

SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) made subject to approval by the Court, as defined herein, by James Baker, Jill Baker, Jeffrey Cox, Michelle Cox, William Springer and Linda Springer (the “Named Plaintiffs”), as proposed representatives of the “TMS Settlement Class,” as defined herein, and Wells Fargo Bank, N.A., individually and as successor by merger to Wachovia Equity Servicing, LLC (f/k/a TMS Mortgage, Inc., d/b/a “The Money Store”), The Money Store, LLC (f/k/a The Money Store, Inc.), Integrated Capital Group, and HomEq Servicing Corporation (collectively “WFB”), and as attorney in fact for The Bank of New York Mellon (f/k/a The Bank of New York), but solely as to the “CFG Loans,” as defined herein, that were sold or assigned to Integrated Capital Group or TMS Mortgage, Inc. (d/b/a “The Money Store”) and securitized in The Money Store Residential Asset Backed Notes and Asset Backed Certificates, Series 1997-DII or The Money Store Residential Asset Backed Notes and Asset Backed Certificates, Series 1998-I (“BNY”). WFB and BNY are referred to as the “Settling Defendants.” The Named Plaintiffs, the Settling Defendants and the TMS Settlement Class are referred to as the “Parties” as the context may require.

WHEREAS, the Named Plaintiffs are prosecuting the civil class action lawsuit currently pending before the Circuit Court of Clay County, Missouri (the “Court”), styled *James and Jill Baker, et al., v. Century Financial Group, Inc.*, and numbered 7CV-100-4294 (the “Litigation”); and

WHEREAS, the Named Plaintiffs are asserting claims in the Litigation against Century Financial Group, Inc. (“CFG”), the Settling Defendants and certain other entities for alleged violations of the Missouri Second Mortgage Loans Act (“MSMLA”), §§ 408.231-408.241 RSMo, both for themselves and for a class of similarly-situated Missouri borrowers who, like the Named Plaintiffs, obtained a second or other subordinate lien mortgage loan secured by

residential real estate situated in Missouri from CFG on or after July 28, 1994 (the “CFG Loans”); and

WHEREAS, the Named Plaintiffs seek to recover the following pursuant to the MSMLA and § 408.562 RSMo: (a) the amount of the loan fees that the Named Plaintiffs alleged had been directly or indirectly charged, contracted for or received in connection with the CFG Loans in violation of § 408.233.1; (b) all of the interest paid on the CFG Loans in violation of § 408.236; (c) all of the interest payable on the CFG Loans (discounted to present value); (d) pre-judgment interest on the fee and interest paid amounts recovered or disgorged; (e) punitive damages pursuant to § 408.562; and (f) reasonable attorneys’ fees and other relief pursuant to § 408.562; and

WHEREAS, on January 2, 2003, the Court certified a litigation class in the Litigation comprised of those individuals who obtained a CFG Loan (the “Litigation Class”); and

WHEREAS, notice of the Litigation, the Court’s certification order, and the right to opt out of the Litigation Class was given to the members of the Litigation Class pursuant to Mo. Rule 52.08; and

WHEREAS, the Settling Defendants deny the claims and causes of action being asserted against them in the Litigation and deny any and all liability to the Named Plaintiffs, the members of the proposed TMS Settlement Class, and the “Non-TMS Plaintiff Borrowers,” as defined herein; and

WHEREAS, counsel for the Named Plaintiffs (“Plaintiffs’ Counsel”) and the Settling Defendants (“Counsel for the Settling Defendants”) have thoroughly investigated the facts related to the claims alleged in the Litigation and the events and transactions underlying those claims, through formal and informal discovery, and have made a thorough study of the legal

principles applicable to the claims being asserted against both CFG and the Settling Defendants;
and

WHEREAS, the Parties have reached an agreement, subject to Court approval, to resolve the Litigation and all remaining claims and motions as between the Named Plaintiffs and the TMS Settlement Class on the one hand and the Settling Defendants on the other hand in accordance with the terms set forth herein; and

WHEREAS, Plaintiffs' Counsel and Counsel for the Settling Defendants have engaged in arm's length negotiations concerning the settlement of the claims being asserted against the Settling Defendants in the Litigation by the Named Plaintiffs on behalf of the TMS Settlement Class; and

WHEREAS, the Named Plaintiffs, on behalf of the TMS Settlement Class, and Plaintiffs' Counsel have concluded that a settlement with the Settling Defendants as stated herein will be fair, just, equitable, reasonable, adequate and in the best interests of the members of the TMS Settlement Class based upon their investigation, study, negotiations and discovery taken in the Litigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Litigation against the Settling Defendants through trial and any appeals, the delays and the risks and costs of further prosecution of the Litigation against the Settling Defendants, the uncertainties of complex litigation in general, the benefits to be received as a result of this Settlement, and the fact that the Named Plaintiffs and other "Non-TMS Plaintiff Borrowers," as defined herein, will continue to pursue their claims on the "CFG Loans," as defined herein, against CFG, The Bank of New York Mellon (f/k/a The Bank of New York), as the purchaser, assignee, trustee, paying agent and/or servicer of any CFG Loans other than the "CFG-TMS Loans," as defined herein, and the other defendants and other non-released persons;

and

WHEREAS, the Settling Defendants desire to settle the claims being asserted against any and all of them in the Litigation on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest all controversies arising from or related to the CFG-TMS Loans that have been or could be raised against the Settling Defendants and their respective affiliates in the Litigation; and

WHEREAS, the Parties acknowledge and agree that this Agreement constitutes a compromise in settlement of the claims and causes of action that have been or could be raised by the Named Plaintiffs and the TMS Settlement Class against the Settling Defendants and other “Released Persons,” as defined herein, as to the “CFG-TMS Loans” as defined herein, but shall in no way release or affect the existing or future claims, causes of action, remedies, and/or rights to relief of any of the Named Plaintiffs or other members of the Litigation Class, including without limitation, the TMS Settlement Class and/or any of the “Non-TMS Plaintiff Borrowers,” against any person, association or entity with respect to the “CFG Loans,” except for the claims of the TMS Settlement Class Members against the “Released Persons” with respect to the CFG-TMS Loans.

