IN THE UNITED STATED BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
ADVANTA CORP., *et al.*,	)	Case No. 09-13931 (KJC)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Related to Docket No. 1254
	)	Extended Objection Deadline: June 27, 2011

CLASS CLAIMANTS' RESPONSE TO SEVENTH OMNIBUS OBJECTION (SUBSTANTIVE) TO CLAIMS AGAINST ADVANTA MORTGAGE CORP. USA BASED ON CERTAIN CLASS ACTION LITIGATION CLAIMS

Creditors Michael and Shellie Gilmor (POC No. 2696), Michael and Lois Harris (POC 2681), Joseph and Amy Black (POC No. 2595), William and Carole Hudson (POC No. 2874), Bruce and Mary James (POC No. 2869), William and Marion Jones (POC No. 2863), Debra Mooney (POC No. 2735), Leo E. Parvin, Jr. (POC No. 2754), Derrick and Alethia Rockett (POC No. 2778), John and Jeanne Rumans (POC No. 2782), Raye Ann Varns (POC No. 2815), David and Nicole Warkentien (POC No. 2823), Jeffrey Weathersby (POC No. 2824), and Patricia Ann Worthy (POC No. 2835) on behalf of themselves, and with class counsel, on behalf of the class of Missouri homeowners in the certified class action lawsuit pending in the United States District Court for the Western District of Missouri, styled *Gilmor v. Preferred Credit Corp., et al.*, Case No. 10-0189-CV-W-ODS (the "*Gilmor* Class Action"); Aric Watson (POC No. 2610), on behalf of himself, and with class counsel, on behalf of the class of Missouri homeowners in the certified class action lawsuit pending in the Circuit Court of Clay County, Missouri, styled *Baker v. Century Financial Group, Inc., et al.*, Case No. CV100-4294 (the "*Baker* Class Action"); and all other creditors who filed Proofs of Claim as unnamed class members of the certified borrower

class in the *Gilmor* Class Action (collectively, the "Class Claimants")[1] hereby submit the following response to the Seventh Omnibus Objection (Substantive) to Claims Against Advanta Mortgage Corp, USA Based on Certain Class Action Litigation Claims (the "Omnibus Objection") filed by FTI Consulting, Inc., in its capacity as Trustee of the AMCUSA Trust (the "Trustee") [Docket No. 1254]. For the reasons discussed below, the Court should deny the Trustee's Omnibus Objection and, pursuant to the Motion of Class Claimants for (I) Abstention, and (II) Modification of the Plan Injunction to Litigate Class Claims, filed concurrently with this brief, the Court should permit the Class Claimants to pursue their claims against Advanta in the Missouri courts currently presiding over the *Gilmor* and *Baker* Class Actions.

I. FACTUAL BACKGROUND

A. The Missouri Class Actions

Class Claimants Michael and Shellie Gilmor, Michael and Lois Harris, Joseph and Amy Black, William and Carole Hudson, Bruce and Mary James, William and Marion Jones, Debra Mooney, Leo E. Parvin, Jr., Derrick and Alethia Rockett, John and Jeanne Rumans, Raye Ann Varns, David and Nicole Warkentien, Jeffrey Weathersby and Patricia Ann Worthy are named plaintiffs and class representatives in the *Gilmor* Class Action. The *Gilmor* Class Action was originally filed in June 27, 2000 in the Circuit Court of Clay County, Missouri and the borrower class was certified by that court on January 2, 2003. *Gilmor* was removed to federal court and remanded back to state court on four occasions prior to February 26, 2010, when it was removed for a fifth time based on the appointment of the Federal Deposit Insurance Corporation as receiver for one of the defendants, Corus Bank, N.A.

[1] Excluding the five duplicative claims disallowed per the Fifth Omnibus Objection, there are 433 Class Claimants and 261 related proofs of Claim. The names of each Class Claimant, and the number and amount of their respective proofs of Claim, are listed in Exhibit A attached to the Trustee's Omnibus Objection. [Docket No. 1254].

The *Gilmor* Class Action involves a certified class of Missouri borrowers who obtained second mortgage loans from Preferred Credit Corporation (f/k/a Preferred Mortgage Corporation and T.A.R. Preferred Mortgage Corporation) ("Preferred Credit"). The complaint in *Gilmor* asserts claims for violations of the Missouri Second Mortgage Loans Act, Mo.Rev.Stat. §§ 408.231 et seq. (the "MSMLA") against Preferred Credit, as the originator of the second mortgage loans, and fifty-five (55) additional defendants who subsequently acquired, held or serviced the loans at issue, including the Debtor Advanta Mortgage Corp. USA ("Advanta"). *See* Seventh Amended Petition, filed in the *Gilmor* Class Action on April 25, 2011, attached as **Exhibit 1**.[2] These claims are based on specific provisions in the MSMLA, which place limits on the type and amount of loan fees that can be "directly **or** indirectly charged, contracted for or received **in connection with any** second mortgage loan" secured by Missouri residential real estate, and further prohibits the collection and receipt of any interest in connection with any illegal second mortgage loan (*e.g.*, a loan for which illegal loan fees have been "directly or indirectly charged," "directly or indirectly ... contracted for" **or** "directly or indirectly ... received"). Mo.Rev.Stat. § 408.233.1 (emphasis added); Mo.Rev.Stat. §§ 408.236 and 408.562; *Mitchell v. Residential Funding*, 334 S.W.3d 477, 501(Mo.App. 2010); *Thomas v. U.S. Bank Nat'l Ass'n ND*, 575 F.3d 794, 796 n. 1 (8th Cir. 2009), *cert denied*, __ U.S. __ , 130 S.Ct. 3505, 177 L.Ed.2d 1091 (2010); *cf Fielder v. Credit Acceptance Corporation*, 19 F.Supp.2d 966, 974-76 (W.D.Mo. 1998), *vacated in part on other grounds*, 188 F.3d 1031 (8th Cir. 1999) (borrowers aggrieved by violations of Missouri Motor Vehicle Time Sales Act in the form of illegal fees were entitled to recover the illegal fees in addition to the time price differential [*i.e.*, interest], as

[2] The Seventh Amended Complaint, which was filed on April 25, 2011, is the most recent amended complaint in the Gilmor Class Action. The Seventh Amended Complaint added several additional named plaintiffs and twelve new defendants; including an additional servicer (Mortgage Loan Servicing Corporation); however, the claims do not differ in any material way from those asserted in the Sixth Amended Complaint referenced in the Class Claimants' POCs and the Trustee's Omnibus Objection.

well as delinquency and collection charges pursuant to Mo.Rev.Stat. § 365.150.2 [which is nearly identical to the MSMLA, § 408.236] and Mo.Rev.Stat.§ 408.562).

Advanta, the Debtor in this action, acted as a loan servicer for and collected loan payments from the borrowers for all or mostly all of the estimated 508 Missouri second mortgage loans at issue in the *Gilmor* Class Action, including all of the loans underlying the Proofs of Claim filed by the *Gilmor* Class Claimants. Significantly, during the ***eleven (11) years*** this protracted and hard-fought litigation has been pending in Missouri, Advanta never once sought to dismiss the claims being asserted against it as the servicer of the loans on the grounds that it now asserts here – specifically, that the plaintiffs can state no claim against Advanta under the MSMLA for which relief can be granted under Missouri law (which, as explained below, is understandable).[3]

Class Claimant Aric Watson, is an unnamed class member in the *Baker* Class Action. The *Baker* Class Action was originally filed in Clay County Circuit Court on June 28, 2000. It has been removed to the United States District Court for the Western District of Missouri three (3) times since it was first filed, but it was remanded on each occasion and therefore remains pending in the Circuit Court of Clay County.

The *Baker* Class Action involves a certified class of Missouri borrowers who obtained second mortgage loans from Century Financial Group, Inc. ("Century Financial"). The petition in *Baker* asserts claims for violation of the MSMLA against Century Financial, as the originator of the second mortgage loans, and ninety-four (94) additional defendants who subsequently

[3] It should also be pointed out that Advanta is only one of six loan servicer defendants named in the *Gilmor* Class Action and, therefore, the factual and legal issues underlying the claims against the other servicers, which are virtually identical to those underlying the claims against Advanta, will necessarily be decided in the Missouri courts. The other loan servicers named as defendants in the *Gilmor* Class Action include: 1) BAC Home Loan Servicing, L.P. (f/k/a Countrywide Home Loan Servicing, L.P.); 2) LaSalle National Bank; 3) Litton Loan Servicing, L.P.; 3) Mortgage Loan Servicing Corporation; 4) Ocwen Loan Servicing, LLC (f/k/a Ocwen Federal Bank, FSB); and 5) Wendover Financial Services Corp.

acquired, held or serviced the loans at issue, including Advanta. *See* Fourth Amended Petition, filed in the *Baker* Class Action on February 3, 2004, attached as **Exhibit 2**. The class claims in *Baker* are based on the same MSMLA provisions as those underlying the claims in the *Gilmor* Class Action.

Advanta also acted as a loan servicer for and collected loan payments from borrowers for an as yet undetermined number of the estimated 524 Missouri second mortgage loans at issue in the *Baker* Class Action including all of the loans underlying the Proofs of Claim filed by the *Baker* Class Claimants. As in *Gilmor*, Advanta never once sought to dismiss the claims being asserted against it in the *Baker* Class Action on the grounds that it now asserts here – specifically, that the plaintiffs can state no claim against Advanta under the MSMLA for which relief can be granted under Missouri law.[4]

The *Gilmor* and *Baker* Class Actions represent just two of eleven such class action lawsuits filed in the Missouri courts on behalf of Missouri homeowners who obtained second mortgage loans secured by Missouri real estate in the late 1990s and early 2000s (the "Missouri Class Actions").[5] Each of the Missouri Class Actions involves virtually identical statutory

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[4] The other loan servicers named as defendants in the *Baker* Class Action include: 1) Homecomings Financial, LLC; 2) La Salle National Bank; 3) Litton Loan Servicing LLP; and 4) Ocwen Loan Servicing LLC. Again, the claims against these other servicers, which are virtually identical to those underlying the claims against Advanta here will necessarily be decided in the Missouri courts.

[5] In addition to the Gilmor and Baker Class Actions, the Missouri Class Actions include: 1) *DeAnthony Thomas, et al. v. US. Bank, N.A., N.D., et al.*, Case No. 11-06013 (U.S. Dist. Ct., W.D. Mo.); 2) *Jack L. and Hilda M. Beaver, et al. v. U.S. Bank N.A., et al.*, Case No. 00CV215097-01 (Circ. Ct., Jackson Cty.); 3) *Dana S. and Melanie D. Hall, et al. v. American West Financial, et al.*, Case No. 00CV218553-01 (Circ. Ct., Jackson Cty.); 4) *Samuel Smith, Jr.. et al. v. Premier Associates Mortgage Company, et al.*, Case No. 01CV201263-01 (Circ. Ct., Jackson Cty.); 5) *Samuel Smith, Jr., et al. v. Premier Associates Mortgage Company, et al.*, Case No, 03CV216423 (Circ. Ct., Jackson Cty.); 6) *James G. Wong, et al. v. Bann-Cor Mortgage, et al., Case No. 10-01038 (U.S, Dist. Ct., W.D. Mo.); 7) Danita Couch, et al. v. SMC Lending, Inc., et al.*, Case No. CV 100-4332 (Circ. Ct., Clay Cty.); 8) *David C. McLean, et al. v. First Horizon Home Loan Corporation, et al.*, Case No. 00CV228530 (Circ. Ct., Jackson Cty.); 9) *Jerry W. and Golda M Washington, et al. v. Countrywide Home Loans, Inc.*, Case No. 08-00459 (U.S. Dist. Ct., W.D. Mo.)(currently pending in the U.S. Court of Appeals for the Eighth Circuit, Case No. 10-1340); 10) *Michael D. and Sharron Mayo, et al. v. UBS Real Estate Securities, Inc., et al.*, Case No. 08-CV-00568 (U.S. Dist. Ct., W.D. MO;

claims for violations of the MSMLA by the mortgage lenders and the purchaser-assignees, owners, holders and servicers of the Missouri second mortgage loans that the lenders made.[6] All eleven Missouri Class Actions were originally filed in Missouri state court, but four of the lawsuits have been removed by the defendants to the United States District Court for the Western District of Missouri. One of these cases, the "*Washington* Class Action," is currently on appeal before the Eighth Circuit Court of Appeals (*see* footnote 5, *supra*). Over the last decade, both the plaintiffs and the defendants in these cases have appealed a number of lower court rulings to both the state and federal appellate courts in Missouri, including one petition for a writ of certiorari to the United States Supreme Court.[7]

One of the Missouri Class Actions, styled *Steven and Ruth Mitchell v. Residential Funding Corp., et al.* (the "*Mitchell* Class Action" or "*Mitchell*"), has gone to trial and been appealed. *Mitchell*, 334 S.W.3d 477 (Mo.App. 2010). As in *Gilmor* and *Baker*, the plaintiffs' class in *Mitchell* asserted claims against several defendants that purchased and received an assignment of, or held or serviced the Missouri second mortgage loans at issue, including a servicer, namely Homecomings Financial, LLC ("Homecomings"). *See* Third Amended Petition, filed in the *Mitchell* Class Action on September 7, 2008, attached as **Exhibit 3**. The claims against Homecomings in the *Mitchell* Class Action were based on the same allegations underlying the Class Claimants' claims against Advanta in the *Gilmor* and *Baker* Class Actions (and now here). As in the *Gilmor* and *Baker* Class Actions, Homecomings' liability stemmed

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and 11) *Steven and Ruth Mitchell, et al. v. Residential Funding Corporation, et al.*, Case No. 03-CV220489 (Circ. Ct., Jackson Cty.).

[6] Several defendants are named in one or more in these cases, including some of the defendants in the *Gilmor* and *Baker* Class Actions.

[7] *See Thomas, et al. v. US. Bank, NA., N.D.*, 575 F.3d 794 (8th Cir. 2009), *cert. denied*, __ U.S. __, 130 S.Ct. 3505, 177 L.Ed.2d 1091 (2010).

from its collection, receipt and disbursement of the plaintiff-class members' loan payments, which included the illegal fees that had been financed and rolled into the loan principal, and which the MSMLA plainly prohibited Homecomings and the loan holders from "directly **or indirectly charging**, "directly **or indirectly ... contracting for**" **or** "directly **or indirectly ... receiving in connection with any** second mortgage loan." *See Mitchell v. Residential Funding*, 334 S.W.3d 447, 501 (Mo.App. 2010) (The Missouri legislature's "broad choice of language" in § 408.233.1 that "[n]o charge ... shall be directly or indirectly charged, contracted for or received in connection with any second mortgage loan" "reaches even those entities that never received the fees or interest, never charged for them, or never contracted for them.").

On June 24, 2008, the Circuit Court of Jackson County, Missouri (Hon. Justine Del Muro) entered final judgment on the jury's verdict against Homecomings in the amount of $706,042. *Id.* at 486. On or about October 14, 2008, all of the defendants, including Homecomings, appealed. *Id.* at 484; *see also*, Notice of Appeal, attached as **Exhibit 4**. On November 30, 2010, the Court of Appeals for the Western District of Missouri affirmed the judgment on plaintiffs' claims for compensatory damages against all defendants, including Homecomings, but reversed the punitive damages award for instructional error and remanded the case for a new trial as to punitive damages. *See Mitchell*, 334 S.W.3d at 515. The defendants subsequently filed applications to transfer the case to the Missouri Supreme Court. The Missouri Court of Appeals denied the applications, but modified its opinion *sua sponte* on February 1, 2011. *See* Orders dated February 2, 2011, attached as **Exhibits 5, 6, 7**. Defendants then filed applications for transfer in the Missouri Supreme Court, all of which were denied on April 26, 2011. *See* Order dated April 26, 2011, attached as **Exhibit 8**. The *Mitchell* opinion became final

on April 28, 2011 when the Missouri Court of Appeals issued its mandate. *See* Mandate, dated April 28, 2011, attached as **Exhibit 9**.

B. Facts Underlying the Class Claimants' Individual Claims Against Advanta

The Class Claimants, like all of the class members in the *Gilmor* and *Baker* Class Actions, are Missouri homeowners who, like literally hundreds of other Missouri homeowners, were charged and paid excessive loan origination and other unauthorized and illegal fees in connection with a Missouri residential second mortgage loan. As in the other Missouri Class Actions, the lenders in the *Gilmor* and *Baker* Class Actions subsequently sold and assigned the Missouri loans to a number of financial institutions for "securitization" purposes shortly after they were made.[8] As the State Courts that certified the plaintiff classes in *Gilmor* and *Baker* found, the factual situation of the named plaintiffs in those cases was not unique, but typical of the second mortgage loans that Preferred Credit and Century Financial systematically solicited and made throughout Missouri. *See* Order Certifying Plaintiff Class in *Gilmor*, attached as **Exhibit 11**, at 11-12; Order Certifying Plaintiff Class in *Baker*, attached as **Exhibit 12**, at 11-12. The following facts relating to the loans and loan payments made by five of the named plaintiffs in the *Gilmor* Class Action, and Aric Watson, are therefore representative of the facts underlying the claims of all of the Class Claimants.

[8] Preferred Credit and Century Financial did not solicit and make the subject Missouri second mortgage loans to hold and service as a part of their own loan portfolios. That was not the business in which they were engaged. Preferred Credit and Century Financial were, instead, loan originators who solicited and closed "non-traditional consumer loans" in order to "securitize" them via trusts setup for that purpose. *See e.g.*, Preferred Credit Corp.'s Form S-1 filed with the Securities and Exchange Commission on June 24, 1997, attached as **Exhibit 10**, at 6, 7. The "core loans" typically consisted of "high loan-to-value" closed-end (usually 15 year), fixed-rate, fully-amortizing second mortgage loans. *Id.* at 7, 8. The core loans were "typically used by consumers to pay-off [sic] credit card and other unsecured indebtedness." *Id.* at 7.

1. Michael and Shellie Gilmor

Class Claimants Michael and Shellie Gilmor, who filed POC 2696, obtained a $40,000 second mortgage loan from Preferred Credit in September 1997, using their Clay County Missouri home as collateral. *See* **Exhibit 1**, ¶¶98-107; *see also* the Affidavit of Shellie L. Gilmor dated November 18, 2010, attached as **Exhibit 13**, ¶¶1-16. The interest rate for the loan was 13.5%. *Id.; see also* the Gilmor Note, attached as **Exhibit 14**. The Gilmors were also charged and paid loan fees totaling $4,533.53, more than 11% of the loan amount, all of which were rolled into and financed as a part of the loan principal. *See* **Exhibit 13**, ¶¶ 10, 11, 16; *see also Gilmor* Settlement Statement (HUD-1), attached as **Exhibit 15**. The Gilmors allege that a number of the fees assessed in connection with their loan violated the MSMLA. *See* **Exhibit 1**, ¶¶102-104. Preferred Credit sold the Gilmor loan to Defendant Impac Funding Corp., which conveyed the loan to its IMPAC Secured Assets CMN Trust Series 1998-1. *See* Declaration of Richard Johnson, dated December 6, 2002, attached as **Exhibit 16**, ¶¶4-6, 11-14. Defendants Advanta and Wendover Financial Services, among others, serviced the Gilmor loan. *See* **Exhibit 13** ¶¶17-23. The Gilmors therefore made monthly mortgage payments to Advanta. *Id.*, ¶17.

2. Michael and Lois Harris.

Michael and Lois Harris, who filed POC 2681, obtained a $45,000 second mortgage loan from Preferred Credit in August 1997, using their Jackson County Missouri home as collateral. *See* **Exhibit 1**, ¶¶108-117; *see also* Affidavit of Michael E. Harris dated November 16, 2010, attached as **Exhibit 17**, ¶¶1-16. The interest rate for the loan was 13.99%. *Id.*; *see also* Harris Note, attached as **Exhibit 18**. The Harrises were charged and paid loan fees totaling $5,560.25, more than 12% of the loan amount, all of which were financed as a part of the principal loan amount. *Id.*, ¶¶10, 11, 16; *see also* Harris Settlement Statement (HUD-1), attached as **Exhibit**

19. The Harrises allege that a number of the fees assessed in connection with their loan violated the SMLA. *See* **Exhibit 1**, ¶¶111-114. Preferred Credit sold the Harris loan to Defendant Impac Funding, which conveyed the loan to its IMPAC Trust 1998-1. *See* **Exhibit 16**, ¶¶4-6, 11-14. Defendants Advanta, Wendover, Impac, and Countrywide Homes Loans, among others, all serviced the Harris' loan. *See* **Exhibit 17**, ¶¶17-23. The Harrises therefore made monthly mortgage payments to Advanta. *Id.*, ¶17.

3. Leo Parvin, Jr.

Leo Parvin, Jr., who filed POC 2754, obtained a $20,000 second mortgage loan from Preferred Credit in June 1997, using his Jackson County Missouri home as collateral. *See* **Exhibit 1**, ¶¶118-127; *see also* Affidavit of Leo Parvin dated November 18, 2010, attached as **Exhibit 20**, ¶¶1-14. The interest rate for the loan was 13.99%. *Id.*; *see also* Parvin Note, attached as **Exhibit 21**. Mr. Parvin was charged and paid loan fees totaling $3,171.47, nearly 16% of the loan amount, all of which, again, was rolled into the loan amount. *Id.*; *see also* Parvin Settlement Statement (HUD-1), attached as **Exhibit 22**. Mr. Parvin asserts that a number of the fees assessed in connection with his loan violated the SMLA. *See* **Exhibit 1**,¶¶121-124. Preferred Credit sold the Parvin loan to Empire Funding Corp., which apparently held and serviced the loan for approximately three years. *See* **Exhibit 20**, ¶¶15-17; *see also* Summary-Monthly Activity Report dated December 1, 1997, attached as **Exhibit 23**; *see also* Affidavit of Christi Gumbs, dated November 19, 2010, attached as **Exhibit 24**, ¶9.g, and Summary-Monthly Activity Report, dated December 1, 1997, attached as **Exhibit 25**. In or about 2000, Wells Fargo Bank, NA (formerly Norwest Bank Minnesota, NA), in an as-yet undisclosed capacity, and/or Countrywide, in an as-yet undisclosed capacity, acquired the Parvin loan on behalf of IFC/IMPAC Trust 2000-1. *See* **Exhibit 24**, ¶9.d, and Corporation Assignment of Deed of Trust,

attached as **Exhibit 26**. Mr. Parvin's Preferred Credit loan went from IFC to Impac Mortgage Holdings, Inc. to IMH Assets Corp. to its IMPAC Trust 2000-1. *See* Amended Response of Defendant Impac Mortgage Holdings, Inc. to Plaintiffs' Interrogatories and Requests for Production, attached as **Exhibit 27** at No. 45 & Ex. A. The Parvin loan was later conveyed to a second trust, IMPAC Trust 2003-5, which held at least one other Preferred Credit Class Loan. *Id.* Impac Funding, individually and through servicers, including Advanta, sent Mr. Parvin his mortgage bills and other information regarding his loan. *See* **Exhibit 20**, ¶¶15-18. Mr. Parvin therefore made mortgage payments to Advanta. *Id.*

4. Aric Watson

Aric Watson, who filed POC No. 2610, obtained a $35,000 second mortgage loan from Century Financial in or about June 1997, using his St. Louis County home as collateral. The interest rate for the loan was 16.750%. *See* Watson Note, attached as **Exhibit 28**. Mr. Watson was also charged and paid loan fees totaling $3,924.00, more than 11% of the loan amount, all of which were rolled into and financed as a part of the loan principal. *See* Watson Settlement Statement (HUD-1), attached as **Exhibit 29**. Mr. Watson alleges that a number of the fees assessed in connection with his loan violated the MSMLA. Century Financial sold the Watson loan to Preferred Credit Corporation. *See* Corporation Assignment of Deed of Trust, attached as **Exhibit 30**. Advanta serviced the Watson Loan for Preferred Credit and Mr. Watson therefore made monthly payments to Advanta. *See* Advanta Payment History for Watson Loan, attached as **Exhibit 31**. Advanta, as Attorney-In-Fact for Preferred Credit (who was an assignee of Century Financial in this case), also executed the Deed of Release for the loan. *See* Full Deed of Release recorded on June 25, 1998, attached as **Exhibit 32**.

5. Undisputed Facts Applicable to Advanta

Based on these facts, as well as the same or similar facts relating to the other Class Claimants, Advanta admits that it charged, collected and received the Class Claimants' monthly loan payments on the loans at issue. *See e.g.*, Omnibus Objection, at p. 7 ¶23. Given these facts, Advanta must also admit that the loan fees at issue were financed; and, thus, that the allegedly illegal fees had been rolled into the loan principal and repaid as part of the monthly loan payments. Advanta therefore cannot deny that it "indirectly charged," "indirectly ... [collected and]" "indirectly ... received" the allegedly illegal loan fees that the Class Claimants paid on their second mortgage loans as a part of each monthly loan payment. Finally, Advanta must also admit that, notwithstanding its collection and receipt of the financed loans fees, Advanta irrefutably charged, collected and received the interest that the Class Claimants paid on the allegedly illegal loans with each monthly payment in violation of § 408.236 of the MSMLA.

II. LAW AND ARGUMENT

A. The Missouri Second Mortgage Loans Act

The MSMLA, Mo.Rev.Stat. §§ 408.231-408.241, is a "fairly comprehensive" consumer protection measure, enacted to protect Missouri homeowners by regulating "the business of making high-interest second mortgage loans on residential real estate." *Mitchell v. Residential Funding*, 334 S.W.3d 477, 503 (Mo.App. 2010) (citing *Avila v. Community Bank of Northern Virginia*, 143 S.W.3d 1, 4 (Mo.App.2003); *U.S. Life Title Insurance Co. v. Brents*, 676 S.W.2d 839, 841 (Mo.App.1984); *Schwartz v. Bann-Cor Mortgage*, 197 S.W.3d 168, 178 (Mo. App. 2006) ("SMLA is remedial in that it is a consumer protection statute"). As a remedial statute, the MSMLA should be liberally construed to protect consumers and "meet the cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy."

Boulds v. Chase Auto Finance Corp., 266 S.W.3d 847, 850 (Mo.App. 2008); *Schwartz,* 197 S.W.3d at 178.

At all times relevant to the subject matter of this action, the MSMLA provided in pertinent part as follows:

> **408.231. Definitions.**
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> 1. A "**second mortgage loan**" shall mean a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust deed, or other similar instrument or document, which provides for interest to be calculated at the rate allowed by the provisions of section 408.232, which residential real estate is subject to one or more prior mortgage loans.
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> 2. "**Principal**" of a second mortgage loan means the total of the net amount paid to, receivable by, contracted for, or paid or payable for the account of the borrower, and to the extent payment is deferred, additional charges permitted by section 408.233.
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> 3. "**Residential real estate**" shall mean any real estate used or intended to be used as a residence by not more than four families, notwithstanding the provisions of section 408.015.

Mo.Rev.Stat. § 408.231.

> **408.232. Rates and Terms.**
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> 1. With respect to a second mortgage loan, any person, firm or corporation may charge, contract for, and receive interest in any manner at a rate which shall not exceed one and sixty-seven hundredths percent per month [at rates agreed to by the parties], computed on unpaid balances of the principal for the time actually outstanding.
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> 4. Sections 408.231 to 408.241 [the MSMLA] shall not apply to any loans on which the rate of interest [and fees] charged [are] lawful [under Missouri law] without regard to the rates permitted in subsection I of this section [and the fees permitted in section 408.233.]

Mo.Rev.Stat. § 408.232.[9]

[9] The bracketed language was added by the Missouri General Assembly in 2004 to clarify, *inter alia*, that the term "lawful" was intended to mean "lawful under Missouri law." The legislative action was necessitated, in part, by a rather anomalous interpretation given to the MSMLA by the Missouri Court of Appeals in *Avila v. Community Bank*

408.233. Additional charges authorized.

1. No charge other than that permitted by section 408.232 shall be directly or indirectly charged, contracted for or received in connection with any second mortgage loan, except as provided in this section:

(1) Fees and charges prescribed by law actually and necessarily paid to public officials for perfecting, releasing, or satisfying a security interest related to the second mortgage loan;

(2) Taxes;

(3) Bona fide closing costs paid to third parties, which shall include:

(a) Fees or premiums for title examination, title insurance, or similar purposes including survey;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Fees for credit reports;

(4) Charges for insurance as described in subsection 2 of this section;

(5) A nonrefundable origination fee not to exceed two [five] percent of the principal [which may be used by the lender to reduce the rate on a second mortgage loan]; [10]

(6) Any amounts paid to the lender by any person, corporation or entity, other than the borrower, to reduce the rate on a second mortgage loan or to assist the borrower in qualifying for the loan.

Mo.Rev.Stat. § 408.233.1.

408.236. Recovery of interest barred, when, exceptions--actions taken or omitted in reliance on interpretation by division of finance, effect

Any person violating the provisions of sections 408.231 to 408.241 shall be barred from recovery of any interest on the contract, except where such violations occurred either:

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of Northern Virginia, 143 S.W.3d 1, 4-5 (Mo.App. 2003) and *Adkison v. First Plus Bank*, 143 S.W.3d 29, 33-35 (Mo.App. 2004).

[10] The bracketed language was added by amendment effective August 28, 1998.

(1) As a result of an accidental and bona fide error of computation; or

(2) As a result of any acts done or omitted in reliance on a written interpretation of the provisions of sections 408.231 to 408.241 by the division of finance.

Mo.Rev.Stat. § 408.233.1.

408.562. Damages recoverable for violation

In addition to any other civil remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.

Mo.Rev.Stat. § 408.562.

Based on the language of Mo.Rev.Stat. § 408.236 and/or § 408.562, persons aggrieved by a violation of the MSMLA are entitled, *inter alia*, to recover all actual damages, including all pecuniary losses, resulting from any violations of the MSMLA. *Mitchell*, 334 S.W.3d at 503. As recently held in *Mitchell*, an aggrieved borrower's actual damages include *all* illegal fees and *all* past interest charged, contracted for or *received* by a defendant in connection with any loan violating the MSMLA, as well as prejudgment interest on such illegal charges paid by the borrower. *Mitchell*, 334 S.W.3d at 506-009 (citing Mo.Rev.Stat. §§ 408.236, 408.562)(emphasis added); *cf Fielder v. Credit Acceptance Corporation*, 19 F.Supp.2d 966, 974-76 (W.D.Mo. 1998), *vacated in part on other grounds*, 188 F.3d 1031 (8th Cir. 1999) (borrowers aggrieved by violations of Missouri Motor Vehicle Time Sales Act in the form of illegal fees were entitled to recover the illegal fees in addition to the time price differential [*i.e.*, interest], as well as

delinquency and collection charges pursuant to Mo.Rev.Stat. § 365.150.2 [which is nearly identical to the MSMLA, § 408.236] and Mo.Rev.Stat.§ 408.562).

B. As a Loan Servicer, Advanta Violated the MSMLA and is Liable to the Class Claimants.

Based on the above facts and law, Advanta clearly violated the MSMLA by having "directly or indirectly charged, contracted for **or** received" the financed illegal loan fees paid "in connection with" the Class Claimants' second mortgage loans. Advanta also separately violated the MSMLA each time it charged, collected and received the illegal interest paid on the Class Claimants' non-compliant loans. These separate violations of the MSMLA in fact occurred each time the Class Claimants' made a monthly payment to Advanta. As a result, the Trustee's assertion that "it is undisputed" that Advanta did not itself violate the MSMLA is unquestionably wrong.

The language of the MSMLA, and in particular section 408.233.1, could not be clearer: "*No charges* other than that permitted by section 408.232 [*i.e.*, the interest rate] *shall be directly or indirectly charged, contracted for or received in connection with any second mortgage loan except* [those permitted in 408.233.1." Mo.Rev.Stat. § 408.233 (emphasis added). As explained by the Court in *Mitchell*:

> Section 408.233.1 mandates:
>
> > No charge other than that permitted by section 408.232 [addressing allowable interest rates for complying loans] shall be directly or indirectly charged, contracted for or received in connection with any second mortgage loan, except [the permitted fees]:
>
> ...
>
> We presume "that the legislature included every word of a statute for a purpose, and that every word has meaning." *Robinson v. Advance Loans II, L.L.C.*, 290 S.W.3d 751, 755 (Mo.App. ED 2009). Defendants arguments amount to a requirement that a defendant must have *directly* charged, contracted for, or

> received fees or interest in connection with the unlawful charges. The language of section 408.233 is self-evident. Had the legislature intended to ascribe liability only if Defendants directly "charged, contracted for, or received," fees and unauthorized interest, it would not have ascribed liability where a defendant "directly or indirectly" engages in such conduct. We do not read the legislature's choice of language in a statute as surplusage. *Id.*
>
> The legislature's intent to reach those loans that would otherwise escape liability through the secondary mortgage market is further evidenced by its broad choice of language: "charged, contracted for, *or* received." § 408,233.1 (emphasis added).
>
> Through the disjunctive, this language reaches even those entities that never received the fees or interest, never charged for them, or never contracted for them. Further, the legislature prohibited those charges merely made "in connection with" second mortgage loans. *See id.* This broad language additionally evidences the legislature's intent to cast a wide net over the market.

Id. at 501 (brackets and italics in original; underscore added). As the *Mitchell* Court clearly recognized, the "wide net" cast by Mo.Rev.Stat. § 408.233.1 includes servicers and other "non-owners"—like Homecomings in that case and Advanta here—that "directly or *indirectly* charge[ed], **or** "directly or *indirectly* … contract[ed] for," **or** "directly or *indirectly* receive[ed] any illegal fees and interest "in connection with any second mortgage loan." *Id.* (emphasis in original).

The facts, as set forth above, establish that Advanta violated the MSMLA, § 408.233.1 by directly or indirectly charging or receiving **illegal loan fees** that were financed and paid to Advanta with each loan payment. *See* Mo.Rev.Stat. § 408.233.1; *Mitchell*, 334 S.W.3d at 501. These same facts also establish that Advanta directly or indirectly received the **illegal interest paid** on the non-compliant loans each time it collected one of the Class Claimants' loan payments, which was, in and of itself, a separate violation of the MSMLA. *See* Mo.Rev.Stat. §§ 408.236 and 408.562; *Mitchell*, 334 S.W.3d at 502-03 (finding that jury was properly "instructed to find liability if it believed Defendants [including the servicer defendant Homecomings]

'directly or indirectly charged, contracted for, or received interest in connection with' the loans and Plaintiffs' class was thereby damaged.").

Advanta's violations of the MSMLA are also conclusively established by the very Servicing Agreement the Trustee attached as Exhibit B to its Omnibus Objection. This agreement, which is but one of three Servicing Agreements Advanta entered into in connection with the loans at issue *Gilmor*, clearly shows that Preferred Credit not only delivered the Mortgage Loans to Advanta, but also that Advanta agreed to establish and maintain a "Collection Account" "specifically for the collection of principal and interest ... and other amounts received with respect to the Mortgage Loans."[11] *See* Seventh Omnibus Objection, at Exhibit B, p. 1; p. 2 § 1.1 ("Collection Account"); p. 10 § 4.4 (a). This Servicing Agreement also provides that Advanta "shall, from time to time, withdraw funds from the Collection Account ... to reimburse itself ... for accrued and unpaid Servicing Fees ..." [and] to pay to itself any interest earned on funds deposited in the Collection Account." *Id.*, p. 11 § 4.5(a). The Agreement further states that Advanta "shall be entitled to *retain* as to each Mortgage Loan, a Servicing Fee of .55% (55 basis points) per annum which shall be retained from the interest portion of the Mortgage Loan payments as received from a Borrower ...." *Id.* at p. 13 § 4.10 (emphasis added). It also expressly provides that Advanta "may invest *all or a portion of the funds in the Collection Account* ... in the name of [*Advanta*; and that *Advanta*] shall receive as Additional Servicing Compensation all income and gain realized from any such Permitted Investment." *Id.* at p. 10 § 4.4(c)(emphases added). Thus, Advanta not only directly or indirectly charged and received the

[11] In addition to Servicing Agreement attached to the Omnibus Objection as Exhibit B, Advanta also entered into at least three other Servicing Agreements relevant to the Gilmor loans. These three virtually identical agreements, which relate to three securitized pools of Preferred Credit loans serviced by Advanta, also provide ample evidence to support Class Claimants' claims that Advanta directly or indirectly charged, contracted for or received illegal fees and interest in connection with Class Claimants' second mortgage loan. *See e.g.*, Pooling and Servicing Agreement, dated June 1, 1996, p. §§ 5.1, 5.3, 5.4, 5.7 & 5.13, attached as **Exhibit 33**.

illegal fees and interest paid on the Class Claimants' second mortgage loans, which is all that must be shown under the MSMLA, it also directly benefited from every dime it thus "charged" or "received."

Without question, even the servicing agreement upon which the Trustee itself relies shows that Advanta "*directly or indirectly charged*" *and* "*directly or indirectly ... received*" the illegal fees and interest paid on the subject loans each time the Class Claimants made a monthly loan payment to Advanta. As either "directly or indirectly charging" *or* "directly or indirectly receiving" illegal loan fees *or* illegal interest is sufficient to establish a separate violation of the MSMLA, the Trustee's Exhibit B itself shows that Advanta violated the MSMLA.

In light of the plain language of the statute and the subsequent decision recently handed down by the Missouri Court of Appeals in *Mitchell*, these facts are more than sufficient to support Class Claimants' claims that Advanta itself violated the MSMLA by directly or indirectly charging, contracting for or receiving illegal fees and interest in connection with the second mortgage loans it serviced. Such facts are also more than sufficient to support their claims that the remedial provisions of the MSMLA entitle them to recover *all* of the illegal fees and interest received by Advanta as well.

C. The Trustee's Contentions as to Derivative Liability are Misplaced.

For these same reasons, *all* of the Trustee's additional, lengthy arguments relating to Advanta's non-liability as an agent and/or assignee of the original lenders are misplaced. In fact, they are completely irrelevant here. Contrary to the Trustee's assumptions, Class Claimants are not claiming, and in fact have never claimed, that Advanta is derivatively liable to them for the originating lenders' violations of the MSMLA, based on an agency theory, common law assignee principles, or assignee liability under the federal Home Ownership Equity Protection Act

("HOEPA"), 15 U.S.C. § 1641(d).[12] *See* Omnibus Objection, pp. 10-15. To the contrary, such liability is, and always has been, based on the undisputed fact that Advanta is itself directly liable under the MSMLA for having "directly or indirectly charged, contracted for or received" the illegal fees and interest "in connection with [the] second mortgage loans" at issue. Mo.Rev.Stat. § 408.233.1. Simply put, although assignees may violate the MSMLA either directly *or* derivatively, one need not be an assignee to *directly* violate this Missouri law.

D. Loan Ownership is not an Element of the Class Claimants' MSMLA Claims.

The Trustee incorrectly seeks to re-write the MSMLA by tying a violation of § 408.233.1 in a "financed fee" case like this one to the "ownership" of the loan for which the illegal fees were financed and repaid in the course of repaying the loan. The MSMLA contains no such "ownership" requirement, § 408.233.1, which is why the court of appeals in *Mitchell* affirmed the judgment against Homecomings, the non-owner loan servicer for one of the owner-assignee defendants in that case. *Mitchell*, 334 S.W.3d at 506-08. Thus, a summary disposition by this Court in favor of the Trustee on the Class Claimants' claims would clearly be at odds with *Mitchell* and the plain wording of the MSMLA.

Without question, Advanta collected **and** received most, and in some cases all, of the borrowers' monthly loan payments. The loan proceeds did not come first from the originator or the assignee trusts or trustees, they came directly from the Missouri borrowers, including the Class Claimants here. Hence, Advanta "indirectly received" the illegal loan fees in exactly the same way that the other defendants in the *Gilmor* and *Baker* Class Actions "indirectly received" the illegal loan fees. That is, just like the defendants who subsequently acquired or held the

[12] As the Trustee correctly pointed out in its Omnibus Objection, the *Mitchell* plaintiffs' common law liability theory was expressly rejected by the Missouri Court of Appeals. *See Mitchell*, 334 S.W.3d at 503-06. However, this particular holding clearly applied only to the "Assignee Defendants" in the *Mitchell* case. *Id.* Again, the plaintiffs in the Missouri Class Actions, including Class Claimants here, have never claimed that servicer defendants such as Advanta are derivatively liable to them, as agents or as assignees.

Class Claimants' loans, Advanta both "charged" and "received" a portion of the illegal fees with each monthly payment it received from the borrowers. And just like the defendants who subsequently acquired or held the Class Claimants' loans, Advanta unquestionably "charged" and "received" the interest paid on these illegal loans each time it received a Class Claimant's monthly loan payment. The fact that Advanta may not have ever taken title to or legally "owned" the loan is immaterial. So, too, is the fact that, per the servicing agreements, Advanta may have taken their fees solely from the interest. The act of indirectly "charging" or "indirectly receiving" the illegal loan fees and illegal interest paid to Advanta on the tainted loans, in and of itself, constituted a violation of § 408.233.1. *See* Mo.Rev.Stat. §§ 408.233.1, 408.562; *Mitchell*, 334 S.W.3d at 501 ("[t]hrough the disjunctive, [the language of § 408.233.1] reaches even those entities that never received the fees or interest, never charged for them, or never contracted for them"). In short, a violation of § 408.233.1 cannot be permissibly tied to "ownership" of the loan or to the retention of the illegal fees and interest that a servicer "charges" and "receives" from the borrowers via repayment.

Such an outcome is not unfair. Servicers like Advanta, which are charged by the holders with the task of collecting on the loans, should not be immunized from the liability arising from the illegal Missouri second mortgage loans they service. Neither the judiciary nor the Missouri legislature should encourage Advanta or any other loan servicer in this highly sophisticated industry to collect, with impunity, loans that are patently illegal, like the second mortgage loan at issue here. This is especially true where, as here, the loan servicer is by no means a disconnected "stranger" to the transactions at issue and takes its fees directly from the illegal mortgage payments it receives from the borrowers, just like the defendants who may have otherwise "held" or "acquired" the loans as "owners." *See CWCapital Asset Management, LLC v. Chicago*

Properties, LLC, 610 F.3d. 497, 499-501 (7th Cir. 2010) (explaining "servicer's role in administering a mortgage-backed security" and concluding that a servicer "is much like an assignee for collection, who must render to the assignor the money collected ..." because the servicer takes its fee from the mortgage payments collected and received).[13]

E. The *Mayo* Ruling.

The Trustee's reliance on the recent unpublished *Mayo* opinion to support its Omnibus Objection should be rejected as misplaced. *See* Omnibus Objection, at pp. 10-11 (citing *Mayo v. GMAC Mortgage, LLC*, 2011 WL 111236 (W.D.Mo., Jan. 13, 2011)). First, the *Mayo* opinion was issued before the *Mitchell* opinion became final and therefore *Mayo* has now been, in effect, overruled by *Mitchell*. *See, e.g., Gibbs-Alfano v. Burton*, 281 F.3d 12, 18-19 (2nd Cir. 2002) (Whenever applicable state law is unsettled, this Court gives "the 'fullest weight' to pronouncements of the state's highest court, while giving 'proper regard' to relevant rulings of the state's lower courts."). Secondly, because it involves a partial summary judgment, the *Mayo* opinion is not yet final and remains subject to an appeal to the Eighth Circuit Court of Appeals, pending either a final judgment in that case or the district court's certification that there is no just reason to delay entry of final judgment on this interlocutory order. *See* Fed.R.Civ.P. 54(b); *Porter v Williams*, 436 17.3d. 917, 920 (8th Cir. 2006) (a partial summary judgment against one of several defendants does not become final for purposes of appeal until the district court disposes of all remaining claims and parties or "the remaining parts of the case are dismissed or otherwise resolved."). Third, and most importantly, the court's partial summary judgment ruling in *Mayo* is clearly erroneous with respect to the claims against the servicers in that case, not only because the opinion is inconsistent with *Mitchell*, but also because it is clearly contrary to the

[13] Notably, Advanta's servicing agreements in this case contain provisions that are substantially the same as those on which the court in *CWCapital* based its decision. *Id.* at 501 (Compare with Omnibus Objection, Exhibit A at §§ 2.2 & 4.1 and **Exhibit 33**, at § 5.1).

plain language of § 408.233.1, the other remedial provisions of the MSMLA and the court's own holdings as to the other *Mayo* defendants.

As shown above, the MSMLA imposes no ownership element, yet the court's order in *Mayo* plainly engrafts one onto this Missouri law for purposes of determining the servicer defendants' liability in that case. Moreover, this ruling as to the servicers in *Mayo* is all the more perplexing because the court also decided, in the same order, that a reasonable jury *could* find that the other defendants (the "Assignee Defendants") "indirectly receive[d]" the illegal loan fees that the court deemed to have been assessed in violation of the MSMLA, § 408.233.1. *Mayo*, at **14-15. The court reasoned that, because the illegal fees had been financed and repaid by the plaintiff-borrower as a part of the principal loan amount, the Assignee Defendants "indirectly received" the illegal fees as a part of the borrower's loan payments, since a portion of the borrower's payments repaid the principal. *Id.* In so doing, the *Mayo* court agreed with *Mitchell*, concluding that under such circumstances the Assignee Defendants "indirectly received" the illegal fees "each time they received a monthly payment." *Id.* Nevertheless, the court simply refused to apply the same analysis and logic to the loan servicers in *Mayo* because, in its opinion, the servicers did not "own" the loans. *Id.* at **13-14. However, as discussed above in Section II.C., the court's conclusion that loan ownership is a requirement for a claim under the MSMLA is clearly erroneous, primarily because it in effect re-writes the MSMLA. Indeed, the *Mayo* court did not rely upon or otherwise cite to any provision in the MSMLA (or to any other legal authority for that matter) in reaching its palpably unfounded conclusion that "ownership" was somehow a requirement for liability under the MSMLA. *Id.* Nor could it. As previously shown, the statutory prohibitions in the MSMLA, § 408.233.1, cannot in any reasonable way be read to encompass only those unauthorized fees that the "owner" of a second mortgage loan directly or

indirectly charges, contracts for or receives in connection with the loan. *See* Mo.Rev.Stat. § 408.233.1. Any person who "directly or indirectly charge[s], contract[s] for or receive[s]" an illegal loan fee "in connection with any [Missouri] section mortgage loan," or who otherwise "directly or indirectly charge[s], contract[s] for or receive[s]" illegal interest on such a loans, violates the MSMLA regardless of whether he owns the loan or not. *Id.*; *Mitchell*, 334 S.W.3d at 506-08 & n. 29. The statute cannot be read any other way.

Put simply, the partial summary judgment order in *Mayo* is wrongly decided, is subject to reconsideration and/or appeal, and is not Missouri law. In contrast, the Missouri Court of Appeals' *Mitchell* opinion, which became final and unappealable on April 28, 2011, clearly establishes that non-owner servicers like Advanta who directly or indirectly charge, contract for or receive illegal fees and interest in connection with their second mortgage loans, are liable for such violations under the MSMLA. *Mitchell*, 334 S.W.3d at 500-09.

F. The Trustee's Arguments as to the Measure of Damages Must be Rejected.

Finally, the Court should also reject the Trustee's arguments as to the proper measure of damages.[14] Such arguments find no support in the MSLMA. As discussed above, the Class Claimants are entitled to recover all of the illegal loan fees Advanta impermissibly received from them in its role as servicer of their second mortgage loans. *See* Mo.Rev.Stat. § 408.233.1. Moreover, given the underlying and undisputed fee violations, Advanta's collection and/or

[14] With respect to the Trustee's argument regarding postpetition attorneys' fees, it is Class Claimants' position that such fees should be allowed because Missouri law expressly authorizes the recovery of attorneys' fees as actual damages for violation of the MSMLA. *See* Mo.Rev.Stat. § 408.562; *see also* discussion in Section II.A., *supra*. Moreover, while this Court has precluded unsecured creditors from including postpetition attorneys' fees in the past, *see, e.g.*, *In re Loewen Group, Int'l, Inc.*, 274 B.R. 427 (Bankr. D. Del. 2002), there is a clear split in authority - left undecided by the United States Supreme Court - as to whether unsecured creditors may recover postpetition attorneys' fees where there is a contractual or statutory basis for their allowance. *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Electric Co.*, 549 U.S. 443, 455-56 (1997). The Third Circuit has not yet had this issue before it, but there is a growing trend among the courts to allow recovery in such situations. *See, e.g.*, *Ogle v. Fid. & Deposit Co. of Md.*, 586 F.3d 143 (2d Cir. 2009), *cert. denied*, __ U.S. __, 130 S.Ct. 2373 (2010); *SN Ins. Servs., Inc. v. Centre Ins. Co. (In re SNTL Corp.)*, 571 F.3d 826 (9th Cir. 2009).

receipt of interest on the Class Claimants' loans, standing alone, also constituted a violation of the MSMLA. *See* Mo.Rev.Stat. §§ 408.236, 408.562; *Mitchell*, 334 S.W.3d at 506-08 & n. 29. Thus, in addition to the illegal loan fees, the Class Claimants are entitled to recover all of the illegal interest that Advanta impermissibly received from them as well. *Mitchell*, 334 S.W.3d at 508 ("the jury was entitled to award between $0 and $3,414,962, the full amount of the past interest paid on the [assignee/holder's] loans" in its verdict against Homecomings, the loan servicer).

III. CONCLUSION

For the foregoing reasons, the Trustee's Omnibus Objection should be denied. For these same reasons, and those set out in the Motion of Class Claimants for (I) Abstention, and (II) Modification of the Plan Injunction to Litigate Class Claims, filed concurrently with this brief, Class Claimants respectfully submit that the Court should also allow them to pursue their claims against Advanta in the Missouri courts currently presiding over the *Gilmor* and *Baker* Class Actions.

Dated: June 27, 2010
Wilmington, Delaware

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ATTORNEYS FOR CREDITORS AND CLASS COUNSEL

Ex 1

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

MICHAEL P. AND SHELLIE GILMOR, et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION **[CURRENT DEFENDANT; DO NOT SERVE]**

and

IMPAC FUNDING CORPORATION **[CURRENT DEFENDANT; DO NOT SERVE]**

and

U.S. BANK NATIONAL ASSOCIATION ND **[CURRENT DEFENDANT; DO NOT SERVE]**

and

IMPERIAL CREDIT INDUSTRIES, INC. **[CURRENT DEFENDANT; DO NOT SERVE]**

and

IMPAC MORTGAGE HOLDINGS, INC. **[CURRENT DEFENDANT; DO NOT SERVE]**

and

IMPAC SECURED ASSETS CORP. **[CURRENT DEFENDANT; DO NOT SERVE]**

Case No. 4:10-cv-00189-ODS

and

IMPAC SECURED ASSETS CMN TRUST SERIES 1998-1
[CURRENT DEFENDANT; DO NOT SERVE]

and

PREFERRED MORTGAGE TRUST 1996-2
[CURRENT DEFENDANT; DO NOT SERVE]

and

PREFERRED CREDIT TRUST 1997-1,
[CURRENT DEFENDANT; DO NOT SERVE]

and

DEUTSCHE BANK TRUST COMPANY AMERICAS (f/k/a BANKERS TRUST COMPANY)
[CURRENT DEFENDANT; DO NOT SERVE]

and

DEUTSCHE BANK NATIONAL TRUST COMPANY (f/k/a BANKERS TRUST COMPANY OF CALIFORNIA, NA)
[CURRENT DEFENDANT; DO NOT SERVE]

and

U.S. BANK NATIONAL ASSOCIATION
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPERIAL CREDIT INDUSTRIES INC.,

ICIFC SEC. ASSETS CORP. MORTGAGE 1997-1
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPERIAL CREDIT INDUSTRIES INC., ICIFC SEC. ASSETS CORP. MORTGAGE 1997-2
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPERIAL CREDIT INDUSTRIES INC., ICIFC SEC. ASSETS CORP. MORTGAGE 1997-3
[CURRENT DEFENDANT; DO NOT SERVE]

and

WILMINGTON TRUST COMPANY
[CURRENT DEFENDANT; DO NOT SERVE]

And

EMPIRE FUNDING HOME LOAN OWNER TRUST 1998-1
[CURRENT DEFENDANT; DO NOT SERVE]

and

ADVANTA MORTGAGE CORP. USA
a Delaware corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

CDC MORTGAGE CAPITAL INC.

a New York corporation
SERVE:
Luc De Clapiers, Chairman
9 W. 57th Street, 36th Floor
New York, NY 10019

and

FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for CORUS BANK NA
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

COUNTRYWIDE HOME LOANS, INC.
A New York Corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

CREDIT-BASED ASSET SERVICING & SECURITIZATION LLC
a New York corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORPORATION.
a Delaware corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

DEUTSCHE BANK NATIONAL TRUST COMPANY

a New York corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

DEUTSCHE BANK TRUST COMPANY AMERICAS
a New York corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

FIRST UNION NATIONAL BANK (n/k/a WELLS FARGO BANK N.A.
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMH ASSETS CORP.
a California corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPAC MORTGAGE HOLDINGS ASSET CORPORATION
a California corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPAC CMB TRUST SERIES 1999-1
a California trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPAC CMB TRUST SERIES 1999-2

a California trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPAC CMB TRUST SERIES 2000-1
a California trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPAC CMB TRUST SERIES 2000-2
a California trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPAC CMB TRUST SERIES 2001-4
a California trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPAC CMB TRUST SERIES 2002-1
a California trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMPAC CMB TRUST SERIES 2003-5
a California trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

JPMORGAN CHASE BANK (f/k/a THE CHASE MANHATTAN BANK)
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

LASALLE NATIONAL BANK
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

LITTON LOAN SERVICING, L.P.
a Delaware corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

MORTGAGE LOAN SERVICING CORPORATION
a California corporation
SERVE:
Officer or Person in Charge
4600 El Camino Real
Los Altos, CA 94022

and

OCWEN LOAN SERVICING, LLC (f/k/a OCWEN FEDERAL BANK, FSB)
a federal bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

PREFERRED MORTGAGE TRUST 1996-1
[CURRENT DEFENDANT; DO NOT

SERVE]

and
RESIDENTIAL FUNDING COMPANY, LLC (f/k/a RESIDENTIAL FUNDING CORPORATION)
a Delaware corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

SOVEREIGN BANK
a federal bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

UNITED MORTGAGE C.B., LLC
a North Carolina company
[CURRENT DEFENDANT; DO NOT SERVE]

and

WELLS FARGO BANK N.A. (f/k/a WELLS FARGO BANK, MN, N.A.)
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

WENDOVER FINANCIAL SERVICES CORPORATION
a North Carolina corporation
[CURRENT DEFENDANT; DO NOT

SERVE]

and

UBS REAL ESTATE SECURITIES, INC.
(f/k/a PAINE WEBBER REAL ESTATE
SECURITIES, INC.)
a Delaware corporation
SERVE:
Ramesh Singh
1285 Avenue of the Americas
New York, New York 10019

and

EMPIRE FUNDING GRANTOR TRUST 1998-1
Serve:
U.S. Bank National Association
601 Second Ave. South
Minnesota MN 55402

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1999-1
Serve:
Wilmington Trust Company
Rodney Square Noth 1100 N. Market Street
Wilmington, DE 19890

and

EMPIRE FUNDING GRANTOR TRUST 1999-1
Serve:
U.S. Bank National Association
U.S. Bank National Association
601 Second Ave. South
Minnesota MN 55402

and

EMC MORTGAGE CORPORATION

Serve:
The Corporation Company
120 South Central Avenue
Clayton, MO 63105

and

BAC HOME LOAN SERVICING, L.P. (f/k/a COUNTRYWIDE HOME LOAN SERVICING, L.P.)
Serve:
CT Corporation System
350 N. St. Paul St.
Ste. 2900
Dallas, TX 75201

and

CHASE HOME FINANCE LLC as successor by merger to CHASE MANHATTAN MORTGAGE CORPORATION
Serve:
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington DE 19801

and

IMPAC REAL ESTATE ASSET TRUST SERIES 2006-SD1
SERVE:
Officer or Person in Charge
Deutsche Bank National Trust Company
(f/k/a Bankers Trust Company of CA, N.A.)
130 Liberty Street
New York, NY 10006

and

WINGSPAN PORFOLIO ADVISORS, LLC
Serve:
Registered Agent Solutions, Inc.
3225 – A Emerald Lane
Jefferson City MO 65109

and

REAL TIME RESOLUTIONS, INC.
Serve:
C T Corporation System
120 South Central Avenue
Clayton, MO 63105

DOES 1 THROUGH 25.

Defendants.

SEVENTH AMENDED COMPLAINT

Plaintiffs Michael P. and Shellie Gilmor, Michael E. and Lois A. Harris, Leo E. Parvin, Jr., Ted and Raye Ann Varns, Mark and Thomasina Shipman, William and Marion Jones, Bruce and Mary James, Kevin and Susan Schaefer, David and Nicole Warkentien, John and Jeanne Rumans, Patricia Ann Worthy, Derrick and Alethia Rockett, William and Carole Hudson, James and Kathleen Woodward, Jeffrey Weathersby, and Debra Mooney, Joseph and Amy Black, individually and on behalf of all other persons similarly situated ("PLAINTIFFS"), state the following for their Sixth Amended Complaint against Defendants in this cause:

Introduction

1. This action is brought as a plaintiffs' class action against PREFERRED CREDIT CORPORATION ("PREFERRED CREDIT") and the rest of the above-named Defendants (individually and as representatives of a defendant class as hereinafter defined), as: (a) the holders or previous holders of the Second Mortgage Loans made in Missouri by PREFERRED CREDIT (as herein defined) (b) the trustees, agents and/or servicers of those persons or entities that purchased or were assigned and/or now hold or previously held said Second Mortgage Loans and/or (c) the trustees, agents, servicers and holders of said Second Mortgage Loans.

2. This action seeks redress on behalf of PLAINTIFFS and the SECOND MORTGAGE CLASS (defined below) against PREFERRED CREDIT and the other Defendants (including a defendant class) for violations of Missouri's Second Mortgage Loans Act (§§ 408.231 Mo. Rev. Stat. et seq.), including claims for injunctive relief.

The Plaintiffs

3. Plaintiffs Michael P. Gilmor and Shellie Gilmor (the "GILMORS") are individuals who formerly resided at 11304 N. Donnelly Avenue, Kansas City, Clay County, Missouri. Shellie Gilmor currently resides at 1121 Canterbury Lane, Liberty, Clay County, Missouri, 64068. The GILMORS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

4. Plaintiffs Michael E. and Lois A. Harris (the "HARRISES") are lawfully married individuals who reside at 1349 East 84th Street, Kansas City, Jackson County, Missouri. The HARRISES bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

5. Plaintiff Leo E. Parvin, Jr. ("PARVIN") is an individual who resides at 686 Outlook Drive, Edwards, Missouri. PARVIN brings this action individually and a representative on behalf of the class of plaintiff-borrowers described below.

6. Plaintiffs Ted and Raye Ann Varns (the "VARNSES") are individuals who formerly resided at 108 South Atterbury Street, Atlanta, Macon County, Missouri. Raye Ann Varns currently resides at 10255 Faith Drive, Apt. 1, King George, Virginia. The VARNSES bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

7. Plaintiffs Mark and Thomasina Shipman (the "SHIPMANS") are lawfully married individuals who reside at 9991 Greenton Rd., Odessa, Missouri. The SHIPMANS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

8. Plaintiffs William and Marion Jones (the "JONESES") are lawfully married individuals who reside at 2208 Park Ave., St. Joseph, Missouri. The JONESES bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

9. Plaintiffs Bruce and Mary James (the "JAMESES") are lawfully married individuals who reside at 724 Fernwood Terrace, Lake Saint Louis, Missouri. The JAMESES bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

10. Plaintiffs Kevin and Susan Schaefer (the "SCHAEFERS") are lawfully married individuals who reside at 715 Hemsath Rd., St. Charles, Missouri. The SCHAEFERS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

11. Plaintiffs David and Nicole Warkentien (the "WARKENTIENS") are lawfully married individuals who reside at 9329 East 15th Street S, Independence, Missouri. The WARKENTIENS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

12. Plaintiffs John and Jeanne Rumans (the "RUMANS") are lawfully married individuals who reside at 808 NE 100th Terrace, Kansas City, Missouri. The RUMANS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

13. Plaintiff Patricia Ann Worthy ("WORTHY") is an individual who resides at 7123 Oreon Ave., St. Louis, Missouri. WORTHY brings this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

14. Plaintiffs Derrick and Alethia Rockett (the "ROCKETTS") are lawfully married individuals who reside at 139 Benedictine Ct., Florissant, Missouri. The ROCKETTS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

15. Plaintiffs William and Carole Hudson (the "HUDSONS") are lawfully married individuals who reside at 5977 SE 208th St., Holt, Missouri. The HUDSONS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

16. Plaintiffs James and Kathleen Woodward (the "WOODWARDS") are lawfully married individuals who reside at 1901 SW 5th St., Blue Springs, Missouri. The WOODWARDS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

17. Plaintiff Jeffrey Weathersby ("WEATHERSBY") is an individual who resides at 9643 Newton Dr., St. Louis Missouri. WEATHERSBY bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

18. Plaintiff Debra Mooney ("MOONEY") is an individual who resides at 519 Kingston Dr., St. Louis Missouri. MOONEY brings this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

19. Plaintiffs Joseph and Amy Black (the "BLACKS") are lawfully married individuals who reside at 10005 E. 36th Street South, Independence, Missouri. The BLACKS

bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

Defendant Preferred Credit

20. PREFERRED CREDIT (f/k/a T.A.R. Preferred Mortgage Corporation) is a California corporation that has no viable registered agent, but which has been served with process in this action by serving the California Secretary of State, 1500 11th Street, Sacramento, CA 95814.

21. PREFERRED CREDIT is a "moneyed corporation" within the meaning of §516.420 Mo. Rev. Stat. At all times relevant to the subject matter of this action, PREFERRED CREDIT was engaged principally if not exclusively in the business of originating, funding and selling residential mortgage loans in a number of different states, including Missouri, and was subject to regulation by the Missouri Division of Finance with regard to its lending and loan activities within Missouri. In particular, PREFERRED CREDIT, as a "mortgage banker" as defined by the Missouri Division of Finance, lent money secured by residential real estate to Missouri consumers and then sold the residential mortgage loans it made for money to entities like the defendant businesses and trusts identified below. PREFERRED CREDIT, upon information and belief, then used the money it received for the loans to make and fund still other loans.

22. As a lender of money secured by people's homes, PREFERRED CREDIT exercised "banking powers" and was at all relevant times subject to regulation by the Missouri Division of Finance. In addition, Plaintiffs allege upon information and belief that PREFERRED CREDIT was also licensed and regulated (or was exempted from certain state licensing requirements) at all relevant times by the banking and/or finance divisions/departments of a

number of different states, including the Missouri Division of Finance, as a "mortgage banker," "mortgage lender," and/or "money broker."

The Investor Defendants

23. Defendant IMPAC FUNDING CORPORATION is a California corporation that has previously been served with (or waived service of) process in this action.

24. Defendant U.S. BANK NATIONAL ASSOCIATION ND is a national bank that has previously been served with (or waived service of) process in this action.

25. Defendant IMPERIAL CREDIT INDUSTRIES, INC. is a California corporation that has previously been served with (or waived service of) process in this action.

