

This SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) is made subject to approval by the Court, as defined herein, by Steven L. and Ruth E. Mitchell (the “Named Plaintiffs”), as the proposed representatives of the “WFB Settlement Class,” as defined herein, and Wells Fargo Bank, N.A. (“WFB”). The Named Plaintiffs, WFB and the WFB Settlement Class are referred to individually as a “Party” or collectively as the “Parties” as the context may require.

WHEREAS, the Named Plaintiffs filed the civil action currently pending before the Circuit Court of Jackson County, Missouri, Division 4 (the “Court”), styled *Steven and Ruth Mitchell v. Residential Funding Company, LLC, et al.*, Case No. 03-CV-220489-01 (the “Litigation”); and

WHEREAS, the Named Plaintiffs originally filed the Litigation on July 29, 2003 asserting claims pursuant to the Missouri Second Mortgage Loans Act (“MSMLA”), §§ 408.231-408.241 RSMo both for themselves and for a class of similarly-situated borrowers who, like the Named Plaintiffs, obtained a second or other subordinate lien mortgage loan secured by residential real estate situated in Missouri from Mortgage Capital Resource Corporation (“MCR”) on or after July 29, 1997; and

WHEREAS, the Named Plaintiffs sought 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 MCR loans in violation of § 408.233.1 RSMo; (b) all of the interest paid on the loans in violation of § 408.236 RSMo; (c) all of the interest payable on the 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 RSMo; and (f) reasonable attorneys’ fees and other relief

pursuant to § 408.562; and

WHEREAS, on December 8, 2006, the Court certified a litigation class in the Litigation comprised of those persons who obtained a Missouri residential second or other junior mortgage loan from Mortgage Capital Resource Corporation (“MCR”) on or after July 29, 1997 (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 Named Plaintiffs’ claims were tried before a jury from December 3, 2007 to January 4, 2008; and

WHEREAS, a judgment was entered in favor of the Named Plaintiffs and the members of the Litigation Class who did not timely opt out and exclude themselves, and against Defendants Residential Funding Company, LLC (“RFC”), Homecomings Financial, LLC, Household Finance Corporation, III (“Household”), and Wachovia Equity Servicing, LLC (as successor-in-interest to HomEq Servicing, LLC, which itself was the successor-in-interest to TMS Mortgage, Inc. d/b/a “The Money Store”), and which is now Wells Fargo Bank, N.A. (collectively, “WFB”), and

WHEREAS, the judgment awarded the Named Plaintiffs and the participating members of the Litigation Class (a) the amount of the loan fees determined to have been directly or indirectly charged, contracted for or received in connection with the loans in violation of § 408.233.1 RSMo; (b) all of the interest paid on the loans; (c) all of the interest payable on the loans (discounted to present value); (d) pre-judgment interest on the amount of the illegal loan fees from the date of the Note; (e) punitive damages pursuant to § 408.562 RSMo; and (f)

reasonable attorneys' fees pursuant to § 408.562 RSMo (a copy of the judgment is attached as **Exhibit H**); and

WHEREAS, the judgment was appealed and the Court of Appeals: (a) affirmed the Court's judgment on the awards for the loan fees, the interest paid and payable amounts, and the pre-judgment interest on the loan from the date of the Note; (b) reversed and remanded the Court's denial of prejudgment interest on the amounts recovered for the past interest paid; (c) reversed the punitive damages assessment; (d) remanded the Litigation for a new trial on punitive damages; and (e) granted the Named Plaintiffs' motion for statutory attorneys' fees on appeal but remanded the motion to the Court to determine the additional statutory award to be made; and

WHEREAS, WFB has paid to the Named Plaintiffs, the Litigation Class, and Class Counsel, and has fully satisfied all amounts affirmed by the Court of Appeals and all amounts awarded by the Court after remand of the Litigation; and

WHEREAS, the Named Plaintiffs are currently asserting both individual and class claims in the Litigation against Defendants RFC, Household and/or WFB for punitive damages, additional statutory attorneys' fees and other relief based on said entities' adjudicated violations of the MSMLA and their purchase, receipt, and servicing of the 302 mortgage loans at issue in the Litigation; and

WHEREAS, the Named Plaintiffs filed a *Motion for Sanctions Against Wells Fargo Bank, N.A. and Residential Funding Company, LLC for Fraud on the Court, for Violations of This Court's Orders Enforcing Discovery, and for Concealment and Spoliation of Material Evidence* (the "Motion for Sanctions") in the Litigation and requested the Court, among other

things, to impose monetary sanctions against Defendants WFB and RFC and/or to strike the pleadings of and render a judgment by default against WFB and RFC; and

WHEREAS, WFB continues to deny the remaining claims and causes of action being asserted against it in the Litigation and continues to deny the allegations and assertions in the Motion for Sanctions and denies any and all liability to the Named Plaintiffs, the “Non-WFB Plaintiff Borrowers,” as defined herein, and the members of the proposed WFB Settlement Class, and each of them; and

WHEREAS, counsel for the Named Plaintiffs (“Plaintiffs’ Counsel”) and counsel for WFB have thoroughly investigated the facts relating to the remaining 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 remaining claims against WFB; and

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

WHEREAS, Plaintiffs’ Counsel and counsel for WFB have engaged in arm’s length negotiations concerning the settlement of the remaining claims and causes of action against WFB; and

WHEREAS, the Named Plaintiffs, on behalf of the WFB Settlement Class, and Plaintiffs’ Counsel have concluded that a settlement with WFB as stated herein will be fair, just, equitable, reasonable, adequate and in the best interests of the members of the WFB 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 WFB through the re-trial and appeals, the delays, risks and costs of further prosecution of the remaining claims against WFB, the uncertainties of complex litigation, the benefits to be received pursuant to this Settlement, and the fact that the Named Plaintiffs and the other “Non-WFB Plaintiff Borrowers” will continue to pursue their remaining claims for punitive damages, additional statutory attorneys’ fees and other relief against RFC and Household; and

WHEREAS, WFB desires to settle the remaining claims being asserted against it 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 that have been or could be raised against WFB and its affiliates in the Litigation; and

WHEREAS, the Parties acknowledge and agree that this Agreement constitutes a compromise in settlement of the remaining claims and causes of action that have been or could be raised by the Named Plaintiffs and the WFB Settlement Class against Defendant WFB and the other “Released Persons,” as defined herein, as to the “MCR-WFB 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 WFB Settlement Class and/or any of the “Non-WFB Plaintiff Borrowers” against any person, association or entity with respect to the “MCR Loans,” except for the claims of the WFB Settlement Class Members against the “Released Persons” with respect to the MCR-WFB 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, as against the “Released Persons,” as defined herein, are finally and fully compromised and settled and that the claims of the WFB 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 any preliminary settlement discussions, agreeing to the terms of this Agreement, 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 of the remaining 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 WFB asserted; or the propriety of class certification of the WFB Settlement Class if the remaining claims against WFB in 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 WFB or its parent, subsidiary, affiliated, or predecessor companies, or its 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; (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 WFB Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons if the remaining claims against WFB were retried; (g) the propriety of class certification in any other proceeding or action; or (h) the propriety of the “multiplier” that the Named Plaintiffs requested and proposed in their *Second Application for Award of Attorney’s Fees* in any future petition or application to the Court for an award of additional attorneys’ fees against WFB. The Parties expressly agree that, in the event the Settlement does not become final and effective in accordance with Paragraph 12, 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. WFB expressly reserves all procedural and substantive rights and defenses to all claims and causes of action and does not waive any such rights or defenses in the event 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 **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.

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

2.4 **Counsel for WFB.** “Counsel for WFB” means Winston & Strawn, LLP, 100 North Tryon Street, Suite 2900, Charlotte, North Carolina 28202.

2.5 **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.

2.6 **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.

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

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

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

2.10 **Household.** “Household” means Defendant Household Finance Corporation, III, individually and together with any officers, directors, agents, employees, attorneys, insurers, predecessors, successors and assigns.

2.11 **Litigation Class.** “Litigation Class” means the class of Missouri borrowers defined by the Court in the Order Certifying Plaintiffs’ Class, entered December 8, 2006.

2.12 **MCR.** “MCR” means Mortgage Capital Resources Corporation, as identified in the Third Amended Petition in the Litigation.

2.13 **MCR Loan.** “MCR 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 located in the state of Missouri, that was originated by Mortgage Capital Resources Corporation on or after July 29, 1997.

2.14 **MCR-WFB Loan.** “MCR-WFB Loan” means any of the 23 MCR Loans that was purchased by, assigned to, and/or serviced by WFB.

2.15 **Named Plaintiffs.** “Named Plaintiffs” means Plaintiffs Steven L. and Ruth E. Mitchell, 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 the amount of such awards while in escrow.

2.18 Non-Settling Defendants. "Non-Settling Defendants" means Residential Funding Company, LLC, Homecomings Financial, LLC, Household Finance Corporation, III, and each of them, together with their joint and/or respective predecessors, successors and assigns.

2.19 Non-WFB Plaintiff Borrower. "Non-WFB Plaintiff Borrower" means any member of the Litigation Class who obtained an MCR Loan that was not an MCR-WFB Loan. "Non-WFB Plaintiff Borrower" includes, but is not limited to, the Named Plaintiffs and each of the other persons identified on **Exhibits F and G**, attached.

2.20 Plaintiffs' Counsel. "Plaintiffs' Counsel" means, collectively, Walters Bender Strohhahn & Vaughan, P.C., 2500 City Center Square, 1100 Main Street, Kansas City, Missouri 64105.

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

2.22 Releasers. "Releasers" means the WFB 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 WFB Settlement Class who opt out of the Settlement in

accordance with Paragraph 9 below; (b) any person not identified as a member of the WFB Settlement Class on **Exhibit E**; or (c) the Named Plaintiffs and other Non-WFB Plaintiff Borrowers.

2.23 **Released Persons.** “Released Persons” shall mean WFB and its partners, affiliates, predecessor companies, parent companies, subsidiaries, divisions, or other organizational units of any kind doing business in their own names, and 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., any and all of their 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 (including, specifically, but not limited to, attorneys Scott W. Martin, Kara S. Bemboom, Michael S. Hargens, the firm Husch Blackwell, LLP as successor of Husch & Eppenberger, LLC, Mary J. Hackett, Jeremy D. Feinstein, Thomas L. Allen, Roy W. Arnold, Dustin N. Pickens, Lyle D. Washowich, and the firm Reed Smith, LLP, and any consultants hired by said counsel), accountants, representatives, beneficial owners, investment advisors, investment bankers, insurers, independent contractors, and the heirs, executors, predecessors, successors, and assigns of each. Notwithstanding the above or anything in this Agreement to the contrary, and regardless of any prior or current relationship or affiliation with WFB, “Released Persons” **does not include**: (a) RFC (including, but not limited to, attorneys Mary J. Hackett, Jeremy D. Feinstein, Thomas L. Allen, Roy W. Arnold, Dustin N. Pickens, Lyle D. Washowich, and the firm Reed Smith, LLP in their capacity as attorneys for RFC), Household, or any other person, association or entity to whom any of the MCR Loans of any of the Non-WFB Plaintiff

Borrowers were sold, assigned or otherwise transferred or conveyed; (b) any person, association or entity that serviced any of the MCR Loans of any of the Non-WFB Plaintiff Borrowers; (c) any person, association or entity to whom any of the MCR-WFB Loans were sold, assigned, transferred and/or conveyed prior to the sale, assignment, transference or conveyance to WFB; or (d) any person, association or entity that serviced any of the MCR-WFB Loans and who is not a Released Person.

2.24 **Released Claims.** “Released Claims” means any and all of the remaining claims for punitive damages, sanctions, statutory attorneys’ fees and any other relief available to the Releasers under § 408.562 RSMo in connection with the MCR-WFB Loans, the Litigation or the Motion for Sanctions, and any and all other unsatisfied and/or unadjudicated 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 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 MCR-WFB Loans, the Litigation, or the Motion for Sanctions and which any of the Releasers currently have, from the beginning of time up through and including the Effective Date, against the Released Persons (the “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 WFB Settlement Class Members’ MCR-WFB Loans; (2) any activities

that any of the Released Persons took with respect to the MCR-WFB 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 RSMo, *et seq.*, or any other similar state statute; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, 12 C.F.R. part 226; the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, *et seq.*, and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, *et seq.*, and its implementing regulation, 12 C.F.R. part 203; the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*; the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*; and the Federal Trade Commission Act, 15 U.S.C. § 45, *et seq.*; and/or (3) any conduct undertaken by any of the Released Persons to defend the 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 Releasors to provide a general release of the Released Claims against the Released Persons; provided, however, that anything in this Agreement to the contrary notwithstanding, the term “Released Claims” does not include: (1) any claims of any kind or type by the Named Plaintiffs or the other Non-WFB Plaintiff Borrowers with respect to the MCR Loans or otherwise; (2) any claims of any kind or type against RFC (including, but not limited to, attorneys Mary J. Hackett, Jeremy D. Feinstein, Thomas L. Allen, Roy W. Arnold, Dustin N. Pickens, Lyle D. Washowich, and the firm Reed Smith, LLP in their capacity as attorneys for RFC) or Household; (3) any claims of any kind or type by the Releasors against any person, association or entity that is not a Released Person, whether or not such claims arise out of or relate to the MCR-WFB Loans or some other conduct, transaction, loan or occurrence; and/or (4) any claims of any kind or type by the Releasors against WFB and/or any other person, association or entity in connection with a loan and/or loan transaction originated or made by a person, association or entity other than MCR, notwithstanding the fact that the loan was purchased by and/or assigned to and/or serviced by WFB.