NOW THEREFORE, the Parties, each intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth herein, do hereby agree, subject to approval of the Court of this Agreement and the provisions contained herein, that the Litigation and the “Released Claims,” as defined herein, against the “Released Persons,” as defined herein, are finally and fully compromised and settled and that the claims of the TMS Settlement Class Members against the Released Persons shall be dismissed with prejudice as against the Released

Persons as follows:

1. Denial of Liability; No Admissions

The Parties are entering into this Agreement in the interests of avoiding the burdens, expense, and risk of continued litigation and in order to resolve all of the vigorously disputed claims that remain undecided as between them. By entering into preliminary settlement discussions, agreeing to the terms of this Agreement, and/or seeking the approval of the Settlement, the Parties are not making any admissions or concessions, whatsoever, with respect to any of the factual or legal assertions or any claims or defenses being alleged, made or asserted in the Litigation. Neither this Agreement nor any of its terms or provisions nor any of the negotiations between the Parties or their counsel shall be construed as an admission or concession by any of the Parties or their counsel of anything whatsoever, including but not limited to, any alleged violation or breach of contract or duty, any alleged fraud, misrepresentation or deception, or any alleged violation of any federal, state, or local law, rule, regulation, guideline or legal requirement (or any other applicable law, rule, regulation, guideline or legal requirement), any alleged conduct that could be or has been asserted as the basis for punitive damages or sanctions, the merits of any defenses that the Settling Defendants have asserted, or the propriety of class certification of the TMS Settlement Class if the Litigation were to be litigated rather than settled. Except as necessary in a proceeding to enforce the terms of this Agreement, or to challenge and refute any assertions that the Settlement and/or the debt(s) arising from the Settlement and/or the compromised claims are dischargeable in bankruptcy, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish: (a) any liability or admission on the part of the Settling Defendants or their respective parent or subsidiary, affiliated, or predecessor companies, or their attorneys, to

establish the existence of any condition constituting a violation of or non-compliance with any federal, state, local or other applicable law, rule, regulation, guideline or other legal requirement or any condition that has been or could be asserted as the basis for punitive damages or sanctions; (b) the truth or relevance of any fact alleged by the Named Plaintiffs; (c) the existence of any class alleged by the Named Plaintiffs; (d) the propriety of class certification if the Litigation were to be litigated rather than settled; (e) the validity of any claim or any defense that has been or could have been asserted in the Litigation or in any other litigation; (f) that the consideration to be given to the TMS Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial; or (g) the propriety of class certification in any other proceeding or action. The Parties expressly agree that, in the event the Settlement does not become final and effective in accordance with Paragraph 12 hereof, no Party will use or attempt to use any conduct or statement of any other Party in connection with the Settlement, or any effort to seek approval of the Agreement, to affect or prejudice any other Party's procedural or substantive rights in any ensuing litigation. The Settling Defendants expressly reserve all procedural and substantive rights and defenses to all claims and causes of action and do not waive any such rights or defenses in the event that the Settlement is not approved for any reason.

2. Definitions

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

2.1 **Agreement.** "Agreement" means this Settlement and Release Agreement.

2.2 **CFG.** "CFG" means Defendant Century Financial Group, Inc., as identified in the Fourth Amended Petition in the Litigation.

2.3 **CFG Loan.** "CFG Loan" means any "Second Mortgage Loan," as defined in §

408.231.1 RSMo, secured by a mortgage or a deed of trust on residential real property situated in the State of Missouri, that was made by Century Financial Group, Inc., as lender, on or after June 28, 1994.

2.4 **CFG-TMS Loan.** “CFG-TMS Loan” means any of the 98 CFG Loans that were purchased by and/or assigned to TMS Mortgage, Inc. (d/b/a “The Money Store”) or Integrated Capital Group and which are identified for each of the members of the TMS Settlement Class on **Schedule A.**

2.5 **Class Counsel.** “Class Counsel” shall mean Plaintiffs’ Counsel, Walters Bender Strohbehn & Vaughan, P.C., 2500 City Center Square, 1100 Main Street, Kansas City, Missouri 64105.

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

2.7 **Counsel for the Settling Defendants.** “Counsel for the Settling Defendants” means Winston & Strawn, LLP, 100 North Tryon Street, Suite 2900, Charlotte, North Carolina 28202.

2.8 **Effective Date.** The “Effective Date” of this Agreement means the date when all of the conditions set forth in Paragraph 12 have occurred and the Settlement thereby becomes effective in all respects.

2.9 **Escrow Agent.** “Escrow Agent” means Missouri Bank and Trust Company of Kansas City, 1044 Main Street, Kansas City, Missouri, or some other insured depository institution in Missouri selected by Plaintiffs’ Counsel, which shall escrow the Settlement Payment as stated in Paragraph 4.

2.10 **Final Approval Order and Judgment.** “Final Approval Order and Judgment”

means an Order and Judgment of the Court in a form substantially the same as that attached hereto as **Exhibit C**, finally approving this Agreement and the Settlement pursuant to Mo. Rule 52.08.

2.11 **Final Approval Hearing.** “Final Approval Hearing” (or “Fairness Hearing”) means the hearing on final approval of the partial class action settlement memorialized by this Agreement.

2.12 **Final Hearing Date.** “Final Hearing Date” means the date set by the Court for the Final Approval Hearing.

2.13 **Litigation Class.** “Litigation Class” means the class of Missouri borrowers defined by the Court in the Litigation in the Order Certifying Plaintiffs’ Class, entered January 2, 2003.

2.14 **Master Financial Defendants.** “Master Financial Defendants” means all of the persons and entities involved and/or participating in the acquisition and/or securitization of mortgage loans by or through Master Financial, Inc. including without limitation the persons and entities involved and/or participating in the Master Financial Asset Securitization Trust 1997-1, Master Financial Asset Securitization Trust 1998-1, and Master Financial Asset Securitization Trust 1998-2, with each such “Master Financial Defendant” being identified individually and together with its respective officers, directors, owner trustees, indenture trustees, agents, parents, subsidiaries, affiliates, predecessors, successors or assigns. The following is a non-exclusive list of “Master Financial Defendants”: Master Financial, Inc., Bear Stearns Asset Backed Securities, Inc., PaineWebber Mortgage Acceptance Corp. IV, and The Bank of New York Mellon (f/k/a The Bank of New York) and Wilmington Trust Company as the purchaser(s), assignee(s), owner(s)/holder(s) and/or trustee(s) of the mortgage loans acquired from and/or securitized by

one or more of the Master Financial Defendants, and/or as the agent, trustee, owner trustee, co-owner trustee, indenture trustee, paying agent, custodian, administrator, servicer and/or master servicer of any one or more of the Master Financial Asset Securitization Trusts listed above and any other trust, fund or pool that is not a Settling Defendant.

2.15 **Named Plaintiffs.** “Named Plaintiffs” means James Baker, Jill Baker, Jeffrey Cox, Michelle Cox, William Springer and Linda Springer, and any person(s) claiming by, through and/or under them.

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

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

2.18 **Non-TMS Plaintiff Borrower.** “Non-TMS Plaintiff Borrower” means the Named Plaintiffs and the members of the Litigation Class whose “CFG Loan” was not a “CFG-TMS Loan,” as defined above. “Non-TMS Plaintiff Borrower” includes, but is not limited to the Named Plaintiffs, and each of them.

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

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

2.21 **Releasers.** “Releasers” means the TMS Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The Releasers shall not include any of the following: (a) any members of the TMS Settlement Class who opt out of the Settlement in accordance with Paragraph 9 below; (b) any person(s) not identified as a member of the TMS Settlement Class on **Exhibit D**; or (c) the Named Plaintiffs and any other Non-TMS Plaintiff Borrowers.