26. Defendant IMPAC MORTGAGE HOLDINGS, INC. is a Maryland corporation that has previously been served with (or waived service of) process in this action.

27. Defendant IMPAC SECURED ASSETS CORP. is a California corporation that has previously been served with (or waived service of) process in this action.

28. Defendant IMPAC SECURED ASSETS CMN TRUST SERIES 1998-1 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

29. Defendant PREFERRED MORTGAGE TRUST 1996-2 is a trust or fund that has previously been served with (or waived service of) process in this action.

30. Defendant PREFERRED CREDIT TRUST 1997-1 is a trust or fund that has previously been served with (or waived service of) process in this action.

31. Defendant DEUTSCHE BANK NATIONAL TRUST COMPANY (f/k/a BANKERS TRUST COMPANY OF CALIFORNIA, NA) is a national bank that has previously been served with (or waived service of) process in this action.

32. Defendant DEUTSCHE BANK TRUST COMPANY AMERICAS (f/k/a BANKERS TRUST COMPANY) is a New York bank that has previously been served with (or waived service of) process in this action.

33. Defendant U.S. BANK NATIONAL ASSOCIATION is a national bank that has previously been served with (or waived service of) process in this action.

34. Defendant IMPERIAL CREDIT INDUSTRIES INC., ICIFC SEC. ASSETS CORP. MORTGAGE 1997-1 is a trust or fund that has previously been served with (or waived service of) process in this action.

35. Defendant IMPERIAL CREDIT INDUSTRIES INC., ICIFC SEC. ASSETS CORP. MORTGAGE 1997-2 is a trust or fund that has previously been served with (or waived service of) process in this action.

36. Defendant IMPERIAL CREDIT INDUSTRIES INC., ICIFC SEC. ASSETS CORP. MORTGAGE 1997-3 is a trust or fund that has previously been served with (or waived service of) process in this action.

37. Defendant WILMINGTON TRUST COMPANY ("WTC") is a Delaware bank that has previously been served with (or waived service of) process in this action.

38. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1998-1 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

39. Defendant ADVANTA MORTGAGE CORP. USA is a Delaware corporation currently in bankruptcy and against which this action has been stayed pursuant to 11 U.S.C. § 362(a), pending further order of the bankruptcy court.

40. Defendant CDC MORTGAGE CAPITAL INC. is a New York corporation and

can be served with legal process by serving Luc De Clapiers, Chairman, 9 W. 57th Street, 36th Floor, New York, NY 10019.

41. Defendant FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for CORUS BANK NA, a national bank that has previously been served with (or waived service of) process in this action.

42. Defendant COUNTRYWIDE HOME LOANS, INC. is a New York corporation that has previously been served with (or waived service of) process in this action.

43. Defendant CREDIT-BASED ASSET SERVICING & SECURITIZATION LLC is a New York corporation currently in bankruptcy and against which this action has been stayed pursuant to 11 U.S.C. § 362(a), pending further order of the bankruptcy court.

44. Defendant CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORPORATION is a Delaware corporation that has previously been served with (or waived service of) process in this action.

45. Defendant DEUTSCHE BANK NATIONAL TRUST COMPANY is a New York corporation that has previously been served with (or waived service of) process in this action.

46. Defendant DEUTSCHE BANK TRUST COMPANY AMERICAS is a New York corporation that has previously been served with (or waived service of) process in this action.

47. Defendant FIRST UNION NATIONAL BANK is a national bank that has merged with and is now part of WELLS FARGO BANK N.A.

48. Defendant IMH ASSETS CORP. is a California corporation that has previously been served with (or waived service of) process in this action.

49. Defendant IMPAC MORTGAGE HOLDINGS ASSET CORPORATION is a California corporation that has previously been served with (or waived service of) process in this action.

50. Defendant IMPAC CMB TRUST SERIES 1999-1 is a California trust that has previously been served with (or waived service of) process in this action.

51. Defendant IMPAC CMB TRUST SERIES 1999-2 is a California trust that has previously been served with (or waived service of) process in this action.

52. Defendant IMPAC CMB TRUST SERIES 2000-1 is a California trust that has previously been served with (or waived service of) process in this action.

53. Defendant IMPAC CMB TRUST SERIES 2000-2 is a California trust that has previously been served with (or waived service of) process in this action.

54. Defendant IMPAC CMB TRUST SERIES 2001-4 is a California trust that has previously been served with (or waived service of) process in this action.

55. Defendant IMPAC CMB TRUST SERIES 2002-1 is a California trust that has previously been served with (or waived service of) process in this action.

56. Defendant IMPAC CMB TRUST SERIES 2003-5 is a California trust that has previously been served with (or waived service of) process in this action.

57. Defendant JPMORGAN CHASE BANK (f/k/a THE CHASE MANHATTAN BANK) ("CHASE") is a national bank that has previously been served with (or waived service of) process in this action. CHASE is named both individually and as a successor in interest to ADVANTA MORTGAGE CORPORATION USA.

58. Defendant LASALLE NATIONAL BANK is a national bank that has previously been served with (or waived service of) process in this action.

59. Defendant LITTON LOAN SERVICING, L.P. is a Delaware corporation that has previously been served with (or waived service of) process in this action.

60. Defendant MORTGAGE LOAN SERVICING CORPORATION is a California corporation that can be served with legal process by serving the officer or person in charge, 4600 El Camino Real, Los Altos, CA 94022.

61. Defendant OCWEN LOAN SERVICING, LLC (f/k/a OCWEN FEDERAL BANK, FSB) is a federal bank that has previously been served with (or waived service of) process in this action.

62. Defendant PREFERRED MORTGAGE TRUST 1996-1 is a trust or fund that has previously been served with (or waived service of) process in this action.

63. Defendant RESIDENTIAL FUNDING COMPANY, LLC (f/k/a RESIDENTIAL FUNDING CORPORATION) is a Delaware corporation that has previously been served with (or waived service of) process in this action.

64. Defendant SOVEREIGN BANK is a federal bank that has previously been served with (or waived service of) process in this action.

65. Defendant UNITED MORTGAGE C.B., LLC. is a North Carolina company that has previously been served with (or waived service of) process in this action.

66. Defendant WELLS FARGO BANK N.A. (f/k/a WELLS FARGO BANK, MN, N.A.) is a national bank that has previously been served with (or waived service of) process in this action.

67. Defendant WENDOVER FINANCIAL SERVICES CORPORATION is a North Carolina corporation that has previously been served with (or waived service of) process in this action.

68. Defendant UBS REAL ESTATE SECURITIES INC. (f/k/a PAINE WEBBER REAL ESTATE SECURITIES, INC.) is a Delaware corporation and can be served with legal process by serving Ramesh Singh, 1285 Avenue of the Americas, New York, New York 10019.

69. Defendant EMPIRE FUNDING GRANTOR TRUST 1998-1 is a Delaware business trust and can be served with legal process by serving its trustee U.S. Bank National Association, 601 Second Ave. South, Minnesota MN 55402.

70. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1999-1 is a Delaware business trust and can be served with legal process by serving Wilmington Trust Company, Rodney Square North 1100 N. Market Street, Wilmington, DE 19890.

71. Defendant EMPIRE FUNDING GRANTOR TRUST 1999-1 Delaware business trust and can be served with legal process by serving its trustee U.S. Bank National Association, 601 Second Ave. South, Minnesota MN 55402.

72. Defendant EMC MORTGAGE CORPORATION is a Delaware corporation and can be served with legal process by serving The Corporation Company, 120 South Central Avenue, Clayton, MO 63105.

73. Defendant BAC HOME LOAN SERVICING, L.P. (f/k/a COUNTRYWIDE HOME LOAN SERVICING, L.P.) is a Texas Corporation and can be served with legal process by serving CT Corporation System, 350 N. St. Paul St., Ste. 2900, Dallas, TX 75201.

74. Defendant CHASE HOME FINANCE LLC as successor by merger to CHASE MANHATTAN MORTGAGE CORPORATION is a Delaware Corporation and can be served with legal process by serving The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington DE 19801.

75. Defendant is IMPAC REAL ESTATE ASSET TRUST SERIES 2006-SD1 is a

California trust and can be served by serving Officer or Person in Charge, Deutsche Bank National Trust Company (f/k/a Bankers Trust Company of CA, N.A.), 130 Liberty Street, New York, NY 10006.

76. Defendant REAL TIME REOLUTIONS, INC. is a Texas corporation and can be served with legal process by serving C T Corporation System 120 South Central Avenue Clayton, MO 63105.

77. Defendant WINGSPAN PORTFOLIO ADVISORS, LLC is a Texas corporation and can be served with legal process by serving Registered Agent Solutions, Inc., 3225 – A Emerald Lane, Jefferson City, MO 65109.

78. Each of the Defendants named in paragraphs 23 through 77 above (collectively the "INVESTOR DEFENDANTS") purchased and/or is or was an owner, assignee (holder) of, and/or the trustee and/or servicer and/or agent of an entity, trust, fund or pool owning and/or holding one or more of the Second Mortgage Loans made to the PLAINTIFFS and the PLAINTIFF CLASS including, *inter alia*, the mortgages and servicing rights for the loans, which the INVESTOR ASSIGNEES thereafter held, owned and/or serviced, and which Second Mortgage Loans were originated and/or made by PREFERRED CREDIT (or a finder or broker on its behalf), all as is more particularly set forth below.

The Doe Defendants

79. Defendants DOE 1 through 25 ("DOES 1-25") are the remaining owners, assignees (holders) and trusts, funds and/or pools, and the trustees and/or agents thereof, organized under various state laws, if any, that are yet to be named and whose identity will become known through discovery and/or by requests made by Plaintiffs or the members of the plaintiff class of their second mortgage servicers, after which such remaining assignees (holders)

and trusts, funds and pools, and the trustees and/or agents thereof, to the extent that they can be identified, will be added as individual and/or class representative defendants.

The Assignee Defendants

80. Each of the INVESTOR DEFENDANTS and DOES 1 through 25 (collectively, the "ASSIGNEE DEFENDANTS") is named as a Defendant both individually, in its capacity as an owner and/or assignee (holder) of, and/or the trustee and/or servicer and/or agent of an entity, trust, fund or pool owning or holding, the Second Mortgage Loans, and as a member and representative of every other member of the Defendant Class (as hereinafter defined), which includes the remaining owners and assignees (holders) of, and trustees and/or servicers, and/or agents of the entities, trusts, funds and pools owning and/or holding, said Second Mortgage Loans.

81. The ASSIGNEE DEFENDANTS, individually and/or through their bank trustees or other trustees, servicers, and/or agents, purchased the Second Mortgage Loans that PREFERRED CREDIT made to PLAINTIFFS and the Plaintiff Class pursuant to one or more standing agreements and/or a course of business dealing with PREFERRED CREDIT and/or on a "secondary market" comprised of businesses like said ASSIGNEE DEFENDANTS and used the Second Mortgage Loans and the money streams they generated for purposes of investment, including use of the loans and money streams as collateral for notes that certain ASSIGNEE DEFENDANTS and their trustees and agents sold to the public.

82. The existence of these agreements, course of dealing and "secondary market," and the capital that the ASSIGNEE DEFENDANTS provided to PREFERRED CREDIT by agreeing to repurchase the loans that it originated and made, enabled PREFERRED CREDIT to make the second mortgage home loans it was making in the first place, including the Missouri Second

Mortgage Loans at issue.

83. Each of the ASSIGNEE DEFENDANTS is a "moneyed corporation" within the meaning of §516.420 Mo. Rev. Stat. in that the ASSIGNEE DEFENDANTS, and each of them, at all relevant times: (a) purchased and/or acquired the subject Second Mortgage Loans made by PREFERRED CREDIT, which originated and funded the loans in violation of Missouri law; (b) was so closely-connected to PREFERRED CREDIT, and/or were indirectly or directly involved in the making and origination of the loans, directly or through an affiliated entity, by virtue of certain business arrangements, that they should be deemed "moneyed corporations" too; (c) were engaged principally if not exclusively in the business of purchasing and/or acquiring residential mortgage loans and the money streams such loans generated in competition with banks, and used the loans for investment; and/or (d) are business enterprises engaged in the business of using money to make money, as alleged herein.

84. The ASSIGNEE DEFENDANTS, upon information and belief, were partners with and/or principals or agents of PREFERRED CREDIT and/or one or more other entities and/or ASSIGNEE DEFENDANTS acting in concert with PREFERRED CREDIT, and/or were engaged in a joint venture and enterprise with PREFERRED CREDIT and/or said other entities, and/or a conspiracy with PREFERRED CREDIT and/or said other entities, to originate, exchange and exploit second mortgage loans from PREFERRED CREDIT's Missouri borrowers without regard to state law and applicable state law fee limitations, in that, among other things, the ASSIGNEE DEFENDANTS bound themselves by commitments and agreements and established relationships with PREFERRED CREDIT and/or the other entities in terms of origination and underwriting criteria, loan terms and fees, and funding arrangements, and/or were otherwise so closely connected, that they are jointly and severally liable for the losses arising from the

unlawful loans.

Jurisdiction and Venue

85. This Court has jurisdiction over each DEFENDANT since each transacted business, made contracts, committed torts and/or are or were assignees, trustees, servicers and/or agents of such entities and/or of the Second Mortgage Loans, and/or used or possessed an interest in real estate located within the state of Missouri, and/or are subject to process in this state, all as is herein alleged.

86. PREFERRED CREDIT is subject to the jurisdiction of this Court either having a registered agent in and/or a continuous and systematic presence in or contacts with the State of Missouri, and/or pursuant to the provisions of §506.500 Mo. Rev. Stat. having further:

(a) Transacted business within this state by virtue of its making numerous Second Mortgage Loans (as hereinafter defined) in this state;

(b) Made contracts within this state by virtue of its making numerous Second Mortgage Loans in this state and the contracts made in conjunction with such Second Mortgage Loans;

(c) Committed tortious acts within this state by virtue of its violations of Missouri's Second Mortgage Loan Act and/or its unlawful collection and conversion of monies in violation of such Act (including without limitation, continuing to collect illegal interest from the class members as more specifically set forth below); and

(d) Used real estate situated in this state to illegally secure the Second Mortgage Loans that are the subject of this action.

87. Each of the ASSIGNEE DEFENDANTS is subject to the jurisdiction of this Court, either having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and/or pursuant to the provisions of §506.500 Mo. Rev. Stat., having further, individually and/or through one or more trustees, servicers and/or agents:

(a) Transacted business within this state individually and/or by virtue of being an assignee (holder) and/or the trustee, agent and/or servicer of an assignee of the Second Mortgage Loans (as herein defined) of PREFERRED CREDIT, by its direct or indirect involvement in the origination and making of the Second Mortgage Loans, and/or by virtue of it being a holder of and/or a trustee, agent and/or servicer of a holder of said Second Mortgage Loans and collecting the benefits of and amounts due under said Second Mortgage Loans from and/or within this state;

(b) Made contracts within this state individually and/or by virtue of being an assignee (holder) or the trustee, agent and/or servicer of an assignee or holder of PREFERRED CREDIT and/or said Second Mortgage Loans, by its direct or indirect involvement in the origination and making of the Second Mortgage Loans and/or by being an intended secondary market purchaser of the Second Mortgage Loans after their closing;

(c) Committed tortious acts within this state individually and/or by virtue of being an assignee (holder) and/or the trustee, agent and/or servicer of an assignee of PREFERRED CREDIT and/or the Second Mortgage Loans by virtue of its conduct in directly or indirectly charging, contracting for and/or receiving illegal fees in violation of the SMLA and Missouri law and continuing to do so, in their

collection and/or receipt of illegal fees and interest from PLAINTIFFS and the Plaintiff Class, and continuing to do so, and/or by its direct or indirect involvement in the origination and making of the Second Mortgage Loans, and/or by being an intended secondary market purchaser of the illegal Second Mortgage Loans after their closing, all as is more specifically set forth below; and

(d) Used real estate situated in this state to secure the Second Mortgage Loans individually and/or by virtue of being an assignee (holder) or the trustee, agent and/or servicer of an assignee of PREFERRED CREDIT and/or the Second Mortgage Loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the trustee and/or agent for such beneficiaries, that secure the Second Mortgage Loans.

88. Venue is proper in the Circuit Court of Clay County pursuant to the terms of §408.562 Mo. Rev. Stat. because one or more plaintiffs reside in that county and/or because the transactions complained of occurred in that county and pursuant to §407.025 Mo. Rev. Stat. and because one or more plaintiffs reside in that county and pursuant to §508.010 Mo. Rev. Stat. because the subject causes of action accrued in Clay County.

General Allegations

89. PLAINTIFFS bring this action individually and as a class action on behalf of the statewide class of Missouri residential real estate owners or borrowers who obtained Second Mortgage Loans from PREFERRED CREDIT. "Second Mortgage Loans" are defined at §408.231 Mo. Rev. Stat. to mean "...a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust

deed, or other similar instrument or document ... which residential real estate is subject to one or more prior mortgage loans."

90. "Residential real estate" is defined at §408.231.3 Mo. Rev. Stat., to mean "... any real estate used or intended to be used as a residence by not more than four families...."

91. From and after six years prior to the original filing of this action and through the present time, PREFERRED CREDIT made Second Mortgage Loans to PLAINTIFFS and the members of the Plaintiff Class

92. In each of the of the Second Mortgage Loans at issue, PREFERRED CREDIT received a promissory note from PLAINTIFFS and from the members of the Plaintiff Class (as hereinafter defined) and was named as the "Beneficiary" in a second mortgage deed of trust to secure the said Second Mortgage Loans.

93. In connection with these Second Mortgage Loans, the rate of interest was unlawful, except for the lawful rate of interest permitted by Missouri's Second Mortgage Loans Act, and in particular §408.233.1 Mo. Rev. Stat.

94. In connection with these Second Mortgage Loans PREFERRED CREDIT contracted for, charged and/or received, and the INVESTOR and ASSIGNEE DEFENDANTS contracted for, charged and/or received fees that violated Missouri's Second Mortgage Loans Act. In particular, PREFERRED CREDIT contracted for, charged and/or received and PREFERRED CREDIT and the INVESTOR and ASSIGNEE DEFENDANTS contracted for, charged and/or received, what PREFERRED CREDIT disclosed to the Plaintiffs and class members to be fees that were either wholly prohibited by or in excess of that allowed by Missouri's Second Mortgage Loans Act, § 408.233.1 Mo. Rev. Stat. and/or other fees that were either not paid to third parties of the lender or were not permitted by or were in excess of those

permitted by Missouri's Second Mortgage Loans Act, § 408.233.1(3) Mo. Rev. Stat.

95. These illegal settlement charges and fees were payable and paid at the time that the loans were funded and were added to the principal balance of the Second Mortgage Loan notes and on which amounts interest was charged, as it was charged on the entire principal balance of the notes.

96. Most if not all of the Second Mortgage Loans that PREFERRED CREDIT made, and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or another ASSIGNEE DEFENDANT, was a "high cost" mortgage within the meaning of 15 U.S.C.§ 1602(aa) having met the requirements of that statute as alleged herein.

97. Since acquiring the loans, the ASSIGNEE DEFENDANTS, individually and/or through their trustees, agents and/or servicers, have directly and/or indirectly charged, contracted for, and/or received (and continue to charge, contract for, collect, or receive) payments of interest on the loans, as well as a portion of the origination and other fees that were rolled into and paid as a part of the loan amounts.

The Gilmor Second Mortgage Loan

98. On or about October 3, 1997, PREFERRED CREDIT loaned the GILMORS $40,000.00, to be repaid with interest at the yearly rate of 13.5% in consecutive monthly installments over a period of 15 years.

99. The 13.5% rate charged was a lawful rate permitted in §408.232.1, but it was otherwise "unlawful" without regard to the rate permitted in §408.232.1. The Annual Percentage Rate (APR) for the loan was 15.752%.

100. To secure repayment of their note, the GILMORS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at §408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

101. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged the following fees payable at closing, each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.231.1 Mo. Rev. Stat.):

Origination Fee to PREFERRED CREDIT	$3,200.00
Loan Processing Fee to PREFERRED CREDIT	395.00
Underwriting Fee to PREFERRED CREDIT	125.00
Administration Fee/Document Fee to PREFERRED CREDIT	500.00
Signing Fees to PREFERRED CREDIT	150.00

102. The GILMORS incurred these Origination fees and other fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

103. At some point after PREFERRED CREDIT made the above second mortgage loan to the GILMORS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

104. Any or all of the above fees that PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the GILMORS was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.233.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) the loan origination fee 0exceeded that which PREFERRED CREDIT could lawfully contract for, charge, and/or receive; and/or (b) PREFERRED CREDIT was prohibited by §408.233.1 from charging, contracting for, and/or receiving from the GILMORS any loan processing, underwriting, administration/document ,

and/or signing fees.

105. Since September 1997, the GILMORS made all of the monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, including but not limited to DEFENDANTS IMPAC FUNDING CORPORATION, WENDOVER FINANCIAL SERVICES, and its trustees.

106. The Gilmors continued to make monthly payments on their loan until June 2001, when they paid it off, and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continued to charge and receive the monthly payments through that date.

107. The second mortgage loan that PREFERRED CREDIT made to the GILMORS and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the GILMORS at or before closing met the applicable APR and/or Points and Fees Triggers.

The Harris Second Mortgage Loan

108. On or about August 12, 1997, PREFERRED CREDIT loaned the HARRISES $45,000.00, to be repaid with interest at the yearly rate of 13.99% in consecutive monthly installments over a period of 15 years.

109. The 13.99% rate charged was a lawful rate permitted in §408.232.1, but it was otherwise "unlawful" without regard to the rate permitted in §408.232.1. The Annual Percentage

Rate (APR) for the loan was 16.655%.

110. To secure repayment of their note, the HARRISES were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in Residential real estate as defined at §408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

111. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged the following fees payable at closing and each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.231.1 Mo. Rev. Stat.):

Mortgage Broker Fee	$ 900.00
Loan Processing Fee	395.00
Underwriting Fee	125.00
Administration Fee/Document Fee	500.00
Review/Signing Fee	210.00
Processing/Administration Fee	3,275.00

112. The HARRISES incurred these fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

113. At some point after PREFERRED CREDIT made the above second mortgage loan to the HARRISES, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

114. Any or all of the above fees that PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the HARRISES was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.233.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) any or all of these fees exceeded that which PREFERRED CREDIT could lawfully contract for, charge, and/or receive; and/or (b)

PREFERRED CREDIT was prohibited by §408.233.1 from charging, contracting for, and/or receiving from the HARRISES any mortgage broker fee, loan processing, underwriting, administration/document, review/signing, and processing fees.

115. Since September 1997, the HARRISES have made all of the monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or any one or more ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, including but not limited to DEFENDANTS IMPAC FUNDING CORPORATION, IMPAC SECURED ASSETS CORPORATION, IMPAC SECURED ASSETS CMN TRUST SERIES 1998-1, WENDOVER FINANCIAL SERVICES, and DEUTSCHE BANK NATIONAL TRUST COMPANY (f/k/a BANKERS TRUST COMPANY OF CALIFORNIA, NA and WTC, its co-trustees.

116. The HARRISES continue to make monthly payments on their loan to this day and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continue to charge and receive the monthly payments.

117. The second mortgage loan that PREFERRED CREDIT made to the HARRISES and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the HARRISES at or before closing met the applicable APR and/or Points and Fees Triggers.

The Parvin Second Mortgage Loan

118. On or about June 11, 1997, PREFERRED CREDIT loaned PARVIN $20,000.00,

to be repaid with interest at the yearly rate of 13.99% in consecutive monthly installments over a period of 15 years.

119. The 13.99% rate charged was a lawful rate permitted in §408.232.1, but it was otherwise "unlawful" without regard to the rate permitted in §408.232.1. The Annual Percentage Rate (APR) for the loan was 15.06%.

120. To secure repayment of his note, PARVIN was required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at §408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

121. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged the following fees payable at closing and each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.231.1 Mo. Rev. Stat.):

Mortgage Broker Fee	$ 400.00
Document Fee to PREFERRED CREDIT	125.00
Loan Processing Fee to PREFERRED CREDIT	395.00
Underwriting Fee to PREFERRED CREDIT	125.00
Sub-Escrow/UPS/Application Fee	190.00
Processing/Administration Fee	1,488.42
Signing Fee to PREFERRED CREDIT	150.00

122. PARVIN incurred these fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

123. At some point after PREFERRED CREDIT made the above second mortgage loan to PARVIN, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

124. Any or all of the above fees that PREFERRED CREDIT and/or any of the

ASSIGNEE DEFENDANTS charged, contracted for and/or received from PARVIN was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.233.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) any or all of these fees exceeded that which PREFERRED CREDIT could lawfully contract for, charge, and/or receive; and/or (b) PREFERRED CREDIT was prohibited by §408.233.1 from charging, contracting for, and/or receiving from PARVIN any document signing fee.

125. Since September 1997, PARVIN has made all of the monthly payments due under his second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, including but not limited to DEFENDANTS IMPAC FUNDING CORPORATION, IMPAC MORTGAGE HOLDINGS, INC., IMPAC MORTAGE HOLDINGS ASSET CORPORATION, IMPAC CMB TRUST SERIES 2000-1 and 2003-5, COUNTRYWIDE HOME LOANS, INC., and DEUTSCHE BANK NATIONAL TRUST COMPANY (f/k/a BANKERS TRUST COMPANY OF CALIFORNIA), DEUTSCHE BANK TRUST COMPANY AMERICAS (f/k/a BANKERS TRUST COMPANY) and WELLS FARGO BANK N.A. (f/k/a WELLS FARGO BANK, MN, N.A. its co-trustees.

126. PARVIN continues to make monthly payments on his loan to this day and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continue to charge and receive the monthly payments.

127. The second mortgage loan that PREFERRED CREDIT made to PARVIN and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by

assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by PARVIN at or before closing met the applicable APR and/or Points and Fees Triggers.

The Varns Second Mortgage Loan

128. On or about August 28, 1997, PREFERRED CREDIT loaned the VARNSES $34,000.00, to be repaid with interest at the yearly rate of 12.5% in consecutive monthly installments over a period of 15 years.

129. The 12.5% rate charged was a lawful rate permitted in §408.232.1, but it was otherwise "unlawful" without regard to the rate permitted in §408.232.1. The Annual Percentage Rate (APR) for the loan was 14.635%.

130. To secure repayment of their note, the VARNSES were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at §408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

131. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged the following fees payable at closing and each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.231.1 Mo. Rev. Stat.):

Origination Fee to PREFERRED CREDIT	$2,600.00
Loan Processing Fee to PREFERRED CREDIT	395.00
Underwriting Fee to PREFERRED CREDIT	125.00
Administration Fee/Document Fee to PREFERRED CREDIT	500.00
Appraisal Fee PREFERRED CREDIT	60.00
Review/Signing Fees to PREFERRED CREDIT	200.00

132. The VARNSES incurred these fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

133. At some point after PREFERRED CREDIT made the above second mortgage loan to the VARNSES, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

134. Any or all of the above fees that PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the VARNSES was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.233.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) the loan origination fee exceeded that which PREFERRED CREDIT could lawfully contract for, charge, and/or receive; and/or (b) PREFERRED CREDIT was prohibited by §408.233.1 from charging, contracting for, and/or receiving from the VARNSES any document signing fees.

135. Since September 1997, the VARNSES have made all of the monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, including but not limited to DEFENDANTS U.S. BANK, NATIONAL ASSOCIATION ND, LITTON LOAN SERVICING and DEUTSCHE BANK NATIONAL TRUST COMPANY (f/k/a BANKERS TRUST COMPANY OF CALIFORNIA), DEUTSCHE BANK TRUST COMPANY AMERICAS (f/k/a BANKERS TRUST COMPANY) and U.S. BANK, NATIONAL ASSOCIATION, its co-trustees.

136. The VARNSES continue to make monthly payments on their loan to this day and

the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continue to charge and receive the monthly payments.

137. The second mortgage loan that PREFERRED CREDIT made to the VARNSES and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the VARNSES at or before closing met the applicable APR and/or Points and Fees Triggers.

The Shipman Second Mortgage Loan

138. On or about July 14, 1997, PREFERRED CREDIT loaned the SHIPMANS $35,000.00, to be repaid with interest at the yearly rate of 14.75% in consecutive monthly installments over a period of twenty (20) years.

139. The 14.75% rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

140. To secure repayment of their note, the SHIPMANS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

141. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received the following fees, each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), including but not limited to:

Mortgage Broker Fee	$ 315.00
Document Preparation Fee to PREFERRED CREDIT	125.00
Loan Processing Fee to PREFERRED CREDIT	395.00
Underwriting Fee to PREFERRED CREDIT	125.00

142. The SHIPMANS incurred these fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

143. At some point after PREFERRED CREDIT made the above second mortgage loan to the SHIPMANS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

144. Any or all of the above fees that PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the SHIPMANS was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), in that, among other things, PREFERRED CREDIT was prohibited by § 408.231.3 from charging, contracting for, and/or receiving from the SHIPMANS any of the stated fees.

145. The SHIPMANS made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to SOVEREIGN BANK.

146. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

147. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the SHIPMANS and which any one or more of the ASSIGNEE

DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the SHIPMANS at or before closing met the applicable APR and/or Points and Fees Triggers.

The Jones Second Mortgage Loan

148. On or about September 9, 1997, PREFERRED CREDIT loaned the JONESES $55,000.00, to be repaid with interest at the yearly rate of 12.99% in consecutive monthly installments over a period of fifteen (15) years.

149. The 12.99% rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

150. To secure repayment of their note, the JONESES were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

151. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, in connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received various loan fees from the JONESES.

152. The JONSES incurred these fees when the loan was funded by financing such over the life of the loan, because, upon information and belief, and based upon the typical practice of PREFERRED CREDIT, such charges were included in the principal balance of the note.

153. At some point after PREFERRED CREDIT made the above second mortgage loan to the JONESES, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

154. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received fees from the JONESES that were illegal settlement charges, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.).

155. The JONESES made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to Empire Funding Home Loan Owner Trust 1998-1 and Empire Funding Grantor Trust 1998-1.

156. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

157. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the JONESES and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the JONESES at or before closing met the applicable APR and/or Points and Fees Triggers.

The James Second Mortgage Loan

158. On or about August 7, 1997, PREFERRED CREDIT loaned the JAMESES $55,000.00, to be repaid with interest at the yearly rate of 13.99% in consecutive monthly

installments over a period of fifteen (15) years.

159. The 13.99% rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

160. To secure repayment of their note, the JAMESES were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

161. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, in connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received various loan fees from the JAMESES.

162. The JAMESES incurred these fees when the loan was funded by financing such over the life of the loan, because, upon information and belief, and based upon the typical practice of PREFERRED CREDIT, such charges were included in the principal balance of the note.

163. At some point after PREFERRED CREDIT made the above second mortgage loan to the JAMESES, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

164. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received fees from the JAMESES that were illegal settlement charges, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.).

165. The JAMESES made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to Empire Funding Home Loan Owner Trust 1999-1 and Empire Funding Grantor Trust 1999-1.

166. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

167. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the JAMESES and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the JAMESES at or before closing met the applicable APR and/or Points and Fees Triggers.

The Schaefer Second Mortgage Loan

168. PREFERRED CREDIT loaned the SCHAEFERS money, to be repaid with interest in consecutive monthly installments over a period of time.

169. Upon information and belief, the interest rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

170. Upon information and belief, to secure repayment of their note, the SCHAEFERS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

171. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second

Mortgage Loans, in connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received various loan fees from the SCHAEFERS.

172. The SCHAEFERS incurred these fees when the loan was funded by financing such over the life of the loan, because, upon information and belief, and based upon the typical practice of PREFERRED CREDIT, such charges were included in the principal balance of the note.

173. At some point after PREFERRED CREDIT made the above second mortgage loan to the SCHAEFERS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

174. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received fees from the SCHAEFERS that were illegal settlement charges, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.).

175. The SCHAEFERS made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to PREFERRED MORTGAGE TRUST 1996-1 and CHASE HOME FINANCE LLC.

176. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

177. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the SCHAEFERS and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an

intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the SCHAEFERS at or before closing met the applicable APR and/or Points and Fees Triggers.

The Warkentien Second Mortgage Loan

178. Upon information and belief, on or about January 20, 1997, PREFERRED CREDIT loaned the WARKENTIENS $35,000.00, to be repaid with interest in consecutive monthly installments over a period of time.

179. Upon information and belief, the interest rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

180. Upon information and belief, to secure repayment of their note, the WARKENTIENS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

181. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, in connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received various loan fees from the WARKENTIENS.

182. The WARKENTIENS incurred these fees when the loan was funded by financing such over the life of the loan, because upon information and belief, and based upon the typical practice of PREFERRED CREDIT, such charges were included in the principal balance of the note.

183. At some point after PREFERRED CREDIT made the above second mortgage loan to the WARKENTIENS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

184. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received fees from the WARKENTIENS that were illegal settlement charges, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.).

185. The WARKENTIENS made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to Preferred Mortgage Trust 1996-2 and Chase Home Finance LLC.

186. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

187. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the WARKENTIENS and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the WARKENTIENS at or before closing met the applicable APR and/or Points and Fees Triggers.

The Rumans Second Mortgage Loan

188. On or about February 24, 1997, PREFERRED CREDIT loaned the RUMANS

$50,000.00, to be repaid with interest at the yearly rate of 14.99% in consecutive monthly installments over a period of fifteen (15) years.

189. The 14.99% rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

190. To secure repayment of their note, the RUMANS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

191. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received the following fees, each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), including but not limited to:

Mortgage Broker Fee	$5,000.00
Document Preparation Fee to PREFERRED CREDIT	125.00
Loan Processing Fee to PREFERRED CREDIT	395.00
Underwriting Fee to PREFERRED CREDIT	125.00
Sub-Escrow/UPS/Application Fee	190.00
Doc Signing Fee to PREFERRED CREDIT	175.00
Processing Fee to PREFERRED CREDIT	295.00

192. The RUMANS incurred these fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

193. At some point after PREFERRED CREDIT made the above second mortgage loan to the RUMANS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

194. Any or all of the above fees that PREFERRED CREDIT and/or any of the

ASSIGNEE DEFENDANTS charged, contracted for and/or received from the RUMANS was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), in that, among other things, PREFERRED CREDIT was prohibited by § 408.231.3 from charging, contracting for, and/or receiving from the RUMANS any of the stated fees.

195. The RUMANS made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to Credit-Suisse First Boston Mortgage Securities Corp., Preferred Credit Trust 1997-1, and Chase Home Finance LLC.

196. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

197. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the RUMANS and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the RUMANS at or before closing met the applicable APR and/or Points and Fees Triggers.

The Worthy Second Mortgage Loan

198. On or about July 14, 1997, PREFERRED CREDIT loaned WORTHY $45,000.00, to be repaid with interest at the yearly rate of 13.99% in consecutive monthly installments over a period of twenty (20) years.

199. The 13.99% rate charged was a lawful rate permitted in § 408.232.1, but was

otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

200. To secure repayment of her note, WORTHY was required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

201. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received the following fees, each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), including but not limited to:

Mortgage Broker Fee	$ 900.00
Document Preparation Fee	$ 125.00
Loan Processing Fee	$ 395.00
Underwriting Fee	$ 125.00
Sub Escrow Fee	$ 375.00

202. WORTHY incurred these fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

203. At some point after PREFERRED CREDIT made the above second mortgage loan to WORTHY, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

204. Any or all of the above fees that PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from WORTHY was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), in that, among other things, PREFERRED CREDIT was prohibited by § 408.231.3 from charging, contracting for, and/or receiving from WORTHY any of the stated fees.

205. WORTHY made monthly payments due under her second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to IMPAC FUNDING CORPORATION, IMPAC MORTGAGE HOLDINGS, INC., IMPAC MORTGAGE HOLDINGS ASSET CORP., IMPAC CMB TRUST SERIES 1999-2, AND IMPAC CMB TRUST SERIES 2003-5.

206. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

207. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to WORTHY and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by WORTHY at or before closing met the applicable APR and/or Points and Fees Triggers.

The Rockett Second Mortgage Loan

208. Upon information and belief, on or about June 25, 1997, PREFERRED CREDIT loaned the ROCKETTS $30,000.00, to be repaid with interest at the yearly rate of 12.99% in consecutive monthly installments over a period of ten (10) years.

209. The 12.99% rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

210. Upon information and belief, to secure repayment of their note, the ROCKETTS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at

§ 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

211. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, in connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received various fees from the ROCKETTS.

212. The ROCKETTS incurred these fees when the loan was funded by financing such over the life of the loan, because upon information and belief, and based upon the typical practice of PREFERRED CREDIT, such charges were included in the principal balance of the note.

213. At some point after PREFERRED CREDIT made the above second mortgage loan to the ROCKETTS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

214. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received fees from the ROCKETTS that were illegal settlement charges, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.).

215. The ROCKETTS made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to IMPAC FUNDING CORPORATION, IMPAC MORTGAGE HOLDINGS, INC., IMPAC MORTGAGE HOLDINGS ASSET CORP., IMPAC CMB TRUST SERIES 2000-2, AND WENDOVER FINANCIAL SERVICES.

216. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the

loan continued to charge and receive the monthly payments.

217. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the ROCKETTS and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the ROCKETTS at or before closing met the applicable APR and/or Points and Fees Triggers.

The Hudson Second Mortgage Loan

218. On or about August 29, 1997, PREFERRED CREDIT loaned the HUDSONS $44,500.00, to be repaid with interest at the yearly rate of 12.99% in consecutive monthly installments over a period of ten (10) years.

219. The 12.99% rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

220. To secure repayment of their note, the HUDSONS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

221. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received the following fees, each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), including but not limited to:

Loan Processing Fee to PREFERRED CREDIT	$ 395.00

Underwriting Fee to PREFERRED CREDIT	$ 125.00
Administration Fee to PREFERRED CREDIT	$ 375.00
Origination Fee to PREFERRED CREDIT	$3,560.00
Loan Doc Fee to PREFERRED CREDIT	$ 125.00
Signing/Review Fee to PREFERRED CREDIT	$ 210.00

222. The HUDSONS incurred these fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

223. At some point after PREFERRED CREDIT made the above second mortgage loan to the HUDSONS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

224. Any or all of the above fees that PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the HUDSONS was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), in that, among other things, PREFERRED CREDIT was prohibited by § 408.231.3 from charging, contracting for, and/or receiving from the HUDSONS any of the stated fees.

225. The HUDSONS made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to IMPAC FUNDING CORPORATION, IMPAC MORTGAGE HOLDINGS, INC., IMPAC MORTGAGE HOLDINGS ASSET CORP., IMPAC CMB TRUST SERIES 1999-1, AND IMPAC CMB TRUST SERIES 2001-4.

226. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

227. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the HUDSONS and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the HUDSONS at or before closing met the applicable APR and/or Points and Fees Triggers.

The Woodward Second Mortgage Loan

228. On or about April 23, 1997, PREFERRED CREDIT loaned the WOODWARDS $50,000.00, to be repaid with interest at the yearly rate of 14.125% in consecutive monthly installments over a period of fifteen (15) years.

229. The 14.125% rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

230. To secure repayment of their note, the WOODWARDS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

231. In connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received the following fees, each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), including but not limited to:

Mortgage Broker Fee	$5,000.00
Document Preparation Fee	150.00
Loan Processing Fee to PREFERRED CREDIT	380.00
Underwriting Fee	175.00

232. The WOODWARDS incurred these fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

233. At some point after PREFERRED CREDIT made the above second mortgage loan to the WOODWARDS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

234. Any or all of the above fees that PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the WOODWARDS was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.), in that, among other things, PREFERRED CREDIT was prohibited by § 408.231.3 from charging, contracting for, and/or receiving from the WOODWARDS any of the stated fees.

235. The WOODWARDS made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to IMPAC FUNDING CORPORATION and IMPAC CMB TRUST SERIES 2002-1.

236. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

237. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the WOODWARDS and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees

payable by the WOODWARDS at or before closing met the applicable APR and/or Points and Fees Triggers.

The Weathersby Second Mortgage Loan

238. Upon information and belief, on or about September 8, 1997, PREFERRED CREDIT loaned WEATHERSBY $52,000.00, to be repaid with interest in consecutive monthly installments over a period of time.

239. Upon information and belief, the interest rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

240. Upon information and belief, to secure repayment of his note, WEATHERSBY was required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

241. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, in connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received various loan fees from WEATHERSBY.

242. WEATHERSBY incurred these fees when the loan was funded by financing such over the life of the loan, because upon information and belief, and based upon the typical practice of PREFERRED CREDIT, such charges were included in the principal balance of the note.

243. At some point after PREFERRED CREDIT made the above second mortgage loan to WEATHERSBY, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

244. Upon information and belief, and based upon the loan fees that PREFERRED

CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received fees from WEATHERSBY that were illegal settlement charges, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.).

245. WEATHERSBY made monthly payments due under his second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to IMPAC FUNDING CORPORATION, IMPAC SECURED ASSETS CORP., EMC MORTGAGE CORPORATION, and IMPAC REAL ESTATE ASSET TRUST SERIES 2006-SD1.

246. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

247. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to WEATHERSBY and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by WEATHERSBY at or before closing met the applicable APR and/or Points and Fees Triggers.

The Mooney Second Mortgage Loan

248. Upon information and belief, on or about August 12, 1997, PREFERRED CREDIT loaned MOONEY $23,700.00, to be repaid with interest in consecutive monthly installments over a period of time.

249. Upon information and belief, the interest rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

250. Upon information and belief, to secure repayment of her note, MOONEY was required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

251. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, in connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received various loan fees from MOONEY.

252. MOONEY incurred these fees when the loan was funded by financing such over the life of the loan, because, upon information and belief, and based upon the typical practice of PREFERRED CREDIT, such charges were included in the principal balance of the note.

253. At some point after PREFERRED CREDIT made the above second mortgage loan to MOONEY, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

254. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received fees from MOONEY that were illegal settlement charges, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.).

255. MOONEY made monthly payments due under her second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that

purchased, acquired and/or serviced the loan, including but not limited to IMPAC FUNDING CORPORATION, IMPAC SECURED ASSET CORP., IMPAC SECURED ASSETS CMN TRUST SERIES 1998-1, and WINGSPAN PORTFOLIO ADVISORS LLC.

256. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

257. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to MOONEY and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by MOONEY at or before closing met the applicable APR and/or Points and Fees Triggers.

The Black Second Mortgage Loan

258. On or about July 14, 1998, PREFERRED CREDIT loaned the BLACKS $37,412.00, to be repaid with interest at the yearly rate of 12.99% in consecutive monthly installments over a period of fifteen (15) years.

259. The 12.99% rate charged was a lawful rate permitted in § 408.232.1, but was otherwise "unlawful" without regard to the rate permitted in § 408.232.1.

260. To secure repayment of their note, the BLACKS were required to and did execute a deed of trust for the benefit of PREFERRED CREDIT. The deed of trust granted PREFERRED CREDIT a security lien in residential real estate as defined at § 408.231 Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

261. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second

Mortgage Loans, in connection with this Second Mortgage Loan, PREFERRED CREDIT charged, contracted for and/or received various loan fees from the BLACKS.

262. The BLACKS incurred these fees when the loan was funded by financing such over the life of the loan, because, upon information and belief, and based upon the typical practice of PREFERRED CREDIT, such charges were included in the principal balance of the note.

263. At some point after PREFERRED CREDIT made the above second mortgage loan to the BLACKS, the loan was subsequently sold and assigned to and/or serviced by one or more of the other ASSIGNEE DEFENDANTS.

264. Upon information and belief, and based upon the loan fees that PREFERRED CREDIT typically charged, contracted for and/or received in connection with Missouri Second Mortgage Loans, PREFERRED CREDIT and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received fees from the BLACKS that were illegal settlement charges, in violation of Missouri's Second Mortgage Loans Act (§ 408.231.1 Mo. Rev. Stat.).

265. The BLACKS made monthly payments due under their second mortgage loan, paying the same to PREFERRED CREDIT and/or to any one or more ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan, including but not limited to JPMORGAN CHASE BANK (f/k/a THE CHASE MANHATTAN BANK).

266. The ASSIGNEE DEFENDANTS that purchased, acquired and/or serviced the loan continued to charge and receive the monthly payments.

267. Upon information and belief, the second mortgage loan that PREFERRED CREDIT made to the BLACKS and which any one or more of the ASSIGNEE DEFENDANTS purchased and received by assignment from PREFERRED CREDIT or an intervening purchaser-

assignee was a "high-cost" mortgage within the meaning of 15 U.S.C. § 1602(aa) in that the Annual Percentage Rate (APR) for the loan and/or the total points and fees payable by the BLACKS at or before closing met the applicable APR and/or Points and Fees Triggers.

Class Action for Violations of Missouri's Second Loans Act

Plaintiff Class Action Allegations

268. This action is properly brought as a plaintiff class action under Mo. Rule 52.08. The Class consists of all persons who satisfy the following criteria:

(a) That obtained Second Mortgage Loans on Residential Real Estate from PREFERRED CREDIT within the meaning of Missouri's Second Mortgage Loans Act, §§408.231 et seq.; and

(b) That as part of that Second Mortgage Loan paid either an Origination Fee or paid fees that were either not bona fide or were not paid to third parties but were paid to the lender PREFERRED CREDIT or were not fees expressly set forth in §408.233.1 Mo. Rev. Stat., and all in violation of Missouri's Second Mortgage Loans Act.

269. The Class includes persons who entered into such loans within six years next before the original filing of this action ("SECOND MORTGAGE CLASS").

270. The particular members of the SECOND MORTGAGE CLASS are capable of being described without difficult managerial or administrative problems. The members of the SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of PREFERRED CREDIT and/or the ASSIGNEE DEFENDANTS and/or the representatives or servicing agents of each.

271. The SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that PREFERRED CREDIT made extensive Second Mortgage Loans in Missouri throughout this period.

272. There are questions of law and fact common to the Class, which questions predominate over any questions affecting only individual members of THE SECOND MORTGAGE CLASS and, in fact, the wrongs suffered and remedies sought by PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS are identical, the only difference being the exact monetary amount to which each member of THE SECOND MORTGAGE CLASS is entitled. The principal common issues are:

(a) Whether PREFERRED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a Defendant class as defined below) violated §408.231 et seq. Mo. Rev. Stat. by directly or indirectly charging, contracting for, and/or receiving from PLAINTIFFS and the SECOND MORTGAGE CLASS the fees and charges and interest described above;

(b) Whether PREFERRED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a defendant class as defined below) are barred under the provisions of §408.236 Mo. Rev. Stat. from the recovery of any interest under these Second Mortgage Loans and whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest;

(c) Whether PREFERRED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a defendant class) are liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and

attorney's fees pursuant to §408.562 Mo. Rev. Stat.

273. PLAINTIFFS' claims are typical of those of the members of the SECOND MORTGAGE CLASS and are based on the same legal and factual theories.

274. PLAINTIFFS will fairly and adequately represent and protect the interests of the Class. They have suffered substantial economic injury in their own capacity from the practices complained of. They have retained counsel experienced in handling class actions and actions involving unlawful commercial practices. Neither PLAINTIFFS nor their counsel has any interests which might cause them not to vigorously pursue this action.

275. Certification of a plaintiff class under Mo. Rule 52.08(b)(2) is appropriate as to PREFERRED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a defendant class), in that these defendants have (individually or as assignees or the trustees, servicers and/or agents of such assignees) illegally charged, contracted for, collected or received fees and interest on the Second Mortgage Loans and pursuant to §408.236 Mo. Rev. Stat. those defendants and each of them (and especially the holders of these Second Mortgage Notes and their trustees and servicers) should be enjoined from collecting any interest from these Second Mortgage Notes, and ordered to return any interest previously collected.

276. Certification of a plaintiff class under Mo. Rule 52.08(b)(3) is also appropriate as to PREFERRED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a defendant class), in that common questions predominate over any individual questions and a plaintiff class action is superior for the fair and efficient adjudication of this controversy. A plaintiff class action will cause an orderly and expeditious administration of THE SECOND MORTGAGE CLASS' claims and economies of time, effort and expense will be fostered and uniformity of decisions will be insured. Moreover, the individual class members are likely to be

unaware of their rights and not in a position (either through experience or financially) to commence individual litigation against PREFERRED CREDIT and the ASSIGNEE DEFENDANTS.

Defendants' Liability Under Missouri's Second Mortgage Loans Act

277. Each of the loans that PREFERRED CREDIT made to PLAINTIFFS and to the members of THE SECOND MORTGAGE CLASS constituted a "Second Mortgage Loan" within the meaning of §408.231 et seq. Mo. Rev. Stat.

278. §408.233 Mo. Rev. Stat. provides in pertinent part as follows:

> 1. No charge other than that permitted by section 408.232 shall be directly or indirectly charged, contracted for or received in connection with any Second Mortgage Loan, except as provided in this section:
>
> * *
>
> (3) Bona Fide closing costs **paid to third parties**, which shall include:
>
> (a) Fees or premiums for title examination, title insurance, or similar purposes including survey;
>
> (b) Fees for preparation of a deed, settlement statement, or other documents;
>
> (c) Fees for notarizing deeds and other documents;
>
> (d) Appraisal fees; and
>
> (e) Fees for credit reports
>
> * *
>
> (5) A nonrefundable origination fee not to exceed two percent of the principal… [increased to five percent by the 1998 amendment to the statute].

279. PREFERRED CREDIT and the ASSIGNEE DEFENDANTS violated §408.233 Mo. Rev. Stat. by engaging in the following acts, methods or practices:

(a) Charging, contracting for, or receiving, either directly or indirectly, fees that were disclosed to the members of the SECOND MORTGAGE CLASS as

nonrefundable origination fees, which were not allowed by and/or were in excess of the amounts allowed for such fees by the SMLA, including without limitation §408.233.1(5);

(b) Charging, contracting for, and/or receiving, either directly or indirectly, fees that were (i) not allowed by the SMLA, including without limitation § 408.233.1; (ii) fees not paid to third parties, but were instead paid to PREFERRED CREDIT, in violation of § 408.233.1(3); and/or (iii) fees in excess of the amounts otherwise permitted by the statute.

280. Mo. Rev. Stat. §408.236 provides as follows:

Any person violating the provisions of sections 408.231 to 408.237 shall be barred from recovery of any interest on the contract, except where such violation occurred either:

(1) As a result of an accidental and bona fide error of computations; or

(2) As a result of any acts done or omitted in reliance on a written interpretation of the provisions of sections 408.231 to 408.240 by the division of finance.

281. The conduct of PREFERRED CREDIT and the ASSIGNEE DEFENDANTS and the resulting statutory violations described above did not occur as a result of an accidental and bona fide error of computation or as a result of any acts done or omitted in reliance on a written interpretation of the provisions of § 408.231 to § 408.241 Mo. Rev. Stat. by the division of finance; said conduct was, instead, intentional, willful, wanton and malicious, or otherwise showed a complete indifference to and/or a conscious disregard of Missouri law and the rights of PLAINTIFFS and every other member of THE SECOND MORTGAGE CLASS.

282. As the purchasers and/or assignees and holders or as the trustees and/or agents for the assignees and holders of the notes and deeds of trust given under the Second Mortgage Loans by PLAINTIFFS and the members of the SECOND MORTGAGE CLASS, the

ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are liable to PLAINTIFFS and the SECOND MORTGAGE CLASS, just as PREFERRED CREDIT is liable to PLAINTIFFS and the SECOND MORTGAGE CLASS in that (a) the ASSIGNEE DEFENDANTS are the assignees, directly or indirectly of PREFERRED CREDIT, and "stand in the shoes" of PREFERRED CREDIT; (b) the ASSIGNEE DEFENDANTS charged and received (and continue to charge and receive) illegal fees on the loans, together with the resulting illegal interest charges; and (c) the points and fees and/or Annual Percentage Rates (APRs) for the loans is such that the ASSIGNEE DEFENDANTS (individually, and as a defendant class) are liable to PLAINTIFFS and the SECOND MORTGAGE CLASS, just as PREFERRED CREDIT is liable.

283. PREFERRED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are derivatively and/or jointly and severally liable to PLAINTIFFS and the SECOND MORTGAGE CLASS for all of the unlawful fees and interest they have charged and/or received (or hereinafter charge or receive) under the Second Mortgage Loans, and any such fees and interest collected after the date of the filing of this action shall be additional evidence of the willful and malicious nature of and conscious disregard of the acts of PREFERRED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined).

284. As partners, joint venturers and/or conspirators of PREFERRED CREDIT and/or any one or more of the other entities and/or ASSIGNEE DEFENDANTS mentioned above (individually and as a defendant class as hereinafter defined), the ASSIGNEE DEFENDANTS are jointly and severally liable to PLAINTIFFS and the SECOND MORTGAGE CLASS for all of the unlawful fees and interest that PREFFERED CREDIT charged, contracted

for and/or received under the Second Mortgage Loans, and any such fees and interest collected after the date of the filing of this action shall be additional evidence of the willful and malicious nature of and conscious disregard of the acts of PREFFERED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined).

285. PREFERRED CREDIT and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined) and each of them should be forever barred and enjoined, under §408.236 Mo. Rev. Stat. from collecting or recovering any fees and interest on the Second Mortgage Loans of PLAINTIFFS and the other members of the SECOND MORTGAGE CLASS for the reasons set out above.

286. Mo. Rev. Stat. §408.562 provides as follows:

> In addition to any other remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.

287. As a result of the statutory violations described above, PLAINTIFFS and the other members of the SECOND MORTGAGE CLASS suffered a loss of money or property in that they were charged and paid and/or became obligated to pay loan fees that were not allowed by or in amounts greater than those allowed by Missouri law and were charged interest in violation of Missouri law.

288. The conduct of PREFERRED CREDIT (and the ASSIGNEE DEFENDANTS by virtue of their status as assignees, trustees and/or servicers for the assignees) and the resulting

violations of Missouri law, were intentional, willful, wanton and malicious, or otherwise showed a complete indifference to or a conscious disregard of the rights of each PLAINTIFF and the other members of the SECOND MORTGAGE CLASS, including, without limitation, the fact that defendant, U.S. BANK NATIONAL ASSOCIATION as trustee over certain trusts holding loans originated by PREFERRED CREDIT, continued to collect interest after it knew of the violations of Missouri law, therefore entitling PLAINTIFFS and the SECOND MORTGAGE CLASS to punitive damages against the defendants and each of them in such amount as is fair and reasonable to punish defendants and to deter defendants and others from like conduct.

Defendant Class Action Allegations

289. This action is properly brought as a defendant class action under Mo. Rule 52.08. The defendant class ("THE DEFENDANT SECOND MORTGAGE CLASS") consists of all persons who satisfy the following criteria:

(a) Those persons or entities or their trustees, agents and/or servicers that received any interest from the Second Mortgage Loans of PLAINTIFFS or the SECOND MORTGAGE CLASS as a result of an assignment or transfer of such Second Mortgage Loans to the recipient of such interest or the trustee of such a recipient; or

(b) Those persons or entities or their trustees, agents and/or servicers that have held or now hold, by virtue of transfer or assignment or otherwise (including acting as trustee of such holder or assignee), the Second Mortgage Loans of PLAINTIFFS or the SECOND MORTGAGE CLASS.

290. The particular members of THE DEFENDANT SECOND MORTGAGE CLASS are capable of being described without difficult managerial or administrative problems.

The members of THE DEFENDANT SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of PREFERRED CREDIT and/or the representatives or servicing agents (or their trustee(s) or servicer(s)) of such Second Mortgage Loans or the assignees or holders (or their trustee(s) or servicer(s)) of such Second Mortgage Loans.

291. Upon information and belief, THE DEFENDANT SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that PREFERRED CREDIT made extensive Second Mortgage Loans in Missouri throughout this period and those loans have since been assigned to a number of mortgage trusts or pools and may thereafter have been reassigned.

292. There are questions of law and fact common to THE DEFENDANT SECOND MORTGAGE CLASS which questions predominate over any questions affecting only individual members of THE DEFENDANT SECOND MORTGAGE CLASS and, in fact, the wrongs alleged against THE DEFENDANT SECOND MORTGAGE CLASS and remedies sought by PLAINTIFFS and the other members of the SECOND MORTGAGE CLASS against the ASSIGNEE DEFENDANTS are identical, the only difference being the exact monetary amount to which each ASSIGNEE DEFENDANT is liable to the respective members of the SECOND MORTGAGE CLASS and the amount of interest that should be barred, enjoined and returned. The principal common issues are:

(a) Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable as a result of the violations by PREFERRED CREDIT of Missouri's Second Mortgage Loans Act and/or whether THE DEFENDANT SECOND MORTGAGE CLASS is entitled to assert any defenses to such violations notwithstanding their status as

an assignee of these notes;

(b) Whether THE DEFENDANT SECOND MORTGAGE CLASS is barred under the provisions of §408.236 Mo. Rev. Stat. from the recovery of any interest under these Second Mortgage Loans and whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest; and

(c) Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorney's fees pursuant to §408.562 Mo. Rev. Stat.

293. The ASSIGNEE DEFENDANTS' defenses of THE SECOND MORTGAGE CLASS claims (which defenses are denied) are typical of those of the individual members of the DEFENDANT SECOND MORTGAGE CLASS and will be based on the same legal and factual theories.

294. Any one of the ASSIGNEE DEFENDANTS, as the owner/assignee/holder or representative trustee and/or servicer (including U.S. BANK as the representative trustee of a number of the assignees and holders of these Second Mortgages) of the remaining assignees, holders, trustees and/or servicers of the Second Mortgage Loans, will fairly and adequately represent and protect the interests of THE DEFENDANT SECOND MORTGAGE CLASS. Each of the ASSIGNEE DEFENDANTS will undoubtedly retain counsel experienced in defending class actions and actions involving unlawful commercial practices. Said defendants do not, based upon information and belief, have any interests which might cause them not to vigorously defend this action.

295. Certification of a defendant class under Mo. Rule 52.08(b)(2) is appropriate as to the ASSIGNEE DEFENDANTS, in that these defendants, as assignees and/or holders (or their

trustees) of the Second Mortgage Loans from PREFERRED CREDIT have illegally collected fees and interest on these Second Mortgage Loans and as holders (or their trustees) of the said notes will continue to collect interest, contrary to §408.236 Mo. Rev. Stat., and those defendants and each of them (and especially the holders of these Second Mortgage Notes) should be enjoined from collecting any interest from those Second Mortgage Notes and ordered to return any interest previously collected.

296. Certification of a defendant class under Mo. Rule 52.08(b)(3) is also appropriate as to the ASSIGNEE DEFENDANTS in that common questions predominate over any individual questions and a defendant class action is superior for the fair and efficient adjudication of this controversy. A defendant class action will cause an orderly and expeditious administration of THE DEFENDANT SECOND MORTGAGE CLASS defenses, if any, and economies of time, effort and expenses will be fostered and uniformity of decisions will be insured.

Prayer for Relief

WHEREFORE, PLAINTIFFS, individually and on behalf of themselves and all members of THE SECOND MORTGAGE CLASS, pray for judgment against defendants PREFERRED CREDIT and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS and each of them, as follows:

(a) For the continued certification allowing that this action may be maintained as class action under Mo. Rule 52.08, appointing PLAINTIFFS and their counsel to represent the SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of the SECOND MORTGAGE CLASS;

(b) For an order certifying that this action may be maintained as a defendant class under Mo. Rule 52.08, appointing US BANK and any other named ASSIGNEE DEFENDANT

to represent THE DEFENDANT SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of THE DEFENDANT SECOND MORTGAGE CLASS;

(c) For a permanent injunction enjoining defendants PREFERRED CREDIT and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS, together with their officers, directors, employees, agents, partners or representatives, successors and any and all persons acting in concert, including their loan servicers and loan servicing agents, from directly or indirectly engaging in the wrongful acts and practices described above for the benefit of PLAINTIFFS and the SECOND MORTGAGE CLASS;

(d) For an order directing disgorgement or restitution of all improperly collected charges and the imposition of an equitable constructive trust over such amounts for the benefit of PLAINTIFFS and other members of the SECOND MORTGAGE CLASS;

(e) For a declaration that PLAINTIFFS and other members of the SECOND MORTGAGE CLASS have a right to rescind their loan transactions, and/or a right to offset any illegal fees and interest paid against the principal amounts due on the loans if they exercise their right to rescind, and an order directing PREFERRED CREDIT and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS to inform PLAINTIFFS and other members of the SECOND MORTGAGE CLASS of these rights;

(f) For actual damages to be proven at the time of trial, including a repayment of all interest paid on these Second Mortgage Loans and all illegal fees;

(g) For punitive damages as are fair and reasonable to punish Defendants and to deter Defendants and others from like conduct;

(h) For reasonable attorneys' fees as provided by law and statute;

(i) For pre-and post-judgment interest as provided by law in amount according to proof at trial;

(j) For an award of costs and expenses incurred in this action; and

(k) For such other and further relief as the Court may deem necessary and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury in the above-captioned civil action on all issues so triable.

Dated: April 25, 2011

Respectfully submitted,

WALTERS BENDER STROHBEHN
& VAUGHAN, P.C.

By: */s/ Kip D. Richards*
R. Frederick Walters - Mo. Bar 25069
J. Michael Vaughan Mo. Bar 24989
Kip D. Richards - Mo. Bar 39743
David M. Skeens -Mo. Bar 35728
Karen W. Renwick – Mo. Bar 41271
Garrett M. Hodes - Mo. Bar 50221
Matthew R. Crimmins - Mo. Bar 53138
Bruce V. Nguyen – Mo. Bar 52893
2500 City Center Square
1100 Main Street
P.O. Box 26188
Kansas City, MO 64196
(816) 421-6620
(816) 421-4747 (Facsimile)
ATTORNEYS FOR PLAINTIFFS
AND CLASS COUNSEL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 25th day of April, 2011, I electronically filed the above and foregoing document with the Clerk of Court using the Court's ECF system, which will send notification of said filing to all counsel of record who are ECF participants.

/s/ Kip D. Richards

Ex 2

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

JAMES AND JILL BAKER,
6813 N. Hardesty
Kansas City, MO 64119

and

JEFFREY A. AND MICHELLE A. COX,
203 NE 65th Street
Gladstone, MO 64118

and

WILLIAM S. AND LINDA A. SPRINGER
302 SW 25th Street
Oak Grove, MO 64075

Plaintiffs,

v.