2.25 **RFC.** “RFC” means Defendant Residential Funding Company, LLC (formerly Residential Funding Corporation and GMAC-Residential Funding Corporation and f/k/a GMAC-RFC) and its past and present officers, directors, agents, employees, attorneys, insurers, predecessors, successors and assigns.

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

2.27 **Settlement Date.** “Settlement Date” means March 1, 2012.

2.28 **Settlement Fund.** “Settlement Fund” means the amount to be delivered by WFB

in accordance with Paragraph 4.a below.

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

2.30 **WFB.** “WFB” means Wells Fargo Bank, N.A., 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., HomEq Servicing Corporation, and TMS Mortgage Corporation d/b/a “The Money Store,” and the joint or respective past and present officers, directors, agents, employees, attorneys, insurers, predecessors, successors and assigns of each.

2.31 **WFB Settlement Class.** “WFB Settlement Class” shall have the meaning set forth in Paragraph 3.a below. The “WFB Settlement Class” does not include any of the “Non-WFB Plaintiff Borrowers.”

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

2.33 **Additional WFB Settlement Class Member Payment.** “Additional WFB Settlement Class Member Payment” means the portion of the “Net Distributable Settlement Fund” shown on **Schedule A** to be paid to the respective WFB Settlement Class Members pursuant to the Settlement, plus any interest earned and attributable to such sum while in escrow.

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

2.34.1 The singular includes the plural and the plural includes the singular.

2.34.2 “Include” and “including” are not limiting.

2.34.3 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.

2.34.4 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 WFB Settlement Class

a. The Named Plaintiffs shall file a motion requesting the Court to preliminarily and finally certify a class of persons for purposes of settlement only (referred to as the “WFB Settlement Class”) to be defined as follows:

All persons who, on or after July 29, 1997, obtained a “Second Mortgage Loan,” as defined in § 408.231.1 RSMo, from Mortgage Capital Resource Corporation on real property located in Missouri that was purchased by, assigned to and/or serviced by 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.), HomEq Servicing Corporation, and/or Wells Fargo Bank, N.A., and who did not timely exclude themselves from the litigation class that the Court certified on December 8, 2006.

b. A list of the members of the WFB Settlement Class for which preliminary and final approval of the Settlement will be sought is attached as **Exhibit E** but said Exhibit shall be filed under seal pursuant to the Stipulated Protective Order to protect the privacy of the WFB Settlement Class.

c. If this Agreement is not approved by the Court pursuant to the proposed Final Approval Order and Final Judgment, or if for any reason this Settlement fails to become effective

pursuant to Paragraph 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, or Final 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, neither this Agreement, any preliminary or final certification of the WFB Settlement Class, any Preliminary Approval Order, Final Approval Order, or Final Judgment, 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 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 WFB Settlement Class Members; Additional Award of Statutory Fees to Plaintiffs' Counsel for Work on Appeals

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 Five Million and No/100 Dollars

(\$5,000,000.00) (the “Settlement Payment”) within five (5) business days after entry of the Final Approval Order. 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 “**Mitchell WFB 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 Plaintiffs’ Counsel the first business day after the Effective Date. Plaintiffs’ Counsel, subject to such supervision and direction of the Court as may be necessary, shall be responsible for and shall administer and oversee the distribution of the Settlement Fund, Net Settlement Fund, and Net Distributable Settlement Fund in accordance with the terms of the Final Approval Order, this Agreement and **Schedule A**, which also shall be filed under seal with the Court pursuant to the Stipulated Protective Order to protect the privacy and rights of the

members of the WFB Settlement Class.

d. If any member(s) of the WFB 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 WFB Settlement Class Members pro rata. Plaintiffs’ 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 WFB Settlement Class electing to opt out or exclude themselves from the Settlement pursuant to Paragraph 4.d or for any other reason.

f. Upon release of the Settlement Fund by the Escrow Agent to Plaintiffs’ Counsel, Plaintiffs’ Counsel shall calculate the Net Settlement Fund and Net Distributable Settlement Fund and distribute the Net Distributable Settlement Fund, plus any interest earned on said fund while in escrow, to the WFB Settlement Class Members (i.e., those members of the WFB 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 WFB Settlement Class Members are referred to and defined as the “Additional WFB Settlement Class Member Payments.” Plaintiffs’ Counsel shall distribute the Additional WFB Settlement Class Member Payments to the WFB Settlement Class Members within thirty (30) days of the Effective Date by checks mailed to the WFB Settlement Class Members or, in the event of a WFB Settlement Class Member bankruptcy under Chapter 7, to the Chapter 7 bankruptcy trustee for said WFB Settlement Class Member, with notice of said mailing to said WFB Settlement

Class Member. Plaintiffs' Counsel will re-mail any returned checks to any new address disclosed. To the extent any check is returned a second time, Plaintiffs' Counsel shall undertake reasonable efforts to locate a current address for said WFB Settlement Class Member. If any WFB Settlement Class Member refuses to accept receipt of an Additional WFB Settlement Class Member Payment check, or does not cash an Additional WFB Settlement Class Member Payment check within thirty (30) days of receipt, Plaintiffs' Counsel shall undertake reasonable efforts to locate and/or contact the WFB Settlement Class Member and inquire about receiving and/or cashing the check. A WFB Settlement Class Member's right to an Additional WFB Settlement Class Member Payment pursuant to this Agreement is a conditional right that terminates if a WFB Settlement Class Member to whom an Additional WFB 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 WFB Settlement Class Member, and said WFB Settlement Class Member shall nonetheless be bound by the Release, the Final Approval Order, and the Final Judgment. Within two hundred ten (210) days of the Effective Date, Plaintiffs' Counsel shall file a report with the Court confirming that the entirety of the Net Distributable Settlement Fund/Additional WFB Settlement Class Member Payments were distributed to the WFB 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 WFB Settlement Class Members. Plaintiffs' Counsel shall reallocate the amounts of any unclaimed or uncashed checks to the paid WFB Settlement Class Members pro rata based on their allocable share of their total paid distributions of claimed checks at such time as Plaintiffs' Counsel determines appropriate in

their sole discretion, but which in any event shall be prior to the expiration of any period of escheatment.

g. Plaintiffs' Counsel shall be responsible for preparing, filing and addressing any requisite IRS Form 1099s. WFB 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 WFB 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 MCR-WFB Loan, regardless of whether a payment check has been made out to all or only some of the WFB Settlement Class Members' co-borrowers.

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

k. In addition to the Settlement Fund that it has agreed to pay or cause to be paid pursuant to Paragraph 4.a, and as part of the Settlement, WFB has stipulated and agreed to the entry of the *Stipulated Order to Approve and Award Additional Statutory Attorney's Fees*, entered by the Court on March 1, 2012 (the "Stipulated Order") and on March 7, 2012, paid Plaintiffs' Counsel the sum of Two Million Three Hundred Twenty-Two Thousand Three Hundred Forty-One and 16/100 Dollars (\$2,322,341.16) as additional statutory attorneys' fees.

In any future petition or application to the Court for an award of additional attorneys' fees against WFB, neither the Named Plaintiffs nor Plaintiffs' Counsel nor any member of the WFB Settlement Class shall use the Stipulated Order, or the amount of the additional statutory award approved in the Stipulated Order, against WFB as evidence of the propriety of the "multiplier" that Plaintiffs requested in their *Second Application for Award of Attorney's Fees*.

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

a. The Named Plaintiffs may petition the Court for the payment of an additional incentive award in a total amount not to exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00) in recognition of their continued services and commitment to the WFB Settlement Class and the remaining claims that have resulted in a substantial additional benefit to the WFB 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 WFB Settlement Class Members as the "Net Distributable Settlement Fund" in accordance with **Schedule A**. WFB 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 costs not to exceed One Hundred Thirty Thousand One Hundred Twelve and 69/100 Dollars (\$130,112.69). 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 Plaintiffs' Counsel to be paid from the common fund recovery shall be deducted before the balance is distributed to the WFB Settlement Class Members as the "Net Distributable Settlement Fund" in accordance with **Schedule A**. WFB 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 fifty percent (50%) of the Net Settlement Fund (as a common fund recovery), which award of attorneys' fees is estimated to be Two Million Four Hundred Twenty-Two Thousand Four Hundred Forty-Eight and 65/100 Dollars (\$2,422,448.65) 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 Additional WFB Settlement Class Member Payments. WFB 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 Paragraph 4.k and this Paragraph 5, each Party shall bear its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Litigation, and specifically, without limitation, WFB shall bear no other attorneys' fees, court costs or expenses.

6. Releases

a. On the Effective Date, in exchange for the payment by WFB of \$5,000,000.00 to the Settlement Fund as provided in Paragraph 4.a, and for other good and valuable consideration, Releasors, by operation of this Release, the Final Approval Order and the Final 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 WFB 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 WFB 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 WFB 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 WFB Settlement Class Member shall be bound by this Agreement and all of their remaining claims against WFB and other Released Persons with respect to his or her MCR-WFB Loan and the Litigation shall be dismissed with prejudice and released even if such WFB 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 WFB Settlement Class Members, including those WFB 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. WFB represents, warrants and declares that: (i) it has acted in good faith and has used its best efforts in identifying the members of the WFB Settlement Class and in producing the loan documents and loan payment and payoff information on which it understands the distribution of the Additional WFB Settlement Class Member Payments shown on **Schedule A** are based; and (ii) based on said best efforts, there are no members of the WFB Settlement Class other than those identified on **Exhibit E**.

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-WFB 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 MCR Loans of the Non-WFB Plaintiff Borrowers are not MCR-WFB Loans, and thus, the Non-WFB Plaintiff Borrowers cannot recover any damages, penalties or other relief from WFB with respect to the MCR 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-WFB Plaintiff Borrowers, or any of them, have released any claims of any kind or type against any person or entity with respect to the MCR 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 WFB that they have not been informed of an intention on the part of any member of the WFB 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 WFB or other Released Persons with respect to any 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 WFB Settlement Class who opt(s) out of the WFB 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 WFB 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 WFB Settlement Class for settlement purposes;
- d. Approving the appointment of Plaintiffs' Counsel as counsel for the WFB 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 WFB 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 WFB Settlement Class by first-class mail to the last known address of such persons;
- g. Establishing a procedure for members of the WFB 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 WFB Settlement Class shall be allowed to opt out of the WFB Settlement Class;

h. Establishing a procedure for the members of the WFB Settlement Class to 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 WFB Settlement Class shall be allowed to so 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 WFB Settlement Class Members to appear at the hearing;

k. Staying the Litigation as against WFB 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 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 MCR-WFB 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 “Mitchell v. Residential Funding Company, Case No. 03-CV-220489-01” and be mailed to:

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

To be considered timely and effective, any opt out request must be received prior to or on the date established by the Court in the Preliminary Approval Order. No person may opt out of the Settlement by having an actual or purported agent or attorney submit an opt out request on said person’s behalf. Nor may an opt out request be submitted or made on behalf of a group of persons. Each member of the WFB Settlement Class who does not submit an opt out request substantially in compliance with this Paragraph 9 shall be included in the WFB Settlement Class and deemed a WFB 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 WFB. Class Counsel shall notify Counsel for WFB 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 WFB Settlement Class. If class member opt outs result in the exclusion from the Settlement of more than four (4) of the twenty-three (23) loans that would otherwise be included in the Settlement, WFB, in its sole discretion, may rescind this Agreement, in which event each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement and any orders entered in connection therewith shall be vacated, rescinded, canceled, and annulled. If WFB exercises 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 such event, this Agreement and all negotiations, Court orders, and proceedings related thereto shall not be admissible or discoverable in the Litigation or otherwise. WFB must exercise its option to rescind the Agreement 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 WFB Settlement Class has filed for bankruptcy under Chapter 7 after obtaining his, her, or their MCR-WFB Loan, if the member of the WFB 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 WFB Settlement Class shall be deemed to have opted out of the Settlement. If neither the member of the WFB 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 WFB 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 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, Esq.
Kip D. Richards, Esq.
Walters Bender Strohbehn & Vaughan, P.C.
2500 City Center Square
1100 Main Street
Kansas City, MO 64105
(on behalf of the WFB 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 WFB)

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 Mitchell v. Residential Funding Company, Case No. 03-CV-220489-01.”

