

## REFUND PAYMENT AGREEMENT

Bank of America, N.A., E.I.N. 94-1687665 ("BANA") and the Virginia Department of Taxation (the "Department") and the Localities ("Locality" or "Localities") which have signed on Schedule A attached hereto (collectively, the "Parties") make the following refund payment agreement (the "Closing Agreement").

WHEREAS, BANA timely filed its Virginia Bank Franchise Tax Returns and paid the Bank Franchise Tax for taxable years 2010, 2011 and 2012 (the "Tax Years").

WHEREAS, on February 21, 2013, BANA filed amended Bank Franchise Tax Returns for the Tax Years claiming a refund.

WHEREAS, the Department audited BANA's amended returns and determined that BANA is due a refund of overpaid Bank Franchise Tax in the amount of \$13,911,504 (the "Refund"), which amount does not include interest.

WHEREAS, the Department has determined the Department's portion and each Locality's portion of the Refund (the "Apportioned Refund").

WHEREAS, for those Parties participating in this Closing Agreement by electing the Delayed Payment Offer or the Refundable Credit Offer, as defined herein, interest shall be calculated at the State rate and accrued for the period as set forth in Virginia Code Sec. 58.1-1833 through the close of the audit, and such interest shall be added to such Party's Apportioned Refund (the "Apportioned Refund Including Interest").

WHEREAS, the Parties desire to provide for application or payment of the Apportioned Refund and/or the Apportioned Refund Including Interest.

### THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. BANA timely filed its taxable year 2010, 2011 and 2012 amended Bank Franchise Tax returns and refund request.
2. The Department and the Localities electing to participate in this Closing Agreement owe BANA a refund of the Apportioned Refund or Apportioned Refund Including Interest as set forth on Schedule B attached hereto.
3. The Department and the Localities hereby choose one of the following three (3) methods to provide for the application or payment of the Apportioned Refund and/or the Apportioned Refund Including Interest:
  - a. Payment in Full – Due Date December 31, 2014 ("Interest Free Offer"). In the event a Party elects the Interest Free Offer, such Party shall sign this Closing Agreement in COLUMN A on Schedule A attached hereto and such Party shall pay BANA the entire Apportioned Refund amount due from such Party by December 31, 2014. If the

entire Apportioned Refund amount is not paid by December 31, 2014 and such Party has not affirmatively elected the Refundable Credit Offer or the Delayed Payment Offer, such Party shall default to the Default Refund as set forth in Paragraph 4 below.

- b. Payment in Full – Delayed Due Date (“Delayed Payment Offer”). In the event a Party elects the Delayed Payment Offer, such Party shall sign this Closing Agreement in COLUMN B on Schedule A attached hereto and such Party shall pay BANA the entire Apportioned Refund Including Interest amount due from such Party in full by June 1, 2016 (the “Refund Due Date”). If the entire Apportioned Refund Including Interest amount is not paid by the Refund Due Date by such Party, interest shall accrue at the State rate on the amount due beginning the day after the Refund Due Date.
- c. Refundable Credit Offer: By electing to sign this Closing Agreement in COLUMN C on Schedule A attached hereto, the signing Party and BANA hereby agree to apply the Apportioned Refund Including Interest under the following methodology (the “Refundable Credit Offer”):
  - i. The Apportioned Refund Including Interest shall be due in equal increments (the “Refund Portion”) over a five (5) year period (the “Refund Period”).
  - ii. The Refund Period shall begin in taxable year 2016, the first payment being due on June 1, 2016.
  - iii. If the amount of Refund Portion for any taxable year shall be less than BANA’s Bank Franchise Tax payable to the Department or such Locality for such year, then such Refund Portion shall be applied against BANA’s Bank Franchise Tax payable to the Department or the Locality for that taxable year.
  - iv. If the amount of Refund Portion for any taxable year shall exceed BANA’s Bank Franchise Tax payable to the Department or such Locality for such year, including if there is zero Bank Franchise Tax due for any reason, the excess shall be payable from the Department or Locality to BANA as set forth in (v.) below (the “Excess Payment”).
  - v. Any Excess Payment shall be paid by the Department or Locality to BANA by June 1<sup>st</sup> of the taxable year, including if there is zero Bank Franchise Tax due (the “Payment Due Date”). If such Excess Payment is not made by the Payment

Due Date, interest shall accrue at the State rate on the amount due beginning the day after the Payment Due Date.

