

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

H&N MANAGEMENT GROUP, INC. & AFF  
COS FROZEN MONEY PURCHASE PLAN,

Plaintiff,

v.

ROBERT M. COUCH, MORRIS A. DAVIS,  
RANDY E. DOBBS, JOHN ERICKSON,  
SAMUEL A. FLAX, LARRY K. HARVEY,  
GARY KAIN, PRUE LAROCCA, ALVIN N.  
PURYEAR, MALON WILKUS, ACAS, LLC,  
ARES CAPITAL CORP., and IVY HILL ASSET  
MANAGEMENT, L.P.,

Defendants,

and

AGNC INVESTMENT CORP., F/K/A,  
AMERICAN CAPITAL AGENCY CORP., a  
Delaware corporation,

Nominal Defendant.

C.A. No. 12847-VCMR

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT AND RELEASE**

Robert M. Couch, Morris A. Davis, Randy E. Dobbs, Larry K. Harvey, Gary Kain, Prue Larocca, John Erickson, Samuel A. Flax, Alvin N. Puryear and Malon Wilkus (collectively, the “Individual Releasees”) and Peter Federico (together with the Individual Releasees, the “Individual Maryland Releasees”); Ares Capital Corporation (“Ares”), Ivy Hill Asset Management L.P. (“Ivy Hill”) and ACAS,

LLC (together with Ares and Ivy Hill, the “American Capital Releasees”); nominal defendant AGNC Investment Corp., f/k/a American Capital Agency Corp. (“AGNC” or the “Company”); and Plaintiff H&N Management Group, Inc. & AFF Cos Frozen Money Purchase Plan (“Plaintiff,” and with the Individual Releasees, Individual Maryland Releasees, the American Capital Releasees and the Company, the “Parties”) through their undersigned counsel, have reached this Stipulation and Agreement of Compromise, Settlement and Release (with the exhibits hereto, the “Stipulation”) in connection with the above-captioned action (“Action”), subject to approval by the Court of Chancery of the State of Delaware (the “Court”) on the terms and conditions set forth herein.

**WHEREAS:**

A. AGNC is a publicly traded real estate investment trust (“REIT”) that invests on a leveraged basis predominately in residential agency mortgage-backed securities.

B. AGNC commenced operations on May 20, 2008, following an initial public offering organized by an affiliate of publicly traded private equity firm American Capital, Ltd. (“American Capital”), now known as ACAS, LLC.

C. Between July 29, 2011 and June 30, 2016, AGNC’s day-to-day operations were handled by an external manager, American Capital AGNC Management, LLC (the “Manager”), which American Capital indirectly owned

through intermediate companies American Capital Asset Management, LLC (“ACAM”) and American Capital Mortgage Management, LLC (“ACMM”). Until August 3, 2011, ACMM was known as American Capital Agency Management, LLC.

D. AGNC’s relationship with the Manager was governed by a management agreement entered into on May 20, 2008, and subsequently amended on July 29, 2011 and September 30, 2011 (the “Management Agreement”). The initial term of the Management Agreement was three years, ending on May 20, 2011. Thereafter, the Management Agreement would automatically renew each year for additional one-year terms unless the Company, by vote of a majority of its independent directors, or the Manager elected not to renew it.

E. The Management Agreement required AGNC to pay monthly management fees to the Manager in exchange for the services set forth in the Management Agreement.

F. The Management Agreement provided that AGNC must pay a termination fee if AGNC terminated the Management Agreement without cause.

G. In late 2015, American Capital announced that it would undertake a full strategic review of alternatives for maximizing shareholder value, including a potential sale of American Capital or its various business lines in whole or in part.

H. In March 2016, Horace Clark, who is the sole trustee of Plaintiff, made a demand pursuant to 8 *Del. C.* § 220 to inspect AGNC’s books and records relating to, among other things, the decisions not to terminate the Management Agreement for the years 2014, 2015, and 2016, which decisions occurred in 2013, 2014, and 2015 (collectively, the “Renewals”), and the Internalization.

I. On May 23, 2016, AGNC announced that it had entered into a transaction agreement pursuant to which AGNC would acquire ACMM, and AGNC would become an internally-managed REIT (the “Internalization”).

J. Also on May 23, 2016, Ares Capital Corporation and American Capital announced that they had entered into a definitive merger agreement for a transaction separate from but related to the Internalization (the “American Capital Acquisition”). The American Capital Acquisition was completed on January 3, 2017. Pursuant to the American Capital Acquisition, ACAM was merged with and into Ivy Hill, with Ivy Hill as the surviving entity and a wholly-owned portfolio company of Ares.

K. On July 1, 2016, AGNC completed the Internalization.

L. On July 6, 2016, Plaintiff served a demand pursuant to 8 *Del. C.* § 220 (the “Section 220 Demand”) to inspect AGNC’s books and records relating to, among other things, the Renewals and the Internalization.

M. On July 13, 2016, AGNC responded to the Section 220 Demand. AGNC's response argued that Plaintiff failed to state a proper purpose for seeking books and records. AGNC offered to produce a limited subset of the requested books and records relating to the Renewals but refused to produce, *inter alia*, any books and records relating to the Internalization.

N. On July 19, 2016, Plaintiff filed a Verified Complaint Pursuant to 8 *Del. C.* § 220 to Compel Inspection of Books and Records (the "Section 220 Complaint") in this Court, commencing the action captioned *H&N Management Group, Inc. and AFF COS Frozen Money Purchase Plan v. American Capital Agency Corp.*, 12573-VCMR (Del. Ch.) (the "Section 220 Action"). Through the Section 220 Action, Plaintiff sought to compel AGNC to produce all materials requested in Plaintiff's Section 220 Demand.

O. On July 29, 2016, the Court entered a scheduling order in the Section 220 Action which provided, *inter alia*, for a trial to occur on October 21, 2016. On August 8, 2016, in accordance with the terms of the scheduling order, AGNC filed an Answer in response to the Section 220 Complaint. Thereafter, Plaintiff and AGNC served discovery requests in the Section 220 Action, including requests for production and interrogatories.

P. On September 1, 2016, Plaintiff and AGNC reached an agreement to settle the Section 220 Action and filed a Stipulation of Dismissal dismissing the

Section 220 Action. Plaintiff and AGNC's settlement of the Section 220 Action required AGNC to produce certain books and records in response to Plaintiff's Section 220 Demand. Accordingly, on September 29, 2016, AGNC produced the books and records it had agreed to produce in order to settle the Section 220 Action.

Q. Pursuant to its review of the books and records produced by AGNC to settle the Section 220 Action, Plaintiff determined to pursue plenary litigation and filed this Action on October 21, 2016. On December 16, 2016, Plaintiff filed a Verified Amended Stockholder Derivative Complaint (the "Amended Complaint") derivatively on behalf of nominal defendant AGNC, which asserted claims against the Individual Releasees.

R. The Amended Complaint alleged, among other things, that the Individual Releasees breached their fiduciary duties owed to AGNC, including the duties of care and loyalty, and any subsidiary duties, by (i) allowing AGNC's Management Agreement to renew for the years 2014, 2015, and 2016; (ii) acquiring ACMM in 2016 and internalizing the management of AGNC's portfolio; and (iii) committing "waste" in effecting the Internalization. The Amended Complaint alleged that the Individual Releasees caused AGNC to overpay for the management of AGNC and for the internalization of its management, and that the Individual Releasees did not undertake an informed, good-faith analysis in connection with these corporate decisions, in part because (i) conflicts of interest

allegedly existed between AGNC on the one hand and American Capital on the other, and (ii) AGNC was allegedly subsidizing the management of MTGE Investment Corp., another REIT managed by an affiliate of AGNC's Manager.

S. On October 25, 2016, the United States District Court for the District of Maryland consolidated two derivative complaints filed on September 21 and September 30, 2016, respectively, by purported AGNC stockholders (the "Maryland Plaintiffs"), captioned *In re AGNC Investment Corp.*, No. TDC-16-3215 (which was consolidated with Civil Action No. TDC-16-3310) (the "Maryland Action"). The complaints, which were not based on any investigation under 8 *Del. C.* § 220 and borrowed substantially from the complaint filed in the Section 220 Action, were based on the same underlying facts and circumstances as the Action.

T. On August 1, 2017, following briefing and oral argument, the Court issued a Letter Opinion denying the Individual Releasees' motion to dismiss the Amended Complaint and allowing Plaintiff to proceed derivatively on behalf of the Company.<sup>1</sup>

U. On July 3, 2018, the Maryland District Court granted in part the Individual Maryland Releasees' motion to dismiss the consolidated complaint in

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<sup>1</sup> On October 9, 2017, Plaintiff also filed a Motion to Strike Affirmative Defenses. Plaintiff subsequently withdrew this motion.

the Maryland Action, including the claims against ACAM, and dismissed the Maryland Plaintiffs' claim asserting violations of Section 14(a) of the Securities and Exchange Act of 1934. On July 17, 2018, the Maryland Plaintiffs moved for leave to file an amended complaint.

V. On October 11, 2018, Plaintiff filed a Verified Second Amended Stockholder Derivative Complaint in the Action (the "Second Amended Complaint"). In addition to the claims alleged in the Amended Complaint, the Second Amended Complaint asserted claims for unjust enrichment and aiding and abetting the Individual Releasees' alleged breaches of fiduciary duty against two new defendants as the alleged successors to the interests and liabilities of American Capital and its wholly-owned subsidiary ACAM: (i) Ares, and (ii) Ivy Hill.

W. On November 14, 2018, Plaintiff filed a Verified Third Amended Stockholder Derivative Complaint (the "Third Amended Complaint"), which added ACAS, LLC—a successor entity to American Capital—as a defendant in connection with its unjust enrichment and aiding and abetting claims against Ares and Ivy Hill.

X. In addition to the allegations detailed above, the Third Amended Complaint alleges, *inter alia*, that the termination fee in the Management Agreement was unlawful and unenforceable under the Investment Advisers Act of

1940 and as an improper penalty clause. Plaintiff alleges that the American Capital Releasees, as successors-in-interest to American Capital and ACAM (i) abused their positions of trust and authority to unjustly enrich themselves by extracting excessive fees from AGNC and causing AGNC to pay an exorbitant amount for the Internalization; and (ii) are liable for the harm caused by the purported breaches of fiduciary duty that American Capital and ACAM aided and abetted. On December 6, 2018, the American Capital Releasees filed a motion to dismiss. That motion has been fully briefed, was argued before the Court on February 21, 2019, and is currently pending before the Court.

Y. Fact discovery in this Action has been extensive and is complete. Plaintiff served document demands and interrogatories on the Parties and subpoenas on numerous non-parties. In connection with Plaintiff's discovery efforts in this Action, Plaintiff filed on September 21, 2018 a Motion to Compel Production of Documents. In total, Plaintiff received and reviewed nearly 140,000 documents, totaling more than 3,500,000 pages. The Parties also conducted sixteen (16) party and non-party depositions, including a full-day deposition of a representative of Plaintiff. The Maryland Plaintiffs were not invited to, and did not participate in, Plaintiff's discovery efforts in the Action in any fashion. Among other things, the Maryland Plaintiffs were not invited to, and

no representative for the Maryland Plaintiffs sought to participate in, or attend, any of the sixteen (16) depositions taken in the Action.

Z. Discovery in the Action, including deposition testimony and the review, production, and analysis of documents, has allowed the Parties to understand the strengths and weaknesses of the claims asserted in the Third Amended Complaint.

AA. On January 8, 2019, the Parties participated in an in-person mediation before Michael D. Young of JAMS (the “Mediator”). Thereafter, with the assistance of the Mediator, counsel for Plaintiff, the Individual Releasees, and the Company continued to engage in extensive arm’s-length discussions and negotiations concerning a possible partial settlement of the Action.

BB. On January 23, 2019, the Maryland District Court heard oral argument on the Maryland Plaintiffs’ motion for leave to file an amended complaint. On February 6, 2019, the Maryland District Court granted in part and denied in part the Maryland Plaintiffs’ motion, and ordered that the Maryland Plaintiffs’ Section 14(a) claim be stricken. The operative complaint in the Maryland Action filed on February 12, 2019, which is the subject of a pending motion to strike by the Individual Maryland Releasees, alleges claims that are (i) substantively identical to those alleged by Plaintiff in the Amended Complaint (and substantially borrows

from the Amended Complaint) and (ii) based on the same factual predicate and operative facts as this Action.

CC. Near the completion of fact discovery, on March 29, 2019, the Individual Releasees and Plaintiff attended another in-person mediation session with the Mediator.

DD. Following further negotiations, the Mediator made a proposal to settle the Action as to the Individual Releasees for a cash payment to the Company of \$24 million in exchange for a full and complete release of all claims against the Individual Releasees.

EE. On May 3, 2019, following further discussions, including with the Mediator, Plaintiff, the Individual Releasees, and AGNC agreed upon a binding term sheet memorializing the principal terms of a partial settlement of the Action. The Maryland Plaintiffs were not invited to, and did not participate in, either mediation session or in any of the settlement negotiations between or among Plaintiff, the Individual Releasees, and AGNC.

FF. Expert discovery commenced on May 6, 2019. That day, Plaintiff served the expert reports of its three testifying experts: (i) William H. Purcell, (ii) Douglas J. Scheidt, and (iii) Kevin C.H. Chiang (collectively, "Plaintiff's Experts"). Also that day, the American Capital Releasees served the expert reports of Richard H. Lee and Paul Habibi.

GG. During the course of expert discovery, and with the assistance of the Mediator, counsel for Plaintiff and counsel for the American Capital Releasees engaged in extensive arm's-length discussions and negotiations concerning a settlement of the remaining claims in the Action.