CENTURY FINANCIAL GROUP, INC.
[CURRENT DEFENDANT; DO NOT SERVE]

and

MASTER FINANCIAL, INC.
a California corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

MASTER FINANCIAL ASSET SECURITIZATION
TRUST 1997-1
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

Case No. CV100-4294 CC

Division 2

FILED

FEB 3 2004

TIME:

Clay County Circuit Court

MASTER FINANCIAL ASSET SECURITIZATION TRUST 1998-1
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

MASTER FINANCIAL ASSET SECURITIZATION TRUST 1998-2
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

AAMES CAPITAL CORPORATION,
a California corporation
Serve:
Officer or Person in Charge
350 S. Grand Avenue, 43rd Floor
Los Angeles, California 90071

and

ADVANTA MORTGAGE CONDUIT SERVICES, INC.
a Delaware corporation
SERVE:
Dennis Alter
Welch & McKean Road
Spring House, Pennsylvania 19477

and

ADVANTA MORTGAGE CORP. USA
a Delaware corporation
SERVE:
Dennis Alter
Welch & McKean Road
Spring House, Pennsylvania 19477

and

ADVANTA REVOLVING HOME EQUITY LOAN TRUST 1999-A
a New York common law trust
SERVE:
Bakers Trust Company
William Christoph
130 Liberty Street
New York, New York 10006

and

AHM SPV I, LLC
a Delaware limited liability company
SERVE:
Officer or Person in Charge
520 Broadhollow Road
Melville, New York 11747

and

AMAXIMUS LENDING , L.L.P.
a Delaware corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

BANC ONE FINANCIAL SERVICES, INC.
an Indiana corporation
SERVE:
CT Corporation System
120 Central Avenue
Clayton, Missouri 63105

and

BANK OF NEW YORK
a New York banking corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

BANKERS TRUST COMPANY
a banking corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

BANKERS TRUST COMPANY OF CALIFORNIA, N.A.
a national bank
SERVE:
Ron Bedie, President
300 S. Grand Avenue
Los Angeles, CA 90071

and

CITIGROUP GLOBAL MARKETS REALTY CORP.,
a New York corporation
SERVE:
Richard Isenberg
390 Greenwich Street
New York, New York 10013
and

CITY NATIONAL BANK OF WEST VIRGINIA
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

CREDIT LYONNAIS NORTH AMERICA, INC.
a Delaware corporation
SERVE:
Jean-Marc Moriani
1301 Avenue of the Americas
19th Floor
New York, New York 10019

and

DEUTSCHE BANK TRUST COMPANY AMERICAS
a New York corporation
SERVE:
Officer or Person in Charge
130 Liberty Street
M/S NYC02-3100
New York, New York 10006

and

DEUTSCHE BANK NATIONAL TRUST CORPORATION
a New York corporation
SERVE:
Officer or Person in Charge
130 Liberty Street
M/S NYC02-3100
New York, New York 10006

and

E-LOAN, INC.,
a Delaware corporation
Serve:
Christian A. Larsen, CEO
5875 Arnold Road
Dublin, California 94568

and

EMC MORTGAGE CORPORATION
a Delaware corporation
SERVE:
The Corporation Company
120 South Central Avenue
Clayton, Missouri 63105

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-1
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-2
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-3
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-4
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-5
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1998-1
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1998-2
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1998-3
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING HOME LOAN OWNER TRUST 1999-1
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

EMPIRE FUNDING GRANTOR TRUST 1998-3
a Delaware business trust
SERVE:
Wilmington Trust Company
Rodney Square North
1100 N. Market Street
Wilmington, DE 1980]

and

EQUICREDIT CORPORATION OF AMERICA
a Delaware corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

FIRST COLLATERAL SERVICES
a Delaware corporation

[CURRENT DEFENDANT; DO NOT SERVE]

and

GOLETA NATIONAL BANK
a national bank
SERVE:
Lynda Nahra, President
5827 Hollister Avenue
Goleta, California 93117

and

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.,
a business association
SERVE:
Officer or Person in Charge
600 Steamboat Road
Greenwich, Connecticut 06830

and

HOMEQ SERVICING CORPORATION
a New Jersey corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

THE MONEY STORE, INC.
a New Jersey corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

IMH ASSETS CORP.
a California corporation
SERVE:
Ronald Morrison
1401 Dove Street, Ste. 100
Newport Beach, CA 92660

and

IMPERIAL CREDIT INDUSTRIES, INC.
a California corporation
SERVE:
Irwin L. Gubman
23550 Hawthorne Blvd., Ste. 210
Torrance, CA 90505

and

IMPAC FUNDING CORPORATION
a California corporation
SERVE:
Ronald Morrison
1401 Dove Street, Ste. 100
Newport Beach, CA 92660

and

IMPAC MORTGAGE HOLDINGS, INC.
a Maryland corporation
SERVE:
Ronald Morrison
1401 Dove Street, Ste. 100
Newport Beach, CA 92660

and

IMPAC SECURED ASSETS CORP.
a California corporation
SERVE:
Ronald Morrison
1401 Dove Street, Ste. 100
Newport Beach, California 92660

and

IMPAC SECURED ASSETS CMN TRUST
SERIES 1998-1
a California trust
SERVE:
Wilmington Trust Company
Rodney Square North
1100 N. Market Street

Wilmington, DE 1980]

and

IMPAC CMB TRUST SERVICES 2000-2
a California trust
SERVE:
Bakers Trust Company
William Christoph
130 Liberty Street
New York, New York 10006

and

INDYMAC, INC.
a Delaware corporation
SERVE:
Michael W. Perry
155 N. Lake Avenue
Pasadena, California 91101-1857

and

INGOMAR LIMITED PARTNERSHIP
a Nevada limited partnership
Serve:
The Prentice-Hall Corp. System
221 Bolivar Street
Jefferson City, Missouri 65101

and

INTEGRATED CAPITAL GROUP, INC.
a California corporation
[**CURRENT DEFENDANT; DO NOT SERVE**]

and

INTERBAY FUNDING, LLC
a Delaware limited liability company
SERVE:
CT Corporation System
120 South Central Avenue
Clayton, Missouri 63105

and

IRWIN UNION BANK AND TRUST CO.
an Indiana corporation
SERVE:
CT Corporation System
120 South Central Avenue
Clayton, Missouri 63105

and

IRWIN HOME EQUITY CORPORATION
an Indiana corporation
SERVE:
The Corporation Company
120 South Central Avenue
Clayton, Missouri 63105

and

IRWIN HOME EQUITY LOAN TRUST
1999-3
a business association
SERVE:
Wells Fargo Bank Minnesota, NA
Bank President
6th & Marquette
Minneapolis, MN 55480

and

IRWIN HOME EQUITY LOAN TRUST
2001-1
a business association
SERVE:
Wells Fargo Bank Minnesota, NA
Bank President
6th & Marquette
Minneapolis, MN 55480

and

IRWIN HOME EQUITY LOAN TRUST
2001-2
a business association
SERVE:
Wells Fargo Bank Minnesota, NA
Bank President
6th & Marquette
Minneapolis, MN 55480

and

IRWIN HOME EQUITY LOAN TRUST
2002-1
a business association
SERVE:
Wells Fargo Bank Minnesota, NA
Bank President
6th & Marquette
Minneapolis, MN 55480

and

LIFE BANK (f/k/a LIFE SAVINGS BANK, F.S.B.)
a federal bank
SERVE:
Ronald Skipper, Chairman
Or an Officer in Charge
LIFE Bank
1598 E. Highland Avenue
San Bernadino, CA 92404

and

NATIONWIDE MORTGAGE PLAN AND TRUST
a business association
SERVE:
Person or Officer in Charge
7119 E. Shea Blvd., #109-466
Scottsdale, Arizona 85254

and

NIKKO FINANCIAL SERVICES, INC.
a Delaware corporation
SERVE:
One World Financial Center
Tower A, 1200 Liberty Street
New York, New York 10281

and

OCWEN FEDERAL BANK, FSB
a federal bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

PREFERRED CREDIT CORPORATION
a California corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

CREDIT SUISSE FIRST BOSTON
MORTGAGE CAPITAL, LLC
a Delaware company
SERVE:
c/o CSC Corporation Service Company
2711 Centerville Road, Ste. 400
Wilmington, Delaware 19808

and

CREDIT SUISSE FIRST BOSTON
MORTGAGE SECURITIES CORP.
a Delaware corporation
SERVE:
Prentice-Hall Corporation System, Inc.
2711 Centerville Road, Ste. 400
Wilmington, DE 19808

and

PREFERRED MORTGAGE TRUST 1996-2 ("PREFERRED MORTGAGE ASSET-BACKED CERTIFICATES, SERIES 1996-2"), a trust or fund
[CURRENT DEFENDANT; DO NOT SERVE]

and

PREFERRED CREDIT TRUST 1997-1 ("PREFERRED CREDIT ASSET-BACKED CERTIFICATES, SERIES 1997-1"), a trust or fund
[CURRENT DEFENDANT; DO NOT SERVE]

and

REAL TIME RESOLUTIONS, INC.
a Texas Corporation
SERVE:
Anthony A. Petrocchi
1900 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201

and

REPUBLIC BANK d/b/a FLAGSHIP FUNDING, a state-chartered bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

REPUBLIC BANK HOME LOAN OWNER TRUST 1997-1
a Delaware business trust
SERVE:
Wachovia Trust Company NA
1 Rodney Square
920 King Street, 1st Floor
Wilmington, Delaware 19801

and

REPUBLIC BANK HOME LOAN OWNER TRUST 1998-1
a Delaware business trust
SERVE:
Wachovia Trust Company NA
1 Rodney Square
920 King Street, 1st Floor
Wilmington, Delaware 19801

and

REPUBLIC BANK HOME LOAN OWNER TRUST 1998-2
a Delaware business trust
SERVE:
Wachovia Trust Company NA
1 Rodney Square
920 King Street, 1st Floor
Wilmington, Delaware 19801

and

RESIDENTIAL FUNDING CORPORATION
a Delaware corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and
RESIDENTIAL FUNDING MORTGAGE SECURITIES II
a Minnesota corporation
SERVE:
Officer or Person in Charge
8400 Normandale Lake Blvd.
Minneapolis, Minnesota 55437

and

JPMORGAN CHASE BANK (f/k/a THE CHASE MANHATTAN BANK)
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

HOMECOMINGS FINANCIAL NETWORK, INC.
a Delaware corporation
[CURRENT DEFENDANT; DO NOT SERVE]

and

HOME LOAN TRUST 1997-HI3
a Delaware business trust
[CURRENT DEFENDANT; DO NOT SERVE]

and

HOME LOAN TRUST 1999-HI1,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

and

HOME LOAN TRUST 1999-HI6,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

and

HOME LOAN TRUST 1999-HI8,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

and

HOME LOAN TRUST 2000-HI1,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

and

HOME LOAN TRUST 2000-HI2,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

and

HOME LOAN TRUST 2000-HI3,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

and

HOME LOAN TRUST 2000-HI4,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

and

HOME LOAN TRUST 2001-HI1,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North

1100 North Market Street
Wilmington, DE 19890

and

HOME LOAN TRUST 2001-HI2,
a Delaware business
SERVE:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

and

SOVEREIGN BANK, FSB
a federal bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

UBS REAL ESTATE SECURITIES, INC.
(f/k/a PAINE WEBBER REAL ESTATE SECURITIES, INC.)
a Delaware corporation
SERVE:
Ramesh Singh
1285 Avenue of the Americas
New York, New York 10019

and

PAINE WEBBER MORTGAGE ACCEPTANCE CORPORATION IV
a Delaware corporation
SERVE:
Joseph Piscina
1285 Avenue of the Americas
New York, New York 10019

and

UCFC LOAN TRUST 1997-C
a business trust
SERVE:
Bankers Trust Company
William Christoph
130 Liberty Street
New York, New York 10006

and

UMLIC VP LLC
a North American limited liability company
SERVE:
Renee S. Alexander
6701 Carmel Road, Ste. 400
Charlotte, North Carolina 28226

and

UNITED COMPANIES FUNDING, INC.
a Louisiana corporation
SERVE:
Person or Officer in Charge
8549 United Plaza Blvd.
Baton Rouge, Louisiana 70809

and

UNITED COMPANIES LENDING CORPORATION
a Louisiana corporation
SERVE:
Person or Officer in Charge
8549 United Plaza Blvd.
Baton Rouge, Louisiana 70809

and

U.S. BANK, N.A. ND
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

U.S. BANK, NATIONAL ASSOCIATION
a national bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

WACHOVIA TRUST COMPANY
NATIONAL ASSOCIATION
a business association
SERVE:
1 Rodney Square
920 King Street, 1st Floor
Wilmington, Delaware 19801

and

WELLS FARGO BANK MINNESOTA
NATIONAL ASSOCIATION,
a national bank
SERVE:
Bank President
6th & Marquette
Minneapolis, MN 55480

and

WILMINGTON TRUST COMPANY
a Delaware bank
[CURRENT DEFENDANT; DO NOT SERVE]

and

DOES 1 THROUGH 25,

Defendants.

FOURTH AMENDED PETITION

Plaintiffs James C. and Jill S. Baker, Jeffrey A. and Michelle A. Cox, and William L. and Linda A. Springer individually and on behalf of all other persons similarly situated ("PLAINTIFFS"), state the following for their Fourth Amended Petition against Defendants in

this cause:

Introduction

1. This action is brought as a plaintiffs' class action against CENTURY FINANCIAL GROUP, INC. ("CENTURY FINANCIAL") and the above-named defendants (and the defendant class as hereinafter defined) as (a) the holders or previous holders of the Second Mortgage Loans made in Missouri by CENTURY FINANCIAL (b) the trustees and/or agents of those persons or entities that have purchased or have been assigned and now hold or previously held said Second Mortgage Loans and/or (c) the trustees, agents and/or holders of the Second Mortgage Loans.

2. This action seeks redress on behalf of the plaintiffs and the plaintiff class against CENTURY FINANCIAL and the other Defendants (including a defendant class) for violations of Missouri's Second Mortgage Loans Act (§408.231 et seq. Mo. Rev. Stat.), including claims for injunctive relief.

The Plaintiffs

3. Plaintiffs James C. and Jill S. Baker (the "BAKERS") are lawfully married individuals who reside at 6813 North Hardesty, Kansas City, Clay County, Missouri. The BAKERS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

4. Plaintiffs Jeffrey A. and Michelle A. Cox (the "COXES") are lawfully married individuals who reside at 203 NE 65th Street, Gladstone, Clay County, Missouri. The COXES bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

5. Plaintiffs William L. and Linda A. Springer (the "SPRINGERS") are lawfully

married individuals who reside at 302 SW 25th Street, Oak Grove, Jackson County, Missouri. The SPRINGERS bring this action individually and as representatives on behalf of the class of plaintiff-borrowers described below.

Defendant Century Financial

6. Defendant CENTURY FINANCIAL is a California corporation that has been served with (or waived service of) process in this action.

7. CENTURY FINANCIAL is a "moneyed corporation" within the meaning of § 516.420 Mo. Rev. Stat. At all relevant times, CENTURY FINANCIAL was engaged principally if not exclusively in the business of originating, funding and selling residential mortgage loans in a number of different states, including Missouri, and was subject to regulation by the Missouri Division of Finance with regard to its lending activities within Missouri. In particular, CENTURY FINANCIAL, as a "mortgage banker" as defined by the Missouri Division of Finance, lent money secured by residential real estate to Missouri consumers and then sold the residential mortgage loans it made for money to entities like the "Investor Defendants" identified below. CENTURY FINANCIAL, upon information and belief, then used the money it received for the loans to make and fund still other loans.

8. As a lender of money secured by people's homes, CENTURY FINANCIAL exercised "banking powers" and was at all relevant times subject to regulation by the Missouri Division of Finance. In addition, Plaintiffs allege upon information and belief that CENTURY FINANCIAL was also licensed and regulated (or was exempted from certain state licensing requirements) at all relevant times by the banking and/or finance divisions/departments of a number of different states, including the Missouri Division of Finance, as a "mortgage banker," "mortgage lender," and/or "money broker."

The Investor Defendants

9. Defendant MASTER FINANCIAL, INC. is a California corporation that has previously been served with (or waived service of) process in this action.

10. Defendant MASTER FINANCIAL ASSET SECURITIZATION TRUST 1997-1 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

11. Defendant MASTER FINANCIAL ASSET SECURITIZATION TRUST 1998-1 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

12. Defendant MASTER FINANCIAL ASSET SECURITIZATION TRUST 1998-2 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

13. Defendant AAMES CAPITAL CORPORATION is a California corporation and can be served with legal process by serving its officer or person in charge, 350 S. Grand Avenue, 43rd Florr, Los Angeles, CA 90071.

14. Defendant ADVANTA MORTGAGE CONDUIT SERVICES, INC. is a Delaware corporation and can be served with legal process by serving Dennis Alter, Welch & McKean Road, Spring House, PA 19477.

15. Defendant ADVANTA MORTGAGE CORP. USA is a Delaware corporation and can be served with legal process by serving Dennis Alter, Welch & McKean Road, Spring House, PA 19477.

16. Defendant ADVANTA REVOLVING HOME EQUITY LOAN TRUST 1999-A is a New York common law trust and can be served with legal process by serving Bakers Trust Company, Trustee, William Christoph, 130 Liberty Street, New York, New York 10006.

17. Defendant AHM SPV I, LLC is a Delaware limited liability company and can be served with legal process by serving its officer or person in charge, 520 Broadhollow Road, Melville, New York 11747.

18. Defendant AMAXIMUS LENDING is a Delaware corporation that has previously been served with (or waived service of) process in this action.

19. Defendant BANC ONE FINANCIAL SERVICES, INC. is an Indiana corporation and can be served with legal process by serving CT Corporation System, 120 Central Avenue, Clayton, MO 63105.

20. Defendant BANK OF NEW YORK is a New York banking corporation that has previously been served with (or waived service of) process in this action.

21. Defendant BANKERS TRUST COMPANY is a banking corporation that has previously been served with (or waived service of) process in this action.

22. Defendant BANKERS TRUST COMPANY OF CALIFORNIA, N.A. is a national bank and can be served with legal process by serving Ron Bedie, President, 300 S. Grand Avenue, Los Angeles, CA 90071.

23. Defendant CITIGROUP GLOBAL MARKETS REALTY CORP. is a New York corporation and can be served with legal process by serving Richard Isenberg, 390 Greenwich Street, New York, New York 10013.

24. Defendant CITY NATIONAL BANK OF WEST VIRGINIA is a national bank that has previously been served with (or waived service of) process in this action.

25. Defendant CREDIT LYONNAIS NORTH AMERICA, INC. is a Delaware corporation and can be served with legal process by serving Jean-Marc Moriani, 1301 Avenue of the Americas, 19th Floor, New York, New York 10019.

26. Defendant DEUTSCHE BANK NATIONAL TRUST COMPANY AMERICAS is a New York corporation and can be served with legal process by serving its officer or person in charge, 130 Liberty Street, M/S NYC02-3100, New York, New York 10006.

27. Defendant DEUTSCHE BANK NATIONAL TRUST CORPORATION is a New York corporation and can be served with legal process by serving its officer or person in charge, 130 Liberty Street, M/S NYC02-3100, New York, New York 10006.

28. Defendant E-LOAN, INC., is a Delaware corporation and can be served with legal process by serving Christian A. Larsen, CEO, 5875 Arnold Road, Dublin, CA 94568.

29. Defendant EMC MORTGAGE CORPORATION is a Delaware corporation and can be served with legal process by serving The Corporation Company, 120 South Central Avenue, Clayton, MO 63105.

30. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-1 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

31. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-2 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

32. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-3 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

33. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-4 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

34. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1997-5 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

35. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1998-1 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

36. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1998-2 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

37. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1998-3 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

38. Defendant EMPIRE FUNDING HOME LOAN OWNER TRUST 1999-1 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

39. Defendant EMPIRE FUNDING GRANTOR TRUST 1998-3 is a Delaware business trust and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 N. Market Street, Wilmington, DE 19801.

40. Defendant EQUICREDIT CORPORATION OF AMERICA is a Delaware corporation that has previously been served with (or waived service of) process in this action.

41. Defendant FIRST COLLATERAL SERVICES is a Delaware corporation that has previously been served with (or waived service of) process in this action.

42. Defendant GOLETA NATIONAL BANK is a national bank and can be served with legal process by serving Lynda Nahra, President, 5827 Hollister Avenue, Goleta, CA 93117.

43. Defendant GREENWICH CAPITAL FINANCIAL PRODUCTS, INC. is a business association and can be served with legal process by serving its officer or person in charge, 600 Steamboat Road, Greenwich, CT 06830.

44. Defendant HOMEQ SERVICING CORPORATION f/k/a TMS MORTGAGE, INC. d/b/a THE MONEY STORE is a New Jersey corporation that has previously been served with (or waived service of) process in this action.

45. Defendant THE MONEY STORE, INC. is a New Jersey corporation that has previously been served with (or waived service of) process in this action.

46. Defendant IMH ASSETS CORP. is a California corporation and can be served with legal process by serving Ronald Morrison, 1401 Dove Street, Ste. 100, Newport Beach, CA 92660.

47. Defendant IMPERIAL CREDIT INDUSTRIES, INC. is a California corporation and can be served with legal process by serving Irwin L. Gubman, 23550 Hawthorne Blvd., Ste. 210, Torrance, CA 90505.

48. Defendant IMPAC FUNDING CORPORATION is a California corporation and can be served with legal process by serving Ronald Morrison, 1401 Dove Street, Ste. 100, Newport Beach, CA 92660.

49. Defendant IMPAC MORTGAGE HOLDINGS, INC. is a Maryland corporation and can be served with legal process by serving Ronald Morrison, 1401 Dove Street, Ste. 100, Newport Beach, CA 92660.

50. Defendant IMPAC SECURED ASSETS CORP. is a California corporation and can be served with legal process by serving Ronald Morrison, 1401 Dove Street, Ste. 100, Newport Beach, CA 92660.

51. Defendant IMPAC SECURED ASSETS CMN TRUST SERIES 1998-1 is a California trust and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 N. Market Street, Wilmington, DE 19801.

52. Defendant IMPAC CMB TRUST SERVICES 2000-2 is a California trust and can be served with legal process by serving Bakers Trust Company, William Christoph, 130 Liberty Street, New York, New York 10006.

53. Defendant INDYMAC, INC. is a Delaware corporation and can be served with legal process by serving Michael W. Perry, 155 N. Lake Avenue, Pasadena, California 91101-1857.

54. Defendant IGOMAR LIMITED PARTNERSHIP is a Nevada limited partnership and can be served with legal process by serving The Prentice-Hall Corp. System, 221 Bolivar Street, Jefferson City, MO 65101.

55. Defendant INTEGRATED CAPITAL GROUP, INC. is a California corporation that has previously been served with (or waived service of) process in this action.

56. Defendant INTERBAY FUNDING, LLC is a Delaware limited liability company and can be served with legal process by serving CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

57. Defendant IRWIN UNION BANK AND TRUST COMPANY is an Indiana corporation and can be served with legal process by serving CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

58. Defendant IRWIN HOME EQUITY CORPORATION is an Indiana corporation and can be served with legal process by serving CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

59. Defendant IRWIN HOME EQUITY LOAN TRUST 1999-3 is a business association and can be served with legal process by serving Wells Fargo Bank Minnesota, NA, Bank President, 6th & Marquette, Minneapolis, MN 55480.

60. Defendant IRWIN HOME EQUITY LOAN TRUST 2001-1 is a business association and can be served with legal process by serving Wells Fargo Bank Minnesota, NA, Bank President, 6th & Marquette, Minneapolis, MN 55480.

61. Defendant IRWIN HOME EQUITY LOAN TRUST 2001-2 is a business association and can be served with legal process by serving Wells Fargo Bank Minnesota, NA, Bank President, 6th & Marquette, Minneapolis, MN 55480.

62. Defendant IRWIN HOME EQUITY LOAN TRUST 2002-1 is a business association and can be served with legal process by serving Wells Fargo Bank Minnesota, NA, Bank President, 6th & Marquette, Minneapolis, MN 55480.

63. Defendant LIFE BANK (f/k/a LIFE SAVINGS BANK, F.S.B.) is a federal bank and can be served with legal process by serving Ronald Skipper, Chairman, or an officer or person in charge, LIFE Bank, 1598 E. Highland Avenue, San Bernadino, CA 92404.

64. Defendant NATIONWIDE MORTGAGE PLAN AND TRUST is a business association and can be served with legal process by serving its officer or person in charge, 7119 Shea Blvd., #109-466, Scottsdale, AZ 85254.

65. Defendant NIKKO FINANCIAL SERVICES, INC. is a Delaware corporation and can be served with legal process by serving One World Financial Center, Tower A, 1200 Liberty Street, New York, New York 10281.

66. Defendant OCWEN FEDERAL BANK, FSB is a federal bank that has previously been served with (or waived service of) process in this action.

67. Defendant PREFERRED CREDIT CORPORATION (f/k/a T.A.R. Preferred Mortgage Corporation) is a California corporation that has previously been served with (or waived service of) process in this action.

68. Defendant CREDIT SUISSE FIRST BOSTON MORTGAGE CAPITAL, LLC is a Delaware company and can be served with legal process by serving CSC Corporation Service Company, 2711 Centerville Road, Ste. 400, Wilmington, DE 19808.

69. Defendant CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP. is a Delaware corporation and can be served with legal process by serving Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Ste. 400, Wilmington, DE 19808.

70. Defendant PREFERRED MORTGAGE TRUST 1996-2 ("PREFERRED MORTGAGE ASSET-BACKED CERTIFICATES, SERIES 1996-2") is a trust or trust fund that has previously been served with (or waived service of) process in this action.

71. Defendant PREFERRED CREDIT TRUST 1997-1 ("PREFERRED CREDIT ASSET-BACKED CERTIFICATES, SERIES 1997-1") is a trust or trust fund that has previously been served with (or waived service of) process in this action.

72. Defendant REAL TIME RESOLUTIONS, INC. is a Texas corporation and can be served with legal process by serving Anthony A. Petrocchi, 1900 Thanksgiving Tower, 1601 Elm Street, Dallas, TX 75201.

73. Defendant REPUBLIC BANK d/b/a FLAGSHIP FUNDING is a banking corporation that has previously been served with (or waived service of) process in this action.

74. Defendant REPUBLIC BANK HOME LOAN OWNER TRUST 1997-1 is a Delaware business trust and can be served with legal process by serving Wachovia Trust Company, NA, 1 Rodney Square, 920 King Street, 1st Floor, Wilmington, DE 19801.

75. Defendant REPUBLIC BANK HOME LOAN OWNER TRUST 1998-1 is a Delaware business trust and can be served with legal process by serving Wachovia Trust Company, NA, 1 Rodney Square, 920 King Street, 1st Floor, Wilmington, DE 19801.

76. Defendant REPUBLIC BANK HOME LOAN OWNER TRUST 1998-2 is a Delaware business trust and can be served with legal process by serving Wachovia Trust Company, NA, 1 Rodney Square, 920 King Street, 1st Floor, Wilmington, DE 19801.

77. Defendant RESIDENTIAL FUNDING CORPORATION (f/k/a GMAC-RESIDENTIAL FUNDING CORPORATION) is a Delaware corporation that has previously been served with (or waived service of) process in this action.

78. Defendant RESIDENTIAL FUNDING MORTGAGE SECURITIES II is a Minnesota corporation and can be served with legal process by serving its officer or person in charge, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

79. Defendant JPMORGAN CHASE BANK ("CHASE") is a national bank that has previously been served with (or waived service of) process in this action. CHASE is named both individually as the successor in interest to ADVANTA MORTGAGE CORPORATION USA.

80. Defendant HOMECOMINGS FINANCIAL NETWORK, INC. is a Delaware corporation that has previously been served with (or waived service of) process in this action.

81. Defendant HOME LOAN TRUST 1997-HI3 is a Delaware business trust that has previously been served with (or waived service of) process in this action.

82. Defendant HOME LOAN TRUST 1999-HI1 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

83. Defendant HOME LOAN TRUST 1999-HI6 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

84. Defendant HOME LOAN TRUST 1999-HI8 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

85. Defendant HOME LOAN TRUST 2000-HI1 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

86. Defendant HOME LOAN TRUST 2000-HI2 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

87. Defendant HOME LOAN TRUST 2000-HI3 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

88. Defendant HOME LOAN TRUST 2000-HI4 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

89. Defendant HOME LOAN TRUST 2001-HI1 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

90. Defendant HOME LOAN TRUST 2001-HI2 is a Delaware business and can be served with legal process by serving Wilmington Trust Company, Rodney Square North, 1100 North Market Street, 8400 Normandale Lake Blvd., Minneapolis, MN 55437.

91. Defendant SOVEREIGN BANK, FSB is a federal bank that has previously been served with (or waived service of) process in this action.

92. Defendant UBS REAL ESTATE SECURITIES, INC. (f/k/a PAINE WEBBER REAL ESTATE SECURITIES, INC.) is a Delaware corporation and can be served with legal process by serving Ramesh Singh, 1285 Avenue of the Americas, New York, New York 10019.

93. Defendant PAINE WEBBER MORTGAGE ACCEPTANCE CORPORATION IV is a Delaware corporation and can be served with legal process by serving Joseph Piscina, 1285 Avenue of the Americas, New York, New York 10019.

94. Defendant UCFC LOAN TRUST 1997-C is a business trust and can be served with legal process by serving Bankers Trust Company, William Christoph, 130 Liberty Street, New York, New York 10006.

95. Defendant UMLIC VP LLC is a North American limited liability company and can be served with legal process by serving Renee S. Alexander, 6701 Carmel Road, Ste. 400, Charlotte, NC 28226.

96. Defendant UNITED COMPANIES FUNDING, INC. is Louisiana corporation and can be served with legal process by serving its officer or person in charge, 8549 United Plaza Blvd., Baton Rouge, LA 70809.

97. Defendant UNITED COMPANIES LENDING CORPORATION is a Delaware business and can be served with legal process by serving its officer or person in charge, 8549 United Plaza Blvd., Baton Rouge, LA 70809.

98. Defendant U.S. BANK, NA ND is a national bank that has previously been served with (or waived service of) process in this action.

99. Defendant U.S. BANK, NA is a national bank that has previously been served with (or waived service of) process in this action.

100. Defendant WACHOVIA TRUST COMPANY NATIONAL ASSOCIATION is a business association and can be served with legal process by serving its officer or person in charge, 1 Rodney Square, 920 King Street, 1st Floor, Wilmington, DE 19801.

101. Defendant WELLS FARGO BANK MINNESOTA NATIONAL ASSOCIATION a national bank and can be served with legal process by serving its bank president, 6th & Marquette, Minneapolis, MN 55480.

102. Defendant WILMINGTON TRUST COMPANY is a Delaware bank that previously has been served with (or waived service of) process in this action.

103. Each of the business associations named in paragraphs 9 through 102 above (the "INVESTOR DEFENDANTS") purchased and/or is or was an owner, assignee (holder) of, and/or the trustee and/or agent of an entity, trust, fund or pool owning and/or holding the Second Mortgage Loans made to PLAINTIFFS and the members of the Plaintiff Class, which Second Mortgage Loans were originated and/or made by CENTURY FINANCIAL (or a finder or broker

on its behalf), all as is more particularly set forth below.

The Doe Defendants

104. Defendants DOE 1 through 25 ("DOES 1-25") are the remaining owners, assignees (holders) and trusts, funds and/or pools, and the trustees and/or agents thereof, organized under various state laws, if any, that are yet to be named and whose identity will become known through discovery and/or by requests made by Plaintiffs or the members of the plaintiff class of their second mortgage servicers, after which such remaining assignees (holders) and trusts, funds and pools, and the trustees and/or agents thereof, to the extent that they can be identified, will be added as individual defendants.

The Assignee Defendants

105. Each of the INVESTOR DEFENDANTS and DOES 1 through 25 (collectively, the "ASSIGNEE DEFENDANTS") is named as a Defendant both individually, in its capacity as an owner and/or assignee (holder) of, and/or the trustee and/or agent (including agent servicer) of an entity, trust, fund or pool owning or holding, the Second Mortgage Loans, and as a member and representative of every other member of the Defendant Class (as hereinafter defined), which includes the remaining owners and assignees (holders) of, and trustees and/or agents (including agent servicers) of the entities, trusts, funds and pools owning and/or holding, said Second Mortgage Loans.

106. The ASSIGNEE DEFENDANTS, individually and/or through their bank trustees or other trustees and/or agents, purchased the Second Mortgage Loans that CENTURY FINANCIAL made to PLAINTIFFS and the Plaintiff Class pursuant to one or more standing agreements and/or a course of business dealing with CENTURY FINANCIAL and/or on a "secondary market" comprised of businesses like said ASSIGNEE DEFENDANTS and used the

Second Mortgage Loans and the money streams they generated as for purposes of investment, including use of the loans and money streams as collateral for notes that certain ASSIGNEE DEFENDANTS and their trustees and agents sold to the public.

107. The existence of these agreements, course of dealing and "secondary market," and the capital that the ASSIGNEE DEFENDANTS provided to CENTURY FINANCIAL by agreeing to repurchase the loans that it originated and made, enabled CENTURY FINANCIAL to make the second mortgage home loans it was making in the first place, including the Missouri Second Mortgage Loans at issue.

108. Each of the ASSIGNEE DEFENDANTS is a "moneyed corporation" within the meaning of § 516.420 Mo. Rev. Stat. in that the ASSIGNEE DEFENDANTS, and each of them, at all relevant times: (a) purchased and/or acquired the subject Second Mortgage Loans made by CENTURY FINANCIAL, which originated and funded the loans in violation of Missouri law; (b) was so closely-connected to CENTURY FINANCIAL, directly or through an affiliated entity, by virtue of certain business arrangements, that they should be deemed "moneyed corporations" too; (c) were engaged principally if not exclusively in the business of purchasing and/or acquiring residential mortgage loans and the money streams such loans generated in competition with banks, and used the loans to collateralize evidences of indebtedness that the ASSIGNEE DEFENDANTS sold to the public; and/or (d) are business enterprises engaged in the business of using money to make money, as is shown by the above.

Jurisdiction and Venue

109. This Court has jurisdiction over CENTURY FINANCIAL, MASTER FINANCIAL and each of the other ASSIGNEE DEFENDANTS, since each transacted business, made a contract, committed a tort and/or are or were assignees, trustees and/or agents of such

entities and/or of the Second Mortgage Loans, and/or used or possessed an interest in real estate located within the state of Missouri, all as is herein alleged.

110. CENTURY FINANCIAL is subject to the jurisdiction of this Court, either having a registered agent in and/or a continuous systematic presence in or contacts within the State of Missouri, and/or pursuant to §506.500 Mo. Rev. Stat. having further:

(a) Transacted business within this state by virtue of its making numerous Second Mortgage Loans (as hereinafter defined) in this state;

(b) Made contracts within this state by virtue of its making numerous Second Mortgage Loans in this state and the contracts made in conjunction with such Second Mortgage Loans;

(c) Committed tortious acts within this state by virtue of its violations of Missouri's Second Mortgage Loan Act and its unlawful collection and conversion of monies in violation of such Act (including without limitation, continuing to collect illegal interest from the class members as more specifically set forth below); and

(d) Used real estate situated in this state to illegally secure the Second Mortgage Loans that are the subject of this action.

111. Each of the ASSIGNEE DEFENDANTS is subject to the jurisdiction of this Court, either having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and/or pursuant to the provisions of §506.500 Mo. Rev. Stat., having further, individually and/or through one or more trustees and/or agents:

(a) Transacted business within this state individually and/or by virtue of being an assignee (holder) or the trustee and/or agent of an assignee of the Second Mortgage Loans (as hereinafter defined) of CENTURY FINANCIAL, and/or by virtue of it being a holder of and/or a

trustee and/or agent of a holder of said Second Mortgage Loans and collecting and/or attempting to collect the benefits of and amounts due under said Second Mortgage Loans from and/or within this state;

(b) Made contracts within this state individually and/or by virtue of being an assignee (holder) or the trustee and/or agent of an assignee of CENTURY FINANCIAL and/or said Second Mortgage Loans;

(c) Committed tortious acts within this state individually and/or by virtue of being an assignee (holder) or the trustee and/or agent of an assignee of CENTURY FINANCIAL and/or the Second Mortgage Loans, and/or by virtue of its continuing to charge and receive illegal costs and fees in violation of Missouri law and in their receipt of illegal interest from PLAINTIFFS and the Plaintiff Class, all as is more specifically set forth below; and

(d) Used real estate situated in this state to secure the Second Mortgage Loans individually and/or by virtue of being an assignee (holder) or the trustee and/or agent of an assignee of CENTURY FINANCIAL and/or the Second Mortgage Loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the trustee and/or agent for such beneficiaries, that secure the Second Mortgage Loans.

112. Venue is proper in this Court pursuant to the terms of §408.562 Mo. Rev. Stat. because plaintiffs reside in this county and because the transactions complained of occurred in this county and pursuant to §407.025 Mo. Rev. Stat. and because plaintiffs reside in this county and pursuant to §508.010 Mo. Rev. Stat. because the subject causes of action accrued in this county.

General Allegations

113. PLAINTIFFS bring this action individually and as a class action on behalf of the

statewide class of Missouri residential real estate owners or borrowers who obtained Second Mortgage Loans from CENTURY FINANCIAL. "Second Mortgage Loans" are defined at §408.231.et seq. Mo. Rev. Stat. to mean "... a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust deed, or other similar instrument or document ... which residential real estate is subject to one or more prior mortgage loans."

114. "Residential real estate" is defined at §408.231.3 Mo. Rev. Stat., to mean "... any real estate used or intended to be used as a residence by not more than four families...." Finally, §408.234.2 Mo. Rev. Stat. makes it illegal for a lender to take a security interest in any collateral other than residential real estate in connection with a Second Mortgage Loan.

115. From and after six years prior to the original filing of this action and through the present time, CENTURY FINANCIAL made Second Mortgage Loans to PLAINTIFFS and the members of the Plaintiff Class.

116. In each of the of the Second Mortgage Loans at issue, CENTURY FINANCIAL received a promissory note from PLAINTIFFS and from the various plaintiff classes (as hereinafter defined) and was named as the "Beneficiary" in a second mortgage deed of trust to secure the said Second Mortgage Loans.

117. In connection with these Second Mortgage Loans, the rate of interest was unlawful, except for the lawful rate of interest permitted by Missouri's Second Mortgage Loans Act, and in particular § 408.233.1 Mo. Rev. Stat.

118. In connection with these Second Mortgage Loans CENTURY FINANCIAL contracted for, charged and received, and the INVESTOR and ASSIGNEE DEFENDANTS charged and received fees and costs that violated Missouri's Second Mortgage Loans Act. In

particular, CENTURY FINANCIAL contracted for, and CENTURY FINANCIAL and the INVESTOR and ASSIGNEE DEFENDANTS charged and received, Origination Fees (or finder's fees or broker's fees) that were either wholly prohibited by or in excess of that allowed by Missouri's Second Mortgage Loans Act, § 408.233.1(5) Mo. Rev. Stat. In addition, CENTURY FINANCIAL contracted for and CENTURY FINANCIAL and INVESTOR and ASSIGNEE DEFENDANTS charged and received other closing costs that were either not paid to third parties of the lender or were not permitted by or were in excess of those permitted by Missouri's Second Mortgage Loans Act, § 408.233.1(3) Mo. Rev. Stat.

119. These unlawful closing costs and other fees were payable at the time that the loans were funded and were added to the principal balance of the Second Mortgage Loan notes and on which amounts interest was charged, as it was charged on the entire principal balance of the notes.

120. Since acquiring the loans, the ASSIGNEE DEFENDANTS, individually and/or through their bank trustees or other trustees and/or agents, have and "charged" and/or "received" (and continue to collect, "charge" and "receive") payments of interest on the loans, as well as a portion of the pre-paid origination fees and closing costs that were financed as a part of the loan amounts.

The Baker Second Mortgage Loan

121. On or about November 24, 1997, CENTURY FINANCIAL loaned the BAKERS $33,500.00 to be repaid with interest at the yearly rate of 13.99% in consecutive monthly installments over a period of 15 years.

122. The 13.99% rate charged was a lawful rate permitted in § 408.232.1, but it was otherwise "unlawful" without regard to the rate permitted in § 408.232.1. The Annual

Percentage Rate (APR) for the loan was 16.568%.

123. To secure repayment of their note, the BAKERS were required to and did execute a deed of trust for the benefit of CENTURY FINANCIAL. The deed of trust granted CENTURY FINANCIAL a security lien in residential real estate as defined at §408.231 et seq. Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

124. In connection with this Second Mortgage Loan, CENTURY FINANCIAL charged the following fees and costs payable at closing and each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.231.et seq. Mo. Rev. Stat.):

Origination Fee to CENTURY FINANCIAL	$2,500.00
Loan Discount to CENTURY FINANCIAL	335.00
Underwriting Fee to CENTURY FINANCIAL	495.00
Document Signing Fee to CENTURY FINANCIAL	150.00
Check and Wire Fee to CENTURY FINANCIAL	155.00
Document Preparation Fee to CENTURY FINANCIAL	150.00

125. The BAKERS incurred these Origination Fees and closing costs and fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

126. Any or all of the above fees and costs that CENTURY FINANCIAL and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the Bakers was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.233.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) the loan origination fee exceeded that which CENTURY FINANCIAL could lawfully contract for, charge, and/or receive; and/or (b) CENTURY FINANCIAL was prohibited by § 408.233.1 from charging, contracting for, and/or receiving from the Bakers any loan discount, underwriting, document signing, check and wire, and/or document preparation fees.

127. Since November 1997, the Bakers made all of the monthly payments due under their second mortgage loan, paying the same to CENTURY FINANCIAL and/or to any one or more ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, including DEFENDANTS MASTER FINANCIAL, INC., MASTER FINANCIAL ASSET SECURITIZATION TRUST 1998-1, and DEFENDANTS WTC and BANK OF NEW YORK, its co-trustees.

128. The Bakers continued to make monthly payments on their loan until February 2001, when they paid it off, and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continued to charge and receive the monthly payments through that date.

The Cox Second Mortgage Loan

129. On or about September 30, 1997, CENTURY FINANCIAL loaned the COXES $48,000.00 to be repaid with interest at the yearly rate of 15.99% in consecutive monthly installments over a period of 20 years.

130. The 15.99% rate charged was a lawful rate permitted in § 408.232.1, but it was otherwise "unlawful" without regard to the rate permitted in § 408.232.1. The Annual Percentage Rate (APR) for the loan was 17.941%.

131. To secure repayment of their note, the COXES were required to and did execute a deed of trust for the benefit of CENTURY FINANCIAL. The deed of trust granted CENTURY FINANCIAL a security lien in residential real estate as defined at §408.231 et seq. Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

132. In connection with this Second Mortgage Loan, CENTURY FINANCIAL charged the following fees and costs payable at closing and each of which was an illegal settlement

charge, in violation of Missouri's Second Mortgage Loans Act (§408.231.et seq. Mo. Rev. Stat.):

Origination Fee to CENTURY FINANCIAL	$3,500.00
Underwriting Fee to CENTURY FINANCIAL	495.00
Wire Fee to CENTURY FINANCIAL	50.00
Document Signing Fee to CENTURY FINANCIAL	150.00
Document Preparation Fee to CENTURY FINANCIAL	150.00

133. The COXES incurred these Origination Fees and closing costs and fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

134. Any or all of the above fees and costs that CENTURY FINANCIAL and/or any of the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the Coxes was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.233.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) the loan origination fee exceeded that which CENTURY FINANCIAL could lawfully contract for, charge, and/or receive; and/or (b) CENTURY FINANCIAL was prohibited by § 408.233.1 from charging, contracting for, and/or receiving from the Coxes any underwriting, wire, document signing and/or document preparation fees.

135. Since September 1997, the Coxes have made all of the monthly payments due under their second mortgage loan, paying the same to CENTURY FINANCIAL and/or to any one or more ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, including DEFENDANTS MASTER FINANCIAL, INC., MASTER FINANCIAL ASSET SECURITIZATION TRUST 1998-1, and DEFENDANTS WTC and BANK OF NEW YORK, its co-trustees.

136. The Coxes continue to make monthly payments on their loan to this day and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and

handled the loan as an agent on behalf of others, continue to charge and receive the monthly payments.

The Springer Second Mortgage Loan

137. On or about October 8, 1997, CENTURY FINANCIAL loaned the SPRINGERS $29,200.00 to be repaid with interest at the yearly rate of 13.99% in consecutive monthly installments over a period of 20 years.

138. The 13.99% rate charged was a lawful rate permitted in § 408.232.1, but it was otherwise "unlawful" without regard to the rate permitted in § 408.232.1. The Annual Percentage Rate (APR) for the loan was 16.648%.

139. To secure repayment of their note, the SPRINGERS were required to and did execute a deed of trust for the benefit of CENTURY FINANCIAL. The deed of trust granted CENTURY FINANCIAL a security lien in residential real estate as defined at §408.231 et seq. Mo. Rev. Stat. and was subject to one or more prior mortgage loans.

140. In connection with this Second Mortgage Loan, CENTURY FINANCIAL charged the following fees and costs payable at closing and each of which was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§408.231.et seq. Mo. Rev. Stat.):

Origination Fee to CENTURY FINANCIAL	$2,900.00
Underwriting Fee to CENTURY FINANCIAL	495.00
Wire Fee to CENTURY FINANCIAL	50.00
Document Signing Fee to CENTURY FINANCIAL	150.00
Document Preparation Fee to CENTURY FINANCIAL	150.00

141. The SPRINGERS incurred these Origination Fees and closing costs and fees when the loan was funded by financing such over the life of the loan, as evidenced by the fact that such charges were included in the principal balance of the note.

142. Any or all of the above fees and costs that CENTURY FINANCIAL and/or any of

the ASSIGNEE DEFENDANTS charged, contracted for and/or received from the Springers was an illegal settlement charge, in violation of Missouri's Second Mortgage Loans Act (§ 408.233.1 Mo. Rev. Stat. et seq.), in that, among other things, (a) the loan origination fee exceeded that which CENTURY FINANCIAL could lawfully contract for, charge, and/or receive; and/or (b) CENTURY FINANCIAL was prohibited by § 408.233.1 from charging, contracting for, and/or receiving from the Springers any underwriting, wire, document signing and/or document preparation fees.

143. Since October 1997, the Springers have made all of the monthly payments due under their second mortgage loan, paying the same to CENTURY FINANCIAL and/or to any one or more ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, including DEFENDANTS MASTER FINANCIAL, INC., MASTER FINANCIAL ASSET SECURITIZATION TRUST 1998-1, and DEFENDANTS WTC and BANK OF NEW YORK, its co-trustees.

144. The Springers continue to make monthly payments on their loan to this day and the ASSIGNEE DEFENDANTS that purchased and/or acquired the loan, and/or that serviced and handled the loan as an agent on behalf of others, continue to charge and receive the monthly payments.

Class Action for Violations of Missouri's Second Loans Act

Plaintiff Class Action Allegations

145. This action is properly brought as a plaintiff class action under Mo. Rule 52.08. The Class ("SECOND MORTGAGE CLASS") consists of all persons who satisfy the following criteria:

(a) That obtained Second Mortgage Loans on Residential Real Estate from

CENTURY FINANCIAL within the meaning of Missouri's Second Mortgage Loans Act, §§408.231 et seq.; and

(b) That as part of that Second Mortgage Loan paid either an Origination Fee (sometimes called a finder's fee or a mortgage broker or broker fee) or paid closing costs that were either not bona fide or were not paid to third parties but were paid to the lender CENTURY FINANCIAL or were not closing costs expressly set forth in § 408.233.1(3) Mo. Rev. Stat., and all in violation of Missouri's Second Mortgage Loans Act.

146. The SECOND MORTGAGE CLASS includes persons who entered into such loans within six years next before the original filing of this action.

147. The particular members of the SECOND MORTGAGE CLASS are capable of being described without difficult managerial or administrative problems. The members of the SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of CENTURY FINANCIAL and/or the ASSIGNEE DEFENDANTS and/or the representatives or servicing agents of each.

148. The SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that CENTURY FINANCIAL made extensive Second Mortgage Loans in Missouri throughout this period.

149. There are questions of law and fact common to the Class, which questions predominate over any questions affecting only individual members of THE SECOND MORTGAGE CLASS and, in fact, the wrongs suffered and remedies sought by PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS are identical, the only difference being the exact monetary amount to which each member of THE SECOND MORTGAGE CLASS

is entitled. The principal common issues are:

(a) Whether CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS (individually, and as a Defendant class as defined below) violated §408.231 et seq. Mo. Rev. Stat. by charging and/or receiving from PLAINTIFFS and the SECOND MORTGAGE CLASS the fees and charges described above;

(b) Whether CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS (individually, and as a defendant class as defined below) are barred under the provisions of §408.236 Mo. Rev. Stat. from the recovery of any interest under these Second Mortgage Loans and whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest;

(c) Whether CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS (individually, and as a defendant class) are liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorneys fees pursuant to §408.562 Mo. Rev. Stat.

150. PLAINTIFFS' claims are typical of those of the members of the SECOND MORTGAGE CLASS and are based on the same legal and factual theories.

151. PLAINTIFFS will fairly and adequately represent and protect the interests of the Class. They have suffered substantial economic injury in their own capacity from the practices complained of. They have retained counsel experienced in handling class actions and actions involving unlawful commercial practices. Neither PLAINTIFFS nor their counsel have any conflicting interests which might cause them not to vigorously pursue this action.

152. Certification of a plaintiff class under Mo. Rule 52.08(b)(2) is appropriate as to CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS (individually, and as a

defendant class), in that these defendants have (directly or as assignees or the trustees of such assignees) illegally collected closing costs, fees and interest on these Second Mortgage Loans and pursuant to §408.236 Mo. Rev. Stat. those defendants and each of them (and especially the holders of these Second Mortgage Notes and their trustees) should be enjoined from continuing to collect any interest from these Second Mortgage Notes, and ordered to return any interest previously collected.

153. Certification of a plaintiff class under Mo. Rule 52.08(b)(3) is also appropriate as to CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS (individually, and as a defendant class), in that common questions predominate over any questions pertaining to individual member of the SECOND MORTGAGE CLASS and a plaintiff class action is superior to other available methods for the fair and efficient adjudication of this controversy. A plaintiff class action will cause an orderly and expeditious administration of THE SECOND MORTGAGE CLASS claims and economies of time, effort and expense will be fostered and uniformity of decisions will be insured. Moreover, the individual class members are likely to be unaware of their rights and not in a position (either through experience or financially) to commence individual litigation against CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS.

Defendants' Liability Under Missouri's Second Mortgage Loans Act

154. Each of the loans that CENTURY FINANCIAL made to PLAINTIFFS and to the members of THE SECOND MORTGAGE CLASS constituted a "Second Mortgage Loan" within the meaning of §408.231 et seq. Mo. Rev. Stat.

155. § 408.233 Mo. Rev. Stat. provides in pertinent part as follows:

1. No charge other than that permitted by section 408.232 shall be directly or

indirectly charged, contracted for or received in connection with any Second Mortgage Loan, except as provided in this section:

* *

(3) Bona Fide closing costs **paid to third parties**, which shall include:

(a) Fees or premiums for title examination, title insurance, or similar purposes including survey;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Fees for credit reports

* *

(5) A nonrefundable origination fee not to exceed two percent of the principal... (increased to five percent by the 1998 amendment to the statute).

156. CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS violated §408.233 Mo. Rev. Stat. by engaging in the following acts, methods or practices:

(a) Charging, contracting for, and/or receiving, either directly or indirectly, nonrefundable origination fees not allowed by and in excess of what fees were allowed by 408.233.1(5);

(b) Charging, contracting for, and/or receiving, either directly or indirectly, closing fees and costs that were (i) not allowed by the statute; or (ii) in excess of those allowed by the statute, including costs and fees not paid to third parties or costs and fees in excess of those otherwise permitted by the statute.

157. Mo. Rev. Stat. § 408.236 provides as follows:

Any person violating the provisions of sections 408.231 to 408.237 shall be barred from recovery of any interest on the contract, except where such violation occurred either:

(1) As a result of an accidental and bona fide error of computations; or

(2) As a result of any acts done or omitted in reliance on a written interpretation of the provisions of sections 408.231 to 408.240 by the division of finance.

158. The conduct of CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS and the resulting statutory violations described above did not occur as a result of an accidental and bona fide error of computation or as a result of any acts done or omitted in reliance on any governmental interpretation; said conduct was, instead, intentional, willful, wanton and malicious, or otherwise showed a complete indifference to and/or a conscious disregard of Missouri law and the rights of PLAINTIFFS and each member of THE SECOND MORTGAGE CLASS.

159. As the purchasers and/or assignees and holders or as the trustees and/or agents for the assignees and holders of the notes and deeds of trust given under the Second Mortgage Loans by PLAINTIFFS and the members of the SECOND MORTGAGE CLASS, the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are liable to PLAINTIFFS and the SECOND MORTGAGE CLASS, just as CENTURY FINANCIAL is liable to PLAINTIFFS and the SECOND MORTGAGE CLASS in that (a) the ASSIGNEE DEFENDANTS are the assignees, directly or indirectly of CENTURY FINANCIAL, and stand in the shoes of CENTURY FINANCIAL; (b) the ASSIGNEE DEFENDANTS charged and received (and continue to charge and receive) illegal fees and costs on the loans, together with the resulting illegal interest charges; and (c) the points and fees and/or Annual Percentage Rates (APRs) for the loans is such that the ASSIGNEE DEFENDANTS (individually, and as a defendant class) are liable to PLAINTIFFS and the SECOND MORTGAGE CLASS, just as CENTURY FINANCIAL is liable.

160. CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS (individually, and

as a defendant class, as hereinafter defined) are derivatively and/or jointly and severally liable to PLAINTIFFS and the SECOND MORTGAGE CLASS for all of the unlawful closing costs and fees and interest they have charged and/or received (or hereinafter charge or receive) under the Second Mortgage Loans, and any such costs, fees and interest collected after the date of the filing of this action shall be additional evidence of the willful and malicious nature of and conscious disregard of the acts of CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined).

161. CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS (individually, and as a defendant class, as hereinafter defined) and each of them should be forever barred and enjoined, under §408.236 Mo. Rev. Stat. from collecting or recovering any costs, fees and interest on the Second Mortgage Loans of PLAINTIFFS and the other members of the SECOND MORTGAGE CLASS for the reasons set out above.

162. Mo. Rev. Stat. § 408.562 provides as follows:

> In addition to any other remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.

163. As a result of the statutory violations described above, PLAINTIFFS and other members of the SECOND MORTGAGE CLASS suffered a loss of money or property in that they were charged and paid and/or became obligated to pay loan closing costs and fees in amounts greater than those allowed by Missouri law and were charged interest in violation of

Missouri law.

164. The conduct of CENTURY FINANCIAL (and the ASSIGNEE DEFENDANTS by virtue of their status as assignees or trustees for the assignees) and the resulting violations of Missouri law, were intentional, willful, wanton and malicious, or otherwise showed a complete indifference to or a conscious disregard of the rights of each PLAINTIFF and the other members of the SECOND MORTGAGE CLASS, including, without limitation, the fact that defendant, U.S. BANK as trustee over certain trusts holding loans originated by CENTURY FINANCIAL, continued to collect interest after it knew of the violations of Missouri law, therefore entitling PLAINTIFFS and the SECOND MORTGAGE CLASS to punitive damages against the defendants and each of them in such amount as is fair and reasonable to punish defendants and to deter defendants and others from like conduct.

Defendant Class Action Allegations

165. This action is properly brought as a defendant class action under Mo. Rule 52.08. The defendant class ("THE DEFENDANT SECOND MORTGAGE CLASS") consists of all persons who satisfy the following criteria:

(a) Those persons or entities or their trustees that received any interest from the Second Mortgage Loans of PLAINTIFFS or the SECOND MORTGAGE CLASS as a result of an assignment or transfer of such Second Mortgage Loans to the recipient of such interest or the trustee of such a recipient; or

(b) Those persons or entities or their trustees that have held or now hold, by virtue of transfer or assignment or otherwise (including acting as trustee of such holder or assignee), the Second Mortgage Loans of PLAINTIFFS or the SECOND MORTGAGE CLASS.

166. The particular members of THE DEFENDANT SECOND MORTGAGE CLASS

are capable of being described without difficult managerial or administrative problems. The members of THE DEFENDANT SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of CENTURY FINANCIAL and/or the representatives or servicing agents of the Second Mortgage Loans or the assignees or holders (or their trustee(s)) of such Second Mortgage Loans.

167. Upon information and belief, THE DEFENDANT SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that CENTURY FINANCIAL made extensive Second Mortgage Loans in Missouri throughout this period and those loans have since been assigned to a number of mortgage trusts or pools and may thereafter have been reassigned.

168. There are questions of law and fact common to THE DEFENDANT SECOND MORTGAGE CLASS which questions predominate over any questions affecting only individual members of THE DEFENDANT SECOND MORTGAGE CLASS and, in fact, the wrongs alleged against THE DEFENDANT SECOND MORTGAGE CLASS and remedies sought by PLAINTIFFS and the other members of the SECOND MORTGAGE CLASS against the ASSIGNEE DEFENDANTS are identical, the only difference being the exact monetary amount to which each ASSIGNEE DEFENDANT is liable to the respective members of the SECOND MORTGAGE CLASS and the amount of interest that should be barred, enjoined and returned. The principal common issues are:

(a) Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable as a result of the violations by CENTURY FINANCIAL of Missouri's Second Mortgage Loans Act and/or whether THE DEFENDANT SECOND MORTGAGE CLASS is entitled to assert any defenses to such violations notwithstanding their status as an assignee of these notes;

(b) Whether THE DEFENDANT SECOND MORTGAGE CLASS is barred under the provisions of §408.236 Mo. Rev. Stat. from the recovery of any interest under these Second Mortgage Loans and whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest; and

(c) Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorney's fees pursuant to §408.562 Mo. Rev. Stat.

169. The ASSIGNEE DEFENDANTS' defenses of THE SECOND MORTGAGE CLASS claims (which defenses are denied) are typical of those of the individual members of the DEFENDANT SECOND MORTGAGE CLASS and will be based on the same legal and factual theories.

170. The ASSIGNEE DEFENDANTS (including U.S. BANK as the representative trustee of a number of the assignees and holders of these Second Mortgages) will fairly and adequately represent and protect the interests of THE DEFENDANT SECOND MORTGAGE CLASS, who will undoubtedly retain counsel experienced in defending class actions and actions involving unlawful commercial practices. Said defendants do not, based upon information and belief, have any interests which might cause them not to vigorously defend this action.

171. Certification of a defendant class under Mo. Rule 52.08(b)(2) is appropriate as to the ASSIGNEE DEFENDANTS, in that these defendants, as assignees and/or holders (or their trustees) of the Second Mortgage Loans from CENTURY FINANCIAL have illegally collected closing costs, fees and interest on these Second Mortgage Loans and as holders (or their trustees) of the said notes will continue to collect interest, contrary to §408.236 Mo. Rev. Stat., and those defendants and each of them (and especially the holders of these Second Mortgage Notes) should

be enjoined from collecting any interest from those Second Mortgage Notes and ordered to return any interest previously collected.

172. Certification of a defendant class under Mo. Rule 52.08(b)(3) is also appropriate as to the ASSIGNEE DEFENDANTS in that common questions predominate over any questions pertaining to individual members of the DEFENDANT SECOND MORTGAGE CLASS and a defendant class action is superior to other available methods for the fair and efficient adjudication of this controversy. A defendant class action will cause an orderly and expeditious administration of THE DEFENDANT SECOND MORTGAGE CLASS defenses, if any, and economies of time, effort and expenses will be fostered and uniformity of decisions will be insured.

Prayer for Relief

WHEREFORE, PLAINTIFFS, individually and on behalf of themselves and all members of THE SECOND MORTGAGE CLASS, pray for judgment against defendants CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS and each of them, as follows:

(a) For the continued order of certification allowing that this action may be maintained as class action under Mo. Rule 52.08, appointing PLAINTIFFS and their counsel to represent the SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of the SECOND MORTGAGE CLASS;

(b) For an order certifying that this action may be maintained as a defendant class under Mo. Rule 52.08, appointing US BANK and any other named ASSIGNEE DEFENDANTS to represent THE DEFENDANT SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of THE DEFENDANT SECOND

MORTGAGE CLASS;

(c) For a permanent injunction enjoining defendants CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS, together with their officers, directors, employees, agents, partners or representatives, successors and any and all persons acting in concert from directly or indirectly engaging in the wrongful acts and practices described above for the benefit of PLAINTIFFS and the SECOND MORTGAGE CLASS;

(d) For an order directing disgorgement or restitution of all improperly collected charges and the imposition of an equitable constructive trust over such amounts for the benefit of PLAINTIFFS and other members of the SECOND MORTGAGE CLASS;

(e) For a declaration that PLAINTIFFS and other members of the SECOND MORTGAGE CLASS have a right to rescind their loan transactions, and/or a right to offset any illegal closing costs and interest paid against the principal amounts due on the loans, and an order directing CENTURY FINANCIAL and the ASSIGNEE DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS to inform PLAINTIFFS and other members of the SECOND MORTGAGE CLASS of these rights;

(f) For actual damages to be proven at the time of trial, including a repayment of all interest paid on these Second Mortgage Loans and all unlawful closing costs and fees;

(g) For punitive damages in a sum that is fair and reasonable;

(h) For reasonable attorneys' fees as provided by law and statute;

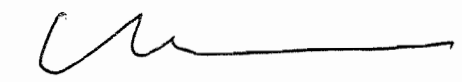
(i) For pre-and post-judgment interest as provided by law;

(j) For an award of costs and expenses incurred in this action; and

(k) For such other and further relief as the Court may deem necessary and proper.

Respectfully submitted,

WALTERS BENDER STROHBEHN
&.VAUGHAN, P.C.

By 

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the above and foregoing was sent by United States mail, first-class postage paid this 3rd day of February 2004 to:

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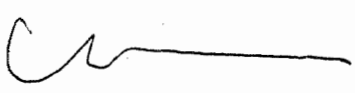

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

Ex 3

STEVEN AND RUTH MITCHELL,
and

JUDITH L. PICKERILL,

Plaintiffs,

vs.

RESIDENTIAL FUNDING COMPANY, LLC,

RESIDENTIAL FUNDING MORTGAGE SECURITIES II, INC.,

JP MORGAN CHASE BANK, N.A., AS TRUSTEE,

BANK OF NEW YORK TRUST COMPANY, N.A., AS SUCCESSOR TRUSTEE,

WILMINGTON TRUST COMPANY HOMECOMINGS FINANCIAL, LLC,

HOUSEHOLD FINANCE CORPORATION, III,

WACHOVIA EQUITY SERVICING LLC F/K/A HOMEQ SERVICING CORPORATION,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and

JP MORGAN CHASE BANK, N.A. AS SUCCESSOR BY MERGER TO BANK ONE, N.A.,

Defendants.

Case No. 03-CV-220489

Division 4

FILED
DEPT OF CIVIL RECORDS
COURT ADMINISTRATOR'S OFFICE
SEP – 7 2007
CIRCUIT COURT OF JACKSON CO., MO.
BY _____ DCA

THIRD AMENDED PETITION FOR DAMAGES

The above-named plaintiffs state and allege the following for their Third Amended Petition in this cause:

NATURE OF THE CLAIMS

1. This action is brought by the plaintiffs on behalf of themselves and as a plaintiffs' class action for violations of Missouri's Second Mortgage Loan Act with respect to Missouri second mortgage loans that were originated by MORTGAGE CAPITAL RESOURCES CORPORATION (hereinafter "MCR"), a California corporation that has since filed bankruptcy, but which second mortgage loans were sold and assigned to the following defendants and which defendants are liable for the violations of Missouri's Second Mortgage Loans Act as committed by MCR, their assignor and loan originator, and also for the violations committed by the following defendants in connection with such loans: RESIDENTIAL FUNDING COMPANY, LLC. (sometimes referred to as "GMAC-RFC"), RESIDENTIAL FUNDING MORTGAGE SECURITIES II, INC. ("RFMS"), HOMECOMINGS FINANCIAL NETWORK, LLC ("HOMECOMINGS") and WILMINGTON TRUST COMPANY ("WILMINGTON TRUST") and JP MORGAN CHASE BANK, N.A., as Trustee and BANK OF NEW YORK TRUST COMPANY, N.A., as Successor Trustee (together "BNY") as the Owner Trustee and Indenture Trustee, respectively, and as representatives and agents of securitized trusts formed by GMAC-RFC and RFMS to hold the loans of the putative class members and that hold the loans of the named plaintiffs, and HOUSEHOLD FINANCE CORPORATION III ("HOUSEHOLD"), and WACHOVIA EQUITY SERVICING, LLC. f/k/a HomEq Servicing Corporation ("HOMEQ"), MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") and JP MORGAN CHASE BANK, N.A., as successor by merger to Bank One, N.A. ("BANK ONE"), all of which

defendants purchased or had assigned to them or their controlled subsidiaries or the trusts which they caused to be formed and/or for which they are trustees for the said Missouri second mortgage loans and which defendants also "charged" and/or "received" monthly payments from the borrowers of the second mortgage loans that are the subject of this action, all in violation of the Missouri Second Mortgage Loans Act. This case also includes the wrongful and conspiratorial efforts of GMAC-RFC and Homecomings to procure second mortgage loans from hundreds of Missouri homeowners because of the extreme profitability of such loans regardless of the legality of such loans and all in violation of Missouri's Second Mortgage Loans Act (§ 408.231 et seq. RSMo) ("SMLA").

