissal with prejudice of the *Action*.

5. No Admission of Liability.

The *Parties* understand and agree that this *Settlement Agreement* embodies a compromise settlement of disputed claims, and that nothing in this *Settlement Agreement*, including the furnishing of consideration for this *Settlement Agreement*, shall be deemed to constitute any finding of wrongdoing by the *Defendant*. Further, *Plaintiffs*, while believing that all claims brought in the *Action* have merit, have concluded that the terms of this *Settlement Agreement* are fair and reasonable given, among other things, the inherent risks, difficulties and delays in complex litigation such as this.

6. The Settlement Fund.

6.1. Establishment of Settlement Fund. There shall be established at a federally-insured

financial institution (the “*Financial Institution*”) designated by Keller Rohrback, P.L.C. a settlement fund account (the “*Settlement Fund*”) which, along with net earnings thereon, shall be considered a common fund created as a result of the *Action*. The *Financial Institution* shall make distributions from the *Settlement Fund* only in accordance with this *Settlement Agreement* or an order of the *Court*. For the avoidance of doubt, the *Financial Institution* shall be instructed that, absent a *Court* order, no funds are to be paid or withdrawn from the *Settlement Fund* except pursuant to Articles 7 and 8 of this *Settlement Agreement* (and the Paragraphs of this *Settlement Agreement* explicitly cross-referenced therein). *Plaintiffs’ Counsel* shall promptly notify *Defendant’s* counsel of the date of the establishment of the *Settlement Fund*, shall confirm the identity of the *Financial Institution* including any information, including but not limited to wiring instructions, needed to make the deposits required by Paragraph 3.

6.2. Administration of the Settlement Fund. The funds on deposit in the *Settlement Fund* shall be invested only in United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury, and mutual funds or money market accounts that invest exclusively in the foregoing securities. The *Settlement Fund* shall be structured and managed to qualify as a “qualified settlement fund” described in the Treasury regulations promulgated under Section 468B of the Internal Revenue Code and no *Party* shall take any position in any filing or before any tax authority that is inconsistent with such treatment. The *Financial Institution* or another *Person* designated by Keller Rohrback, P.L.C. shall be the *Settlement Fund* “administrator,” as that term is used in the Section 468B Treasury regulations (the “*Administrator*”). The *Administrator* shall (a) prepare and file all income tax and information returns required to be filed, and provide payees with copies of such

information returns; (b) pay all taxes owed by the *Settlement Fund*; (c) pay the fees and expenses incurred by the *Financial Institution* associated with the administration of the *Settlement Fund*; and (d) obtain and provide *Defendant* with the *Settlement Fund*'s federal taxpayer identification number on or before the date that *Defendant* transfers funds to the *Settlement Fund*. The *Administrator* shall be authorized to retain a certified public accounting firm for these purposes. All taxes on the income of the *Settlement Fund* and tax-related expenses, including the expenses, if any, of a certified public accounting firm, incurred in connection with the administration of the *Settlement Fund* shall be paid solely out of the *Settlement Fund*, shall be considered a cost of administration of the *Settlement*, and shall be timely paid without further order of the *Court*. All fees and expenses of the *Administrator* or the *Financial Institution*, and of professional advisors engaged by the *Administrator* or the *Financial Institution* in connection with the *Settlement Fund*, shall be funded solely from the *Settlement Fund*. The *Administrator* may instruct the *Financial Institution* to reserve any portion of the *Settlement Fund* for the purpose of satisfying future or contingent expenses or obligations, including expenses of *Settlement Fund* administration or any disbursement provided for in Article 7 of this *Settlement Agreement*. The *Parties* agree that *Defendant* has no responsibility, authority, or liability, respecting the operation, expenses, obligations and administration of the *Settlement Fund*.

7. Payments from the *Settlement Fund*.

7.1. Disbursements from *Settlement Fund*. No funds shall be disbursed from the *Settlement Fund* except by order of the *Court* or in accordance with Section 8.2.1 of this *Settlement Agreement* and in any event only after the *Judgment* is *Final*. In addition to the disbursements provided for in Paragraph 6.2, funds in the *Settlement Fund* shall be disbursed as follows:

7.1.1. Attorneys' Fees and Expenses. As provided in Paragraph 9.1 hereof.

7.1.2. Incentive Awards. As provided in Paragraph 9.2 hereof.

7.1.3. The ESOP. Subject to Paragraph 8 hereof with respect to the retention in the *Settlement Fund* of the amounts deposited therein, and in any event only after the *Judgment* is *Final*, amounts in the *Settlement Fund* shall be disbursed to the *ESOP* to be allocated by the *ESOP* in accordance with the *Plan of Allocation*.