2.22 **Released Persons.** “Released Persons” shall mean the Settling Defendants, each of their joint or respective partners, affiliates, predecessor companies, parent companies, subsidiaries, divisions, or other organizational units of any kind doing business in their own names, or doing business under any other names, any entity now or in the past controlled by, controlling or under the common control with any of the foregoing and doing business under any other names, including Wachovia Corporation and Wells Fargo & Co., and any and all respective affiliates and subsidiaries, and each of their respective predecessors, successors and assigns, and each of their past and present officers, directors, shareholders, partners, associates, trustees, employees, agents, attorneys, accountants, representatives, beneficial owners, investment advisors, investment bankers, insurers, independent contractors, and the heirs, executors, predecessors, successors, and assigns of each; provided, however, that anything in this

Agreement to the contrary notwithstanding, and regardless of any prior or current relationship or affiliation with WFB or any other Settling Defendant, “Released Persons” **does not include any of the following**: (a) Century Financial Group, Inc. (“CFG”); (b) the “Master Financial Defendants”; (c) Wilmington Trust Company; (d) Wells Fargo Bank, N.A., individually and/or as the assignee of and/or successor to any other person, association or entity including, but not limited to, Norwest Bank Minnesota, N.A., as the purchaser, assignee, and/or owner/holder of any loans other than the CFG-TMS Loans, and/or as a trustee, owner trustee, co-owner trustee, indenture trustee, paying agent, servicer and/or master servicer of any loans other than the CFG-TMS Loans; (e) The Bank of New York Mellon (f/k/a The Bank of New York) as the purchaser, assignee, and/or owner/holder of any loans other than the CFG-TMS Loans, and/or as a trustee, owner trustee, co-owner trustee, indenture trustee, paying agent, servicer and/or master servicer of any loans other than the CFG-TMS Loans; (f) JP Morgan Chase Bank, NA, individually and/or formerly and/or as successor to Banc One, NA, Chase Manhattan Bank and/or others, in its capacity as an assignee, holder, trustee, servicer and/or master servicer of loans other than CFG-TMS Loans; (g) any current and/or former defendant named in the Litigation, other than the Settling Defendants; (h) any person, association or entity, who is not a Released Person, that serviced any of the CFG-TMS Loans; (i) any person, association or entity to whom any of the loans of any of the Non-TMS Plaintiff Borrowers were sold, assigned or otherwise transferred or conveyed; (j) any person, association or entity that serviced any of the loans of any of the Non-TMS Plaintiff Borrowers; or (k) any person, association or entity to whom any of the CFG-TMS Loans were sold, assigned, transferred and/or conveyed prior to the sale, assignment, transference or conveyance to a Settling Defendant.

2.23 **Released Claims.** “Released Claims” means any and all claims, demands,

actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, liens, costs, surcharges, losses, attorneys' fees, expenses or liabilities of any kind whatsoever, in law or in equity, for any relief available to the Releasors under § 408.562 RSMo in connection with the CFG-TMS Loans, whatsoever, including monetary, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential or punitive damages, as well as any and all claims for treble damages, penalties, sanctions, attorneys' fees, costs or expenses, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, relate to, or arise out of the CFG-TMS Loans and which any of the Releasors have had, or now have, from the beginning of time up through and including the Effective Date, against the Released Persons ("Claims"), including but not limited to, any and all Claims arising out of or relating to: (1) allegations that were or could have been asserted against the Released Persons in the Litigation in any way relating to the TMS Settlement Class Members' CFG-TMS Loans; (2) any activities that any of the Released Persons took with respect to the CFG-TMS Loans including, without limitation, any alleged representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act, deceptions, acts of unconscionability, unfair business practices, breaches of contract, usury, unfulfilled promises, breaches of warranty or fiduciary duty, conspiracy, excessive fees collected, or violations of any consumer protection statute or merchandising practices act, any state unfair trade practice statute, or any other body of case, statutory or common law or regulation, federal or state, including but not limited to the Missouri Second Mortgage Loans Act, §§ 408.231, *et seq.* RSMo, or any other similar state statute; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, 12 C.F.R. part

226; the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, *et seq.*, and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, *et seq.*, and its implementing regulation, 12 C.F.R. part 203; the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.*; and the Federal Trade Commission Act, 15 U.S.C. §§ 45, *et seq.*; and/or (3) any conduct undertaken by any of the Released Persons to defend the Litigation, including but not limited to, any alleged improper discovery conduct and/or any request for sanctions in the Litigation. The term “Released Claims” also includes, without limitation, any allegation that any Released Person has conspired with, aided and abetted, or otherwise acted in concert with any other third parties with respect to any of the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances, or other matters related to the Litigation or the conduct of the Litigation. It is the intention of the Releasers to provide a general release of the Released Claims against the Released Persons; provided, however, that anything in this Agreement to the contrary notwithstanding, the term Released Claims **does not include**: (1) any claims of any kind or type by the Releasers against any person, association or entity that is not a Released Person, whether such claims arise out of or relate to CFG-TMS Loans or some other conduct, transaction, loan or occurrence; (2) any claims of any kind or type by the Releasers against any person, association or entity in connection with a loan and/or loan transaction originated or made by a person, association or entity other than CFG, notwithstanding the fact that the loan, in whole or in part, was purchased by and/or assigned to

TMS Mortgage, Inc. d/b/a “The Money Store” or Integrated Capital Group; (3) any claims of any kind or type against Wells Fargo Bank, N.A., individually and/or as the assignee of and/or successor to any other person, association or entity including, but not limited to, Norwest Bank Minnesota, N.A., in any way relating to any CFG Loan or any other loan that is not a CFG-TMS Loan; (4) any claims of any kind or type against The Bank of New York Mellon (f/k/a The Bank of New York) and/or any of the other Master Financial Defendants in any way relating to any CFG Loan or any other loan that is not a CFG-TMS Loan; and/or (5) any claims of any kind or type by the Non-TMS Plaintiff Borrowers with respect to the CFG Loans.

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

2.25 **Settlement Fund.** “Settlement Fund” means the amount to be delivered by WFB in accordance with Paragraph 4.a below. In no event shall the Settling Defendants be obligated to pay more than the amount of the Settlement Fund (\$7,350,000.00), including all attorneys’ fees, costs, administration expenses, incentive award, and any other amounts whatsoever.

2.26 **Settling Defendants.** “Settling Defendants” shall have the meaning set forth in in the recitals.

2.27 **TMS.** “TMS” means TMS Mortgage, Inc., d/b/a “The Money Store,” and as used in this Agreement refers specifically to the 98 CFG Loans that were purchased by and/or assigned to TMS Mortgage, Inc. (d/b/a “The Money Store”) or Integrated Capital Group.

2.28 **TMS Settlement Class.** “TMS Settlement Class” shall have the meaning set forth in Paragraph 3(a) below. The “TMS Settlement Class” does not include any of the Named Plaintiffs or any of the other “Non-TMS Plaintiff Borrowers.”