2. Defendants GMAC-RFC, RFMS, and their Securitized Trusts, WILMINGTON TRUST, BNY, HOMECOMINGS, HOUSEHOLD, MERS, HOMEQ and BANK ONE individually, and as representatives of a defendant class, all purchased loans made or originated by MCR or had assigned to them loans made or originated by MCR and now hold or previously held the hereinafter described second mortgage loans and/or have charged and/or received or now charge and/or receive the monthly payments from the borrowers, which illegal fees together with the other closing costs were payable at the closing of such second mortgage loans and were included in the principal of such loans, and which illegal fees and charges were thereafter charged and/or received by the defendants as part of the monthly payments of such second mortgage loans.

3. Plaintiffs are individual Missouri borrowers that seek redress on behalf of themselves and on behalf of a plaintiff class ("PLAINTIFF CLASS") against GMAC-RFC, RFMS, and their Securitized Trusts, WILMINGTON TRUST, BNY, HOMECOMINGS, HOUSEHOLD, MERS, HOMEQ and BANK ONE and the other defendants (including a defendant class) consisting of

those entities that now hold or have held and/or now charge and/or receive or have charged and/or received the illegal fees and charges and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action for violations of Missouri's SMLA, including claims for monetary damages and injunctive relief.

FACTUAL BACKGROUND

The Predatory and Fraudulent Lending Scheme – In General

4. Plaintiffs and the Plaintiff Class, all as more particularly alleged below, were the victims of a predatory lending scheme that charged them bogus and illegal fees and charges, together with charging high interest rates all as part of a scheme to make high-cost loans to Missouri borrowers, as well as borrowers across the country. Such bogus and illegal fees were unlawful under Missouri's SMLA and included illegal origination fees, loan discount fees, underwriting fees, processing fees, document preparation fees, attorneys' fees and other fees and charges contracted for by MCR and were payable to MCR and were thereafter charged by and received by the defendants, together with the illegal interest that were charged by and received by these defendants and all of which fees, charges and interest violate Missouri's SMLA.

5. With respect to the loan origination fees, the loan discount charges, the underwriting fees, the processing fees and the document fees, such were paid to the originating lender, MCR and were not in fact paid to a third party. Further, the attorneys' fees, regardless of to whom such were paid, were not permitted by Missouri's SMLA.

6. The Missouri second mortgage loans at issue were and are "high-cost" loans under the Home Ownership and Equity Protection Act, 15 U.S.C. §§ 1602 and 1641 (hereinafter "HOEPA").

7. GMAC-RFC and RFMS, individually, and in connection with the securitized trusts that were created and formed by them, and through the securitized trusts' Owner Trustee, Wilmington Trust, and Indenture Trustee, BNY, purchased a substantial number of the loans at issue from MCR, thereby "stepping into the shoes of" MCR with respect to any liability, claims or defenses arising from the loan transactions pursuant to 15 U.S.C. § 1641(d)(1) and also pursuant to having "charged" and/or "received" such illegal fees and the resulting illegal interest, all in violation of § 408.233 RSMo Supp. 1998.

8. HOUSEHOLD, HOMEQ and BANK ONE also purchased a number of the loans at issue from MCR, thereby "stepping into the shoes of" MCR with respect to any liability, claims or defenses arising from the loan transactions pursuant to 15 U.S.C. § 1641(d)(1) and also pursuant to having "charged" and/or "received" such illegal fees and the resulting illegal interest, all in violation of § 408.233 RSMo Supp. 1998. Plaintiffs have standing to include HOUSEHOLD and HOMEQ in this action on behalf of the members of the Plaintiff Class whose loans were purchased, directly or indirectly, from MCR, and which claims are juridically linked to those of the Representative Plaintiffs in that all of the loans were made by MCR to Missouri borrowers and the joinder of HOUSEHOLD, and HOMEQ as parties is permitted in order to afford all members of the class the same relief.

9. MERS is named in its capacity as a "nominee" for Defendant HOUSEHOLD. As nominee for Defendant HOUSEHOLD, MERS has been assigned certain rights and liabilities of Household and stands in the shoes of HOUSEHOLD.

10. GMAC-RFC and RFMS, to the extent that they individually purchased such loans, thereafter sold and assigned the loans, in whole or in substantial part, to securitized trusts that they formed for that purpose. WILMINGTON TRUST is the Owner Trustee and BNY is the

Indenture Trustee of these securitized trusts that continue to hold the subject Missouri second mortgage loans.

11. Defendants (as well as any other holder or assignee of the subject Missouri second mortgage loans or their respective trustees) have "charged" to and/or "received" from the plaintiffs and the members of the Plaintiff Class those aforementioned illegal fees and charges and the resulting illegal interest, all in violation of the SMLA and in particular § 408.233 RSMo Supp. 1998.

12. Defendants were aware of the fraudulent conduct at issue and they individually and jointly participated in and acted in furtherance of said scheme and funded the said scheme by providing the financing necessary to continue the illegal scheme, all in its effort to feed an insatiable appetite for these high cost loans.

13. MCR aggressively solicited residential home equity mortgages across the country, including Missouri, all through a massive national direct mail marketing campaign.

The Role Of Defendant GMAC-Residential Funding Corporation and Residential Funding Mortgage Securities II, Inc. in this Scheme

14. Residential Funding Corporation (n/k/a Residential Funding Company, LLC) although not the exclusive purchaser, was a substantial purchaser of the Missouri second mortgage loans made or originated by MCR.

15. Residential Funding Corporation was originally a subsidiary of Banco Mortgage Company, an affiliate of Northwestern National Bank, the predecessor of Norwest Bank.

16. Initially, Residential Funding Corporation focused on buying and securitizing "jumbo" mortgages. "Securitization" as used herein and as meant in general terms refers to the process of consolidating loans (including but not limited to residential mortgage loans) and/or packaging loans (not only mortgage loans) for sale as securities.

17. Residential Funding Corporation, like many purchasers of mortgage loans, profited by not only purchasing and holding mortgage loans in its own inventory, but also generated significant profits by acting directly or through an affiliate, such as RFMS, to consolidate such mortgage loans into securitized pools and sell, as securities, interests in the pools.

18. Several years ago, Residential Funding Corporation was acquired by General Motors Acceptance Corporation and became known as GMAC-RFC.

19. Some of the most profitable loans that GMAC-RFC could either hold or securitize through its affiliates, such as RFMS, or their securitized trusts, were high cost home equity mortgage loans, including those commonly referred to as High Loan To Value ("HLTV") loans.

20. Thus GMAC-RFC and RFMS turned to a number of originators of these high cost and often HLTV loans in order to generate substantial profits that were generated from either holding such loans in inventory or by securitizing such loans in securitization pools/trusts.

21. MCR became a substantial source for GMAC-RFC's appetite for these high cost loans and in particular became a substantial source of high cost Missouri second mortgage loans for GMAC-RFC.

22. GMAC-RFC, individually, and through its affiliates, including RFMS, and the Owner Trustee, WILMINGTON TRUST, and Indenture Trustee, BNY, of the securitized trusts, and HOMECOMINGS, as the servicer, directly participated in and conspired with MCR or its affiliated entities to participate in the fraudulent and predatory lending practices of MCR. Said defendants' scheme was made possible by said defendants' provision of the necessary funding and commitment to purchase substantially all of the loans generated by the MCR's lending activities and to expand the same so that GMAC-RFC could, in turn, expand its substantial profits from acquiring and/or securitizing these high cost loans through said defendants,

including a substantial number of the Missouri second mortgage loans that are the subject of this action.

THE PARTIES

The Plaintiffs

23. Plaintiffs Steven and Ruth Mitchell (the "MITCHELLS") are lawfully married individuals who reside at 2109 NW Harbor Place, Blue Springs, Jackson County, Missouri 64105.

24. Plaintiff Judith L. Pickerill resides at 712 Edwin Avenue, St. Louis, Missouri 63122.

The Defendants

Holder and Charging/ Defendants

25. Defendant RESIDENTIAL FUNDING COMPANY, LLC (sometimes referred to above and below as "GMAC-RFC") has previously been served with (or waived service of) process in this action.

26. Defendant RESIDENTIAL FUNDING MORTGAGE SECURITIES II, INC. ("RFMS") has previously been served with (or waived service of) process in this action..

27. Defendant WILMINGTON TRUST COMPANY ("WILMINGTON TRUST") is named in its capacity as Trustee for the GMAC-RFC and RFMS-formed securitization trusts that owned and held the named plaintiffs' loans and that own and hold or held the loans of the members of the Plaintiff Class. WILMINGTON TRUST is the Trustee for the 2000-HI1 securitization trust the MITCHELLS' loan. Wilmington Trust has previously been served with (or waived service of) process in this action..

28. Defendant JP MORGAN CHASE BANK, N.A., as Trustee, and BANK OF NEW YORK TRUST COMPANY, N.A., as Successor Trustee (together "BNY") are named in their

capacities as the Indenture Trustee and as the Successor Indenture Trustee for the GMAC-RFC and RFMS securitization trusts that own and hold the named plaintiffs' loans and that own and hold the loans of the members of the Plaintiff Class. BNY is the Successor Indenture Trustee for the 2000-HI1 securitization trust holding the MITCHELLS' loan. BNY has previously been served with (or waived service of) process in this action.

29. Defendant HOMECOMINGS FINANCIAL NETWORK, LLC ("Homecomings") is a Delaware corporation (and was known as "a GMAC Company") has previously been served with (or waived service of) process in this action. HOMECOMINGS is named as a defendant for having charged and received from the named plaintiffs and from the members of the Plaintiff Class the illegal charges and fees and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action, and which actions of charging and receiving and continuing to charge and receive such illegal charges and fees and the resulting illegal interest, all in violation of the SMLA and in particular, in violation of § 408.233 RSMo.

30. Defendant HOUSEHOLD FINANCE CORPORATION III ("Household") has previously been served with (or waived service of) process in this action. Household is named as a defendant for having purchased and held the loans of members of the Plaintiff Class and for having charged and received from the named plaintiffs and from the members of the Plaintiff Class the illegal charges and fees and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action, and which actions of charging and receiving and continuing to charge and receive such illegal charges and fees and the resulting illegal interest, all in violation of the SMLA and in particular, in violation of § 408.233 RSMo.

31. Defendant Mortgage Electronic Registration Systems, Inc. ("MERS") has previously been served with (or waived service of) process in this action. MERS is named in its capacity as

nominee for HOUSEHOLD, having received an assignment of certain rights and liabilities of HOUSEHOLD.

32. Defendant WACHOVIA EQUITY SERVICING, LLC. f/k/a HomEq Servicing Corporation has previously been served with (or waived service of) process in this action. HOMEQ is named as a defendant for having purchased and held the loans of members of the Plaintiff Class and for having charged and received from the named plaintiffs and from the members of the Plaintiff Class the illegal charges and fees and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action, and which actions of charging and receiving and continuing to charge and receive such illegal charges and fees and the resulting illegal interest, all in violation of the SMLA and in particular, in violation of § 408.233 RSMo.

33. JP MORGAN CHASE BANK, N.A., as successor by merger to Bank One, N.A. ("BANK ONE") is also named as a defendant, since BANK ONE purchased and held the loans of named Plaintiff Judith Pickerill and other members of the Plaintiff Class, and for having charged and received from the named plaintiffs and from the members of the Plaintiff Class the illegal charges and fees and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action, and which actions of charging and receiving and continuing to charge and receive such illegal charges and fees and the resulting illegal interest, all in violation of the SMLA and in particular, in violation of § 408.233 RSMo.

The Doe Defendants

34. Defendants DOE 1 through 25 ("DOES 1-25") are the remaining owner, assignees (holders) and trusts, funds and/or pools, and the trustees thereof, organized under various state laws, that are yet to be identified and named, and whose identity will become known through

discovery and/or by requests made by plaintiffs or the members of the Plaintiff Class of their second mortgage servicers, after which such remaining assignees (holders) and trusts, funds and pools, and the trustees thereof, to the extent that they can be identified, will be added as individual and class representative defendants.

The Holder/Recipient Defendants

35. Each of the HOLDER AND CHARGING/RECIPIENT DEFENDANTS and DOES 1 through 25 (collectively, the "HOLDER/RECIPIENT DEFENDANTS"), together with the lender, MCR, are "moneyed corporations" as that term is defined in § 516.420 RSMo because each of said defendants are assignees of the second mortgage loans; entities or association in form and in substance engaged in the business of buying loans (streams of money) that are used to collateralize certain notes or evidences of indebtedness that they sell to the public; as well as enterprises that are engaged in the business of using money to make money and each is named as a defendant both individually and in their capacity as an owner and/or assignee (holder) of, and/or the trustee of a trust, fund or pool owning or holding, and/or the servicer of the Missouri second mortgage loans that were made by MCR, and as named defendants and representatives of every other member of the Defendant Class (as hereinafter defined), which includes the remaining owners and assignees (holders) of, and trustees of the trusts, funds and pools owning and/or holding, and servicers of the said Missouri second mortgage loans that were made by MCR.

36. The Holder/Recipients Defendants, even if not holder recipient defendants of the Representative Plaintiffs, are juridically linked by virtue of the fact that each are derivative holders and/or recipients of Missouri second mortgage loans made by MCR and are holders and/or recipients of the loans of either the Representative Plaintiffs or of members of the Plaintiff

Class and are joined herein necessarily and permissibly under Mo. Rule 52.04(a) so as to give full and complete relief to members of the Plaintiff Class as described, just as such relief is sought for the Representative Plaintiffs.

JURISDICTION AND VENUE

37. This Court has jurisdiction over each of the HOLDER/RECIPIENT DEFENDANTS since each violated Missouri's Second Mortgage Loans Act. In doing so, each of the HOLDER/RECIPIENT DEFENDANTS transacted business, made contracts, committed torts and unlawful actions in Missouri, and/or are assignees or nominees of such entities and/or used or possessed an interest in real estate all located within the state of Missouri, and/or are subject to the service of process in this state, all as is more particularly alleged in this Petition. The HOLDER/RECIPIENT DEFENDANTS all have sufficient minimum contacts, and in fact, substantial contacts, with Missouri such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The HOLDER/RECIPIENT DEFENDANTS have purposefully obtained Missouri second mortgage loans through MCR and its other loan originators, brokers and correspondents, and have purposefully charged and/or received unlawful fees and charges thereby violating Missouri's Second Mortgage Loans Act such that said defendants should reasonably anticipate being haled into court in Missouri to answer for the unlawful acts of MCR and their own unlawful acts. Defendants' scheme, built around the assignment and securitization of the second mortgage loans into pools, securitized trusts and the secondary market, is designed in substantial part to insulate the HOLDER/RECIPIENT DEFENDANTS from being haled into Missouri courts to account for their loan originator' and loan correspondents' violations of Missouri's consumer protection

laws, including the SMLA. Missouri has a strong interest in providing a forum for its residents aggrieved by such schemes to violate its consumer protection acts.

0. Additionally, defendants GMAC-RFC and RFMS are subject to the jurisdiction of this Court, each having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and, additionally, pursuant to § 506.500 RSMo having engaged individually, and by virtue of being an assignee of the high-cost second mortgage loans and/or having also engaged in the following actions through its agents, subsidiaries or affiliates:

(a) Transacted business within this state by virtue of making and purchasing numerous high cost Missouri second mortgage loans, by acting as a substantial source of the funding for such second mortgage loans, and having charged and received illegal fees and charges and the resulting illegal interest, all in violation of Missouri law;

(b) Made contracts within this state by virtue of its promoting and making through their assignor, MCR, numerous high cost second mortgage loans in this state;

(c) Committed tortious acts within this state by virtue of their violations of Missouri's SMLA and their unlawful contracting for, charging and receiving of such illegal fees and the resulting illegal interests and the continuing collection of illegal fees and charges and the resulting illegal interest from the plaintiffs and members of the Plaintiff Class, as more specifically set forth below; and

(d) Used real estate situated in this state to secure the Missouri second mortgage loans individually and/or by virtue of being assignees (holders) or the trustees of an assignee of MCR and/or the second mortgage loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the

trustee for such beneficiaries, that secure the second mortgage loans that are the subject of this action.

0. Additionally, defendant HOMECOMINGS is subject to the jurisdiction of this Court having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and, additionally, pursuant to § 506.500 RSMo having engaged in the following actions:

(a) Transacted business within this state by virtue of having charged and received illegal fees and charges and the resulting illegal interest, all in violation of Missouri law;

(b) Committed tortious acts within this state by virtue of its violations of Missouri's SMLA and its unlawful charging and receiving such illegal fees and the resulting illegal interests and the continuing collection of illegal fees and charges and the resulting illegal interest from the plaintiffs and members of the Plaintiff Class, as more specifically set forth below;

(c) Committed tortious acts within this state by virtue of its violations of Missouri's SMLA and its unlawful contracting for, charging and receiving of such illegal fees and the resulting illegal interests and the continuing collection of illegal fees and charges and the resulting illegal interest from the plaintiffs and members of the Plaintiff Class, as more specifically set forth below

(d) Used real estate situated in this state to secure the Missouri second mortgage loans individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of MCR and/or the second mortgage loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the

trustee for such beneficiaries, that secure the second mortgage loans that are the subject of this action.

0. Additionally, defendants WILMINGTON TRUST and BNY, as the trustees of the GMAC-RFC and RFMS-formed securitized trusts, are subject to the jurisdiction by virtue of their own actions and the actions of MCR, GMAC-RFC, and RFMS as more particularly described above and for which WILMINGTON TRUST and BNY stands in the shoes of each of these said defendants.

0. Additionally, defendants HOUSEHOLD, MERS, HOMEQ, BANK ONE are subject to the jurisdiction of this Court, having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and, additionally, pursuant to § 506.500 RSMo having engaged in the following actions individually or through its agents, subsidiaries, affiliates and/or nominees:

(a) Transacted business within this state by virtue of purchasing numerous high cost Missouri second mortgage loans, by acting as a substantial source of the funding for such second mortgage loans, and having charged and received illegal fees and charges and the resulting illegal interest, all in violation of Missouri law;

(b) Made contracts within this state by virtue of its promoting and making through their assignor, MCR, numerous high cost second mortgage loans in this state;

(c) Committed tortious acts within this state by virtue of their violations of Missouri's SMLA and its unlawful contracting for, charging and receiving of such illegal fees and the resulting illegal interests and the continuing collection of illegal fees and charges and the resulting illegal interest from the plaintiffs and members of the Plaintiff Class, as more specifically set forth below

(d) Used real estate situated in this state to secure the Missouri second mortgage loans individually and/or by virtue of being assignees (holders) or the trustees of an assignee of MCR and/or the second mortgage loans, and/or by virtue of their continuing capacity as the beneficiary of the deeds of trust and mortgages, or the trustee for such beneficiaries, that secure the second mortgage loans that are the subject of this action.

0. Each of the HOLDER/RECIPIENT DEFENDANTS is subject to the jurisdiction of this Court, either having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and/or pursuant to the provisions of §506.500 RSMo, having further:

(a) Transacted business within this state individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of the Missouri second mortgage loans that are the subject of this action from MCR, by acting as a substantial source of the funding for such second mortgage loans, and/or by virtue of it being a holder of and/or a trustee of a holder of said second mortgage loans and collecting the benefits of said second mortgage loans from residents of this state;

(b) Made contracts within this state individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of MCR and/or said second mortgage loans;

(c) Committed tortious acts within this state individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of MCR and/or the Second Mortgage Loans, and/or by virtue of its continuing to charge and receive the illegal charges and fees and the resulting illegal interests from the second mortgage loans that are the subject of this action; and

(d) Used real estate situated in this state to secure the Missouri second mortgage loans individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of MCR and/or the second mortgage loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the trustee for such beneficiaries, that secure the second mortgage loans that are the subject of this action.

43. Venue is proper in this Court pursuant to the terms of § 408.562 RSMo because the named plaintiffs reside in this county and the transactions of the named plaintiffs complained of in this action occurred in this county and pursuant to § 508.010 RSMo because the causes of action accrued in this county.

GENERAL ALLEGATIONS

44. As noted above, plaintiffs (sometimes collectively, the "REPRESENTATIVE PLAINTIFFS") bring this action individually, and as a class action on behalf of the statewide class of Missouri residential real estate owners or borrowers who obtained second mortgage loans from MCR.

45. The "Second Mortgage Loans" that are the subject of this action are defined at §408.231 et seq. RSMo to mean "...a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust deed, or other similar instrument or document, ... which residential real estate is subject to one or more prior mortgage loans."

46. "Residential real estate" is defined at § 408.231.3 RSMo, to mean ". . . any real estate used or intended to be used as a residence by not more than four families . . . ."

47. Finally, § 408.234.2 RSMo makes it illegal for a lender to take a security interest in any collateral other than residential real estate in connection with a Second Mortgage Loan.

48. From and after six years prior to the filing of this action and through the present time, MCR "made" Second Mortgage Loans to the REPRESENTATIVE PLAINTIFFS and the other members of the Plaintiff Class, defined below.

49. In each of the of the Second Mortgage Loans at issue, MCR received a promissory note from the REPRESENTATIVE PLAINTIFFS and from the various members of the Plaintiff Class (as hereinafter defined) and was named as the "Beneficiary" in a second mortgage deed of trust to secure the said Second Mortgage Loans.

50. In connection with these Second Mortgage Loans, MCR contracted for and/or charged and/or received the above referenced illegal costs and fees which were payable at closing of the second mortgage loans, all in violation of Missouri's Second Mortgage Loans Act, which costs and fees included illegal loan origination fees, loan discount charges, underwriting fees, processing fees and document fees that were paid to the originating lender, MCR and were not in fact paid to a third party. Further, the attorneys' fees, regardless of to whom such were paid, were not permitted by Missouri's SMLA.

51. These unlawful fees and closing charges were payable by the borrower at closing and were contracted for and thereafter charged and received by the said defendants by virtue of the fact that the said unlawful fees and closing charges were added to the principal balance of the second mortgage loan notes (§ 408.231.2 RSMo), and the resulting unlawful interest was charged on the entire principal balance of the notes, although no such interest is due under such notes pursuant to § 408.236 RSMo.

THE MITCHELLS' SECOND MORTGAGE LOAN

52. On or about November 24, 1999 and in connection with the above alleged predatory lending scheme, MCR loaned the MITCHELLS a total loan of $21,000.00, to be repaid with interest at the yearly rate of 10.85% in consecutive monthly installments over a period of 15 years.

0. To secure repayment of their note, the MITCHELLS were required to and did execute a deed of trust for the benefit of MCR. The deed of trust granted MCR a security lien in Residential real estate as defined at § 408.231 RSMo and was subject to one or more prior mortgage loans.

0. In connection with this Second Mortgage Loan, MCR contracted for and charged and/or received (and the HOLDER/RECIPIENT DEFENDANTS GMAC-RFC, RFMS and Homecomings and Wilmington Trust and Chase Manhattan, as Owner Trustee and Indenture Trustee, later charged and/or received) the following illegal fees and costs, none of which were interest, and some of which were in fact finder's fees:

Loan Discount Fee to MCR	$ 735.00
Credit Report Fee to MCR	$ 50.00
Custodial Fee to Republic Bank	$ 35.00
Underwriting Fee to MCR	$ 525.00
Processing Fee to MCR	$ 525.00
Federal Express Fee	$ 80.00
Document Preparation Review Fee to MCR	$ 420.00
Attorney's Fees to Johnson & Payne	$ 450.00
Wire Transfer Fee to Johnson & Payne	$ 30.00

MS. PICKERILL'S SECOND MORTGAGE LOAN

0. On or about December 29, 1999 and in connection with the above alleged predatory lending scheme, MCR loaned Judith Pickerill a total loan of $29,600.00, to be repaid with interest at the yearly rate of 11.6% in consecutive monthly installments over a period of 15 years.

0. To secure repayment of their note, Ms. Pickerill was required to and did execute a deed of trust for the benefit of MCR. The deed of trust granted MCR a security lien in Residential real estate as defined at § 408.231 RSMo and was subject to one or more prior mortgage loans.

0. In connection with this Second Mortgage Loan, MCR contracted for and charged and/or received (and Banc One Financial Services, Inc. and one or more DOES 1 through 25 later charged and/or received) the following illegal fees and costs, none of which were interest, and some of which were in fact finder's fees:

Loan Discount Fee to MCR	$ 1,036.00
Custodial Fee to Republic Bank	$ 35.00
Underwriting Fee to MCR	$ 592.00
Processing Fee to MCR	$ 592.00
Federal Express Fee	$ 80.00
Document Preparation Review Fee to MCR	$ 296.00
Attorneys' Fees to Johnson & Payne, PLC	$ 450.00
Wire Transfer Fees to Johnson & Payne LLC	$ 30.00

CLASS ACTION FOR VIOLATIONS OF MISSOURI'S SECOND MORTGAGE LOANS ACT

Plaintiff Class Action Allegations

58. This action is properly brought as a plaintiff class action under Mo. Rule 52.08(b)(3). The Class consists of all persons who satisfy the following criteria:

- Those borrowers that obtained Second Mortgage Loans on Residential Real Estate from MCR, all within the meaning of Missouri's Second Mortgage Loans Act (§ 408.231 et seq. RSMo); and

- That as part of that Second Mortgage Loans, MCR and the defendants herein, contracted for, charged and/or received or Plaintiffs were charged, contracted for or paid, and an entity received, the following types of fees:

    - A Loan Discount Fee contracted for and payable to MCR and which was thereafter charged by and paid to the HOLDER/RECIPIENT DEFENDANTS;

    - An Underwriting Fee contracted for and payable to MCR and which was thereafter charged by and paid to the HOLDER/RECIPIENT DEFENDANTS;

    - A Processing Fee contracted for and payable to MCR and which was thereafter charged by and paid to the HOLDER/RECIPIENT DEFENDANTS;

    - A Document Preparation Fee contracted for and payable to MCR and which was thereafter charged by and paid to the HOLDER/RECIPIENT DEFENDANTS.

    - Other charges or fees that were in excess of those that were permitted or were not permitted under § 408.233 RSMo and were contracted for, charged and/or received by MCR or the HOLDER/RECIPIENT DEFENDANTS.

59. The Plaintiff Class includes persons who took such Missouri Second Mortgage Loans within six years next before the filing of this action or those persons who originally took a MCR Missouri second mortgage loan and who were charged or who paid such fees and interest on such loans within the six years next before filing of this action. ("THE SECOND MORTGAGE CLASS").

60. The Plaintiff Class also includes persons who were "charged" or who paid those above fees or interest on the said loans within six years next before filing of this action.

0. The particular members of THE SECOND MORTGAGE CLASS are capable of being described without difficult managerial or administrative problems. The members of THE SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of MCR, and/or the HOLDER/RECIPIENT DEFENDANTS and/or the representatives or servicing agents of each.

0. THE SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that MCR made extensive Second Mortgage Loans in Missouri throughout this period.

0. There are questions of law and fact common to the Class, which questions predominate over any questions affecting only individual members of THE SECOND MORTGAGE CLASS and, in fact, the wrongs suffered and remedies sought by the REPRESENTATIVE PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS are identical, the only difference being the exact monetary amount to which each member of THE SECOND MORTGAGE CLASS is entitled. The principal common issues are:

- Whether MCR violated §§ 408.231 et seq. RSMo by charging the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS the fees and charges described above;
- Whether MCR and the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class as defined below) are barred under the provisions of § 408.236 RSMo from recovery of any interest under these Second Mortgage Loans, and

whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest; and

- Whether MCR and the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class) are liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorneys fees pursuant to §408.562 RSMo.

64. The REPRESENTATIVE PLAINTIFFS' claims are typical of those of the members of the Class and are based on the same legal and factual theories.

65. The REPRESENTATIVE PLAINTIFFS will fairly and adequately represent and protect the interests of the SECOND MORTGAGE CLASS. They have suffered substantial economic injury in their own capacity from the practices complained of. They have retained counsel experienced in handling class actions, and actions involving unlawful commercial practices. Neither REPRESENTATIVE PLAINTIFFS nor their counsel have any conflicting interests which might cause them not to vigorously pursue this action.

66. Certification of a plaintiff class under Mo. Rule 52.08(b)(3) is appropriate as to the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class), in that the common questions predominate over any individual questions pertaining to individual members of the Class, and a plaintiff class action is superior to any other available methods for the fair and efficient adjudication of this controversy. A plaintiff class action will cause an orderly and expeditious administration of THE SECOND MORTGAGE CLASS' claims and economies of time, effort and expense will be fostered, and uniformity of decisions will be insured. Moreover, the individual class members are likely to be unaware of their rights and not in a position (either through experience or financially) to commence individual litigation against the likes of GMAC-

RFC, RFMS, HOMECOMINGS, HOUSEHOLD, MERS, HOMEQ and BANK ONE and the other HOLDER/RECIPIENT DEFENDANTS.

Defendants' Liability Under Missouri's Second Mortgage Loans Act

67. Each of the loans that MCR made to the REPRESENTATIVE PLAINTIFFS and members of THE SECOND MORTGAGE CLASS constituted a "Second Mortgage Loan" within the meaning of §§ 408.231 et seq. RSMo.

68. § 408.233 RSMo provides in pertinent part as follows:

> 1. No charge other than that permitted by section 408.232 shall be directly or indirectly **charged, contracted for or received** in connection with any Second Mortgage Loan, except as provided in this section:
>
> ***
>
> (3) Bona Fide closing costs **paid to third parties**, which shall include:
>
> (a) Fees or premiums for title examination, title insurance or similar purposes including survey;
>
> (b) Fees for preparation of a deed, settlement statement, or other documents;
>
> (c) Fees for notarizing deeds and other documents;
>
> (d) Appraisal fees; and
>
> (e) Fees for credit reports
>
> ***
>
> (5) A nonrefundable origination fee not to exceed five percent of the principal... (two percent prior to August 28, 1998).

69. MCR, GMAC-RFC, RFMS, WILMINGTON TRUST and BNY, as Owner Trustee and Indenture Trustee of the GMAC-RFC and RFMS-formed securitized trusts, HOMECOMINGS, and BANK ONE violated § 408.233 RSMo as such relates to the REPRESENTATIVE PLAINTIFFS' loan and together with HOUSEHOLD, MERS, HOMEQ

and the other HOLDER/RECIPIENT DEFENDANTS as it relates to the members of the SECOND MORTGAGE CLASS by engaging in the following acts, methods or practices:

- Charging and/or receiving, either directly or indirectly, nonrefundable origination fees not allowed by and/or in excess of what fees were allowed by § 408.233.1(5);
- Charging and/or receiving, either directly or indirectly, Discount Fees not allowed by § 408.233.1 RSMo; and
- Charging and/or receiving, either directly or indirectly, other closing fees and costs that were not allowed by the statute.

70. As a result of such violations, § 408.236 RSMo provides as follows:

> Any person violating the provisions of sections 408.231 to 408.237 shall be barred from recovery of any interest on the contract, except where such violation occurred either:
>
> (1) As a result of an accidental and bona fide error of computation; or
>
> (2) As a result of any acts done or omitted in reliance on a written interpretation of the provisions of sections 408.231 to 408.240 by the division of finance.

71. The conduct of MCR and the resulting statutory violations described above as such relates to all of the defendants, and each of them, did not occur as a result of an accidental and bona fide error of computation or as a result of any acts done or omitted in reliance on any governmental interpretation; but said conduct was, instead, intentional, willful, wanton and malicious, or otherwise showed a complete indifference to and a conscious disregard of the rights of the REPRESENTATIVE PLAINTIFFS and every other member of THE SECOND MORTGAGE CLASS.

72. As the purchasers and/or assignees and holders or as trustee for the assignees and holders of the notes and deeds of trust given under the Second Mortgage Loans by the REPRESENTATIVE PLAINTIFFS and every other member of THE SECOND MORTGAGE

CLASS, the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are liable to the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTAGE CLASS, just as MCR is liable to the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS.

73. The HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are liable to the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS for all interest that they have collected or hereinafter will collect from the Second Mortgage Loans, and any such interest collected after the date of the filing of this action shall be additional evidence of the willful and malicious nature of and conscious disregard of the unlawfulness of the acts of MCR and the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class, as hereinafter defined).

74. The HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class, as hereinafter defined) and each of them should be forever barred and enjoined under § 408.236 RSMo from collecting or recovering any interest on the Second Mortgage Loans of the REPRESENTATIVE PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS for the reasons set out above.

75. § 408.562 RSMo provides as follows:

> In addition to any other remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.

76. As a result of the statutory violations described above, each of the REPRESENTATIVE PLAINTIFFS and other members of THE SECOND MORTGAGE CLASS suffered a loss of money or property in that they were charged and paid and/or became obligated to pay fees, charges and costs in amounts greater than those allowed by Missouri law and were charged interest in violation of Missouri law.

77. The conduct of MCR (and the HOLDER/RECIPIENT DEFENDANTS by virtue of their status as assignees or trustees for the assignees) and the resulting violations of Missouri law, were intentional, willful, wanton and malicious, or otherwise showed a complete indifference to or a conscious disregard of the rights of each of the REPRESENTATIVE PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS, including, without limitation, the fact that defendant GMAC-RFC and RFMS, individually, and WILMINGTON TRUST and BNY, as trustees over certain trusts holding loans originated by MCR and consolidated by GMAC-RFC, RFMS, HOMECOMINGS and BANK ONE, all as such relates to the REPRESENTATIVE PLAINTIFFS and other members of the SECOND MORTGAGE CLASS and HOUSEHOLD, MERS, and HOMEQ, as to members of the SECOND MORTGAGE CLASS, have continued to collect interest after they knew of the violations of Missouri law, therefore for that and the other reasons set forth herein the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS are entitled to punitive damages against the defendants and each of them in such amount as is fair and reasonable to punish defendants and to deter defendants and others from like conduct.

Defendant Class Action Allegations

78. This action is also properly brought as a defendant class action under Mo. Rule 52.08(b)(3). The defendant class ("THE DEFENDANT SECOND MORTGAGE CLASS") consists of all persons who satisfy the following criteria:

- Those persons or entities or their trustees that have held or now hold, by virtue of transfer or assignment or otherwise (including acting as nominee or trustee of such holder or assignee), the Second Mortgage Loans of the REPRESENTATIVE PLAINTIFFS or THE SECOND MORTGAGE CLASS; or
- Those persons or entities that have "charged" or "received" the monthly payments from the REPRESENTATIVE PLAINTIFFS or THE SECOND MORTGAGE CLASS, which monthly fees include the illegal charges and resulting illegal interest by virtue that such fees were financed as part of the principal of the Second Mortgage Loans (collectively "THE DEFENDANT SECOND MORTGAGE CLASS").

79. The specifically named HOLDER/RECIPIENT DEFENDANTS and each of them are the REPRESENTATIVE DEFENDANTS of THE DEFENDANT SECOND MORTGAGE CLASS.

80. The particular members of THE DEFENDANT SECOND MORTGAGE CLASS are capable of being described without difficult managerial or administrative problems. The members of THE DEFENDANT SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of MCR and/or the representatives or servicing agents of the Second Mortgage Loans or the assignees or holders (or their trustee(s)) of such Second Mortgage Loans.

81. Upon information and belief, THE DEFENDANT SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that MCR made extensive Second Mortgage Loans in Missouri throughout this period and those loans have since been assigned to a number of mortgage trusts or pools and may thereafter have been reassigned.

0. There are questions of law and fact common to THE DEFENDANT SECOND MORTGAGE CLASS which questions predominate over any questions affecting only individual members of THE DEFENDANT SECOND MORTGAGE CLASS and, in fact, the wrongs alleged against THE DEFENDANT SECOND MORTGAGE CLASS and remedies sought by the REPRESENTATIVE PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS against the HOLDER/RECIPIENT DEFENDANTS are identical, the only difference being the exact monetary amount to which each HOLDER/RECIPIENT DEFENDANT is liable to the respective members of THE SECOND MORTGAGE CLASS and the amount of interest that should be barred, enjoined and returned. The principal common issues are:

- Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable as a result of MCR's violations of Missouri's Second Mortgage Loans Act and/or whether THE DEFENDANT SECOND MORTGAGE CLASS is entitled to assert any defenses to such violations.
- Whether THE DEFENDANT SECOND MORTGAGE CLASS is barred under the provisions of § 408.236 RSMo from the recovery of any interest under these Second Mortgage Loans and whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest; and

- Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorneys fees pursuant to § 408.562 RSMo.

0. The HOLDER/RECIPIENT DEFENDANTS' defenses of THE DEFENDANT SECOND MORTGAGE CLASS (which defenses are denied) are typical of those of the individual HOLDER/RECIPIENT DEFENDANTS and will be based on the same legal and factual theories.

0. The HOLDER/RECIPIENT DEFENDANTS will fairly and adequately represent and protect the interests of THE DEFENDANT SECOND MORTGAGE CLASS. They have in the past and will undoubtedly in this action retain counsel experienced in defending class actions and actions involving unlawful commercial practices. Said defendants do not, based upon information and belief, have any interests which might cause them not to vigorously defend this action.

0. Certification of a defendant class under Mo. Rule 52.08(b)(3) is appropriate as to THE DEFENDANT SECOND MORTGAGE CLASS in that common questions predominate over any individual questions pertaining to individual members of the Defendant Class and a defendant class action is superior to any other available methods for the fair and efficient adjudication of this controversy. A defendant class action will cause an orderly and expeditious administration of THE DEFENDANT SECOND MORTGAGE CLASS defenses, if any, and economies of time, effort and expenses will be fostered and uniformity of decisions will be insured.

Prayer for Relief

WHEREFORE, the REPRESENTATIVE PLAINTIFFS, individually, on behalf of themselves and all members of THE SECOND MORTGAGE CLASS, pray for judgment against the HOLDER/RECIPIENT DEFENDANTS (including GMAC-RFC, RFMS, WILMINGTON TRUST and BNY, as Owner Trustee and Indenture Trustee of the GMAC-RFC and RFMS-formed securitized trusts, HOMECOMINGS, HOUSEHOLD, MERS, HOMEQ, and BANK ONE) and THE DEFENDANT SECOND MORTGAGE CLASS, jointly and severally, as follows:

- For an order certifying that this action may be maintained as a plaintiff class action under Mo. Rule 52.08(b)(3), appointing the REPRESENTATIVE PLAINTIFFS and their counsel to represent THE SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of THE SECOND MORTGAGE CLASS;
- For an order certifying that this action may be maintained as a defendant class under Mo. Rule 52.08(b)(3), appointing the HOLDER/RECIPIENT DEFENDANTS to represent THE DEFENDANT SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of THE DEFENDANT SECOND MORTGAGE CLASS;
- For a permanent injunction enjoining the HOLDER/RECIPIENT DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS, together with their officers, directors, employees, agents, partners or representatives, successors and any and all persons acting in concert from directly or indirectly engaging in the wrongful acts and practices described above (including the charging or receipt of any future

interest in connection with the Second Mortgage Loans that are the subject of this action), all for the benefit of the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS;

- For an order directing disgorgement or restitution against each defendant, jointly and severally, as to each REPRESENTATIVE PLAINTIFF and each member of THE SECOND MORTGAGE CLASS, that contracted for, charged or received the aforesaid illegal charges and fees and the imposition of an equitable constructive trust over such amounts for the benefit of the REPRESENTATIVE PLAINTIFFS and other members of THE SECOND MORTGAGE CLASS;
- A judgment of monetary damages against each defendant, jointly and severally, as to each REPRESENTATIVE PLAINTIFF and each member of THE SECOND MORTGAGE CLASS, that contracted for, charged or received the aforesaid illegal charges and fees, including not only such prohibited or excess fees, but also jointly and severally for all interest that has been contracted for, charged or received by each of the defendants individually and as members of THE DEFENDANT SECOND MORTGAGE CLASS as to each of the plaintiffs, including THE REPRESENTATIVE PLAINTIFFS and as members of THE SECOND MORTGAGE CLASS.
- For a judgment of punitive damages against each of the defendants in a sum that is fair and reasonable;
- For reasonable attorneys' fees as provided by law and statute;
- For pre-and-post judgment interest as provided by law in amount according to proof at trial;

- For an award of costs and expenses incurred in this action; and
- For such other and further relief as the Court may deem necessary and proper.

Respectfully submitted,

WALTERS BENDER STROHBEHN & VAUGHAN, P.C.

By 

R. Frederick Walters - Mo. Bar 25069
J. Michael Vaughan - Mo. Bar 24989
David M. Skeens -Mo. Bar 35728
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(816) 421-6620
(816) 421-4747 (Facsimile)

ATTORNEYS FOR PLAINTIFFS AND CLASS COUNSEL

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the above and foregoing document was mailed this 3 day of July 2007, to:

Daniel McClain
Randolph Willis
Rassmussen Willis Dickey & Moore, LLC
9200 Ward Parkway, Ste. 310
Kansas City, MO 64114
(816) 960-1669
Attorneys for Defendants Residential Funding Corporation n/k/a Residential Funding Company, LLC, Residential Funding Mortgage Securities II, Inc., JP Morgan Chase Bank, N.A. as Trustee and Bank of New York Trust Company, N.A., as Successor Trustee, Wilmington Trust Co., Homecomings Financial Network, Inc. n/k/a Homecomings Financial Network, LLC and Defendant JP Morgan Chase Bank, N.A. as successor by Merger to Bank One, N.A.

Todd W. Ruskamp
Shook, Hardy & Bacon LLP
2555 Grand
Kansas City, Missouri 64108
(816) 474-6550
Attorneys for Defendant Household Finance Corporation III and Mortgage Electronic Registration Systems, Inc.

Scott W. Martin
Husch & Eppenberger, LLC
1200 Main, Suite 2300
Kansas City, Missouri 64105
(816) 421-4800
Attorneys for Defendant Wachovia Equity Servicing LLC f/k/a HomEq Servicing Corporation

Roy Frederick Walter

IN THE SIXTEENTH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Ex 4

Judge or Division: 4 (Justine E. Del Muro)	**Case Number: 03-CV-220489**		
Plaintiffs: Steven and Ruth Mitchell, et al.	Appellate Number:	☐ Filing as an Indigent	
	Court Reporter: Julie Del Percio	☐ Sound Recording Equipment	
vs.	Reporter's Telephone: (816) 881-3704	Number of Days of Trial: 21	
Defendants: Residential Funding Corporation, et al.	Date of Judgment/Sentence: June 24, 2008 and various other Orders (see Exhibits A-O, attached)	Date Post Trial Motion Filed: July 24, 2008	
	Date Ruled Upon: October 6, 2008	Date Notice Filed: October 14, 2008	(Date File Stamp)

Notice of Appeal

☐ Supreme Court of Missouri Court of Appeals: X Western ☐ Eastern ☐ Southern

Notice is given that Defendants Residential Funding Company, LLC ("RFC") and Homecomings Financial, LLC ("Homecomings") (collectively, the "Defendants") appeal from the following Final Judgment and all interlocutory orders, including but not limited to: (1) Nunc Pro Tunc Judgment and Order entered October 6, 2008 as amended and dated as of June 24, 2008 (attached as Exhibit A); (2) Order dated October 6, 2008 denying Defendants' motion for new trial, for judgment notwithstanding verdict and for remittitur (attached as Exhibit B); (3) Order dated October 6, 2008 denying Defendants' motion to set aside class-wide judgment and to decertify plaintiff class (attached as Exhibit C); (4) Order dated October 6, 2008 as amended granting in part and denying in part Plaintiffs' motion to amend judgment (attached as Exhibit D); (5) Order dated October 6, 2008 addressing Defendants' application for approval of supersedeas bond and motion for stay of execution (attached as Exhibit E); (6) Judgment and Order dated June 24, 2008 (attached as Exhibit F); (7) Order dated June 24, 2008 granting Plaintiffs' application for attorneys' fees (attached as Exhibit G); (8) Order dated June 24, 2008 amending March 4, 2008 order granting Plaintiffs' motions for substitution of parties (attached as Exhibit H); (9) Order dated March 13, 2008 granting in part and denying in part Plaintiffs' application for pre-judgment interest (attached as Exhibit I); (10) Order dated March 4, 2008 granting Plaintiffs' motion for substitution of parties (attached as Exhibit J); (11) Order dated December 2, 2007 denying Defendants' motions for summary judgment and granting Plaintiffs' motion in limine No. 8 filed November 28, 2007 precluding the voluntary payment defense (attached as Exhibit K); (12) Order dated November 26, 2007 denying Defendants' motions for summary judgment and granting in part and denying in part Plaintiffs' motion for summary judgment (attached as Exhibit L); (13) Order dated October 11, 2007 denying and precluding Defendants from obtaining any written or deposition testimony from any members of the plaintiff class (attached as Exhibit M); (14) Order dated December 8, 2006 granting Plaintiffs' motion for class certification (attached as Exhibit N); and, (15) Order dated March 23, 2004 denying Defendants' motions to dismiss (attached as Exhibit O).

Complete if Appeal is to Supreme Court of Missouri

Jurisdiction of the Supreme Court is based on the fact that this appeal involves:
(Check appropriate box)

☐ The validity of a treaty or statute of the United States
☐ The punishment imposed is death
☐ The validity of a statute or provision of the Constitution of Missouri
☐ The title to any state office in Missouri
☐ The construction of the revenue laws of Missouri

If the basis of jurisdiction is validity of a United States treaty or statute, the validity of a Missouri statute or Constitutional provision or construction of Missouri revenue laws, a concise explanation, together with suggestions, if desired, is required. This may be filed as part of or with this notice of appeal or, in the alternative, may be filed within ten days after the notice of appeal is filed by filing it directly with the Clerk of the Supreme Court. See Rule 81.08(b) and (c) and Rule 30.01(f) and (g).

Appellants' Attorneys/Bar Numbers	Respondents' Attorneys/Bar Numbers (If multiple, list all or attach additional sheets)
Ann K. Covington #26619 K. Lee Marshall #48653 and Evan M. Tager *pro hac vice* pending Miriam R. Nimitz *pro hac vice* pending Craig W. Canetti *pro hac vice* pending	R. Frederick Walters #25069 Kip D. Richards #39743 David M. Skeens #35728 J. Michael Vaughan #24989 Garrett M. Hodes #50221

Addresses Bryan Cave LLP 221 Bolivar Street Jefferson City, MO 65101-1574 Mayer Brown LLP 1909 K. Street, N.W. Washington, DC 20006-1101	Address 2500 City Center Square 1100 Main Street PO Box 26188 Kansas City, MO 64196
Telephone (573) 556-6620 (202) 263-3000 Fax (573) 556-6630 (202) 263-3300	Telephone (816) 421-6620 Fax (816) 421-4747
Appellants' Names Residential Funding Company, LLC and Homecomings Financial, LLC	Respondents' Names Steven and Ruth Mitchell
Address 8400 Normandale Lake Blvd., Suite 600 Minneapolis, Minnesota 55431	Address 2109 NW Harbor Place Blue Springs, Missouri 64015
Telephone (612) 832-7000	Telephone

Brief Description of Case

In this putative class action lawsuit, Plaintiffs alleged that certain subordinate lien loans made by non-party Mortgage Capital Resource Corporation ("MCR") violated the Missouri Second Mortgage Loan Act ("SMLA"), R.S. Mo. 408.231, *et seq.* by charging, contracting for or receiving various challenged fees. Plaintiffs claimed that RFC and two co-defendants, Household Finance Corporation III and Wachovia Equity Servicing, LLC, were liable as purchasers/assignees for MCR's alleged violations under the Home Ownership and Equity Protection Act ("HOEPA"), 15 U.S.C. § 1641(d)(1). Plaintiffs also claimed that the purchaser/assignee defendants violated the SMLA by indirectly charging, contracting for or receiving the challenged fees and that these defendants and Homecomings violated the SMLA by collecting interest on the MCR loans. The trial court certified the case as a class action, and it was tried before a jury. At the close of Plaintiffs' case-in-chief and before Defendants were permitted to introduce any evidence, the trial court granted Plaintiffs' motion for directed verdict based upon its finding that MCR charged, contracted for and received the challenged fees and ruled that RFC, as a subsequent purchaser/assignee of the closed MCR loans, was liable for MCR's violation of the SMLA under HOEPA, 15 U.S.C. § 1641(d)(1). At the conclusion of all of the evidence, the trial court directed a verdict in favor of Defendants on Plaintiffs' claims alleging the existence of a conspiracy, joint venture or partnership between Defendants and MCR. The trial court precluded Defendants from presenting their voluntary payment and holder-in-due-course defenses. Thereafter, at Plaintiffs' urging and over Defendants' objections, the trial court refused to instruct the jury on punitive damages in accordance with U.S. Supreme Court and Missouri appellate case law. The jury returned a verdict against RFC for challenged fees in the amount of $798,832.00, past and future interest forfeiture/penalty of $3,530,216.00 and punitive damages of $92,000,000.00. The jury also returned a verdict against Homecomings for past and future interest forfeiture/penalty of $706,042.00. By Order dated March 13, 2008, the trial court awarded Plaintiffs pre-judgment interest against all Defendants in the amount of $753,868. By Order dated June 24, 2008, the trial court awarded statutory attorney's fees against all Defendants in the amount of $3,165,231, in addition to granting Plaintiffs' request for a contingency fee in the amount of 35% of the common fund recovery (i.e., in excess of $35 million). On October 6, 2008, the trial court denied all post-trial motions filed by Defendants, including Defendants' motions for new trial, judgment notwithstanding the verdicts and remittitur, denied Defendants' motion to set aside class-wide judgment and to decertify the plaintiff class, and granted in part and denied in part Plaintiffs' motion to amend judgment and entered a nunc pro tunc judgment dated as of June 24, 2008. In its nunc pro tunc judgment, the trial court allocated the prejudgment interest and attorney's fees awards against the assignee defendants such that RFC was assessed pre-judgment interest in the amount of $642,066.00 and statutory attorney's fees in the amount of $2,680,001.09. In addition, on October 6, 2008, the trial court ordered Defendants to post supersedeas bonds in the amount of $126,556,917.00 (total judgment amount of $99,651,115.09 plus three years of annual interest at 9%) as to RFC, and $896,674.00 as to Homecomings, thereby denying RFC's motion insofar as it requested that the Court apply the statutory bond cap set forth in R.S. Mo. §512.099, and further denying RFC's motion insofar as it requested application of the limitation of damages set forth in HOEPA, 15 U.S.C. §1641(d)(2).

Date of Appeal Bond To be filed.	Amount of Bond	☐ Bond Attached
Signature of Attorney or Appellant Chris Ellington w/permission WMR 50387		Date October 14, 2008

Notice to Appellants' Attorney

Local rules may require supplemental documents to be filed. Please refer to the applicable rule for the district in which the appeal is being filed and forward supplements as required.

Certificate of Service

I certify that on October 14, 2008, I served a copy of the notice of appeal on the following parties, at the following addresses, via U.S. Mail, postage prepaid.

R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, Garrett M. Hodes, Walters Bender Strohbehn & Vaughan, P.C., 2500 City Center Square, 1100 Main Street, PO Box 26188, Kansas City, Missouri 64196, Attorneys for Steven and Ruth Mitchell; Scott Martin, Michael Hargens, Kara S. Bemboom, Husch Blackwell Sanders LLP, 1200 Main Street, Suite 2300, Kansas City, Missouri 64105, Attorneys for Wachovia Equity Servicing LLC f/k/a Homeq Servicing Corporation; Todd W. Ruskamp, Danielle Mau, Sarah Lepak, Shook, Hardy & Bacon LLP, 2555 Grand Boulevard, Kansas City, Missouri 64108, Attorneys for Household Finance Corporation III.

Clem Colvig for w/permission MBR 50387

Appellants or Attorney for Appellants

Directions to Clerk

Serve a copy of the notice of appeal in a manner as prescribed by Rule 43.01 on the attorneys of record of all parties to the judgment other than those taking the appeal and on all other parties who do not have an attorney. (A copy of the notice of appeal is to be sent to the Attorney General when the appeal involves a felony.) Transmit a copy of the notice of appeal to the clerk of the Supreme Court/Court of Appeals. If a party does not have an attorney, mail the notice to the party at his/her last known address. Clerk shall then fill in the memorandum below. (See Rules 81.08(d) and 30.01 (h) and (i).) Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by ☐ regular mail ☐ registered mail ☐ certified mail ☐ facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

_____

_____

_____

_____

_____

_____

I have also transmitted a copy of the notice of appeal to the clerk of the

☐ Supreme Court ☐ Court of Appeals, _____ District

☐ Docket fee in the amount of $_____ has been received by this clerk which will be disbursed as required by statute.

☐ A copy of an order granting leave to appeal as indigent.

_____ _____

Date Clerk

Ex 5

Missouri Court of Appeals

WESTERN DISTRICT
1300 OAK STREET

TERENCE G. LORD
CLERK

KANSAS CITY, MO. 64106–2970

AREA CODE 816-889-3600
FAX 816-889-3668
E-MAIL wdcoa@courts.mo.gov

February 1, 2011

IMPORTANT NOTICE

To: All Attorneys of Record

Re: STEVEN AND RUTH MITCHELL, ET AL., APPELLANT-RESPONDENTS
vs.
RESIDENTIAL FUNDING CORP, ET AL., RESPONDENT-APPELLANTS

WD70210

Please be advised that Appellant-Respondent's motion to Modify/Change Opinion is **DENIED.**

Terence G. Lord

Terence G. Lord
Clerk

cc: ROY F WALTERS (816) 421-4747
ROBERT KENT SELLERS (816) 292-2001
ROBERT THOMAS ADAMS (816) 421-5547
KENNETH LEE MARSHALL (573) 556-6630

Ex 6

Missouri Court of Appeals

Western District

February 1, 2011

IMPORTANT NOTICE

To: All Attorneys of Record

Re: STEVEN AND RUTH MITCHELL, ET AL., APPELLANT-RESPONDENTS

vs.

RESIDENTIAL FUNDING CORP, ET AL., RESPONDENT-APPELLANTS

WD70210

Please be advised that Appellant-Respondent's motion for Rehearing is **OVERRULED.** Opinion modified on Courts own motion. Copy of modification enclosed.

Terence G. Lord

Terence G. Lord
Clerk

cc: ROY F WALTERS (816) 421-4747
ROBERT KENT SELLERS (816) 292-2001
ROBERT THOMAS ADAMS (816) 421-5547
KENNETH LEE MARSHALL (573) 556-6630

Ex 7

Missouri Court of Appeals
Western District

February 1, 2011

IMPORTANT NOTICE

To: All Attorneys of Record

Re: STEVEN AND RUTH MITCHELL, ET AL., APPELLANT-RESPONDENTS

vs.

RESIDENTIAL FUNDING CORP, ET AL., RESPONDENT-APPELLANTS

WD70210

Please be advised that Respondent-Appellants' motions for Transfer to Supreme Court are **DENIED.** See Rule 83.04. Opinion modified on Courts own motion. Copy of modification enclosed.

Terence G. Lord

Terence G. Lord
Clerk

cc: ROY F WALTERS (816) 421-4747
ROBERT KENT SELLERS (816) 292-2001
ROBERT THOMAS ADAMS (816) 421-5547
KENNETH LEE MARSHALL (573) 556-6630

In the Supreme Court of Missouri

Ex 8

SC91529
WD70210, WD70227, WD70244, and WD70263 (consolidated)
January Session, 2011

Steven and Ruth Mitchell, et al.,
Respondents/Cross-Appellants,

vs. (TRANSFER)

Residential Funding Company, et al.,
Appellants/Cross-Respondents.

Now at this day, on consideration of the Appellants/Cross-Respondents Residential Funding Company, LLC and Homecomings Financial, LLC's application to transfer, Appellant/Cross-Respondent Household Finance Corporation III's application to transfer, and Appellant/Cross-Respondent Wachovia Equity Servicing, LLC's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said applications be, and the same are hereby denied.

STATE OF MISSOURI-Sct.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session, 2011, and on the 26th day of April, 2011, in the above-entitled cause.

Given under my hand and seal of
said Court, at the City of Jefferson,
this 26th day of April, 2011.

Clerk

D.C.

Ex 9

Mandate

Missouri Court of Appeals

Western District

STEVEN AND RUTH MITCHELL, ET AL., APPELLANT-RESPONDENTS,	)	
vs. (JACKSON)	)	WD 70210 CONSOLIDATED WITH WD70227, WD70244, AND WD70263
RESIDENTIAL FUNDING CORP, ET AL., RESPONDENT-APPELLANTS.	)	CIR. CT. 03CV220489

Now on this day the judgment is affirmed in part and reversed in part, and the cause is remanded to the Circuit Court of Jackson County for further proceedings, all in accordance with the Opinion of this Court herein delivered. The costs on appeal are divided equally between the parties.

Opinion filed.

STATE OF MISSOURI - Set.

I, TERENCE G. LORD, Clerk of the Missouri Court of Appeals, Western District, certify that the foregoing is a full, true and complete transcript of the judgment of the Missouri Court of Appeals, Western District, entered of record and on the 23rd day of November, 2010, in the above entitled cause.

Given under my hand and the seal of the Court, at Kansas City, Missouri, this 28th day of April, 2011.

Terence G. Lord

TERENCE G. LORD, CLERK

cc: Circuit Court Clerk
Circuit Court Judge
Roy F. Walters Kenneth Lee Marshall
Robert Kent Sellers

FAXED FAXED

Ex 10

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON JUNE 24, 1997
REGISTRATION NO. 333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549 **FORM S-1**

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

PREFERRED CREDIT CORPORATION

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

NEVADA	6141	33-0506860
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(PRIMARY STANDARD INDUSTRIAL CLASSIFICATION CODE NO.)	(I.R.S. EMPLOYER IDENTIFICATION NO.)

3347 MICHELSON, SUITE 400
IRVINE, CALIFORNIA 92612
(714) 474-0700
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING AREA CODE, OF
REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

TODD A. RODRIGUEZ, CHIEF EXECUTIVE OFFICER
PREFERRED CREDIT CORPORATION
3347 MICHELSON, SUITE 400
IRVINE, CALIFORNIA 92612
(714) 474-0700
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING AREA CODE, OF
AGENT FOR SERVICE)

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ETHAN D. FEFFER, ESQ.
BROBECK, PHLEGER & HARRISON LLP
4675 MACARTHUR COURT, SUITE 1000
NEWPORT BEACH, CALIFORNIA 92660-1846
(714) 752-7535

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. [ ]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If the delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED(1)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE(2)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE(2)	AMOUNT OF REGISTRATION FEE
Common Stock, $.001 par value.....	5,750,000	$23.00	$132,250,000	$40,076

(1) Includes 750,000 shares of Common Stock issuable upon exercise of an option granted to the Underwriters to cover over-allotments.

(2) Estimated solely for the purpose of calculating the registration fee under Rule 457(a).

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY

STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH
SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID
SECTION 8(A), MAY DETERMINE.

+INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. A
+REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE
+SECURITIES AND EXCHANGE COMMISSION. THESE SECURITIES MAY NOT BE SOLD NOR MAY
+OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION STATEMENT
+BECOMES EFFECTIVE. THIS PROSPECTUS SHALL NOT CONSTITUTE AN OFFER TO SELL OR
+THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THESE
+SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION OR SALE WOULD BE
+UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF
+ANY SUCH STATE.

+ PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION, DATED JUNE 24, 1997

5,000,000 SHARES

PREFERRED CREDIT CORPORATION

COMMON STOCK

Of the 5,000,000 shares of common stock, par value $.001 per share (the "Common Stock"), offered hereby, 4,775,000 shares are being sold by Preferred Credit Corporation (the "Company") and 225,000 shares are being sold by stockholders of the Company (the "Selling Stockholders"). See "Principal and Selling Stockholders." The Company will not receive any of

the proceeds from the sale of the shares by the Selling Stockholders. Prior to this offering, there has been no public market for the Common Stock. It is currently estimated that the initial public offering price will be between $20.00 and $23.00 per share. See "Underwriting" for a discussion of the factors to be considered in determining the initial public offering price. Application has been made to list the Common Stock on the Nasdaq National Market under the symbol "PREF."

THE COMMON STOCK OFFERED HEREBY INVOLVES A HIGH DEGREE OF RISK. SEE "RISK FACTORS" AT PAGES 8 TO 18 FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED BY EACH PROSPECTIVE INVESTOR.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	PRICE TO PUBLIC	UNDERWRITING DISCOUNTS AND COMMISSIONS(1)	PROCEEDS TO COMPANY(2)	PROCEEDS TO SELLING STOCKHOLDERS
Per Share.....	$	$	$	$
Total(3).....	$	$	$	$

(1) See "Underwriting" for information concerning indemnification of the Underwriters and other matters.

(2) Before deducting expenses of the offering payable by the Company estimated to be $600,000.

(3) The Selling Stockholders have granted the Underwriters a 30-day option to purchase up to 750,000 additional shares of Common Stock solely to cover overallotments, if any. To the extent

that the option is exercised, the Underwriters will offer the additional shares of Common Stock at the Price to Public shown above. If the option is exercised in full, the total Price to Public, Underwriting Discounts and Commissions, Proceeds to Company and Proceeds to Selling Stockholders will be $, $, $ and $, respectively. See "Underwriting."

The Common Stock offered by the Underwriters in the offering is subject to prior sale, when, as and if delivered to and accepted by the Underwriters, and subject to their right to withdraw, modify, correct and reject orders in whole or in part. It is expected that delivery of the certificates representing such shares of Common Stock will be made against payment therefor at the offices of Keefe, Bruyette & Woods, Inc. ("KBW"), or in book entry form through the facilities of The Depository Trust Company, on or about , 1997.

KEEFE, BRUYETTE & WOODS, INC. PIPER JAFFRAY INC.

THE DATE OF THIS PROSPECTUS IS , 1997

[PICTURES]

CERTAIN PERSONS PARTICIPATING IN THIS OFFERING MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN, OR OTHERWISE AFFECT THE PRICE OF THE COMMON STOCK, INCLUDING PURCHASES OF THE COMMON STOCK TO STABILIZE ITS MARKET PRICE, PURCHASE OF THE COMMON STOCK TO COVER SOME OR ALL OF A SHORT POSITION IN THE COMMON STOCK MAINTAINED BY THE UNDERWRITERS AND THE IMPOSITION OF PENALTY BIDS. FOR A DESCRIPTION OF THESE ACTIVITIES, SEE "UNDERWRITING."