7.1.4. The Independent Fiduciary. As provided in Paragraph 9.4 hereof.

7.1.5. Mailing of the Notice. As provided in Paragraph 2.1.

8. Termination of the Settlement Agreement.

8.1. Termination. This *Settlement Agreement* may terminate if (a) the *Court* declines to enter the *Judgment*, (b) the *Independent Fiduciary* fails to approve the *Settlement*, or (c) the *Judgment* entered by the *Court* is reversed or modified in any material respect on appeal, except a modification relating to the award of legal fees and expenses or the *Plan of Allocation*. If, within thirty (30) days after the date when any reversal or modification which would cause this *Settlement Agreement* to terminate becomes *Final*, the *Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* in light of such ruling, this *Settlement Agreement* shall automatically terminate and thereupon become null and void.

8.2. Consequences of Termination of the Settlement Agreement. If the *Settlement Agreement* terminates, the following shall occur:

8.2.1. Return of Consideration. Except as otherwise provided in Paragraph 6.2, all consideration paid by or on behalf of the *Defendant* under Paragraph 3 hereof,

including any interest and earnings, shall be returned to *Defendant* within ten business days of the termination of the Settlement Agreement.

8.2.2. Reversion of Action. The *Action* shall for all purposes with respect to the Parties revert to its status as of May 1, 2011. Any and all statutes of limitations, statutes of repose and/or other defenses based upon the passage of time applicable to the claims asserted in this *Action* shall be tolled from May 1, 2011 to the date on which this *Settlement Agreement* terminates.

8.2.3. Null and Void. All provisions of this *Settlement Agreement* shall be null and void except for this Paragraph 8.2, and except as otherwise explicitly provided in this *Settlement Agreement*.

9. Attorneys' Fees and Expenses and Incentive Awards.

9.1. Attorneys' Fees and Expenses. Pursuant to the common fund doctrine and/or any applicable statutory fee provision, *Plaintiffs' Counsel* may apply to the *Court* for awards of attorneys' fees, and for reimbursement of expenses, to be paid solely from the *Settlement Fund*. *Defendant* shall take no position with respect to any such applications.

9.2. Incentive Awards. In addition, *Plaintiffs* may apply to the *Court* for incentive awards for *Plaintiffs* in connection with the *Action*, to be paid solely from the *Settlement Fund*. *Defendant* shall take no position with respect to any such applications.

9.3. Disbursement of Attorneys' Fees and Expenses and Incentive Awards. If the *Court* enters one or more orders allowing payment of attorneys' fees and/or expenses, or *Plaintiffs'* incentive payments, upon the order becoming *Final* the amount awarded shall be disbursed as set

forth in such order(s) from the *Settlement Fund*.

9.4. Payment of Fees and Expenses of Independent Fiduciary. All fees and expenses incurred by the *Independent Fiduciary* in the course of evaluating the *Settlement* shall be paid from the *Settlement Fund*.

10. Miscellaneous Provisions.

10.1. Governing Law. This *Settlement Agreement* shall be governed by the laws of the State of New York without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

10.2. Amendment. Before entry of the *Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties*. Following entry of the *Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties* and approved by the *Court*.

10.3. Waiver. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this *Settlement Agreement*.

10.4. Construction. None of the *Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the

drafter hereof.

10.5. Principles of Interpretation. The following principles of interpretation apply to this *Settlement Agreement*:

10.5.1. Headings. The headings of this *Settlement Agreement* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Settlement Agreement*.

10.5.2. Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

10.5.3. Gender. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

10.5.4. References to a Person. References to a *Person* are also to the *Person*'s permitted heirs, trustees, personal representatives, executors, administrators, directors, officers, employees, agents, partners, members, successors and assigns.

10.5.5. Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this *Settlement Agreement*, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

10.5.6. Time. References to "days" in this *Settlement Agreement* are to calendar days, unless otherwise stated.

10.6. Further Assurances. All *Parties* agree, without further consideration, and as part of finalizing the *Settlement* hereunder, that they will in good faith execute and deliver such other

documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

10.7 No Assignments. Each Party warrants and represents to each other Party that it is the sole owner of all rights, title, and interest in and to the Released Matters and that it has not sold, transferred, assigned, or otherwise disposed of any rights, title, or interest in any of the Released Matters or any part or portion thereof to any person or entity who is not a Party to this Agreement.