HH. On May 21, 2019, Plaintiff and the American Capital Releasees agreed to settle the claims as to the American Capital Releasees for a cash payment to the Company of \$11.5 million in exchange for a full and complete release of all claims against the American Capital Releasees, which would resolve all remaining claims in the Action. The Maryland Plaintiffs were not invited to, and did not participate in, settlement negotiations between Plaintiff and the American Capital Releasees.

II. Plaintiff represents that it has owned at all relevant times—and continues to own—shares of AGNC stock, for which proof of ownership was proffered.

JJ. Plaintiff and Plaintiff's counsel, Labaton Sucharow LLP, Friedman Oster & Tejtell PLLC, Goldberg Law, P.C. and Quinn Emanuel Urquhart & Sullivan, LLP (collectively, "Plaintiff's Counsel"), having thoroughly considered the facts and law underlying the Action, and based upon their investigation and prosecution of the Action and the two mediation sessions and extensive follow-on negotiations that led to the settlement, and after weighing the risks of continued

litigation, have determined that it is in the best interests of the Company and its stockholders that the Action and all claims be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation (the “Settlement”), and that these terms and conditions are fair, reasonable, and adequate to the Company and its stockholders.

KK. Each of the Individual Releasees and the American Capital Releasees has denied, and continues to deny, that he, she, or it committed any breach of duty, breached any other law, aided and abetted any breach, was unjustly enriched, or engaged in any of the wrongful acts alleged or that could have been alleged in the Action, expressly maintains that he, she, or it diligently and scrupulously complied with his or her fiduciary and other legal duties, to the extent such duties exist, and further believes that the Action is without merit, and is entering into the Settlement solely to eliminate the burden, expense, and uncertainties inherent in further litigation.

LL. In connection with settlement discussions and negotiations leading to the Settlement, counsel for the Parties did not discuss the appropriateness or amount of any application by counsel for Plaintiff for an award of attorneys’ fees and expenses or an incentive award.

MM. The Parties wish to settle and resolve all claims as described in more detail below, and the Parties have, following arm’s-length negotiations, reached an

agreement as set forth in this Stipulation, providing for the Settlement on the terms and conditions set forth below, and the Parties believe the Settlement is in the best interests of the Parties and AGNC's stockholders.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED,** in consideration of the benefits afforded herein, that the Action shall be compromised, settled, released and dismissed with prejudice as to the Released Defendant Parties (defined *infra* at ¶ 10), upon and subject to the following terms and conditions:

**ADDITIONAL DEFINITIONS**

1. In this Stipulation, the following terms shall have the following meanings:
  - a. "AGNC's Releasing Plaintiff Parties" has the meaning set forth in ¶ 10 hereof.
  - b. "Attorneys' Fee and Expense Award" means any award of attorneys' fees and reimbursement of Plaintiff's Counsel's litigation expenses associated with creation of the Settlement Payment. Plaintiff's Counsel shall apply to the Court for the Attorneys' Fee and Expense Award, and any such award shall be paid from (and out of) the Settlement Payment, and from no other source.

- c. “Effective Date” means the first date upon which all of the following conditions precedent of the Settlement have been met and occurred: (i) Final Approval of the Settlement in accordance with ¶ 1(d); and (ii) the Court’s dismissal of this Action in accordance with ¶ 13(i).
- d. “Final Approval” means approval of the Settlement by the Court upon the later of (i) the expiration of the time for the filing or noticing of an appeal or motion for reargument or rehearing from the Court’s Judgment approving the material terms of the Settlement without such appeal or motion having been made; (ii) the date of final affirmance of the Court’s Judgment on any appeal or reargument or rehearing; or (iii) the final dismissal of any appeal.
- e. “Incentive Award” means an award to Plaintiff for the time and effort expended by Plaintiff in connection with this Action, which award will be paid solely out of any Attorneys’ Fee and Expense Award.
- f. “Individual Maryland Releasees” means the Individual Releasees and Peter Federico.

- g. “Judgment” means entry by the Court of an Order and Final Judgment Approving Derivative Action Settlement, substantially in the form attached hereto as Exhibit C.
- h. “Maryland Court” means the United States District Court for the District of Maryland.
- i. “Released AGNC Parties” has the meaning set forth in ¶ 10 hereof.
- j. “Released Defendant Parties” has the meaning set forth in ¶ 10 hereof.
- k. “Released Parties” has the meaning set forth in ¶ 10 hereof.
- l. “Released Plaintiff Parties” has the meaning set forth in ¶ 10 hereof.
- m. “Releasing Defendant Parties” has the meaning set forth in ¶ 10 hereof.
- n. “Releasing Parties” has the meaning set forth in ¶ 10 hereof.
- o. “Releasing Plaintiff Parties” has the meaning set forth in ¶ 10 hereof.
- p. “Scheduling Order” means a scheduling order substantially in the form attached hereto as Exhibit A.
- q. “Settled AGNC Claims” has the meaning set forth in ¶ 10 hereof.
- r. “Settled Claims” has the meaning set forth in ¶ 10 hereof.

- s. “Settled Defendant Claims” has the meaning set forth in ¶ 10 hereof.
- t. “Settled Plaintiff Claims” has the meaning set forth in ¶ 10 hereof.
- u. “Settlement Hearing” means the Court’s final approval hearing for the Settlement.
- v. “Settlement Notice” means the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B.
- w. “Settlement Notice Costs” means the sum that is sufficient to pay the costs of the Settlement Notice to the Company stockholders.
- x. “Settlement Payment” means the cash payment of \$35,500,000.00, of which: (i) \$24,000,000.00 shall be paid on behalf of the Individual Releasees and (ii) \$11,500,000.00 shall be paid on behalf of the American Capital Releasees, and which shall be otherwise paid per the conditions set forth in ¶¶ 2-4.
- y. “Unknown Claims” has the meaning set forth in ¶ 24 hereof.

**SETTLEMENT CONSIDERATION**

2. In consideration for the full settlement and release of all Settled Claims (defined *infra* in ¶ 10) against the Released Parties (defined *infra* in ¶ 10)

and the dismissal with prejudice of the Action and related matters and claims as to the Individual Releasees, the Individual Maryland Releasees, and the American Capital Releasees, the Parties have agreed that payment on behalf of the Individual Releasees and the American Capital Releasees shall be made as follows:

- a. the Settlement Payment minus any Attorneys' Fee and Expense Award minus the Settlement Notice Costs shall be paid into a settlement account designated and controlled by the Company;
- b. any Attorneys' Fee and Expense Award shall be paid into an account designated and controlled by Plaintiff's Counsel; and
- c. the Settlement Notice Costs shall have been paid to AGNC in accordance with ¶ 7 below.

3. The payments set forth *supra* in ¶ 2(a) and (b) shall be made no later than fifteen (15) business days after the latter of (i) the entry of Judgment approving the Settlement described in ¶ 13(i) with such order becoming final after exhaustion of all appeals or petitions for review; and (ii) dismissal of the Maryland Action described in ¶ 13(ii) with such order becoming final after exhaustion of all appeals or petitions for review.

4. All taxes shall be timely paid out of the settlement accounts described in ¶ 2(a) and (b). The Released Defendant Parties shall have no responsibility or

liability for the acts or omissions of the Company or its agents or Plaintiff's Counsel or its agents with respect to the payment of taxes, as described herein.

### **SUBMISSION AND APPLICATION TO THE COURT**

5. As soon as practicable after this Stipulation has been executed, the Parties shall apply jointly for a Scheduling Order, substantially in the form attached hereto as Exhibit A, establishing the procedure for: (i) providing the Settlement Notice to AGNC's stockholders, and (ii) the Court's consideration of the Settlement and Plaintiff's Counsel's application for the Attorneys' Fee and Expense Award and Incentive Award, including the scheduling of the Settlement Hearing.

### **NOTICE**

6. Notice of the Settlement shall be provided by AGNC. In accordance with the terms of the Scheduling Order to be entered by the Court, not later than sixty (60) days before the Settlement Hearing, AGNC shall cause the Settlement Notice, substantially in the form attached hereto as Exhibit B, to be mailed to all stockholders of record as of the close of business on the date the Scheduling Order is entered by the Court as shown on the stock records maintained on behalf of the Company. All stockholders of record who are not also the beneficial owners of the shares of the Company's stock held by such stockholders of record shall be requested to forward the Settlement Notice to such beneficial owners of those

shares. Not later than sixty (60) calendar days before the Settlement Hearing, AGNC shall post a copy of this Stipulation and the Settlement Notice on the “Investors” section of the Company’s website, <https://agnc.com>, and such documents shall remain posted to that website through the Effective Date of the Settlement.

7. The Individual Releasees shall cause an advance sum to be paid to AGNC on the Individual Releasees’ behalf that is sufficient to pay the Settlement Notice Costs. AGNC will have no responsibility for the payment of the Settlement Notice Costs. Settlement Notice Costs are to be paid within twenty (20) business days after receipt by Individual Releasees of a vendor estimate acceptable to AGNC of the cost of required Notice to AGNC stockholders of the Settlement ordered to be made by the Court in its Scheduling Order.

8. AGNC shall, at least ten (10) business days before the Settlement Hearing, file with the Court an appropriate affidavit with respect to the dissemination of the Settlement Notice.

### **ORDER AND FINAL JUDGMENT**

9. If the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) shall be approved by the Court following the Settlement Hearing as fair, reasonable, adequate and in the best

interests of the Company and its stockholders, the Parties shall jointly request that the Court enter a Judgment, substantially in the form attached hereto as Exhibit C.

10. The Judgment shall, among other things, provide for the full and complete dismissal of the Action as to the Released Defendant Parties with prejudice, and, upon the Effective Date of the Settlement:

(i) the complete, comprehensive, and total settlement and release of any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, against the Individual Releasees, the Individual Maryland Releasees, and the American Capital Releasees, together with their respective past, present or future agents, insurers, representatives, attorneys, family members, heirs, executors, trustees, associates, affiliates, financial or investment advisors, consultants, accountants, advisors, estates, administrators, beneficiaries, distributes, foundations, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions,

associated entities, stockholders, principals, officers, directors, managing directors, managing partners, members, managing members, managing agents, successors, predecessors, predecessors-in-interest, and assigns (collectively, the “Released Defendant Parties”) by or on behalf of Plaintiff and its past or present trustees, beneficiaries, participants, officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns, in their capacities as such only; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, in their capacities as such only, or any AGNC stockholder derivatively on behalf of AGNC, or by AGNC (collectively, the “Releasing Plaintiff Parties”) that: (i) were asserted in this Action; (ii) were asserted in the Maryland Action; (iii) could have been asserted in this Action or the Maryland Action under the facts, acts, events, matters, transactions, occurrences, statements, representations,

misrepresentations, omissions, allegations, practices, claims or any other matters, things or causes whatsoever alleged therein; or (iv) which otherwise arise out of or relate in any way to the Renewals or the Internalization, including all disclosures made to AGNC stockholders related to the Renewals or the Internalization (the “Settled Defendant Claims”). For the avoidance of doubt, this release extinguishes any claims that were or could have been asserted or threatened by Plaintiff in its individual capacity or derivatively on behalf of AGNC against the Individual Releasees, the Individual Maryland Releasees, the American Capital Releasees, and/or AGNC under the facts, acts, events, matters, transactions, occurrences, statements, representations, misrepresentations, or omissions alleged in this Action or the Maryland Action;

(ii) the complete, comprehensive, and total settlement and release of any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, against AGNC, its direct and indirect current and former subsidiaries,

affiliates and all of their respective past or present officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, (including without limitation ACMM, AGNC Management, LLC, MTGE Management, LLC) (collectively, the “Released AGNC Parties”) by or on behalf of Plaintiff in its individual capacity only (*i.e.*, not on behalf of any other AGNC stockholders) and its past or present officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives,

insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, in their capacities as such only, (collectively, “AGNC’s Releasing Plaintiff Parties”) arising from or relating in any way to acts, events, facts, matters, transactions, occurrences, statements or representations occurring prior to May 3, 2019 (the “Settled AGNC Claims”);

(iii) the complete, comprehensive, and total settlement and release of any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, arising out of or relating to the commencement or prosecution of the Action against Plaintiff or Plaintiff’s Counsel, together with their respective past, present or future agents, insurers, representatives, attorneys, immediate family members, heirs, executors, trustees, associates, affiliates, financial or investment advisors, consultants, accountants, advisors, estates, administrators, beneficiaries, distributes, foundations, fiduciaries, partners,

partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, directors, managing directors, managing partners, members, managing members, managing agents, successors, predecessors, predecessors-in-interest, and assigns, in their capacities as such only (collectively, the “Released Plaintiff Parties” and together with the Released Defendant Parties and the Released AGNC Parties, the “Released Parties”) by or on behalf of the Individual Releasees, the Individual Maryland Releasees, the American Capital Releasees, or AGNC, together with their past or present officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns, in their capacities as such only; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, in their capacities as such only,

(collectively, the “Releasing Defendant Parties” and together with the Releasing Plaintiff Parties, the “Releasing Parties”) (the “Settled Plaintiff Claims,” and together with the Released Defendant Claims and Released AGNC Claims, the “Settled Claims”);

(iv) the complete, comprehensive, and total settlement and release of any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, against each or any of the Individual Releasees, the Individual Maryland Releasees, or the American Capital Releasees by or on behalf of any other of the Individual Releasees, the Individual Maryland Releasees, or the American Capital Releasees based upon the Action, the Maryland Action, or the Settlement, including claims based upon any Settlement Payment made on behalf of the Individual Releasees and on behalf of the American Capital Releasees; and

(v) the complete, comprehensive, and total settlement and release of any and all claims, whether based on state, local, foreign, federal,

statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, against AGNC by or on behalf of the American Capital Releasees, based upon or regarding the Action, the Maryland Action, or the Settlement, including without limitation claims relating to any costs or expenses incurred in connection therewith or to any Settlement Payment made by or on behalf of the American Capital Releasees.