2.29 **TMS Settlement Class Member.** “TMS Settlement Class Member” means any

member of the TMS Settlement Class who does not timely opt out of the Settlement pursuant to Paragraph 9.a below. If any TMS Settlement Class Member has died, filed for bankruptcy, or otherwise voluntarily or involuntarily transferred his or her rights under a CFG-TMS Loan, the person's heir, representative, successor or assign shall be deemed a TMS Settlement Class Member.

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

2.31 **WFB.** "WFB" means Wells Fargo Bank, N.A., as well as Wachovia Equity Servicing, LLC, f/k/a TMS Mortgage, Inc., d/b/a "The Money Store," The Money Store, LLC, f/k/a The Money Store, Inc., TMS Mortgage, Inc., d/b/a "The Money Store," Integrated Capital Group, and HomEq Servicing Corporation, and the joint or respective past and present officers, directors, agents, employees, attorneys, insurers, predecessors, successors, and assigns of each.

2.32 **Usage.** The following rules apply to the construction of this Agreement:

2.32.1 The singular includes the plural and the plural includes the singular.

2.32.2 "Include" and "including" are not limiting.

2.32.3 The headings of the sections and subsections are for convenience only and shall not constitute a part of this Agreement and shall not affect the meaning, construction, or effect of the applicable provisions of this Agreement.

2.32.4 Words such as "hereunder," "hereto," "hereof," and "herein," and other words of like import shall, unless the context clearly indicates to the

contrary, refer to the whole Agreement and not to any particular section, subsection, or clause hereof.

3. Certification of the TMS Settlement Class

a. The Named Plaintiffs and Plaintiffs' Counsel shall file a motion requesting that the Court preliminarily and finally certify a settlement for a class of persons for purposes of settlement only (referred to and defined herein as the "TMS Settlement Class"), to be defined as follows:

All persons who, on or after June 28, 1994, obtained a "Second Mortgage Loan," as defined in § 408.231.1 RSMo, that was secured by a mortgage or a deed of trust on residential real property situated in the state of Missouri, originated by Century Financial Group, Inc., and purchased by and/or assigned to TMS Mortgage, Inc. (d/b/a "The Money Store") or Integrated Capital Group and who did not timely exercise their right and option to exclude themselves from the litigation class that the Court previously certified on January 2, 2003.

b. A list of the members of the TMS Settlement Class for which preliminary and final approval of the Settlement will be sought is attached hereto as **Exhibit D**, but said Exhibit shall be filed under seal with the Court pursuant to the terms of the Stipulated Protective Order dated November 18, 2009 to protect the privacy of the names and addresses of the members of the TMS Settlement Class.

c. If this Agreement is not approved by the Court pursuant to the proposed Final Approval Order and Judgment, or if for any reason this Settlement fails to become effective pursuant to Paragraph 12, this Agreement, any preliminary and/or final approval of a settlement class provided herein, the Settlement (including any modifications made with the consent of the Parties), and any action(s) taken or to be taken in connection therewith, shall be terminated and shall become null and void and have no further force or effect, any Preliminary Approval Order, Final Approval Order and Judgment shall be vacated, the Parties shall be restored to their

respective positions existing prior to the execution of this Agreement, and the Parties' rights and obligations with respect to the use of this Agreement and the settlement contemplated hereby will be subject to Paragraph 1 hereof. In addition, if this Agreement is not approved by the Court pursuant to the proposed Final Approval Order and Judgment, or if for any reason this Settlement fails to become effective pursuant to Paragraph 12, neither this Agreement, the preliminary certification of the TMS Settlement Class, the Preliminary Approval Order, nor any other document relating in any way to any of the foregoing, shall be relied on, referred to or used in any way for any purpose in connection with any further proceedings in the Litigation or any related action. In such case, or in the event that this Agreement shall terminate or the settlement embodied herein does not become effective for any reason, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, who shall be restored to their respective positions existing prior to the execution of this Agreement and any Party may reassert its claims and/or defenses against any other Party or Parties as provided in Paragraph 13 and in such event evidence relating to the Agreement, and all negotiations, shall not be discoverable or admissible in the Litigation or otherwise.

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

a. Subject to Paragraph 4.d, and provided the Agreement has not been terminated or rescinded pursuant to Paragraph 9.b, WFB shall pay the sum of Seven Million, Three Hundred Fifty Thousand and No/100 Dollars (\$7,350,000.00) (the "Settlement Payment") within ten (10) business days after entry of the Final Approval Order and Judgment. WFB shall deliver the Settlement Payment to the Escrow Agent for deposit into the escrow account as stated in Paragraph 4.b by means of a check made payable to "**Baker TMS Settlement Escrow**

Account.”

b. The Settlement Payment shall be deposited into an interest-bearing escrow account that the Parties shall establish, pursuant to mutually agreeable terms, at Missouri Bank & Trust, 1044 Main Street, Kansas City, Missouri, or some other insured depository institution in Missouri selected by Plaintiffs’ Counsel (the “Escrow Agent”) and shall thereafter comprise the “Settlement Fund.” All interest earned on the Settlement Fund while in escrow shall be added to and included within the definition of “Settlement Fund” and shall be allocated to the persons identified on **Schedule A** in proportion to his, her or their share of the Net Distributable Settlement Fund. The Settlement Fund, including any interest earned in escrow, shall be returned to WFB in the event that the Settlement is rescinded, terminated, vacated, or the Effective Date does not arrive for any other reason. The Settlement Fund while in the escrow account shall be invested in a manner that generates the highest return that can be obtained without risk to the principal.

c. The Parties’ escrow agreement shall provide that the Escrow Agent shall release the Settlement Fund to Class Counsel the first business day after the Effective Date. Class Counsel, subject to such supervision and direction of the Court as may be necessary, shall be responsible for and shall administer and oversee the distribution of the Settlement Fund, Net Settlement Fund, and Net Distributable Settlement Fund in accordance with the terms of the Final Approval Order and Judgment, this Agreement and **Schedule A**, which also shall be filed under seal with the Court pursuant to the terms of the Stipulated Protective Order dated November 18, 2009 to protect the privacy and rights of the members of the TMS Settlement Class.

d. If any member(s) of the TMS Settlement Class timely opt out and exclude

themselves from the Settlement and WFB does not terminate this Agreement pursuant to Subparagraph 9.b., the name(s) of the “opt out” class member(s) shall be removed from **Schedule A** and the portion of the Net Distributable Settlement Fund attributable to said “opt outs” shall remain a part of the Net Distributable Settlement Fund and will be reallocated to the TMS Settlement Class Members pro rata. Class Counsel shall submit any required revisions to **Schedule A** to the Court under seal prior to the Final Hearing Date.