10.8 Notices. Any notice, demand, or other communication under this *Settlement Agreement* (other than the *Notice*, or other notice given at the direction of the *Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

IF TO *PLAINTIFFS*:

Gary Greenwald
Keller Rohrback P.L.C.
3101 N. Central Avenue
Suite 1400
Phoenix, AZ 85013
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

Terence J. Devine
Devine, Markovits & Snyder, LLP
52 Corporate Circle
Albany, New York 12203
Telephone: (518) 464-0640
Facsimile: (518) 464-0200

Stanley H. Shayne
Shayne Nichols, LLC
Two Miranova Place, Suite 220
Columbus, Ohio 43215
Telephone: (614) 221-2220
Facsimile: (614) 221-9020

IF TO *DEFENDANT*

Edward A. Scallet
Groom Law Group, Chartered
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Telephone: (202) 857-0620
Facsimile: (202) 659-4503

Any *Party* may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described above.

10.7. Entire Agreement. This *Settlement Agreement* contains the entire agreement among the *Parties* relating to this *Settlement*. It specifically supersedes any settlement terms or settlement agreements relating to the *Parties* that were previously agreed upon orally or in writing by any of the *Parties*. In the event of any dispute regarding the interpretation of this *Settlement Agreement*, no *Party* may rely upon or cite any previous version of this *Settlement Agreement*.

10.8. Counterparts. This *Settlement Agreement* may be executed by exchange of faxed or scanned executed signature pages, and any signature thereby transmitted for the purpose of executing this *Settlement Agreement* shall be deemed an original signature. This *Settlement Agreement* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

10.9. Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors, and successors.

IN WITNESS WHEREOF, the *Parties* have executed this *Settlement Agreement* on the dates set forth below.

FOR *PLAINTIFFS*:

By: _____
Joseph Henry

Dated: _____

By: _____
Michael Malinky

Dated: _____

By: _____
Gary Greenwald
Keller Rohrback P.L.C
3101 N. Central Avenue
Suite 1400
Phoenix, AZ 85013
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

Dated: _____

By: _____
Terence J. Devine
Devine, Markovits & Snyder, LLP
52 Corporate Circle
Albany, New York 12203
Telephone: (518) 464-0640
Facsimile: (518) 464-0200

Dated: _____

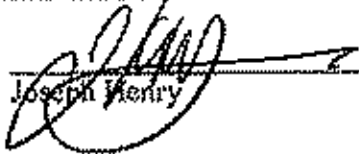
Stanley H. Shayne
Shayne Nicholls, LLC
Two Miranova Place, Suite 220
Columbus, Ohio 43215
Telephone: (614) 221-2220
Facsimile: (614) 221-9020

Dated: _____

10.9. Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors, and successors.

IN WITNESS WHEREOF, the *Parties* have executed this *Settlement Agreement* on the dates set forth below.

FOR PLAINTIFFS:

By: 
Joseph Henry

Dated: 8/10/2011.

By: _____
Michael Malinky

Dated: _____

By: _____
Gary Greenwald
Keller Rohrback P.L.C
3101 N. Central Avenue
Suite 1400
Phoenix, AZ 85013
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

Dated: _____

By: _____
Terence J. Devine
Devine, Markovits & Snyder, LLP
52 Corporate Circle
Albany, New York 12203
Telephone: (518) 464-0640
Facsimile: (518) 464-0200

Dated: _____

Stanley H. Shayne
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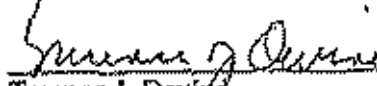
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FOR PLAINTIFFS:

By: _____ Dated: _____
Joseph Henry

By: _____ Dated: _____
Michael Malinky

By: _____ Dated: _____
Gary Greenwald
Keller Rohrback P.L.C
3101 N. Central Avenue
Suite 1400
Phoenix, AZ 85013
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

By:  Dated: 8.11.11
Terence J. Devine
Devine, Markovits & Snyder, LLP
52 Corporate Circle
Albany, New York 12203
Telephone: (518) 464-0640
Facsimile: (518) 464-0200

_____ Dated: _____
Stanley H. Shayne
Shayne Nicholls, LLC
Two Miranova Place, Suite 220
Columbus, Ohio 43215
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FOR PLAINTIFFS:

By: _____
Joseph Henry

Dated: _____

By: _____
Michael Malinky

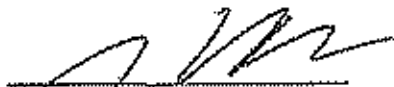
Dated: _____

By: _____
Gary Greenwald
Keller Rohrback P.L.C
3101 N. Central Avenue
Suite 1400
Phoenix, AZ 85013
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