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

a. The Named Plaintiffs and Plaintiffs’ Counsel agree that they will request the Court to enter, after the hearing on final approval of this Agreement, a Final Approval Order substantially in the form attached as **Exhibit C**. In accordance with **Exhibit C**, the Final Approval Order will certify the WFB Settlement Class and find that the Settlement and this

Agreement are fair, reasonable, and adequate and in the best interests of the WFB Settlement Class. The Final Approval Order will require the Parties to carry out the provisions of this Agreement.

b. The Named Plaintiffs and Plaintiffs' Counsel agree that they will request the Court to enter a Final Judgment in the Litigation in a form substantially the same as that attached as **Exhibit D** after the Final Approval Hearing. In accordance with **Exhibit D**, the Final Judgment will dismiss all remaining claims and motions of the Named Plaintiffs on behalf of the WFB Settlement Class Members against WFB in the Litigation on the merits and with prejudice as to the Releasors, declare that the WFB 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-WFB Plaintiff Borrowers cannot recover any damages, penalties, sanctions or other relief from WFB with respect to the MCR Loans because the MCR Loans of the Non-WFB Plaintiff Borrowers are not MCR-WFB Loans (which finding and/or conclusion shall not be deemed a holding that the Non-WFB Plaintiff Borrowers have released any claims of any kind or type with respect to the MCR Loans), contain an express determination by the Court that "there is no just reason for delay," and 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.

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 WFB;

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 WFB Settlement Class as ordered by the Court;

iv. A Final Approval Order has been entered by the Court in a form substantially similar to that attached as **Exhibit C** as provided in Paragraph 10.a;

v. A Final Judgment has been entered by the Court, in a form substantially similar to that attached as **Exhibit D**, as provided in Paragraph 10.b; and

vi. The Final Approval Order and the Final Judgment entered as provided in Paragraphs 10.a and 10.b have 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, or the Final Judgment is vacated, voided, modified, or otherwise altered by the Court or on appeal, any Party may, in its sole discretion, within 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 WFB Settlement Class Members are otherwise precluded from reasserting their claims against WFB 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 WFB Settlement Class Members may commence a new lawsuit or proceeding against WFB 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 E** constitutes a list of the members of the WFB 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 WFB 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 WFB 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. 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.

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

c. 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.

d. Nothing in this Section shall prohibit counsel from providing legal advice to any of the individual WFB 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 WFB Settlement Class Members on the one hand, and WFB 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. 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.

c. 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.

d. 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.

e. Duplicate Originals/Execution in Counterpart. All Parties, Plaintiffs' Counsel and Counsel for WFB 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 Jackson County, Missouri and WFB, the Named Plaintiffs and the WFB 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 Jackson 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 WFB 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 WFB 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 WFB. WFB 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 WFB 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.

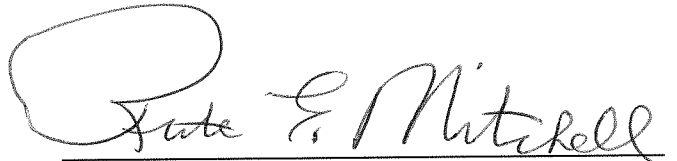
n. Non-Use of the Agreement. In addition to the above, and as may be otherwise stated herein, the Named Plaintiffs, the WFB Settlement Class, and Plaintiffs' Counsel agree that neither this Agreement, nor its terms, nor any related negotiations, statements, or court proceedings, nor the Settlement Fund, the Net Settlement Fund, or any other amounts specified herein, may be offered or used in the lawsuit styled *James Baker, et al. v. Century Financial Corp., et al.*, in the Circuit Court of Clay County, Missouri at Liberty, Case No. CV 100 4294, or in any other litigation, action, or proceeding in which WFB 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 for whom he/she has executed 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 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 Settlement Date.

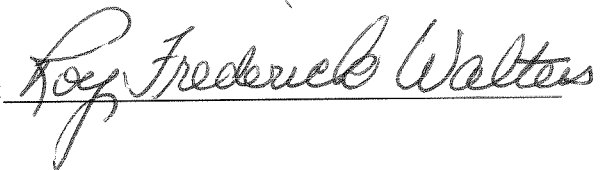

Steven L. Mitchell, as a named representative
on behalf of the WFB Settlement Class
Members.


Ruth E. Mitchell, as a named representative on
behalf of the WFB Settlement Class Members.

WELLS FARGO BANK, N.A.

By: _____
Title: _____

PLAINTIFFS' COUNSEL

By: 

COUNSEL FOR WELLS FARGO BANK,
N.A.

By: _____

Steven L. Mitchell, as a named representative
on behalf of the WFB Settlement Class
Members.

Ruth E. Mitchell, as a named representative on
behalf of the WFB Settlement Class Members.

WELLS FARGO BANK, N.A.

By: Mark E. Bruchner
Title: Senior Company Counsel

PLAINTIFFS' COUNSEL

By: _____

COUNSEL FOR WELLS FARGO BANK,
N.A.

By: J. Thomas O'Connell III

EXHIBITS AND SCHEDULES

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

Exhibit A – Class Mail Notice

Exhibit B – Preliminary Approval Order

Exhibit C – Final Approval Order

Exhibit D – Final Judgment

Exhibit E – WFB Settlement Class List

Exhibit F – List of Class Members – RFC Loans

Exhibit G – List of Class Members - Household Loans

Exhibit H – Nunc Pro Tunc Judgment and Order

ORIGINAL SCHEDULE FILED UNDER SEAL

Schedule A

Exhibit A

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

STEVEN AND RUTH MITCHELL,

Plaintiffs,

Vs.

RESIDENTIAL FUNDING CORPORATION,
et al.,

Defendants.

Case No. 03-CV-220489-01

Division 4

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND OF SETTLEMENT HEARING**

*A Missouri Court has authorized this Notice. This is not a solicitation from a lawyer.
Please read this Notice carefully and completely.*

THIS NOTICE APPLIES TO YOU BECAUSE (1) YOU ARE A MEMBER OF THE CLASS OF PERSONS CERTIFIED IN THIS LAWSUIT ON DECEMBER 8, 2006 AND (2) THE MISSOURI SECOND MORTGAGE LOAN YOU OBTAINED FROM MORTGAGE CAPITAL RESOURCE CORPORATION WAS PURCHASED BY, ASSIGNED TO AND/OR SERVICED BY 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.), HOMEQ SERVICING CORPORATION, AND/OR WELLS FARGO BANK, N.A. (DEFINED AND REFERRED TO COLLECTIVELY IN THIS NOTICE AS "WFB").

AS A MEMBER OF THE CLASS WHOSE MCR LOAN WAS SOLD TO AND/OR SERVICED BY WFB, YOU ARE ELIGIBLE TO RECEIVE AN ADDITIONAL PAYMENT WITH REGARD TO YOUR LOAN AS A PART OF A SETTLEMENT REACHED BY PLAINTIFFS STEVEN AND RUTH MITCHELL AND WFB IN MARCH 2012. THE SUBJECT SETTLEMENT COVERS THE REMAINING CLAIMS FOR PUNITIVE DAMAGES AND ALL OTHER FORMS OF RELIEF BEING SOUGHT (AND TO BE SOUGHT) FROM WFB IN THE LAWSUIT. ALL SUCH MEMBERS OF THE "WFB SETTLEMENT CLASS" WHO DO NOT EXCLUDE THEMSELVES FROM THE SETTLEMENT WILL RECEIVE AN ADDITIONAL PAYMENT RANGING FROM AN ESTIMATED \$22,613.61 TO \$211,115.46 (\$105,323.85 ON AVERAGE) IN CONNECTION WITH THEIR LOAN. WFB SETTLEMENT CLASS MEMBERS CAN SEE WHAT PLAINTIFFS' COUNSEL CURRENTLY ESTIMATES THE AMOUNT OF THEIR "ADDITIONAL WFB CLASS MEMBER PAYMENT" TO BE BY VISITING THE WEBSITE OF PLAINTIFFS' COUNSEL, www.wbsvlaw.com, AND CLICKING ON THE LINK "MITCHELL WFB SETTLEMENT."

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY

1. WHY SHOULD I READ THIS NOTICE?

This Notice has been mailed to you because the parties' records show that (1) you obtained a second mortgage loan that was originated by Mortgage Capital Resource Corporation ("MCR") on or after July 29, 1997 that was secured by your Missouri residence; (2) your loan was purchased by, assigned to and/or serviced by 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.), HomEq Servicing Corporation, and/or Wells Fargo Bank, N.A. (collectively, "WFB"); (3) you are a member of the "Litigation Class" that the Circuit Court of Jackson County, Missouri certified in the lawsuit styled *Steven and Ruth Mitchell v. Residential Funding Corporation, et al.*, Case No. 03-CV-220489-01 (the "Lawsuit" or "Litigation"); (4) you did not opt out of or exclude yourself from the certified Litigation Class; and (5) you recovered and received an award of actual damages in connection with your loan after the Named Plaintiffs' claims were tried in December 2007 and January 2008.

You (and any co-borrower(s) on your second mortgage loan) are now eligible to receive an additional payment in connection with your second mortgage loan pursuant to a proposed settlement (the "Settlement") that Steven and Ruth Mitchell, the Named Plaintiffs in the Lawsuit, and WFB entered into as of March 1, 2012. Please share this Notice with any co-borrower(s) on your loan(s).

This Notice generally describes your rights under the proposed Settlement, which has been preliminarily approved by the Circuit Court of Jackson County, Missouri (the "Court") and specifies the date and time of a "Fairness Hearing" that the Court will conduct to consider the fairness of the Settlement.

2. WHAT IS THE SETTLEMENT ABOUT?

If approved by the Court, the Settlement will bring an end to the remaining claims for punitive damages and all other relief that Steven L. and Ruth E. Mitchell, as Named Plaintiffs, are pursuing in the Lawsuit on behalf of the members of the previously certified Litigation Class whose second mortgage loans from MCR were sold and assigned to and/or serviced by WFB, as opposed to one of the other two assignee defendants named the case. These particular members of the Litigation Class are defined in the Parties' Settlement Agreement (the "Agreement") as the "WFB Settlement Class." The loans that the members of the WFB Settlement Class obtained from MCR are defined as the "MCR-WFB Loans."

A detailed description of the Lawsuit is set out in the Notice of Class Action Lawsuit dated March 2, 2007 that was previously mailed to you. A copy of the Notice of Class Action Lawsuit is also available on line at the website of Plaintiffs' Counsel, www.wbsvlaw.com (click on the link "Mitchell WFB Settlement"). You may also obtain a copy of the March 2, 2007 Notice of Class Action Lawsuit by contacting Plaintiffs' Counsel at the address listed in Section 7 of this Notice.

The proposed Settlement covers any and all claims against WFB and its affiliates and related persons in connection with the MCR-WFB Loans that to date remain unresolved. The claims against WFB for actual or compensatory damages and interest on the actual or compensatory

damages, and for the attorneys' fees incurred in connection with those claims for actual or compensatory damages and interest, are no longer part of the Lawsuit. Those claims were tried to a Jackson County jury, together with a claim for punitive damages, from December 3, 2007 to January 4, 2008. The jury returned a verdict in favor of those class members who obtained an MCR-WFB Loan and collectively awarded those class members a total of \$374,957.00 of compensatory damages and \$2.5 million of punitive damages. Thereafter, the Court entered its judgment in favor of the class members who obtained an MCR-WFB Loan for \$374,957.00 of compensatory damages, \$52,508.00 of interest on a portion of those damages, and \$2.5 million of punitive damages. In addition, the Court awarded statutory attorneys' fees of \$232,011.43 pursuant to § 408.562 RSMo and ordered the following sums to be paid from the class common fund recovered with respect to the MCR-WFB Loans: (a) \$2,287.77 representing WFB's allocable share of the \$30,000 incentive award made to the Named Plaintiffs for their services on behalf of the Litigation Class through trial; and (b) a common fund attorneys' fees award of 35% to Plaintiffs' Counsel for the legal work performed in connection with the compensatory damage, interest, and punitive damages awards.

WFB and its co-defendants filed an appeal from the Court's judgment and the Named Plaintiffs filed a cross-appeal.

On November 23, 2010, the Missouri Court of Appeals, Western District (the "Court of Appeals") affirmed the Court's judgment as to compensatory damage and related attorneys' fees awards. The Court of Appeals also held that the members of the Class who obtained the MCR-WFB Loans were entitled to prejudgment interest on both the illegal loan fee and interest paid components of the compensatory damage awards, and affirmed in part and reversed in part the Court's judgment in this regard. The Court of Appeals also held that the Named Plaintiffs had made a submissible case for punitive damages against WFB and its co-defendants but reversed the judgment for punitive damages as to each defendant because of an error in the jury instructions. The Court of Appeals determined that the claims for punitive damages had to be retried and therefore remanded the case to the Court for a re-trial with respect to those claims. The Court of Appeals also held that the Litigation Class was the prevailing party on appeal and that the Court on remand should also award statutory attorneys' fees for the work of Plaintiffs' Counsel on appeal.