PROSPECTUS SUMMARY

The following summary is qualified in its entirety by the more detailed information (including "Risk Factors" and the financial statements and notes thereto) appearing elsewhere in this Prospectus. Unless otherwise indicated, all information included in this Prospectus has been adjusted to reflect the 6,000 for one stock split of the Common Stock effected in June, 1997 and assumes no exercise of the Underwriters' over-allotment option. See "Description of Capital Stock" and "Underwriting."

THE COMPANY

OVERVIEW

Preferred Credit Corporation is a specialized consumer finance company primarily engaged in the origination, purchase, sale and securitization of non- traditional consumer loans. The Company's principal loan product ("core loans") consists of second mortgage loans to qualified individuals who generally have above average to superior credit and satisfy the Company's underwriting criteria based on income, credit scores and other factors, but who have limited access to traditional mortgage-related financing generally because of a lack of equity in their homes. The Company originates and acquires its core loans on a nationwide basis through three different production channels including retail offices, wholesale brokers and correspondent lenders. For the year ended December 31, 1996 and the three months ended March 31, 1997, 14.5% and 19.1%, respectively, of the Company's core loan production was originated through its retail/consumer direct loan channel, 72.8% and 38.2%, respectively, was originated through wholesale brokers and 12.7% and 42.7%, respectively, was acquired from correspondent lenders, not including a one-time bulk purchase of $136.0 million in 1996. During 1996 and the first three months of 1997, the Company originated or acquired loans in 43 states with only one state, California, accounting for more than 5% of the Company's total production. For the three months ended March 31, 1997, California accounted for 37.0% of all core loans originated or purchased by the Company, as compared to 65.4% for the year ended December 31, 1996.

From 1994 to 1996, the Company's annual loan production volume increased from $16.5 million to $596.9 million (including $496.3 million of core loans during 1996). For the three months ended March 31, 1997, the Company originated or acquired $250.8 million of core loans and brokered a nominal amount of non-core loans. Based upon available industry data, the Company believes it is one of the largest companies in the United States specializing in the origination and purchase of loans similar to the Company's core loans.

The Company sells substantially all of its core loans in securitization transactions and, to a lesser extent, on a whole loan basis. Since it commenced its securitization program in June 1996, the Company has sold a total of $487.3 million of core loans in securitization transactions, $256.7 million during 1996 and $230.6 million during the three months ended March 31, 1997, recognizing a weighted average gain of 5.5% and 8.3%, respectively, on such sales.

The Company's overall business strategy is to continue its recent growth and solidify its position as a leading consumer finance lender within its niche market. The Company intends to achieve this objective by increasing the volume of core loans originated and purchased, and continuing to seek ways to improve customer service, risk management and cash flow. The Company's business strategy focuses on expanding its core loan production on a nationwide basis, primarily through expansion of its retail production offices and also through increasing loan production through existing and new wholesale brokers and correspondent lenders. As a key element of its business strategy, the Company intends to leverage its increased loan production and increase profitability and cash flow through a combination of regular sales of loans on a whole loan basis and the securitization of a substantial portion of core loans on a quarterly basis. In addition, in order to support the anticipated increases in loan production levels without degradation of underwriting standards and to increase operating efficiencies by permitting wholesale brokers to make online underwriting decisions, the Company has undertaken a program to enhance and further automate its underwriting systems by the end of 1997.

PRODUCT FOCUS

The Company's core loans are typically closed-end (usually 15 year), fixed- rate, fully-amortizing loans secured by a second lien on the borrower's primary residence, and are typically used by consumers to pay-off credit card and other unsecured indebtedness. The Company believes that its core loan product represents an attractive alternative to other financial products because it may allow borrowers to consolidate outstanding indebtedness into a single loan having a longer repayment term and possibly a lower interest rate than other forms of unsecured consumer debt, and affords borrowers the opportunity to lower their overall monthly debt payments. In addition, the potential for tax deductibility of interest payments on the core loan product offers a benefit for many borrowers. The Company also originates a small volume of traditional single family residential mortgage loans, substantially all of which are sold in the secondary market through programs sponsored by the Federal Home Loan Mortgage Corporation ("Freddie Mac"), Federal National Mortgage Association ("Fannie Mae") and others, or are brokered to other lenders.

UNDERWRITING STANDARDS AND BORROWER PROFILE

Because of the limited equity value of the collateral underlying the Company's core loans, and the Company's typical position as a junior lien holder on that collateral, the Company relies principally on the borrower's creditworthiness and ability to repay the loan in making its underwriting decisions. The Company reviews the borrower's income relative to the amount of the loan and other existing debt in evaluating the repayment ability of the borrower. In order to evaluate the creditworthiness of potential borrowers, the Company uses its own computer-assisted underwriting system. This system is based in part on the borrower's "FICO" credit score, which is a credit evaluation score methodology developed by Fair, Isaac & Company ("Fair Isaac"), and in part on the Company's evaluation of the borrower's employment history, earnings stability, credit history, length of home ownership, stability in the community and other traditional underwriting criteria. During 1996 and for the three months ended March 31, 1997, loans securitized by the Company had a weighted average FICO score of approximately 670 to 680, which is generally classified by Fannie Mae and Freddie Mac as loans that have acceptable credit risks.

DISTRIBUTION CHANNELS

The Company began opening retail production offices in 1995 and, as of May 31, 1997, had 12 retail production offices in seven states (California, Arizona, Colorado, Florida, Nevada, New Mexico and Oregon). The Company plans to open additional offices at the rate of approximately three each quarter during the remainder of 1997. The Company believes that the retail consumer/direct channel is the Company's most profitable production channel and is subject to less competitive pricing pressures than either the wholesale or correspondent channel. As of May 31, 1997, the Company's broker network included approximately 900 independent mortgage brokers located in 42 states and its correspondent network included approximately 160 approved

correspondent lenders located in 27 states. The Company intends to continue to increase its loan production from correspondent lenders and wholesale brokers by adding new correspondents and brokers, by offering them a relatively new product to diversify their existing product lines and by increasing the efficiency and production of the correspondents and brokers that are a part of the Company's existing network. The Company believes that its network of production channels, emphasis on retail production and geographic diversity of loan production provides it with a competitive advantage for increasing production of its core loans.

INFORMATION SYSTEMS

The Company is developing a fully-integrated proprietary loan processing system to monitor its underwriting process on a real-time basis to insure consistent application of its underwriting procedures prior to funding. The Company believes this enables it to process an increasingly greater number of loans without degradation of its underwriting standards. In addition, the Company has recently made a significant investment in its information systems for its main office which are intended to enable it effectively to monitor, audit and perform quality control review on loans. The Company continuously reviews its technologies needs, and seeks to add additional applications as its growth and operations require.

MANAGEMENT

The Company has an experienced senior management team with an aggregate of over 60 years in the lending business. The Company's management team is particularly experienced in Fannie Mae and Freddie Mac eligibility requirements, which are significantly focused on an evaluation of the creditworthiness of borrowers and their ability to repay. In addition, the Company's underwriting managers have an average of 16 years experience in the consumer finance business and its branch managers have an average of 10 years experience in the consumer finance business.

COMPANY EVOLUTION

Since commencing operations in 1989 as a mortgage broker (which were expanded to include mortgage banking in 1994), the Company has focused on lending to creditworthy borrowers. Until 1995, the Company primarily originated loans meeting the underwriting guidelines of Freddie Mac and Fannie Mae. In late 1994, management believed that market conditions (primarily increasing competition and higher interest rates) were reducing the profitability for originators and purchasers of Freddie Mac and Fannie Mae eligible loans. As a result, commencing in late 1994, the Company decided to expand its loan products to include core loans. The Company believed that core loans offered a greater profit margin than non-core loans and, due to the similar credit characteristics and underwriting approach between core loans and the non-core loans originated by the Company prior to 1995, permitted the Company to utilize its existing expertise and personnel to expand its operations. The increasing consumer demand for the Company's core loan product has substantially increased the Company's operating revenues

and profitability. From 1994 to 1996, the Company's annual revenues increased from $867,000 to $27.2 million, and its net earnings increased from $81,000 (or $48,000 on a pro forma basis adjusted for taxes) to $7.1 million. For the three months ended March 31, 1997, the Company recognized total revenues of $23.2 million and net income of $9.7 million.

RISK FACTORS

See "Risk Factors" for a description of certain factors which should be considered carefully in evaluating an investment in the Common Stock offered by this Prospectus.

THE OFFERING

Common Stock offered	5,000,000 shares
Common Stock to be outstanding after the offering	16,994,000 shares(1)
Use of Proceeds	To repay certain indebtedness, fund overcollaterization requirements of future securitizations, fund loan originations and acquisitions, and for general corporate purposes. See "Use of Proceeds."
Proposed Nasdaq National Market Symbol	"PREF"

(1) Excludes up to 3,412,310 shares of Common Stock issuable upon exercise of outstanding options and warrants and 289,906 shares of Common Stock reserved for issuance pursuant to options that may be granted in the future under the Company's 1996 Stock Option Plan (the "Company's Stock Option Plan" or the "1996 Plan"). See "Management--Stock Option Plan," "Shares Eligible for Future Sale" and "Underwriting."

SUMMARY FINANCIAL AND OTHER DATA
(IN THOUSANDS, EXCEPT PER SHARE DATA)

	YEAR ENDED DECEMBER 31,			THREE MONTHS ENDED MARCH 31,	
	1994	1995	1996	1996	1997
STATEMENT OF EARNINGS DATA:					
Revenues:					

Fully diluted	6,000	11,994	15,188	11,994	15,188

	DECEMBER 31,			MARCH 31, 1997	
	1994	1995	1996	ACTUAL	ADJUSTED(5)
BALANCE SHEET DATA:					
Mortgage loan held for sale, net	$1,878	$30,020	$ 76,032	$ 93,496	$ 93,496
Residual interest in securitization, net(4)	--	--	36,879	70,281	70,281
Total assets	2,477	32,115	121,730	172,199	240,672
Short-term notes payable	1,838	28,549	88,136	109,080	109,080
Short-term residual financing	--	--	14,258	27,407	--
Total liabilities	1,969	29,839	111,715	152,497	125,090
Total stockholders' equity	508	2,276	10,015	19,702	115,582

	YEAR ENDED DECEMBER 31,		THREE MONTHS ENDED MARCH 31,	
	1995	1996	1996	1997
OPERATING DATA:				
Core loans originated or acquired:				
Retail/consumer direct	$ --	$ 52,225	$ 2,232	$ 47,787
Wholesale	106,411	262,435	70,510	95,851
Correspondent	--	45,617	--	107,161
Bulk acquisition(6)	--	135,979	--	--
Total	$106,411	$496,256	$ 72,742	$ 250,799
Non-core loans originated or acquired	$ 87,172	$100,623	$ 40,128	$ --
Core loans sold through securitization	$ --	$256,692	$ --	$ 230,571

Core and non-core loans sold on whole loan, servicing released basis.....	$165,401	$287,671	$ 59,310	$ 35
Number of states where loans were originated or acquired (at period end)(7).....			38	43
Number of branches (at period end)(7)(8).....			10	10

(1) Gain on sale includes net interest receivable from sales of asset backed securities and whole loan sales, offset by selling expenses related to securitization. See "Risk Factors--Possible Adverse Effect of Prepayments, Delinquencies and Defaults" and "Management's Discussion and Analysis of Financial Condition and Results of Operations--Accounting Considerations Used in Determining Gain on Sale."

(2) Prior to June 1996, the Company was operated as an S Corporation for federal tax purposes and consequently was not responsible for federal income taxes. Pro forma tax adjustments have been made to earnings and provision for income taxes for periods that the Company was operated as an S Corporation by applying an income tax rate of 42% to earnings before income taxes. In 1996, the actual income tax of $5.7 million included amounts that would have been deferred had the Company not elected a change in tax status resulting in lower net earnings as compared to that under the pro forma calculation.

(3) Pro forma earnings per share has been computed by dividing pro forma net earnings by the pro forma weighted average number of shares outstanding. The pro forma weighted average number of shares includes all options and warrants issued below the estimated initial public offering price within one year prior to the filing of the Registration Statement for the initial public offering and is calculated using the treasury stock method.

(4) Residual interest in securitization includes $8.7 million in overcollateralization and $45.0 million in net interest receivable, offset by $16.8 million discounted estimate of default losses as of December 31, 1996, and $20.1 million in overcollateralization and $83.4 million in net interest receivable, offset by $33.2 million discounted estimate of default losses as of March 31, 1997.

(5) Adjusted to give effect to the exercise of Warrants to purchase 225,000 shares of Common Stock by Merrill Lynch at an exercise price per share of $2.18 per share and the sale of 4,775,000 shares of Common Stock offered by the Company hereby at an assumed public offering price of $21.50 per share and the application of the estimated net proceeds therefrom. See "Use of Proceeds" and "Capitalization."

(6) Represents a single bulk acquisition of core loans acquired from Credit Suisse First Boston Mortgage Capital Corp. ("CSFB Mortgage"). See "Management's Discussion and Analysis of Financial Condition and Results of Operations--Liquidity and Capital Resources" and "Certain Transactions."

(7) Data for the year ended December 31, 1995 and the three months ended March 31, 1996 are not comparable and have not been presented.

(8) Includes 8 retail branches, one correspondent branch in Arizona and one wholesale branch within the Company's headquarters.

RISK FACTORS

In addition to the other information in this Prospectus, the following factors should be considered carefully in evaluating the Company and its business before purchasing the shares of Common Stock offered hereby. This Prospectus contains, in addition to historical information, forward-looking statements that involve risks and uncertainties. The Company's actual results or experience could differ significantly from those discussed in the forward- looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in this section as well as those discussed elsewhere in this Prospectus.

LIMITED OPERATING HISTORY; LACK OF SEASONING

The Company has a limited operating history upon which an evaluation of its current operations and prospects can be based. Although the Company has been involved in the origination of mortgage loans since 1989, it commenced origination of its core loans in late 1994. In addition, the Company began its securitization program in the second quarter of 1996. As a result, the Company's historical results of operations, including its loss and prepayment experience, may be of limited relevance to an investor seeking to evaluate the Company's future prospects. Although the Company has experienced significant growth in recent periods, there can be no assurance that the origination levels, revenues or net earnings of the Company will continue to increase, or even remain at their current level. Therefore, recent quarterly origination, revenue and earnings comparisons should not be considered indicative of the operating results or rate of growth, if any, that can be expected in the future. See "Management's Discussion and Analysis of Financial Condition and Results of Operations."

The loans originated and acquired by the Company and included in the Company's securitizations have not been outstanding for a sufficient period of time to determine whether there are material adverse credit, delinquency, loss, prepayment or other issues associated with these loans. Furthermore, the Company's loans represent a relatively new loan product within the consumer finance industry and accordingly the Company cannot rely on the historical experience of other companies issuing a comparable product. In addition, a substantial portion of the income recognized by the Company during 1996 reflects its estimation of cash proceeds it expects to receive in the future from securitization of its core loans. See "--Possible Adverse Effects of Prepayments, Delinquencies and Defaults." Although the delinquency, prepayment and loss experience of the Company's loans originated and acquired to date has been relatively consistent with management's assumptions, no assurance can be given that the delinquency, prepayment and loss experience of these loans will remain consistent with management's assumptions and estimates. Any material change in delinquencies, prepayments and losses from management's assumption and estimates may adversely affect the Company's financial condition and results of

operations. The actual performance of such loans will not be known until sometime in the future. See "--Credit Risk of Company's Products."

CREDIT RISK OF COMPANY'S PRODUCTS

Although the Company's core loans are secured by real estate, because of the relatively high loan-to-value ("LTV") of the Company's loans, in most cases the value of the underlying collateral will be less than the principal amount of the loans, and effectively unsecured. The weighted average combined LTV ratio of core loans securitized by the Company for the 1996-1, 1996-2, and 1997-1 securitization transactions were 90.61%, 110.19% and 115.80%, respectively. Accordingly, in making underwriting decisions, the Company relies principally on the creditworthiness of the borrower, rather than the underlying collateral for repayment. Because of the relatively high combined LTV ratios of the Company's core loans and the Company's position as a subordinate lien holder with respect to the collateral underlying the Company's loans, the Company is likely to incur a total loss in the event that a customer defaults on its loan obligations to the Company or to the senior lien holder.

Although the Company intends to sell substantially all of the loans which it originates or acquires through securitization transactions or whole loan sales, the Company retains some degree of credit risk on substantially

all such loans sold. The documents governing the Company's securitization transactions require the Company to establish levels of overcollateralization through application of excess interest spread distributions in order to reduce the principal balance of the senior interests issued by the trust that acquires the loans. Such amounts serve as credit enhancement for the relevant trust and are therefore available to fund losses realized on loans held by such trust. In addition, when borrowers are delinquent in making monthly payments on loans included in a trust, the servicer is required to advance interest payments with respect to such delinquent loans to the extent that the servicer deems such advances ultimately recoverable. If deemed not recoverable, the loans will be charged off against the overcollaterization account and to the extent there is a deficit in the overcollaterization account, a claim could be made against the insurance company which then may have a right to be reimbursed out of future cash flows otherwise payable to the Company by the trust. As a result, the Company continues to be subject to the risks of delinquency and loss following securitization to the extent that anticipated excess interest spread distributions to the Company may be required to be applied to fund the overcollateralization account, reimburse the insurer or servicer or make distributions to the senior certificate holders. If the losses required to be absorbed by the Company exceed the Company's estimates of such losses, the Company could be required to write down the value of its residual interest in securitization which could have a material adverse effect on the Company's financial condition and results of operations. In addition, a significant increase in non-performing loans could trigger an acceleration of repayment obligations of principal outstanding under the senior interests issued by the affected trusts, which would materially adversely affect the Company's receipt of

The Company's ability to implement its business strategy will depend upon its ability to continue to effect securitizations, to sell its loans on a whole loan basis on favorable terms, to establish alternative long-term financing arrangements, to maintain sufficient financing under warehousing facilities upon acceptable terms, and to access the public or private capital markets in connection with the issuance of its equity or debt securities. There can be no assurance that such financing will be available to the Company on favorable terms, if at all. If such financing were not available or the Company's capital requirements exceed anticipated levels, then the Company would be required to obtain additional financing. The Company cannot presently estimate the amount and timing of additional financing requirements because such requirements are dependent upon, among other things, the growth of the Company. If the Company were unable to raise such additional capital, its results of operations and financial condition would be adversely affected. See "Management's Discussion and Analysis of Results of Operations and Financial Condition--Liquidity and Capital Resources."

The Company is significantly dependent upon its access to credit facilities in order to fund new originations and acquisitions of loans. A primary source of funds for the Company consists of a whole loan repurchase facility with CSFB Mortgage (the "First Boston Facility"), which was established in October of 1996. Currently the First Boston Facility may be used to fund up to $200 million of loans (the "FB Warehouse Line") and to fund up to $30 million for working capital and other cash requirements (primarily the funding of the Company's overcollateralization requirements in conjunction with securitizations and funding of premiums in conjunction with its correspondent loan program) (the "FB Residual Line"). The FB Residual Line is secured by the Company's interest in its residual interest in securitization. Currently the Company has several other warehouse lines of credit, with a total combined commitment amount of $190 million, all of which expire within the next 12 months. In total, the Company's current credit facilities provide the Company with up to an aggregate of $390 million in financing for loan origination and acquisition activities and up to approximately $30 million for other working capital needs. The Company expects to be able to maintain existing credit facilities and/or obtain replacement or additional financing as current arrangements expire or become fully utilized; however, there can be no assurance that such financing will be obtainable on favorable terms, or at all. At December 31, 1996 and March 31, 1997, the Company had cash and cash equivalents of approximately $4.6 million and $3.8 million, respectively, and the net proceeds of this offering, along with the Company's current credit facilities, are expected to be sufficient to fund the Company's liquidity requirements for approximately 12 months. To the extent that the Company is unable to retain its existing credit facilities or arrange new credit facilities or successfully obtain additional debt or equity financing, the Company will most likely have to curtail loan origination and acquisition activities, which would have a material adverse effect on the Company's financial position and results of operations. See "Management's Discussion and Analysis of Financial Condition and Results of Operations--Liquidity and Capital Resources."

DEPENDENCE ON SECURITIZATION TRANSACTIONS AND WHOLE LOAN SALES

In the second quarter of 1996, the Company implemented a securitization program that involves the periodic pooling and sale of its core loans. The securitization proceeds have been used to repay outstanding advances under its existing warehouse financing credit facilities. Although the Company will not complete a securitization in the second quarter of 1997, management currently intends to continue to securitize a substantial portion of its core loans; however, there can be no assurance that the Company will be able to securitize its loan production efficiently, or at all. The Company believes that the securitization market for assets such as its core loans is relatively undeveloped and may be more susceptible to market fluctuations or other adverse changes than more developed capital markets. Securitization transactions may be affected by a number of factors, some of which are beyond the Company's control, including, among other things, conditions in the securities markets in general, conditions in the asset-backed securitization market, performance of securitization pools backed by mortgage loans as well as other forms of consumer debt and the conformity of loan pools to rating agency requirements and, to the extent that monoline insurance is used, the requirements of such insurers.

The Company's securitization transactions have utilized credit enhancements in the form of financial guaranty insurance policies in order to achieve AAA/Aaa ratings. There can be no assurance that the Company will be able to obtain credit enhancement on acceptable terms for its future securitizations or that any future securitizations will be similarly rated. Failure to obtain acceptable rating agency ratings or insurance company credit enhancements could decrease the efficiency or affect the pricing or timing of future securitization transactions, thus resulting in the Company's need to conduct whole loan sales or in losses being reported by the Company. A withdrawal of credit enhancement could result in higher interest costs for future Company securitizations. Such events could have a material adverse effect on the Company's results of operations and financial condition.

In addition to its securitization transactions, the Company has in the past and expects, depending upon existing cash needs and other factors, to sell loans on a whole loan basis from time to time in the future. The Company believes that a substantial portion of the existing investors for the Company's core loans are acquiring such loans for the purpose of including the loans in securitization transactions. In addition, the Company believes that current demand for the core loans allows it to sell core loans at a substantial premium. Any adverse change

in the securitization market for the Company's core loans may result in a substantial reduction in the number of investors in or the price or demand for the Company's core loans, thereby impairing the Company's ability to sell core loans on a favorable or timely basis. See "Business--Securitization."

UNDERWRITING STANDARDS

The Company considers the underwriting policy under which its core loans are underwritten to be analogous to unsecured credit lending, rather than collateral-based lending practices used in traditional mortgage lending. Because the Company's underwriting decisions are based primarily

on the borrower's credit history and capacity to repay rather than on the potential value of the underlying collateral, it is extremely important that the Company appropriately evaluate the credit risk associated with each loan applicant. In order to evaluate the creditworthiness of the loan applicants, the Company has developed an underwriting system which is based, in part, on the borrower's "FICO" credit score, as well as certain other qualitative and quantitative factors. The FICO credit scoring method was developed by Fair Isaac and is an evaluation of information contained in the borrower's credit bureau report, including all reported payment and usage patterns of past and present credit accounts as well as public records and inquires. Although the Company believes that it is reasonable to use the FICO credit score to assist in the evaluation of the creditworthiness of potential borrowers, FICO credit scores only analyze the information contained in the borrower's credit bureau report which could be incomplete or erroneous. Also, Fair Isaac only considers a FICO score to be predictive of credit performance for a period of approximately two years, which is significantly shorter than the estimated average duration of the Company's loans of approximately 4.75 years and the typical contractual maturity of the Company's loans of approximately 15 years. There can be no assurance that the FICO credit score will accurately predict the actual future creditworthiness of the borrower beyond a two year period or even within such two year period. Additionally, because the Company's core loans are a relatively new product in the consumer finance industry, data on the relationship between FICO credit scores and the Company's core loans, including loss estimates and performance data is not available.

In making credit decisions, the Company also relies on the debt-to-income ratio of its borrowers, which is calculated on the basis that a borrower will use the loan proceeds to repay or consolidate his or her current outstanding indebtedness. However, after the borrower's loan has been funded and the outstanding indebtedness has been consolidated, the Company is subject to the risk that the borrower could incur substantial additional indebtedness or suffer a decrease in income, thus increasing his or her debt-to-income ratio and potential for default.

Additionally, many of the other factors utilized by the Company when underwriting its loans are weighted in importance based on the Company's past experience. Because of the Company's relatively short operating history, such factors, or the weights given to such factors, are unproven. If the Company's underwriting system proves to be unreliable in evaluating the current and future creditworthiness of borrowers, the Company may be subject to higher than expected losses on its securitization transactions. These risks may become more acute in periods of economic downturn or recession. See "Business--Underwriting."

ABILITY TO IMPLEMENT BUSINESS STRATEGY

The Company's ability to continue its growth depends on its ability to increase the volume of loans it originates and acquires while successfully managing its growth. In addition to being dependent on access to adequate financing, this volume increase is dependent on the Company's ability to (i) identify and offer attractive products to prospective borrowers, (ii) attract and retain qualified underwriting, origination and other personnel, (iii) market its products successfully, (iv) establish and maintain relationships with independent correspondent lenders and wholesale brokers in states where the Company is currently active and in additional states, and (v) procure, maintain and manage increasingly larger credit facilities and other indebtedness. In addition,

because the Company's core loan product is relatively new, it is not possible to predict with certainty whether sufficient demand and acceptance from consumers will exist to permit the Company to increase its core loan production levels as contemplated.

In order to support the growth of its business, the Company will be required to continue to implement and improve its operational, financial and management information systems and controls, and maintain appropriate procedures, policies and systems to ensure that the Company's loans have an acceptable level of credit risk, while managing the costs associated with expanding its infrastructure. The Company will also have to hire, train, motivate and manage new employees, including management personnel, and integrate them into its overall operations and culture. There can be no assurance that the Company will be able to perform such actions successfully.

In addition, the growth experienced by the Company, and the corresponding increased need for timely information, has placed significant demands on the Company's existing accounting and management information systems. As a result, the Company is upgrading these systems with the first priority being to automate its correspondent lender operations and to further refine and automate its underwriting system. The Company intends to continuously invest in improving its financial systems and controls to facilitate expansion. The Company's failure to manage growth effectively would have a material adverse effect on the Company's results of operations and its ability to execute its business strategy. In addition, the increase in personnel and systems will require higher levels of administrative expense and capital investment. To the extent that such expenditures do not result in corresponding revenue increases, the Company's operating results will be adversely affected.

SENSITIVITY TO ECONOMIC CONDITIONS

General. The risks associated with the Company's business will likely increase in any economic slowdown or recession. Periods of economic slowdown or recession may be accompanied by employee layoffs, wage reductions and declining real estate values, thereby further increasing the credit risk inherent in the Company's core loan products. Further, delinquencies, foreclosures and the frequency and severity of losses generally increase during economic slowdowns or recessions. Because the Company's underwriting decisions are based primarily on the borrower's ability and willingness to repay and place limited importance on the potential value of the underlying collateral, any sustained period of such increased delinquencies or foreclosures will likely result in increased losses with respect to the Company's loans. Any such increase in losses, or in losses in the consumer finance industry in general, could increase the cost of securitizing and selling loans in the secondary market or could adversely affect the Company's ability to securitize or sell loans in the secondary market. Any sustained period of such increased losses could cause a write down in the value of the Company's residual interest in securitization and could have a material adverse effect on the Company's results of operations and financial condition. In addition, the Company bears certain fixed costs associated with its retail branch offices, including lease payments, costs of equipment and personnel expenses. In times of

economic slowdown or recession, the volume of loans originated from its retail branch offices may decrease without any corresponding decrease in the Company's fixed operating costs.

Interest Rates. The Company's earnings may be directly affected by the level of and fluctuations in interest rates which affect the Company's ability to earn a spread between interest received on its loans and the costs of its liabilities. While the Company monitors the interest rate environment and, to the extent management believes necessary under the circumstances, employs a strategy designed to hedge some of the risks associated with changes in interest rates, no assurance can be given that the strategy will prevent an adverse change in the earnings of the Company during any period of fluctuation in interest rates. A significant increase in interest rates could curtail demand for the Company's loans, or increase market pressure on the Company to reduce origination fees or servicing spreads to offset the cost of higher interest rates. The ultimate sale of the Company's loans will fix the spread between the interest rates paid by borrowers and the interest rates paid to investors in securitization transactions with respect to such loans, and in times of rapidly increasing interest rates such spread may be narrower than the spread that existed at the time the loans were originated or acquired by the Company. In addition, since the interest rates on the Company's indebtedness used to fund and acquire loans are variable and the rates charged on loans the Company originates and acquires are fixed, increases in interest rates after loans are originated and prior to their sale could have a material adverse effect on the net interest income earned by the Company. Alternatively, a significant decline in interest rates could result in refinancing activity by the

Company's borrowers, resulting in an increase in the level of loan prepayments, thereby reducing the period of time during which the Company receives income with respect to such prepaid loans and causing a write down in the residual interest in securitization. Although an increase in interest rates may reduce prepayment activity, such reduction may not offset the costs of financing the Company's residual interest in securitization. See "Management's Discussion and Analysis of Financial Condition and Results of Operations."

DEPENDENCE ON SUBCONTRACTED SERVICING

The Company currently contracts with Advanta Mortgage Corp. USA ("Advanta") for the servicing of all core loans it originates or acquires. This arrangement allows the Company to increase the volume of loans it originates and acquires without incurring the overhead investment associated with servicing operations. The Company is subject to risks associated with the provision of inadequate or untimely services by Advanta, in which event the Company would have the right to terminate its servicing agreement with the subservicer. The servicing agreement may also be terminated by either party without cause upon 90 days notice. If the servicing agreement is terminated, the Company would have to either locate an alternative subservicer or establish internal servicing capabilities. In either case the servicing of the Company's loans would be disrupted and delinquency levels would likely increase. Additionally, no assurance can be given that the Company would be able to enter into an alternative servicing arrangement on satisfactory terms or, since the Company's product is relatively new, that there are other

subservicers capable of servicing the Company's product. Although the Company periodically reviews the costs associated with establishing servicing operations to service the loans it originates and acquires, it has no plans to establish and perform servicing operations at this time. See "Business--Loan Servicing and Delinquencies."

Recently, Advanta Corp., the parent of Advanta, issued a press release announcing that it had retained an outside advisor to explore various business strategies. The Company is unable to predict what effects, if any, these developments will have on its relationship with Advanta, but it is possible that certain of these business strategies may adversely impact the Company's ongoing relationship with Advanta. To the extent there is a significant change in Advanta's personnel or operating strategies, the Company may be forced to re-evaluate its ongoing relationship with Advanta or seek other sources to service its loans. If a new servicer were selected, the change in servicing might result in greater delinquencies and losses on the loans serviced by Advanta, which would adversely impact the value of the Company's residual interest in securitization and have a corresponding material adverse impact on the Company's results of operations and financial condition.

DEPENDENCE ON CORRESPONDENT LENDERS AND WHOLESALE BROKERS

The Company currently depends on correspondent lenders and wholesale brokers for a substantial majority of its loan production. In 1996, approximately 14.5% of the Company's core loans were originated through correspondent lenders and 72.8% through wholesale brokers (excluding a one-time bulk purchase of $136.0 million of core loans), both of which are expected to remain a significant part of the Company's overall loan production program for the foreseeable future. As an acquiror of such loans, the Company is exposed to competition from other acquirors of such loans, market conditions and other factors. The Company's competitors also have relationships with the Company's correspondent lenders and wholesale brokers and actively compete with the Company in its efforts to expand its correspondent and broker networks. Accordingly, the Company's success depends in large part on its continued ability to offer its brokers and correspondents a comparably attractive product and competitive compensation. To the extent that other acquirors enter, or increase their activities in, the markets in which the Company competes, competitive pressures may increase the Company's cost of acquiring such loans or decrease the volume of loans produced through those channels, or both. See "Business--Competition."

In addition, although the Company acquires and originates loans from a variety of correspondent lenders and wholesale brokers, a significant portion of the volume of the loans originated by the Company through wholesale brokers has been concentrated among a relatively small number of wholesale brokers. For the fiscal year ended December 31, 1996, and the three months ended March 31, 1997, the Company's top five wholesale

brokers accounted for 60.7% and 53.8%, respectively, of the total volume of loans originated by the Company through its wholesale production channel, and the top wholesale broker accounted

(b) The Company has the full power to execute, deliver and issue this Warrant and to carry out its obligations hereunder, the execution, delivery and issuance of this Warrant, and delivery and issuance of Warrant Shares upon exercise of this Warrant, have been duly and validly authorized by the Company, no other acts or proceedings on the part of the

Company are necessary to authorize this Warrant or the Warrant Shares; and this Warrant constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms;

(c) The Warrant Shares will, when issued pursuant to this Warrant, be duly authorized and validly issued, fully paid and nonassessable, and not subject to preemptive rights;

(d) No consent or approval by, or filing with, any governmental authority is required in connection with the execution, delivery and issuance by the Company of this Warrant or the delivery and issuance of the Warrant Shares other than such as have been obtained or made (or as may he required in the future under applicable securities laws in connection with the transfer or exercise of this Warrant or the resale of the Warrant Shares);

(e) The execution, delivery, issuance of this Warrant and the delivery and issuance of the Warrant Shares will not result in the violation of any term or provision of the charter or bylaws of the Company, or any loan agreement, indentured note or other instrument, or decree, order, statute, rule or regulation applicable to the Company (subject, however, to compliance with applicable securities laws in connection with the transfer or exercise of this Warrant or the resale of the Warrant Shares);

(f) The entire authorized capital stock of the Company is one million shares of common stock and no shares of preferred stock. As of the date of this Warrant, the Company has issued and outstanding (i) 1,999 shares of Common Stock, (ii) excluding the Warrant Shares, 9.995 shares of Common Stock issuable upon the exercise of any rights outstanding as of the date hereof including any right to subscribe for or to purchase, or any options for the purchase of Common Stock or Convertible Securities and (iii) no shares of preferred stock; and

(g) Other than this Warrant, the Company is not a party to any agreement regarding registration rights.

Section 13. Delivery Upon Execution of this Warrant. This Warrant shall not be effective until the Holder has executed and delivered to the Company a certificate in the form of Exhibit B-1 hereto.

Section 14. Notices. Any notice pursuant to this Warrant by the Company or by the Holder shall be in writing and shall be mailed by certified mail, return receipt requested, (a) to the Company, at its principal office at 19782 MacArthur Blvd., Irvine, CA 92715. Attention: Todd Rodriguez; or (b) to the Holder, to CS First Boston Mortgage Capital Corp., 55 East 52nd St., New York,

N.Y. 10055-0186, Attention: Michael Commaroto. Either party may from time to time change the address to which notices to it are to be delivered or mailed under this

Warrant by notice in writing to the other party.

Section 15. Applicable Law. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflict of laws.

Section 16. Captions. The captions of the Sections and subsections of this Warrant have been inserted for convenience only and shall have no substantive effect.

IN WITNESS WHEREOF, the undersigned have executed this Warrant this 2nd day of October, 1996.

T.A.R. PREFERRED CORPORATION

By: s/Todd Rodriguez
Name: Todd Rodriguez
Title: C.E.O.

Attest: s/
Secretary

T.A.R. PREFERRED MORTGAGE CORPORATION

PURCHASE FORM

The undersigned irrevocably elects to exercise the right of purchase under the enclosed Warrant, all of the Warrant Shares provided for in the enclosed Warrant, and requires that certificates for such shares be issued in the name of:

(Please Print Name and Social Security No.)

(Street Address)

(City, State and Zip Code)

were necessary to support the Company's securitization program). During the three months ended March 31, 1996, and 1997, the Company's average outstanding borrowings were $54.8 million and $106.2 million, respectively. Included in interest expense for the three months ended March 31, 1997, the Company recorded $449,000 for amortization of prepaid commitment fees associated with stock warrants issued in 1996 to CS First Boston and certain affiliates of Merrill Lynch. See "Description of Capital Stock". The Company anticipates that it will incur a similar amortization expense relating to these warrants in each of the remaining quarters of 1997 (or an aggregate of approximately $1.3 million during 1997). Due to the Company's intention to increase its volume of whole loan sales in future periods, and to implement new structures for the securitization of its core loans, management believes that its dependence on borrowings under the FB Residual Line, or similar financing arrangements, may decrease in future periods. If the Company is successful in these strategies, the Company expects that interest expense as a percentage of total revenue should decrease in future periods.

General and administrative expenses increased $1.8 million or 310.0% from $589,000 for the three months ended March 31, 1996 to $2.4 million for the three months ended March 31, 1997. The increase in general and administrative expenses was primarily the result of $1.3 million increase in marketing expenses to support retail/consumer direct expansion and to promote name recognition in the nationwide wholesale market.

During the three months ended March 31, 1996 and 1997, retail/consumer direct loans accounted for 3.1% and 19.1% of the total core loan production, respectively. As noted above, the Company is seeking to increase its retail/consumer direct production channel. If successful, the Company expects potentially significant increases in general and administrative expenses to support this production, both on an overall basis and as a percentage of revenues. Other operating expenses also increased to accommodate the increased overhead required to support the growth in all production channels.

Income Taxes

Prior to June 20, 1996, the Company elected S Corporation status under the Internal Revenue Code and the corresponding tax laws of the State of California. Accordingly, income was taxed directly to the stockholders for federal income and state franchise tax purposes. The Company reimbursed stockholders for such taxes arising from the Company's operations and recorded such reimbursements as distribution of retained earnings to the stockholders. The Company converted its tax filling status from S Corporation to C Corporation on June 20, 1996, in connection with incorporating its wholly- owned subsidiary, Preferred Mortgage SPC Funding Corporation ("PSPCFC"). PSPCFC was incorporated to facilitate the implementation of the Company's securitization program. On a pro forma basis, applying the C Corporation statutory tax rates to the earnings under the S Corporation status, net earnings would have been $315,000 as compared to $524,000 for the three month period ended March 31, 1996.

to access the capital markets for additional financing to meet the cash requirements of its operating activities.

The Company uses its working capital (primarily the FB Residual Line), gain on whole loan sales, net interest income and loan fee income to fund its on- going operations, and relies upon short-term warehouse facilities, whole loan sales and securitization transactions to continue to fund loan originations and purchases. While the Company is currently evaluating a number of different strategies to reduce its cash needs, including modifying the structure of its securitization transactions and increasing the volume of loans sold on a whole loan basis, the Company will continue operating on a negative cash flow basis as long as it continues to sell a significant portion of its loans through securitization transactions and continues to retain the residual interest in securitization in the loans sold. This is because securitization transactions require an initial outlay of cash by the Company, while providing the Company with a stream of cash flow over the lives of the loans securitized.

In mid-1996, management of the Company believed that the limited number of whole loan investors for the Company's core loans, combined with the Company's increasing volume of originations, required the Company to locate a stable conduit into which it could sell whole loans on a predictable basis. In August 1996, the Company entered into a whole loan sale facility with CSFB Mortgage, under which the Company is currently obligated to sell not less than $750 million of core loans on a whole loan basis on or prior to December 31, 1998. If the Company fails to deliver $750 million of core loans by September 30, 1998, the Company will be obligated to pay CSFB Mortgage a non-delivery fee equal to 1% of the difference between the principal balance

of loans delivered and $750 million. If, on December 31, 1998, the Company has not satisfied this delivery requirement, the Company will be obligated to pay CSFB a non-delivery fee equal to 2% of the difference between the principal balance of loans delivered and $750 million. As of May 31, 1997, the Company had delivered $190 million to CSFB Mortgage.

To accumulate loans for securitization, the Company borrows money through various credit facilities. To date, substantially all of the loans that the Company purchased and originated have been funded through borrowing under these facilities, which are repaid as the loans are sold. After the loans are sold and the borrowings repaid, the Company's credit facilities then become available to fund additional core loan originations. The Company has four established credit facilities for this purpose.

A primary source of funds for the Company consists of the First Boston Facility, which was established in October of 1996. Under the First Boston Facility, the Company has $200 million in financing available for funding of core loans originated or acquired by the Company and up to an additional $30 million available for the financing of the Company's residual interests in securitization that are generated in securitization transactions in which First Boston acts as lead manager. Funds under the FB Warehouse Line are available at an advance rate of approximately

par and accrue interest based on LIBOR. Funds under the FB Residual Line are available at an advance rate of approximately 50% of the value of the Company's residual interest in securitization and accrued interest based on LIBOR, determined at the sole discretion of the lender. At March 31, 1997, $63.6 million was outstanding under the FB Warehouse Line and $27.4 million was outstanding under the FB Residual Line. The First Boston Facility expires on December 31, 1997.

In June 1997, the Company established a warehouse line of credit with Nikko Financial Services, Inc. (the "Nikko Facility") which is currently in the amount of $150 million. The Nikko Facility may be used to fund core and non- core loans and is secured by a security interest in the loans funded through the facility. Interest accrues on outstanding borrowings based upon the LIBOR rate. If, in any month, the average daily balance of advances under the Nikko Facility is less than $100 million, the Company must pay a non-usage fee equal to one-twelfth of one-quarter of one percent (or .0208%) of the difference between $100 million and the average daily outstanding balance. The advance rate on loans funded under the Nikko Facility is 98%. The maturity date for the Nikko Facility is June 30, 1998 and the term of the facility may be extended at the option of Nikko upon the request of the Company.

Since November 1995, the Company has had a warehouse line of credit with PNC Mortgage Bank (the "PNC Facility"), which is currently in the amount of $20 million. The PNC Facility may be used to fund core and non-core loans and is secured by a security interest in the loans funded through the facility. Interest accrues on outstanding borrowings based on the Federal funds rate. The Company is obligated to pay a monthly fee on one-quarter of one percent (.25%) annualized, if the Company has not utilized over 50% of the commitment amount. The advance rate under the PNC Facility is 98% of the value of the loans that are subject to a purchase commitment, and 95% on uncommitted loans. The PNC Facility matures on June 20, 1997 and may continue to be extended at the option of PNC Mortgage Bank upon the request of the Company.

In March 1997, the Company established a revolving credit facility with La Salle National Bank (the "La Salle Facility"), which is currently in the amount of $20 million. The La Salle Facility may be used to fund core and non-core loans and is secured by a security interest in the loans funded through the facility. Interest accrues on outstanding borrowings based on LIBOR. The advance rate on loans funded through the La Salle Facility is 98%. The maturity date for the La Salle Facility is March 24, 1998, and the term of the facility may be extended at the option of La Salle National Bank upon the request of the Company.

As indicated above, the Company's ability to continue to originate and purchase loans is dependent, in large part, upon its ability to securitize or sell the loans in the secondary market. The value of and market for the Company's loans are dependent upon a number of factors, including general economic conditions, interest rates and government regulations. Adverse changes in such factors may affect the Company's ability to purchase, securitize or sell loans for acceptable prices within a reasonable period of time. A prolonged, substantial reduction in the size of the secondary market for loans of the type originated or purchased by the Company may

and competitive prices and (ii) increase its market share by locating new wholesale brokers in geographic areas not currently serviced by the Company.

Correspondent Lender Loans. In 1996, the Company implemented a correspondent lender loan program through which loans are purchased from independent correspondent lenders with which the Company maintains ongoing relationships. At May 31, 1997, the Company had approximately 160 approved correspondents in approximately 27 states. The correspondent loan purchase program offers an efficient way for the Company to generate loans from additional markets. The Company considers the following factors in connection with the

expansion of its correspondent operations: (i) increasing its market share by locating new correspondent lenders in geographic areas not currently serviced by the Company; (ii) tailoring its marketing strategies and focus on servicing smaller correspondent lenders; and (iii) strengthening its relationships with correspondent lenders by providing an attractive product (which permits the correspondent lenders to diversify its product offerings) at competitive prices. All of the core loans purchased by the Company are acquired on a servicing released basis. The Company purchased approximately $45.6 million from approved correspondent lenders during 1996 (excluding a one time bulk purchase of $136.0 million) and $107.2 million during the three months ended March 31, 1997. See "Certain Transactions."

The Company reviews the reputation, consumer finance lending experience and financial condition of all of its correspondent lenders. Correspondent lenders tend to be financial institutions, mortgage banks or credit unions that meet the Company's minimum net worth and other requirements, but lack the capital, resources or willingness to hold and service portfolios of loans similar to the Company's core loans. The Company's correspondent lenders are usually situated in local markets where they are able to contact the borrowers directly. The correspondent lender prepares the loan application, including supporting documentation, which is then submitted to the Company's correspondent loan underwriting personnel who review each loan package and, in some cases, perform independent employment and credit verifications. The Company typically approves the loan within two business days. If the loan package meets the Company's underwriting criteria, the correspondent loan is closed by the originating lender and purchased by the Company. The originating lender warrants the validity and enforceability of the purchased loans, thereby reducing the risk to the Company of claims for fraud or improper documentation. In the event such warranty is breached, the Company may require the correspondent lender to repurchase such non-conforming loan.

Geographic Distribution of Loans. Although the Company is licensed or registered as a finance lender in 43 states, it has historically concentrated its business in California. While this concentration has declined recently, the Company remains heavily dependent on the California market, which contributed approximately 65.4% of the Company's total core loan volume for the year ended December 31, 1996 and approximately 37.0% during the three month period ended March 31, 1997. The Company intends to continue to expand and geographically diversify its loan purchase and origination activities.

The following table shows geographic distribution of core loan purchases and originations for the periods shown, except for the one time bulk acquisition of $136.0 million in 1996:

	YEAR-ENDED DECEMBER 31,				THREE MONTHS ENDED MARCH 31,	
	1995		1996		1997	
	(DOLLARS ARE IN THOUSANDS)					
State:						
California	$104,745	98.4%	$235,523	65.4%	$ 92,707	37.0%
Ohio	--	--	5,570	1.5	12.570	5.0
Washington	53	0.1	7,363	2.0	9,396	3.7
Florida	--	--	1,278	0.4	9,194	3.7
Indiana	--	--	1,861	0.5	8,576	3.4
Other 38 States	1,613	1.5	108,682	30.2	118,356	47.2
Total (43 States)	$106,411	100.0%	$360,277	100.0%	$250,799	100.0%

MARKETING

The Company's marketing program is designed to establish the Company's core loans as an attractive source of financing for creditworthy borrowers and to generate leads for retail/consumer direct loan originations, while at the same time developing national "brand name" recognition of the "Preferred Credit" name and core loan product in the retail, wholesale and correspondent markets. To achieve this objective, the Company has employed an advertising program of local direct mass mailings and telemarketing, followed and supported by local newspaper, radio and television advertising to engender and develop name recognition.

The Company monitors the response it receives to each of the Company's advertisements to ascertain the effectiveness of its specific programs, which it then uses to establish advertising budgets and strategies for future advertising campaigns. The Company relies upon this data to formulate targeted marketing campaigns directed to borrowers believed to be the most likely

self-employed	
Employment Verification	Telephonic verification required prior to funding
Maximum Cash Directly to Borrower(2)	$25,000

(1) Maximum loan amount ranges from $75,000 for FICO scores of 700 and above to $35,000 for FICO scores between 620 and 639.

(2) Maximum cash that the Company will pay directly to borrowers is $25,000, except in the cases of a previous bankruptcy or a FICO score between 620 and 639, in which case the maximum amount is $5,000.

LOAN SECURITIZATIONS AND SALES

Since June 1996, the Company has sold substantially all of its core loans through its public securitization program in order to enhance profitability. In securitization transactions, investors purchase senior pass-through certificates evidencing undivided beneficial ownership interests in a pool of loans sold to a trust established for that purpose. The principal and interest payments on loans included in the trust are distributed by the trust to the senior pass-through certificate holders after deducting the servicing fee and certain expenses, and then to the Company as beneficial holder of the residual interest in securitization. The Company recognizes a gain on the sale of loans securitized upon the closing of the securitization, but receives payments over the actual life of the loans securitized. The residual interest in securitization represents, over the estimated life of the loans, the excess of the weighted average interest rate on the pool of loans sold over the sum of the investor pass-through rate, normal servicing fee and the monoline insurance fee. The net present value of that excess (determined based on certain prepayment and loss assumptions) less transaction expenses is recorded as gain on sale at the time of the closing of the securitization.

The Company conducted two securitizations in 1996, referred to as 1996-1 and 1996-2 and one securitization in the first quarter of 1997 referred to as 1997-1. Of the core loans originated or acquired during 1996 and the three months ended March 31, 1997 by the Company, 51.7% and 100%, respectively, were sold in securitization transactions. The Company securitized an aggregate of $256.7 million of loans in 1996, of which $41.5 million were sold in the 1996-1 private securitization transaction during the second and third quarters of 1996 and $215.2 million were sold in the 1996-2 public securitization transaction during the fourth quarter of 1996. During the three months ended March 31, 1997, $230.6 million of core loans were sold in securitization transactions. Although the Company will not complete a securitization transaction

in the second quarter of 1997, the Company currently intends to complete regular securitization transactions, either through private placements or in public offerings; however, there can be no assurance that it will be able to do so. The Company retains the servicing rights (collecting loan payments and handling borrower defaults) to all of the loans it securitizes, and has an agreement with Advanta to subservice its servicing portfolio. See "--Servicing Operations."

The Company also brokers or sells substantially all of its non-core loans. The Company does not retain any servicing rights with respect to non-core loans. During 1996 and the three months ended March 31, 1997, the Company originated $100.6 million and $0 million, respectively, of non-core loans. The Company expects that the volume of non-core loans originated or acquired by the Company will continue to decrease substantially in the future as the Company continues to focus its efforts and resources on originating and purchasing core loans.

The Company purchased credit enhancements for the senior interests in the form of insurance policies provided by a monoline insurance company, and, as a result, the senior interests in each trust received a rating of "Aaa" from Moody's Investor Service, Inc. and "AAA" from Standard & Poor's Ratings Group. In future periods, the Company expects to modify the structure of its securitizations by eliminating the use of insurance policies as a means of credit enhancement and providing credit enhancement in the form of a combination of cash reserve accounts and the retention of additional credit risk by the Company.

The documents governing the Company's securitization program require that the Company establish levels of overcollateralization through application of excess interest spread distributions in order to reduce the principal balances of the senior interests issued by the related trust. The Company's interest in the overcollateralized amount is reflected in the Company's Consolidated Financial Statements as a portion of "residual interest in securitization." To the extent that borrowers default on the payment of principal or interest on the loans, default losses will reduce the overcollateralization to the extent that funds are available and will result in a reduction in the value of the net interest receivable held by the Company. The overcollateralization account will thereafter be replenished from excess interest spread distributions, to the extent required by each securitization pooling and servicing agreement. If payment defaults exceed the amount of overcollateralization, as applicable, the monoline insurance company guarantee will pay any further losses experienced by holders of the senior pass-through certificates. The residual interest in securitization will not be paid until the insurer and the trust are repaid for any losses.

The Company may be required either to repurchase or to replace loans that do not conform to the representations and warranties made by the Company in the pooling and servicing agreements entered into when the loans are pooled and securitized. To the extent these nonconforming loans breach a warranty made by the correspondent lender or wholesale broker, the Company may require the correspondent lender or wholesale broker to repurchase the nonconforming loan or indemnify the Company against losses. However, no assurance can be given that any correspondent lender or broker will be able to repurchase such nonconforming loan or satisfy its indemnification obligations.

In June 1996, the Company issued its first asset backed security collateralized by second lien mortgage loans through its subsidiary, Preferred Mortgage SPC Funding Corp. Preferred Mortgage Asset-Backed Certificates, Series 1996-1, consisted of several classes of certificates. Class A Certificates have an initial aggregate principal balance of $41.5 million and were offered through a private offering. The Certificates were structured under the REMIC tax treatment, with credit enhancement and overcollateralization requirement from 3.5% initially to 8.5%. The Company retained the interest in the overcollateralization.

In December 1996, the Company conducted its second securitization, Series 1996-2, with an initial aggregate principal balance of $280 million through a public offering. Of the initial $280 million, $210 million was settled immediately and the remaining $70 million was settled in January and February, 1997. The initial required overcollateralization was 2.38% with a target of 8.8%. The following table provides certain additional details on the certificates distributed in the second securitization:

CLASS/RATING	WEIGHTED AVERAGE LIFE (YRS)	PASS THROUGH RATES	BOND EQUIVALENT YIELD	CLASS PRINCIPAL BALANCES	% OF OFFERED CERTIFICATES	PURCHASE PRICE	% OF CLASS PRINCIPAL BALANCE
A-1/AAA/Aaa	1.00	6.4%	6.0%	$ 80,200,000	28.7%	$ 80,163,181	100.0%
A-2/AAA/Aaa	2.14	6.3	6.2	29,800,000	10.6	29,790,755	100.0
A-3/AAA/Aaa	3.10	6.4	6.3	43,700,000	15.6	43,685,076	100.0
A-4/AAA/Aaa	5.02	6.6	6.6	59,800,000	21.4	59,779,093	100.0
A-5/AAA/Aaa	7.15	7.0	7.0	16,300,000	5.8	16,291,208	100.0
A-6/AAA/Aaa	10.49	7.2	7.2	50,200,000	17.9	50,165,164	100.0
Total/Wtd. Avg.	4.37	6.8%	6.8%	$280,000,000	100.0%	$279,874,477	

In March 1997, the Company conducted its third securitization, Series 1997- 1, with an initial aggregate principal balance of $200 million through a public offering. Of the initial $200 million, $154.2 million was settled immediately and the remaining $45.8 million was settled in April, 1997. The initial required overcollateralization was 3.0% with a target of 9.6%. The following table provides certain additional details on the certificates distributed in the third securitization:

WEIGHTED AVERAGE LIFE (YRS)	PASS THROUGH RATES	BOND EQUIVALENT YIELD	CLASS PRINCIPAL BALANCES	% OF OFFERED CERTIFICATES	PURCHASE PRICE	% OF CLASS PRINCIPAL BALANCE
A-1/AAA/Aaa			$ 47,800,000	23.9%	$ 47,598,698	100.0%
.96	6.2%	6.3%				
A-2/AAA/Aaa			29,500,000	14.8	29,485,524	100.0
2.16	6.7	6.6				
A-3/AAA/Aaa			23,200,000	11.6	23,196,269	100.0
3.08	6.9	6.8				
A-4/AAA/Aaa			50,600,000	25.3	50,594,722	100.0
4.87	7.2	7.1				
A-5/AAA/Aaa			11,500,000	5.7	11,494,551	100.0
7.18	7.4	7.4				
A-6/AAA/Aaa			37,400,000	18.7	37,396,374	100.0
10.65	7.6	7.6				
Total/Wtd. Avg			$200,000,000	100.0%	$199,766,138	
4.54	7.3%	7.3%				

The following table provides certain delinquency, bankruptcy, curtailment and prepayment information for each of the Company's securitization trusts, prior to any potential recoveries, as of March 31, 1997:

DELINQUENCY TABLE AS OF MARCH 31, 1997
(DOLLARS IN THOUSANDS)

	1996-1		1996-2		1997-1	
	PRINCIPAL BALANCE	% OF TOTAL LOANS	PRINCIPAL BALANCE	% OF TOTAL LOANS	PRINCIPAL BALANCE	% OF TOTAL LOANS
Current	$37,502	96.17%	$274,288	97.94%	$156,201	98.65%
Delinquency:						
30-59 days	509	1.31%	2,390	0.85%	1,908	

1.20%						
60-89 days.....	180	0.46	684	0.24	98	
0.06						
90+ days.....	370	0.95	1,486	0.53	--	
0.00						
Total.....	1,059	2.72%	4,560	1.62%	2,006	
1.26%						
Total Pool Balance...	$38,993	100.00%	$280,068	100.00%	$158,345	
100.00%						

(1) Cumulative totals since June 1996 for 1996-1 and December 1996 for 1996-2 and March 1997 for 1997-1.

(2) As a percentage of original pool balance.

(3) Including a $511,000 gross default loss during the first quarter of 1997 (14 loans).

Based upon existing performance data reviewed by the Company, management believes that a majority of all loans more than 90 days delinquent will eventually become default losses. The documents governing the Company's securitization transactions generally do not permit the Company to recognize a default loss on its delinquent loans until the loan is 180 days or more delinquent. Accordingly, while default losses on loans over 90 days delinquent are expected, the losses will only be recognized at such time as the loan becomes 180 days or more contractually delinquent. Of all loans 90 days or more delinquent at March 31, 1997, $569.9 or 19 loans were from 90 to 119 days delinquent, $542.8 or 17 loans were from 120 to 149 days delinquent and $743.3 or 19 loans were from 150 to 179 days delinquent.

As of March 31, 1997, the Company had recognized default losses on 14 loans having an aggregate principal balance of $511,000, all of which were originally included in the Company's 1996-1 securitization transaction. As the Company's pools season and the volume of loans originated or purchased by the Company increases, the Company anticipates that the dollar volume of delinquencies and default losses (both on an absolute basis and as a percentage of the principal amount of loans securitized) will increase. Under the documentation for the Company's securitization transactions, the Company is required to recognize default losses on 100% of the net principal balance of any loans 180 days or more delinquent, without regard to any potential recovery that may be available upon liquidation. While the Company seeks to liquidate its defaulted loans, any recovery would be reflected in periods following the period during which the loss is recognized and reduce the overall losses in the later period. While the Company expects to be able to realize some recovery on its defaulted loans, the Company does not expect such recoveries to have a material impact on the Company's financial condition or results of operations. In calculating the value of its residual interest in securitization, the Company assumes that recoveries following a default loss will be zero.

The consumer finance market is highly competitive. One of the primary distinctions among market participants is type of loan products offered. The Company competes with a number of finance companies providing financing programs to individuals who cannot qualify for traditional home equity financing due to a lack of equity in their homes. To a lesser extent the Company competes with commercial banks, savings and loan associations, credit unions, insurance companies and captive finance arms of major manufacturing companies that apply more traditional lending criteria to the consumer credit approval process. Many of these competitors or potential competitors are substantially larger and have significantly greater capital and other resources than the Company. In the future, the Company may also face competition from government-sponsored entities, such as Fannie Mae and Freddie Mac.

REGULATION

The operations of the Company are subject to extensive regulation, supervision and licensing by federal, state and local government authorities. Regulated matters include, without limitation, loan origination, credit activities, maximum interest rates and finance and other charges, disclosure to customers, the terms of secured transactions, the collection, repossession and claims handling procedures utilized by the Company, multiple qualification and licensing requirements for doing business in various jurisdictions and other trade practices.

The Company's loan origination activities are subject to the laws and regulations in each of the states in which those activities are conducted. The Company's activities as a lender are also subject to various federal laws including the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act and the Fair Credit Reporting Act.

The Truth in Lending Act ("TILA") and Regulation Z promulgated thereunder contain disclosure requirements designed to provide consumers with uniform, understandable information with respect to the terms and conditions of loans and credit transactions in order to give them the ability to compare credit terms. TILA also guarantees consumers a three day right to cancel certain credit transactions including loans of the type originated by the Company. Management of the Company believes that it is in substantial compliance in all material respects with TILA.

The Company is also required to comply with the Equal Credit Opportunity Act of 1974, as amended ("ECOA"), which prohibits creditors from discriminating against applicants on the basis of race, color, sex, age or marital status. Regulation B promulgated under ECOA restricts creditors from obtaining certain types of information from loan applicants. It also requires certain disclosures by the lender regarding consumer rights and requires lenders to advise applicants of the reasons for any credit denial. In instances where the applicant is denied credit or the rate or charge for loans increases as a result of information obtained from a consumer credit agency, another statute, the Fair Credit Reporting Act of 1970, as amended, requires lenders to supply the applicant with the name and address of the reporting agency. The Company is also subject to the Real Estate Settlement Procedures Act and is required to file an annual report with the Department of Housing and Urban Development pursuant to the Home Mortgage Disclosure Act.

In addition, the Company is subject to various other federal and state laws, rules and regulations governing, among other things, the licensing of, and procedures that must be followed by, mortgage lenders and servicers, and disclosures that must be made to consumer borrowers. Failure to comply with these laws may result in civil and criminal liability and may, in some cases, give consumer borrowers the right to rescind their mortgage loan transactions and to demand the return of finance charges paid to the Company.

In the course of its business, the Company may acquire properties securing loans that are in default through foreclosure proceedings. There is a risk that hazardous or toxic waste could be found on such properties. In such event, the Company could be held responsible for the cost of cleaning up or removing such waste, and such cost could exceed the value of the underlying properties.

Because the Company's business is highly regulated, the laws, rules and regulations applicable to the Company are subject to regular modification and change. There are currently proposed various laws, rules and regulations which, if adopted, could impact the Company. There can be no assurance that these proposed laws, rules and regulations, or other such laws, rules or regulations, will not be adopted in the future which could make compliance much more difficult or expensive, restrict the Company's ability to originate, broker, purchase or sell loans, further limit or restrict the amount of commissions, interest and other charges earned on loans originated, brokered, acquired or sold by the Company, or otherwise adversely affect the business or prospects of the Company.

EMPLOYEES

As of May 31, 1997, the Company employed 351 persons. Of the total number of employees at such date, 207 were located at the Company's headquarters in Irvine, California and 144 in the Company's branch offices. None of the Company's employees is subject to a collective bargaining agreement. The Company believes that its relations with its employees are good.

PROPERTIES

The executive and administrative offices of the Company are located at 3347 Michelson Drive, Irvine, California, and consist of approximately 47,000 square feet. The lease on these premises extends through March 31, 2002, and the current annual rental is approximately $1,369,000.

The Company also leases space for its branch offices. The Company has been able to maintain low overhead expenses by leasing space in office complexes located in accessible, but non-prime locations. These facilities aggregate approximately 22,000 square feet, with an annual aggregate base rental of approximately $342,000. The offices range in size from 1,200 to 4,000 feet with lease terms typically ranging from three to five years. In general, the leases expire between 1997 and 2001, and several lease agreements contain options to extend the term of the lease.

by the Company at a premium of 6.4%. The Company considers the sale and repurchase as separate transactions and, although the net result of such transactions was an increase in the cost basis of the loans sold and repurchased, the Company believes that such transactions were on terms no less favorable to the Company than those that could have been obtained from an unaffiliated third party. There was no obligation on the part of the Company to buy these loans from CSFB Mortgage and CSFB Mortgage was marketing these loans to third parties generally. For a description of the various agreements between the Company and CSFB Mortgage, see "Management's Discussion and Analysis of Financial Condition and Results of Operations--Liquidity and Capital Resources" and "Description of Capital Stock--Warrants."

PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth certain information regarding the beneficial ownership of the Company's Common Stock as of May 31, 1997 and as adjusted to reflect the sale of shares of Common Stock offered hereby, for (i) each person who is known to the Company to be the beneficial owner of more than 5% of the outstanding Common Stock, (ii) each of the Company's directors, (iii) each of the Named Executive Officers, (iv) all directors and executive officers of the Company as a group, and (v) each Selling Stockholder. The address of each person listed is in care of the Company, 3347 Michelson, Irvine, California 92012, unless otherwise set forth below such person's name.