### **CONDITIONS OF SETTLEMENT**

11. Each of the Individual Releasees and the American Capital Releasees denies and continues to deny that he or she committed, aided and abetted, or was unjustly enriched by the commission of any unlawful or wrongful acts alleged in the Action and expressly maintains that he or she diligently and scrupulously complied with his or her fiduciary duties and other legal duties, to the extent such duties exist. The Individual Releasees and the American Capital Releasees are entering into this Stipulation solely because the Settlement will eliminate the burden, expense, and uncertainties in further litigation.

12. Plaintiff and Plaintiff's Counsel believe that Plaintiff's claims have merit, but recognize that the Individual Releasees and the American Capital Releasees would continue to assert legal and factual defenses to Plaintiff's claims. Plaintiff and Plaintiff's Counsel have concluded that the Settlement is fair, reasonable, and adequate, and that it is reasonable to pursue the Settlement based upon the terms and procedures outlined herein.

13. The Settlement is conditioned upon the fulfillment of each of the following:

(i) the entry of Judgment approving the Settlement, dismissing this Action as to the Released Defendant Parties with prejudice, and approving the grant of a release by the Releasing Parties of the Settled Claims, with such Judgment being final after exhaustion of all appeals or petitions for review;

(ii) the Maryland Court's dismissal with prejudice of all claims asserted against the Individual Maryland Releasees and the American Capital Releasees in the Maryland Action, with such order being final after exhaustion of all appeals or petitions for review;

(iii) the Individual Releasees and the American Capital Releasees causing to be paid the Settlement Payment as specified in ¶ 2(a) above; and

(iv) the inclusion in the Judgment of a provision enjoining AGNC and its stockholders from asserting any of the Settled Defendant Claims as against the Released Defendant Parties or any of the Settled AGNC Claims as against the Released AGNC Parties.

14. Plaintiff agrees that the Individual Releasees, Individual Maryland Releasees, American Capital Releasees, and AGNC have no obligation to provide any additional discovery in response to requests served by Plaintiff in the Action, and Plaintiff will not serve any additional discovery on the Individual Releasees, Individual Maryland Releasees, American Capital Releasees or AGNC concerning the merits of the Action. For the avoidance of doubt, Plaintiff expressly reserves the right to seek, and the Individual Releasees, the American Capital Releasees, and AGNC expressly reserve their right to oppose, discovery on the Individual Releasees, the American Capital Releasees, and AGNC unrelated to the merits of the Action, such as in connection with any opposition to Plaintiff's application for the Attorneys' Fee and Expense Award or any proposed resolution or settlement of the Maryland Action.

15. The Individual Releasees and the American Capital Releasees agree that Plaintiff has no obligation to provide any additional discovery to them in response to requests served by the Individual Releasees or the American Capital Releasees in the Action. AGNC, the Individual Releasees, and the American

Capital Releasees further agree that they will not serve any additional discovery on Plaintiff concerning the merits of the Action.

16. Immediately upon the Effective Date, there shall be a permanent injunction against the filing or further prosecution of all claims released by the Settlement under ¶ 10.

17. Within five (5) business days following the Effective Date, the Individual Maryland Releasees and the American Capital Releasees shall file a motion (the “Maryland Motion”) in the Maryland District Court, alerting the Maryland District Court to the Judgment of the Delaware Court of Chancery and seeking the dismissal described *supra* in paragraph 13(ii). If the requirements in paragraph 13(ii) are not met, then the Settlement, including the Judgment, shall be rendered null and void. If the Maryland District Court dismisses the Maryland Action, but an appellate court subsequently reverses that decision or otherwise issues an order which would have the effect of permitting the claims against the Individual Maryland Releasees and the American Capital Releasees in the Maryland Action to proceed notwithstanding the Judgment of the Delaware Court of Chancery, then the Settlement, including the Judgment, shall be rendered null and void. The terms of this paragraph may be modified by the express written agreement of all Parties, before or after the Effective Date.

18. In the event that the Settlement is rendered null and void for any reason, the existence of or the provisions contained in this Stipulation shall not be deemed to prejudice in any way the respective positions of the Parties, and no party shall assert any argument to the contrary.

**ATTORNEYS' FEE AND EXPENSE AWARD AND INCENTIVE AWARD**

19. Plaintiff's Counsel intends to apply to the Court for an Attorneys' Fee and Expense Award, as well as an Incentive Award. The Released Defendant Parties take no position with respect to Plaintiff's Counsel's application for an Attorneys' Fee and Expense Award or Incentive Award.

20. An amount equal to any Attorneys' Fee and Expense Award approved by the Court shall be payable from the Settlement Payment to Plaintiff's Counsel immediately after payment of the Settlement Payment pursuant to ¶ 3, and in no event later than fifteen (15) business days after the latter of (i) the entry of Judgment approving the Settlement described in ¶ 13(i) with such order becoming final after exhaustion of all appeals or petitions for review; or (ii) dismissal of the Maryland Action described in ¶ 13(ii) with such order becoming final after exhaustion of all appeals or petitions for review. In the event that any order approving any Attorneys' Fee and Expense Award is reversed or modified on appeal and such order reversing or modifying any Attorneys' Fee and Expense Award has become final and no longer subject to appeal, Plaintiff's Counsel are

obligated to refund to the Company the amount by which the fees and expenses were reduced within five (5) business days of entry of an order reversing or modifying on appeal any Attorneys' Fee and Expense Award.

21. The Court may consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of any award of attorneys' fees and expenses or incentive payment. The failure of the Court to approve any requested Attorneys' Fee and Expense Award, in whole or in part, or any requested Incentive Award, in whole or in part, shall have no effect on the Settlement, and final resolution by the Court of any requested Attorneys' Fee and Expense Award or Incentive Award shall not be a precondition to the dismissal of the Action.

22. No fees or expenses shall be paid to Plaintiff's Counsel pursuant to the Settlement in the absence of the Court's entry of the Judgment finally approving the Settlement, in substantially the form attached hereto as Exhibit C.

23. Except as provided above, the Parties shall have no obligation to pay or reimburse any fees, expenses, costs or damages alleged or incurred by any person or entity with respect to the Settled Claims. The Released Defendant Parties shall not have any obligation whatsoever to pay any amount over and above the principal amount of \$35,500,000.00, of which (i) \$24,000,000.00 shall be paid on behalf of the Individual Releasees and (ii) \$11,500,000.00 shall be paid on behalf of the American Capital Releasees. AGNC and the Released Defendant

Parties shall have no responsibility or liability with respect to the allocation of any Attorneys' Fee and Expense Award among Plaintiff's Counsel, or any other counsel representing or purporting to represent Plaintiff or any other AGNC stockholder or AGNC derivatively or any other counsel asserting a right to recover any portion of the Attorneys' Fee and Expense Award, and will not affirmatively present any position with respect to the allocation of any portion of any Attorneys' Fee and Expense Award unless requested by the Court or otherwise compelled by law. Any dispute regarding any allocation of fees or expenses among Plaintiff's Counsel, or any other counsel representing or purporting to represent Plaintiff or any other AGNC stockholder, or any other counsel asserting a right to recover any portion of the Attorneys' Fee and Expense Award, shall have no effect on the Settlement.

#### **EFFECT OF RELEASE**

24. The Releasing Parties acknowledge and shall be deemed by operation of law to have acknowledged that they may discover facts in addition to or different from those now known or believed to be true by them with respect to the Settled Claims, but that it is the intention of the Releasing Parties to completely, fully, finally and forever compromise, settle, release, discharge, extinguish, and dismiss any and all Settled Claims, known or unknown, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, accrued or unaccrued, apparent or

unapparent, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts, and that “Unknown Claims” are expressly included in the definition of “Settled Claims.” “Unknown Claims” means any claims that the Releasing Parties do not know or suspect exist in their favor at the time of the release of the Settled Claims, including without limitation those which, if known, might have affected the decision to enter into the Settlement.

25. The Settlement is intended to extinguish all of the Settled Claims, and consistent with such intention, upon the Effective Date of the Settlement, the Releasing Parties shall waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of any state, federal, or foreign law or principle of common law, which may have the effect of limiting the release set forth above. This shall include a waiver by the Releasing Parties of any rights pursuant to section 1542 of the California Civil Code (or any similar, comparable, or equivalent provision of any federal, state, or foreign law, or principle of common law), which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

The Parties acknowledge, and the other Releasing Parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for, is an integral element of the Settlement, and was relied upon by each and all of the Parties in entering into the Settlement.

### **BEST EFFORTS**

26. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement, and to use their best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, this Stipulation and the Settlement provided for herein (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement) and the dismissal of the Action and the Maryland Action with prejudice and with each party bearing its own costs, fees or expenses (except as provided for *supra* in ¶¶ 1(b), 6 and 21-22).

### **STAY OF PROCEEDINGS**

27. Pending Final Approval of the Settlement, the Parties agree to stay this Action and to not initiate any other proceedings other than those incident to the Settlement itself.

28. The Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved, the Parties are barred and enjoined from commencing, prosecuting, initiating or in any way participating in the commencement or prosecution of any action asserting any Settled Claims, either directly, representatively, derivatively, or in any other capacity, against the Released Parties.

**STIPULATION NOT AN ADMISSION**

29. The provisions contained in this Stipulation shall not be deemed a presumption, concession, or admission by the Individual Releasees or American Capital Releasees of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, nor shall they be deemed a presumption, concession, or admission by Plaintiff of any lack of merit of the claims alleged or asserted in the Action. Neither this Stipulation, nor any of the terms and provisions of this Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, nor the Judgment, (i) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, of any wrongful

conduct, acts, or omissions on the part of any of the Released Defendant Parties or Released Plaintiff Parties of any infirmity of any defense on the part of any of the Released Defendant Parties or Released Plaintiff Parties or of any damage to the Releasing Plaintiff Parties, Releasing Defendant Parties, or any other party or entity, or otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Parties or Released Plaintiff Parties concerning any purported liability, fault, or wrongdoing of the Released Defendant Parties or Released Plaintiff Parties; (ii) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any lack of merit of the claims asserted in the Action, that any of the Released Defendant Parties had meritorious defenses, that the damages recoverable in the Action would not have exceeded the Settlement Payment, or with respect to any purported liability, fault, or wrongdoing of the Releasing Plaintiff Parties; (iii) shall be construed as an admission, concession, or presumption that the cash consideration to be given under this Stipulation represents the amount that could or would have been recovered after trial; or (iv) shall otherwise be admissible in any proceeding of any nature; *provided, however*, that the Stipulation and/or the Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or the Judgment has *res*

*judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or the Judgment or to secure any insurance rights or proceeds of any of the Released Parties.

**ENTIRE AGREEMENT; AMENDMENTS; WAIVER**

30. This Stipulation and the exhibits attached hereto constitute the entire agreement among the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous written or oral agreements or understandings relating to the Stipulation, and may be modified or amended only by a writing signed by the signatories hereto. No representations, warranties, or inducements have been made to or relied upon by any party concerning this Stipulation or its exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.

31. The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation by any other Party.

**COUNTERPARTS**

32. This Stipulation may be executed in multiple counterparts by any of the signatories hereto, including by signature transmitted via facsimile, or by a .pdf/.tiff image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

### **GOVERNING LAW AND DISPUTE RESOLUTION**

33. This Stipulation and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of laws principles. Any action or proceeding arising out of or relating in any way to this Stipulation or the Settlement, or to enforce any of the terms of the Stipulation or Settlement, shall (i) be brought, heard, and determined exclusively in this Court; and (ii) not be litigated or otherwise pursued in any forum or venue other than this Court (or, if subject matter jurisdiction is unavailable in this Court, then in any other state or federal court sitting in Wilmington, Delaware); *provided, however*, that the Stipulation and/or Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or Judgment or to secure any insurance rights or proceeds of any of the Released Parties. Each Party: (i) consents to personal jurisdiction in any such action or proceeding referenced in this paragraph (but in no other action) brought in this Court (or, if subject matter jurisdiction is unavailable in this Court, then in any other state or federal court sitting in Wilmington, Delaware); (ii) consents to service of process by registered mail upon such party and/or such party's agent; (iii) waives any objection to venue

in this Court and any claim that Delaware or this Court is an inconvenient forum; and (iv) expressly waives any right to demand a jury trial as to any dispute described in this paragraph.

**NO CONTRA PROFERENTEM**

34. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that this Stipulation is the result of arm's-length negotiations between and among the Parties, and all Parties have contributed substantially and materially to the preparation of this Stipulation.

**SUCCESSORS AND ASSIGNS**

35. This Stipulation, and all rights and powers granted hereby, shall be binding upon and inure to the benefit of the Releasing Parties and their respective legal representatives, heirs, executors, administrators, transferees, successors, agents, and assigns of all such foregoing persons and entities and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize.

**REPRESENTATION AND WARRANTY**

36. Plaintiff represents and warrants that (i) Plaintiff is an AGNC stockholder and has been an AGNC stockholder at all relevant times and continues

to hold stock in AGNC as of the date this Stipulation is signed, and (ii) none of the claims or causes of action referred to in the Amended Complaint, the Second Amended Complaint, the Third Amended Complaint, or this Stipulation, or any claims Plaintiff could have alleged, have been assigned, encumbered, or in any manner transferred in whole or in part.

37. The Parties represent that: (i) none of the Settled Claims have been assigned, encumbered or in any manner transferred in whole or in part; and (ii) they will not attempt to assign, encumber or in any manner transfer, in whole or in part, any of the Settled Claims.