On remand, WFB paid the compensatory damage and pre- and post-judgment interest awards to the members of the Litigation Class whose loans were assigned to and/or serviced by WFB as ordered by the Court pursuant to the opinion and mandate of the Court of Appeals. WFB has also paid its allocable share of the statutory attorneys' fees awarded by the Court to Plaintiffs' Counsel for their work in procuring the compensatory damage and interest awards and \$2,322,341.16 for the additional work of Plaintiffs' Counsel following the initial trial through the appeals. Plaintiffs' Counsel was not paid and did not receive any common fund attorneys' fees for any punitive damages recovery since the Court of Appeals reversed and remanded those claims to the Court for retrial.

Also on remand, the Named Plaintiffs filed a *Motion for Sanctions Against Wells Fargo Bank, N.A. and Residential Funding Company, LLC for Fraud on the Court, for Violations of this Court's Orders Enforcing Discovery, and for Concealment and Spoliation of Material Evidence*

(the "Motion for Sanctions"). In that motion, the Named Plaintiffs sought monetary and procedural sanctions from WFB and co-defendant Residential Funding Company, LLC ("RFC"). The sanctions sought in the motion included, but were not limited to, striking the answers of WFB and RFC and the entry of a judgment holding WFB and RFC liable on the claims for punitive damages. WFB denied and continues to deny all allegations made by the Named Plaintiffs in the Motion for Sanctions.

The Motion for Sanctions and the remaining claims for punitive damages were set to be heard and tried in March and April 2012. The motions hearing and the trial were continued given the Parties' settlement and the separate settlements that the Named Plaintiffs also reached with the other defendants. The Named Plaintiffs withdrew the Motion for Sanctions as a part of the settlements.

WFB and the Named Plaintiffs, as representatives of the "WFB Settlement Class Members," and WFB have agreed to settle all of the remaining claims that the WFB Settlement Class Members have against WFB and other affiliated and related persons and entities with respect to the MCR-WFB Loans, including the claims for punitive damages and sanctions on the terms summarized in this Notice. The complete details of the proposed Settlement are set out in the Agreement signed by the Named Plaintiffs, as representatives of the "WFB Settlement Class," and WFB as the assignee, owner, holder and/or servicer of the "MCR-WFB Loans." The Named Plaintiffs and WFB are collectively referred to in the Agreement and this Notice as the "Parties."

On April __, 2012, the Court preliminarily approved the Parties' proposed Agreement as fair, reasonable, and adequate. The Court will conduct a "fairness hearing" on _____, 2012 to consider, among other things, whether the Settlement should be finally approved as fair, reasonable, and adequate. The proposed Settlement will become effective only if it is finally approved by the Court, and provided that all other terms and conditions of the Settlement as stated in the Agreement are met.

3. WHO IS COVERED BY THE PROPOSED SETTLEMENT?

The Settlement will only apply to the WFB Settlement Class Members as defined in the Agreement. The WFB Settlement Class Members are those persons who, on or after July 29, 1997, obtained a "Second Mortgage Loan," as defined in § 408.231.1 RSMo, from Mortgage Capital Resource Corporation on real property located in Missouri, that was purchased by, assigned to and/or serviced by 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.), HomeEq Servicing Corporation, and/or Wells Fargo Bank, N.A., and who did not timely exclude themselves from the litigation class that the Court certified on December 8, 2006.

4. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

The following is only a summary of some of the terms and conditions of the proposed Settlement. For more information, you may obtain a copy of the executed Agreement by contacting Plaintiffs' Counsel at the address listed in Section 7 of this Notice, or by visiting the

website of Plaintiffs' Counsel, www.wbsvlaw.com, and clicking on the link "Mitchell WFB Settlement."

- A. The additional amount that WFB has agreed to pay in settlement (the "Settlement Fund") is \$5 million. This \$5 million is twice the amount of the prior punitive damages award of \$2,500,000.00 and is in addition to the \$816,452.60 gross amount for the compensatory damages and interest awards previously recovered from WFB by the Named Plaintiffs as representatives on behalf of the members of the Litigation Class who obtained the MCR-WFB Loans. If the Court approves the proposed Settlement, the members of the WFB Settlement Class who did not exclude themselves from the Settlement will receive a settlement payment in addition to their prior distribution and payment that will range from an estimated \$22,613.61 to \$211,115.46 (\$105,323.85 on average) per loan. The amount of each such "Additional WFB Settlement Class Member Payment" represents a pro rata share of the "Net Distributable Settlement Fund" recovered via the Settlement and is determined per loan based on the compensatory damages and interest amounts previously awarded to members of the WFB Settlement Class in connection with their respective MCR-WFB Loans as compared to the total amount of the compensatory damages and interest recovered for all of the MCR-WFB Loans. If approved by the Court, each Additional WFB Settlement Class Member Payment will be more than **450%** of the amount of the corresponding Class Member Payment previously made to the WFB Settlement Class Members in connection with their loans per the Court's Order dated August 11, 2011.

The "Net Distributable Settlement Fund" is a percentage of the "Net Settlement Fund." The "Net Settlement Fund" is determined by deducting the following amounts from the "Settlement Fund": (a) the amount of any incentive award made to the Named Plaintiffs by the Court for their services, time, expenses and dedication in continuing to represent the WFB Settlement Class; and (b) the amount of any post-remand litigation expenses and/or court costs awarded to Plaintiffs' Counsel by the Court pursuant to the Agreement. As proposed, the "Net Distributable Settlement Fund" will total \$2,422,488.65, or fifty percent (50%) of the "Net Settlement Fund." The Named Plaintiffs and Plaintiffs' Counsel will ask the Court to award the remaining fifty percent (50%) of the Net Settlement Fund, also \$2,422,488.65, as attorney's fees to Plaintiffs' Counsel for their services and work in pursuing the claims for punitive damages and motion for sanctions against WFB and in procuring the \$5 million Settlement Fund for the WFB Settlement Class. The basis for the proposed incentive, expense and attorneys' fees awards that the Named Plaintiffs and Plaintiffs' Counsel will ask the Court to approve are more fully explained in Section 10 of this Notice

WFB Settlement Class Members can review what Plaintiffs' Counsel currently estimates the amount of their Additional WFB Settlement Class Member Payment to be by visiting the website of Plaintiffs' Counsel, www.wbsvlaw.com, and clicking on the link "Mitchell WFB Settlement."

- B. If the Court approves the Settlement and it becomes effective in accordance with the terms and conditions of the Agreement, the members of the WFB Settlement Class who do not

exclude themselves from the Settlement will receive their Additional WFB Settlement Class Member Payment for the loan by check. The check will be mailed by first-class mail, postage prepaid, to the WFB Settlement Class Members, or to the bankruptcy trustee for those WFB Settlement Class Members who filed a Chapter 7 bankruptcy after obtaining their loan. The check will be mailed by Plaintiffs' Counsel and will not come from WFB directly. A WFB Settlement Class Members' right to a settlement payment is a conditional right that terminates if a WFB Settlement Class Member to whom an Additional WFB Settlement Class Member Payment check is mailed fails to cash his or her check within six (6) months of the date of the check. In such case the check shall be null and void (the checks shall be stamped or printed with a notice to such effect), and the Parties shall have no further obligation to make any payment to such WFB Settlement Class Member. **Joint borrowers, such as a husband and wife, will receive a single payment per loan, even if they are separated or divorced. Any WFB Settlement Class Member who receives a payment under the Settlement is personally and solely responsible for distributing or allocating the payment between or among any co-borrower(s), regardless of whether the check is made payable to all or only some of the WFB Settlement Class Member's co-borrowers. WFB Settlement Class Members will also be responsible for paying any taxes due on any Additional WFB Settlement Class Member Payment received. WFB Settlement Class Members are strongly encouraged to consult with their own tax advisor concerning the tax effects of any money received pursuant to this Settlement. Plaintiffs' Counsel cannot provide you with any tax advice.**

- C. The proposed Settlement will become effective only if approved by the Court and all of the other terms and conditions as to effectiveness as stated in the Agreement are met. If the Settlement is approved and becomes effective, the Court will enter a Final Judgment that releases and discharges WFB and its affiliates and certain other persons related to WFB as of the "Effective Date" from certain claims that were or could have been asserted against them in the Lawsuit. The Releases are further discussed and set out in Section 11 of this Notice.

5. WHAT DO I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?

Nothing. You are already a member of the WFB Settlement Class and will participate in the Settlement and will receive the estimated Additional WFB Settlement Class Member Payments as stated above. **If you filed for Chapter 7 bankruptcy protection after you obtained your loan, you are still a member of the WFB Settlement Class, but the Settlement Payment will be made payable to you and/or your Chapter 7 bankruptcy trustee, who will also receive this Notice.** If you filed for bankruptcy protection, you should consult with a bankruptcy attorney about this Notice.

If you change your address, please contact Plaintiffs' Counsel at the address provided in Section 7 below.

6. CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

Yes. However, if you exclude yourself from the Settlement, you will **not** receive any payment from the Settlement Fund.

Consequently, if you wish to receive your “Additional WFB Settlement Class Member Payment” as described in Section 4.A of this Notice, **DO NOTHING**.

If you do wish to exclude yourself from the Settlement, you must send a request for exclusion by first-class mail, postage prepaid, to Plaintiffs’ Counsel and Counsel for WFB (the names and addresses are provided in Section 7 below). To be effective, your request for exclusion must be in writing and be **received** by Plaintiffs’ Counsel and Counsel for WFB at the addresses below on or before _____, 2012. The request for exclusion must include: (a) your name, address, telephone number and the last four digits of your social security number; (b) a statement that you and all other borrowers named on the promissory note for your loan are seeking exclusion from the Settlement; (c) your signature and the signature of any other borrower(s) named on the promissory note for your loan; and (d) a reference to “Mitchell v. Residential Funding Corporation, et al., Case No. 03-CV-220489-01.” The request for exclusion must be signed personally by you and any other borrower(s) named on the promissory note for your loan or the personal representative of any such person if deceased or legally incompetent. No request for exclusion may be made on behalf of a group of WFB Settlement Class members. Nor may any member(s) of the WFB Settlement Class opt out or exclude themselves from the WFB Settlement Class by having an agent or attorney sign and submit an exclusion request form on their behalf. A request for exclusion form must be signed personally by you and any other borrower(s) named on the promissory note for your loan. Your request for exclusion must be timely **received** to be effective.

If you exclude yourself from the Settlement, you will not be bound by any Final Order or Judgment entered with respect to the WFB Settlement Class. You will be free to continue on with your claims against WFB.

7. WHY, WHEN, AND WHERE WILL A FAIRNESS HEARING BE HELD?

A hearing on whether to grant final approval of the Settlement will be held before the Honorable Justine E. Del Muro of the Circuit Court of Jackson County, Missouri (Division 4) on _____, 2012, at _____.m., in the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106 (the “Fairness Hearing”). There is no need for you to attend the Fairness Hearing if you simply wish to benefit from the Settlement. The purpose of the Fairness Hearing is to determine, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate; (b) whether the Named Plaintiffs are adequate representatives of the proposed WFB Settlement Class; (c) whether Plaintiffs’ Counsel are entitled to attorneys’ fees and expenses and, if so, how much; (d) whether the Named Plaintiffs should be entitled to a payment for their services as representatives of the WFB Settlement Class and, if so, how much; and (e) whether a Final Approval Order and Final Judgment should be

entered to dismiss the remaining claims for punitive damages and sanctions with prejudice on the merits as to WFB.

The Court has the power to adjourn or reschedule the Fairness Hearing from time to time without further notice of any kind.

At the Fairness Hearing, the Court will consider the statements of the parties and any objections that may have been made. Any member of the WFB Settlement Class who has not filed a timely written Request for Exclusion has the right to object to the Settlement. If you wish to object to the Settlement, you must file your objection in writing with the Clerk of Court, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106, no later than _____, 2012. All persons wishing to object must also send a copy of their written objection to Plaintiffs' Counsel and Counsel for WFB (the names and addresses are stated below). The objection must include: (a) your name, address, and telephone number; (b) a statement of each objection to the proposed Settlement that you wish to assert; (c) a detailed description of the facts supporting each of the objections; (d) copies of any loan documents in your possession or control that you rely on as a basis for your objections; (e) the names of all witnesses, and the report(s) from any proposed experts you intend to call at the Fairness Hearing; (f) copies of any exhibits that you intend to rely on at the hearing; (g) a reference to "Mitchell v. Residential Funding Corporation, et al., Case No. 03-CV-220489-01"; (h) a statement of whether you intend to appear at the Fairness Hearing in person or through an attorney; and (i) if you are represented by an attorney, a detailed description of the legal authorities supporting each of your objections.