NAME OF BENEFICIAL OWNER	SHARES BENEFICIALLY OWNED PRIOR TO OFFERING(1) NUMBER OF SHARES	PERCENT OF CLASS	SHARES BEING OFFERED	SHARES BENEFICIALLY OWNED AFTER THE OFFERING(2) NUMBER OF SHARES	PERCENT OF CLASS
Todd A. Rodriguez	6,028,452(3)	50.1%		6,028,452(3)	35.4%
Walter P. Villaume	6,022,452(4)	50.1%		6,022,452(4)	35.4%
Credit Suisse First Boston Mortgage Capital Corp.	1,897,800(5)	13.7%		1,897,800(5)	10.0%
Merrill Lynch Mortgage Capital, Inc.	104,998(5)	1.4%	135,000	29,998(5)	*
Merrill Lynch, Pierce, Fenner & Smith Incorporated	109,932(5)	*	90,000	19,932(5)	*

Terrance J. Wolfe.....	569,058(6)	4.5%	569,058(6)
3.2%			
Li-Lin Ko.....	59,970(6)	*	59,970(6)
*			
Jo Ann Niffenegger.....	15,808(7)	*	15,808(7)
*			
James T. Heaton.....	-- (8)	*	-- (8)
*			
Robert K. George.....	-- (8)	*	-- (8)
*			
All executive officers and directors as a group (8 persons).....	12,711,548(9)	100%	12,711,548(9)
71.8%			

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* Less than one percent.

(1) Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission that deem shares to be beneficially owned by any person who has or shares voting or investment power with respect to such shares. Unless otherwise indicated, the persons named in this table have sole voting and sole investment power with respect to all shares shown as beneficially owned, subject to community property laws where applicable. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of Common Stock subject to options or warrants held by that person that are currently exercisable or exercisable within 60 days of the date of this Prospectus are deemed outstanding. Such shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of each other person. Accordingly, the beneficial ownership percentages shown above exceed 100%.

(2) Assumes the exercise by Merrill Lynch Mortgage Capital, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively referred to as "Merrill Lynch"), concurrently with this offering, of warrants to purchase an aggregate of 225,000 shares of Common Stock and the sale of such shares in this offering. Also assumes no exercise of the Underwriters' over- allotment option. If the Underwriters' over-allotment option is exercised in full, (i) Merrill Lynch will sell an additional 49,830 shares of Common Stock, (ii) Credit Suisse First Boston Mortgage Capital Corporation will sell shares of Common Stock and (iii) , , and will sell , , and shares of Common Stock, respectively.

(3) Includes 28,452 shares of Common Stock underlying stock options that are currently exercisable.

(4) Includes 28,452 shares of Common Stock underlying stock options that are currently exercisable.

(5) Consists entirely of shares of Common Stock underlying warrants that are currently exercisable.

(6) Consists entirely of shares of Common Stock underlying options that are currently exercisable.

(7) Includes 15,808 shares of Common Stock underlying stock options that are currently exercisable. Excludes 31,616 shares of Common Stock underlying stock options that are outstanding, but not exercisable.

(8) Excludes 10,000 shares of Common Stock underlying stock options that are outstanding, but

not exercisable.
(9) Includes 717,548 shares of Common Stock underlying options that are currently exercisable.

DESCRIPTION OF CAPITAL STOCK

The total number of shares that the Company is authorized to issue is 60,000,000, consisting of 50,000,000 shares of Common Stock, par value $0.001 per share, and 10,000,000 shares of Preferred Stock, par value $0.001 per share. At March 31, 1997, the Company had two holders of record of the Company's capital stock. The following statements are brief summaries of certain provisions relating to the Company's capital stock.

COMMON STOCK

The holders of Common Stock are entitled to one vote for each share held of record on all matters on which the holders of Common Stock are entitled to vote. The holders of Common Stock are entitled to receive ratably dividends when, as and if declared by the Board out of funds legally available therefor. In the event of liquidation, dissolution or winding up of the Company, the holders of Common Stock are entitled, subject to the rights of holders of Preferred Stock issued by the Company, if any, to share ratably in all assets remaining available for distribution to them after payment of liabilities and after provision is made for each class of stock, if any, having preference over the Common Stock.

The holders of Common Stock have no preemptive or conversion rights and they are not subject to further calls or assessments by the Company. There are no redemption or sinking fund provisions applicable to the Common Stock. The outstanding shares of Common Stock are, and the Common Stock issuable pursuant to this Prospectus will be, when issued, fully paid and nonassessable.

PREFERRED STOCK

The Board has the authority to issue the authorized and unissued Preferred Stock in one or more series with such designations, rights and preferences as may be determined from time to time by the Board. Accordingly, the Board is empowered, without stockholder approval, to issue Preferred Stock with dividend, liquidation, conversion, voting or other rights which adversely affect the voting power or other rights of the holders of the Company's Common Stock. In the event of issuance, the Preferred Stock could be utilized, under certain circumstances, as a way of discouraging, delaying or preventing an acquisition or change in control of the Company. The Company does not currently intend to issue any shares of its Preferred Stock.

WARRANTS

In connection with entering into the First Boston Facility, on October 2, 1996, the Company issued warrants to purchase 1,687,554 shares of Common Stock to CSFB Mortgage at an

exercise price of $2.21 per share. The Company issued warrants to purchase 210,246 additional shares of Common Stock at an exercise price of $2.21 to CSFB Mortgage on December 17, 1996, in consideration for amending the First Boston Facility. Such warrants are fully exercisable and expire on October 2, 2111 and December 17, 2111, respectively.

The Company issued warrants to purchase 274,830 shares of Common Stock to Merrill Lynch at an exercise price of $2.18 per share on December 6, 1996. Such warrants are fully exercisable and expire on December 6, 2111.

On December 31, 1996, the Company issued warrants to purchase 47,424 shares of Common Stock to John Heatly at an exercise price of $2.25 per share. Such warrants vest in three equal installments on each of June 1, 1997, 1998 and 1999 and expire on December 31, 2106.

ANTI-TAKEOVER PROVISIONS

The Company's Articles of Incorporation and Bylaws include several provisions which may have the effect of discouraging persons from pursuing non-negotiated takeover attempts. See "Risk Factors--Effect of Certain Charter Provisions and Nevada Law."

REGISTRATION RIGHTS

The holders of warrants to purchase 2,172,630 shares of the Common Stock (including the 225,000 shares being sold by Merrill Lynch in this offering) have been granted certain registration rights by the Company. Such rights include one demand registration right and also piggy-back registration rights which allow the holder to participate, with certain exceptions, in any registration by the Company of its Common Stock for sale under the Securities Act of 1933, as amended.

TRANSFER AGENT

The Company's transfer agent and registrar for its Common Stock is U.S. Stock Transfer Corporation, 1745 Gardena Avenue, Glendale, California 91204- 2991.

SHARES ELIGIBLE FOR FUTURE SALE

Upon completion of this offering, the Company will have 16,994,000 shares of Common Stock outstanding. Of these shares, the 5,000,000 shares of Common Stock offered hereby, will be freely tradeable either without restriction under the Securities Act or without regard to the volume limitations of Rule 144 under the Securities Act by persons other than "affiliates" of the Company. The remaining shares of Common Stock (approximately 11,994,000 shares) were

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

Ex 11

MICHAEL AND SHELLIE GILMOR, et al., Plaintiffs,	Case No. CV100-4263 CC
v.	
PREFERRED CREDIT CORPORATION, INC., et al.,	Division 2
Defendants.	

ORDER CERTIFYING PLAINTIFF CLASS

This matter is before the Court on Plaintiffs' Motion for Order Determining that this Action may be Maintained as a Plaintiffs' Class Action. In support of this Order to certify the class, the Court finds and concludes as follows:

I.

Plaintiffs seek certification of a statewide plaintiff class consisting of all those persons who obtained a second mortgage loan from Defendant Preferred Credit Corporation, Inc. ("Preferred Credit"), secured by Missouri residential real estate, and who may claim damage caused by Preferred Credit's alleged practice of charging certain "loan origination" and other closing costs and fees in violation of Missouri law, specifically Missouri's Second Mortgage Loans Act, §§ 408.231 RSMo., et seq. (the "MSMLA"), during the six (6) year period next preceding the date on which this action was commenced.

A. Michael and Shellie Gilmor

In September 1997, Plaintiffs Michael and Shellie Gilmor obtained a $40,000.00 mortgage loan from Preferred Credit. The Gilmors claim that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Preferred Credit charged the Gilmors

interest of 13.5% per year. In addition, Preferred Credit charged the Gilmors a $3,200.00 "loan origination fee," some 8% of the total loan amount, as well as a "Loan Processing Fee" fee of $335.00, a $125.00 "underwriting fee," a $500.00 "administration/document fee," a $60.00 "appraisal review fee," and a $150.00 "signing fee." Plaintiffs allege that, in doing so, Preferred Creditviolated the MSMLA, particularly § 408.231, because: (1) the loan origination fee was greater than the $800.00 (2%) amount allowed at the time by § 408.231.1(5) RSMo. and/or (2) § 408.231.1(3) RSMo. prohibited Preferred Credit from charging or receiving the loan processing fee, underwriting fee, administration/document fee, appraisal review fee, and signing fee and/or other fees described above.

B. Michael and Lois Harris

In August of 1997, Plaintiffs Michael and Lois Harris obtained a $45,000.00 mortgage loan from Preferred Credit. They claim that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Preferred Credit charged Mr. and Mrs. Harris interest at a rate of 13.99 % per year. In addition, Preferred Credit charged Mr. and Mrs. Harris a $900.00 "mortgage broker fee" and a $3,275.00 "processing/administration fee," together with a $395.00 "loan processing fee," a $125.00 "underwriting fee," a $500.00 "administration/document fee," and a $210.00 "application review/signing fee." Plaintiffs allege that, in doing so, Preferred Credit violated the MSMLA, particularly § 408.231, because § 408.231.1(3) RSMo. prohibited Preferred Credit from charging or receiving the mortgage broker fee, processing/administration fee, loan processing fee, underwriting fee and/or administration/document fee described above.

C. Ted and Raye Ann Varns

In August 1997, Plaintiffs Ted and Raye Ann Varns obtained a $34,000.00 mortgage loan from Preferred Credit. The Varns claim that the loan was a "Second Mortgage Loan" within the

meaning of the MSMLA. For the loan, Preferred Credit charged the Varns interest at a rate of 12.5% per year. In addition, Preferred Credit charged the Varns a $2600.00 "loan origination fee," approximately 7.6% of the total loan amount, as well as a $395.00 "loan processing fee," a $125.00 "underwriting fee," a $500.00 "administration/document fee," a $60.00 "appraisal review fee," and a $200.00 "signing fee." Plaintiffs allege that, in doing so, Preferred Credit violated the MSMLA, particularly § 408.231, because: (1) the loan origination fee was greater than the $680.00 (2%) amount allowed at the time by § 408.231.1(5) RSMo. and/or (2) § 408.231.1(3) RSMo. prohibited Preferred Credit from charging or receiving the loan processing fee, underwriting fee, administration/document fee, appraisal review fee and/or signing fee described above.

D. Leo Parvin

In June 1997, Plaintiff Leo Parvin obtained a $20,000.00 mortgage loan from Preferred Credit. Mr. Parvin claims that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Preferred Credit charged Mr. Parvin interest at a rate of 13.99 % per year. In addition, Preferred Credit charged Mr. Parvin a $400.00 "mortgage broker fee" and a $1,488.42 "processing/administration fee," together with a $125.00 "document preparation fee," a $395.00 "loan processing fee," a $125.00 "underwriting fee," a $190.00 "sub-escrow/UPS/application fee," and a $150.00 "signing fee" that the records show Preferred Credit kept for itself. Plaintiffs allege that, in doing so, Preferred Credit violated the MSMLA, particularly § 408.231, because § 408.231.1(3) RSMo. prohibited Preferred Credit from charging or receiving the mortgage broker fee, processing/administration fee, document preparation fee, loan processing fee, underwriting fee, sub-escrow/UPS/application fee, and/or signing fee described above.

E. The Petition and Plaintiffs' Claims

Plaintiffs Michael and Shellie Gilmor originally filed this action on June 27, 1994. The Court joined the Leo Parvin, Ted and Raye Ann Varns and Michael and Lois Harris as plaintiffs on March 6, 2002. In their Fourth Amended Petition, Plaintiffs assert claims both individually and on behalf of all other Missouri homeowners alleged to have been similarly aggrieved by Preferred Credit's acts (i.e., those Missouri borrowers charged the same type of allegedly unauthorized and/or excessive "loan origination" and other costs and fees in violation of the MSMLA and Missouri law). Among other things, Plaintiffs seek to recover the unlawful fees and costs that they were charged, as well as all of the interest they have paid on their respective second mortgage loan, and a forfeiture of any interest not yet due, a remedy that Plaintiffs claim is expressly made available to them by virtue of the MSMLA, § 408.236 RSMo. Plaintiffs seek the same relief and remedies for the proposed plaintiff class, under both the MSMLA and § 408.562.

F. The Applicable Statute of Limitations

In opposing Plaintiffs' motion to certify, Defendants have urged the Court to find that Plaintiffs' claims are governed by § 516.130(2) RSMo., a 3-year statute of limitations. Plaintiffs, on the other hand, contend that the 6-year statute of limitations contained in § 516.420 RSMo applies. The Court agrees with Plaintiffs.

The 6-year statute of limitations contained in § 516.420 RSMo. applies to "all" lawsuits where the claimant seeks relief (i.e., "to recover any penalty or forfeiture imposed, **or** to enforce any liability created by ... law") from and/or against a "moneyed corporation." The statute provides:

> None of the provisions of sections 516.380 to 516.420 shall apply to suits against **moneyed corporations** or against the directors or stockholders thereof, to recover any

> penalty or forfeiture imposed, **or to enforce any liability created by** the act of incorporation or **any other law**; but **all** such suits shall be brought within six years after the discovery by the aggrieved party of the facts upon which such penalty or forfeiture attached, **or by which such liability was created**.

§ 516.420 RSMo. 2000 (emphasis added).

The named Plaintiffs seek to "enforce a liability" and/or to recover a "penalty or forfeiture" imposed by Missouri law against and from Preferred Credit, a second mortgage lender, and its various assignees. Specifically, the named Plaintiffs seek to recover the unlawful fees and costs that they and the members of the putative plaintiff class were charged for their second mortgage loans, as well as (1) all of the interest that they and any class member paid on their loans, (2) a forfeiture of any interest not yet due, and (3) statutory penalties, punitive damages, and attorneys' fees. Plaintiffs seek this relief both for themselves and for the plaintiff class pursuant to the MSMLA and § 408.562 RSMo.

Because Plaintiffs are seeking to "enforce a liability" and/or to recover a "penalty or forfeiture" imposed by the MSMLA and § 408.562 against and from Preferred Credit, a "moneyed corporation," and its derivatively liable assignees, Plaintiffs' statutory claims are governed by § 516.420 RSMo. The language of the statute is crystal clear: "all" suits "to recover any penalty or forfeiture imposed, or to enforce any liability created by any ... law ... shall be brought within six years after the discovery by the aggrieved party of the facts upon which such penalty or forfeiture attached, or by which such liability was created." § 516.420 RSMo. 2000. Hence, the 6-year statute applies in this case. Cf. Nolan v. Kolar, 629 S.W.2d 661, 663 (Mo. App. 1982) (statute providing for forfeiture of 10% of amount of deed of trust for failure to timely acknowledge satisfaction of deed of trust was subject to § 516.420); Fielder v. Credit Acceptance Corporation, 19 F. Supp.2d 966, 974 (W.D. Mo. 1998) (6-year statute set out in § 516.420 applies to consumer class action against auto loan finance company brought pursuant to

§ 408.562 RSMo.).

II.

Standards for Determining Class Action

Missouri Rule of Civil Procedure 52.08 sets forth the requirements for a Class Action lawsuit. Rule 52.08(a) provides:

> (a) Prerequisite to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.

Once the requirements of Rule 52.08(a) are satisfied, an action may be maintained as a class action under Rule 52.08(b)(3) if:

> [T]he court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:
>
> (A) the interest of the members of the class in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
>
> (D) the difficulties likely to be encountered in the management of a class action.

III.

Class Action Analysis

The analysis required in this case is divided into two parts, which correspond to the separate requirements of Mo. Rule 52.08(a) and (b)(3).

Part I

A. Numerosity

Rule 52.08(a)(1) requires that the proponent of a class action demonstrate that "the class is so numerous that joinder of all members is impracticable." The rule does not require that joinder be impossible; rather, joinder of all members is impracticable when the procedure "would be difficult or inconvenient." Jackson v. Rapps, 132 F.R.D. 226, 230 (W.D. Mo. 1990); Esler v. Northrop Corp., 86 F.R.D. 20, 33-34 (W.D. Mo. 1979). "A showing of strong litigational inconvenience in the prosecution of claims separately or jointly by the proposed class members is sufficient." Esler, 86 F.R.D. at 34.[1]

Rule 52.08(a) does not contain any explicit numerical limitations. See Bradford v. Agco Corp., 187 F.R.D. 600, 604 (W.D. Mo. 1999). Nor does the rule require precise enumeration of the class size before the action can proceed as a class action. Morgan v. United Parcel Service of America, Inc., 169 F.R.D. 349, 355 (E.D. Mo. 1996); see Jackson, 132 F.R.D. at 230. It is permissible to estimate class size. Fielder v. Credit Acceptance Corp., 175 F.R.D. 313 (W.D. Mo. 1997) (between 120 and 160 members). However, impracticability of joinder has generally been found where the class is composed of more than 40 persons. Esler, 86 F.R.D. at 33 ("the difficulty inherent in joining as few as 25 or 30 class members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of 23(a)(1) on that fact alone") (quoting H. Newberg, Class Actions § 1105b (1977 & Supp. 1978)); Senn v. Manchester Bank of St. Louis, 583 S.W.2d 119, 132-33 (Mo. banc 1979)

[1] Mo.R.Civ.P. 52.08 is identical to Federal Rule 23. Consequently, Missouri courts consider interpretations of Rule 23 in interpreting Rule 52.08. Ralph v. American Family Mut. Ins. Co., 809 S.W.2d 173, 174 (Mo.App. WD 1991).

overruled on other grounds, Harman v. Davis, 651 S.W.2d 134, 136 (Mo. 1983) (trial court property permitted cause to proceed as class action with class comprised of approximately 80 members); Paxton v. Union Nat. Bank, 688 F.2d 552 (8th Cir. 1982) (16 members); Bradford, 187 F.R.D. at 600 (W.D. Mo. 1999) (65 members); Morgan, 169 F.R.D. 349 (possibly 19 members).[2]

The Court may also consider a number of additional factors when determining impracticability of joinder, including the nature of the action, the inconvenience of trying individual suits, geographical distribution, the size of the claims of the individual class members, the ability of individual litigants to institute an action on their own behalf "and any other factor relevant to the practicability of joining all the putative class members. Paxton, 688 F.2d at 559-60;. Esler, 86 F.R.D. at 33. The fact that all class members are located in the same state does not defeat certification. In fact, having all the plaintiffs in close proximity actually substantiates the need for certification. Bradford, 187 F.R.D. at 604 ("If the same witnesses traveled to the same courthouse to testify about the same [facts] in multiple cases, then judicial resources would be wasted").

Rule 52.08(a)(1) is Satisfied

The Court finds as a fact that Preferred Credit has made no less than 416 "high interest" second mortgage home loans secured by Missouri real estate since June 1994. The Court also finds that as to the 41 borrowers from whom Plaintiffs received loan documents, as to all 41 loans Preferred Credit charged a "loan origination" or other fees and costs that appear to have either exceeded the lawful permissible amount allowed by § 408.232.1(5) or to be fees and

[2] Though a specific number is not required, Professor Newberg's survey of court rulings on the numerosity issue concludes that any class consisting of 40 or more members presumptively fulfills the numerosity requirements. Newberg on Class Actions § 3.05 (3d Ed. 2001).

charges not mentioned by § 408.232.1(3). These 416 loans may also pertain to property in a number of counties throughout the state of Missouri, making joinder of all class members in a single action more problematic and costly. Despite the number of loans, however, the parties and the Court can identify the particular members of the Class by name and address and in fact the Plaintiffs have obtained that information through a county by county search. Under the above facts, the Court concludes that the numerosity requirement of Mo. Rule 52.08(a) is satisfied.

B. Commonality

Mo. Rule 52.08(a)(2) requires a showing of the existence of "questions of law or fact common to the class." This threshold of "commonality" is not high. Winkler v. DTE, Inc., 205 F.R.D. 235, 240 (D. Ariz. 2001) ("[t]he standard for commonality is minimal because 'all that is required is a common issue of law or fact'"). This prong of the rule is satisfied when the "legal question 'linking the class members is substantially related to the resolution of the litigation.'" Fielder v. Credit Acceptance Corp., 175 F.R.D. 313, 319-20 (W.D. Mo. 1997) (quoting Paxton, 688 F.2d at 561); see Senn, 583 S.W.2d at 132 (commonality existed where legal theory and underlying agreements were the same).

Rule 52.08(a)(1) is Satisfied

The causes of action stated in the Second Amended Petition allege claims common to the members of the Class. These claims raise questions of law or fact common to the Class because they all pertain to each member's loan and the application of the MSMLA to such loans. The Court further finds that the class issues sufficiently predominate so as to justify use of a class action in this case under Mo. Rule. 52.08.

It is not for the Court to determine on certification whether the common questions guarantee a determination of liability. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178, 94 S.Ct. 2140 (1974).

The question, instead, is whether the legal issues and the factual underpinnings of any decision are common to all members of the class. Id.; Jackson v. Rapps, 132 F.R.D. 226, 230 (W.D. Mo. 1990) ("The Court may go beyond the pleadings in determining whether class action prerequisites have been met, but may not review the sufficiency or substantive merits of [the plaintiff's claims and factual] allegations"). Here, both the liability and the damages issues presented by Plaintiffs' claims have a common nucleus.

The MSMLA claims advanced by Plaintiffs are statutorily based, thus providing common questions of law with respect to the interpretation of the statute. Violation of the statute grants specific remedies and carries specific penalties. Neither the interpretation of the statute, which the parties dispute, nor the methodology for application of the statutory remedy will vary between class members. Should there be a finding of liability, each class member may receive a different amount based upon his or her loan, but the *method* of determining the amount will not vary. Plaintiffs have alleged that it was a common procedure of Preferred Creditto charge the same type of "loan origination" and other fees and costs to all its borrowers, thus further reducing the prospect of differences among class members' claims. Plaintiffs' claims are based upon a common interpretation of the limits imposed on such fees by the MSMLA. The determination of that issue will effect the named and unnamed class members alike. If, as alleged, Preferred Credit employed a common practice with respect to the subject fees and costs it charged its many borrowers, the question of whether those fees violated the MSMLA will be common to all class members.

The Court has also carefully considered the issue of damages in this action. As many courts recognize, when a plaintiff establishes an issue of law common to all class members, the possibility of individualized damages cannot bar class certification. In re Visa Check/Master

Money Antitrust Litigation, 280 F.3d 124, 139 (2nd Cir. 2001); Bertulli v. Indep. Ass'n of Cont'l Pilots, 242 F.3d 290, 298 (5th Cir. 2001); Blackie v. Barrack, 524 F.2d 891, 905 (9th Cir. 1975); Gold Strike Stamp Co. v. Christensen, 436 F.2d 791, 796,798 (10th Cir. 1970). The issue of damages, therefore, must be considered in the context of whether the common issues of law or fact predominate over any collateral issue as to individualized damages. Id. Thus, individualized issues of damages are relegated to secondary status in making the decision on whether or not common issues predominate. To the extent that each borrower may have a claim for a different amount depending on the amount of his or her loan, or whether or not the loan has been repaid, these distinctions are not sufficient to outweigh the predominance of the common elements of the damage issues; nor will the calculation of those damages pose an insurmountable problem for the management of this action as a class action.

Based upon the foregoing, the Court finds as a fact and concludes as a matter of law that a "class" within the meaning of Mo. Rule 52.08 exists and that there likewise exist common issues of law and fact with respect to that Class. The Court further concludes as a matter of law that the class issues sufficiently predominate to justify use of a class action in this case under Mo. Rule 52.08.

C. Typicality

Rule 52.08(a)(3) requires that the claims of the class representatives be "typical of the claims ... of the class." The threshold for establishing typicality is also low. DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1174 (8th Cir. 1995). "The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." Id. Typicality does not require that the claims of the class members be identical. Id.; Fielder, 175 F.R.D. at 320. Typicality is frequently demonstrated by showing that the plaintiff has the same

or similar grievances as the other members of the class. Paxton, 688 F.2d at 562; Donaldson v. Pillsbury Co., 554 F.2d 825, 830 (8th Cir.), cert. denied, 434 U.S. 856 (1977)). "The court must be shown that the representative is not alone." Paxton, 688 F.2d at 562.

Rule 52.08(a)(3) is Satisfied

The action also satisfies the typicality requirement. The named Plaintiffs' claims arise out of the same course of conduct as the Class claims; Plaintiffs have no conflict of interest; and their claims are based upon the same legal theories, which will apply to the Class in general. The named Plaintiffs' claims also arise out of the same course of conduct, i.e., the alleged violation of § 408.233.1, and are based on the same legal theories as those of the members of the Class. Plaintiffs, like the members of the Class, allege that they were aggrieved in the first instance by the conduct of the same and single mortgage lender, Preferred Credit, in precisely the same way -- they were all charged unauthorized and/or excessive fees and costs in connection with their second mortgage loans. This is true of the Gilmors, whose claims are not "atypical" simply because they paid off their loan. Nor does the Court find at this time that the Gilmors are "atypical" because of their bankruptcy and they shall remain in this case as plaintiffs. Thus, the Court concludes that the typicality requirement of Rule 52.08(a) is also met.

D. Adequacy of Representation

The requirement of Rule 52.08(a)(4) is satisfied if it appears that (1) the named plaintiffs' interests are not antagonistic to those of the class they seek to represent and (2) the named plaintiffs' attorneys are qualified, experienced and generally able to conduct the litigation. Paxton, 688 F.2d at 562-63; Bradford, 187 F.R.D. at 605; Fielder, 175 F.R.D. at 320. The existence of these elements is to be presumed, absent proof to the contrary. See Morgan, supra, 169 F.R.D. at 357. As the court explained in Cook v. Rockwell Int'l Corp., 151 F.R.D. 378 (D.

Colo. 1993):

> [A]dequate representation presumptions are usually invoked in the absence of contrary evidence by the party opposing the class. On the issue of no conflict with the class, one of the tests for adequate representation, the presumption fairly arises because of the difficulty of proving negative facts. On the issue of professional competence of counsel for the class representative, the presumption fairly arises that all members of the bar in good standing are competent. Finally, on the issue of intent to prosecute the action vigorously, the favorable presumption arises because the test involves future conduct of persons, which cannot fairly be prejudged adversely.

Id. at 386 (quoting from Newberg on Class Actions, § 7.24 at 7-80)

Rule 52.08(a)(4) is Satisfied

The named Plaintiffs in this action seek money damages and injunctive relief from Preferred Credit and its assignees as a result of its unlawful acts. Given this identity of claims, there is no potential for conflicting interests in this action. The named Plaintiffs seek the same relief as the Class based on the same legal theories.

The overwhelming focus of Defendants' effort to oppose certification has been to attack the adequacy of Class counsel. This attack does not go to the competency or experience of counsel but is limited to the allegation that they are inadequate for allegedly having unethically solicited class representatives. The Court has considered those facts and the legal authorities presented by both sides on this issue, both in this and the other second mortgage cases pending before it, and finds that Class counsel is more than adequate as the allegation of unethical solicitation is factually unfounded and legally deficient. There is simply no evidence that Brian Thomas, consulting expert for Plaintiffs, was paid to refer potential class representatives to either Walters Bender Strohbehn & Vaughan or Lawson & Fields (n/k/a Lawson, Fields, McCue, Lee & Campbell) or that Mr. Thomas has any financial interest in the outcome of this lawsuit. The Court also incorporates and restates herein its findings and conclusions as expressed with regard

to the issue of adequacy on December 11, 2002 in Couch v. SMC Lending, Case No. CV100-4332CC.

As in Couch, the Court notes with approval the authorities cited by Plaintiffs, which instruct that the purpose behind the ethical cannons is subverted when used as a weapon by adversaries. See Terre Du Lac Property Owners Ass'n, Inc. v. Shrum, 661 S.W.2d 45, 48 (Mo. App. E.D. 1983); Smith v. Kansas City Southern Railway Co., 2002 WL 1393697 (Mo. App. W.D. June 28, 2002, mot. for reh'g and/or transfer to Sup. Ct. denied, as modified, Oct. 1, 2002) at *8 n. 8; State ex rel. Wallace v. Munton, 989 S.W.2d 641, 645 (Mo. App. S.D.1999). Indeed, as it held in Couch, the Court believes that this forum is not the proper place to assert an ethical complaint as the alleged ethical violation has nothing to do with the competence and experience of class counsel and their corresponding ability to fairly and adequately represent the class. Rather, any such complaint is more properly placed before the authority with jurisdiction to investigate and determine such matters, i.e. the Office of Chief Disciplinary Counsel of the Missouri Bar.

Additionally, the cases relied upon by Defendants on the issue of solicitation of class plaintiffs are obsolete. Based on protections under the First Amendment and the general evolution of the standards relating to solicitation of clients, attorneys today may directly solicit potential class representatives. Mo. Rules 4-7.1-7.3(a)(eff. 1/1/86) (permitting direct solicitation with persons known to need legal services of the kind provided by the lawyer) and 4-1.8(e)(eff. 1/1/86) (permitting a lawyer to advance court costs and expenses of litigation); see also Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626, 647, 105 S.Ct. 2265, 85 L.Ed 2d 652 (1985); Kennedy v. United HealthCare of Ohio, Inc., 206 F.R.D. 191 (S.D. Ohio 2002); Rand v. Monsanto Co., 926 F.2d 596, 600 (7th Cir. 1991).

The Court also rejects any contention by Defendants that a conflict of interest exists between Class counsel and the class given the agreement by counsel to pay the costs and expenses associated with the litigation. See Mo. Rule 4-1.8(e) ("a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter"); Rand, 926 F.2d at 600 (the then recently adopted "Model Rule 1.8(e) allows a lawyer [in a class action lawsuit] to pick up the tab for costs if the suit is unsuccessful"); Moye v. Credit Acceptance Corp., 2001 WL 589101, at *4 (Conn. 2001) (in light of Model Rule 1.8(e), "plaintiffs' arrangement with their [class] counsel whereby their counsel will advance the costs of litigation does not demonstrate inadequacy").

Defendants also claim that the named Plaintiffs are not adequate to represent the Class because they are not familiar with their claims and have abdicated control of the case to counsel. The Court rejects these arguments as well. The law does not require that a class representative know every detail of their claim or be familiar with the facts of the other class members' claims. Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 366, 86 S.Ct. 845, 847-48, 15 L.Ed.2d 807 (1966); Lewis v. Curtis, 671 F.2d 779, 789 (3rd Cir. 1982). All that is required is that the Class plaintiffs have a fundamental understanding of their claims and a willingness to vigorously pursue the Defendants and rely on counsel's expertise. Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 61-62 (2nd Cir.2000). A review of the testimony of the named class representatives reveals that each understands their claims and their responsibility to the other Class members, and that each has and intends to continue to pursue such claims vigorously. Nor have these Class representatives abdicated control of the litigation to their counsel. They are appropriately relying on counsel to prepare and present their claims, as is typical in class actions and, indeed, in litigation in general; but the Court has seen nothing to indicate that any of the

representatives are anything but committed to pursing their claims. Bradford v. AGCO Corp., 187 F.R.D. 600, 605 (W.D. Mo. 1999); Nathan Gordon Trust v. Northgage Exploration, Ltd., 148 F.R.D. 105, 107 (S.D.N.Y. 1993).

Defendants also claim that the Class representatives are "inadequate" because they either do not have the ability and/or financial willingness to pursue the class action. While this was a valid point of contention in class action litigation at one time, it is no longer valid given Mo. Rule 4-1.8(e), which allows counsel to agree to be responsible for all costs, which is in fact what has happened in this case.

In sum, the Court finds that both the named Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

Part II

Having determined that the requirements of Mo. Rule 52.08(a) are met, the Court must determine whether, in its discretion, a class action procedure constitutes a superior method for adjudicating the Plaintiffs' claims pursuant to Mo. Rule 52.08(b)(3).[3]

A. Rule 52.08(b)(3)

The Court finds as a fact and concludes as a matter of law that the class action mechanism is the superior method for adjudication of the claims in this case. In making this determination, the Court, in the exercise of its discretion, reaffirms its conclusions above that there are common issues of fact and law which predominate in this action and that Plaintiffs are adequate class representatives. These two factors substantially support the superiority of adjudication as a class action. The Court also finds that the useful purposes of class actions in

[3] Plaintiffs initially sought certification under Rule 52.08(b)(2) in the alternative. That no longer is the case as Plaintiffs now seek certification only under Rule 52.08(b)(3).

preventing multiplicity of lawsuits and inconsistent verdicts is served in this instance. See Dublin v. UCR, Inc., 115 N.C. App. 209, 444 S.E.2d 455 (1994).

The Court has also considered the nature of the damages in this case. They are not nominal. Should Plaintiffs prevail they stand to recover all of the illegal fees and interest they have thus far paid on the loans obtained from Preferred Credit, together with a forfeiture of any future interest owed. §§ 408.236, 408.562 RSMo. The fees and interest could total millions of dollars. Statutory penalties including attorneys' fees and punitive damages could also increase that amount. § 408.562 RSMo. The damages are significant in amount and significant to Plaintiffs and the class of homeowners they will represent since their home mortgages could be affected. It is therefore likely that class members would make claims.

Next, the Court has considered whether there are any individualized issues that adversely impact the superiority of the class mechanism. The Court finds no such issues based upon its understanding of Plaintiffs' claims. Were such issues to exist, however, the Court would be required to give them little weight. When there has been established an issue of law common to all class members, as is the case here, the fact that there will be individualized damages is a collateral matter and no bar to certification. In re Visa Check/Master Money Antitrust Litigation, 280 F.3d at 139-140.

A class action will foster economies of time and effort and expense, and uniformity of decisions will be ensured. The only alternative to a class action is for Plaintiffs and the members of the Class to file no less than 416 individual claims. To do so would be time consuming and redundant, as each claimant would be required to conduct discovery into Defendants' business practices to prove exactly the same allegations and proffer exactly the same evidence. Each claimant would then be required to brief and argue the same questions of law. Moreover, the

individual members may not be aware of their rights. Nor may they be in a position (through lack of experience or financially) to commence individual lawsuits against Preferred Credit and its various assignees. As a result, the many members of the Class would not likely proceed individually against the Defendants.

The Court also notes that it has been widely recognized that a class action is superior to other available methods -- particularly, individual lawsuits -- for the fair and efficient adjudication of a suit that affects a large number of persons injured by violations of consumer protection laws or the common law. Prudential Insurance Co. of America Sales Practices Litigation v. Prudential Insurance Co. of America, 148 F.3d 282, 316 (3rd Cir. 1988). Consumer class actions such as the case at bar typically satisfy the superiority requirement of Rule 52.08. See, e.g., Lozada v. Dale Baker Oldsmobile, Inc., 197 F.R.D. 321, 332 (W.D. Mich. 2000) (consumer class actions are recognized as particularly efficient where individual claims are small"); Lake v. First Nationwide Bank, 156 F.R.D. 615, 626 (E.D. Pa. 1994) (public interest in seeing that rights of consumers are vindicated favors disposition of claims in a class action).

In addition, the Court notes that, unlike many consumer finance cases involving fraud claims, the MSMLA issues raised in this case do not involve reliance issues, nor will the validity or invalidity of some of the fees be dependent upon the state of mind of the class member. Whether or not the loan origination and other costs and fees were unauthorized or excessive will be a question of law for the Court to decide.

The Court has also considered the nature and extent of other similar litigation desirability or undesirability of concentrating the claim in this forum and concludes that it is desirable to proceed with a class action here. To the knowledge of the Court, there is no other similar action involving Preferred Credit pending before any court. In addition, the claims in this case involve

Missouri second mortgage loans, secured by Missouri real estate, which are subject to Missouri law. This Court is well equipped to handle the administrative transaction of this case. No party has argued otherwise.

Finally, the Court has also considered whether there are excessive transaction costs or management difficulties raised by the nature of the case that would influence the determination of the superior method for handing this particular case. The Court does not find any management difficulties that cannot be overcome and which would negatively impact the use of the class action mechanism. The size and significance of the claims will likely result in the claims process being utilized if Plaintiffs prevail. The size of the class and identification of the class members do not present insurmountable problems. There is no issue here of the cost of litigation surpassing any potential recovery or payout to claimants. In sum, the Court finds no factors that it believes would render the class action mechanism an inferior method of adjudicating this dispute. Indeed, this is the type of case that the courts of Missouri and other jurisdictions routinely certify as a class action. See, e.g., Order dated December 11, 2002, certifying MSMLA consumer class action in Couch v. SMC Lending, Inc., Case No. CV100-4332, in the Circuit Court of Clay County, Missouri (Div. II, Russell, J.); Order dated December 17, 2002, certifying Missouri Second Mortgage Loan Act case in McLean v. First Horizon Home Loan Corporation f/k/a McGuire Mortgage Company, Case No.00 CV 228530 in the Circuit Court of Jackson County, Missouri (Div. 16, Roldan, J.); Order dated May 1, 2002, certifying consumer class action in Roberson v. Associates Financial Services of Kansas, Inc., Case No. 00-CV-211760-01, in the Circuit Court of Jackson County, Missouri (Div. 8, McGraw, J.); Fabricant v. Sears Roebuck, 202 F.R.D. 310, 317 (S.D. Fla. 2001) (numerous courts have certified TILA class actions on the issue of liability to resolve common questions of fact and

law)(citing Hill v. Galaxy Telecom, 184 F.R.D. 82, 87 (N.D. Miss. 1999)); Sanchez v. Lowell Lebermann, Inc., 79 F.R.D. 21 (W.D. Tex. 1978); McCoy v. Salem Mortgage Co., 74 F.R.D. 8, 12 (E.D. Mich. 1976).

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that Plaintiffs' motion for certification of a plaintiff class is granted and the Court hereby certifies a class of plaintiffs under Rule 52.08(b)(3) defined as follows:

All individuals who, on or after June 27, 1994:

A. obtained a "Second Mortgage Loan" loan from Preferred Credit; and

B. who paid the following, or who financed the payment of the following as a part of the principal loan balance, at or before the closing:

1. An origination fee exceeding 2% of the principal loan amount for loans having a loan date before August 28, 1998; or

2. An origination fee exceeding 5% of the principal loan amount for loans having a loan date on or after August 28, 1998; or

3. Any other prohibited fees or costs paid or financed as a part of the principal loan balance including, without limitation, the following fees and costs:

- BROKER FEES
- DOCUMENT PREPARATION FEES
- LOAN (OR OTHER) PROCESSING FEES
- UNDERWRITING FEES
- SUB-ESCROW FEES
- APPLICATION FEES
- REVIEW/APPRAISAL REVIEW FEES
- CREDIT/COURIER/UPS FEES
- DOCUMENT SIGNING FEES
- PROCESSING/ADMINISTRATION FEES

The prohibited fees and costs do not include the following:

- Fees and charges paid for perfecting, releasing, or satisfying a security interest related to the second mortgage loan
- Taxes

- Fees or premiums for title examination, title insurance, or similar purposes including survey
- Fees for preparation of a deed, settlement statement, or other documents
- Fees for notarizing deeds and other documents
- Appraisal fees
- Fees for credit reports
- Charges for insurance (i) protecting the lender against the borrower's default or other credit loss (ii) against loss of or damage to the property, where no such coverage then existed or (h) providing life, accident, health or involuntary unemployment coverage.

A "Second Mortgage Loan" is defined by Missouri Statutes as a "a loan secured in whole or in part by a lien upon any interest in Residential Real Estate created by a security instrument, including a mortgage, deed of trust, or other similar instrument or document, which provides for interest to be calculated at the rate allowed by the provisions of section 408.232, which Residential Real Estate is subject to one or more prior mortgage loans."

"Residential Real Estate" shall mean "any real estate used or intended to be used as a residence by not more than four families, and which is situated within the state of Missouri."

IT IS FURTHER, ORDERED, ADJUDGED and DECREED (1) that Plaintiffs Michael and Shellie Gilmor, Michael and Lois Harris, Ted and Raye Ann Varns and Leo Parvin are designated as Representatives for the above Class; (2) that Plaintiffs' counsel and the firms Walters Bender Strohbehn & Vaughan, PC and Lawson & Fields, PC are designated as Counsel for the above Class; and (3) that Class Counsel shall prepare a Notice consistent with Rule 52.08 for dissemination to the Class through the best practicable means under the circumstances.

Dated: JAN 2 2003

/S/ DAVID W. RUSSELL

David W. Russell, Circuit Judge

CERTIFIED COPY
STATE OF MISSOURI COUNTY OF CLAY,
This is to certify that the foregoing is a true and correct copy of the documents on file in my office
Witness my hand and official seal this 2
day of January 2003
Clerk of Circuit Court, RITA FULLER
By Rita Fuller D.C.

Ex 12

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

JAMES AND JILL BAKER, Plaintiffs, v. CENTURY FINANCIAL GROUP, INC. et al., Defendants.	Case No. CV100-4294 CC Division 2

ORDER CERTIFYING PLAINTIFF CLASS

This matter is before the Court on Plaintiffs' Motion for Order Determining that this Action may be Maintained as a Plaintiffs' Class Action. In support of this Order to certify the class, the Court finds and concludes as follows:

I.

Plaintiffs seek certification of a statewide plaintiff class consisting of all those persons who obtained a second mortgage loan from Defendant Century Financial Group, Inc. ("Century Financial"), secured by Missouri residential real estate, and who may claim damage caused by Century Financial's alleged practice of charging certain "loan origination" and other closing costs and fees in violation of Missouri law, specifically Missouri's Second Mortgage Loans Act, §§ 408.231 RSMo., et seq. (the "MSMLA"), during the six (6) year period next preceding the date on which this action was commenced.

A. James and Jill Baker

In November 1997, Plaintiffs James and Jill Baker obtained a $33,500.00 mortgage loan from Century Financial. The Bakers claim that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Century Financial charged the Bakers interest at a rate

of 13.99% per year. In addition, Century Financial charged the Bakers a $2,500.00 "loan origination fee," approximately 7% of the total loan amount, as well as a "Loan Discount" fee of $335.00, an "Underwriting Fee" of $495.00, a "Doc[ument] Signing Fee" of $150.00 and a "Check and Wire Fee" of $155.00. Plaintiffs allege that, in doing so, Century Financial violated the MSMLA, particularly § 408.231, because: (1) the loan origination fee was greater than the $670.00 (2%) amount allowed at the time by § 408.231.1(5) RSMo. and/or (2) § 408.231.1(3) RSMo. prohibited Century Financial from charging or receiving the loan discount, underwriting and/or other fees described above.

B. Jeffrey and Michelle Cox

In September 1997, Plaintiffs Jeffrey and Michelle Cox obtained a $48,000.00 mortgage loan from Century Financial. The Coxes claim that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Century Financial charged the Coxes interest at a rate of 15.99% per year. In addition, Century Financial charged the Coxes a $3,500.00 "loan origination fee," approximately 7% of the total loan amount, as well as an "Underwriting Fee" of $495.00 and a "Doc[ument] Signing Fee" of $150.00. Plaintiffs allege that, in doing so, Century Financial violated the MSMLA, particularly § 408.231, because: (1) the loan origination fee was greater than the $960.00 (2%) amount allowed at the time by § 408.231.1(5) RSMo. and/or (2) § 408.231.1(3) RSMo. prohibited Century Financial from charging or receiving the underwriting and/or document signing described above.

C. William and Linda Springer

In October 1997, Plaintiffs William and Linda Springer obtained a $29,200.00 mortgage loan from Century Financial. The Springers claim that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Century Financial charged the Springers

interest at a rate of 13.99% per year. In addition, Century Financial charged the Springers a $2,900.00 "loan origination fee," approximately 10% of the total loan amount, as well as an "Underwriting Fee" of $495.00 and a "Doc[ument] Signing Fee" of $150.00. Plaintiffs allege that, in doing so, Century Financial violated the MSMLA, particularly § 408.231, because: (1) the loan origination fee was greater than the $584.00 (2%) amount allowed at the time by § 408.231.1(5) RSMo. and/or (2) § 408.231.1(3) RSMo. prohibited Century Financial from charging or receiving the underwriting and/or document signing described above.

D. The Petition and Plaintiffs' Claims

Plaintiffs James and Jill Baker originally filed this action on June 28, 2000. The Court joined the Coxes and the Springers as plaintiffs on March 4, 2002. In their Second Amended Petition, Plaintiffs assert claims both individually and on behalf of all other Missouri homeowners alleged to have been similarly aggrieved by Century Financial's acts (i.e., those Missouri borrowers charged the same type of allegedly unauthorized and/or excessive "loan origination" and other costs and fees in violation of the MSMLA and Missouri law). Among other things, Plaintiffs seek to recover the unlawful fees and costs that they were charged, as well as all of the interest they have paid on their respective second mortgage loan, and a forfeiture of any interest not yet due, a remedy that Plaintiffs claim is expressly made available to them by virtue of the MSMLA, § 408.236 RSMo. Plaintiffs seek the same relief and remedies for the proposed plaintiff class, under both the MSMLA and § 408.562.

E. The Applicable Statute of Limitations

In opposing Plaintiffs' motion to certify, and in an earlier filed motion of summary judgment, Defendants have urged the Court to find that Plaintiffs' claims are governed by § 516.130(2) RSMo., a 3-year statute of limitations. Plaintiffs, on the other hand, contend that the

6-year statute of limitations contained in § 516.420 RSMo applies. The Court agrees with Plaintiffs.

The 6-year statute of limitations contained in § 516.420 RSMo. applies to "all" lawsuits where the claimant seeks relief (i.e., "to recover any penalty or forfeiture imposed, **or** to enforce any liability created by ... law") from and/or against a "moneyed corporation." The statute provides:

> None of the provisions of sections 516.380 to 516.420 shall apply to suits against **moneyed corporations** or against the directors or stockholders thereof, to recover any penalty or forfeiture imposed, **or to enforce any liability created by** the act of incorporation or **any other law**; but **all** such suits shall be brought within six years after the discovery by the aggrieved party of the facts upon which such penalty or forfeiture attached, **or by which such liability was created**.

§ 516.420 RSMo. 2000 (emphasis added).

The named Plaintiffs seek to "enforce a liability" and/or to recover a "penalty or forfeiture" imposed by Missouri law against and from Century Financial, a second mortgage lender, and its various assignees. Specifically, the named Plaintiffs seek to recover the unlawful fees and costs that they and the members of the putative plaintiff class were charged for their second mortgage loans, as well as (1) all of the interest that they and any class member paid on their loans, (2) a forfeiture of any interest not yet due, and (3) statutory penalties, punitive damages, and attorneys' fees. Plaintiffs seek this relief both for themselves and for the plaintiff class pursuant to the MSMLA and § 408.562 RSMo.

Because Plaintiffs are seeking to "enforce a liability" and/or to recover a "penalty or forfeiture" imposed by the MSMLA and § 408.562 against and from Century Financial, a "moneyed corporation," and its derivatively liable assignees, Plaintiffs' statutory claims are governed by § 516.420 RSMo. The language of the statute is crystal clear: "all" suits "to recover any penalty or forfeiture imposed, or to enforce any liability created by any ... law ... shall be

brought within six years after the discovery by the aggrieved party of the facts upon which such penalty or forfeiture attached, or by which such liability was created." § 516.420 RSMo. 2000. Hence, the 6-year statute applies in this case. Cf. Nolan v. Kolar, 629 S.W.2d 661, 663 (Mo. App. 1982) (statute providing for forfeiture of 10% of amount of deed of trust for failure to timely acknowledge satisfaction of deed of trust was subject to § 516.420); Fielder v. Credit Acceptance Corporation, 19 F. Supp.2d 966, 974 (W.D. Mo. 1998) (6-year statute set out in § 516.420 applies to consumer class action against auto loan finance company brought pursuant to § 408.562 RSMo.). The Court incorporates herein its December 19, 2002 decision to deny Defendant Master Financial Asset Securitization Trust 1998-1's motion of summary judgment and again holds that the applicable statute of limitations in this cause is the 6-year limitation under § 516.420 RSMo., which shall be deemed applicable to all Defendants, all as was more fully stated on December 19, 2002.

II.

Standards for Determining Class Action

Missouri Rule of Civil Procedure 52.08 sets forth the requirements for a Class Action lawsuit. Rule 52.08(a) provides:

> (a) Prerequisite to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.

Once the requirements of Rule 52.08(a) are satisfied, an action may be maintained as a class action under Rule 52.08(b)(3) if:

> [T]he court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient

adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of the members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

III.

Class Action Analysis

The analysis required in this case is divided into two parts, which correspond to the separate requirements of Mo. Rule 52.08(a) and (b)(3).

Part I

A. Numerosity

Rule 52.08(a)(1) requires that the proponent of a class action demonstrate that "the class is so numerous that joinder of all members is impracticable." The rule does not require that joinder be impossible; rather, joinder of all members is impracticable when the procedure "would be difficult or inconvenient." Jackson v. Rapps, 132 F.R.D. 226, 230 (W.D. Mo. 1990); Esler v. Northrop Corp., 86 F.R.D. 20, 33-34 (W.D. Mo. 1979). "A showing of strong litigational inconvenience in the prosecution of claims separately or jointly by the proposed class members is sufficient." Esler, 86 F.R.D. at 34.[1]

Rule 52.08(a) does not contain any explicit numerical limitations. See Bradford v. Agco Corp., 187 F.R.D. 600, 604 (W.D. Mo. 1999). Nor does the rule require precise enumeration of

[1] Mo.R.Civ.P. 52.08 is identical to Federal Rule 23. Consequently, Missouri courts consider interpretations of Rule 23 in interpreting Rule 52.08. Ralph v. American Family Mut. Ins. Co., 809 S.W.2d 173, 174 (Mo.App. WD 1991).

the class size before the action can proceed as a class action. Morgan v. United Parcel Service of America, Inc., 169 F.R.D. 349, 355 (E.D. Mo. 1996); see Jackson, 132 F.R.D. at 230. It is permissible to estimate class size. Fielder v. Credit Acceptance Corp., 175 F.R.D. 313 (W.D. Mo. 1997) (between 120 and 160 members). However, impracticability of joinder has generally been found where the class is composed of more than 40 persons. Esler, 86 F.R.D. at 33 ("the difficulty inherent in joining as few as 25 or 30 class members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of 23(a)(1) on that fact alone") (quoting H. Newberg, Class Actions § 1105b (1977 & Supp. 1978)); Senn v. Manchester Bank of St. Louis, 583 S.W.2d 119, 132-33 (Mo. banc 1979) overruled on other grounds, Harman v. Davis, 651 S.W.2d 134, 136 (Mo. 1983) (trial court property permitted cause to proceed as class action with class comprised of approximately 80 members); Paxton v. Union Nat. Bank, 688 F.2d 552 (8th Cir. 1982) (16 members); Bradford, 187 F.R.D. at 600 (W.D. Mo. 1999) (65 members); Morgan, 169 F.R.D. 349 (possibly 19 members).[2]

The Court may also consider a number of additional factors when determining impracticability of joinder, including the nature of the action, the inconvenience of trying individual suits, geographical distribution, the size of the claims of the individual class members, the ability of individual litigants to institute an action on their own behalf "and any other factor relevant to the practicability of joining all the putative class members. Paxton, 688 F.2d at 559-60;. Esler, 86 F.R.D. at 33. The fact that all class members are located in the same state does not defeat certification. In fact, having all the plaintiffs in close proximity actually substantiates the

[2] Though a specific number is not required, Professor Newberg's survey of court rulings on the numerosity issue concludes that any class consisting of 40 or more members presumptively fulfills the numerosity requirements. Newberg on Class Actions § 3.05 (3d Ed. 2001).

need for certification. Bradford, 187 F.R.D. at 604 ("If the same witnesses traveled to the same courthouse to testify about the same [facts] in multiple cases, then judicial resources would be wasted").

Rule 52.08(a)(1) is Satisfied

The Court finds as a fact that Century Financial has made no less than 560 "high interest" second mortgage home loans secured by Missouri real estate since June 1994. The Court also finds that no fewer than 393 of these second mortgage loans Century Financial charged a "loan origination" or other fees and costs that appear to have either exceeded the lawful permissible amount allowed by § 408.232.1(5) or to be fees and charges not mentioned by § 408.232.1(3). These 393 loans may also pertain to property in a number of counties throughout the state of Missouri, making joinder of all class members in a single action more problematic and costly. Despite the number of loans, however, the parties and the Court can identify the particular members of the Class by name and address using the business records of Century Financial and of the current holders of the loans. Under the above facts, the Court concludes that the numerosity requirement of Mo. Rule 52.08(a) is satisfied.

B. Commonality

Mo. Rule 52.08(a)(2) requires a showing of the existence of "questions of law or fact common to the class." This threshold of "commonality" is not high. Winkler v. DTE, Inc., 205 F.R.D. 235, 240 (D. Ariz. 2001) ("[t]he standard for commonality is minimal because 'all that is required is a common issue of law or fact'"). This prong of the rule is satisfied when the "legal question 'linking the class members is substantially related to the resolution of the litigation.'" Fielder v. Credit Acceptance Corp., 175 F.R.D. 313, 319-20 (W.D. Mo. 1997) (quoting Paxton, 688 F.2d at 561); see Senn, 583 S.W.2d at 132 (commonality existed where legal theory and

underlying agreements were the same).

Rule 52.08(a)(1) is Satisfied

The causes of action stated in the Second Amended Petition allege claims common to the members of the Class. These claims raise questions of law or fact common to the Class because they all pertain to each member's loan and the application of the MSMLA to such loans. The Court further finds that the class issues sufficiently predominate so as to justify use of a class action in this case under Mo. Rule. 52.08.

It is not for the Court to determine on certification whether the common questions guarantee a determination of liability. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178, 94 S.Ct. 2140 (1974). The question, instead, is whether the legal issues and the factual underpinnings of any decision are common to all members of the class. Id.; Jackson v. Rapps, 132 F.R.D. 226, 230 (W.D. Mo. 1990) ("The Court may go beyond the pleadings in determining whether class action prerequisites have been met, but may not review the sufficiency or substantive merits of [the plaintiff's claims and factual] allegations"). Here, both the liability and the damages issues presented by Plaintiffs' claims have a common nucleus.

The MSMLA claims advanced by Plaintiffs are statutorily based, thus providing common questions of law with respect to the interpretation of the statute. Violation of the statute grants specific remedies and carries specific penalties. Neither the interpretation of the statute, which the parties dispute, nor the methodology for application of the statutory remedy will vary between class members. Should there be a finding of liability, each class member may receive a different amount based upon his or her loan, but the *method* of determining the amount will not vary. Plaintiffs have alleged that it was a common procedure of Century Financial to charge the same type of "loan origination" and other fees and costs to all its borrowers, thus further

reducing the prospect of differences among class members' claims. Plaintiffs' claims are based upon a common interpretation of the limits imposed on such fees by the MSMLA. The determination of that issue will effect the named and unnamed class members alike. If, as alleged, Century Financial employed a common practice with respect to the subject fees and costs it charged its many borrowers, the question of whether those fees violated the MSMLA will be common to all class members.

The Court has also carefully considered the issue of damages in this action. As many courts recognize, when a plaintiff establishes an issue of law common to all class members, the possibility of individualized damages cannot bar class certification. In re Visa Check/Master Money Antitrust Litigation, 280 F.3d 124, 139 (2nd Cir. 2001); Bertulli v. Indep. Ass'n of Cont'l Pilots, 242 F.3d 290, 298 (5th Cir. 2001); Blackie v. Barrack, 524 F.2d 891, 905 (9th Cir. 1975); Gold Strike Stamp Co. v. Christensen, 436 F.2d 791, 796,798 (10th Cir. 1970). The issue of damages, therefore, must be considered in the context of whether the common issues of law or fact predominate over any collateral issue as to individualized damages. Id. Thus, individualized issues of damages are relegated to secondary status in making the decision on whether or not common issues predominate. To the extent that each borrower may have a claim for a different amount depending on the amount of his or her loan, or whether or not the loan has been repaid, these distinctions are not sufficient to outweigh the predominance of the common elements of the damage issues; nor will the calculation of those damages pose an insurmountable problem for the management of this action as a class action.

Based upon the foregoing, the Court finds as a fact and concludes as a matter of law that a "class" within the meaning of Mo. Rule 52.08 exists and that there likewise exist common issues of law and fact with respect to that Class. The Court further concludes as a matter of law

that the class issues sufficiently predominate to justify use of a class action in this case under Mo. Rule 52.08.

C. Typicality

Rule 52.08(a)(3) requires that the claims of the class representatives be "typical of the claims ... of the class." The threshold for establishing typicality is also low. DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1174 (8th Cir. 1995). "The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." Id. Typicality does not require that the claims of the class members be identical. Id.; Fielder, 175 F.R.D. at 320. Typicality is frequently demonstrated by showing that the plaintiff has the same or similar grievances as the other members of the class. Paxton, 688 F.2d at 562; Donaldson v. Pillsbury Co., 554 F.2d 825, 830 (8th Cir.), cert. denied, 434 U.S. 856 (1977)). "The court must be shown that the representative is not alone." Paxton, 688 F.2d at 562.

Rule 52.08(a)(3) is Satisfied

The action also satisfies the typicality requirement. The named Plaintiffs' claims arise out of the same course of conduct as the Class claims; Plaintiffs have no conflict of interest; and their claims are based upon the same legal theories, which will apply to the Class in general. The named Plaintiffs' claims also arise out of the same course of conduct, i.e., the alleged violation of § 408.233.1, and are based on the same legal theories as those of the members of the Class. Plaintiffs, like the members of the Class, allege that they were aggrieved in the first instance by the conduct of the same and single mortgage lender, Century Financial, in precisely the same way -- they were all charged unauthorized and/or excessive fees and costs in connection with their second mortgage loans. This is true of the Bakers, whose claims are not "atypical" simply because they paid off their loan, or because Master Financial may have allegedly "warehoused"

the loan for a short time, as Defendants claim. The Court concludes that the typicality requirement of Rule 52.08(a) is also met.

D. Adequacy of Representation

The requirement of Rule 52.08(a)(4) is satisfied if it appears that (1) the named plaintiffs' interests are not antagonistic to those of the class they seek to represent and (2) the named plaintiffs' attorneys are qualified, experienced and generally able to conduct the litigation. Paxton, 688 F.2d at 562-63; Bradford, 187 F.R.D. at 605; Fielder, 175 F.R.D. at 320. The existence of these elements is to be presumed, absent proof to the contrary. See Morgan, supra, 169 F.R.D. at 357. As the court explained in Cook v. Rockwell Int'l Corp., 151 F.R.D. 378 (D. Colo. 1993):

> [A]dequate representation presumptions are usually invoked in the absence of contrary evidence by the party opposing the class. On the issue of no conflict with the class, one of the tests for adequate representation, the presumption fairly arises because of the difficulty of proving negative facts. On the issue of professional competence of counsel for the class representative, the presumption fairly arises that all members of the bar in good standing are competent. Finally, on the issue of intent to prosecute the action vigorously, the favorable presumption arises because the test involves future conduct of persons, which cannot fairly be prejudged adversely.

Id. at 386 (quoting from Newberg on Class Actions, § 7.24 at 7-80)

Rule 52.08(a)(4) is Satisfied

The named Plaintiffs in this action seek money damages and injunctive relief from Century Financial and its assignees as a result of its unlawful acts. Given this identity of claims, there is no potential for conflicting interests in this action. The named Plaintiffs seek the same relief as the Class based on the same legal theories.

The overwhelming focus of Defendants' effort to oppose certification has been to attack the adequacy of Class counsel. This attack does not go to the competency or experience of

counsel but is limited to the allegation that they are inadequate for allegedly having unethically solicited class representatives. The Court has considered those facts and the legal authorities presented by both sides on this issue, both in this and the other second mortgage cases pending before it, and finds that Class counsel is more than adequate as the allegation of unethical solicitation is factually unfounded and legally deficient. There is simply no evidence that Brian Thomas, consulting expert for Plaintiffs, was paid to refer potential class representatives to either Walters Bender Strohbehn & Vaughan or Lawson & Fields (n/k/a Lawson, Fields, McCue, Lee & Campbell) or that Mr. Thomas has any financial interest in the outcome of this lawsuit. The Court also incorporates and restates herein its findings and conclusions as expressed with regard to the issue of adequacy on December 11, 2002 in Couch v. SMC Lending, Case No. CV100-4332CC.

As in Couch, the Court notes with approval the authorities cited by Plaintiffs, which instruct that the purpose behind the ethical cannons is subverted when used as a weapon by adversaries. See Terre Du Lac Property Owners Ass'n, Inc. v. Shrum, 661 S.W.2d 45, 48 (Mo. App. E.D. 1983); Smith v. Kansas City Southern Railway Co., 2002 WL 1393697 (Mo. App. W.D. June 28, 2002, mot. for reh'g and/or transfer to Sup. Ct. denied, as modified, Oct. 1, 2002) at *8 n. 8; State ex rel. Wallace v. Munton, 989 S.W.2d 641, 645 (Mo. App. S.D.1999). Indeed, as it held in Couch, the Court believes that this forum is not the proper place to assert an ethical complaint as the alleged ethical violation has nothing to do with the competence and experience of class counsel and their corresponding ability to fairly and adequately represent the class. Rather, any such complaint is more properly placed before the authority with jurisdiction to investigate and determine such matters, i.e. the Office of Chief Disciplinary Counsel of the Missouri Bar.

Additionally, the cases relied upon by Defendants on the issue of solicitation of class plaintiffs are obsolete. Based on protections under the First Amendment and the general evolution of the standards relating to solicitation of clients, attorneys today may directly solicit potential class representatives. Mo. Rules 4-7.1-7.3(a)(eff. 1/1/86) (permitting direct solicitation with persons known to need legal services of the kind provided by the lawyer) and 4-1.8(e)(eff. 1/1/86) (permitting a lawyer to advance court costs and expenses of litigation); see also Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626, 647, 105 S.Ct. 2265, 85 L.Ed 2d 652 (1985); Kennedy v. United HealthCare of Ohio, Inc., 206 F.R.D. 191 (S.D. Ohio 2002); Rand v. Monsanto Co., 926 F.2d 596, 600 (7th Cir. 1991).

The Court also rejects any contention by Defendants that a conflict of interest exists between Class counsel and the class given the agreement by counsel to pay the costs and expenses associated with the litigation. See Mo. Rule 4-1.8(e) ("a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter"); Rand, 926 F.2d at 600 (the then recently adopted "Model Rule 1.8(e) allows a lawyer [in a class action lawsuit] to pick up the tab for costs if the suit is unsuccessful"); Moye v. Credit Acceptance Corp., 2001 WL 589101, at *4 (Conn. 2001) (in light of Model Rule 1.8(e), "plaintiffs' arrangement with their [class] counsel whereby their counsel will advance the costs of litigation does not demonstrate inadequacy").