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

f. Upon release of the Settlement Fund by the Escrow Agent to Class Counsel, Class Counsel shall calculate the Net Settlement Fund and Net Distributable Settlement Fund and distribute the Net Distributable Settlement Fund, plus any interest earned on said fund while in escrow, to the TMS Settlement Class Members (i.e., those members of the TMS Settlement Class, if any, who did not timely opt out) in the amounts and to the addresses shown on **Schedule A**, or as the Court may otherwise determine and approve. Such distributions to the TMS Settlement Class Members are referred to and defined as the “TMS Settlement Class Member Payments.” Class Counsel shall distribute the TMS Settlement Class Member Payments to the TMS Settlement Class Members within 30 days of the Effective Date by checks mailed to the TMS Settlement Class Members or, in the event of an TMS Settlement Class Member bankruptcy under Chapter 7, to the Chapter 7 bankruptcy trustee for said TMS Settlement Class Member, with notice of said mailing to said TMS Settlement Class Member. Class Counsel will re-mail any returned checks to any new address disclosed. To the extent any check is returned a second time, Class Counsel shall undertake reasonable efforts to locate a

current address for said TMS Settlement Class Member. If any TMS Settlement Class Member refuses to accept receipt of an TMS Settlement Class Member Payment check, or does not cash an TMS Settlement Class Member Payment check within thirty (30) days of receipt, Class Counsel shall undertake reasonable efforts to locate and/or contact the TMS Settlement Class Member and inquire about receiving and/or cashing the check. A TMS Settlement Class Member's right to a TMS Settlement Class Member Payment pursuant to this Agreement is a conditional right that terminates if a TMS Settlement Class Member to whom a TMS Settlement Class Member Payment is mailed fails to cash such check within one hundred eighty (180) days from the date of issuance of said check. In such case, the check shall be null and void, the Parties shall have no further obligations to said TMS Settlement Class Member, and said TMS Settlement Class Member shall nonetheless be bound by the Release, and the Final Approval Order and Judgment. Within two hundred ten (210) days of the Effective Date, Class Counsel shall file a report with the Court confirming that the entirety of the Net Distributable Settlement Fund/TMS Settlement Class Member Payments were distributed to the TMS Settlement Class Members pursuant to the original or any revised **Schedule A** and checks cashed or, if such a confirmation cannot be provided, outlining the steps that remain to distribute any unclaimed portion of the Net Distributable Settlement Fund to the TMS Settlement Class Members. Class Counsel shall reallocate the amounts of any unclaimed or uncashed checks to the paid TMS Settlement Class Members pro rata based on their allocable share of their total paid distributions of claimed checks at such time as Class Counsel determines appropriate in their sole discretion, but which in any event shall be prior to the expiration of any period of escheatment.

g. Class Counsel shall be responsible for preparing, filing and addressing any requisite IRS Form 1099s. TMS Settlement Class Members shall be responsible for any taxes

due or any tax liability arising out of the distribution of the Settlement Fund.

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

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

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

5. Incentive Award and Common Fund Attorneys' Fees and Costs

a. The Named Plaintiffs may petition the Court for the payment of an incentive award in a total amount not to exceed \$10,000 per couple (\$30,000 total) in recognition of their services and commitment to the TMS Settlement Class and the claims that have resulted in a substantial benefit to the TMS Settlement Class Members. The amount of any incentive award approved by the Court, and any interest attributable to said amount while in escrow, shall be deducted from the Settlement Fund to determine the "Net Settlement Fund" from which any award of attorneys' fees to Plaintiffs' Counsel to be paid from the common fund recovery shall be deducted before the balance is distributed to the TMS Settlement Class Members as the "Net Distributable Settlement Fund" in accordance with **Schedule A**. The Settling Defendants will

not object to the Named Plaintiffs applying to the Court for and/or receiving an incentive award in the above-stated amount. To the extent the Court approves an incentive award in an amount less than the not-to-exceed amount stated above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Fund.

b. Plaintiffs' Counsel and/or the Named Plaintiffs may petition the Court for an award of litigation expenses and/or court costs not to exceed \$18,822.46. The amount of any such award, and any interest attributable to said amount(s) while in escrow, shall also be deducted from the Settlement Fund to determine the Net Settlement Fund from which any award of attorneys' fees to Class Counsel to be paid from the common fund recovery shall be deducted before the balance is distributed to the TMS Settlement Class Members as the "Net Distributable Settlement Fund" in accordance with **Schedule A**. The Settling Defendants will not object to Plaintiffs' Counsel and/or the Named Plaintiffs applying to the Court for, and receiving, an award of expenses and/or costs in the above amount. To the extent the Court awards expenses and/or costs in an amount that is less than the not-to-exceed amount stated above, the difference and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Fund.

c. Plaintiffs' Counsel and/or the Named Plaintiffs may also petition the Court for an award of attorneys' fees not to exceed forty-seven percent (47%) of the Net Settlement Fund (as a common fund recovery), which award of attorneys' fees is estimated to be \$3,431,553.44 if the Court approves the award as proposed. The amount of any such fee award approved by the Court, and any interest attributable to said amount while in escrow, shall be deducted from the Net Settlement Fund to determine the Net Distributable Settlement Fund and the individual TMS

Settlement Class Member Payments. The Settling Defendants will not object to Plaintiffs' Counsel and/or the Named Plaintiffs applying to the Court for, and receiving, an award of attorneys' fees in the above amount. To the extent the Court awards attorneys' fees in an amount that is less than the not-to-exceed amount stated above, the difference and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Distributable Settlement Fund.

d. Except as provided in this Paragraph 5, each of the Parties shall bear its own attorneys' fees, court costs, and expenses incurred in the prosecution, defense, and/or settlement of the Litigation, and specifically, without limitation, the Settling Defendants shall bear no other attorneys' fees, court costs or expenses. In no event shall the Settling Defendants be obligated to pay more than the amount of the Settlement Fund (\$7,350,000.00), including all attorneys' fees, costs, administration expenses, incentive award, and any other amounts whatsoever.

6. Releases

a. On the Effective Date, in exchange for the payment by WFB of \$7,350,000.00 to the Settlement Fund as provided in Paragraph 4.a, and for other good and valuable consideration, Releasors, by operation of this Release and the judgment set forth in the Final Approval Order and Judgment, shall be deemed without further action by any person or the Court (i) to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the Released Persons of and from any and all Released Claims; (ii) to have consented to dismiss with prejudice the Released Claims of the Releasors against the Released Persons in the Litigation; and (iii) to be forever barred and enjoined from instituting or further prosecuting the Released Claims in any forum whatsoever including, but not limited to, any state, federal, or foreign court, or regulatory agency. The Parties agree that the Released Persons will suffer

irreparable harm if any TMS Settlement Class Member takes action inconsistent with this Paragraph 6.a, and that, in such event, the Released Persons may seek an injunction as to such action or proceeding without further showing of irreparable harm.

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

c. Subject to Court approval, each TMS Settlement Class Member shall be bound by this Agreement and all of their remaining claims against TMS and other Released Persons with respect to his or her CFG-TMS Loan and the Litigation shall be dismissed with prejudice and released even if such TMS Settlement Class Member never received actual, prior notice of the Litigation or the Settlement in the form of the Class Mail Notice or otherwise. When effective, the Releases and agreements contained in this Paragraph 6 shall apply to and bind all TMS Settlement Class Members, including those TMS Settlement Class Members whose Class Mail Notices are returned as undeliverable, and those for whom no current address can be found, if any.