Any member of the WFB Settlement Class who has not filed a timely written request for exclusion has the right to appear and/or enter an appearance at the Fairness Hearing. Attendance at the Fairness Hearing is not necessary. If you do wish to appear at the Fairness Hearing, you or your attorney must: (a) file a Notice of Appearance with the Clerk of Court, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106 no later than _____, 2012; and (b) serve the Notice of Appearance on Plaintiffs' Counsel and Counsel for WFB. Any subjects to be raised at the Fairness Hearing must be contained in a written objection filed with the Court in the manner specified above. If you wish to call witnesses or present other evidence at the Fairness Hearing, you must identify the witnesses in your written objection. In addition, you must attach to your objection any exhibits or other documents on which you intend to rely and describe any other evidence you intend to present at the Hearing.

The addresses for Plaintiffs' Counsel and the Counsel for WFB are as follows:

Plaintiffs' Counsel

R. Frederick Walters, Esq.
Kip D. Richards, Esq.
Walters Bender Strohbahn & Vaughan, P.C.
2500 City Center Square
1100 Main Street
Kansas City, MO 64105

Counsel for WFB

T. Thomas Cottingham, III, Esq.
Stacie C. Knight, Esq.
Winston & Strawn, LLP
100 North Tryon Street
Suite 2900
Charlotte, NC 28202

Any member of the WFB Settlement Class who has not filed a timely written request for exclusion may request to intervene in the Lawsuit, in person or through an attorney retained at the WFB Settlement Class Member's own expense. A request or motion to intervene must be in writing and reference "Mitchell v. Residential Funding Corporation, et al., Case No. 03-CV-220489-01" and otherwise comply with the Missouri Rules of Civil Procedure and applicable law. A request to intervene must be filed with the Clerk of Court, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106, no later than _____, 2012. Any persons wishing to intervene must also send a copy of their written request to intervene to Plaintiffs' Counsel and Counsel for WFB at the addresses above.

Any member of the WFB Settlement Class who does not comply with the above requirements shall be deemed to have waived all objections to and shall be forever barred from challenging the Settlement.

8. WHO REPRESENTS THE WFB SETTLEMENT CLASS?

The WFB Settlement Class is represented by Plaintiffs' Counsel: R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the law firm Walters Bender Strohhahn & Vaughan, P.C. If you have questions regarding the Settlement, this Notice or your options, you can contact Plaintiffs' Counsel without charge by writing to them at the address provided above, or by calling 1-877-472-6620 (or 816-421-6620 if in the Kansas City Metro Area) or by visiting the website of Plaintiffs' Counsel, www.wbsvlaw.com and clicking on the link "Mitchell WFB Settlement."

9. WHAT ARE THE REASONS FOR SETTLEMENT?

The Named Plaintiffs and WFB have agreed to the Settlement after considering, among other things, (i) the substantial benefits to be made available to the WFB Settlement Class pursuant to the terms of the Agreement; (ii) the attendant risks and uncertainty of litigation, especially in complex litigation such as this, as well as the difficulties and considerable delays inherent in such litigation; (iii) the vigorousness of the defenses asserted by WFB; and (iv) the desirability of consummating the Settlement promptly to provide effective relief to the WFB Settlement Class.

WFB has denied and continues to deny its liability for punitive damages and denies and disputes the asserted basis for sanctions. Nonetheless, WFB has concluded that further litigation and a re-trial of the punitive damages claims would be protracted, burdensome, and expensive, and that it is desirable that the punitive damages claims and the issue of sanctions be fully and finally settled and resolved as against it in the manner and on the terms and conditions set forth in the Agreement.

10. WILL THE NAMED PLAINTIFFS OR PLAINTIFFS' COUNSEL RECEIVE COMPENSATION?

Yes. The Named Plaintiffs, as representatives of the WFB Settlement Class, will make an application to the Court for approval of what is called an "incentive award." Such awards are used and made in class action lawsuits to provide an "incentive" to individuals like the Named

Plaintiffs to file and prosecute class action lawsuits for the benefit of a class of people they do not know. The award also compensates the representatives of a class for their work, time and expense as class representatives. The Named Plaintiffs will ask the Court to approve a separate incentive award of up to \$25,000 based on the additional recovery that the Named Plaintiffs obtained for the WFB Settlement Class. The amount of the award is based on the Named Plaintiffs' continued service and dedication to the WFB Settlement Class and their continued time, expense and service to the WFB Settlement Class since the end of the trial in 2008. WFB has agreed not to object to the Named Plaintiffs' application, but the Court must still determine and approve the amount of any incentive award to be made as "reasonable." Any incentive award made to the Named Plaintiffs will be paid from the Settlement Fund in order to determine the "Net Settlement Fund" and "Net Distributable Settlement Fund," the latter of which will be distributed to the WFB Settlement Class Members as "Additional WFB Settlement Class Member Payments" as described in Section 4 above.

Plaintiffs' Counsel and/or the Named Plaintiffs will make an application to the Court to approve and award up to \$130,112.69 to reimburse Plaintiffs' Counsel for the costs and expenses that they incurred and advanced on behalf of the WFB Settlement Class in connection with the Lawsuit since the case was remanded by the Court of Appeals in April 2011. The \$130,112.69 amount represents approximately 58% of the \$222,623.46 in total costs and expenses that Plaintiffs' Counsel incurred and advanced on behalf of the entire Litigation Class, post remand. The \$130,112.69 amount equals one-third of the "common" post-remand costs and expenses that are fairly attributable to the remaining claims against all three defendants, plus \$98,439.23 of advances that were directly attributable to the claims against WFB alone. The \$130,112.69 total amount does not include any of the costs and expenses that Plaintiffs' Counsel incurred and advanced on behalf of the Named Plaintiffs and the Litigation Class from the inception of the suit through the trial, appeal and remand. WFB will not object to the proposed award of costs and expenses, but the Court must still consider and approve the amount of the proposed award as "reasonable." Like any incentive award made to the Named Plaintiffs, the amount of any expense award to Plaintiffs' Counsel will be paid from the Settlement Fund in order to determine the "Net Settlement Fund" and "Net Distributable Settlement Fund" as described in Section 4 above.

Plaintiffs' Counsel and/or the Named Plaintiffs will also make an application to the Court to approve and award \$2,422,448.65 of attorneys' fees to Plaintiffs' Counsel for their services and work in pursuing the claims for punitive damages and the motion for sanctions against WFB, and in procuring the \$5 million Settlement Fund for the WFB Settlement Class. WFB will not object to the proposed award of attorneys' fees, but the Court also must still determine and approve the amount of any such award to be made to Plaintiffs' Counsel as "reasonable" based on a number of factors including, but not limited to, the nature and extent of the work involved, the difficulty of the case and the issues presented, the skill needed to conduct the case properly, the experience, reputation and ability of the lawyers, the contingency or certainty of compensation, the customary charges for similar work, the amount involved in the controversy, and the benefits to the client.

If approved by the Court, the \$2,422,448.65 amount will constitute fifty percent (50%) of the Net Settlement Fund and the amount of any such award made to Plaintiffs' Counsel will be deducted

and paid from the Net Settlement Fund to calculate the Net Distributable Settlement Fund to be distributed to the WFB Settlement Class Members, which as proposed will also equal fifty percent (50%) of the Net Settlement Fund. The distributions to the WFB Settlement Class Members will be in addition to the amounts previously paid to the members of the WFB Settlement Class pursuant to the Court's Order dated August 11, 2011; and, if approved, the amount of each such Additional WFB Settlement Class Member Payment will be more than 450% of the amount of the corresponding Class Member Payment previously made to the WFB Settlement Class Members.

The Named Plaintiffs and Plaintiffs' Counsel believe that the percentage fee amount and amount of the attorneys' fees being proposed as a part of the Settlement are reasonable for a number of reasons including, among others, the considerable length and complexity of the case, the nature and extent of the legal work provided by Plaintiffs' Counsel in connection with the remaining claims for punitive damages and the Motion for Sanctions against WFB, the defenses raised by WFB in response to the claims and motion, the commitment of and work performed by Plaintiffs' Counsel in prosecuting and continuing to prosecute the punitive damages claims and Motion for Sanctions, the contingency fee percentages charged and/or approved in similar cases in the community, the timing of the Settlement, the amount and risks involved in this controversy, the attorneys' fees previously awarded to Plaintiffs Counsel for their work in connection with the recovery and distribution of the compensatory damages and interest awards, the extraordinary benefits obtained for the members of the WFB Settlement Class, which earlier recovered \$816,452.60 of compensatory damages and interest in connection with the MCR-WFB Loans, the fact that the Settlement Fund will be twice the amount of the previous punitive damages award against WFB, and the fact that, as proposed, the amount of each Additional WFB Settlement Class Member Payment to be distributed will be more than 450% of the amount of the corresponding Class Member Payment made to the WFB Settlement Class Members in August 2011.

The range and average of the Settlement Payments described in Section 4 of this Notice have been estimated with the expectation that the Court will approve as reasonable the applications for the above stated incentive, expense and attorneys' fees awards. If the Court approves an incentive award or awards costs and expenses or attorneys' fees in amounts that are less than that applied for, the difference will be reallocated to the Net Settlement Fund or the Net Distributable fund, as applicable.

11. WHAT CLAIMS WILL BE RELEASED UNDER THE SETTLEMENT?

If approved by the Court and effective in accordance with its terms, the proposed Settlement will be legally binding upon all members of the WFB Settlement Class who did not timely request to be excluded from the WFB Settlement Class. The Settlement will fully, finally and forever release, settle, compromise, relinquish and discharge any and all of the Released Persons, as defined in the Agreement, from the Released Claims, also as defined in the Agreement, as of the Effective Date.

The Releases mean that you cannot bring any lawsuit against WFB or any of the other "Released Persons" identified in the Agreement for any reason whatsoever relating to the "Released

Claims,” which are also defined in the Agreement; but you will of course be able to enforce your rights under the Agreement, if necessary. If you are currently litigating any claims against WFB or any other “Released Person” in any other lawsuit or proceeding, either individually or as part of a class, you may be barred from continuing to pursue those claims if you do not timely exclude yourself from the WFB Settlement Class in this case. If you are currently litigating any such claims, you should consult with an attorney concerning your rights immediately.

The term “**Releasers**” is defined in the Agreement at paragraph 2.22 as:

[T]he WFB 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 WFB Settlement Class who opt out of the Settlement in accordance with Paragraph 9 below; (b) any person not identified as a member of the WFB Settlement Class on **Exhibit E**; or (c) the Named Plaintiffs and other Non-WFB Plaintiff Borrowers.

The term “**Released Persons**” is defined in the Agreement at paragraph 2.23 as:

WFB and its partners, affiliates, predecessor companies, parent companies, subsidiaries, divisions, or other organizational units of any kind doing business in their own names, and 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., any and all of their 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 (including, specifically, but not limited to, attorneys Scott W. Martin, Kara S. Bemboom, Michael S. Hargens, the firm Husch Blackwell, LLP as successor of Husch & Eppenberger, LLC, Mary J. Hackett, Jeremy D. Feinstein, Thomas L. Allen, Roy W. Arnold, Dustin N. Pickens, Lyle D. Washowich, and the firm Reed Smith, LLP, and any consultants hired by said counsel), accountants, representatives, beneficial owners, investment advisors, investment bankers, insurers, independent contractors, and the heirs, executors, predecessors, successors, and assigns of each. Notwithstanding the above or anything in this Agreement to the contrary, and regardless of any prior or current relationship or affiliation with WFB, “Released Persons” **does not include**: (a) RFC (including, but not limited to, attorneys Mary J. Hackett, Jeremy D. Feinstein, Thomas L. Allen, Roy W. Arnold, Dustin N. Pickens, Lyle D. Washowich, and the firm Reed Smith, LLP in their capacity as attorneys for RFC), Household, or any other person, association or entity to whom any of the MCR Loans of any of the Non-WFB Plaintiff Borrowers were sold, assigned or otherwise transferred or conveyed; (b) any person, association or entity that serviced any of the MCR Loans of any of the Non-WFB Plaintiff Borrowers; (c) any person, association or entity to whom any of the MCR-WFB Loans were sold, assigned, transferred and/or conveyed prior to the sale, assignment, transference or conveyance to WFB; or (d) any person, association or entity that serviced any of the MCR-WFB Loans and who is not a Released Person.