#### **SEVERABILITY**

38. If any provisions of this Stipulation are determined to be invalid or unenforceable, in whole or in part, the remaining provisions, and any partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable except to the extent that the provision determined to be invalid or unenforceable is a condition precedent.

#### **KNOWING AND VOLUNTARY**

39. Each of the Parties certifies that he, she, or it (i) has carefully read and fully understands all of the provisions and effects of this Stipulation, (ii) has been advised to consult and thoroughly discuss all aspects of this Stipulation with his, her, or its attorneys, (iii) is voluntarily entering into this Stipulation, and (iv) is not

relying on any representations concerning the terms or effects of this Stipulation, other than those contained herein.

### **CONFIDENTIALITY**

40. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information, including, without limitation, the Stipulation and Order Governing the Production and Exchange of Confidential and Highly Confidential Information so-ordered by the Court on November 16, 2017, shall survive this Stipulation.

### **AUTHORITY**

41. The undersigned attorneys represent and warrant that each of them has been given express authority by their client(s) to enter into this Stipulation and bind their client(s) thereto.

42. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

### **MISCELLANEOUS PROVISIONS**

43. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

OF COUNSEL:

FRIEDMAN OSTER & TEJTEL  
PLLC

Jeremy Friedman  
Spencer Oster  
David Tejtcl  
493 Bedford Center Road, Suite 2D  
Bedford Hills, NY 10507  
(888) 529-1108

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

Chad Johnson  
Noam Mandel  
52 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
(212) 849-7000

LABATON SUCHAROW LLP

/s/ Ned Weinberger  
Ned Weinberger (#5256)  
Mark Richardson (#6575)  
Thomas Curry (#5877)  
300 Delaware Avenue, Suite 1340  
Wilmington, DE 19801  
(302) 573-2540

*Counsel for Plaintiff*

OF COUNSEL:

John D. Donovan  
David Hennes  
Amy D. Roy  
Michael J. Shiposh  
ROPES & GRAY LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199-3600

RICHARDS, LAYTON & FINGER,  
PA

/s/ Anne C. Foster  
Anne C. Foster (# 2513)  
Brian F. Morris (#6235)  
John M. O'Toole (#6448)  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
(302) 651-7700  
*Counsel for Defendants Robert M.  
Couch, Morris A. Davis, Randy E.  
Dobbs, Larry K. Harvey, Gary Kain,  
and Prue Larocca*

OF COUNSEL:

Jon M. Talotta  
Scott R. Haiber  
HOGAN LOVELLS US LLP  
Harbor East  
100 International Drive  
Suite 2000  
Baltimore, MD 21202  
(410) 659-2700

POTTER ANDERSON & CORROON  
LLP

/s/ William R. Denny  
William R. Denny (#2580)  
Andrew H. Sauder (#5560)  
1313 N. Market Street  
Hercules Plaza, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 984-6000  
*Counsel for Nominal Defendant AGNC  
Investment Corp., F/K/A, American  
Capital Agency Corp.*

OF COUNSEL:

John C. Massaro  
James W. Thomas, Jr.  
Matthew J. Oster  
ARNOLD & PORTER KAYE  
SCHOLER LLP  
601 Massachusetts Avenue, NW  
Washington, DC 20001

MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP

/s/ David J. Teklits  
David J. Teklits (#3221)  
Derek C. Abbott (#3376)  
Alexandra M. Cumings (#6146)  
1201 N. Market Street  
Wilmington, DE 19801  
(302) 658-9200  
*Attorneys for Defendants John Erickson,  
Samuel A. Flax, Alvin N. Puryear and  
Malon Wilkus*

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP

/s/ Robert S. Saunders  
Robert S. Saunders (#3027)  
Ronald N. Brown, III (#4831)  
Sarah R. Martin (#5230)  
Michelle L. Davis (#3283)  
Juliana R. van Hoeven (#6498)  
Jacob J. Fedechko (#6502)  
One Rodney Square  
P.O. Box 636  
Wilmington, DE 19899  
(302) 651-3000  
*Attorneys for Defendants Ares Capital  
Corporation and Ivy Hill Asset  
Management, L.P. and ACAS, LLC*

Dated: June 11, 2019

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

H&N MANAGEMENT GROUP, INC. & AFF  
COS FROZEN MONEY PURCHASE PLAN,

Plaintiff,

v.

ROBERT M. COUCH, MORRIS A. DAVIS,  
RANDY E. DOBBS, JOHN ERICKSON,  
SAMUEL A. FLAX, LARRY K. HARVEY,  
GARY KAIN, PRUE LAROCCA, ALVIN N.  
PURYEAR, MALON WILKUS, ACAS, LLC,  
ARES CAPITAL CORP., and IVY HILL ASSET  
MANAGEMENT, L.P.,

Defendants,

and

AGNC INVESTMENT CORP., F/K/A,  
AMERICAN CAPITAL AGENCY CORP., a  
Delaware corporation,

Nominal Defendant.

C.A. No. 12847-VCMR

**[PROPOSED] SCHEDULING ORDER**

WHEREAS, a stockholder derivative action is pending in this Court under the above caption (the “Action”);

WHEREAS, (a) Plaintiff H&N Management Group, Inc. & AFF Cos Frozen Money Purchase Plan (“Plaintiff”); (b) Robert M. Couch, Morris A. Davis, Randy E. Dobbs, Larry K. Harvey, Gary Kain, Prue Larocca, John Erickson, Samuel A.

Flax, Alvin N. Puryear and Malon Wilkus (collectively, the “Individual Releasees”); (c) Defendants ACAS, LLC, Ares Capital Corporation, and Ivy Hill Asset Management, L.P. (collectively, the “American Capital Releasees”); and (d) nominal defendant AGNC Investment Corp., f/k/a American Capital Agency Corp. (“AGNC” or the “Company,” and with Plaintiff, the Individual Releasees, and the American Capital Releasees, the “Parties”) have determined to settle all claims asserted in the Action with prejudice on the terms and conditions set forth in the Parties’ Stipulation and Agreement of Compromise, Settlement and Release, dated June 10, 2019 (the “Stipulation”);

WHEREAS, in accordance with the Stipulation, the Parties<sup>1</sup> have made an application, pursuant to Court of Chancery Rule 23.1, for entry of a scheduling order, approving the form, content, and method of notice of the Settlement to Current AGNC Stockholders (defined in ¶ 6 of this Order) and scheduling the date and time for the Settlement Hearing, in accordance with the Stipulation; and

WHEREAS, the Court having read and considered the Stipulation and the exhibits attached thereto; the Stipulation being sufficient to warrant notice to AGNC stockholders; and all Parties having consented to the entry of this Order;

NOW THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, as follows:

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the same meaning provided in the Stipulation.

1. **Settlement Hearing:** The Court will hold a final approval hearing (the “Settlement Hearing”) on \_\_\_\_\_, 2019, at \_\_:\_\_ a.m./p.m., at the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, for the following purposes: (a) to determine whether Plaintiff and Plaintiff’s Counsel have adequately represented the interests of AGNC and its stockholders; (b) to determine whether the Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Plaintiff, AGNC, and its stockholders, and should be approved by the Court; (c) to determine whether an Order and Final Judgment Approving Derivative Action Settlement (the “Judgment”), substantially in the form attached as Exhibit C to the Stipulation, dismissing the Action with prejudice against the Individual Releasees and the American Capital Releasees, should be entered; (d) to determine whether the application by Plaintiff’s Counsel for an award of attorneys’ fees and expenses should be approved; (e) to determine whether to award the Incentive Award to Plaintiff; and (f) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Current AGNC Stockholders as set forth in ¶ 3 of this Order.

2. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the Attorneys’ Fee and

Expense Award, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof. The Court further reserves the right to approve the Stipulation and the Settlement at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice to AGNC stockholders.

3. **Manner of Giving Notice:** Notice of the Settlement and the Settlement Hearing shall be given by AGNC as follows:

(a) Not later than sixty (60) calendar days before the Settlement Hearing, AGNC shall cause the Settlement Notice, substantially in the form attached to the Stipulation as Exhibit B, to be mailed to all AGNC stockholders of record as of the close of business on the date of entry of this Order as shown on the stock records maintained on behalf of the Company;

(b) Not later than sixty (60) calendar days before the Settlement Hearing, AGNC shall post a copy of the Stipulation and the Settlement Notice on the “Investors” section of the Company’s website, <https://agnc.com>, and such documents shall remain posted to that website through the Effective Date of the Settlement; and

(c) Not later than ten (10) business days prior to the Settlement Hearing, AGNC shall file with the Court an affidavit providing proof of compliance with ¶ 3(a) and (b) above.

4. **Approval of Form, Content, and Manner of Notice:** The Court (a) approves the form and content of the Settlement Notice, and (b) finds that the manner of providing notice of the Settlement set forth in ¶ 3 of this Order: (i) constitutes notice that is reasonably calculated, under the circumstances, to apprise Current AGNC Stockholders (defined in ¶ 6 of this Order) of the pendency of the Action, of the effect of the Settlement (including the releases set forth in the Stipulation), of the requested Attorneys' Fee and Expense Award, of their right to object to the Settlement and/or the requested Attorneys' Fee and Expense Award, and of their right to appear at the Settlement Hearing; (ii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement; and (iii) satisfies the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and any and all other applicable law and rules.

5. **Nominee Procedures:** All stockholders of record who are not also the beneficial owners of the shares of the Company's stock held by them of record shall be requested to forward the Settlement Notice to such beneficial owners of those shares. If additional copies of the Settlement Notice are required to be forwarded to such beneficial owners, record holders may (i) request from AGNC (or its designated agent) sufficient copies of the Settlement Notice to forward to all such beneficial owners; or (ii) provide a list of the names and addresses of all such

beneficial owners to AGNC, and AGNC (or its designated agent) will send a copy of the Settlement Notice to the beneficial owners.

6. **Appearance and Objections at Settlement Hearing:** Any person or entity who or which held shares of AGNC stock as of the close of business on the date of entry of this Order (“Current AGNC Stockholders”) and continues to hold shares of AGNC stock as of the date of the Settlement Hearing may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Register in Chancery and delivering a notice of appearance to counsel for Plaintiff, AGNC, the Individual Releasees, and the American Capital Releasees at the addresses set forth in ¶ 7 below, such that it is received no later than fourteen (14) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Current AGNC Stockholder who or which does not enter an appearance will be represented by Plaintiff’s Counsel, and shall be deemed to have waived and forfeited any and all rights he, she, or it may otherwise have to appear separately at the Settlement Hearing.

7. Any Current AGNC Stockholder who continues to hold AGNC stock as of the date of the Settlement Hearing may file a written objection to the Settlement and/or the requested Attorneys’ Fee and Expense Award and appear and show cause, if he, she, or it has any cause, why the Settlement and/or the

requested Attorneys' Fee and Expense Award should not be approved; *provided, however,* that, unless otherwise directed by the Court for good cause shown, no such person or entity shall be heard or entitled to contest the approval of the terms and conditions of the Settlement and/or the requested Attorneys' Fee and Expense Award unless that person or entity has filed a written objection with the Register in Chancery and served (by hand, first class mail, or express service) copies of such objection on counsel for Plaintiff, AGNC, the Individual Releasees, and the American Capital Releasees at the addresses set forth below, such that they are received no later than fourteen (14) calendar days prior to the Settlement Hearing.

**Counsel for Plaintiff:**

Ned Weinberger  
LABATON SUCHAROW LLP  
300 Delaware Avenue, Suite 1340  
Wilmington, DE 19801

**Counsel for the American Capital  
Releasees:**

Robert S. Saunders  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, DE 19899

**Counsel for the Individual Releasees:**

Anne Foster  
RICHARDS, LAYTON  
& FINGER, P.A.  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801

David Teklits  
MORRIS, NICHOLS,  
ARSHT & TUNNELL LLP  
1201 N. Market Street  
Wilmington, DE 19899

**Counsel for AGNC:**

William Denny  
POTTER ANDERSON  
& CORROON LLP  
1313 North Market Street  
Hercules Plaza, 6th Floor  
Wilmington, DE 19801

8. Any objections, filings, and other submissions must: (a) state the name, address, and telephone number of the objector and, if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (b) be signed by the objector; (c) state that the objection is being filed with respect to “*H&N Management Group, Inc. & AFF Cos Frozen Money Purchase Plan v. Couch et al.*, C.A. No. 12847-VCMR”; (d) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal

and evidentiary support the objector wishes to bring to the Court's attention, and if the objector has indicated that he, she, or it intends to appear at the Settlement Hearing, the identity of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Settlement Hearing; and (e) include documentation sufficient to prove that the objector owned shares of AGNC stock as of the close of trading on the date of entry of this Order and contain a statement that the objector continues to hold shares of AGNC stock as of the date of filing of the objection and will continue to hold shares of AGNC stock as of the date of the Settlement Hearing.

9. Unless the Court orders otherwise, any person or entity who or which does not make his, her, or its objection in the manner provided herein shall (a) be deemed to have waived and forfeited his, her, or its right to object to any aspect of the Settlement and/or the requested Attorneys' Fee and Expense Award; (b) be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the Settlement, and/or the requested or awarded Attorneys' Fee and Expense Award; and (c) be deemed to have waived and forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any matters concerning the Settlement and/or the Attorneys' Fee and Expense Award.