7. Representations and Stipulations

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

b. Upon the Effective Date, the following stipulations shall be made:

i. No Privilege Waiver. Each Party stipulates and acknowledges that neither this Agreement nor a Party's decision to negotiate and/or execute the Agreement can be used to show or establish that a Party's conduct during this Litigation, including that of counsel, gives rise to or constitutes a waiver of the attorney-client, common interest or joint defense privilege or work product doctrines.

ii. Claims of the Non-TMS Plaintiff Borrowers. The Parties stipulate and agree for purposes of this Agreement and the instant Settlement that, based on the loan files, payment histories and other information and documents produced in the case, the CFG Loans of the Non-TMS Plaintiff Borrowers are not CFG-TMS Loans, and thus, the Non-TMS Plaintiff Borrowers cannot recover any damages, penalties or other relief from the Settling Defendants with respect to the CFG-TMS Loans. The Parties further agree that a finding and/or conclusion to this effect shall be included in the Final Approval Order, but such a finding and/or conclusion by the Court shall not in any way be deemed a holding that the Non-TMS Plaintiff Borrowers, or any of them, have released any claims of any kind or type against any person or entity with respect to the CFG Loans.

iii. Use of Discovery Information. The Parties agree to comply with the terms

of the Stipulated Protective Order, except as the Parties have previously agreed or may hereafter agree.

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

8. Preliminary Approval Order

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

a. Certifying the proposed TMS Settlement Class pursuant to Mo. Rule 52.08 for settlement purposes;

b. Preliminarily approving the Settlement as fair, reasonable and adequate under Mo. Rule 52.08 subject to a final determination by the Court;

c. Approving the appointment of the Named Plaintiffs as representatives of the TMS Settlement Class for settlement purposes;

d. Approving the appointment of Plaintiffs' Counsel as counsel for the TMS Settlement Class for settlement purposes;

- e. Approving a form of mailed notice substantially similar to the Class Mail Notice attached as **Exhibit A** to be sent to the members of the TMS Settlement Class;
- f. Directing Plaintiffs' Counsel to mail the Class Mail Notice promptly after entry by the Court of the Preliminary Approval Order to the TMS Settlement Class by first-class mail to the last known address of such persons;
- g. Establishing a procedure for members of the TMS Settlement Class to opt out and setting a date, approximately thirty (30) days after the mailing of the Class Mail Notice, after which no member of the TMS Settlement Class shall be allowed to opt out of the TMS Settlement Class;
- h. Establishing a procedure for the members of the TMS Settlement Class to appear and/or object to the Settlement and setting a date, approximately thirty (30) days after the mailing of the Class Mail Notice, after which no member of the TMS Settlement Class shall be allowed to object; and
- i. Establishing a procedure for motions to intervene in the Litigation and setting a date, approximately thirty (30) days after the mailing of the Class Mail Notice, after which no one shall be allowed to intervene;
- j. Scheduling a hearing on final approval of this Agreement and establishing a procedure for the TMS Settlement Class Members to appear at the hearing;
- k. Staying the Litigation as against the Settling Defendants until further order of the Court, other than as may be necessary to effectuate the Settlement and carry out the terms of the Agreement or the responsibilities related or incidental thereto; and
- l. Containing such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable.

9. Opt Outs, Class Member Objections and Intervention

a. Procedure for Opt Outs. The deadline for opt out requests shall be set forth by the Court in the Preliminary Approval Order. Any request to opt out must be in writing and must include the name, address, telephone number, and last four digits of the Social Security Number of the class member seeking to opt out and a statement that the class member and all other borrowers named on the class member's promissory note are seeking exclusion. Any opt out request must be personally signed by each person who was a party to the promissory note in connection with the class member's CFG-TMS Loan, unless such person is deceased or legally incompetent. In the event a party to the promissory note is deceased or legally incompetent, the personal representative or guardian must sign the opt out request. Any opt out request must include a reference to "Baker v. Century Financial Group, Case No. 7CV 100-4294" and be mailed to:

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

and

T. Thomas Cottingham, III, Esq.
Stacie C. Knight, Esq.
Winston & Strawn, LLP
100 North Tryon Street, Suite 2900
Charlotte, NC 28202
(on behalf of the Settling Defendants)

To be considered timely and effective, any opt out request must be received on or prior to the date established by the Court in the Preliminary Approval Order. No person may opt out of the TMS Settlement Class by having a request to opt out submitted by an actual or purported agent

or attorney submit an opt out request on said person's behalf. Nor may an opt out request may be submitted or made on behalf of a group of class members. Each member of the TMS Settlement Class who does not submit an opt out request substantially in compliance with this Paragraph 9 shall be included in the TMS Settlement Class and deemed a TMS Settlement Class Member. For purposes of determining timeliness, an opt out request shall be deemed to have been submitted when received by either Class Counsel or Counsel for the Settling Defendants. Plaintiffs' Counsel shall notify Counsel for the Settling Defendants upon receipt of any opt out requests and shall provide the Court with a list of any persons who timely and adequately file a request to opt out and be excluded from the Settlement on or before the date of the Final Approval Hearing.

b. Effect of Opt Outs By Members of the TMS Settlement Class. If class member opt outs result in the exclusion from the Settlement of more than 10 of the 98 loans that would otherwise be included in the Settlement, the Settling Defendants, acting jointly in their sole discretion, may rescind this Agreement, in which event each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement and any orders entered in connection therewith shall be vacated, rescinded, canceled, and annulled. If the Settling Defendants exercise this option, the Parties shall return to the status quo in the Litigation as if the Parties had not entered into this Agreement and any Party may reassert its/their claims and/or defenses against the other Party or Parties as provided in Paragraph 13. In addition, and in such event, this Agreement and all negotiations, Court orders and proceedings related thereto, shall be without prejudice to the rights of the Parties, and each of them, and evidence of or relating to the Agreement and all negotiations shall not be admissible or discoverable in the Litigation or otherwise. The Settling Defendants must exercise their option to rescind the Agreement

collectively pursuant to this Paragraph 9.b at least ten (10) business days prior to the Final Hearing Date, by giving written notice of such exercise to Plaintiffs' Counsel.