The term “**Released Claims**” is defined in the Agreement at paragraph 2.24 as:

[A]ny and all of the remaining claims for punitive damages, sanctions, statutory attorneys’ fees and any other relief available to the Releasers under § 408.562 RSMo in connection with the MCR-WFB Loans, the Litigation or the Motion for Sanctions, and any and all other unsatisfied and/or unadjudicated 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 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 MCR-WFB Loans, the Litigation, or the Motion for Sanctions and which any of the Releasers currently have, from the beginning of time up through and including the Effective Date, against the Released Persons (the “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 WFB Settlement Class Members’ MCR-WFB Loans; (2) any activities that any of the Released Persons took with respect to the MCR-WFB 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 RSMo, *et seq.*, or any other similar state statute; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, 12 C.F.R. part 226; the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, *et seq.*, and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, *et seq.*, and its implementing regulation, 12 C.F.R. part 203; the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*; the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*; and the Federal Trade Commission Act, 15 U.S.C. § 45, *et seq.*; and/or (3) any conduct undertaken by any of the Released Persons to defend the 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 Named Plaintiffs or the other Non-WFB

Plaintiff Borrowers with respect to the MCR Loans or otherwise; (2) any claims of any kind or type against RFC (including, but not limited to, attorneys Mary J. Hackett, Jeremy D. Feinstein, Thomas L. Allen, Roy W. Arnold, Dustin N. Pickens, Lyle D. Washowich, and the firm Reed Smith, LLP in their capacity as attorneys for RFC) or Household; (3) any claims of any kind or type by the Releasors against any person, association or entity that is not a Released Person, whether or not such claims arise out of or relate to the MCR-WFB Loans or some other conduct, transaction, loan or occurrence; and/or (4) any claims of any kind or type by the Releasors against WFB and/or any other person, association or entity in connection with a loan and/or loan transaction originated or made by a person, association or entity other than MCR, notwithstanding the fact that the loan was purchased by and/or assigned to and/or serviced by WFB.

12. WHAT IF THE SETTLEMENT IS NOT APPROVED BY THE COURT OR DOES NOT BECOME EFFECTIVE?

If the proposed Settlement is not approved by the Court as being fair, reasonable and adequate, or if the Settlement does not become effective in accordance with the terms and conditions of the Agreement, the Settlement and the Agreement will be null and void and the Named Plaintiffs will proceed with their claims for punitive damages and request for sanctions against WFB in the Lawsuit, both individually and on behalf of the WFB Settlement Class. In that event, no payments will be made under the terms of the Agreement; however, WFB and the Named Plaintiffs could attempt to enter into another settlement.

13. WHERE DO I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed Settlement and does not describe all of the terms and conditions of the Agreement. You are encouraged to review the Agreement and other related documents, all of which are available upon request from Plaintiffs' Counsel, or by visiting the website of Plaintiffs' Counsel, www.wbsvlaw.com and clicking on the link "Mitchell WFB Settlement."

14. WHAT ARE THE RELEVANT DATES?

If you wish to opt out and exclude yourself from the WFB Settlement Class, or to object to the Settlement or to intervene in the Lawsuit or to appear at the Fairness Hearing, the relevant dates are as follows:

- **Deadline for mailing a request for exclusion (must be received by): _____, 2012**
- **Deadline for filing and serving any written objection, a notice of appearance, or a motion to intervene (must be received by the court by): _____, 2012**
- **Date and time of the Fairness Hearing: _____, 2012 at ____ .m.**

This Notice provides only a summary of matters about the Lawsuit. If you have any questions or concerns, please contact Plaintiffs' Counsel in writing at the address listed in Section 7 of this Notice or call 816-421-6620.

PLEASE DO NOT CALL OR CONTACT THE COURT FOR INFORMATION.

This notice is sent pursuant to Rule 52.08 of
the Missouri Rules of Civil Procedure and
BY ORDER OF THE COURT

DATED: APRIL __, 2012

Exhibit B

**EXHIBIT B: PROPOSED PRELIMINARY APPROVAL ORDER
IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

STEVEN AND RUTH MITCHELL,

Plaintiffs,

Vs.

RESIDENTIAL FUNDING CORPORATION,
et al.,

Defendants.

Case No. 03-CV-220489-01

Division 4

**ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

WHEREAS, a class action petition was filed in the above-entitled action (the “Litigation”) on July 29, 2003; and

WHEREAS, on December 8, 2006, the Court certified a litigation class in the Litigation, comprised of those persons who obtained a Missouri residential second mortgage loan from Mortgage Capital Resource Corporation (“MCR”) on or after July 29, 1997, and which is particularly described in the Court’s *Order Certifying Plaintiff Class* (the “Litigation Class”); and

WHEREAS, notice of the Litigation and the *Order Certifying Plaintiff Class* was provided to the members of the Litigation Class, who were also notified of their right to opt out and exclude themselves from the Litigation Class; and

WHEREAS, only two (2) members of the Litigation Class, who were co-borrowers on the same MCR-originated loan, opted out of and excluded themselves from the Litigation Class; and

WHEREAS, Plaintiffs Steven L. and Ruth E. Mitchell (“the Named Plaintiffs”) are

representatives of the members of the Litigation Class whose second mortgage loans from Mortgage Capital Resource Corporation were purchased by, assigned to and/or serviced by 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.), HomEq Servicing Corporation, and/or Wells Fargo Bank, N.A. (collectively, “WFB”); and

WHEREAS, the Named Plaintiffs and WFB have entered into a “Settlement Agreement and Release” (the “Agreement”), which memorializes a negotiated and agreed-upon settlement of all remaining claims in the Litigation as between the Named Plaintiffs as representatives of the members of the Litigation Class whose second mortgage loans from Mortgage Capital Resource Corporation were purchased by, assigned to and/or serviced by WFB (defined in the Agreement as the “WFB Settlement Class”), and WFB, subject to the approval of the Court (“the Settlement”); and

WHEREAS, the Named Plaintiffs have filed a *Motion for Preliminary Approval of Class Action Settlement With Defendant WFB* with the Court.

NOW THEREFORE, upon careful consideration of the *Motion for Preliminary Approval of Class Action Settlement With Defendant WFB*, and after reviewing the Agreement, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The terms of the Agreement, and the Settlement as provided therein, are approved preliminarily as fair, reasonable and adequate to the WFB Settlement Class as defined in the Agreement, subject to further consideration at the Fairness Hearing described in Paragraph 14 below.
2. The definitions set forth in the Agreement are hereby incorporated by reference

into this Order (with capitalized terms as set forth in the Agreement).

3. The Named Plaintiffs and WFB have executed the Agreement in order to settle and resolve the remaining claims and allegations in the Litigation, including any claim for sanctions, as between the WFB Settlement Class and WFB, subject to approval of the Court.

4. Accordingly, for the purpose of a settlement in accordance with the Agreement, and upon review of the *Plaintiffs' Motion for Preliminary Approval of Class Action Settlement With Defendant WFB*, this Court hereby preliminarily certifies the following class of persons as a settlement class (the "WFB Settlement Class"):

All persons who, on or after July 29, 1997, obtained a "Second Mortgage Loan," as defined in § 408.231.1 RSMo, from Mortgage Capital Resource Corporation on real property located in Missouri that was purchased by, assigned to and/or serviced by 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.), HomeEq Servicing Corporation, and/or Wells Fargo Bank, N.A., and who did not timely exclude themselves from the litigation class that the Court certified on December 8, 2006.

5. Pursuant to the Agreement, and for purposes of the Settlement only, the Court finds preliminarily as to the WFB Settlement Class that:

a. The WFB Settlement Class is so numerous that joinder of all members is impracticable;

b. There are questions of law or fact common to the WFB Settlement Class that predominate over questions affecting only individual members of the WFB Settlement Class;

c. The claims of the Named Plaintiffs are typical of those of the members of the WFB Settlement Class;

d. The Named Plaintiffs and Plaintiffs' Counsel will fairly and adequately represent and protect the interests of the members of the WFB Settlement Class; and

e. Certification of the WFB Settlement Class as proposed is an appropriate method for the fair and efficient adjudication of the controversies between the WFB Settlement Class and Defendant WFB.

6. For the purpose of this preliminary approval, and for all matters relating to the Settlement, until further order of the Court, the Court appoints the Named Plaintiffs as Representatives of the WFB Settlement Class and R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the law firm Walters Bender Strohbehn & Vaughan, P.C., as Counsel for the WFB Settlement Class (“Plaintiffs’ Counsel” or “Class Counsel”).

7. By this Order, the Court hereby exercises subject matter and personal jurisdiction over the WFB Settlement Class for purposes of evaluating the final certification of the WFB Settlement Class and the fairness and adequacy of the Settlement.

8. The Class Mail Notice, as set forth in Exhibit A to the Agreement, is hereby approved.

9. The Class Mail Notice in a form substantially the same as that set forth in Exhibit A to the Agreement shall be mailed by Class Counsel by first-class mail, postage prepaid, to all members of the WFB Settlement Class (as identified on Exhibit E of the Agreement, which was filed under seal) and any known Chapter 7 bankruptcy trustees of any member of the WFB Settlement Class for any Chapter 7 bankruptcy filed after origination of said individual class member’s loan. Such mailing shall be made within five (5) days of this Preliminary Approval Order.

10. The Agreement contemplates a notice methodology that (a) protects the interests of the Named Plaintiffs, the WFB Settlement Class, and WFB, (b) is the best notice practicable

under the circumstances, and (c) is reasonably calculated to apprise the WFB Settlement Class of the pendency of the remaining claims against WFB, the proposed Settlement, the Agreement, and the class members' right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the notice methodology stated in the Agreement is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meets all applicable requirements of law, including, but not limited to, Mo. Rule 52.08 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

11. Prior to the Fairness Hearing, Class Counsel shall serve and file a sworn statement of a person with knowledge, evidencing compliance with the provisions of this Order concerning the mailing of the Class Mail Notice.

12. Any member of the WFB Settlement Class desiring exclusion from the WFB Settlement Class shall mail a request for exclusion ("Request for Exclusion") to the Parties' respective counsel. To be valid, the Request for Exclusion must be **received** on or before ____, 2012. Such Request for Exclusion must be in writing and include: (a) the name, address, telephone number and the last four digits of the social security number of the class member seeking to opt out; (b) a statement that the class member and all other borrowers named on the class member's promissory note are seeking exclusion; (c) the signature of each person who was a party to the promissory note made in connection with the class member's loan, unless such person is deceased or legally incompetent, in which event the opt out submission shall be signed by said deceased or legally incompetent person's personal representative or guardian; and (d) a reference to "Mitchell v. Residential Funding Corporation, et al., Case No. 03-CV-220489-01." Any member of the WFB Settlement Class who does not properly and timely request exclusion

from the WFB Settlement Class in full compliance with these requirements shall be included in the WFB Settlement Class and be bound by any judgment entered in this Litigation with respect to the Class.

13. Within seven (7) days after the deadline for submitting Requests for Exclusion, Class Counsel shall file with the Court a sworn statement to identify those persons, if any, who timely submitted a Request for Exclusion. The Parties shall retain the original Requests for Exclusion and shall promptly furnish the other with copies of any Requests for Exclusion that come into their possession.

14. A hearing (the "Fairness Hearing") shall be held before the undersigned at __.m. on ____, 2012, in Division 4 at the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106. At the Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or judgment in the Litigation with respect to the WFB Settlement Class; (c) the application for an incentive award for the services rendered by the Named Plaintiffs; (d) the application for attorneys' fees and for reimbursement of expenses by Class Counsel; and (e) other related matters. The Fairness Hearing may be postponed, adjourned or continued by Order of the Court without further notice to the WFB Settlement Class.

15. To be considered at the Fairness Hearing, any person desiring to file an objection or other comment on the Settlement shall be required to file all such objections and comments and all supporting pleadings on or before _____, 2012, with service upon Class Counsel and Counsel for WFB. The objections of any WFB Settlement Class Member must be in writing, and must specifically include the following: (a) the name, address, and telephone number of the class member filing the objection; (b) a statement of each objection asserted; (c) a detailed

description of the facts underlying each objection; (d) any loan documents in the possession or control of the objector and relied upon by the objector as a basis for the objection; (e) if the objector is represented by counsel, a detailed description of the legal authorities supporting each objection; (f) 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; (g) 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; (h) a statement of whether the objector intends to appear at the hearing; (i) a copy of any exhibits which the objector may offer during the hearing; and (j) reference to "Mitchell v. Residential Funding Corporation, et al., Case No. 03-CV-220489-01."

16. No objection to or other comment concerning the Settlement shall be heard unless timely filed in accordance with the guidelines specified above. Class Counsel and Counsel for WFB shall promptly furnish each other with copies of any objections that come into their possession.

17. Any WFB Settlement Class Member who does not make his or her objection in the manner provided in this Order shall be deemed to have waived any such objection and shall forever be barred from making any objection to the Settlement, including but not limited to the propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement.

18. Submissions of the Parties relative to the Settlement, including memoranda in support of the Settlement, applications for attorneys' fees and reimbursement of expenses by Class Counsel, and any applications for the payment of services rendered by the Named

Plaintiffs shall be filed with the Clerk of the Court on or before _____, **2012**.

19. Any attorney hired by a WFB Settlement Class Member for the purpose of appearing and/or making an objection shall file his or her Entry of Appearance at the Class Member's expense on or before _____, **2012**, with service on Class Counsel and Counsel for WFB as required by the Missouri Rules of Civil Procedure.

20. Any WFB Settlement Class Member may appear at the Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in the Class Mail Notice, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless, on or before _____, **2012**, unless such person has (a) filed with the Clerk of the Court a notice of such person's intention to appear; and (b) served copies of such notice upon Class Counsel and Counsel for WFB as required by the Missouri Rules of Civil Procedure.