10. **Stay and Temporary Injunction:** Until otherwise ordered by the Court, all proceedings in the Action, other than proceedings as may be necessary to carry out or enforce the terms and conditions of the Stipulation, and deadlines contained in the Second Amended Stipulation and Proposed Scheduling Order Governing Case Schedule are hereby stayed and suspended until further order of the Court without prejudice to the Parties' ability to later execute all filings, submissions, and events if the Settlement, for any reason, does not become final pursuant to the Stipulation and Proposed Order Governing Deadlines in Case Scheduling Order that the Parties agreed to on May 3, 2019 and filed with the Court on May 10, 2019. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiff and all other AGNC stockholders from commencing, prosecuting, instituting or in any way participating in the commencement or prosecution of any non-federal Settled Defendant Claims or Settled AGNC Claims, either directly, representatively, derivatively, or in any other capacity, against AGNC, the Individual Releasees, the American Capital Releasees, or any of the other Released Defendant Parties or Released AGNC Parties.

11. **Notice and Administration Costs:** AGNC shall assume all administrative responsibility for providing the Settlement Notice. The Parties acknowledge and agree that (a) the Individual Releasees shall cause an advance

sum to be paid to AGNC that is sufficient to pay the Settlement Notice Costs. Settlement Notice Costs are to be paid within twenty (20) business days after receipt by the Individual Releasees of a vendor estimate of the cost of required Notice to Current AGNC Stockholders of the Settlement ordered to be made by the Court in its Scheduling Order.

12. **Termination of Settlement:** If the Settlement is terminated pursuant to the terms of the Stipulation, this Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the respective rights and positions of Plaintiff, all other AGNC stockholders, AGNC, the Individual Releasees, and the American Capital Releasees.

13. **Use of this Order:** Neither the Stipulation nor this Order, nor any of their terms and provisions, shall be deemed a presumption, concession, or admission by AGNC, any Individual Releasee, or any American Capital Releasee of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, nor shall they be deemed a presumption, concession, or admission by Plaintiff of any lack of merit of the claims alleged or asserted in the Action. Neither the Stipulation nor this Order, nor any of their terms and provisions, nor any of the negotiations or proceedings in connection with the Stipulation, nor any of the documents or statements referred to in the Stipulation, nor the Settlement,

nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, nor the Judgment, (a) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Parties, of any infirmity of any defense on the part of any of the Released Defendant Parties, or of any damage to the Releasing Plaintiff Parties or any other party or entity, or otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Parties concerning any purported liability, fault, or wrongdoing of the Released Defendant Parties; (b) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any lack of merit of the claims asserted in the Action, that any of the Released Defendant Parties had meritorious defenses, that the damages recoverable in the Action would not have exceeded the Settlement Payment; (c) shall be construed as an admission, concession, or presumption that the cash consideration to be given under the Stipulation represents the amount that could or would have been recovered after trial; or (d) shall otherwise be admissible in any proceeding of any nature, for any purpose whatsoever; *provided, however*, that if the Stipulation is approved by the

Court and the Judgment is entered, the Stipulation and the Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or the Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or the Judgment or to secure any insurance rights or proceeds of any of the Released Parties.

14. **Supporting Papers:** Plaintiff's Counsel shall file their opening papers in support of the proposed Settlement and the application for an award of attorneys' fees and expenses no later than twenty-one (21) calendar days prior to the Settlement Hearing; any objections thereto shall be filed no later than fourteen (14) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed no later than seven (7) calendar days prior to the Settlement Hearing.

15. **Final Approval:** If the Settlement is approved by the Court following the Settlement Hearing, the Court shall enter the Judgment, substantially in the form attached as Exhibit C to the Stipulation.

16. **Retention of Jurisdiction:** The Court retains jurisdiction over the Action to consider all further applications related to, arising out of, or in connection with the Settlement.

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Vice Chancellor Tamika Montgomery-Reeves

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

H&N MANAGEMENT GROUP, INC. & AFF  
COS FROZEN MONEY PURCHASE PLAN,

Plaintiff,

v.

ROBERT M. COUCH, MORRIS A. DAVIS,  
RANDY E. DOBBS, JOHN ERICKSON,  
SAMUEL A. FLAX, LARRY K. HARVEY,  
GARY KAIN, PRUE LAROCCA, ALVIN N.  
PURYEAR, MALON WILKUS, ACAS, LLC,  
ARES CAPITAL CORP., and IVY HILL  
ASSET MANAGEMENT, L.P.,

Defendants,

and

AGNC INVESTMENT CORP., F/K/A,  
AMERICAN CAPITAL AGENCY CORP., a  
Delaware corporation,

Nominal Defendant.

C.A. No. 12847-VCMR

**NOTICE OF PENDENCY OF DERIVATIVE ACTION,  
PROPOSED SETTLEMENT OF DERIVATIVE ACTION,  
SETTLEMENT HEARING, AND RIGHT TO APPEAR**

***The Court of Chancery of the State of Delaware authorized this Notice. This is  
not a solicitation from a lawyer.***

TO: ALL PERSONS OR ENTITIES WHO OR WHICH HELD SHARES OF  
AGNC INVESTMENT CORP., F/K/A AMERICAN CAPITAL AGENCY  
CORP. (“AGNC” OR THE “COMPANY”) STOCK AS OF THE CLOSE OF

BUSINESS ON [DATE OF ENTRY OF SCHEDULING ORDER] (“CURRENT AGNC STOCKHOLDERS”).

The purpose of this Notice is to inform you of: (i) the pendency of the above-captioned stockholder derivative action (the “Action”), which was brought by plaintiff H&N Management Group, Inc. & AFF Cos Frozen Money Purchase Plan (“Plaintiff”) on behalf of and for the benefit of AGNC in the Court of Chancery of the State of Delaware (the “Court”); (ii) a proposed settlement of the Action (the “Settlement”) and related matters and claims as to certain parties, subject to Court approval, as provided in the Stipulation and Agreement of Compromise, Settlement and Release, dated as of June 10, 2019 (the “Stipulation”); (iii) the hearing that the Court will hold on [DATE], 2019 to determine whether to approve the Settlement and to consider the application by Plaintiff’s Counsel<sup>1</sup> for an award of attorneys’ fees, litigation expenses, and an incentive fee for Plaintiff (the “Settlement Hearing”); and (iv) Current AGNC Stockholders’ rights with respect to the proposed Settlement and Plaintiff’s Counsel’s application for attorneys’ fees, litigation expenses, and an incentive fee for Plaintiff.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.  
YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED  
SETTLEMENT OF THIS ACTION AND RELATED MATTERS AND  
CLAIMS.**

The Stipulation was entered into as of June 10, 2019, between and among (i) Plaintiff; (ii) Robert M. Couch, Morris A. Davis, Randy E. Dobbs, Larry K. Harvey, Gary Kain, Prue Larocca, John Erickson, Samuel A. Flax, Alvin N. Puryear and Malon Wilkus (collectively, the “Individual Releasees”); (iii) Ares Capital Corporation (“Ares”), Ivy Hill Asset Management L.P. (“Ivy Hill”) and ACAS, LLC (together with Ares, and Ivy Hill, the “American Capital Releasees”); and (iv) nominal defendant AGNC (together with Plaintiff, the Individual Releasees, and the American Capital Releasees, the “Settling Parties”), subject to the approval of the Court pursuant to Delaware Chancery Court Rule 23.1.

As described in paragraph 42 below, the Settlement provides for a cash payment of \$35,500,000.00, of which: (i) \$24,000,000.00 shall be paid on behalf of

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<sup>1</sup> Plaintiff’s Counsel consist of Labaton Sucharow LLP, Friedman Oster & Tejtel PLLC, Quinn Emanuel Urquhart & Sullivan, LLP, and Goldberg Law, P.C. The only attorneys’ fees to be paid in resolving the Settled Defendant Claims are those approved by the Court in the steps described herein.

the Individual Releasees and Peter Federico (together with the Individual Releasees, the “Individual Maryland Releasees”); and (ii) \$11,500,000.00 shall be paid on behalf of the American Capital Releasees (the “Settlement Payment”). The Settlement Payment will, after deducting any Attorneys’ Fee and Expense Award to Plaintiff’s Counsel, any Incentive Award to Plaintiff, and costs to provide this Notice to AGNC stockholders, be paid to the Company.

If you are a nominee who held AGNC stock for the benefit of another, please read the section below entitled “NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS.”

Please Note: Because the Action was brought as a derivative action, which means that it was brought on behalf of and for the benefit of the Company, the benefits from the Settlement will go to the Company. Individual AGNC stockholders will not receive any direct payment from the Settlement. Also, please note that there is no proof of claim form for stockholders to submit in connection with this Settlement, and stockholders are not required to take any action in response to this Notice.

#### WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to explain the Action, the terms of the Settlement, and how the Settlement affects AGNC stockholders’ legal rights.
2. In a derivative action, one or more persons or entities who are current stockholders of a corporation sue on behalf of and for the benefit of the corporation, seeking to enforce the corporation’s legal rights. In this case, Plaintiff, an AGNC stockholder, has filed suit against the Individual Releasees and the American Capital Releasees on behalf of and for the benefit of AGNC.
3. The Court has scheduled a Settlement Hearing to consider the fairness, reasonableness, and adequacy of the Settlement and the application by Plaintiff’s Counsel for an Attorneys’ Fee and Expense Award and the Incentive Award. *See* paragraphs 52-53 below for details about the Settlement Hearing, including the location, date, and time of the hearing.

#### WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

THE FOLLOWING DESCRIPTION OF THE ACTION AND THE SETTLEMENT HAS BEEN PREPARED BY COUNSEL FOR THE

PARTIES. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS, AND THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY THE COURT OF FINDINGS OF FACT.

4. AGNC is a publicly traded real estate investment trust (“REIT”) that invests on a leveraged basis predominately in residential agency mortgage-backed securities.

5. AGNC commenced operations on May 20, 2008, following an initial public offering organized by an affiliate of publicly traded private equity firm American Capital, Ltd. (“American Capital”), now known as ACAS, LLC.

6. Between July 29, 2011 and June 30, 2016, AGNC’s day-to-day operations were handled by an external manager, American Capital AGNC Management, LLC (the “Manager”), which American Capital indirectly owned through intermediate companies American Capital Asset Management, LLC (“ACAM”) and American Capital Mortgage Management, LLC (“ACMM”). Until August 3, 2011, ACMM was known as American Capital Agency Management, LLC.

7. AGNC’s relationship with the Manager was governed by a management agreement entered into on May 20, 2008, and subsequently amended on July 29, 2011 and September 30, 2011 (the “Management Agreement”). The initial term of the Management Agreement was three years, ending on May 20, 2011. Thereafter, the Management Agreement would automatically renew each year for additional one-year terms unless the Company, by vote of a majority of its independent directors, or the Manager elected not to renew it.

8. The Management Agreement required AGNC to pay monthly management fees to the Manager in exchange for the services set forth in the Management Agreement.

9. The Management Agreement provided that AGNC must pay a termination fee if AGNC terminated the Management Agreement without cause.

10. In late 2015, American Capital announced that it would undertake a full strategic review of alternatives for maximizing shareholder value, including a potential sale of American Capital or its various business lines in whole or in part.

11. In March 2016, Horace Clark, who is the sole trustee of Plaintiff, made a demand pursuant to 8 *Del. C.* § 220 to inspect AGNC’s books and records relating to, among other things, the decisions not to terminate the Management

Agreement for the years 2014, 2015, and 2016, which decisions occurred in 2013, 2014, and 2015 (collectively, the “Renewals”), and the Internalization.

12. On May 23, 2016, AGNC announced that it had entered into a transaction agreement pursuant to which AGNC would acquire ACMM, and AGNC would become an internally-managed REIT (the “Internalization”). Also on May 23, 2016, Ares and American Capital announced that they had entered into a definitive merger agreement for a transaction separate from but related to the Internalization (the “American Capital Acquisition”). The American Capital Acquisition was completed on January 3, 2017. Pursuant to the American Capital Acquisition, ACAM was merged with and into Ivy Hill, with Ivy Hill as the surviving entity and a wholly-owned portfolio company of Ares.

13. On July 1, 2016, AGNC completed the Internalization.

14. On July 6, 2016, Plaintiff served a demand pursuant to 8 *Del. C.* § 220 (the “Section 220 Demand”) to inspect AGNC’s books and records relating to, among other things, the Renewals and the Internalization.

15. On July 13, 2016, AGNC responded to the Section 220 Demand. AGNC’s response argued that Plaintiff failed to state a proper purpose for seeking books and records. AGNC offered to produce a limited subset of the requested books and records relating to the Renewals but refused to produce, *inter alia*, any books and records relating to the Internalization.

16. On July 19, 2016, Plaintiff filed a Verified Complaint Pursuant to 8 *Del. C.* § 220 to Compel Inspection of Books and Records (the “Section 220 Complaint”) in this Court, commencing the action captioned *H&N Management Group, Inc. and AFF COS Frozen Money Purchase Plan v. American Capital Agency Corp.*, 12573-VCMR (Del. Ch.) (the “Section 220 Action”). Through the Section 220 Action, Plaintiff sought to compel AGNC to produce all materials requested in Plaintiff’s Section 220 Demand.

17. On July 29, 2016, the Court entered a scheduling order in the 220 Action which provided, *inter alia*, for a trial to occur on October 21, 2016. On August 8, 2016, in accordance with the terms of the scheduling order, AGNC filed an Answer in response to the Section 220 Complaint. Thereafter, Plaintiff and AGNC served discovery requests in the Section 220 Action, including requests for production and interrogatories.

18. On September 1, 2016, Plaintiff and AGNC reached an agreement to settle the Section 220 Action and filed a Stipulation of Dismissal dismissing the

Section 220 Action. Plaintiff and AGNC's settlement of the Section 220 Action required AGNC to produce certain books and records in response to Plaintiff's Section 220 Demand. Accordingly, on September 29, 2016, AGNC produced the books and records it had agreed to produce in order to settle the Section 220 Action.