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

d. Procedure for Objections to Settlement. Any TMS Settlement Class Member who wishes to object to the Settlement or to the incentive awards or the awards of expenses, costs or attorneys' fees must file a written notice of objection with the Court as provided below (the "Notice of Objection") on or before the date established by the Court in the Preliminary Approval Order. For purposes of determining timeliness, a Notice of Objection shall be deemed to have been submitted when received and filed with the Clerk of the Court. Copies of the Notice of Objection must also be mailed or delivered to the following on or before the date for filing a Notice of Objection:

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

and

T. Thomas Cottingham, III, Esq.
Stacie C. Knight, Esq.
Winston & Strawn, LLP
100 North Tryon Street, Suite 2900
Charlotte, NC 28202
(on behalf of the Settling Defendants)

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

- (i) The name, address, and telephone number of the class member filing the objection;
- (ii) A statement of each objection asserted;
- (iii) A detailed description of the facts underlying each objection;
- (iv) Any loan documents in the possession or control of the objector and relied upon by the objector as a basis for the objection;
- (v) If the objector is represented by counsel, a detailed description of the legal authorities supporting each objection;
- (vi) If the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts;
- (vii) If the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documents by attaching them to the objection and provide any other evidence that the objector intends to present;
- (viii) A statement of whether the objector intends to appear at the hearing;
- (ix) A copy of any exhibits which the objector may offer during the hearing;
and
- (x) A reference to “Baker v. Century Financial Group, Case No. 7CV 100-4294.”

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

e. Intervention. Any person who wishes to intervene in the Litigation must file and serve his or her motion to intervene with the Court in accordance with the Missouri Rules of Civil Procedure on or before the date prescribed in the Preliminary Approval Order. To the extent any such TMS Settlement Class Member intervenes, such TMS Settlement Class Member shall be bound by this Agreement and will be entitled to receive only a pro rata payment from the Net Distributable Settlement Fund.

10. Final Approval Order and Judgment

a. The Named Plaintiffs and Plaintiffs' Counsel agree that they will request the Court to enter, after the hearing on final approval of this Agreement, a Final Approval Order and Judgment substantially in the form attached as **Exhibit C**.

b. In accordance with **Exhibit C**, the Final Approval Order and Judgment will certify the TMS Settlement Class and find that the Settlement and this Agreement are fair, reasonable, and adequate and in the best interests of the TMS Settlement Class, dismiss all claims and motions of the Named Plaintiffs on behalf of the TMS Settlement Class Members pending against the Settling Defendants in the Litigation on the merits and with prejudice as to the Releasers, declare that the TMS Settlement Class Members are bound by the Releases set forth in Paragraph 6 of this Agreement as of the Effective Date, find and/or conclude that the Non-TMS Plaintiff Borrowers cannot recover any damages, penalties, sanctions, or other relief from the Settling Defendants with respect to the CFG Loans because the CFG Loans of the Non-TMS Plaintiff Borrowers are not CFG-TMS Loans (which finding and/or conclusion shall not be deemed a holding that the Non-TMS Plaintiff Borrowers have released any claims of any kind or type with respect to the CFG Loans), contain an express determination by the Court that "there is no just reason for delay," reserve continuing jurisdiction over the enforcement of this

Agreement, the administration and distribution of the Settlement Fund and, if necessary, vacating and/or setting aside the Final Judgment in the event the Settlement does not (or cannot) become effective pursuant to Paragraph 12 below, and require the Parties to carry out the provisions of this Agreement.

11. Certifications to the Court

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

b. On or before the Final Hearing Date, Plaintiffs' Counsel shall file with the Court an affidavit verifying that they have complied with the procedures described in Paragraph 14.a with respect to all Class Mail Notices returned as undeliverable.

12. Effectiveness of Settlement Agreement

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

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

ii. A Preliminary Approval Order has been entered by the Court in a form substantially similar to that attached as **Exhibit B**, granting preliminary approval of this Agreement, and approving a form of Class Mail Notice, as provided in Paragraph 8;

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

iv. A Final Approval Order and Judgment has been entered by the Court in a

form substantially similar to that attached as **Exhibit C** as provided in Paragraph 10;

vi. The Final Approval Order and Judgment entered as provided in Paragraph 10 has become final, binding, and no longer subject to appellate review, which shall be one (1) business day following the latest of the following events: (a) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Final Judgment without any appeal having been taken or, (b) if there is an appeal or appeals, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order and Final Judgment without any material modification, of all proceedings arising out of the appeal (including but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on any remand), and all proceedings arising out of any subsequent appeal or appeals following decisions on remand; or (c) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

b. If any material portion of the Agreement, the Final Approval Order and Judgment is vacated, voided, modified, or otherwise altered by the Court or on appeal, any Party may, in its sole discretion, within five (5) business days of such ruling, declare that the Agreement has failed to become effective and in such circumstances the Agreement shall cease to be of any force and effect as provided in Paragraph 13.

13. Failure of Condition

If, for any reason, this Agreement fails to become effective as provided in Paragraphs 3, 9 and/or 12, each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement, any dismissal entered pursuant to this Agreement, the Final Judgment and any orders entered in connection with the Settlement, dismissal order or Final Judgment,

shall be vacated, rescinded, canceled, annulled and deemed “void” and/or “no longer equitable” for purposes of Mo. Rule 74.06 and the Parties shall be returned to the status quo prior to entering into the Settlement and Agreement with respect to the Litigation as if this Agreement had never been entered into, except that the provisions of Paragraph 1 hereof shall survive and remain binding on the Parties and effective in all respects regardless of the reasons for such failure of condition and any Party may reassert its claims and/or defenses against the other Party or Parties in the Litigation; provided, however, that if at such time the Litigation is terminated or has been otherwise concluded or if the Named Plaintiffs and/or the TMS Settlement Class Members are otherwise precluded from reasserting their claims against the Settling Defendants or any of the other Released Persons in the Litigation after requesting the Court to allow them to do so, then the Named Plaintiffs and the TMS Settlement Class Members may commence a new lawsuit or proceeding against the Settling Defendants and/or the other Released Persons, or any one or more of them in the same or separate proceedings, to pursue the claims and causes of action that they are currently asserting in the Litigation as if the claims had been reasserted in the Litigation as stated herein. In such event, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all of the Parties, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Litigation or otherwise.

14. Class Notice Forms

a. **Exhibit D** constitutes a list of the members of the TMS Settlement Class to whom notice pursuant to this Agreement shall be provided. Prior to mailing, Plaintiffs’ Counsel will update the addresses by use of the United States Postal Service’s National Change of Address database or another address database service (e.g., Accurint, Intelius). Plaintiffs’ Counsel will

re-mail any returned notices to any new address disclosed. To the extent any notice is returned a second time, Plaintiffs' Counsel shall undertake reasonable efforts to locate current addresses for said class member(s). The notices shall be mailed within five (5) days of the Preliminary Approval Order.

b. Subject to Court approval, all TMS Settlement Class Members shall be bound by this Agreement and the Released Claims shall be dismissed with prejudice and deemed released as of the Effective Date, even if a TMS Settlement Class Member did not receive actual notice of the Litigation or the Settlement. Further, the Parties expressly acknowledge and agree that a Final Judgment shall be entered by the Court dismissing the Released Claims and barring the relitigation of the Released Claims as provided herein, regardless of whether such Released Claims were actually asserted, to the fullest extent of the law and that any dismissal order or judgment shall be entitled to full faith and credit in any other court, tribunal, forum, including arbitration fora, or agency.