- vi. No interest shall accrue on the Apportioned Refund Including Interest during the Refund Period except as set forth in section (4.v.) herein.
4. In the event the Department and/or a Locality do not elect the Interest Free Offer, the Delayed Payment Offer or the Refundable Credit Offer by signing and returning this Closing Agreement by December 31, 2014, then such Party shall default to the Party's current governing law and shall be required to pay its portion of the Apportioned Refund as calculated with interest pursuant to such Party's governing statutes and added to such Apportioned Refund amount (the "Default Refund").
5. This Closing Agreement is binding and conclusive with respect to the subject matter of this Closing Agreement for the Tax Years except that:
- i. The Closing Agreement may be reopened by the Department in the event of fraud, malfeasance, or misrepresentation of material fact.
  - ii. This Closing Agreement shall be construed and interpreted in accordance with the law of the State of Virginia. The Parties, and each of them, hereby agree to submit to the jurisdiction of the Virginia courts in any action relating to this Closing Agreement or to the enforcement or interpretation of the terms hereof.
  - iii. This Closing Agreement constitutes the entire agreement and understanding of the Parties concerning the Refund, Apportioned Refund and Apportioned Refund Including Interest and is expressly intended by the Parties to supersede all prior agreements, negotiations, representations, and/or understandings, whether written or oral, of the Parties pertaining to these issues for the Tax Years.
  - iv. This Closing Agreement is binding upon the Parties and their subsidiaries, affiliates, officers, directors, agents, personal representatives, successors in interest, transferees and assigns, and each of them.
  - v. Each Party, on its own behalf, represents and warrants that the signatories to this Closing Agreement have the authority to execute it on behalf of that Party.
  - vi. By signing, the Parties certify that they have read and agreed to the terms of this Closing Agreement.

- vii. This Closing Agreement shall be effective upon its execution by or on behalf of BANA and upon its execution by or on behalf of the Department and, with respect to each participating Locality, upon its execution by such Locality.
- viii. If any provision of this Closing Agreement is breached by the Department or a Locality, the rights and obligations of any non-breaching Party shall not be affected and such breach shall not affect the binding nature of this Closing Agreement on any other Party.

*[remainder of page intentionally left blank]*

**SCHEDULE A**

**CLOSING AGREEMENT ELECTION**

Taxing Jurisdiction	COLUMN A ELECTS the <u>Interest Free Offer</u> and Will Pay the Apportioned Refund in Full by December 31, 2014	COLUMN B ELECTS the <u>Delayed Payment Offer</u> and Will Pay the Apportioned Refund Including Interest in Full by the Refund Due Date	COLUMN C ELECTS the <u>Refundable Credit Offer</u> and Will Apply or Pay the Apportioned Refund Including Interest Over the Refund Period	Date
Department				
Abingdon Town				
Albemarle County				
Alexandria City				
Arlington County				
Ashland Town				
Blacksburg Town				
Botetourt County				
Buena Vista City				
Campbell County				

Taxing Jurisdiction	COLUMN A ELECTS the <u>Interest Free Offer</u> and Will Pay the Apportioned Refund in Full by December 31, 2014	COLUMN B ELECTS the <u>Delayed Payment Offer</u> and Will Pay the Apportioned Refund Including Interest in Full by the Refund Due Date	COLUMN C ELECTS the <u>Refundable Credit Offer</u> and Will Apply or Pay the Apportioned Refund Including Interest Over the Refund Period	Date
Cape Charles Town				
Carroll County				
Charlottesville City				
Chesapeake City				
Chesterfield County				
Clarksville Town				
Colonial Heights City				
Danville City				
Dumfries Town				
Dillwyn Town				
Elkton Town				
Fairfax County				

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Fairfax City				
Falls Church City				
Farmville Town				
Franklin County				
Franklin City				
Fredericksburg City				
Gate City Town				
Glade Spring Town				
Gordonsville Town				
Greene County				
Hampton City				
Hanover County				

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x Harrisonburg City				
Henrico County				
Hillsville Town				
Hopewell City				
Isle of Wight County				
James City County				
Lawrenceville Town				
Leesburg Town				
Loudoun County				
Louisa Town				
Lynchburg City				
Manassas City				

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Martinsville City				
Matthews County				
Newport News City				
Norfolk City				
Norton City				
Orange Town				
Petersburg City				
Portsmouth City				
Prince Williams County				
Pulaski Town				
Pulaski County				
Quantico Town				

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Richmond City				
Roanoke City				
Roanoke County				
Shenandoah County				
South Boston Town				
Spotsylvania County				
Stafford County				
Standardsville Town				
Staunton City				
Suffolk City				
Vienna Town				
Vinton Town				

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Virginia Beach City				
Waynesboro City				
Woodstock Town				
Wytheville City				
York County				