19. Pursuant to its review of the books and records produced by AGNC to settle the Section 220 Action, Plaintiff determined to pursue plenary litigation and filed this Action on October 21, 2016. On December 16, 2016, Plaintiff filed a Verified Amended Stockholder Derivative Complaint (the "Amended Complaint") derivatively on behalf of nominal defendant AGNC, which asserted claims against the Individual Releasees.

20. The Amended Complaint alleged, among other things, that the Individual Releasees breached their fiduciary duties owed to AGNC, including the duties of care and loyalty, and any subsidiary duties, by (i) allowing AGNC's Management Agreement to renew for the years 2014, 2015, and 2016; (ii) acquiring ACMM in 2016 and internalizing the management of AGNC's portfolio; and (iii) committing "waste" in effecting the Internalization. The Amended Complaint alleged that the Individual Releasees caused AGNC to overpay for the management of AGNC and for the internalization of its management, and that the Individual Releasees did not undertake an informed, good-faith analysis in connection with these corporate decisions, in part because (i) conflicts of interest allegedly existed between AGNC on the one hand and American Capital on the other, and (ii) AGNC was allegedly subsidizing the management of MTGE Investment Corp., another REIT managed by an affiliate of AGNC's Manager.

21. On October 25, 2016, the United States District Court for the District of Maryland consolidated two derivative complaints filed on September 21 and September 30, 2016, respectively, by purported AGNC stockholders (the "Maryland Plaintiffs"), captioned *In re AGNC Investment Corp.*, No. TDC-16-3215 (which was consolidated with Civil Action No. TDC-16-3310) (the "Maryland Action"). The complaints, which were not based on any investigation under 8 *Del. C.* § 220 and borrowed substantially from the complaint filed in the Section 220 Action, were based on the same underlying facts and circumstances as the Action.

22. On August 1, 2017, following briefing and oral argument, the Court issued a Letter Opinion denying the Individual Releasees' motion to dismiss the

Amended Complaint and allowing Plaintiff to proceed derivatively on behalf of the Company.<sup>2</sup>

23. On July 3, 2018, the Maryland District Court granted in part the Individual Maryland Releasees' motion to dismiss the consolidated complaint in the Maryland Action, including the claims against ACAM, and dismissed the Maryland Plaintiffs' claim asserting violations of Section 14(a) of the Securities and Exchange Act of 1934. On July 17, 2018, the Maryland Plaintiffs moved for leave to file an amended complaint.

24. On October 11, 2018, Plaintiff filed a Verified Second Amended Stockholder Derivative Complaint in the Action (the "Second Amended Complaint"). In addition to the claims alleged in the Amended Complaint, the Second Amended Complaint asserted claims for unjust enrichment and aiding and abetting the Individual Releasees' alleged breaches of fiduciary duty against two new defendants as the alleged successors to the interests and liabilities of American Capital and its wholly-owned subsidiary ACAM: (i) Ares, and (ii) Ivy Hill.

25. On November 14, 2018, Plaintiff filed a Verified Third Amended Stockholder Derivative Complaint (the "Third Amended Complaint"), which added ACAS, LLC—a successor entity to American Capital—as a defendant in connection with its unjust enrichment and aiding and abetting claims against Ares and Ivy Hill.

26. In addition to the allegations detailed above, the Third Amended Complaint alleges, *inter alia*, that the termination fee in the Management Agreement was unlawful and unenforceable under the Investment Advisers Act of 1940 and as an improper penalty clause. Plaintiff alleges that the American Capital Releasees, as successors-in-interest to American Capital and ACAM (i) abused their positions of trust and authority to unjustly enrich themselves by extracting excessive fees from AGNC and causing AGNC to pay an exorbitant amount for the Internalization; and (ii) are liable for the harm caused by the purported breaches of fiduciary duty that American Capital and ACAM aided and abetted. On December 6, 2018, the American Capital Releasees filed a motion to dismiss. That motion has been fully briefed, was argued before the Court on February 21, 2019, and is currently pending before the Court.

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<sup>2</sup> On October 9, 2017, Plaintiff also filed a Motion to Strike Affirmative Defenses. Plaintiff subsequently withdrew this motion.

27. Fact discovery in this Action has been extensive and is complete. Plaintiff served document demands and interrogatories on the Parties and subpoenas on numerous non-parties. In connection with Plaintiff's discovery efforts in this Action, Plaintiff filed on September 21, 2018 a Motion to Compel Production of Documents. In total, Plaintiff received and reviewed nearly 140,000 documents, totaling more than 3,500,000 pages. The Parties also conducted sixteen (16) party and non-party depositions, including a full-day deposition of a representative of Plaintiff. The Maryland Plaintiffs were not invited to, and did not participate in, Plaintiff's discovery efforts in the Action in any fashion. Among other things, the Maryland Plaintiffs were not invited to, and no representative for the Maryland Plaintiffs sought to participate in, or attend, any of the sixteen (16) depositions taken in the Action.

28. Discovery in the Action, including deposition testimony and the review, production, and analysis of documents, has allowed the Parties to understand the strengths and weaknesses of the claims asserted in the Third Amended Complaint.

29. On January 8, 2019, the Parties participated in an in-person mediation before Michael D. Young of JAMS (the "Mediator"). Thereafter, with the assistance of the Mediator, counsel for Plaintiff, the Individual Releasees, and the Company continued to engage in extensive arm's-length discussions and negotiations concerning a possible partial settlement of the Action.

30. On January 23, 2019, the Maryland District Court heard oral argument on the Maryland Plaintiffs' motion for leave to file an amended complaint. On February 6, 2019, the Maryland District Court granted in part and denied in part the Maryland Plaintiffs' motion, and ordered that the Maryland Plaintiffs' Section 14(a) claim be stricken. The operative complaint in the Maryland Action filed on February 12, 2019, which is the subject of a pending motion to strike by the Individual Maryland Releasees, alleges claims that are: (i) substantively identical to those alleged by Plaintiff in the Amended Complaint (and substantially borrows from the Amended Complaint) and (ii) based on the same factual predicate and operative facts as this Action.

31. Near the completion of fact discovery, on March 29, 2019, the Individual Releasees and Plaintiff attended another in-person mediation session with the Mediator.

32. Following further negotiations, the Mediator made a proposal to settle the Action as to the Individual Releasees for a cash payment to the Company of

\$24 million in exchange for a full and complete release of all claims against the Individual Releasees.

33. On May 3, 2019, following further discussions, including with the Mediator, Plaintiff, the Individual Releasees, and AGNC agreed upon a binding term sheet memorializing the principal terms of a partial settlement of the Action. The Maryland Plaintiffs were not invited to, and did not participate in, either mediation session or in any of the settlement negotiations between or among Plaintiff, the Individual Releasees, and AGNC.

34. Expert discovery commenced on May 6, 2019. That day, Plaintiff served the expert reports of its three testifying experts: (i) William H. Purcell, (ii) Douglas J. Scheidt, and (iii) Kevin C.H. Chiang (collectively, Plaintiff's Experts). Also that day, the American Capital Releasees served the expert reports of Richard H. Lee and Paul Habibi.

35. During the course of expert discovery, and with the assistance of the Mediator, counsel for Plaintiff and counsel for the American Capital Releasees engaged in extensive arm's-length discussions and negotiations concerning a settlement of the remaining claims in the Action.

36. On May 21, 2019, Plaintiff and the American Capital Releasees agreed to settle the claims as to the American Capital Releasees for a cash payment to the Company of \$11.5 million in exchange for a full and complete release of all claims against the American Capital Releasees, which would resolve all remaining claims in the Action. The Maryland Plaintiffs were not invited to, and did not participate in, settlement negotiations between Plaintiff and the American Capital Releasees.

37. Plaintiff represents that it has owned at all relevant times—and continues to own—shares of AGNC stock, for which proof of ownership was proffered.

38. Plaintiff and Plaintiff's Counsel, having thoroughly considered the facts and law underlying the Action, and based upon their investigation and prosecution of the Action and the two mediation sessions and extensive follow-on negotiations that led to the Settlement, and after weighing the risks of continued litigation, have determined that it is in the best interests of the Company and its stockholders that the Action and all claims be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation, and that

these terms and conditions are fair, reasonable, and adequate to the Company and its stockholders.

39. Each of the Individual Releasees and the American Capital Releasees has denied, and continues to deny, that he, she or it committed any breach of duty, breached any other law, aided and abetted any breach, was unjustly enriched, or engaged in any of the wrongful acts alleged or that could have been alleged in the Action, expressly maintains that he, she or it diligently and scrupulously complied with his or her fiduciary and other legal duties, to the extent such duties exist, and further believes that the Action is without merit, and is entering into the Settlement solely to eliminate the burden, expense, and uncertainties inherent in further litigation.

40. In connection with settlement discussions and negotiations leading to the Settlement, counsel for the Parties did not discuss the appropriateness or amount of any application by counsel for Plaintiff for an award of attorneys' fees and expenses or an incentive award.

41. On [DATE], 2019, the Court entered the Scheduling Order in connection with the Settlement which, among other things, authorized this Notice to be provided to Current AGNC Stockholders and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

## WHAT ARE THE TERMS OF THE SETTLEMENT?

42. In consideration of the full compromise, settlement, and release of all Released Defendant Claims (defined in paragraph 45 below) against the Released Defendant Parties and the Released AGNC Parties (defined in paragraph 45 below) and the dismissal with prejudice of the Action and the Maryland Action as to the Individual Releasees, the Individual Maryland Releasees, and the American Capital Releasees, the Parties have agreed that payment to the Company on behalf of the Individual Releasees of \$24,000,000 and on behalf of the American Capital Releasees of \$11,500,000, for a total of \$35,500,000, minus any Attorneys' Fee and Expense Award and any Incentive Award ordered by the Court, and minus the Settlement Notice Costs, shall be paid into a settlement account designated and controlled by the Company. The Settlement Payment shall be made no later than fifteen (15) business days after the later of (i) the entry of Judgment approving the Settlement, and such order becoming final after exhaustion of all appeals or petitions for review; **and** (ii) dismissal with prejudice of the Maryland Action, and such order becoming final after exhaustion of all appeals or petitions for review.

## WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?

43. Plaintiff has stated as follows: Plaintiff, through Plaintiff's Counsel, has conducted an extensive investigation and discovery relating to the claims and underlying events and transactions alleged in the Action. Plaintiff's Counsel have analyzed the evidence adduced during their investigation and discovery and have also researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto. In negotiating and evaluating the terms of the Settlement, Plaintiff and Plaintiff's Counsel considered certain legal and factual arguments advanced by the Individual Releasees and American Capital Releasees in defending against Plaintiff's claims and the expense, time, and risk of pursuing their claims against the Individual Releasees and American Capital Releasees through trial and appeals. While Plaintiff continues to believe strongly that its claims may have merit, the Individual Releasees and American Capital Releasees have argued that they are not subject to liability or damages and have raised certain non-frivolous arguments in their defense. In light of the substantial monetary recovery achieved by the Settlement, Plaintiff and Plaintiff's Counsel have determined that the Settlement is fair, reasonable, adequate, and in the best interests of the Company and its stockholders. The Settlement provides substantial immediate benefits to the Company without the risk that continued litigation could

result in obtaining similar or lesser relief for the Company after continued extensive and expensive litigation, including trial and the appeals that were likely to follow.

44. The Individual Releasees and American Capital Releasees have stated as follows: The Individual Releasees and American Capital Releasees, to avoid the costs, disruption, and distraction of further litigation, and without admitting the validity of any allegations made in the Action, or any liability with respect thereto, have concluded that it is desirable that the claims against them be settled on the terms reflected in the Stipulation. Each of the Individual Releasees and American Capital Releasees has denied, and continues to deny, that he, she or it committed any breach of duty, breached any other law, aided and abetted any breach, was unjustly enriched, or engaged in any of the wrongful acts alleged in the Action; expressly maintains that he, she, or it diligently and scrupulously complied with all fiduciary and other legal duties, to the extent such duties exist; and further believes that the Action is without merit, and has entered into the Stipulation solely to eliminate the burden, expense, and uncertainties inherent in further litigation.

<p>WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS WILL THE SETTLEMENT RELEASE?</p>
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45. If the Settlement is approved, the Court will enter an Order and Final Judgment Approving Derivative Action Settlement (the “Judgment”). Pursuant to the Judgment, upon the Final Approval and the Effective Date of the Settlement (as defined in paragraphs 46–47 below), the Action will be dismissed with prejudice as against the Individual Releasees and American Capital Releasees, and the following releases will occur:

**Release of Claims by Plaintiff, AGNC Stockholders, and AGNC:** Upon the Effective Date of the Settlement, Plaintiff and its past or present trustees, beneficiaries, participants, officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns, in their capacities as such only; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, in their capacities as such only, and all AGNC stockholders, derivatively

on behalf of AGNC, and AGNC (collectively, the “Releasing Plaintiff Parties”) shall be deemed to have, and by operation of the Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, against the Individual Releasees, the Individual Maryland Releasees, and the American Capital Releasees together with their respective past, present, or future agents, insurers, representatives, attorneys, family members, heirs, executors, trustees, associates, affiliates, financial or investment advisors, consultants, accountants, advisors, estates, administrators, beneficiaries, distributes, foundations, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, directors, managing directors, managing partners, members, managing members, managing agents, successors, predecessors, predecessors-in-interest, and assigns (collectively, the “Released Defendant Parties”) that (i) were asserted in this Action; (ii) were asserted in the Maryland Action; (iii) could have been asserted in this Action or the Maryland Action under the facts, acts, events, matters, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, practices, claims or any other matters, things or causes whatsoever alleged therein; or (iv) which otherwise arise out of or relate in any way to the Renewals or the Internalization, including all disclosures made to AGNC stockholders related to the Renewals or the Internalization (the “Settled Defendant Claims”). For the avoidance of doubt, this release extinguishes any claims that were or could have been asserted or threatened by Plaintiff in its individual capacity or derivatively on behalf of AGNC against the Individual Releasees, the Individual Maryland Releasees, the American Capital Releasees, and/or AGNC under the facts, acts, events, matters, transactions, occurrences, statements, representations, misrepresentations, or omissions alleged in this Action or the Maryland Action.