Dated: _____

By: _____
Terence J. Devine
Devine, Markovits & Snyder, LLP
52 Corporate Circle
Albany, New York 12203
Telephone: (518) 464-0640
Facsimile: (518) 464-0200

Dated: _____



Stanley H. Shayne
Shayne Nicholls, LLC
Two Miranova Place, Suite 220
Columbus, Ohio 43215
Telephone: (614) 221-2220
Facsimile: (614) 221-9020

Dated: 8-12-2011

10.9. Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors, and successors.

IN WITNESS WHEREOF, the *Parties* have executed this *Settlement Agreement* on the dates set forth below.

FOR *PLAINTIFFS*:

By: _____ Dated: _____
Joseph Henry

By: _____ Dated: _____
Michael Malinky

By: Gary D. Greenwald Dated: August 9, 2011
Gary Greenwald
Keller Rohrback P.L.C
3101 N. Central Avenue
Suite 1400
Phoenix, AZ 85013
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

By: _____ Dated: _____
Terence J. Devine
Devine, Markovits & Snyder, LLP
52 Corporate Circle
Albany, New York 12203
Telephone: (518) 464-0640
Facsimile: (518) 464-0200

_____ Dated: _____
Stanley H. Shayne
Shayne Nicholls, LLC
Two Miranova Place, Suite 220
Columbus, Ohio 43215
Telephone: (614) 221-2220
Facsimile: (614) 221-9020

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IN WITNESS WHEREOF, the *Parties* have executed this *Settlement Agreement* on the dates set forth below.

FOR *PLAINTIFFS*:

By: _____ Dated: _____
Joseph Henry

By: Michael J. Malinky Dated: AUGUST 10, 2011
Michael Malinky

By: _____ Dated: _____
Gary Greenwald
Keller Rohrback P.L.C
3101 N. Central Avenue
Suite 1400
Phoenix, AZ 85013
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

By: _____ Dated: _____
Terence J. Devine
Devine, Markovits & Snyder, LLP
52 Corporate Circle
Albany, New York 12203
Telephone: (518) 464-0640
Facsimile: (518) 464-0200

_____ Dated: _____
Stanley H. Shayne
Shayne Nicholls, LLC
Two Miranova Place, Suite 220
Columbus, Ohio 43215
Telephone: (614) 221-2220
Facsimile: (614) 221-9020

FOR DEFENDANT:

Bank of America, N.A.

By: *Edwin Scallet*
for Bank of America, N.A.

Dated: 8/9/11

By: *Edwin Scallet*
Edward A. Scallet
Groom Law Group, Chartered
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Telephone: (202) 857-0620
Facsimile: (202) 659-4503

Dated: 8/9/11

EXHIBITS TO THE SETTLEMENT AGREEMENT

Exhibits

A Judgment

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

**JOSEPH HENRY and MICHAEL
MALINKY,**

Plaintiffs,

vs.

**BANK OF AMERICA, NATIONAL
ASSOCIATION,**

Defendant.

**No. 01-CV-1681
(DNH/RFT)**

ORDER AND FINAL JUDGMENT

This Order concerns the settlement (“Settlement”) of this litigation (the “Action”) involving claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. (“ERISA”), with respect to the Champlain Enterprises, Inc. Employee Stock Ownership Plan (the “ESOP”). A Settlement Agreement, dated _____, 2011 (“Settlement Agreement”), was filed with the Court on _____, 2011 (Dkt. ____).¹ Before the Court are: (1) Plaintiffs’ Motion for Final Approval of Settlement (“Final Approval Motion”); (2) Plaintiffs’ Motion and Memorandum for Approval of Plan of Allocation (“Plan of Allocation Motion”); and (3) Plaintiffs’ Counsel’s Motion for Award of Attorneys’ Fees and Expenses and Plaintiff Incentive Awards (collectively, the “Fees and Expenses Motion”).

On _____, 2011 (Dkt. ____), the Court entered its Order Preliminarily Approving Settlement and Setting Fairness Hearing (“Preliminary Approval Order”). The Court has

¹ All capitalized terms used in this Order and Final Judgment and not defined herein shall have the meanings assigned to them in the Settlement Agreement and Preliminary Approval Order.

received declarations attesting to the mailing of the Notice and publication of the Notice in accordance with the Preliminary Approval Order. A hearing was held on _____, __ 2011 (the “Final Approval Hearing”) to: (i) determine whether to grant the Final Approval Motion; (ii) determine whether to grant the Plan of Allocation Motion; (iii) determine whether to grant the Fees and Expenses Motion; and (iv) rule upon such other matters as the Court might deem appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of the Action and all Parties thereto pursuant to 29 U.S.C. § 1132(e).