21. Any WFB Settlement Class Member may seek to intervene in the Litigation in person, or by counsel if a motion to intervene is filed and served as provided in the Notice. No person shall be permitted to intervene unless, on or before _____, **2012**, such person has (a) filed with the Clerk of the Court a valid motion to intervene and (b) served copies of such notice upon Class Counsel and Counsel for WFB as required by the Missouri Rules of Civil Procedure.

22. All other events contemplated under the Agreement to occur after entry of this Order and before the Fairness Hearing shall be governed by the Agreement and the Class Mail Notice, to the extent not inconsistent herewith. Class Counsel and Counsel for WFB shall take such further actions as are required by the Agreement.

23. The Parties shall be authorized to make non-material changes to the Class Mail

Notice so long as Class Counsel and Counsel for WFB agree and one of the Parties files a notice thereof with the Court prior to the Fairness Hearing. Neither the insertion of dates nor the correction of typographical or grammatical errors shall be deemed a change to the Class Mail Notice.

24. All claims against and motions involving Defendant WFB in the Litigation are hereby stayed and suspended until further order of this Court, other than such as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related or incidental thereto.

25. If Final Approval of the Settlement does not occur, or if the Settlement does not become effective on or before the Effective Date as provided in the Agreement, or if the Settlement is rescinded or terminated for any reason, the Settlement and Agreement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Agreement was made, and this Order and all Orders issued pursuant to the Agreement shall be vacated, rescinded, canceled, annulled and deemed "void" and/or "no longer equitable" for purposes of Mo. Rule 74.06, as provided in and subject to paragraph 13 of the Agreement.

26. Neither this Order, the Agreement, nor any of their terms or provisions, nor any of the negotiations between the Parties or their counsel (nor any action taken to carry out this Order), is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of (a) the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract or duty, any legal or factual argument, contention or assertion, or any claim for 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 remainder of 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 WFB Settlement Class Members hereunder represents the amount that could be or would have been recovered by any such persons if the remaining claims against WFB were retried; (g) the propriety of class certification in any other proceeding or action; or (h) the propriety of the “multiplier” that the Named Plaintiffs requested and proposed in their *Second Application for Award of Attorney’s Fees* in any future petition or application to the Court for an award of additional attorneys’ fees against WFB. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any way be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, or factual or legal positions of WFB, and shall not be offered or received in evidence in any action or proceeding against any Party in any court, administrative agency or other tribunal for any purpose whatsoever, except as is necessary in a proceeding to enforce the terms of this Order and the Agreement; provided, however, that this Order and the Agreement may be filed by WFB in any action filed by or against WFB or any other Released Person to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim. WFB expressly reserves all rights and defenses to any claims and does not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

IT IS SO ORDERED

Date: _____, 2012

Justine E. Del Muro, Circuit Judge

Exhibit C

EXHIBIT C: PROPOSED FINAL APPROVAL ORDER
IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

STEVEN AND RUTH MITCHELL,

Plaintiffs,

Vs.

RESIDENTIAL FUNDING CORPORATION,
et al.,

Defendants.

Case No. 03-CV-220489-01

Division 4

ORDER FINALLY APPROVING CLASS ACTION SETTLEMENT
AND CERTIFYING A CLASS FOR SETTLEMENT PURPOSES

Upon careful review and consideration of the Parties' Settlement and Release Agreement dated March 1, 2012 (the "Agreement"), the evidence and arguments of counsel as presented at the Fairness Hearing held on _____, 2012, the suggestions and memoranda filed with this Court, [and the timely objections to the proposed Settlement], and all other filings in connection with the Parties' settlement as memorialized in the Agreement (the "Settlement"); and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Other Documents.** This Order incorporates and makes the following a part hereof:

- a. The Agreement, filed with the above Court on or about May __, 2012; and
- b. The following exhibits to the Agreement: (i) Schedule A (Proposed Distribution Schedule of "Net Distributable Settlement Fund," **filed under seal**); (ii) Exhibit A (Proposed Class Mail Notice); (iii) Exhibit B (Proposed Order Preliminarily Approving the Class Action Settlement); (iv) Exhibit C (Proposed Order Finally

Approving the Class Action Settlement and Certifying a Class for Settlement Purposes); (v) Exhibit D (Proposed Final Judgment); (vi) Exhibit E (list of members of the WFB Settlement Class, **filed under seal**); (vii) Exhibit F (list of Litigation Class Members – RFC Loans); (viii) Exhibit G (list of Litigation Class Members – Household Loans); and (ix) Exhibit H (the Court’s Nunc Pro Tunc Judgment and Order).

Unless otherwise provided herein, all capitalized terms in this Order shall have the same meaning as those terms in the Agreement.

2. **Jurisdiction.** Because adequate notice was disseminated and all potential members of the WFB Settlement Class (as defined below) were given notice of and an opportunity to opt out of the Settlement, the Court has personal jurisdiction over all members of the WFB Settlement Class. The Court has subject matter jurisdiction over the Litigation, including, without limitation, jurisdiction to approve the proposed Settlement, to grant final certification of the WFB Settlement Class, and to dismiss the Litigation against Defendant WFB with prejudice.

3. **Final Class Certification.** The WFB Settlement Class, which this Court previously certified preliminarily, is hereby finally certified for settlement purposes pursuant to Mo. Rule 52.08, the Court finding that for purposes of settlement the WFB Settlement Class fully satisfies all of the applicable requirements of Mo. Rule 52.08 and due process. The WFB Settlement Class is defined as follows:

All persons who, on or after July 29, 1997, obtained a “Second Mortgage Loan,” as defined in § 408.231.1 RSMo, from Mortgage Capital Resource Corporation on real property located in Missouri that was purchased by, assigned to and/or serviced by 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.), HomEq Servicing Corporation, and/or Wells Fargo Bank, N.A., and who did not timely exclude themselves from the litigation class that the Court certified on December 8, 2006.

[No members of the WFB Settlement Class timely requested to be excluded from or “opted out” of the WFB Settlement Class.] OR [A list of those persons who have timely excluded themselves from the WFB Settlement Class, and who therefore are not bound by the Settlement and the accompanying Final Judgment, is attached hereto as **Exhibit 1** and incorporated herein and made a part hereof.]

4. **Adequacy of Representation.** There are no apparent conflicts of interest between the Named Plaintiffs and the WFB Settlement Class, or among the members of the WFB Settlement Class. Plaintiffs’ Counsel will fairly and adequately represent and protect the interests of the WFB Settlement Class. Accordingly, the Named Plaintiffs and R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the firm Walters Bender Strohbehn & Vaughan, P.C. (“Plaintiffs’ Counsel” or “Class Counsel”), have satisfied the requirements of Mo. Rule 52.08 and are hereby appointed and approved as representatives of the WFB Settlement Class and Counsel for the WFB Settlement Class, respectively.

5. **Class Notice.** The Court finds that the Class Mail Notice and its distribution to the WFB Settlement Class as implemented pursuant to the Agreement and the Preliminary Approval Order:

- a. Constituted the best practicable notice to the members of the WFB Settlement Class under the circumstances of this Litigation;
- b. Constituted notice that was reasonably calculated, under the circumstances, to apprise the members of the WFB Settlement Class of (i) the pendency of the remaining claims for punitive damages against WFB, the motion for sanctions, and the proposed Settlement, (ii) their right to exclude themselves from the WFB Settlement

Class and the proposed Settlement, (iii) their right to object to any aspect of the proposed Settlement if they did not timely exclude themselves (including, but not limited to, final certification of the WFB Settlement Class; the fairness, reasonableness or adequacy of the Settlement as proposed; the adequacy of the Named Plaintiffs and/or Class Counsel's representation of the WFB Settlement Class; the proposed awards of attorneys' fees and expenses and the proposed incentive award to Plaintiffs Steven L. and Ruth E. Mitchell), (iv) their right to appear at the Fairness Hearing if they did not timely exclude themselves, and (v) the binding effect of this Final Approval Order and the accompanying Final Judgment on all members of the WFB Settlement Class who did not timely exclude themselves from the Settlement;

c. Constituted due, adequate, sufficient and reasonable notice to all persons and entities entitled to be provided with notice; and

d. Constituted notice that fully satisfied the requirements of Mo. Rule 52.08, due process, and all other applicable law.

6. **Final Settlement Approval.** The terms and provisions of the Agreement, including all exhibits, have been entered into in good faith and as a result of arm's length negotiations, and the Agreement is fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Parties and the WFB Settlement Class Members, and in full compliance with all applicable requirements of the laws of the state of Missouri, the United States Constitution (including the Due Process Clause), and all other applicable laws. The Parties are hereby directed to implement and consummate the Agreement according to its terms and provisions.

7. **Binding Effect.** The terms of the Agreement, this Final Approval Order and the accompanying Final Judgment shall be forever binding on the WFB Settlement Class Members and the Named Plaintiffs as representatives of the WFB Settlement Class, as well as their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The terms of the Agreement, this Final Approval Order and the accompanying Final Judgment shall have *res judicata* and other preclusive effect as to the “Releasers” for the “Released Claims” as against the “Released Persons,” all as defined in the Agreement.

8. **Releases.** The Releasers, as defined in Paragraph 2.22 of the Agreement, shall be bound by the Releases provided in Paragraph 6 of the Agreement, which is incorporated herein in all respects, regardless of whether such Releasers received any compensation under the Agreement and Settlement. The Releases shall become effective as of the Effective Date specified in Paragraph 12 of the Agreement. The Court expressly adopts all defined terms in Paragraph 6 of the Agreement, including but not limited to, the definitions of the persons and claims covered by the Releases (which are set forth at Paragraphs 2.22, 2.23 and 2.24 of the Agreement).

9. **Enforcement of Settlement.** Nothing in this Final Approval Order or the accompanying Final Judgment shall preclude any action by any Party to enforce the terms of the Agreement.

10. **Additional Payment to the Named Plaintiffs.** The Court hereby awards \$25,000.00 to be paid from the Settlement Fund to Plaintiffs Steven L. and Ruth E. Mitchell as an incentive award for their continued services as representative plaintiffs for the WFB Settlement Class.

11. **Attorneys' Fees and Expenses.** Plaintiffs' Counsel are awarded \$ _____, representing an allocated share of the litigation expenses and court costs that Plaintiffs' Counsel has incurred and advanced in connection with the Litigation and Settlement from April 27, 2011 (when the case was remanded by the Court of Appeals) through April 6, 2012. The award of expenses and costs to Plaintiffs' Counsel shall be deducted from the "Settlement Fund" as defined in the Agreement. In addition, the Court awards Plaintiffs' Counsel common fund attorneys' fees of \$ _____, representing 50% of the "Net Settlement Fund" as defined in the Agreement. The Court finds and concludes that both the expense and fee awards to Plaintiffs' Counsel for their work and services in the Litigation and in connection with the remaining claims for punitive damages and the Settlement are reasonable for the reasons stated in *Plaintiffs' Application for Award of Attorney's Fees, Litigation Expenses and Court Costs* and finds and concludes as follows:

[As in other cases Plaintiffs will include language for the Court to consider for purposes of the final approval order in support of the fee award.]

12. **No Other Payments.** The preceding paragraphs of this Final Approval Order cover, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Plaintiffs' Counsel and any other counsel representing the Named Plaintiffs as representatives of the WFB Settlement Class and/or incurred by the WFB Settlement Class Members in connection with or related in any manner to the Litigation since April 27, 2011, when the case was remanded by the Court of Appeals, the Settlement of the remaining claims for punitive damages, the motion for sanctions, the administration of the Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement or this Final Approval Order.

13. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Approval Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Approval Order and the accompanying Final Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration and enforcement of the Agreement and Settlement and of this Final Approval Order and the accompanying Final Judgment, and for any other necessary purpose as permitted by Missouri law, including, without limitation:

a. enforcing the terms and conditions of the Agreement and Settlement and resolving any disputes, claims or causes of action that, in whole or in part, are related to the administration and/or enforcement of the Agreement, Settlement, this Final Approval Order or the Final Judgment (including, without limitation, whether a person is or is not a member of the WFB Settlement Class or a WFB Settlement Class Member; and whether any claim or cause of action is or is not barred by this Final Approval Order and the Final Judgment);

b. entering such additional orders as may be necessary or appropriate to protect or effectuate the Court's Final Approval Order and the Final Judgment and/or to ensure the fair and orderly administration of the Settlement and distribution of the Settlement Fund; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

14. **No Admissions.** Neither this Final Approval Order, nor the accompanying Final Judgment, nor the Agreement, nor any of its terms or provisions, nor any of the negotiations between the Parties or their counsel, nor any action taken to carry out this Order or the Final

Judgment, is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of: (a) the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention, assertion, or any claim for 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 remainder of 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 WFB Settlement Class Members hereunder represents the amount that could be or would have been recovered by any such persons if the punitive damages claims were retried; (g) the propriety of class certification in any other proceeding or action; or (h) the propriety of the “multiplier” that the Named Plaintiffs requested and proposed in their *Second Application for Award of Attorney’s Fees* in any future petition or application to the Court for an award of additional attorneys’ fees against WFB. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, factual or legal positions of WFB and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as necessary in a proceeding to enforce the terms of this Order and the Agreement or to prove or show that a compromise in settlement of the Released Claims per the Agreement, in fact, was reached; provided, however, that this Final Approval Order and the Agreement may be filed by WFB in any action by or against WFB or other Released Person to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction,

full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

15. **Dismissal of Litigation Against WFB.** The Litigation against WFB, including any individual and all class claims for punitive damages and all other relief, is dismissed with prejudice as to the WFB Settlement Class Members, without fees or costs to any Party, except as provided in the Agreement, this Final Approval Order and/or the accompanying Final Judgment, and subject to the Court's retention of jurisdiction to vacate, rescind, cancel, annul and deem "void" and/or "no longer equitable" for purposes of Mo. Rule 74.06 this Final Approval Order and/or the Final Judgment and reinstate the punitive damages claims and motion for sanctions of the Named Plaintiffs and the WFB Settlement Class Members against WFB pursuant to the Agreement in the event the Settlement does not (or cannot) become effective as provided in Paragraph 12 of the Agreement. [The Litigation and all individual and class claims and causes of action shall remain pending against Defendants Residential Funding Company, LLC and Household Finance Corporation, III [to be revised as needed].

16. **Claims of Non-WFB Plaintiff Borrowers.** The Court finds and concludes that the MCR Loans of the "Non-WFB Plaintiff Borrowers" as defined in Paragraph 2.19 of the Agreement were not purchased by, assigned to or serviced by WFB and that, given this fact, as stipulated by the Parties, the Non-WFB Plaintiff Borrowers cannot recover any damages, penalties or other relief from WFB with respect to the MCR Loans. This finding and/or conclusion shall not be deemed or construed as a holding that any of the Non-WFB Plaintiff Borrowers have in any way released any claims, of whatever type or kind, with respect to any MCR Loans or otherwise.

17. **Separate Judgment.** The Court will separately enter the accompanying Final Judgment.

Dated: _____, 2012

Justine E. Del Muro, Circuit Judge

Exhibit D

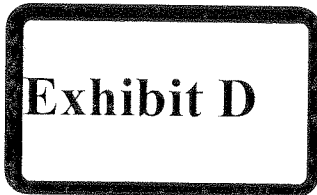


EXHIBIT D: PROPOSED FINAL JUDGMENT

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

STEVEN AND RUTH MITCHELL,

Plaintiffs,

Vs.

RESIDENTIAL FUNDING CORPORATION,
et al.,

Defendants.

Case No. 03-CV-220489-01

Division 4

FINAL JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The settlement of the claims of the WFB Settlement Class Members on the terms set forth in the Parties' Settlement Agreement and Release ("Agreement"), is approved, and the following settlement class is granted final certification for settlement purposes under Mo. Rule 52.08:

All persons who, on or after July 29, 1997, obtained a "Second Mortgage Loan," as defined in § 408.231.1 RSMo, from Mortgage Capital Resource Corporation on real property located in Missouri that was purchased by, assigned to and/or serviced by 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.), HomEq Servicing Corporation, and/or Wells Fargo Bank, N.A., and who did not timely exclude themselves from the litigation class that the Court certified on December 8, 2006.

(the "WFB Settlement Class").

2. Individual notice complying with Rule 52.08 was sent to the last-known address of each member of the WFB Settlement Class as identified on Exhibit E to the Agreement as warranted by WFB. The Court finds all members of the WFB Settlement Class to be "WFB Settlement Class Members" as defined in Paragraph 2.32 of the Agreement and that all such

persons are bound by this Final Judgment, [except for those members, if any, who timely excluded themselves from the WFB Settlement Class, as shown on **Exhibit 1** to the Court's *Order Finally Approving Class Action Settlement and Certifying a Class for Settlement Purposes*.]

3. The Litigation and all of the claims that Plaintiffs Steven L. and Ruth E. Mitchell are asserting as representatives on behalf of the WFB Settlement Class against Defendant Wells Fargo Bank, N.A. ("WFB") are dismissed on the merits with prejudice in accordance with the terms set forth in the Agreement and the Court's *Order Finally Approving Class Action Settlement and Certifying a Class for Settlement Purposes*, which is dated this same date (the "Final Approval Order"), without costs to any Party except as provided in the Agreement and Final Approval Order.

4. All members of the WFB Settlement Class [shall be bound by the Releases provided in Paragraph 6 of the Agreement, as no class members excluded themselves from the Settlement Class.] OR ["who did not timely opt out of and exclude themselves from the Settlement shall be bound by the Releases set forth in Paragraph 6 of the Agreement."] The Releases shall become effective as of the Effective Date specified in Paragraph 12 of the Agreement.

5. As of the Effective Date specified in Paragraph 12 of the Agreement, the Releasers, as defined in Paragraph 2.22 of the Agreement, are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims, as defined in Paragraph 2.24 of the Agreement, against the Released Persons, as defined in Paragraph 2.23 of the Agreement.

6. On December 8, 2006, this Court certified a litigation class that included numerous borrowers whose Second Mortgage Loans were originated by Mortgage Capital Resource Corporation, but were not purchased by, assigned to, or serviced by Defendant WFB. Based on this fact as stipulated by the Parties, the Court finds and concludes that such borrowers (being defined collectively in Paragraph 2.19 of the Agreement as the “Non-WFB Plaintiff Borrowers”) cannot recover any damages, penalties or other relief from WFB with respect to the “MCR Loans,” as defined in Paragraph 2.13 of the Agreement. This finding and/or conclusion shall not be deemed or construed as a holding that any of the Non-WFB Plaintiff Borrowers have in any way released any claims, of whatever type or kind, with respect to the MCR Loans or otherwise.

7. [The dismissal of the Litigation and claims against WFB as provided in the Agreement and Final Approval Order shall in no way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of the Litigation or any other claims including, but not limited to, the claims of any Non-WFB Plaintiff Borrower against RFC or Household.] [*Optional and as needed*]

8. All claims for contribution, indemnity and other claims, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, related to the Released Claims, as defined in Paragraph 2.24 of the Agreement, which could have been brought in the Litigation by any person or party against a Released Person as defined in Paragraph 2.23 of the Agreement (unless such claim is made with respect to a claim by a person or party who is not a Releasor, as defined in Paragraph 2.22 of the Agreement), are permanently barred, prohibited and enjoined.

9. The Court will retain continuing jurisdiction over the Litigation and each of the matters set forth in Paragraph 13 of the Final Approval Order for the purposes set forth in the Final Approval Order.

10. The Court expressly determines that there is no just reason for delay under Mo. Rule 74.01.

11. Unless otherwise provided herein, all capitalized terms in this Final Judgment shall have the same meaning as those terms in the Agreement.

Dated: _____, 2012

Justine E. Del Muro, Circuit Judge

ORIGINAL EXHIBIT FILED UNDER SEAL

Exhibit E

ORIGINAL EXHIBIT FILED UNDER SEAL

Exhibit F

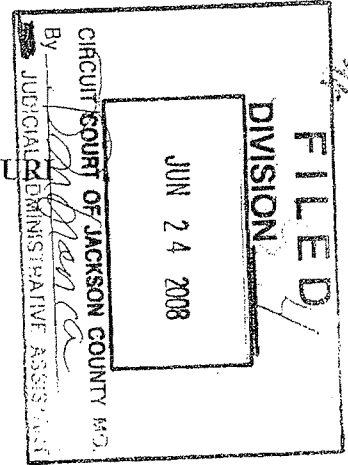
ORIGINAL EXHIBIT FILED UNDER SEAL

Exhibit G

Exhibit H

Exhibit H

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY



STEVEN MITCHELL, ET.AL.,
Plaintiff,

vs.

RESIDENTIAL FUNDING, ET.AL.,
Defendants.

Case No.:03CV220489
Division 4

NUNC PRO TUNC
JUDGMENT AND ORDER

This cause came on for trial by jury beginning December 3, 2007. Plaintiffs appeared through representatives and the respective attorneys.

Upon selection of a petit jury and after opening statements, the parties presented evidence.

On January 3, 2008, the instructions were read to the jury and closing arguments were made. The case was submitted to the jury upon the evidence presented, the instructions of the Court and the arguments of counsel. On January 4, 2008, the jury, after due deliberations, returned to open court with verdicts for damages against all defendants and in FAVOR OF PLAINTIFFS.

IT IS ORDERED AND ADJUDGED that judgment be entered in favor of Plaintiff Class and against Defendant Residential Funding Corp.:

For unauthorized settlement charges or fees in the amount of \$798,832.00

For past interest paid in the amount of \$3,414,962.00

For future interest payable in the amount of \$115,254.00 and

For punitive damages in the amount of \$92,000,000.00

IT IS ORDERED AND ADJUDGED that judgment be entered in favor of Plaintiff Class and against Defendant Homecomings Financial, LLC.:

For past interest paid in the amount of \$682,992.00 and

For future interest payable in the amount of \$23,050.00

IT IS ORDERED AND ADJUDGED that judgment be entered in favor of Plaintiff Class and against Defendant Household Finance Corporation III:

For unauthorized settlement charges or fees in the amount of \$83,494.00

For past interest paid in the amount of \$316,710.00

For future interest payable in the amount of \$8,626.00, and

For punitive damages in the amount of \$4,500,000.00

IT IS ORDEDER AND ADJUDGED that judgment be entered in favor of Plaintiff Class and against Defendant Wachovia Equity Servicing, LLC:

For unauthorized settlement charges or fees in the amount of \$65,407.00

For past interest paid in the amount of \$309,550.00

For punitive damages in the amount of \$2,500,000.00

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs Steven and Ruth Mitchell as representatives of the class shall be jointly awarded an incentive payment of \$30,000.00, which shall be paid from the class common fund with a pro rata reduction to the recovery of the class members other than Steven and Ruth Mitchell on a per loan basis;

IT IS FURTHER ORDERED AND ADJUDGED that pre-judgment interest be assessed against Defendants and in favor of Plaintiff Class in the total amount of \$759,484.00;

Defendant Residential Funding Corp. in the amount of \$642,066.00

Defendant Household Finance Corporation III in the amount of \$64,910.00

Defendant Wachovia Equity Servicing LLC in the amount of \$52,508.00

IT IS FURTHER ORDERED AND ADJUDGED that 35% of the total class common fund shall be awarded to Class Counsel. Class counsel shall be awarded statutory attorney's fees in the amount of \$3,165,231.00;

Defendant Residential Funding Corp. in the amount of \$2,680,001.09

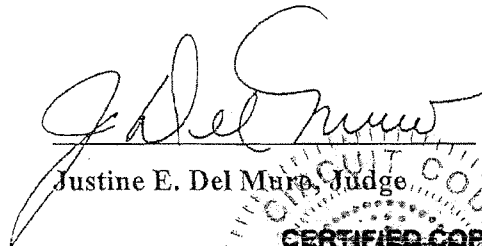
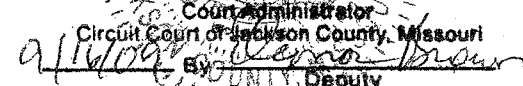
Defendant Household Finance Corporation III in the amount of \$253,218.48

Defendant Wachovia Equity Servicing, LLC in the amount of \$232,011.43

IT IS SO ORDERED.

June 24, 2008

Date


Justine E. Del Muro, Judge
CERTIFIED COPY
I certify that the foregoing document is a full, true and complete copy of the original on file in my office and of which I am legal custodian.
Teresa L. York
Court Administrator
Circuit Court of Jackson County, Missouri
By 
Deputy

I hereby certify that a copy of the foregoing was made available for pick up 6 day of October, 2008 to:

R. Frederick Walters, Attorney for Plaintiff: Walters Bender Strohbehn & Vaughan PC: 2500 City Center Square, 1100 Main, Kansas City, MO 64105-2112.

Roy W. Arnold, Attorney for Defendant Residential Funding LLC: Reed Smith, LLP., 435 Sixth Avenue, Pittsburg, PA 15219-1886.

Randolph G. Willis, Attorney for Defendant Residential Funding LLC: Rasmussen Willis Dickey & Moore LLC, 9200 Ward Parkway, Suite 310, Kansas City, MO 64114

Scott W. Martin, Attorney for Defendant Wachovia Servicing LLC: Husch & Eppenberger, LLC, 1200 Main, Suite 2300, Kansas City, MO 64105

Todd W. Ruskamp, Attorney for Defendant Household Finance Corp., et.al.: Shook Hardy & Bacon, LLP, 2555 Grand Blvd., Kansas City, MO 64108

Diana L. Infranca, Judicial Administrative Assistant, Division 4