**Release of Claims by Plaintiff:** Upon the Effective Date of the Settlement, Plaintiff in its individual capacity (*i.e.*, not on behalf of any other AGNC stockholders) and its past or present trustees, beneficiaries, plan recipients, officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial

bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns, in their capacities as such only; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, in their capacities as such only shall be deemed to have, and by operation of the Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, against AGNC and any of its direct and indirect current and former subsidiaries, affiliates and all of their respective past or present officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns (including, without limitation, ACMM, AGNC Management, LLC, and MTGE Management, LLC), (collectively, the “Released AGNC Parties”) arising from acts, events, facts, matters, transactions, occurrences, statements or representations occurring prior to May 3, 2019 (the “Settled AGNC Claims”).

**Release of Claims by the Individual Releasees, American Capital Releasees, and AGNC:** Upon the Effective Date of the Settlement, the Individual Releasees, Individual Maryland Releasees, the American Capital Releasees, and AGNC, together with their past or present officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns, in their capacities as such only; and the legal representatives, heirs, executors, administrators,

predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, in their capacities as such only (collectively, the “Releasing Defendant Parties” and together with the Releasing Plaintiff Parties, the “Releasing Parties”), shall be deemed to have, and by operation of the Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, arising out of or relating to the commencement or prosecution of the Action against Plaintiff or Plaintiff’s Counsel, together with their respective past, present or future agents, insurers, representatives, attorneys, immediate family members, heirs, executors, trustees, associates, affiliates, financial or investment advisors, consultants, accountants, advisors, estates, administrators, beneficiaries, distributes, foundations, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, directors, managing directors, managing partners, members, managing members, managing agents, successors, predecessors, predecessors-in-interest, and assigns (collectively, the “Released Plaintiff Parties” and together with the Released Defendant Parties and the Released AGNC Parties, the “Released Parties”)) (the “Settled Plaintiff Claims,” and together with the Released Defendant Claims and Released AGNC Claims, the “Settled Claims”).

**Release of Claims by the Individual Releasees, the Individual Maryland Releasees, and the American Capital Releasees:** Upon the Effective Date of the Settlement, each or any of the Individual Releasees, Individual Maryland Releasees, and the American Capital Releasees shall be deemed to have, and by operation of the Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, based upon the Action, the Maryland Action, or the Settlement, including claims based upon any Settlement Payment made on behalf of the Individual Releasees and on behalf of the American Capital Releasees, against any other of the Individual Releasees, the Individual Maryland Releasees, or the American Capital Releasees.

**Release of Claims by the American Capital Releasees:** Upon the Effective Date of the Settlement, the American Capital Releasees shall be deemed to have, and by operation of the Judgment shall have, settled and released, and shall forever be enjoined from prosecuting any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, based upon or regarding the Action, the Maryland Action, or the Settlement, including without limitation claims relating to any costs or expenses incurred in connection therewith or to any Settlement Payment made by or on behalf of the American Capital Releasees, against AGNC.

Notwithstanding the foregoing, nothing in the Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or the Judgment.

46. The approval of the Settlement by the Court shall be considered final (“Final Approval”) for purposes of this Stipulation upon the later of (i) the expiration of the time for the filing or noticing of an appeal or motion for reargument or rehearing from the Court’s Judgment approving the material terms of the Settlement without such appeal or motion having been made; (ii) the date of final affirmance of the Court’s Judgment on any appeal or reargument or rehearing; or (iii) the final dismissal of any appeal.

47. The “Effective Date” of the Settlement shall be the first date upon which the following conditions precedent of the Settlement have been met and occurred: (i) Final Approval of the Settlement; and (ii) the Court’s dismissal of the Action.

48. Upon the Effective Date of the Settlement, because the Company will have released the Settled Defendant Claims described above against the Released Defendant Parties, no AGNC stockholder will be able to commence, prosecute, or initiate another action asserting those claims against those parties.

49. By Order of the Court, pending final determination of whether the Settlement should be approved, (i) all proceedings in the Action, including all deadlines, other than proceedings as may be necessary to carry out the terms and conditions of the Stipulation, have been stayed and suspended until further order of

the Court; and (ii) Plaintiff and all other AGNC stockholders are barred and enjoined from commencing, instituting, or prosecuting any of the Settled Defendant Claims against any of the Released Defendant Parties.

#### HOW WILL THE ATTORNEYS BE PAID?

50. Plaintiff's Counsel have not received any payment for their services in pursuing the claims asserted in this Action, nor have Plaintiff's Counsel been reimbursed for their out-of-pocket expenses. Plaintiff's Counsel invested their own resources for pursuing the claims asserted on a contingency basis, meaning they would recover their expenses and be compensated for their time only if they created benefits through this litigation. In light of the risks undertaken in pursuing this litigation on a contingency basis and the benefits created for the Company through the Settlement and the prosecution of the claims asserted, Plaintiff's Counsel intends to petition the Court for the Attorneys' Fee and Expense Award paid from (and out of) the Settlement Payment. Plaintiff's Counsel's application for the Attorneys' Fee and Expense Award will seek reimbursement of Plaintiff's Counsel's reasonable out of pocket expenses associated with creation of the Settlement Payment, which expenses Plaintiff's Counsel presently estimates will not exceed \$1 million. Plaintiff's Counsel will also seek an award of attorneys' fees of up to 27.5% of the \$35,500,000 Settlement Payment, net of expenses. Finally, Plaintiff's Counsel also intend to seek an Incentive Award in the amount of \$10,000 for Plaintiff for its time and effort in prosecuting the Action.

51. The Court will determine the amount of the Attorneys' Fee and Expense Award, as well as the amount of the Incentive Award. The Court-approved Attorneys' Fee and Expense Award and Incentive Award, if any, will be paid from the Settlement Payment. AGNC stockholders are not personally liable for any such fees or expenses.

#### WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING? MAY I OBJECT TO THE SETTLEMENT AND SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

52. The Court will consider the Settlement and all matters related to the Settlement at the Settlement Hearing. The Settlement Hearing will be held before the Honorable Tamika R. Montgomery-Reeves on [DATE], 2019, at \_\_: \_\_ a.m./p.m, at the Court of Chancery of the State of Delaware, Leonard L.

Williams Justice Center, 500 North King Street, Wilmington, DE 19801. At the Settlement Hearing, the Court will, among other things: (i) determine whether Plaintiff and Plaintiff's Counsel have adequately represented the interests of AGNC and its stockholders; (ii) determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Plaintiff, AGNC, and AGNC stockholders, and should be approved by the Court; (iii) determine whether the Judgment, substantially in the form attached as Exhibit C to the Stipulation, should be entered dismissing the Action with prejudice against the Individual Releasees and the American Capital Releasees; (iv) determine whether the application for the Attorneys' Fee and Expense Award and Incentive Award should be approved; and (v) consider any other matters that may properly be brought before the Court in connection with the Settlement. Stockholders do not need to attend the Settlement Hearing.

53. Please Note: The Court has reserved the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for the Attorneys' Fee and Expense Award, without further notice of any kind other than by oral announcement at the Settlement Hearing or any adjournment thereof. The Court has further reserved the right to approve the Stipulation and the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice to AGNC stockholders. You should monitor the Court's docket before making plans to attend the Settlement Hearing. You may also confirm the date and time of the Settlement Hearing by contacting Plaintiff's Counsel at the address indicated in paragraph 54 below.

54. Any Current AGNC Stockholder who or which owned shares of AGNC stock as of the date of the Court's entry of the Scheduling Order and who or which continues to own shares of AGNC stock as of [DATE], 2019, the date of the Settlement Hearing, may object to the Settlement and/or Plaintiff's Counsel's application for the Attorneys' Fee and Expense Award or the Incentive Award. Objections must be in writing and filed with the Register in Chancery at the address set forth below on or before [DATE], 2019. Objections must also be served on counsel for Plaintiff, AGNC, the Individual Releasees and the American Capital Releasees by hand, first class U.S. mail, or express service, at the addresses set forth below such that they are received no later than [DATE], 2019. Plaintiff's Counsel will be filing a brief no later than 21 days before the Settlement Hearing, which any Current AGNC Stockholder should review before filing an objection.

Register in Chancery

Register in Chancery  
Delaware Court of  
Chancery  
Kent County Courthouse  
414 Federal Street  
Dover, DE 19901

Counsel for Plaintiff

Ned Weinberger  
LABATON SUCHAROW  
LLP  
300 Delaware Avenue, Suite  
1340  
Wilmington, DE 19801

Counsel for AGNC

William Denny  
POTTER ANDERSON  
& CORROON LLP  
1313 North Market  
Street  
Hercules Plaza, 6th  
Floor  
Wilmington, DE 19801

Counsel for the  
Individual Releasees

Anne Foster  
RICHARDS, LAYTON  
& FINGER, P.A.  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801

Counsel for the  
American Capital Releasees

Robert S. Saunders  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, DE 19899

David Teklits  
MORRIS, NICHOLS,  
ARSHT & TUNNELL  
LLP  
1201 N. Market Street  
Wilmington, DE 19899

55. Any objections, filings and other submissions must: (i) state the name, address, and telephone number of the objector and, if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (ii) be signed by the objector; (iii) state that the objection is being filed with respect to “*H&N Management Group, Inc. & AFF Cos Frozen Money Purchase Plan v. Couch et al.*, C.A. No. 12847-VCMR”; (iv) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the objector wishes to bring to the Court’s attention, and if the objector has indicated that he, she, or it intends to appear at the Settlement Hearing, the identity of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the hearing; and (v)

include documentation sufficient to prove that the objector owned shares of AGNC stock as of the close of business on [DATE OF ENTRY OF SCHEDULING ORDER], and contain a statement that the objector continues to hold shares of AGNC stock as of the date of filing of the objection and will continue to hold shares of AGNC stock as of the date of the Settlement Hearing.

56. Current AGNC Stockholders who or which owned shares of AGNC stock as of the date of the Court's entry of the Scheduling Order and who or which continue to own shares of AGNC stock as of the date of the Settlement Hearing may file a written objection without having to appear at the Settlement Hearing. Unless the Court orders otherwise, however, such persons may not appear at the Settlement Hearing to present their objections unless they first filed and served a written objection in accordance with the procedures described above.

57. Persons who file and serve a timely written objection as described above and who wish to be heard at the Settlement Hearing in opposition to the approval of the Settlement, Plaintiff's Counsel's application for the Attorneys' Fee and Expense Award, and/or Incentive Award must also file a notice of appearance with the Register in Chancery and serve it on counsel for Plaintiff, AGNC, the Individual Releasees and the American Capital Releasees at the addresses set forth in paragraph 54 above so that it is *received* on or before [DATE], 2019. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. Such persons may be heard at the discretion of the Court.

58. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on counsel for Plaintiff, AGNC, the Individual Releasees and the American Capital Releasees at the addresses set forth in paragraph 54 above so that the notice is *received* on or before [DATE], 2019.

59. Unless the Court orders otherwise, any person or entity who or which does not make his, her, or its objection in the manner set forth above: (i) shall be deemed to have waived and forfeited his, her, or its right to object to any aspect of the Settlement, the requested Attorneys' Fee and Expense Award or the Incentive Award; (ii) shall be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered

approving the Settlement, or the requested or awarded Attorneys' Fee and Expense Award and Incentive Award; and (iii) shall be deemed to have waived and forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any matters concerning the Settlement or the requested or rewarded Attorneys' Fee and Expense Award and Incentive Award.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I  
HAVE QUESTIONS?

60. This Notice does not purport to be a comprehensive description of the Action, the allegations related thereto, or the terms of the Settlement. For a more detailed statement of the matters involved in the Action, you may view a copy of the Stipulation in the "Investors" section of the Company's website, <https://agnc.com>. You may also inspect the pleadings, the Stipulation, the Orders entered by the Court, and other papers filed in the Action (with the exception of documents filed under seal as "Confidential" or "Highly Confidential") at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, during regular business hours of each business day. If you have questions regarding the Action or the Settlement, you may write or call Plaintiff's Counsel: Ned Weinberger, Labaton Sucharow LLP, 300 Delaware Avenue, Suite 1340, Wilmington, DE 19801, (302) 573-2540; Jeremy Friedman, Friedman Oster & Tejtel PLLC, 493 Bedford Center Road, Suite 2D, Bedford Hills, NY 10507, (888) 529-1108; or Chad Johnson, Quinn Emanuel Urquhart & Sullivan, LLP, 52 Madison Avenue, 22nd Floor, New York, NY 10010, (212) 849-7000.

NOTICE TO PERSONS OR ENTITIES HOLDING RECORD  
OWNERSHIP ON BEHALF OF OTHERS.

Brokerage firms, banks, and other persons or entities holding shares of AGNC stock as of the close of business on [DATE OF ENTRY OF SCHEDULING ORDER] as record holders for the beneficial interest of persons or organizations other than themselves are requested to immediately send this Notice to all such beneficial owners. If additional copies of the Notice are required to forward to such beneficial owners, record holders may (i) request from AGNC – Investor Relations, 2 Bethesda Metro Center, 12<sup>th</sup> Floor, Bethesda, MD 20814, and [ir@agnc.com](mailto:ir@agnc.com), sufficient copies of this Notice to forward to all such beneficial owners; or (ii) provide a list of the names and addresses of all such beneficial

owners to AGNC – Investor Relations, 2 Bethesda Metro Center, 12<sup>th</sup> Floor, Bethesda, MD 20814, and [ir@agnc.com](mailto:ir@agnc.com). If you choose the second option, AGNC will send a copy of the Notice to the beneficial owners. Copies of this Notice may also be obtained from the “Investors” section of the Company’s website, <https://agnc.com/>.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF  
THE REGISTER IN CHANCERY REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_, 2019

BY ORDER OF THE COURT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

H&N MANAGEMENT GROUP, INC. & AFF  
COS FROZEN MONEY PURCHASE PLAN,

Plaintiff,

v.