15. Public Comments and Press Releases

a. The Named Plaintiffs and Plaintiffs' Counsel agree that they will not issue any press release without giving Counsel for the Settling Defendants an opportunity to review and comment on any such release prior to it being made public.

b. Before the Motion for Preliminary Approval of Class Action Settlement is filed, neither the Parties nor any of their counsel shall issue any press release or have other communications with the media regarding the Agreement or the Settlement, except as required by law.

c. It is expressly understood and agreed that a Party's website is not the "press" and that the publication and/or a description of information and documents on a Party's website is

not a “press release.”

d. No Party and no counsel shall make any public comments including any posting on the Party’s website that would undermine the Settlement, adversely affect the ability of the Parties to obtain final approval of the Settlement, or disparage any other Party or counsel for any Party.

e. Nothing in this Section shall prohibit counsel from providing legal advice to any of the individual TMS Settlement Class Members and/or any other client.

16. General Provisions

a. Entire Agreement. This Agreement, together with the attached exhibits, constitutes the full, complete and entire understanding, agreement and arrangement of and between the Named Plaintiffs and the TMS Settlement Class Members on the one hand and the Settling Defendants on the other hand with respect to the Settlement and the Released Claims against the Released Persons. This Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the Settlement and the Released Claims against the Released Persons. Except for those set forth expressly in this Agreement, there are no agreements, covenants, promises, representations or arrangements between the Parties with respect to the Settlement and/or the Released Claims against the Released Persons.

b. Severability. This Agreement shall be enforced in its entirety to the maximum extent allowed by law. If any provision contained in this Agreement shall be determined to be invalid, illegal, unenforceable or contrary to law in any respect for any reason, such provision or portion of such provision shall be of no force or effect; but, subject to Paragraph 12.b hereof, the validity, legality, and enforceability of the provision in any other respect and of any and all of the

remaining provisions of this Agreement shall continue in full force and effect and shall not be impaired in any way. The Parties agree that, to the extent allowed by law, they shall meet and confer in good faith with respect to any provision found to be in contravention of the law in order to agree on a substitute provision.

c. Modification in Writing. This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by all Parties. This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

d. Ongoing Cooperation. The Parties hereto shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement. The execution of documents must take place prior to the Final Hearing Date.

e. Duplicate Originals/Execution in Counterpart. All Parties, Plaintiffs' Counsel and Counsel for the Settling Defendants shall sign two (2) copies of this Agreement and each such copy shall be considered an original. This Agreement may be signed in one or more counterparts. All executed copies of this Agreement, and photocopies thereof (including facsimile copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

f. No Reliance. Each Party to this Agreement warrants that he, she or it is acting upon his, her, or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Agreement.

g. Governing Law. This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the State of Missouri, without regard to conflict of laws rules. This Agreement shall be enforced in the Circuit Court of Clay County, Missouri.

The Settling Defendants, the Named Plaintiffs and the TMS Settlement Class Members waive any objection that each such Party may now have or hereafter have to the venue of such suit, action, or proceeding and irrevocably consent to the jurisdiction of the Clay County Court in any such suit, action or proceeding, and agree to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding.

h. Reservation of Jurisdiction. Notwithstanding the dismissal of and entry of a judgment on the Released Claims, the Court shall retain jurisdiction for purposes of enforcing the terms of this Agreement and implementing the Settlement, including the issuance of injunctions against actions brought by TMS Settlement Class Members in violation of the Final Judgment.

i. Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.

j. Mutual Preparation. This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

k. Gender Neutrality. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa.

l. Taxes. All TMS Settlement Class Members shall be responsible for paying and/or reporting any and all federal, state and local income taxes due on the payments made to them pursuant to the Settlement.

m. No Other Financial Obligations on the Settling Defendants. The Settling Defendants shall not be liable for or obligated to pay any fees, expenses, costs or disbursements to the Named Plaintiffs, Plaintiffs' Counsel and/or any of the TMS Settlement Class Members or any attorney representing any of them, either directly or indirectly, in connection with the Litigation or the administration of this Agreement, other than the amounts expressly provided for herein. Any miscellaneous settlement administration expenses of any kind shall be advanced by Plaintiffs' Counsel and reimbursed from the Settlement Fund, subject to the Court's approval.

n. Non-Use of the Agreement. In addition to the above, and as may be otherwise stated herein, the Named Plaintiffs, Plaintiffs' Counsel and the TMS Settlement Class Members agree that neither this Agreement, nor its terms, nor any related negotiations, statements or court proceedings, nor the Settlement Fund, the Net Settlement Fund, or any other amounts specified herein may be offered or used in any litigation, action or proceeding in which any of the Settling Defendants is a party for any purpose except to enforce the terms of this Agreement.

o. Authority. With respect to themselves, each of the Parties to this Agreement represents, covenants and warrants that (i) they have the full power and authority to enter into and consummate all transactions contemplated by this Agreement and have duly authorized the execution, delivery and performance of this Agreement and (ii) the person executing this Agreement has the full right, power and authority to enter into this Agreement on behalf of the Party or Parties for whom he/she is executing this Agreement, and the full right, power and authority to execute any and all necessary instruments in connection herewith, and to fully bind such Party or Parties to the terms and obligations of this Agreement.

p. Exhibits. The exhibits attached to this Agreement are incorporated herein as though fully set forth.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed as of the earliest date and year written below.

Dated: September ____, 2013

James Baker, on behalf of the TMS Settlement Class Members.

Dated: September ____, 2013

Jill Baker, on behalf of the TMS Settlement Class Members.

Dated: September ____, 2013

Jeffrey Cox, on behalf of the TMS Settlement Class Members.

Dated: September ____, 2013

Michelle Cox, on behalf of the TMS Settlement Class Members.

Dated: September ____, 2013

William Springer, on behalf of the TMS Settlement Class Members.

Dated: September ____, 2013

Linda Springer, on behalf of the TMS Settlement Class Members.

WELLS FARGO BANK, N.A.,
INDIVIDUALLY AND AS SUCCESSOR BY
MERGER TO WACHOVIA EQUITY
SERVICING, LLC (F/K/A TMS MORTGAGE,
INC., D/B/A "THE MONEY STORE"), THE
MONEY STORE, LLC (F/K/A THE MONEY
STORE, INC.), INTEGRATED CAPITAL
GROUP, AND HOMEQ SERVICING
CORPORATION, AND AS ATTORNEY-IN-
FACT FOR THE BANK OF NEW YORK
MELLON (F/K/A THE BANK OF NEW
YORK)

Dated: September ____, 2013

By: _____

Title: _____

Plaintiffs' Counsel

Dated: September ____, 2013

By: _____

Counsel for the Settling Defendants

Dated: September ____, 2013

By: _____

SCHEDULES AND EXHIBITS

Schedule A – Proposed Distribution Schedule of Net Distributable Settlement Fund/TMS
Settlement Class Member Payments

Exhibit A – Class Mail Notice

Exhibit B – Preliminary Approval Order

Exhibit C – Final Approval Order and Judgment

Exhibit D – TMS Settlement Class List