Defendants also claim that the named Plaintiffs are not adequate to represent the Class because they are not familiar with their claims and have abdicated control of the case to counsel. The Court rejects these arguments as well. The law does not require that a class representative know every detail of their claim or be familiar with the facts of the other class members' claims. Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 366, 86 S.Ct. 845, 847-48, 15 L.Ed.2d 807

(1966); Lewis v. Curtis, 671 F.2d 779, 789 (3rd Cir. 1982). All that is required is that the Class plaintiffs have a fundamental understanding of their claims and a willingness to vigorously pursue the Defendants and rely on counsel's expertise. Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 61-62 (2nd Cir.2000). A review of the testimony of the named class representatives reveals that each understands their claims and their responsibility to the other Class members, and that each has and intends to continue to pursue such claims vigorously. Nor have these Class representatives abdicated control of the litigation to their counsel. They are appropriately relying on counsel to prepare and present their claims, as is typical in class actions and, indeed, in litigation in general; but the Court has seen nothing to indicate that any of the representatives are anything but committed to pursing their claims. Bradford v. AGCO Corp., 187 F.R.D. 600, 605 (W.D. Mo. 1999); Nathan Gordon Trust v. Northgage Exploration, Ltd., 148 F.R.D. 105, 107 (S.D.N.Y. 1993).

Defendants also claim that the Class representatives are "inadequate" because they either do not have the ability and/or willingness to financially pursue the class action. While this was a valid point of contention in class action litigation at one time, it is no longer valid given Mo. Rule 4-1.8(e), which allows counsel to agree to be responsible for all costs, which is in fact what has happened in this case.

In sum, the Court finds that both the named Plaintiffs, including Plaintiffs James and Jill Baker, and the named Plaintiffs' chosen counsel will fairly and adequately represent and protect the interests of the Class.

Part II

Having determined that the requirements of Mo. Rule 52.08(a) are met, the Court must determine whether, in its discretion, a class action procedure constitutes a superior method for

adjudicating the Plaintiffs' claims pursuant to Mo. Rule 52.08(b)(3).[3]

A. Rule 52.08(b)(3)

The Court finds as a fact and concludes as a matter of law that the class action mechanism is the superior method for adjudication of the claims in this case. In making this determination, the Court, in the exercise of its discretion, reaffirms its conclusions above that there are common issues of fact and law which predominate in this action and that Plaintiffs are adequate class representatives. These two factors substantially support the superiority of adjudication as a class action. The Court also finds that the useful purposes of class actions in preventing multiplicity of lawsuits and inconsistent verdicts is served in this instance. See Dublin v. UCR, Inc., 115 N.C. App. 209, 444 S.E.2d 455 (1994).

The Court has also considered the nature of the damages in this case. They are not nominal. Should Plaintiffs prevail they stand to recover all of the illegal fees and interest they have thus far paid on the loans obtained from Century Financial, together with a forfeiture of any future interest not yet due. §§ 408.236, 408.562 RSMo. The fees and interest could total millions of dollars. Statutory penalties including attorneys' fees and punitive damages could also increase that amount. § 408.562 RSMo. The damages are significant in amount and significant to Plaintiffs and the class of homeowners they will represent since their home mortgages could be affected. It is therefore likely that class members would make claims.

Next, the Court has considered whether there are any individualized issues that adversely impact the superiority of the class mechanism. The Court finds no such issues based upon its understanding of Plaintiffs' claims. Were such issues to exist, however, the Court would be required to give them little weight. When there has been established an issue of law common to

[3] Plaintiffs initially sought certification under Rule 52.08(b)(2) in the alternative. That no longer is the case as Plaintiffs now seek certification only under Rule 52.08(b)(3).

all class members, as is the case here, the fact that there will be individualized damages is a collateral matter and no bar to certification. In re Visa Check/Master Money Antitrust Litigation, 280 F.3d at 139-140.

A class action will foster economies of time and effort and expense, and uniformity of decisions will be ensured. The only alternative to a class action is for Plaintiffs and the members of the Class to file no less than 393 individual claims. To do so would be time consuming and redundant, as each claimant would be required to conduct discovery into Defendants' business practices to prove exactly the same allegations and proffer exactly the same evidence. Each claimant would then be required to brief and argue the same questions of law. Moreover, the individual members may not be aware of their rights. Nor may they be in a position (through lack of experience or financially) to commence individual lawsuits against Century Financial and its various assignees. As a result, the many members of the Class would not likely proceed individually against the Defendants.

The Court also notes that it has been widely recognized that a class action is superior to other available methods -- particularly, individual lawsuits -- for the fair and efficient adjudication of a suit that affects a large number of persons injured by violations of consumer protection laws or the common law. Prudential Insurance Co. of America Sales Practices Litigation v. Prudential Insurance Co. of America, 148 F.3d 282, 316 (3rd Cir. 1988). Consumer class actions such as the case at bar typically satisfy the superiority requirement of Rule 52.08. See, e.g., Lozada v. Dale Baker Oldsmobile, Inc., 197 F.R.D. 321, 332 (W.D. Mich. 2000) (consumer class actions are recognized as particularly efficient where individual claims are small"); Lake v. First Nationwide Bank, 156 F.R.D. 615, 626 (E.D. Pa. 1994) (public interest in seeing that rights of consumers are vindicated favors disposition of claims in a class action).

In addition, the Court notes that, unlike many consumer finance cases involving fraud claims, the MSMLA issues raised in this case do not involve reliance issues, nor will the validity or invalidity of some of the fees be dependent upon the state of mind of the class member. Whether or not the loan origination and other costs and fees were unauthorized or excessive will be a question of law for the Court to decide.

The Court has also considered the nature and extent of other similar litigation desirability or undesirability of concentrating the claim in this forum and concludes that it is desirable to proceed with a class action here. To the knowledge of the Court, there is no other similar action involving Century Financial pending before any court. In addition, the claims in this case involve Missouri second mortgage loans, secured by Missouri real estate, which are subject to Missouri law. This Court is well equipped to handle the administrative transaction of this case. No party has argued otherwise.

Finally, the Court has also considered whether there are excessive transaction costs or management difficulties raised by the nature of the case that would influence the determination of the superior method for handing this particular case. The Court does not find any management difficulties that cannot be overcome and which would negatively impact the use of the class action mechanism. The size and significance of the claims will likely result in the claims process being utilized if Plaintiffs prevail. The size of the class and identification of the class members do not present insurmountable problems. There is no issue here of the cost of litigation surpassing any potential recovery or payout to claimants. In sum, the Court finds no factors that it believes would render the class action mechanism an inferior method of adjudicating this dispute. Indeed, this is the type of case that the courts of Missouri and other jurisdictions routinely certify as a class action. See, e.g., Order dated December 11, 2002,

certifying MSMLA consumer class action in Couch v. SMC Lending, Inc., Case No. CV100-4332, in the Circuit Court of Clay County, Missouri (Div. II, Russell, J.); Order dated May 1, 2002, certifying consumer class action in Roberson v. Associates Financial Services of Kansas, Inc., Case No. 00-CV-211760-01, in the Circuit Court of Jackson County, Missouri (Div. 8, McGraw, J.); Fabricant v. Sears Roebuck, 202 F.R.D. 310, 317 (S.D. Fla. 2001) (numerous courts have certified TILA class actions on the issue of liability to resolve common questions of fact and law)(citing Hill v. Galaxy Telecom, 184 F.R.D. 82, 87 (N.D. Miss. 1999)); Sanchez v. Lowell Lebermann, Inc., 79 F.R.D. 21 (W.D. Tex. 1978); McCoy v. Salem Mortgage Co., 74 F.R.D. 8, 12 (E.D. Mich. 1976).

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that Plaintiffs' motion for certification of a plaintiff class is granted and the Court hereby certifies a class of plaintiffs under Rule 52.08(b)(3) defined as follows:

All individuals who, on or after June 28, 1994:

A. obtained a "Second Mortgage Loan" loan from Century Financial; and

B. who paid the following, or who financed the payment of the following as a part of the principal loan balance, at or before the closing:

1. An origination fee exceeding 2% of the principal loan amount for loans having a loan date before August 28, 1998; or

2. An origination fee exceeding 5% of the principal loan amount for loans having a loan date on or after August 28, 1998; or

3. Any other prohibited fees or costs paid or financed as a part of the principal loan balance including, without limitation, the following fees and costs:

- UNDERWRITING FEES
- LOAN DISCOUNT FEES
- BROKERS FEES
- DOCUMENT SIGNING FEES
- PROCESSING FEES

- APPLICATION FEES
- SETTLEMENT/CLOSING FEES
- SIGNING/RESIGNING FEES
- CHECK/WIRE TRANSFER FEES

The prohibited fees and costs do not include the following:

- Fees and charges paid for perfecting, releasing, or satisfying a security interest related to the second mortgage loan
- Taxes
- Fees or premiums for title examination, title insurance, or similar purposes including survey
- Fees for preparation of a deed, settlement statement, or other documents
- Fees for notarizing deeds and other documents
- Appraisal fees
- Fees for credit reports
- Charges for insurance (i) protecting the lender against the borrower's default or other credit loss (ii) against loss of or damage to the property, where no such coverage then existed or (h) providing life, accident, health or involuntary unemployment coverage.

Definitions: For purposes of the Class,

"Second Mortgage Loan" shall mean "a loan secured in whole or in part by a lien upon any interest in Residential Real Estate created by a security instrument, including a mortgage, deed of trust, or other similar instrument or document, which provides for interest to be calculated at the rate allowed by the provisions of section 408.232, which Residential Real Estate is subject to one or more prior mortgage loans."

"Residential Real Estate" shall mean "any real estate used or intended to be used as a residence by not more than four families, and which is situated within the state of Missouri."

IT IS FURTHER, ORDERED, ADJUDGED and DECREED (1) that Plaintiffs James and Jill Baker, Jeffrey and Michelle Cox, and William and Linda Springer are designated as Representatives for the above Class; (2) that Plaintiffs' counsel and the firms Walters Bender Strohbehn & Vaughan, PC and Lawson & Fields, PC are designated as Counsel for the above Class; and (3) that Class Counsel shall prepare a Notice consistent with Rule 52.08 for dissemination to the

Class through the best practicable means under the circumstances.

Dated: JAN 2 2003

/S/ DAVID W. RUSSELL

David W. Russell, Circuit Judge

DIVISION 2

DOCKET SHEET

CV100-4294 CC

Circuit Court, Clay County, Missouri

File No.

Nature of Action:	JAMES BAKER	MICHAEL VAUGHAN
	Plaintiff/Petitioner	
	vs.	Att. for Plaintiff or Petition
	CENTURY FINANCIAL GROUP, ET AL	
	Defendant/Respondent	Att. for Defendant or Res

Date	Orders of Court
DEC 19 2002	Cause TT by atty Δs Master Financial Acc By atty- Ct hears Δs' motion for summa judgment- Ct makes findings on the record & Ct denies said motion- LM
Dec 19 2002	Plaintiffs file unopposed motion for enlargement of time. bkd
12/20/02	Ct grants TT extension to 12/24/02 in which respond to opposition to class action motion- LM
Dec 24 2002	Plaintiffs file reply to suggestions in opposition to plaintiffs' motion for class certification. bkd
Dec 24 2002	Plaintiffs file Appendix of Exhibits, plaintiffs' reply to defendants' suggestions in opposition to plaintiffs' motion for class certification. bkd
Dec 24 2002	Plaintiffs file Appendix of Unreported Decisions, Plaintiffs' reply to defendants' suggestions in opposition to plaintiffs' motion for class certification. bkd
JAN - 2 2003	Cause TTs by atty as stated on the rec + Δs as stated on the record. Ct hears arguments in TT's' motion to declare cl + order class action, + determine a class. makes record & Ct certifies TT's class a Formal order of certification. LM

Form 101 4/90

Ex 13

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MICHAEL P. AND SHELLIE GILMOR, et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION, et al.,

Defendants.

Case No. 10-0189-CV-W-ODS

AFFIDAVIT OF SHELLIE L. GILMOR

Shellie L. Gilmor, being first duly sworn upon her oath, and of lawful age, deposes and says the following:

1. My name is Shellie Gilmor. I am over 18 years of age and am one of the named plaintiffs in this lawsuit.

2. From approximately May 1995 through July 2001, I lived with my husband, Michael (Mike) at 11304 North Donnelly Ave., Kansas City, Missouri 64157. This home was our primary residence.

3. On or about September 30, 1997, Mike and I took out a second mortgage loan from Preferred Credit Corporation. We used our home at 11304 North Donnelly Ave. to secure the loan.

4. I remember thinking that Mike and I learned about Preferred Credit from a marketing call that we received at our home. I do not remember hearing any ads for Preferred on the radio, but Mike may have. See Exhibit A-1. Mike and I did provide Preferred Credit with information over the telephone and we sent Preferred the employment, credit card and other information it requested. We received the letter attached as Exhibit A-2, which I believe was

either faxed to us or mailed to our home.

5. Preferred told us over the phone that it would send a representative to our home with the loan papers for us to sign. On or about September 30, 1997, a person whom we understood to be Preferred's representative came to our home in Missouri. He had two sets of loan papers. The representative had us sign one set of the papers, which he kept. The representative gave us the second set and told us that this was all we needed to do and that the loan was done.

6. Mike and I signed the application for our second mortgage loan in our home on or about September 30, 1997. This was when the representative from Preferred came to our home with the two sets of loan papers. A genuine copy of the signed application is attached as Exhibit A-3.

7. A genuine copy of the Note we received when we signed up for our loan is attached as Exhibit A-4.

8. A genuine copy of the Deed of Trust we received when we signed up for our loan is attached as Exhibit A-5.

9. Both the note and the deed of trust for the loan contained a notation on the bottom left-hand corner of each page indicating that the loan was a "MISSOURI - SECOND MORTGAGE."

10. A genuine copy of the Settlement Statement that Mike and I received when we signed up for our loan is attached as Exhibit A-6. It shows a Settlement Date of 09/27/1997. The disbursement listing on the Settlement Statement matches up with what I will call the Creditor Payoff Sheet, which we also received and signed on or about September 30, 1997, attached as Exhibit A-7.

11. Mike and I borrowed all the fees and any prepaid interest that we had to pay to

obtain our loan as a part of the $40,000 total loan amount. This is the way Preferred proposed the loan to us. I do not remember anyone from Preferred ever telling or suggesting to us that we could (or should) pay for the fees ourselves with cash, instead of from the money we were borrowing.

12. A genuine copy of the Federal Truth in Lending Disclosure Statement that Mike and I received when we signed up for our loan is attached as Exhibit A-8.

13. A genuine copy of the Itemization of Amount Financed that Mike and I received when we signed up for our loan is attached as Exhibit A-9.

14. A genuine copy of the Notice of Right to Cancel that Mike and I received when we signed up for our loan is attached to this affidavit as Exhibit A-10. We did not cancel the loan at any time.

15. A genuine copy of the Loan Servicing Disclosure Statement that Mike and I received when we signed up for our loan is attached as Exhibit A-11.

16. Our records show that, after we "closed" our loan in September, Preferred mailed us a Final Closing Statement, together with the disbursement checks and the letter attached as Exhibit A-12. Our records also show that we probably received the Settlement Statement attached as Exhibit A-13, which shows a Settlement Date of 10/03/1997, along with the Final Closing Statement and checks.

17. I paid most of the bills and I made most if not all of the payments on our second mortgage loan. I do not remember ever making any monthly payments to Preferred Credit. I recall sending some of the payments to Advanta Mortgage. Later, and at or about the time we received the Notice of Assignment, Sale or Transfer of Servicing Rights from Advanta Mortgage, attached as Exhibit A-14, I started sending our payments to Wendover Financial Services Corporation.

18. I wrote most if not all of the checks we sent in to pay our second mortgage loan. Mike and I made all of the monthly payments from Missouri. All of the checks were drawn on our bank account in Missouri. We wrote each check after receiving a written bill, which was also mailed to us in Missouri. Mike and I made all of the monthly payments due on the loan up until the time it was repaid.

19. Even though I sent the monthly payments to Wendover, our bills still came from Impac Funding Corp. A genuine copy of one of the bills we received for our loan is attached as Exhibit A-15.

20. Genuine copies of the Form 1098's that Mike and I received for our loan are collectively attached as Exhibits A-16. Like the monthly bills, the 1098's were mailed to us in Missouri for each year.

21. Before filing this suit, Mike and I requested Wendover to identify the holder or owner of our mortgage note. A genuine copy of the letter Wendover mailed in response is attached as Exhibit A-17.

22. Mike and I were able to pay off our second mortgage loan in 2001. A genuine copy of the Deed of Release available on-line from the Clay County Recorder of Deeds is attached as Exhibit A-18.

23. The signatures on the documents collectively attached as Exhibit A-19 are Mike's and mine.

24. I have personal knowledge of each of the matters set out above and state that they are true.

Dated: Nov 18, 2010

Shellie L. Gilmor

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Before me, on this 18th day of November 2010, the undersigned, a Notary Public within and for the County and State aforesaid, came Shellie L. Gilmor, who is personally known to me to be the same person who executed this instrument, and such person duly acknowledged the execution of the same to her own fee act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

Notary Public

My Commission Expires:

4/29/2012

JOANNE M. HAAKE
MY COMMISSION EXPIRES
April 29, 2012
NOTARY SEAL
#08464008
JACKSON COUNTY
NOTARY PUBLIC, STATE OF MISSOURI

NOTE

Loan No. 30202679

11304 N. DONNELLY AVENUE, KANSAS CITY, MO 64157September 26, 1997
Property Address City State Zip Code

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. 40,000.00 (this amount will be called "principal"),plus interest, to the order of the Lender. The Lender is PREFERRED CREDIT CORPORATION, A CALIFORNIA CORPORATION. I understand that the Lender may transfer this Note . The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."

Ex 14

2. INTEREST

I will pay interest at a yearly rate of 13.5%.

Interest will be charged on unpaid principal until the full amount of principal has been paid.

3. PAYMENTS

I will pay principal and interest by making payments each month of U.S. $519.33 .

I will make my payments on the 10th day of each month beginning on November 10, 1997.

I will make these payments every month until I have paid all of the principal and interest and any other charges, described below, that I may owe under this Note. If, on October 10, 2012, I still owe amounts under this Note, I will pay all those amounts, in full, on that date.

I will make my monthly payments at 3347 MICHELSON , SUITE #400, IRVINE, CALIFORNIA, 92612 or at a different place if required by the Note Holder.

4. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Notice From Note Holder

If I do not pay the full amount of each monthly payment by the end of 10 calendar days after the date it is due, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default. That date must be at least 30 days after the date on which the notice is mailed to me or, if it is not mailed, 30 days after the date on which it is delivered to me.

(B) Default

If I do not pay the overdue amount by the date stated in the notice described in (A) above, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(C) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back for all of its reasonable costs and expenses to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

5. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Deed of Trust, dated 9/26/97 , protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Deed of Trust describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note.

6. BORROWER'S PAYMENTS BEFORE THEY ARE DUE

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in a letter that I am doing so. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment. "

I may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will use all of my repayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates or changes in the amounts of my monthly payments unless the Note Holder agrees in writing to those delays or changes. I may make a full prepayment at any time. If I choose to make a partial prepayment, the Note Holder may require me to make the prepayment on the same day that one of my monthly payments is due. The Note Holder may also require that the amount of my partial prepayment be equal to the amount of principal that would have been part of my next one or more monthly payments.

7. BORROWER'S WAIVERS

I waive my rights to require the Note Holder to do certain things. Those things are: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice of dishonor"); (C) to obtain an official certification of nonpayment (known as a "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else also waives these rights. These persons are known as "guarantors, sureties and endorsers."

8. GIVING OF NOTICES

Any notice that must be given to me under this Note will be given by delivering it or by mailing it by certified mail addressed to me at the Property Address above. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by certified mail to the Note Holder at the address stated in Section 3 above. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

9. RESPONSIBILITY OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of a guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to keep all of the promises made in this Note.

Borrower has executed and acknowledges receipt of pages 1 and 2 of this Note.

_____(Seal)	_____(Seal)
MICHAEL P. GILMOR -Borrower	SHELLIE GILMOR -Borrower
_____(Seal)	_____(Seal)
-Borrower	-Borrower
_____(Seal)	_____(Seal)
-Borrower	-Borrower

Settlement Statement
Transactions without Sellers

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0491

Ex 15

Name & Address of Borrower:	Name and Address of Lender:
MICHAEL P. GILMOR SHELLIE GILMOR 11304 N. DONNELLY AVENUE KANSAS CITY, MO 64157	Preferred Credit Corporation 3347 Michelson Suite 400 Irvine, CA 92612
Property Location: (If different from above)	Settlement Agent: Preferred Credit Corporation
	Place of Settlement: Preferred Credit Corporation
Loan Number: 30202679	Settlement Date: 10/03/1997

L. Settlement Charges			M. Disbursements to Others		
801. Loan Origination Fee	%		1501. COMMERCE		$7,033.00
802. Loan Discount Fee	%				
803. Appraisal Fee to:	Preferred Credit Corporation	$0.00	1502. DISCOVER CD		$6,766.47
804. Credit Report to:					
805. Inspection Fee to:			1503. AMERTRVLSV		$6,445.00
806. Mortgage Insurance Application Fee to:					
807. Mortgage broker fee to:	PMC LAKE FOREST	$0.00	1504. SD COUNTY		$5,915.00
808. Document Preparation to:	Preferred Credit Corporation	$0.00			
809. Loan Processing to:	Preferred Credit Corporation	$395.00	1505. SEARS		$5,070.00
810. Underwriting Fee to:	Preferred Credit Corporation	$125.00			
811. Yield Spread Premium	PMC LAKE FOREST $0.00 (P.O.C.)		1506 AG PRVTLBL		$2,460.00
812. ADMINSTRATION	Preferred Credit Corporation	$500.00			
813. APPRAISAL REVIEW	Preferred Credit Corporation	$60.00	1507. AG MORE MC		$1,777.00
814. SIGNING FEES	Preferred Credit Corporation	$150.00			
815. ORIGINATION FEE	Preferred Credit Corporation	$3,200.00	1508.		
900. Items Required by Lender to be paid in Advance					
901. Interest From: 10/3/97 to: 10/10/97 @ 14.79 per day		$103.53	1509.		
902. Mortgage Insurance Premium for:	months to:		1510.		
903. Hazard Insurance Premium for:	years to:		1511.		
904.			1512.		
1000. Reserve's Deposited with Lender					
1001. Hazard Insurance	months @$ per mo		1513.		
1002. Mortgage Insurance	months @$ per mo				
1003. City Property Tax	months @$ per mo		1514.		
1004. County Property Tax	months @$ per mo				
1005. Annual Assessments	months @$ per mo		1515.		
1006.	months @$ per mo				
1007.	months @$ per mo		1516		
1008.	months @$ per mo				
1100. Title Charges			1517		
1101. Settlement of closing fee	to:				
1102. Abstract or Title Search	to:		1518		
1103. Title Examination	to:				
1104. Title Insurance Binder	to:		1519		
1105. Document Preparation	to:				
1106. Notary Fees	to:		1520. TOTAL DISBURSED (enter on line 1603)		$35,466.47
1107. Attorney's Fees (includes above item numbers)	to:				
1108. Title Insurance (includes above item numbers)	to Preferred Credit Corporation	$0.00			
1109. Lenders coverage	$		N. NET SETTLEMENT		
1110. Owner's coverage	$		1600. Loan Amount		$40,000.00
1111.					
1112.			1601. Check/Cash from Borrower		
1113.					
1200. Government Recording and Transfer Charges			1602. Minus Settlement Charge		$4,533.53
1201. Recording Fees:		$0.00			
1202. City/County tax/stamps			1603. Minus Disbursements to Others		$35,466.47
1203. State tax/stamps					
1204.			1604. Net to Borrowers		$0.00
1205.					
1300. Additional Settlement					
1301. Survey to:					
1302. Pest Inspection to:			Borrower(s) Signature(s):		
1303. Architectural/engineering service to:					
1304. Building permits to:			X		
1305.					
1400. Total Settlement Charges (enter on line 1602)		$4,533.53	X		

Ex 16

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

MICHAEL P. AND SHELLIE GILMOR, Plaintiffs, v. PREFERRED CREDIT CORPORATION, et al., Defendants.	)	Case No. CV 100 4263 CC

DECLARATION OF RICHARD JOHNSON

I, Richard Johnson, hereby declare as follows:

1. I am the Executive Vice-President of defendants IMPAC Funding Corporation ("IMPAC Funding") and IMPAC Mortgage Holdings, Inc. ("IMPAC Mortgage"). I am making this declaration on behalf of defendants IMPAC Funding Corporation, IMPAC Mortgage Holdings, Inc., IMPAC Secured Assets Corp., ICIFC Secured Assets Corp. Mortgage Pass-Through Certificates, Series 1997-1, ICIFC Secured Assets Corp. Mortgage Pass-Through Certificates, Series 1997-2, ICIFC Secured Assets Corp. Mortgage Pass-Through Certificates, Series 1997-3, Impac Secured Assets CMN Trust Series 1998-1 Collateralized Asset-Backed Notes, Series 1998-1 (collectively the "IMPAC Entities").

2. Except where expressly noted to the contrary, I have personal knowledge of the facts set forth herein.

3. Impac Funding is a corporation organized under the laws of the State of California with a principal place of business in Newport Beach, California. IMPAC Mortgage is a Maryland corporation with its principal place of business in California.

4. IMPAC Secured Assets Corporation ("IMPAC Secured") is an affiliate of IMPAC Mortgage and IMPAC Funding. IMPAC Secured is a California corporation with its principal place of business in California.

5. The business of IMPAC Funding in relevant part involves the purchase of closed loans from independent third parties and the pooling of those loans into larger groups for purposes of creating securitization trusts and selling beneficial interests in such trusts to investors. The purpose of such trusts is to hold mortgage loans, including second mortgage loans, and distribute payments to persons holding beneficial interests in the trusts.

6. IMPAC Mortgage, IMPAC Funding, and its affiliates played a role in creating the following trusts: (1) ICIFC Secured Assets Corporation Mortgage Pass-Through Certificates, Series 1997-1; (2) ICIFC Secured Assets Corporation Mortgage Pass-Through Certificates, Series 1997-2; (3) ICIFC Secured Assets Corporation Mortgage Pass-Through Certificates, Series 1997-3; and (4) IMPAC Secured Assets CMN Trust Series 1998-1 Collateralized Asset-Backed Notes ("the 1998-1 Trust") (collectively "Trusts").

7. The Trusts exist solely for the purpose of holding securitized loans and engage in no other business. The Trusts have no employees, agents, or operations of any kind. Other than the loans contributed to the Trusts, the Trusts neither own nor lease property. Third-party independent contractors service loans that the Trusts own.

8. Preferred Credit Corporation ("Preferred Credit") was a California corporation in the business of originating, purchasing and selling second mortgage loans from approximately 1994 until 1998. Upon information and belief, Preferred Credit initially originated second mortgage loans in California and ultimately expanded its second mortgage loan origination business to a number of states, although the greatest percentage of its loan originations remained in the State of California.

9. Upon information and belief, Preferred Credit originated mortgage loans to Missouri borrowers that were secured by Missouri real property. Preferred Credit negotiated the terms of these loans with the borrowers.

10. None of the IMPAC Entities participated in the origination of any loans by Preferred Credit in Missouri or otherwise; none of the IMPAC Entities has ever acted as an agent or representative of Preferred Credit.

11. In approximately 1998, IMPAC Funding purchased certain second mortgage loans from Preferred Credit's mortgage loan portfolio. Among the approximately 416 second mortgage borrowers who have been identified by Plaintiffs as potential class members, 156 of their loans were purchased by IMPAC Funding for inclusion in securitization trusts.

12. IMPAC Funding purchased from Preferred Credit second mortgage loans made to named plaintiffs Michael and Shellie Gilmor and Michael and Lois Harris. The Gilmor and Harris loans are the only loans of the various named plaintiffs that IMPAC Funding purchased. Both the Gilmor and Harris loans were securitized as part of the 1998-1 Trust.

13. The purchase of the Gilmor and Harris loans by IMPAC Funding and the securitization of these loans in the 1998-1 Trust are the only connection between any of the IMPAC Entities and any of the named plaintiffs.

14. The Gilmor loan has been paid in full.

15. I understand that plaintiffs in this case have asserted that loans originated by Preferred Credit to the putative class violated the provisions of the Missouri Second Mortgage Loan Act ("SMLA"), and that the SMLA: (1) prevents the imposition of origination fees that exceed (i) 2% of the loan principal if the loan was originated before August 28, 1998 or (ii) 5% of the loan principal if the loan was originated on or after August 28, 1998; and (2) prohibits the imposition of certain fees or costs unless those fees or costs were paid to a third party in connection with bona fide services.

16. None of the IMPAC Entities maintains any computer database or other electronically stored source of information from which it could readily determine whether the loans made to plaintiffs or any putative class members included any fees or costs

prohibited by the SMLA. The IMPAC Entities cannot determine whether any of the putative class members' loans included these fees or costs without reviewing each putative class member's loan file.

17. I am aware that plaintiffs have produced 37 of the putative class members' loan files. I understand that the majority of the 37 loans contained no origination fee at all. Most contain broker fees, and virtually all include fees that would be required to be compared against the SMLA to determine compliance with law. There appears to be little consistency in the manner in which Preferred charged or did not charge origination fees, and there is little consistency in the purposes or the amounts of the fees charged by Preferred. A number of loans appeared to have been originated by mortgage brokers (and funded by Preferred Credit) which also received fees that could be confused with fees charged by Preferred Credit as well as other third parties.

18. Furthermore, the loan files do not indicate the purposes for which the borrowers obtained their loans.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS 6th DAY OF DECEMBER, 2002.

/s/ Richard Johnson

Ex 17

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MICHAEL P. AND SHELLIE GILMOR, et al.,	
Plaintiffs,	Case No. 10-0189-CV-W-ODS
vs.	
PREFERRED CREDIT CORPORATION, et al.,	
Defendants.	

AFFIDAVIT OF MICHAEL E. HARRIS

Michael E. Harris, being first duly sworn upon his oath, and of lawful age, deposes and says the following:

1. My name is Michael E. Harris. I am over 18 years of age and am one of the named plaintiffs in this lawsuit.

2. Since approximately July 1993, I have lived with my wife, Lois, at 1349 East 84th Street, Kansas City, Missouri 64131. This home is our primary residence.

3. On or about August 7, 1997, Lois and I took out a second mortgage loan from Preferred Credit Corporation. We used our home at 1349 East 84th Street, Kansas City, to secure the loan.

4. Lois and I learned about Preferred Credit from a postcard mailed to our home. We responded to the card and talked with representatives from Preferred Credit over the telephone. We provided and sent Preferred the employment, credit card and other information it requested. A genuine copy of one of the letters that Preferred sent us is attached to this affidavit as Exhibit B-1.

5. Once everything was in order Preferred told us on the phone that it would send a representative to our home with the loan papers for us to sign. On or about August 7, 1997, a person whom we understood to be Preferred's representative came to our home in Missouri. She had two sets of loan papers. The representative had us sign one set of the papers, which she kept. The representative gave us the second set and told us that this was all we needed to do and that the loan was done.

6. Lois and I signed the application for our second mortgage loan in our home on or about August 7, 1997. This was when the representative from Preferred came to our home with the two sets of loan papers. A genuine copy of the signed application is attached as Exhibit B-2.

7. A genuine copy of the Note we received when we signed up for our loan is attached as Exhibit B-3.

8. A genuine copy of the Deed of Trust we received when we signed up for our loan is attached as Exhibit B-4.

9. Both the note and the deed of trust for the loan contained a notation on the bottom left-hand corner of each page indicating that the loan was a "MISSOURI - SECOND MORTGAGE."

10. A genuine copy of the Settlement Statement that Lois and I received when we signed up for our loan is attached as Exhibit B-5. It shows a Settlement Date of 08/12/1997. The disbursement listing on the Settlement Statement matches up with the list of debts to be paid with our loan funds, which we also received when we signed up for our loan, and which is attached as Exhibit B-6.

11. Lois and I borrowed all the loan fees and any prepaid interest that we had to pay to obtain our loan as a part of the $45,000.00 total loan amount. This is the way Preferred

proposed the loan to us. I do not remember anyone from Preferred ever suggesting or telling us that we could (or should) pay for the fees with cash, instead of from the money we were borrowing.

12. A genuine copy of the Federal Truth in Lending Disclosure Statement that Lois and I received when we signed up for our loan is attached as Exhibit B-7.

13. A genuine copy of the Itemization of Amount Financed that Lois and I received when we signed up for our loan is attached as Exhibit B-8.

14. A genuine copy of the Notice of Right to Cancel that Lois and I received when we signed up for our loan is attached to this affidavit as Exhibit B-9. We did not cancel the loan at any time.

15. A genuine copy of the Loan Servicing Disclosure Statement that Lois and I received when we signed up for our loan is attached as Exhibit B-10.

16. Our records show that, after we "closed" our loan on or about August 7, 1997, Preferred mailed us a Final Closing Statement dated 8/15/97, attached as Exhibit B-11, together with the disbursement checks. Our records also show that we probably received the Settlement Statement, attached as Exhibit B-12, which shows a Settlement Date of 08/18/1997, along with the Final Closing Statement and disbursement checks.

17. I paid most of the bills and I made most if not all of the payments on our second mortgage loan. I do not remember making any monthly payments to Preferred Credit. I recall making payments to Advanta Mortgage, and later I started sending our payments to Wendover Financial Services, and then to Countrywide Home Loans at the end.

18. I wrote most if not all of the checks we sent in to pay our second mortgage loan. Lois and I made all of the monthly payments from Missouri. All of the checks were drawn on our

bank account in Missouri. We wrote each check after receiving a written bill, which was also mailed to us in Missouri.

19. Even though I sent the monthly payments to Wendover, our bills still came from Impac Funding Corp. Genuine copies of two of the bills and stubs we received for our loan are attached as Exhibit B-13.

20. Genuine copies of the Form 1098's that Lois and I received for our loan are collectively attached as Exhibits B-14. Like the monthly bills, the 1098's were mailed to us in Missouri for each year.

21. Before we joined this lawsuit, Lois and I requested Wendover to identify the holder or owner of our mortgage note. A genuine copy of the letter Wendover mailed in response is attached as Exhibit B-15.

22. Lois and I were able to pay off our second mortgage loan in 2006. A genuine copy of the Deed of Release available on-line from the Jackson County Recorder of Deeds is attached as Exhibit B-16.

23. The signatures on the documents collectively attached as Exhibit A-17 are Lois' and mine.

24. I have personal knowledge of each of the matters set out above and state that they are true.

Dated: November 16, 2010

Michael E. Harris

Michael E. Harris

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Before me, on this 16th day of November 2010, the undersigned, a Notary Public within and for the County and State aforesaid, came Michael E. Harris , who is personally known to me to be the same person who executed this instrument, and such person duly acknowledged the execution of the same to her own fee act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

Joanne M Haake

Notary Public

My Commission Expires:
4/29/2012

NOTE

Loan No. 40001682

August 7, 1997 , KANSAS CITY Missouri
1349 EAST 84TH STREET, KANSAS CITY, MO 64131
Property Address City State Zip Code

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. 45,000.00 (this amount will be called "principal"),plus interest, to the order of the Lender. The Lender is PREFERRED CREDIT CORPORATION, A CALIFORNIA CORPORATION. I understand that the Lender may transfer this Note . The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."

Ex 18

2. INTEREST

I will pay interest at a yearly rate of 13.99%.

Interest will be charged on unpaid principal until the full amount of principal has been paid.

3. PAYMENTS

I will pay principal and interest by making payments each month of U.S. $598.98 .

I will make my payments on the 27th day of each month beginning on September 27, 1997.

I will make these payments every month until I have paid all of the principal and interest and any other charges, described below, that I may owe under this Note. If, on August 27, 2012, I still owe amounts under this Note, I will pay all those amounts, in full, on that date.

I will make my monthly payments at 3347 MICHELSON , SUITE #400, IRVINE, CALIFORNIA, 92612 or at a different place if required by the Note Holder.

4. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Notice From Note Holder

If I do not pay the full amount of each monthly payment by the end of 10 calendar days after the date it is due, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default. That date must be at least 30 days after the date on which the notice is mailed to me or, if it is not mailed, 30 days after the date on which it is delivered to me.

(B) Default

If I do not pay the overdue amount by the date stated in the notice described in (A) above, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(C) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back for all of its reasonable costs and expenses to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

5. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Deed of Trust, dated 8/7/97 , protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Deed of Trust describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note.

6. BORROWER'S PAYMENTS BEFORE THEY ARE DUE

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in a letter that I am doing so. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment. "

I may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will use all of my repayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates or changes in the amounts of my monthly payments unless the Note Holder agrees in writing to those delays or changes. I may make a full prepayment at any time. If I choose to make a partial prepayment, the Note Holder may require me to make the prepayment on the same day that one of my monthly payments is due. The Note Holder may also require that the amount of my partial prepayment be equal to the amount of principal that would have been part of my next one or more monthly payments.

7. BORROWER'S WAIVERS

I waive my rights to require the Note Holder to do certain things. Those things are: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice of dishonor"); (C) to obtain an official certification of nonpayment (known as a "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else also waives these rights. These persons are known as "guarantors, sureties and endorsers."

8. GIVING OF NOTICES

Any notice that must be given to me under this Note will be given by delivering it or by mailing it by certified mail addressed to me at the Property Address above. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by certified mail to the Note Holder at the address stated in Section 3 above. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

9. RESPONSIBILITY OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of a guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to keep all of the promises made in this Note.

Borrower has executed and acknowledges receipt of pages 1 and 2 of this Note.

_____(Seal)	_____(Seal)
MICHAEL E. HARRIS -Borrower	LOIS A. HARRIS -Borrower
_____(Seal)	_____(Seal)
-Borrower	-Borrower
_____(Seal)	_____(Seal)
-Borrower	-Borrower

Settlement Statement

Transactions without Sellers

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0491

Name & Address of Borrower: MICHAEL E. HARRIS LOIS A. HARRIS 1349 EAST 84TH STREET KANSAS CITY, MO 64131	Name and Address of Lender: Preferred Credit Corporation 3347 Michelson Suite 400 Irvine, CA 92612
Property Location: (if different from above)	Settlement Agent: Preferred Credit Corporation
	Place of Settlement: Preferred Credit Corporation
Loan Number: 40001682	Settlement Date: 08/18/1997

Ex 19

L. Settlement Charges				M. Disbursements to Others		
801.	Loan Origination Fee	%		1501.	HFC Paid	$10,950.00
802.	Loan Discount Fee	%		1502.	COMM BANK CDCTR	$5,448.00
803.	Appraisal Fee to:	PRE IRVINE/PFS	$0.00	1503.	FIRST USA BANK	$4,205.00
804.	Credit Report to:			1504.	DISCOVER CARD	$4,100.00
805.	Inspection Fee to:			1505.	CITI BANK GOLD	$2,791.75
806.	Mortgage Insurance Application Fee to:			1506.	SEARS Paid	$3,808.00
807.	Mortgage broker fee to:	PRE IRVINE/PFS	$900.00	1507.	CIRCLE ONE	$2,863.00
808.	Document Preparation to:	Preferred Credit Corporation	$0.00	1508.	BNB BEST BUY	$2,271.00
809.	Loan Processing to:	Preferred Credit Corporation	$395.00	1509.	FID FIN SERV Paid	$1,277.00
810.	Underwriting Fee to:	Preferred Credit Corporation	$125.00	1510.	QVC/MBGA	$731.00
811.	Yield Spread Premium	PRE IRVINE/PFS $0.00 (P.O.C.)		1511.	CREDIT FIRST	$584.00
812.		Preferred Credit Corporation	$500.00	1512.	MWARDS/MBGA Paid	$411.00
813.	ADMINISTRATION/DOCU	Preferred Credit Corporation	$210.00	1513.		
814.	REVIEW/SIGNING	PRE IRVINE/PFS	$3,275.00	1514.		
815.	PROCESSING/ADMINIST		$0.00	1515.		
900.	**Items Required by Lender to be paid in Advance**			1516.		
901.	Interest From: 8/18/97 to: 8/27/97 @ 17.25 per day		$155.25	1517.		
902.	Mortgage Insurance Premium for: months to:			1518.		
903.	Hazard Insurance Premium for: years to:			1519.		
904.				1520.	TOTAL DISBURSED (enter on line 1603)	$39,439.75
1000.	**Reserve's Deposited with Lender**					
1001.	Hazard Insurance	months @$ per mo				
1002.	Mortgage Insurance	months @$ per mo				
1003.	City Property Tax	months @$ per mo				
1004.	County Property Tax	months @$ per mo				
1005.	Annual Assessments	months @$ per mo				
1006.		months @$ per mo				
1007.		months @$ per mo				
1008.		months @$ per mo				
1100.	**Title Charges**					
1101.	Settlement of closing fee	to:				
1102.	Abstract or Title Search	to:				
1103.	Title Examination	to:				
1104.	Title Insurance Binder	to:				
1105.	Document Preparation	to:				
1106.	Notary Fees	to:				
1107.	Attorney's Fees (includes above item numbers)	to:				
1108.	Title Insurance (includes above item numbers)	to Preferred Credit Corporation	$0.00			
1109.	Lenders coverage	$		N.	NET SETTLEMENT	
1110.	Owner's coverage	$		1600.	Loan Amount	$45,000.00
1111.				1601.	Check/Cash from Borrower	
1112.				1602.	Minus Settlement Charge	$5,560.25
1113.				1603.	Minus Disbursements to Others	$39,439.75
1200.	**Government Recording and Transfer Charges**			1604.	Net to Borrowers	$0.00
1201.	Recording Fees:		$0.00			
1202.	City/County tax/stamps					
1203.	State tax/stamps					
1204.						
1205.						
1300.	**Additional Settlement**					
1301.	Survey to:					
1302.	Pest Inspection to:					
1303.	Architectural/engineering service to:					
1304.	Building permits to:					
1305.						
1400.	Total Settlement Charges (enter on line 1602)		$5,560.25			

Borrower(s) Signature(s):

X

X

GvPfd-har0517

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Ex 20

MICHAEL P. AND SHELLIE GILMOR, et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION, et al.,

Defendants.

Case No. 10-0189-CV-W-ODS

AFFIDAVIT OF LEO PARVIN

Leo E. Parvin, being first duly sworn upon his oath, and of lawful age, deposes and says the following:

1. My name is Leo E. Parvin. I am over 18 years of age and am one of the named plaintiffs in this lawsuit.

2. From approximately 1997 through 2004, I lived at 1913 South Maywood, Independence, Missouri 64052. This home was my primary residence.

3. On or about June 6, 1997, I took out a second mortgage loan from Preferred Credit Corporation. I used my home at 1913 South Maywood, Independence, Missouri 64052 to secure the loan.

4. I do not currently recall how I learned about Preferred Credit. I do remember giving Preferred Credit my information over the telephone. I sent Preferred the employment, credit card and other information it requested. I received the letter attached as Exhibit D-1, which I believe was either faxed to me or mailed to my home.

5. On or about June 6, 1997, I signed the loan closing papers at a title company in

Raytown, Missouri, designated by Preferred Credit. The loan officer had two sets of loan papers. The loan officer had me sign one set of the papers, which he kept. The loan officer gave me the second set and told me that this was all I needed to do and that the loan was done.

6. A genuine copy of the Note I received when I signed up for my loan is attached as Exhibit D-2.

7. A genuine copy of the Deed of Trust I received when I signed up for my loan is attached as Exhibit D-3.

8. Both the note and the deed of trust for the loan contained a notation on the bottom left-hand corner of each page indicating that the loan was a "MISSOURI - SECOND MORTGAGE."

9. A genuine copy of the Settlement Statement that I received in connection with my second mortgage loan is attached as Exhibit D-4. It shows a Settlement Date of June 11, 1997. The disbursement listing on the Settlement Statement matches up with the list of debts to be paid with my loan funds, which I received and signed on or about June 11, 1997, attached as Exhibit D-5.

10. I borrowed all the fees and any prepaid interest that I had to pay to obtain my loan as a part of the $20,000 total loan amount. This is the way Preferred proposed the loan to me. I do not remember anyone from Preferred ever telling or suggesting to me that I could (or should) pay for the fees myself with cash, instead of from the money I was borrowing.

11. A genuine copy of the Federal Truth in Lending Disclosure Statement that I received when I signed up for my loan is attached as Exhibit D-6.

12. A genuine copy of the Itemization of Amount Financed that I received when I signed up for my loan is attached as Exhibit D-7.

13. A genuine copy of the Notice of Right to Cancel that I received when I signed up for my loan is attached to this affidavit as Exhibit D-8. I did not cancel the loan at any time.

14. A genuine copy of the Loan Servicing Disclosure Statement that I received when I signed up for our loan is attached as Exhibit D-9.

15. I paid all of the bills and I made all of the payments on my second mortgage loan. I do not remember ever making any monthly payments to Preferred Credit. I recall sending some of the payments to Advanta Mortgage, Empire Funding and Countrywide Home Loans, Inc.

16. I wrote all of the checks I sent in to pay my second mortgage loan. I made all of the monthly payments from Missouri. All of the checks were drawn on my bank account in Missouri. I wrote each check after receiving a written bill, which was also mailed to me in Missouri.

17. Genuine copies of the Form 1098's that I received for my loan are collectively attached as Exhibits D-10. Like the monthly bills, the 1098's were mailed to me in Missouri for each year.

18. I was able to pay off my second mortgage loan from Preferred Credit. A genuine copy of the Deed of Release available on-line from the Jackson County Recorder's Office is attached at Exhibit D-11.

19. I have personal knowledge of each of the matters set out above and state that they are true.

Dated: 11-18-10

Leo E. Parvin

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Before me, on this 18th day of November 2010, the undersigned, a Notary Public within and for the County and State aforesaid, came Leo E. Parvin, who is personally known to me to be the same person who executed this instrument, and such person duly acknowledged the execution of the same to her own fee act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

Joanne M Haake
Notary Public

My Commission Expires:

4/29/2012

JOANNE M. HAAKE
NOTARY SEAL
#08484089
MY COMMISSION EXPIRES
April 29, 2012
JACKSON COUNTY
NOTARY PUBLIC, STATE OF MISSOURI

NOTE

Loan No. 40001498

June 6, 1997 , INDEPENDENCE Missouri
1913 SOUTH MAYWOOD, INDEPENDENCE, MO 64052
Property Address City State Zip Code

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. 20,000.00 (this amount will be called "principal"),plus interest, to the order of the Lender. The Lender is PREFERRED CREDIT CORPORATION, A CALIFORNIA CORPORATION. I understand that the Lender may transfer this Note . The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."

Ex 21

2. INTEREST

I will pay interest at a yearly rate of 13.99%.

Interest will be charged on unpaid principal until the full amount of principal has been paid.

3. PAYMENTS

I will pay principal and interest by making payments each month of U.S. $266.21 .

I will make my payments on the 26th day of each month beginning on July 26, 1997.

I will make these payments every month until I have paid all of the principal and interest and any other charges, described below, that I may owe under this Note. If, on June 26, 2012, I still owe amounts under this Note, I will pay all those amounts, in full, on that date.

I will make my monthly payments at 3347 MICHELSON , SUITE #400, IRVINE, CALIFORNIA, 92612 or at a different place if required by the Note Holder.

4. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Notice From Note Holder

If I do not pay the full amount of each monthly payment by the end of 10 calendar days after the date it is due, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default. That date must be at least 30 days after the date on which the notice is mailed to me or, if it is not mailed, 30 days after the date on which it is delivered to me.

(B) Default

If I do not pay the overdue amount by the date stated in the notice described in (A) above, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(C) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back for all of its reasonable costs and expenses to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

5. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Deed of Trust, dated 6/6/97 , protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Deed of Trust describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note.

6. BORROWER'S PAYMENTS BEFORE THEY ARE DUE

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in a letter that I am doing so. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment. "

I may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will use all of my repayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates or changes in the amounts of my monthly payments unless the Note Holder agrees in writing to those delays or changes. I may make a full prepayment at any time. If I choose to make a partial prepayment, the Note Holder may require me to make the prepayment on the same day that one of my monthly payments is due. The Note Holder may also require that the amount of my partial prepayment be equal to the amount of principal that would have been part of my next one or more monthly payments.

7. BORROWER'S WAIVERS

I waive my rights to require the Note Holder to do certain things. Those things are: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice of dishonor"); (C) to obtain an official certification of nonpayment (known as a "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else also waives these rights. These persons are known as "guarantors, sureties and endorsers."

8. GIVING OF NOTICES

Any notice that must be given to me under this Note will be given by delivering it or by mailing it by certified mail addressed to me at the Property Address above. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by certified mail to the Note Holder at the address stated in Section 3 above. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

9. RESPONSIBILITY OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of a guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to keep all of the promises made in this Note.

Borrower has executed and acknowledges receipt of pages 1 and 2 of this Note.

_____(Seal)	_____(Seal)
LEO E. PARVIN, JR. -Borrower	-Borrower
_____(Seal)	_____(Seal)
-Borrower	-Borrower
_____(Seal)	_____(Seal)
-Borrower	-Borrower

Settlement Statement
Transactions without Sellers

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0491

Ex 22

Name & Address of Borrower:	Name and Address of Lender:
LEO E. PARVIN, JR. 816-252-5896 1913 SOUTH MAYWOOD INDEPENDENCE, MO 64052	Preferred Credit Corporation 3347 Michelson Suite 400 Irvine, CA 92612
Property Location: (If different from above)	Settlement Agent: Preferred Credit Corporation
	Place of Settlement: Preferred Credit Corporation
Loan Number: 40001498	Settlement Date: 6/11/97

L. Settlement Charges			M. Disbursements to Others		
801. Loan Origination Fee	%		1501. DISCOVER CARD		$3,049.00
802. Loan Discount Fee	%				
803. Appraisal Fee to:	Preferred Credit Corporation	$0.00	1502. FNANB VISA		$3,040.00
804. Credit Report to:					
805. Inspection Fee to:			1503. NATIONS BANK MW		$2,708.00
806. Mortgage Insurance Application Fee to:					
807. Mortgage broker fee to:	PRE IRVINE/PFS	$400.00	1504. SEARS		$2,330.00
808. Document Preparation to:	Preferred Credit Corporation	$125.00			
809. Loan Processing to:	Preferred Credit Corporation	$395.00	1505. BRAVO CARD		$2,093.00
810. Underwriting Fee to:	Preferred Credit Corporation	$125.00			
811. Yield Spread Premium	PRE IRVINE/PFS $0.00 (P.O.C.)		1506 JC PENNEY		$1,293.00
812.	Preferred Credit Corporation	$190.00			
813. YIELD SPREAD	PRE IRVINE/PFS	$0.00	1507. JC PENNEY		$1,174.00
814. PREMIUM(3600POC)	PRE IRVINE/PFS	$1,488.42			
815. PROCESSING/UNDERWRIT	Preferred Credit Corporation	$150.00	1508.		
900. Items Required by Lender to be paid in Advance					
901. Interest From:	to:	$115.05	1509.		
@ 7.67 per day					
902. Mortgage Insurance Premium for:	months to:		1510.		
903. Hazard Insurance Premium for:	years to:		1511.		
904.			1512.		
1000. Reserve's Deposited with Lender					
1001. Hazard Insurance	months @$ per mo		1513.		
1002. Mortgage Insurance	months @$ per mo				
1003. City Property Tax	months @$ per mo		1514.		
1004. County Property Tax	months @$ per mo				
1005. Annual Assessments	months @$ per mo		1515.		
1006.	months @$ per mo				
1007.	months @$ per mo		1516		
1008.	months @$ per mo				
1100. Title Charges			1517		
1101. Settlement or closing fee	to:				
1102. Abstract or Title Search	to:		1518		
1103. Title Examination	to:				
1104. Title Insurance Binder	to:		1519		
1105. Document Preparation	to:				
1106. Notary Fees	to:		1520. TOTAL DISBURSED		$15,687.00
1107. Attorney's Fees	to:		(enter on line 1603)		
(includes above item numbers)					
1108. Title Insurance to	Preferred Credit Corporation	$135.00			
(includes above item numbers)					
1109. Lenders coverage	$		N. NET SETTLEMENT		
1110. Owner's coverage	$		1600. Loan Amount		$20,000.00
1111.					
1112.			1601. Check/Cash from Borrower		
1113.					
1200. Government Recording and Transfer Charges			1602. Minus Settlement Charge		$3,171.47
1201. Recording Fees:		$48.00			
1202. City/County tax/stamps			1603. Minus Disbursements to Others		$15,687.00
1203. State tax/stamps					
1204.			1604. Net to Borrowers		$1,141.53
1205.					
1300. Additional Settlement					
1301. Survey to:					
1302. Pest Inspection to:			Borrower(s) Signature(s):		
1303. Architectural/engineering service to:					
1304. Building permits to:			X		
1305.					
1400. Total Settlement Charges (enter on line 1602)		$3,171.47	X		

GvPfd-par0105

Remit

Ex 23

SUMMARY
MONTHLY ACTIVITY REPORT
December 01, 1997
Investor 353-216- ICIFC/Preferred Loans Sold To Empire Funding

Servicer:	Investor:
ADVANTA Mortgage Corp., USA 16875 West Bernardo Drive San Diego, CA 92127 Attn: Jo Ann Bramwell 619-618-5039	Empire Funding Corporation 9737 Great Hills Trial Austin, TX 78759 Attn: Alisa Turner 800-206-9004 X2026

Principal Reconciliation		**Loan Count**		
1. Beginning Unpaid Principal Balance		5790		216,415,291.16
Sales Adj. See Schedule				0.00
				216,415,291.16
2. Principal Adjustments				
A. (+)	Loans Added	0		0.00
B. (-)	Regular Principal/Curtailment Collections		0.00	
C. (-)	Payments in Full	0	0.00	
D. (-)	Serviced Released	5790	216,415,291.16	0.00
E. (+/-)	Other Principal Activity -	0	0.00	
F.	Total Principal Adjustments	-5790		(216,415,291.16)
3. Ending Balance		0		0.00

Remittance Detail

4. Interest			
A. (+)	Net Interest Collections	0.00	
B. (+)	Net Interest Collections on Payments in Full	0.00	
C.	Total Interest Collections		0.00
5. Collection Activity			
A. (+)	Principal Collected (line 2b, 2c)	0.00	
B. (+/-)	Other Adjustments, See Attached Sheet	0.00	
C. (-)	Liquided Loan Loss	0.00	
D.	Total Principal Collections		0.00
6. Remittance Due for Current Activity			0.00
7. Adjustments Not Reflected Above			0.00
8. *TOTAL FUNDS TO BE REMITTED ON 12/08/97*			$ -

Approved: _____
Date: _____

Investor 353-216- ICIFC/Preferred Loans Sold To Empire Funding

Wire Amount:

Checked by:

Date:

ADVANTA

INTEROFFICE MEMORANDU

TO: Financial Processing

FROM: Theresa Bales

DATE: 12/1/97

SUBJECT: Service Release

The following service release transactions occurred today:

Transaction Name	**Batch Name**
ICIFC/Empire	EMPIRE 2/6

Attached is a copy of the trial balance, reconciliation and check request for this transaction.

If you have any questions, please call me at x5003.

cc: Patricia Ramirez, Diane Weaver

Service Release Cash Reconciliation

New Servicer: Empire Funding
Effective: 12/1/97

Cash Balances

Escrow Balances		$	46.95
	Interest on Escrow	$	0.51
Suspense Balances:			
	Miscellaneous	$	34,747.69
	Forbearance/Partial Payment	$	2,373.14
	Hazard Loss	$	0.00
	Subtotal	$	37,168.29
Escrow Advances		$	20,231.06
			0.00
Corporate Advances		$	195.00
			0.00
	Subtotal	$	20,426.06
	Net Total	$	16,742.23

Check/Request Attached [X] *Wire/See Below* [ ]

Wire Information

ABA/Routing No.

Remit From: CENTRAL DISBURSEMENT

Funds Wired To:
City/State:
For Credit To:
Account No.:
Reference:

Approval Signatures

Prepared By

ANB/Accounting Approval

Reviewed/Manager Approval By

Wire Confirmed By

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3035177	40001135	HOLT	39,653.80	112797	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3097557	31201683	LOCKHART	28,692.23	112597	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3113164	40001131	DICKERHOF	63,565.33	122597	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3113297	40001142	HEITMANN	39,367.54	122597	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3113412	22001056	LANIER	34,445.73	122697	.00	.00	.00	.00	.00	.00
REDACTED												

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3114584	22001023	HUNTER	19,743.91	113097	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3114824	40001198	DECKER	23,613.06	120497	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3114980	40001190	MCPHERSON	29,398.48	121197	.00	.00	.00	.00	182.58	.00
REDACTED												

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3121936	40001194	CHENEY	24,884.62	122797	.00	.00	.00	.00	.00	.00
REDACTED												

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3122843	20615551	RICB	34,565.99	120797	.00	.00	.00	.00	.00	.00
REDACTED												

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3132685	22001110	DEVENPORT	23,758.13	111897	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3131695	20615480	BOYD	23,463.26	111297	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANX

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	INT ESC	SUSP MISC	SUSP HAZ	SUSP PORB	ESCROW ADV	CORP ADV BAL
REDACTED													
353	216	3132941	40001205	SCHOTT	34,619.08	121197	.00		.00	.00	.00	.00	.00
353	216	3132958	40001213	SCHMITZ	30,550.52	121597	.00		.00	.00	.00	.00	.00
REDACTED													
353	216	3135373	20615549	FRAZIER	22,758.90	121797	.00		.00	.00	.00	.00	.00

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3154929	40001099	BENKERT	49,680.52	121097	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL (IBT ESC)	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3155744	40001141	HAMILTON	20,602.46	122797	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	BSCROW ADV	CORP ADV BAL
REDACTED												
353	216	3156320	40001159	OSMAN	44,540.66	111097	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3156429	20615389	PIBURN	37,977.42	121097	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3156460	20614882	PRATT	24,051.57	120497	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3156510	40001153	REESE	49,401.09	121197	.00	.00	.00	.00	.00	.00
REDACTED												

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3190956	22001042	RIEDL	34,475.15	120797	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	INT ESC	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED													
353	216	3205788	40001172	RICHTER	49,217.40	010598	.00		.00	.00	.00	.00	.00
REDACTED													

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP PORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3211208	21501983	ZARVOS	30,433.01	122397	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3211703	22001019	GIACONIA	46,264.29	010398	.00	.00	.00	.00	.00	.00

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3211737	22001039	GENTRY	30,079.34	122197	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3211877	22001135	ROBINSON	18,798.40	121197	.00	.00	.00	.00	.00	.00
353	216	3211935	22001171	LAWSON	20,823.49	111497	.00	.00	.00	.00	53.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
353	216	3214814	40001202	WRIGHT	19,799.91	110997	.00	27.98	.00	.00	.00	.00
353	216	3214905	40001258	MCVEHIL	44,602.74	112397	.00	.00	.00	.00	.00	.00

REDACTED

QUERY NAME: RELACQ4CA SUSANK

UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3294352	40001204	RILEY	39,591.67	111897	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3331923	40001212	KNIRR	46,966.31	121597	.00	.00	.00	.52	.00	.00
REDACTED												

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3390291	40001457	TOHILL	39,874.67	112297	.00	.00	.00	.00	270.28	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3394806	22001705	SMITH	20,762.08	122297	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3430907	21003402	VAN PRAAG	39,730.94	112797	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3433000	40001456	STARK	46,354.33	112697	.00	.00	.00	.00	.00	.00
353	216	3433018	40001479	VORBECK	54,630.07	112597	.00	.00	.00	.00	.00	.00
353	216	3433026	40001488	RADCLIFFE	49,843.35	112597	.00	.00	.00	.00	.00	.00
REDACTED												

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3442985	22001853	MULLANE	27,308.40	112097	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3443397	40001491	MADDOX	49,663.72	112797	.00	.00	.00	.00	.00	.00
353	216	3443405	40001498	PARVIN	19,865.50	112697	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3451994	21003373	REINBERG	74,012.14	112697	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3452141	21003463	LISLH	34,625.79	010698	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP PORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3453768	30202122	NAGEL	44,127.23	122497	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3453834	30202161	SANSAGRAW	36,744.84	121097	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3454501	40001489	BOGLE	49,843.35	120497	.00	.00	.00	.00	.00	.00
353	216	3454519	40001497	ALDAG	51,535.80	121197	.00	.00	.00	.00	.00	.00
353	216	3454527	40001515	BEEBE	18,327.88	122797	.00	.00	.00	.00	.00	.00
353	216	3454535	40001517	BROWN	34,904.59	112797	.00	.00	.00	.00	.00	.00
Redacted												
353	216	3454550	40001524	COLBERT	49,558.95	122797	.00	.00	.00	.00	.00	.00
353	216	3454568	40001542	JONES	34,659.21	120897	.00	.00	.00	.00	.00	.00
353	216	3454576	40001567	OTTIGER	34,357.56	120897	.00	.00	.00	.00	.00	.00
353	216	3454584	40001587	CHASSELLS	29,798.23	120997	.00	.00	.00	.00	.00	.00
353	216	3454600	40001595	ARMBRUSTE	24,645.45	110897	.00	24,930.26	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3670460	20402158	EDWARDS	28,701.09	121097	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3674157	21502683	RIGOT	22,359.44	121597	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3674215	21502917	CHRISTIAN	54,592.88	120697	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3674785	22002561	BROCK	59,534.75	120497	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3675683	31901714	MILLER	37,770.54	120797	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3675782	40001401	SHEKAR	49,577.19	122797	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3675832	40001510	MATTINGLY	55,284.42	112797	.00	.00	.00	.00	.00	.00
353	216	3675857	40001514	LAY	46,391.38	111597	.00	.00	.00	.00	.00	.00
353	216	3675865	40001519	MUELLER	59,596.44	120497	.00	.00	.00	.00	.00	.00
353	216	3675881	40001530	WEST	64,706.54	122797	.00	.00	.00	.00	.00	.00
353	216	3675899	40001532	MEYER	49,843.35	120697	.00	.00	.00	.00	.00	.00
353	216	3675907	40001536	MOUNTCAST	44,859.01	120697	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3675949	40001554	ARMSTRONG	34,735.90	120897	.00	.00	.00	.00	.00	.00
353	216	3675956	40001561	TEACUTTER	32,957.01	010698	.00	.00	.00	.00	.00	.00
353	216	3675972	40001565	SHANKS	21,051.33	011198	.00	.00	.00	.00	.00	.00
353	216	3675980	40001570	BROWN	64,562.99	121097	.00	.00	.00	.00	.00	.00
353	216	3676004	40001578	HOLBERT	47,827.59	120897	.00	.00	.00	.00	.00	.00
353	216	3676038	40001592	BARLEY	49,639.84	120997	.00	.00	.00	.00	.00	.00

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
353	216	3676053	40001600	COTTER	28,804.95	121197	.00	.00	.00	.00	.00	.00
353	216	3676061	40001602	NETTLES	33,877.87	121197	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3676095	40001619	WIBBENMEN	63,301.08	121197	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3693629	22002063	SMITH	34,787.53	110997	.00	.00	.00	.00	.00	.00
REDACTED												

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3694304	40001659	BEAL	15,892.39	122297	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3779998	21503399	CHRISTOPH	59,555.85	122497	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3781416	40001613	AKINS	54,845.30	121397	.00	.00	.00	.00	.00	.00
353	216	3781424	40001622	PUERTA	43,880.07	121597	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3781457	40001652	GOOD	49,843.35	121597	.00	.00	.00	.00	.00	.00
353	216	3781465	40001656	MAGGARD	34,840.79	112397	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3784477	40001516	MURRAY	19,865.50	112797	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

CONFIDENTIAL

UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3828068	21503481	ROBINSON	62,809.63	122797	.00	.00	.00	.00	.00	.00
353	216	3828076	21503497	SHIPMAN	34,901.35	122797	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

ADV20782

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3829728	40001502	BROWN	16,763.10	120997	.00	.00	.00	30.00	.00	.00
REDACTED												
353	216	3829785	40001638	MURRAY	54,802.45	122297	.00	.00	.00	.00	.00	.00
353	216	3829793	40001668	FLOYD	39,730.94	122797	.00	.00	.00	.00	.00	.00
353	216	3829801	40001683	PERSINGER	74,108.83	112797	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INVESTOR 353 POOLS 216
UPB > ZERO, SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3834462	20402270	HEDIN	40,265.70	112597	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3838620	21503570	GRZECHOWI	39,892.95	121397	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3838653	21503630	EADS	16,916.87	121097	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3841145	40001584	JORDAN	74,799.02	120697	.00	.00	.00	.00	.00	.00
353	216	3841152	40001603	ERTL	24,806.15	122797	.00	.00	.00	.00	.00	.00
353	216	3841160	40001610	TRUMAN	74,795.55	121397	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3841194	40001646	SKINNER	44,822.73	011598	.00	.00	.00	.00	.00	.00
353	216	3841202	40001661	JONES	49,866.02	121097	.00	.00	.00	.00	.00	.00
353	216	3841210	40001664	MILLER	54,724.17	120797	.00	.00	.00	.00	.00	.00
353	216	3841228	40001671	WORTHY	44,746.83	113097	.00	.00	.00	.00	.00	.00
353	216	3841236	40001687	COHEN	40,773.61	121097	.00	.00	.00	.00	.00	.00
353	216	3841251	40001691	DANCHUS	74,623.87	120797	.00	.00	.00	.00	.00	.00
353	216	3841269	40001692	SANDSTEDT	44,469.28	120797	.00	.00	.00	.00	.00	.00
353	216	3841277	40001700	BOLDEN	49,723.91	120797	.00	.00	.00	.00	.00	.00
353	216	3841285	40001707	HERBERGER	26,936.94	121397	.00	.00	.00	.00	.00	.00
353	216	3841293	40001709	CARROLL	39,779.13	121397	.00	.00	.00	.00	.00	.00
353	216	3841301	40001713	ZINN	49,883.20	120797	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3841327	40001725	LOHMAN	49,749.26	120797	.00	.00	.00	.00	.00	.00
353	216	3841343	40001732	ROLLER	49,898.40	121397	.00	.00	.00	.00	.00	.00
REDACTED												
353	216	3841368	40001747	KRUPNIK	50,695.13	121097	.00	.00	.00	.00	.00	.00
353	216	3841376	40001761	BUDDE	35,819.44	121797	.00	.00	.00	.00	.00	.00
REDACTED												

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3868775	30202204	FAVROW	49,755.50	112697	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Ex 24

MICHAEL AND SHELLIE GILMOR, et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION, et al.,

Defendants

Case No. 10-0189-CV-W-ODS

AFFIDAVIT OF CHRISTI GUMBS

Christi Gumbs, being first duly sworn upon an oath, states as follows:

1. My name is Christi Gumbs. I am over 18 years of age and work as a legal assistant for Walters Bender Strohbehn & Vaughan, P.C.