ROBERT M. COUCH, MORRIS A. DAVIS,  
RANDY E. DOBBS, JOHN ERICKSON,  
SAMUEL A. FLAX, LARRY K. HARVEY,  
GARY KAIN, PRUE LAROCCA, ALVIN N.  
PURYEAR, MALON WILKUS, ACAS, LLC,  
ARES CAPITAL CORP., and IVY HILL ASSET  
MANAGEMENT, L.P.,

Defendants,

and

AGNC INVESTMENT CORP., F/K/A,  
AMERICAN CAPITAL AGENCY CORP., a  
Delaware corporation,

Nominal Defendant.

C.A. No. 12847-VCMR

**ORDER AND FINAL JUDGMENT**  
**APPROVING DERIVATIVE ACTION SETTLEMENT**

WHEREAS, a stockholder derivative action is pending in this Court under the above caption (the “Action”);

WHEREAS, (a) Plaintiff H&N Management Group, Inc. & AFF Cos Frozen Money Purchase Plan (“Plaintiff”); (b) Robert M. Couch, Morris A. Davis, Randy E. Dobbs, Larry K. Harvey, Gary Kain, Prue Larocca, John Erickson, Samuel A.

Flax, Alvin N. Puryear and Malon Wilkus (collectively, the “Individual Releasees”) and Peter Federico (together with the Individual Releasees, the “Individual Maryland Releasees”); (c) Defendants ACAS, LLC, Ares Capital Corporation, and Ivy Hill Asset Management, L.P. (the “American Capital Releasees”); and (d) nominal defendant AGNC Investment Corp., f/k/a American Capital Agency Corp. (“AGNC” or the “Company,” and with Plaintiff, the Individual Releasees, and the American Capital Releasees, the “Parties”) have entered into a Stipulation and Agreement of Compromise, Settlement and Release, dated June 10, 2019 (the “Stipulation”) that provides, among other things, for a complete dismissal with prejudice of the claims asserted against the Individual Releasees and American Capital Releasees in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, by Order dated \_\_\_\_\_, 2019 (the “Scheduling Order”), this Court (a) ordered Plaintiff to file papers in support of the proposed Settlement; (b) ordered that notice of the Settlement be provided to Current AGNC Stockholders; (c) provided current AGNC Stockholders with the opportunity to object to the Settlement and Plaintiff’s Counsel’s application for an Attorneys’ Fee and Expense Award and Incentive Award; and (d) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a final approval hearing on \_\_\_\_\_, 2019 (the “Settlement Hearing”) to consider, among other things, (a) whether Plaintiff and Plaintiff’s Counsel have adequately represented the interests of AGNC and its stockholders; (b) whether the terms and conditions of the Settlement are fair, reasonable and adequate to AGNC and its stockholders, and should therefore be approved; (c) whether a judgment should be entered dismissing the Action with prejudice; and (d) whether the application by Plaintiff’s Counsel for an Attorneys’ Fee and Expense Award and Incentive Award should be approved; and

WHEREAS, it appearing that due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or entities requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to current AGNC stockholders was adequate and sufficient; and the entire matter of the Settlement having been heard and considered by the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this \_\_\_ day of \_\_\_\_\_, 2019, as follows:

1. **Definitions:** Unless otherwise defined in this Judgment, the capitalized terms used herein shall have the same meaning as they have in the Stipulation and/or the Scheduling Order.

2. **Jurisdiction:** This Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement of the Action, as well as personal jurisdiction over all of the Parties and each of the current stockholders of AGNC, and it is further determined that, without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and AGNC stockholders for purposes of all matters relating to the administration, interpretation, implementation, and enforcement of the Settlement.

3. **Incorporation of Settlement Documents:** This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on June 10, 2019; and (b) the Settlement Notice filed with the Court on June 10, 2019.

4. **Derivative Action Properly Maintained; Adequacy of Plaintiff and Plaintiff's Counsel:** Based on the record in the Action, each of the provisions of Court of Chancery Rule 23.1 has been satisfied and the Action has been properly maintained according to Court of Chancery Rule 23.1. Plaintiff and Plaintiff's Counsel have adequately represented the interests of AGNC and its stockholders

both in terms of litigating the Action and for purposes of entering into and implementing the Settlement.

5. **Notice:** The Court finds that the dissemination of the Settlement Notice: (a) was implemented in accordance with the Scheduling Order; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise current AGNC stockholders of: (i) the pendency of the Action; (ii) the effect of the Settlement (including the releases to be provided thereunder); (iii) Plaintiff's Counsel's application for an Attorneys' Fee and Expense Award and Incentive Award; (iv) their right to object to the Settlement and/or Plaintiff's Counsel's application for an Attorneys' Fee and Expense Award; and (v) their right to appear at the Settlement Hearing; (c) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement; and (d) satisfied the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and any and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Court of Chancery Rule 23.1, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the releases, including the release of the Settled Defendant Claims as against the Released Defendant

Parties, the release of the Settled AGNC Claims as against the Released AGNC Parties, and the release of the Settled Plaintiff Claims as against the Released Plaintiff Parties; and the dismissal with prejudice of the claims asserted against the Individual Releasees and American Capital Releasees in the Action and related matters and claims), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to Plaintiff, AGNC, and AGNC's stockholders. The Parties are hereby authorized and directed to implement, perform, and consummate the Settlement on the terms and conditions contained in the Stipulation.

7. The Action and all of the claims asserted in the Action by Plaintiff are hereby dismissed, on the merits, with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation and this Judgment.

8. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding upon and inure to the benefit of the Parties and their respective legal representatives, heirs, executors, administrators, transferees, successors, agents, and assigns of all such foregoing persons and entities and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize. It is further determined that all current stockholders of AGNC, as well as their transferees, heirs, executors, successors, and assigns, are bound by the Judgment herein.

9. **Releases:**

(a) Upon the Effective Date of the Settlement, Plaintiff, in its individual capacity, and Plaintiff and its past or present trustees, beneficiaries, participants, officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns, in their capacities as such only; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, in their capacities as such only, and all AGNC stockholders, derivatively on behalf of AGNC, and AGNC (collectively, the “Releasing Plaintiff Parties,” as defined in the Stipulation, ¶ 10(i)) shall be deemed to have, and by operation of this Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or

unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, against the Individual Releasees, the Individual Maryland Releasees and the American Capital Releasees, together with their respective past, present, or future agents, insurers, representatives, attorneys, family members, heirs, executors, trustees, associates, affiliates, financial or investment advisors, consultants, accountants, advisors, estates, administrators, beneficiaries, distributes, foundations, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, directors, managing directors, managing partners, members, managing members, managing agents, successors, predecessors, predecessors-in-interest, and assigns (collectively, the “Released Defendant Parties”) that (i) were asserted in this Action; (ii) were asserted in the Maryland Action; (iii) could have been asserted in this Action or the Maryland Action under the facts, acts, events, matters, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, practices, claims or any other matters, things or causes whatsoever alleged therein; or (iv) which otherwise arise out of or relate in any way to the Renewals or the Internalization, including all disclosures made to AGNC stockholders related to the Renewals or the Internalization (the “Settled Defendant Claims”). For the avoidance of doubt, this

release extinguishes any claims that were or could have been asserted or threatened by Plaintiff in its individual capacity or derivatively on behalf of AGNC against the Individual Releasees, the Individual Maryland Releasees, the American Capital Releasees, and/or AGNC under the facts, acts, events, matters, transactions, occurrences, statements, representations, misrepresentations, omissions alleged in this Action or the Maryland Action.

(b) Upon the Effective Date of the Settlement, Plaintiff in its individual capacity only (*i.e.*, not on behalf of any other AGNC stockholders) and its past or present officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, in their capacities as such only, (collectively, “AGNC’s Releasing Plaintiff Parties”) shall be deemed to have, and by operation of this Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any and all claims, whether based on state, local, foreign,

federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, against AGNC, its direct and indirect current and former subsidiaries, affiliates and all of their respective past or present officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns, (including, without limitation, ACMM, AGNC Management, LLC, and MTGE Management, LLC) (collectively, the “Released AGNC Parties”) arising from or relating in any way to acts, events, facts, matters, transactions, occurrences, statements, or representations occurring prior to May 3, 2019 (the “Settled AGNC Claims”).

(c) Upon the Effective Date of the Settlement, the Individual Releasees, the Individual Maryland Releasees, the American Capital Releasees, and AGNC, together with their past or present officers, directors, stockholders, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns, in their capacities as such only; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns (collectively, the “Releasing Defendant Parties”), shall be deemed to have, and by operation of this Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, arising out of or relating to the commencement or prosecution of the Action or the Settlement

against Plaintiff or Plaintiff's Counsel, together with their respective past, present or future agents, insurers, representatives, attorneys, immediate family members, heirs, executors, trustees, associates, affiliates, financial or investment advisors, consultants, accountants, advisors, estates, administrators, beneficiaries, distributes, foundations, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, directors, managing directors, managing partners, members, managing members, managing agents, successors, predecessors, predecessors-in-interest, and assigns, in their capacities as such only (collectively, the "Released Plaintiff Parties") (the "Settled Plaintiff Claims").

(d) Upon the Effective Date of the Settlement, each or any of the Individual Releasees, Individual Maryland Releasees, and the American Capital Releasees shall be deemed to have, and by operation of the Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or

undisclosed, at law or in equity, based upon the Action, the Maryland Action, or the Settlement, including claims based upon any Settlement Payment made on behalf of the Individual Releasees and on behalf of the American Capital Releasees, against any other of the Individual Releasees, the Individual Maryland Releasees, or the American Capital Releasees.

(e) Upon the Effective Date of the Settlement, the American Capital Releasees shall be deemed to have, and by operation of the Judgment shall have, settled and released, and shall forever be enjoined from prosecuting any and all claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including any and all claims for relief or causes of action, debts, demands, rights, liabilities, damages, losses, obligations, judgments, duties, costs, expenses, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, apparent or unapparent, disclosed or undisclosed, at law or in equity, based upon or regarding the Action, the Maryland Action, or the Settlement, including without limitation claims relating to any costs or expenses incurred in connection therewith or to any Settlement Payment made by or on behalf of the American Capital Releasees, against AGNC.

(f) Notwithstanding Paragraph 9(a)–(e) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

10. **No Admissions:** Neither the Stipulation nor this Judgment, nor any of their terms and provisions, shall be deemed a presumption, concession, or admission by AGNC or the Individual Releasees or the Individual Maryland Releasees or the American Capital Releasees of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, nor shall they be deemed a presumption, concession, or admission by Plaintiff of any lack of merit of the claims alleged or asserted in the Action. Neither the Stipulation nor this Judgment, nor any of their terms and provisions, nor any of the negotiations or proceedings in connection with the Stipulation, nor any of the documents or statements referred to in the Stipulation, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, nor this Judgment, (a) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Parties or Released Plaintiff Parties, of any infirmity of any defense on the part of any of the Released Defendant Parties or Released Plaintiff Parties, or of any damage to the Releasing Plaintiff Parties or Released Plaintiff Parties or any other party or entity, or otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Parties concerning any

purported liability, fault, or wrongdoing of the Released Defendant Parties; (b) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any lack of merit of the claims asserted in the Action, that any of the Released Defendant Parties had meritorious defenses, or that the damages recoverable in the Action would not have exceeded the Settlement Amount; (c) shall be construed as an admission, concession, or presumption that the cash consideration to be given under the Stipulation represents the amount that could or would have been recovered after trial; or (d) shall otherwise be admissible in any proceeding of any nature, for any purpose whatsoever; *provided, however*, that the Stipulation and this Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or this Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or this Judgment or to secure any insurance rights or proceeds of any of the Released Defendant Parties or Released AGNC Parties.

11. **Award of Attorneys' Fee and Expense Award and Incentive**

**Award:** Plaintiff's Counsel are hereby awarded attorneys' fees in the amount of \$\_\_\_\_\_, (which fees and expenses shall be paid from the Settlement

consideration pursuant to the Stipulation), which sums the Court finds to be fair and reasonable.

12. Plaintiff's Counsel are hereby awarded expenses in the amount of \$ \_\_\_\_\_ (which expenses shall be paid from the Settlement consideration pursuant to the Stipulation), which sums the Court finds to be fair and reasonable.

13. Plaintiff is hereby awarded an Incentive Award of \$ \_\_\_\_\_, (which award shall be paid out of the Attorneys' Fee and Expense Award), and which sum the Court finds to be fair and reasonable.

14. No proceedings or court order with respect to the Attorneys' Fee and Expense Award or Incentive Award shall in any way disturb or affect this Judgment, and any such proceedings or court order shall be considered separate from this Judgment.

15. **Modification of the Stipulation:** Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of AGNC or its stockholders in connection with the Settlement. Without further order of the Court, the Parties may further agree to reasonable extensions of time to carry out any provisions of the Stipulation or Settlement.

16. **Termination of Settlement:** If the Settlement is terminated pursuant to the terms of the Stipulation, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the respective rights and positions of Plaintiff, all other AGNC stockholders, AGNC, the Individual Releasees, and the American Capital Releasees.

17. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this Judgment in the Action pursuant to Court of Chancery Rule 54(b).

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Vice Chancellor Tamika Montgomery-Reeves