2. The Settlement was negotiated at arm’s-length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties had engaged in extensive discovery and motion practice, a full trial, two appeals, and while a third appeal was pending. Plaintiffs’ Counsel and Defendant’s Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

3. The proposed Settlement warrants final approval because it is fair, adequate, and reasonable to the Parties, the ESOP, the Affected Participants, and to others whom they affect based upon: (1) the complexity, expense and likely duration of the litigation; (2) the reaction to the Settlement of the Affected Participants; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the ability of the Defendants to withstand a greater judgment; (7) the range of reasonableness of the Settlement Fund in light of

the best possible recovery; and (8) the range of reasonableness of the Settlement Fund to a possible recovery in light of all the attendant risks of litigation.

4. The Court determines that the Settlement is not part of an agreement, arrangement, or understanding designed to benefit a party in interest, but rather is designed and intended to benefit the ESOP and the ESOP's participants. Accordingly, the Court determines that the negotiation and consummation of the Settlement by Plaintiffs on behalf of the ESOP and approval by the ESOP Trustee do not constitute "prohibited transactions" as defined by ERISA §§ 406(a) or (b), 29 U.S.C. §§ 1106(a) or (b). Further, the Court finds that, to the extent any of the transactions required by the Settlement constitute a transaction prohibited by ERISA §§ 406(a) or (b), 29 U.S.C. §§ 1106(a) or (b), such transactions satisfy the provisions of Prohibited Transaction Exemption 2003-39. 68 Fed. Reg. 75632 (2003).

5. The Final Approval Motion is GRANTED, and the Settlement is hereby APPROVED as fair, adequate and reasonable to the Parties, the ESOP, and the Affected Participants and others whom they affect, and in the public interest. The settling parties are directed to consummate the Settlement in accordance with the terms of the Settlement Agreement.

6. The Plan of Allocation is hereby APPROVED as fair, adequate, and reasonable to the Parties, the ESOP, and the Affected Participants. The Administrator shall, in accordance with the respective provisions of the Settlement Agreement disburse the Settlement Funds to the ESOP for distribution by the ESOP's trustee(s) in accordance with the Plan of Allocation, subject to any amounts withheld by the Administrator for the payment of taxes, statutory penalties, expenses and other sums as authorized in the Settlement Agreement, and attorneys' fees and expenses and incentive awards to Plaintiffs as authorized by this Order. The Court finds

payments and distributions made in accordance with such Plan of Allocation to be “restorative payments” as defined in IRS Revenue Ruling 2002-45. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

7. Incentive awards payable from the Settlement Fund in accordance with the Settlement Agreement are awarded to Mr. Malinky in the amount of \$ _____ and to Mr. Henry in the amount of \$ _____.

8. Plaintiffs’ Counsel are hereby awarded attorneys’ fees of _____% of all amounts deposited in the QSF in accordance with the terms of the Settlement Agreement and expenses of \$ _____. These awards shall be payable from the Settlement Fund in accordance with the terms of the Settlement Agreement.

9. The Court retains jurisdiction over the Action, the Parties, the ESOP and the Affected Participants for all matters relating to the Action, including (without limitation) the administration, interpretation, effectuation or enforcement of the Settlement Agreement, this Order and Final Judgment, and any application for fees and expenses incurred in connection with future actions necessary to fully consummate the Settlement and distribute the proceeds thereof.

10. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

11. As of the date of complete settlement approval and payment of the Settlement Amount (as defined in the Settlement Agreement), all release provisions shall be given full force and effect in accordance with each and all of their express terms and provisions, including those terms and provisions relating to unknown, unsuspected, or future claims, demands, or causes of action.

12. All counts asserted in the Action are DISMISSED WITH PREJUDICE, without further order of the Court, pursuant to the terms of the Settlement Agreement.

13. In the event that the Settlement is terminated in accordance with the terms of the Settlement Agreement, this Judgment shall be null and void and shall be vacated nunc pro tunc, and Article 8 of the Settlement Agreement shall govern the rights of the Parties thereto.

SO ORDERED this ___ day of _____, 2011.

Hon. Randolph F. Treece
United States Magistrate Judge