2. I am one of the legal assistants assigned to work on the Gilmor class action litigation.

3. As a legal assistant assigned to work on this case, I have, among other things, directed and assisted with the review and analysis of the discovery responses and documents that the defendants have produced to date. In addition, I have reviewed and analyzed the various trust deeds, assignments, deeds of release and other records that Walters Bender Strohbehn & Vaughan, P.C. obtained from the various Missouri County Recorders' Offices for this case. I have also reviewed and analyzed all of the information that thus far has been produced or obtained for the Missouri second mortgage loans that Preferred Credit Corporation ("PCC") made. I have also reviewed the mailing lists for the Class Notice. Four (4) Exclusion Requests

were received.

4. I, and persons under my direction, have personally reviewed all of the information and documents described in the preceding paragraph and have analyzed the same for purposes of this case.

5. To date, I have been able to identify from the above information a total of 514 Missouri second mortgage loans that Preferred Credit Corporation made on or after June 27, 1994. The records show that the Note dates for the 514 loans ranged from January 1996 through October 1998. Based on the Deeds of Trust, it appears that a total of 894 individuals obtained the 514 loans from PCC.

6. Exhibit G-1 to this affidavit is a PCC Loan Schedule that I prepared. Exhibit G-1 identifies each of the 514 PCC-originated loans by borrower name, assignee as disclosed in the defendants' discovery responses (multiple sets), the Note date, the servicer and any known successor servicer (based on the defendants' documents and/or discovery responses) and the assignee and holder information obtained from the defendants' discovery responses and results from the county searches. Columns D and E of Exhibit G-1 identify, for most of the loans, the Assignee Defendant(s) that Plaintiffs currently believe acquired the PCC Class Loans based on the Defendants' discovery responses. Columns G, H and I identify the servicers and any known successor servicers for many of the loans, again based on Defendants' discovery responses and the documents obtained. The loan information shown on Exhibit G-1 is sorted chronologically, with the earlier loans first. The four loans for which an Exclusion Request was received are identified at the bottom.

7. Exhibit G-2 is another PCC Loan Schedule. The information is the same as that on Exhibit G-1. Exhibit G-2 is sorted by the Column D Assignee, then by the Column E and Column J

Assignee.

8. Exhibits G-1 and G-2 are partial summaries of the information and documents described in paragraph 3 above. G-1 and G-2 are preliminary and not final. We reserve the right to correct any errors and to amend or supplement the schedules as additional or different information becomes known.

9. Defendants' discovery responses and documents and other information produced to date show the following:

a. A total of 117 of the PCC Class Loans were conveyed to Impac Funding Corporation ("IFC"), which states that it securitized the loans via its affiliates into various IMPAC Trusts. (Ex. G-2; Ex. G-3) Advanta Mortgage Corp. serviced the loans. (Ex. G-2, col.G) The documents show that Advanta "service released" some of the loans to Wendover Financial (formerly Wendover Funding, Inc.). (Ex. G-2, col.H) It also appears that Countrywide Home Loans, Inc. (Countrywide) acquired and/or serviced some of the PCC loans that IFC acquired. (Ex. G-4)

b. One of the PCC Class Loans conveyed to IFC was made to Named Plaintiffs Michael and Shellie Gilmor. (Ex. G-3, ¶¶6, 11-14). The Gilmor loan went from IFC to Impac Secured Assets Corp. to the IMPAC Trust 1998-1. Advanta and Wendover serviced the loan. LaSalle National Bank, as "Master Servicer" executed the Deed of Release for the Gilmor loan. (Ex. G-5) The Gilmors have produced records showing that they made their mortgage payments to Advanta and Wendover. (See Exhibit X, submitted with Plaintiffs' Suggestions).

c. A second of the PCC loans conveyed to IFC was made to Named Plaintiffs Michael and Lois Harris. (Ex. G-3, ¶¶6, 11-12) The Harris loan went from IFC to

Impac Secured Assets Corp. to the IMPAC Trust 1998-1. Advanta, Wendover and Countrywide serviced the loan. A genuine copy of the Assignment of Deed of Trust dated August 7, 1997 to Deutsche Bank National Trust Company (formerly Bankers Trust Company of California, NA) ("DBNTC) as trustee for the IMPAC Trust 1998-1 is attached as Exhibit G-6. DBNTC is an "affiliate" of Deutsche Bank Trust Company Americas (formerly Bankers Trust Company) ("DBTCA"). (Ex. G-7, ¶1) "MERS" executed the Deed of Release for the Harris loan. (Ex. G-8) The Harrises have produced records showing that they made their mortgage payments to Advanta, Werndover, IFC and Countrywide. (See Exhibit X, submitted with Plaintiffs' Suggestions).

d. A third PCC loan conveyed to the IFC was made to Named Plaintiff Leo Parvin, Jr. The Parvin loan went from IFC to Impac Mortgage Holdings, Inc. to IMH Assets Corp. to IMPAC Trust 2000-1, which held at least one additional PCC Class Loan, according to Impac's discovery responses. (Ex. G-9, No. 45 & Ex. A) Impac also states that the Parvin loan was later conveyed to a second trust, IMPAC Trust 2003-5, which held at least one other PCC Class Loan. (Id.) It appears from the documents and dates that Wells Fargo Bank, NA (formerly Norwest Bank Minnesota, NA), in an as-yet undisclosed capacity, and/or Countrywide, in an as-yet undisclosed capacity, acquired the Parvin loan on behalf of IFC/IMPAC Trust 2000-1 and its trustee, DBNTC in 2000. A genuine copy of the Corporation Assignment of Deed of Trust that purports to assign the Parvin loan to Wells Fargo Bank is attached as Exhibit G-10. In 2003, Wells Fargo "assigned" the loan to Countrywide, which acquired and/or continued to service the loan for the Impac Trusts. (Ex. G-4) A genuine copy of the Corporation Assignment of Deed of Trust to Countrywide is attached as Exhibit G-11. Wells Fargo (then Norwest), executed the Deed of Release for the Parvin loan as Indenture Trustee for the Impac Trust 2000-1, in

September 2003. (Ex. G-12) Mr. Parvin has produced records showing that he made mortgage payments to Advanta, Empire Funding, and Countrywide. (See Exhibit X, submitted with Plaintiffs' Suggestions).

e. U.S. Bank National Association ND (USBND) acquired 138 of the PCC Class Loans. (Ex. G-13 No.'s 45 & 46) Advanta Mortgage, Litton Loan Servicing and U.S. Bank National Association ("U.S. Bank") serviced the PCC loans assigned to USBND. (Ex. G-2, col.G, H, I) One of these loans was the loan made to Named Plaintiffs Ted and Raye Ann Varns. (Ex. G-13, No. 45) The Varns have produced records showing that they made their mortgage payments to Advanta, Litton, and U.S. Bank. (See Exhibit X, submitted with Plaintiffs' Suggestions).

f. Empire Funding Corporation (EFC) acquired what appear from the Advanta servicing records, county records and U.S. Bank's current discovery responses to be no less than 115 PCC Class Loans. (Ex. G-2) Empire conveyed 31 of the loans via PaineWebber Mortgage Acceptance Corp. IV to U.S. Bank as trustee of the Empire Home Loan Owner Trust 1998-1 ("Empire Trust 1998-1"). Genuine copies of the securitization documents that U.S. Bank produced on behalf of the Empire Trust 1998-1 in the *Baker* case are attached to my other affidavit, which is submitted with Plaintiffs' Joint Suggestions in Opposition to Defendants' Motions to Dismiss for Lack of Personal Jurisdiction. Advanta Mortgage and EFC serviced these loans.

g. Documents produced by Advanta show that EFC acquired and serviced Plaintiff Leo Parvin's Loan, but the loan was not among the 31 PCC Class Loans conveyed to U.S. Bank as trustee for Empire Trust 1998-1. (Ex. G-2; G-14: 12/01/97) Although Plaintiffs believe that U.S. Bank likely acquired the Parvin loan as trustee for one of the Empire Trusts,

U.S. Bank has not yet produced any loan files or payment or transaction histories for this or any non-Empire Trust 1998-1 loans.

h. DBTCA (formerly Bankers Trust Company), an affiliate of DBTNA, acquired at least 3 of the PCC Class Loans as trustee for Preferred Trust 1996-1 via Preferred Mortgage SPC Funding Corp. (Ex. G-15 No. 1; Ex.'s G-16, G-17) Advanta Mortgage was the servicer for these loans. Genuine copies of some of the securitization documents that DBTCA has produced on behalf of Preferred Trust 1996-1 are attached to my other affidavit, which is submitted with Plaintiffs' Joint Suggestions in Opposition to Defendants' Motions to Dismiss for Lack of Personal Jurisdiction.

i. DBTCA acquired at least 8 of the PCC Class Loans as trustee for Preferred Trust 1996-2 via Credit Suisse First Boston Mortgage Securities, Inc. ("CSFB"). (Ex. G-2 - as identified from the documents and discovery responses of CSFB, DBTCA and DBNTC including those attached as Ex.'s G-16, G-17) Advanta also was the servicer. Genuine copies of some of the securitization documents that DBTCA and/or CSFB produced for Preferred Trust 1996-2 are attached to my other affidavit, which is submitted with Plaintiffs' Joint Suggestions in Opposition to Defendants' Motions to Dismiss for Lack of Personal Jurisdiction.

j. DBTCA acquired at least 41 PCC Class Loans as trustee for Preferred Trust 1997-1 via CSFB. (Ex. G-2 - as identified from the documents and discovery responses of CSFB, DBTCA and DBNTC including Ex.'s G-16, G-17) Advanta was also the servicer for these loans. Genuine copies of some of the securitization documents that DBTCA and/or CSFB have to date produced for Preferred Trust 1997-1 are attached to my other affidavit, which is submitted with Plaintiffs' Joint Suggestions in Opposition to Defendants' Motions to Dismiss for Lack of Personal Jurisdiction.

k. Defendant Residential Funding Company LLC (RFC) and Sovereign Bank purchased at least 9 PCC-originated Missouri loans between them, 8 to RFC and 1 to Sovereign Bank. (Ex. G-2 - as identified from the documents that RFC produced and from the county searches for Sovereign Bank) Advanta Mortgage serviced most if not all of these loans. (Ex, G-2, col.G) Homecomings Financial also serviced at least seven (7) of the PCC Class Loans that RFC acquired.

l. Credit-Based Assets Servicing & Securitization, L.L.C. ("C-BASS") acquired no less than 4 of the PCC Class Loans. (Ex. G-2 - as identified from the documents that C-BASS and Litton jointly produced; G-18). Records from Advanta show that Advanta serviced these loans. (Id., col.G) Litton, which serviced the Varns' loan, also serviced these four loans for C-BASS. (Id., col.H, I)

m. According to its records, Ocwen Loan Servicing, L.L.C. serviced at least two of the PCC Class loans on behalf of U.S. Bank and the Empire Home Loan Owner Trust 1998-1. (G-2, col.I)

n. United Mortgage C.B, LLC acquired what appears to be at least 1 of the PCC Class Loans. (Ex. G-2 - identified from the county searches) Records from Advanta show that Advanta serviced this loan. (Id., col.G) United Mortgage has not produced any documents or payment histories for this loan.

10. I have also performed an analysis of the Notes and other loan documents obtained to date. My analysis reveals that, in connection with at least 163 of the PCC Class Loans, which constitute all of the loans for which detailed loan records have been produced and obtained thus far, PCC charged, contracted for or received the following from the PCC Class Members: "broker fees," "processing/administration fees," "processing fees," "underwriting fees," "review"

fees and/or an origination fee in excess of 2% (before August 28, 1998) and 5% (on or after August 28, 1998) for every loan. The Settlement Statements and the Notes for the loans show that all of the loan fees were financed and paid by the borrowers as a part of the loan amount. True and genuine copies of the Settlement Statements for the Named Plaintiffs' loans are attached as Exhibit G-19.

11. The number of PCC Class Loans that I attributed to the various Assignee Defendants as set out above is based primarily on the discovery responses received from the Assignee Defendants, respectively. The numbers are subject to change. The total number of PCC Class Loans that any of the above Assignee Defendants acquired may be more than what is stated above, particularly in the case of DBTCA and the Preferred Trust 1996-2 and 1997-1, which to my knowledge have still not identified the particular PCC Class Loans they acquired. They have merely referred Plaintiffs to numerous documents, which on their face show a greater number of Missouri loans that we have not yet been able to verify as having been originated by Preferred Credit Corporation.

12. Each of the discovery responses, declarations, letters and other documents attached to this affidavit is a true and genuine reproduction of the original as produced in this case.

13. The foregoing statements are true and correct and are based on my personal knowledge, my personal review and analysis of Defendants' discovery responses and documents, and of the documents produced, on the affidavits of the named plaintiffs, or on the knowledge of the various attorneys and/or legal assistants who performed portions of the above analyses with or before me.

Dated: 11/19/10

Christi Gumbs

Christi Gumbs

STATE OF KANSAS)
) ss
COUNTY OF SEDGWICK)

Before me, on this 19th day of November 2010, the undersigned, a Notary Public, came Christi M. Gumbs, who is personally known to me to be the same person who executed this instrument, and such person duly acknowledged the execution of the same to his own fee act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Kurt

Notary Public

My Commission Expires: 7/28/2012

NOTARY PUBLIC - State of Kansas
KURT JEFFERY
My Appt. Expires 7/28/2012

Remit

Ex 25

SUMMARY
MONTHLY ACTIVITY REPORT
December 01, 1997
Investor 353-216- ICIFC/Preferred Loans Sold To Empire Funding

Servicer:

ADVANTA Mortgage Corp., USA
16875 West Bernardo Drive
San Diego, CA 92127
Attn: Jo Ann Bramwell 619-618-5039

Investor:

Empire Funding Corporation
9737 Great Hills Trial
Austin, TX 78759
Attn: Alisa Turner 800-206-9004 X2026

Principal Reconciliation		Loan Count		
1. Beginning Unpaid Principal Balance		5790		216,415,291.16
Sales Adj. See Schedule				0.00
				216,415,291.16
2. Principal Adjustments				
A. (+)	Loans Added	0		0.00
B. (-)	Regular Principal/Curtailment Collections		0.00	
C. (-)	Payments in Full	0	0.00	
D. (-)	Serviced Released	5790	216,415,291.16	0.00
E. (+/-)	Other Principal Activity -	0	0.00	
F.	Total Principal Adjustments	-5790		(216,415,291.16)
3. Ending Balance		0		0.00

Remittance Detail

4. Interest			
A. (+)	Net Interest Collections	0.00	
B. (+)	Net Interest Collections on Payments in Full	0.00	
C.	Total Interest Collections		0.00
5. Collection Activity			
A. (+)	Principal Collected (line 2b, 2c)	0.00	
B. (+/-)	Other Adjustments, See Attached Sheet	0.00	
C. (-)	Liquided Loan Loss	0.00	
D.	Total Principal Collections		0.00
6. Remittance Due for Current Activity			0.00
7. Adjustments Not Reflected Above			0.00
8. *TOTAL FUNDS TO BE REMITTED ON 12/08/97*			$ -

Approved: _____
Date: _____

Investor 353-216- ICIFC/Preferred Loans Sold To Empire Funding

Wire Amount:

Checked by:

Date:

ADVANTA

INTEROFFICE MEMORANDU

TO: Financial Processing

FROM: Theresa Bales

DATE: 12/1/97

SUBJECT: Service Release

The following service release transactions occurred today:

Transaction Name	**Batch Name**
ICIFC/Empire	EMPIRE 216

Attached is a copy of the trial balance, reconciliation and check request for this transaction.

If you have any questions, please call me at x5003.

cc: Patricia Ramirez, Diane Weaver

Service Release Cash Reconciliation

New Servicer: Empire Funding
Effective: 12/1/97

Cash Balances

Escrow Balances	$	46.95
Interest on Escrow	$	0.51
Suspense Balances:		
Miscellaneous	$	34,747.69
Forbearance/Partial Payment	$	2,373.14
Hazard Loss	$	0.00
Subtotal	$	37,168.29
Escrow Advances	$	20,231.06
		0.00
Corporate Advances	$	195.00
		0.00
Subtotal	$	20,426.06
Net Total	$	16,742.23

Check/Request Attached [X] Wire/See Below [ ]

Wire Information

ABA/Routing No.

Remit From: CENTRAL DISBURSEMENT

Funds Wired To:
City/State:
For Credit To:
Account No.:
Reference:

Approval Signatures

Prepared By

ANB/Accounting Approval

Reviewed/Manager Approval By

Wire Confirmed By

INVESTOR 353 POOLS 216
UPB > ZERO; SUSP/ADV INFO
FOR LOAN ACQUISITIONS

INV CODE	POOL NMBR	LOAN NUMBER	ALTERNATE LN NUMBER	BORROWER LAST NAME	UNPAID PRIN BALANCE	*NEXT* PYMT DUE	ESCROW BAL	SUSP MISC	SUSP HAZ	SUSP FORB	ESCROW ADV	CORP ADV BAL
REDACTED												
353	216	3443397	40001491	MADDOX	49,663.72	112797	.00	.00	.00	.00	.00	.00
353	216	3443405	40001498	PARVIN	19,865.50	112697	.00	.00	.00	.00	.00	.00
REDACTED												

QUERY NAME: RELACQ4CA SUSANK

2002I 0012256

Ex 26

JACKSON COUNTY DEPARTMENT OF RECORDS
308 WEST KANSAS
INDEPENDENCE, MO 64050

RECORDER OF DEEDS DOCUMENT IDENTIFICATION & CERTIFICATION SHEET

TYPE OF INSTRUMENT: PARTIAL PRINCIPALS IDENTIFIED FROM DOCUMENT FOR DOCUMENT TRACKING PURPOSES

ASDT | PREFERRED CREDIT CORPORATION | NORWEST BANK MINNESOTA

BRIEF PROPERTY DESCRIPTION: LOT 121 SOUTH MAYWOOD

NOTE: Document information on this certification sheet is furnished as a convenience only, and in the case of any discrepancy between same and the attached instrument, the attached instrument governs. The Recorder's official Grantor/Grantee indices are created from the information contained in the actual instrument attached hereto.

STATE OF MISSOURI)
SS.
COUNTY OF JACKSON)

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 2 pages (this page inclusive), was filed for record in my office on the 19 day of February, 2002, at 11:56:38 and is truly recorded as the document number shown at the top and/or bottom of this page.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

RECORDER OF DEEDS DEED OF IND. JACKSON CO. MO.

Fees:

MO HTF	$3.00
HOMELESS 043-250-2195	$3.00
REC. TECH	$1.25
DEPT. OF REV. RECORDER'S FUND	$2.00
CO. GEN. REV	$1.75
RECORDING FEE	$5.00
USER FEE	$4.00

Mary N. Murphy
Director of Records
Jackson County, MO

S. Davis
Recording Deputy

Recording Fee: $20.00
(Paid at time of Recording)

Return to:

STONEWOOD GROUP
4360 AUGUSTA RD
STE H 302
LEXINGTON, SC 29073

Document Number / Book & Page:
2002I 0012256 (1 - 2)

PLEASE DO NOT REMOVE THIS PAGE FROM THE DOCUMENT

2002I 12256

Prepared By: MATT PARSONS
Requested by, Record and Return To:
THE STONEWOOD GROUP
4360 AUGUSTA ROAD, SUITE H-302
LEXINGTON, SC 29073
ATTN: C. JOHNSON

Loan #1900000594

EXEMPT
Document Recorded Under Exempt Status RSMo 59.310.4

CORPORATION ASSIGNMENT OF DEED OF TRUST

~~FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to~~
NORWEST BANK MINNESOTA. NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE UNDER THE INDENTURE RELATING TO IMH ASSETS CORP., COLLATERALIZED ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2000-1
all beneficial interest under that certain Deed of Trust dated **JUNE 6, 1997**
executed by **LEO E. PARVIN, JR., A SINGLE PERSON** Trustor,

Norwest Center
Sixth + Marquette
Minneapolis MN
55479

to **NATIONAL TITLE SERVICES** Trustee,

and recorded as Instrument No. on **12/15/97** in book **I31109** page **272**, of Official Records in the County Recorder's office of **JACKSON** County, State of MISSOURI describing land therein as: **LOT 121, SOUTH MAYWOOD, A SUBDIVISION IN INDEPENDENCE, JACKSON COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.**

TOGETHER with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued under the said Deed of Trust.

PREFERRED CREDIT CORPORATION,
A CALIFORNIA CORPORATION

Candy Koontz

CANDY KOONTZ, AUTHORIZED SIGNATORY
FOR PREFERRED CREDIT CORPORATION,
A CALIFORNIA CORPORATION

State of CALIFORNIA
County of ORANGE
On, 11/7/2001 before me, **MATT PARSONS** Notary Public in and for said state, personally appeared **CANDY KOONTZ**, AUTHORIZED SIGNATORY FOR PREFERRED CREDIT CORPORATION, A CALIFORNIA CORPORATION, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the same.

WITNESS my hand and official seal.

Matt Parsons (SEAL)
MATT PARSONS, NOTARY PUBLIC

MATT PARSONS
COMM. # 1301240
NOTARY PUBLIC • CALIFORNIA
ORANGE COUNTY
Comm. Exp. APRIL 25, 2005

96187 I16

Ex 27

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

MICHAEL P. AND SHELLIE GILMOR, Plaintiffs, v. PREFERRED CREDIT CORPORATION, et al., Defendants.	Case No. CV 100 4263 CC

AMENDED RESPONSE OF DEFENDANT IMPAC MORTGAGE HOLDINGS, INC. TO PLAINTIFFS' INTERROGATORIES AND REQUESTS FOR PRODUCTION

Pursuant to Mo. R. Civ. P. 58.01 and 65.01, Defendant Impac Mortgage Holdings, Inc. ("Impac Mortgage") submits the following Responses to Plaintiffs' Interrogatories 45-55 and Requests for Production 45-47.

GENERAL OBJECTIONS

Impac Mortgage makes the following general objections to Plaintiffs' discovery requests, including specific objections to the definitions and instructions set forth therein.

1. Impac Mortgage objects to Plaintiffs' discovery requests to the extent they are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

2. Impac Mortgage objects to Plaintiffs' discovery requests to the extent that they seek to discover information and documents pertaining to persons or entities other than the parties, because such discovery is neither relevant to the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

3. Impac Mortgage objects to Plaintiffs' discovery requests to the extent that they seek to impose a burden upon Impac Mortgage beyond that permitted by the Missouri Rules of Civil Procedure. Further, in responding to the discovery requests, Impac Mortgage will assign to

each word its everyday meaning and has construed the language of each request in light of the scope of discovery permitted by applicable rules.

4. Impac Mortgage objects to Plaintiffs' discovery requests to the extent that they call for the production of privileged documents, attorney work product, documents protected by Mo. R. Civ. P. 56.01, or documents otherwise protected under the Missouri discovery rules or otherwise.

5. Impac Mortgage objects to Plaintiffs' discovery requests to the extent they seek to impose an obligation upon Impac Mortgage to provide continuing responses in addition to and other than as specifically required by Mo. R. Civ. P. 56.01.

6. Impac Mortgage objects to Plaintiffs' discovery requests to the extent they call for legal conclusions.

7. Impac Mortgage objects to Plaintiffs' discovery requests to the extent that they seek information or documents pertaining to any entity that serviced mortgage loans.

8. Impac Mortgage objects to Plaintiffs' discovery requests to the extent that they seek information or documents beyond the scope of the Court's Order dated July 10, 2003, in *Couch v. SML Lending, Inc.*, Case No. CV 100-4332 CC.

9. Impac Mortgage objects to Plaintiffs' discovery requests to the extent that they call upon Impac Mortgage to produce "all" documents on the grounds that such demands are overly broad, seek to impose an undue burden upon Impac Mortgage, and call for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

10. Impac Mortgage objects to Plaintiffs' discovery requests to the extent that they seek confidential and proprietary business and financial information of Impac Mortgage absent an order of the Court sufficiently protecting the confidentiality of such information. Impac Mortgage further objects to producing specific information concerning its borrowers that is protected on privacy grounds.

11. As applicable, Impac Mortgage hereby incorporates by reference, as if fully set forth herein, each of the foregoing general objections in its responses and specific objections to each of the individual requests set forth below.

12. Impac Mortgage makes its objections and responses without waiver of and with express reservation with respect to:

A. all questions as to competency, relevance, materiality, privilege, and admissibility of the responses as evidence for any purpose in this proceeding (including the trial of this action) and in any other matter or action;

B. the right to object to the use of any such responses on any ground in this proceeding (including the trial of this action) and in any other action or matter;

C. the right to object to a request for further responses to these Requests on any ground in this proceeding (including the trial of this action) and in any other actions or matter; and

D. the right to review, correct, add to, supplement or clarify any of the responses at any time.

Specific Objections and Responses to Interrogatories

45. For each of the loans made by Defendant Preferred Credit Corporation (as identified on the schedule hereto attached), that was purchased or acquired by You, identify each person, entity, trust and/or association known by you to have at any time acquired, held and/or owned the loan and state the date(s) during which each such person, entity, trust and/or association held and/or owned the loan.

Response: Subject to and without waiving the foregoing General Objections, and pursuant to the Court's Order of July 10, 2003, in *Couch v. SML Lending, Inc.*, Case No. CV 100-4332 CC, Impac Mortgage states that it acquired the loans set forth on the attached Exhibit A. Prior to their acquisition by Impac Mortgage, these loans were held by Impac Funding Corporation. All of these loans were subsequently held by Impac Mortgage Holdings Asset Corporation and then placed in a trust, as identified on the

spreadsheet attached as Exhibit A. Certain of these loans were subsequently placed in another trust, which is also identified on the attached spreadsheet.

46. If you are aware of any other second mortgage loans not on the attached schedule, secured by Missouri residential real estate, made by Defendant Preferred Credit Corporation on or after June 27, 1994, that was purchased or acquired by You, identify each such loan by providing the name(s) and address(es) of the borrower(s), the loan amount, the interest rate, the closing date, and further identify every person, entity, trust and/or association known by you to have at any time purchased, acquired, received, held, transferred, conveyed, serviced, and/or owned each such loan and state the date(s) on or during which each such person, entity, trust and/or association purchased, acquired, received, held, transferred, conveyed, serviced, and/or owned the loan.

Response: Subject to and without waiving the foregoing General Objections, Impac Mortgage states that it has no database that can be searched by loan originator. Other than a manual review of every file in its possession, Impac Mortgage has no means of determining whether it possesses information concerning "other second mortgage loans . . . secured by Missouri residential real estate, made by Defendant Preferred Credit Corporation on or after June 27, 1994 . . .".

47. For each of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, state or attach documents showing the total amount of interest paid by the borrower(s) each year.

Response: Impac Mortgage incorporates by reference its General Objections. Interrogatory no. 47 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

48. For each of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, state or attach documents showing the total amount of principal paid by the borrower(s) each year.

Response: Impac Mortgage incorporates by reference its General Objections. Interrogatory no. 48 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

49. For each of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, state or attach documents showing the type and total amount of charges other than interest and principal paid by the borrower(s) each year.

Response: Impac Mortgage incorporates by reference its General Objections.

Interrogatory no. 49 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

50. State whether each of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, are first or second mortgage loans and describe the nature of the real estate that secures each loan as either residential or commercial

Response: Impac Mortgage incorporates by reference its General Objections.

Interrogatory no. 50 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

51. State whether each of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, are high cost loans as defined by 15 U.S.C. § 1602(aa).

Response: Impac Mortgage incorporates by reference its General Objections.

Interrogatory no. 51 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

52. Identify all of the entities having custody of any documents pertaining to each of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, and state the dates during which each such entity acted as custodian.

Response: Impac Mortgage incorporates by reference its General Objections.

Interrogatory no. 52 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

53. State whether any of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, is or ever has been the subject of foreclosure and, if so, identify the loan(s), state the date(s) of foreclosure, and identify the forum in which each action was filed.

Response: Impac Mortgage incorporates by reference its General Objections.

Interrogatory no. 53 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

54. State whether any of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, was ever the subject of a bankruptcy proceeding and, if so, identify the loan(s), state the date(s) on which each such bankruptcy proceeding commenced, and identify the court(s) and case number(s) for each.

Response: Impac Mortgage incorporates by reference its General Objections.

Interrogatory no. 54 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

55. State whether any of the loans made by Defendant Preferred Credit Corporation, that was purchased or acquired by You, was conveyed for recovery or liquidated and identify any amounts recovered.

Response: Impac Mortgage incorporates by reference its General Objections.

Interrogatory no. 55 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

Specific Objections and Responses to Requests for Production

45. Copies of the IRS Form 1098's, annual interest statements and/or other documents that show the total amount of principal, interest, and other charges (including any liquidation proceeds) paid or received to date for each of the loans made by Defendant Preferred Credit Corporation that was purchased or acquired by You.

Response: Impac Mortgage incorporates by reference its General Objections. Request no. 45 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

46. Copies of any loan files for each of the loans made by Defendant Preferred Credit Corporation that was purchased or acquired by You.

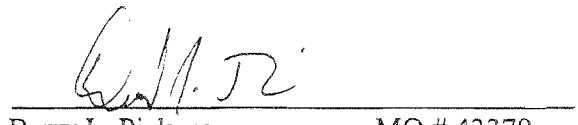
Response: Impac Mortgage incorporates by reference its General Objections. Request no. 46 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

47. Copies of any agreements entered into between and/or among You and the trusts, trustees, and any person or entity that liquidated any of the loans made by Defendant Preferred Credit Corporation that was purchased or acquired by You.

Response: Impac Mortgage incorporates by reference its General Objections. Request no. 47 is premature and beyond the scope of permissible discovery and is therefore overly broad and unduly burdensome.

IMPAC MORTGAGE HOLDINGS, INC.

As to objections:



Barry L. Pickens MO # 43379
1000 Walnut Street, Suite 1400
Kansas City, MO 64106
(816) 474-8100
(816) 474-3216 (fax)

and:

R. Bruce Allensworth
KIRKPATRICK & LOCKHART LLP
75 State Street
Boston, MA 02109
(617) 261-3100
(617) 261-3175 (fax)

Daniel J. Tobin
Sean R. Sullivan
Jennifer L. Hieb
KIRKPATRICK & LOCKHART LLP
1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 778-9000
(202) 778-9100 (fax)

ATTORNEYS FOR DEFENDANT IMPAC MORTGAGE HOLDINGS, INC.

Dated: September 9, 2003

SWORN SIGNATURE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

Richard Johnson hereby certifies that he is Treasurer and Executive Vice President of Impac Mortgage Holdings, Inc. ("Impac Mortgage"), and that he understands that the above interrogatories are answered on behalf of and for Impac Mortgage and that the amended answers given to the above and foregoing interrogatories are true and correct to the best of his information and belief.

Date: _____

Name: Richard Johnson
Title: Treasurer and Executive Vice President of Impac Mortgage Holdings, Inc.

The foregoing Answers to Interrogatories were subscribed and sworn to before me this 8th day of Sept., 2003.

Notary Public in and for the County and State above written

JULIA WILLIAMS
Commission # 1274751
Notary Public - California
Orange County
My Comm. Expires Aug 21, 2004

My Commission Expires: 8.21.2004

Certificate of Service

I hereby certify that, on this 9th day of September, 2003, the foregoing was served by first-class mail, postage prepaid, upon:

Kip D. Richards, Esq.
Walters, Bender, Strohbehn & Vaughan, PC
2500 City Center Square
12th and Baltimore
P.O. Box 26188
Kansas City, MO 64196

Gary Lawson, Esq.
Lawson & Fields, PC
5323 Spring Valley Road
Dallas, TX 75240

Mark A. Olthoff
Shughart Thomson & Kilroy, P.C.
Twelve Wyandotte Plaza
120 W. 12th Street
Kansas City, Missouri 64105

Leslie A. Greathouse
Kutak Rock, LLP
444 W. 47th St.
Suite 200, Valencia Place
Kansas City, MO 64112-1914

Patrick J. McLaughlin
Dorsey & Whitney LLP
220 South Sixth Street
Minneapolis, Minnesota 55402

Daniel J. Tobin

IMPAC MORTGAGE HOLDINGS, INC.

ID	Name	First Trust Name	Second Trust Name
6	Armstrad	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
9	Ayotte	IMPAC CMB TRUST SERIES 1999-1	
12	Baird	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
55	Carroll	IMPAC CMB TRUST SERIES 1999-1	
81	Cox	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
89	Danchus	IMPAC CMB TRUST SERIES 1999-1	
102	Eads	IMPAC CMB TRUST SERIES 2000-1	
107	Eilers	IMPAC CMB TRUST SERIES 1999-1	
114	Ertl	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
116	Ewart	IMPAC CMB TRUST SERIES 1999-1	
118	Favrow	IMPAC CMB TRUST SERIES 1999-1	
128	Frazier oV	IMPAC CMB TRUST SERIES 2000-2	
148	Guyre	IMPAC CMB TRUST SERIES 1999-1	
150	Hall	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
159	Harrell	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
173	Hilliard	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
179	Hudson	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
191	Johnson	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
213	Lattrace	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
233	Lynch	IMPAC CMB TRUST SERIES 1999-1	
261	Miller	IMPAC CMB TRUST SERIES 1999-1	
263	Miller	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
268	Morgan	IMPAC CMB TRUST SERIES 1999-1	
270	Morris	IMPAC CMB TRUST SERIES 1999-1	
303	Parvin, Jr.	IMPAC CMB TRUST SERIES 2000-1	IMPAC CMB TRUST SERIES 2003-5
348	Rockett	IMPAC CMB TRUST SERIES 2000-2	
412	Uminn	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
436	Wensel	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2001-4
448	Winegar	IMPAC CMB TRUST SERIES 1999-1	
450	Woodward	IMPAC CMB TRUST SERIES 1999-1	IMPAC CMB TRUST SERIES 2002-1
452	Worthy	IMPAC CMB TRUST SERIES 1999-2	IMPAC CMB TRUST SERIES 2003-5

Ex 28

JUNE 3, 1997 NEWPORT BEACH, CALIFORNIA

NOTE

11926 ROSEVALLEY, ST. LOUIS, MISSOURI 63138
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 35,000.00 (this amount will be called "principal"), plus interest, to the order of the Lender. The Lender is CENTURY FINANCIAL GROUP, INC., A CALIFORNIA CORPORATION, CFL 01160527. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."

2. INTEREST

I will pay interest at a yearly rate of 16.750 %.

Interest will be charged on unpaid principal until the full amount of principal has been paid.

3. PAYMENTS

I will pay principal and interest by making payments each month of U.S. $ 506.74 .

I will make my payments on the 17th day of each month beginning on JULY, 1997 . I will make these payments every month until I have paid all of the principal and interest and any other charges, described below, that I may owe under this Note. If, on JUNE 17, 2017 , I still owe amounts under this Note, I will pay all those amounts, in full, on that date.

I will make my monthly payments at 3501 JAMBOREE ROAD, SUITE 4200, NEWPORT BEACH, CA 92660 or at a different place if required by the Note Holder.

4. BORROWER'S FAILURE TO PAY AS REQUIRED FIRST PAYMENT AS PER NOTE

(A) Notice from Note Holder

If I do not pay the full amount of each monthly payment by the end of 10 calendar days after the date it is due, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default. That date must be at least 30 days after the date on which the notice is mailed to me or, if it is not mailed, 30 days after the date on which it is delivered to me.

(B) Default

If I do not pay the overdue amount by the date stated in the notice described in (A) above, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(C) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back for all of its costs and expenses to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

5. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Deed of Trust, dated JUNE 3, 1997 , protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Deed of Trust describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note.

6. BORROWER'S PAYMENTS BEFORE THEY ARE DUE

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in a letter that I am doing so. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

Certified to be a true, correct and complete copy of the original.

Initials

AMC0138

I may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates or changes in the amounts of my monthly payments unless the Note Holder agrees in writing to those delays or changes. I may make a full prepayment at any time. If I choose to make a partial prepayment, the Note Holder may require me to make the prepayment on the same day that one of my monthly payments is due. The Note Holder may also require that the amount of my partial prepayment be equal to the amount of principal that would have been part of my next one or more monthly payments.

7. BORROWER'S WAIVER

I waive my rights to require the Note Holder to do certain things. Those things are: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice of dishonor"); (C) to obtain an official certification of nonpayment (known as a "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else also waives these rights. These persons are known as "guarantors, sureties and endorsers."

8. GIVING OF NOTICES

Any notice that must be given to me under this Note will be given by delivering it or by mailing it by certified mail addressed to me at the Property Address above. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by certified mail to the Note Holder at the address stated in Section 3 above. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

9. RESPONSIBILITY OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of a guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to keep all of the promises made in this Note.

ARIC WATSON (Seal) Borrower

CHANTAY WATSON (Seal) Borrower

(Seal) Borrower

(Seal) Borrower

(Seal) Borrower

(Seal) Borrower

(Sign Original Only)

Certified to be a true, correct and complete copy of the original.

Initials_____

Ex 29

Settlement Statement

Transaction without Sellers

U.S. Department of Housing and Urban Development

OMB Approval N

Name and Address of Borrower: ARIC WATSON AND CHANTAY WATSON 11926 ROSEVALLEY, ST. LOUIS, MISSOURI 63138	Name and Address of Lender: CENTURY FINANCIAL GROUP, INC. 3501 JAMBOREE ROAD, SUITE 4200 NEWPORT BEACH, CALIFORNIA 92660
Property Location: (if different from above) 11926 ROSEVALLEY, ST. LOUIS, MISSOURI 63138	Settlement Agent: CENTURY FINANCIAL GROUP, INC. Place of Settlement: 3501 JAMBOREE ROAD, SUITE 4200, NEWPORT BEACH, CALIFORNIA 92660
Loan Number:	Settlement Date: JUNE 17, 1997

L. Settlement Charges		1306.	
800. Items Payable in Connection with Loan		1307.	
801. Loan origination % to	2,844.00	**1400. Total Settlement Charges (enter on line 1602)**	3,924.00
802. Loan discount % to		**M. Disbursement to Others**	
803. Appraisal fee to		1501. HB NV NA	848.00
804. Credit report to	55.00	1502. PIER ONE	482.00
805. Inspection fee to		1503. DISCOVER CARD	635.00
806. Mortgage insurance application to		1504. TARGET	323.00
807. Mortgage broker fee to		1505. HELZBG	1,386.00
808. Escrow fee to		1506. CNB USA	6,930.00
809. UNDERWRITING	495.00	1507. CITIBANK MC	6,545.00
810. WIRE	50.00	1508. AM GEN FIN	2,970.00
811. SIGNING	150.00	1509. SEARS	2,512.00
812.		1510. AFSCI	1,886.00
813.		1511 ~~THIS LIMITED~~	~~XXXXXX~~ 285.00
814.		1512. SEARS	1,317.00
815.		1513. FAMOUS BARR	354.00
900. Items Required by Lender to be Paid in Advance		1514. ZALE	634.00
901. Int from 06-17-97 to 06-17-97 @ $ 16.06 per day		**1520. TOTAL DISBURSED** (enter on line 1603)	30,287.00 ~~30,492.00~~
902. Mortgage insurance premium for months to			
903. Hazard insurance premium for year(s) to			
904.			
1000. Reserves Deposited with Lender			
1001. Hazard insurance mos. @ $ 0.00 per mo.			
1002. Mortgage insurance mos. @ $ per mo.			
1003. City property taxes mos. @ $ per mo.			
1004. County property taxes mos. @ $ per mo.			
1005. Annual assessments mos. @ $ per mo.			
1006. mos. @ $ per mo.			
1007. mos. @ $ per mo.			
1008. mos. @ $ per mo.			
1100. Title Charges		P.O.C. - Paid Outside Closing	
1101. Settlement/Closing fee to			
1102. Abstract/Title search to			
1103. Title examination to			
1104. Title insurance binder to			
1105. Document preparation to	150.00	**N. NET SETTLEMENT**	
1106. Notary fee to		**1600. Loan Amount**	35,000.00
1107. Attorneys' fees to (includes above item numbers)		**1601. Plus Cash/Check from Borrower**	0.00
1108. Title insurance to (includes above item numbers)	125.00	**1602. Minus Total Settlement Charges** (line 1400)	3,924.00
1109. Lender's coverage $		**1603. Minus Total Disbursements to Others** (line 1520)	~~30,492.00~~ 30,287.00
1110. Owner's coverage $			
1200. Government Recording and Transfer Charges		**1604. Equals Disbursements to Borrower** (after expiration of any applicable rescission period required by law)	~~584.00~~ 789.00
1201. Recording fees:	55.00		
1202. City/county tax/stamps:		Borrower(s) Signature(s):	
1203. State tax/stamp:		X ARIC WATSON	
1204.		X CHANTAY WATSON	
1300. Additional Settlement Charges		X	
1301. Survey to		X	
1302. Pest inspection to			
1303. Architectural/engineering services to			
1304. Building permit to			
1305. Courier Fee to			

p

ICC55500.PCL-10-94

AMC0127

Ex 30

WHEN RECORDED MAIL TO:
CENTURY FINANCIAL
GROUP, INC.

3501 JAMBOREE ROAD,
SUITE 4200
NEWPORT BEACH,
CALIFORNIA 92660

Title Order No.
Escrow No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Assignment of Deed of Trust

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
, PREFERRED CREDIT CORPORATION
all beneficial interest under that certain Deed of Trust dated JUNE 3, 1997
executed by ARIC WATSON AND CHANTAY WATSON, HUSBAND AND WIFE
, Trustor,
to FIRST AMERICAN TITLE INSURANCE COMPANY , Trustee,
and recorded as Instrument No. on in book
page , of Official Records in the County Recorder's office of ST. LOUIS
County, MISSOURI , describing land therein as:

SEE ATTACHED EXHIBIT "A"

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under this Deed of Trust.

CENTURY FINANCIAL
GROUP, INC., A
CALIFORNIA CORPORATION

PATTI A. JIMINEZ
VICE PRESIDENT

STATE OF CALIFORNIA)
)SS
COUNTY OF ORANGE)

On 6/9/97 before me, PAUL COOK, NOTARY PUBLIC
NAME, TITLE OF OFFICER

personally appeared PATTI A. JIMINEZ

☒ personally known to me -OR- ☐ proved to me on the basis of satisfcatory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

PAUL COOK
Comm. # 1117637
NOTARY PUBLIC-CALIFORNIA
Orange County
My Comm. Expires Nov. 20, 2000

Signature of Notary

REF22359.PCL-2/97

Certified to be a true, correct and
complete copy of the original.
Initials

AMC0108

Ex 31

YINV	YSLN	YDATE	YTYPE	YDUDT	YPBAL	YPRAM	YINAM	YAM1
371	3929064	9101997	81	7171997	35,000.00	35,000.00	-	-
371	3929064	9121997	1	8171997	34,981.80	18.20	488.54	16.04
371	3929064	9181997	1	9171997	34,963.35	18.45	488.29	16.03
371	3929064	9301997	1	10171997	34,944.64	18.71	488.03	16.02
371	3929064	10061997	2	11171997	34,925.67	18.97	487.77	16.02
371	3929064	11031997	2	12171997	34,906.43	19.24	487.50	16.01
371	3929064	12021997	2	1171998	34,886.93	19.50	487.24	16.00
371	3929064	1051998	2	2171998	34,867.15	19.78	486.96	15.99
371	3929064	2031998	2	3171998	34,847.10	20.05	486.69	15.98
371	3929064	3031998	2	4171998	34,826.77	20.33	486.41	15.97
371	3929064	4031998	2	5171998	34,806.15	20.62	486.12	15.96
371	3929064	4231998	30	5171998	34,806.15	-	113.36	3.72
						35,000.00	4,986.91	163.74

ADVANTA
Mortgage Corp. USA
An Affiliate of Colonial National Bank USA

16875 W. Bernardo Drive
San Diego CA 92127
(619) 674 - 1800

FAX INSTRUCTION SHEET

Fax # (619) 674 - 3388

Date : May 26, 1998

Deliver To: *Laura and/or Closing/Recording Department*

Company/Dept: *Universal Title*

Telephone #:

Fax #: *714 664-0954*

From: Cynthia Harris

Department: Paid Accounts

Telephc 74-3551 or (800) 548-7912, ext. 3551

Loan Number Reference for Aric Watson's Loan

Message: *Your assistance is respectfully requested in order to issue the release/discharge in connection with AMC #3929064 for Aric & Chantay Watson your transaction closed in late April 1998 (property address: 11926 Rosevalley, St Louis, MO)). When the collateral file was received from our custodian/file room only copies of some of the documents were in the file and therefore the following information from you title search is needed:*

1. *Recording information, including date recorded, document/instrument number, book/liber/volume and page/folio, of the Mortgage/Deed of Trust dated June 3, 1997.*

2. *Recording information of the assignment from Century Financial Group to ??? - please advise.*

Please review your file and/or the county records for the requested recording and fax the information to my attention at the above fax number, please reference my loan number. Should you have any questions, please do not hesitate to contact me. Thank you so much for your assistance with this matter.

Number of pages to follow: 0

[redacted]

Ex 32

DANIEL T. O'LEARY
RECORDER OF DEEDS
ST. LOUIS COUNTY MISSOURI
41 SOUTH CENTRAL
CLAYTON, MO 63105

RECORDER OF DEEDS DOCUMENT IDENTIFICATION & CERTIFICATION SHEET

TYPE OF INSTRUMENT	GRANTOR	TO	GRANTEE
REL	ADVANTA MORTGAGE CORP	WATSON ARIC ETUX	

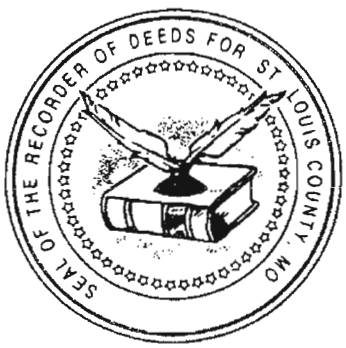
PROPERTY DESCRIPTION: HIDDEN LAKE PARK PLAT 2 LOT 268 PB 148 PG 22

Lien Number	Notation	Document Number	Locator
	X	29	

STATE OF MISSOURI)
SS.
COUNTY OF ST. LOUIS)

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 2 pages, (this page inclusive), was filed for record in my office on the 25 day of June 1998 at 08:16 AM and is truly recorded in the book and at the page shown at the top and/or bottom of this page.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.



Daniel T. O'Leary
Recorder of Deeds
St. Louis County, Missouri

J. Allen JA
Deputy Recorder

RECORDING FEE $18.00

(Paid at the time of Recording)

_____ N.P.
_____ N.P.C
_____ N.N.C.
_____ N.N.I.

Mail to:

Destination code: 18 | P | **Do Not Remove This Page**

B-11653 P-0779/0780

Notation

Recording Requested By:
Advanta Mortgage Corp. USA

When Recorded Return To:

Aric Watson
11926 ROSEVALLEY
St. Louis, MO 63138

FULL DEED OF RELEASE

Paid Accounts Department #:3929064 "Watson" Lender ID:371/21820610 Saint Louis, Missouri

WHEREAS ARIC WATSON AND CHANTAY WATSON, HUSBAND AND WIFE by a Deed of Trust, dated 06/03/1997 and recorded 06/12/1997 as Inst No in the Recorder's Office in and for the County of SAINT LOUIS State of MISSOURI in Book/Reel/Liber 11192, Page/Folio 196, conveyed to FIRST AMERICAN TITLE INSURANCE COMPANY Trustee, for CENTURY FINANCIAL GROUP, INC., A CALIFORNIA CORPORATION as Lender certain real estate, to secure the payment of certain note or notes in said deed described and set forth; and whereas, said Deed of Trust and Note or Notes has or have been FULLY paid and satisfied.

NOW THEREFORE, the undersigned, present holder and legal owner of said deed of trust and note or notes, does hereby REMISE, RELEASE, AND QUITCLAIM unto the present owners of said property, ALL of the real estate in said Deed of Trust described, situated in the County of SAINT LOUIS and State of Missouri, to-wit:

Legal: LOT 268 OF HIDDEN LAKE PARK PLAT 2, A SUBDIVISION IN ST. LOUIS COUNTY, MISSOURI, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 148 PAGES 22 AND 23 OF THE ST. LOUIS COUNTY RECORDS.

Property Address: 11926 Rosevalley,St. Louis,MO,63138

TO HAVE AND TO HOLD the same, with all the appurtenances thereto belonging free, clear and discharged from the encumbrance of said Deed of Trust.

IN WITNESS WHEREOF, the undersigned has executed these presents.

Preferred Credit Corporation A.K.A.
T.A.R. Preferred Mortgage Corporation By:
Advanta Mortgage Corp. USA, attorney-in-fact
Rec 1/30/98, #362, BP 11439, Pg 0878
On May 28, 1998

By: _____
TELMA RUIZ, ASST. SECRETARY

ADVANTA MORTGAGE CORP. USA CORPORATE SEAL 1983 DELAWARE

STATE OF California
COUNTY OF San Diego

ON May 28, 1998, before me, E. L. Hallows, a Notary Public in and for San Diego County, in the State of California, personally appeared Telma Ruiz, Asst. Secretary, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

E. L. Hallows
Notary Expires: 03/26/2002 #1177442

CSC1 E. L. HALLOWS COMM. #1177442 NOTARY PUBLIC-CALIFORNIA SAN DIEGO COUNTY My Commission Expires MARCH 26, 2002 CSC1

(This area for notarial seal)

Advanta Mortgage Corp USA, 16875 W Bernardo Dr, San Diego, CA 92127/619 6741800
WTO-19980528-0028 MOSAINL SAINT LOUIS MO BAT 3511/3929064 KXMODOR1

EXECUTION COPY

Ex 33

POOLING AND SERVICING AGREEMENT

Dated as of June 1, 1996

by and among

Preferred Mortgage SPC Funding Corp.
(Depositor)

T.A.R. Preferred Mortgage Corporation
(Seller)

and
Advanta Mortgage Corp. USA
(Servicer)

and

Bankers Trust Company
(Trustee)

Preferred Mortgage Asset-Backed Certificates,
Series 1996-1

TABLE OF CONTENTS

EXHIBITS

This Pooling and Servicing Agreement, relating to Preferred Mortgage SPC Funding Corp., dated as of June 1, 1996, by and among Preferred Mortgage SPC Funding Corp., a Delaware corporation, in its capacity as depositor (the "Depositor"), T.A.R. Preferred Mortgage Corporation, a California corporation, in its capacity as seller (the "Seller"), Advanta Mortgage Corp. USA, a Delaware corporation, in its capacity as servicer (the "Servicer"), and Bankers Trust Company, a New York banking corporation, in its capacity as trustee (the "Trustee).

PRELIMINARY STATEMENT:

The Depositor intends to sell asset-backed certificates (collectively, the "Certificates"), to be issued hereunder in five classes (each, a "Class"), which in the aggregate will evidence the entire beneficial ownership interest in the Trust Fund (as defined herein), consisting primarily of the Mortgage Loans, the Collection Account, the Certificate Account, the Pre-Funding Accounts and the Capitalized Interest Account (each, as defined herein).

In consideration of the mutual agreements herein contained, the Depositor, the Seller, the Servicer and the Trustee agree as follows:

ARTICLE I

Definitions

Section 1.1 Certain Defined Terms. Whenever used herein, the following words and phrases, unless the context otherwise requires, shall have the following meanings.

"Accepted Servicing Practices" shall mean the Servicer's normal servicing practices in servicing and administering mortgage loans for its own account, which in general will conform to the mortgage servicing practices of prudent mortgage lending institutions which service for their own account mortgage loans of the same type as the Mortgage Loans in the jurisdictions in which the related Mortgaged Properties are located and will give due consideration to the Certificate Insurer's and the Certificateholders' reliance on the Servicer.

"Account" shall mean any Eligible Account established hereunder.

"Accrual Period" shall mean with respect to any Remittance Date, the calendar month immediately preceding the month in which such Remittance Date occurs.

"Addition Notice" shall mean, with respect to the transfer of Subsequent Mortgage Loans to the Trust Fund pursuant to Section 2.9 of this Agreement and the related Subsequent Transfer Instrument, a notice, substantially in the form of Exhibit O, which shall be given not later than five Business Days prior to the related Subsequent Transfer Date, of the Depositor's designation of Subsequent Mortgage Loans to be sold to the Trust Fund and

the aggregate Principal Balance as of the related Subsequent Cut-Off Date of such Subsequent Mortgage Loans.

"Advanta" shall mean Advanta Mortgage Corp. USA, a Delaware corporation.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" shall mean this Pooling and Servicing Agreement, including the Exhibits hereto, as amended or supplemented from time to time.

"Appraised Value" shall mean the appraised value of any Mortgaged Property, equal to the value of the related Mortgaged Property based upon the appraisal made at the time the Mortgage Loan is originated.

"Assignment of Mortgage" shall mean, with respect to each Mortgage Loan, an assignment of the Mortgage, notice of transfer or equivalent instrument sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect of record the sale of the Mortgage to the Trustee for the benefit of the Certificateholders and the Certificate Insurer.

"Authorized Denominations" shall mean with respect to each of the Class A Certificates, the minimum Percentage Interest corresponding to a minimum denomination of $1,000,000.00 or integral multiples of $1,000.00 in excess thereof; with respect to the Class B Certificates, the Class C Certificates and the Residual Certificates, a minimum Percentage Interest of 10.00% and integral multiples of 0.01% in excess thereof.

"Available Funds" as defined in Section 6.4(a).

"Available Funds Shortfall" shall mean, with respect to the Mortgage Loans and any Remittance Date, the excess of (x) the Insured Distribution Amount over (y) the Available Funds for such Remittance Date.

"Business Day" shall mean any day other than (a) a Saturday or Sunday, or (b) a day on which banking institutions in the States of California or New York or in the city in which the Corporate Trust Office of the Trustee or the principal offices of the Certificate Insurer are authorized or obligated by law or executive order to be closed.

"Capitalized Interest Account" shall mean the Account established and maintained pursuant to Section 6.12, which must be an Eligible Account.

"Capitalized Interest Addition" shall mean, as to any Remittance Date, an amount equal to interest accrued for the related Collection Period on an amount equal to (i) $10,826,941.00 minus (ii) the aggregate Principal Balance of any related Subsequent Mortgage Loans transferred prior to the first day of the month in which such Remittance Date occurs, calculated at a rate equal to the Class A Pass-Through Rate.

"Capitalized Interest Amount" shall mean $141,048.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"Certificate" shall mean any Class A Certificate, Class B Certificate, Class C Certificate, Class RU Certificate or Class RL Certificate executed by the Trustee on behalf of the Trust Fund and authenticated by the Trustee.

"Certificate Account" shall mean the Eligible Account established in accordance with Section 6.1(a) hereof and maintained by the Trustee.

"Certificateholder or Holder" shall mean the Person in whose name a Certificate is registered in the Certificate Register, except that, neither a Disqualified Organization nor a Non-United States Person shall be a Holder of a Residual Certificate for any purposes hereof and, solely for the purposes of giving any consent (except any consent required to be obtained pursuant to Section 11.02), waiver, request or demand pursuant to this Agreement, any Certificate registered in the name of the Depositor or the Seller or any Affiliate thereof shall be deemed not to be outstanding and the rights to which it is entitled shall not be taken into account in determining whether the requisite percentage of rights necessary to effect any such consent has been obtained, except as otherwise provided in Section 11.03. The Trustee shall be entitled to rely upon a certification of the Depositor or the Seller in determining if any Certificates are registered in the name of a respective Affiliate. Any Class A Certificates on which payments are made under the Certificate Insurance Policy shall be deemed to be outstanding and held by the Certificate Insurer to the extent of such payment.

"Certificate Insurance Agreement" shall mean that certain agreement dated as of June 1, 1996 between the Certificate Insurer, the Depositor and the parties named therein.

"Certificate Insurance Payments Account" shall mean the Eligible Account established in accordance with Section 6.4(c) hereof and maintained by the Trustee.

"Certificate Insurance Policy" shall mean the certificate guaranty insurance policy No. 21409, and all endorsements thereto dated the Closing Date, issued by the Certificate Insurer for the benefit of the Class A Certificateholders, a copy of which is attached hereto as Exhibit A-1.

"Certificate Insurance Policy Premium Amount" shall mean, the product of the Premium Percentage and the Class A Principal Balance for the related Remittance Date.

"Certificate Insurer" shall be MBIA Insurance Corporation, a stock insurance company organized and created under the laws of the State of New York, and any successors thereto.

"Certificate Insurer Default" shall mean the failure, and continuance of such failure, by the Certificate Insurer to make a payment required under the Certificate Insurance Policy in accordance with its terms.

"Certificate Register" shall have the meaning described in Section 4.2(a).

"Charged-off Loan": a Mortgage Loan shall become a Charged-off Loan on the earlier to occur of (a) the date on which such Mortgage Loan has become delinquent for a period of 180 consecutive days or (b) the time such Mortgage Loan becomes a Liquidated Loan.

"Civil Relief Act" shall mean the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

"Class" shall mean any designated Class of Certificates of this Series.

"Class A Carry-Forward Amount" shall mean, as of any Remittance Date, the sum of (a) the amount, if any, by which (i) the Insured Distribution Amount as of the immediately preceding Remittance Date exceeded (ii) the amount actually distributed to the Holders of the Class A Certificates on such Remittance Date in respect thereof (including, without limitation, any amounts paid to the Class A Certificateholders by the Certificate Insurer pursuant to Section 6.5 hereof) and (b) interest accrued for the related Accrual Period on the amount described in clause (a), calculated at an interest rate equal to the Class A Pass-Through Rate. Any Class A Carry-Forward Amount shall be deemed to be allocated first to any related Overcollateralization Deficit and second to any related Class A Interest Distribution Amount.

"Class A Certificate" shall mean any Certificate designated as a "Class A Certificate" on the face thereof, in the form of Exhibit B-1 hereto, and executed, authenticated and delivered by the Trustee in accordance with the procedures set forth herein and evidencing an interest designated as a "regular interest" in the Upper-Tier REMIC for the purposes of the REMIC Provisions.

"Class A Certificateholder" shall mean a Holder of a Class A Certificate.

"Class A Final Scheduled Maturity Date" shall mean the September, 2012 Remittance Date.

"Class A Interest Distribution Amount" shall mean, with respect to the Class A Certificates for any Remittance Date the sum of (i) the aggregate amount of interest accrued for the related Accrual Period on the Class A Principal Balance immediately prior to such Remittance Date at the Class A Pass-Through Rate (based on a 360-day year and a

30-day month) and (ii) the portion of any Class A Carry-Forward Amount which equals the unpaid interest shortfall from any prior Remittance Date in a distribution of a Class A Interest Distribution Amount in respect of the Class A Certificates.

"Class A Pass-Through Rate" with respect to any Remittance Date on or prior to the Step-up Remittance Date, will be equal to a per annum rate of 7.90%; on and after the Step-up Remittance Date, the Class A Pass-Through Rate shall be equal to a per annum rate of 8.40%.

"Class A Principal Balance" shall mean, as of any time of determination, the Original Class A Principal Balance less any amounts distributed with respect to principal thereon on all prior Remittance Dates.

"Class A Principal Distribution Amount" shall mean, with respect to the Class A Certificates for any Remittance Date, the lesser of:

(a) the excess of (i) the sum, as of such Remittance Date, of (A) the Available Funds, plus (B) any Insured Payment over (ii) the Class A Interest Distribution Amount; and

(b) the sum, without duplication, of:

(i) the portion of any Class A Carry-Forward Amount which relates to a shortfall in a distribution of an Overcollateralization Deficit,

(ii) all scheduled and unscheduled amounts relating to principal with respect to the Mortgage Loans received by the Servicer during the prior Collection Period to the extent actually received by the Trustee,

(iii) the Principal Balance of each Mortgage Loan that either was repurchased by a Seller or by the Depositor on the related Servicer Remittance Date to the extent such Principal Balances are actually received by the Trustee,

(iv) any Substitution Adjustments delivered by the Seller or the Depositor on the related Servicer Remittance Date in connection with a substitution of a Mortgage Loan to the extent such Substitution Adjustments are actually received by the Trustee,

(v) the Net Liquidation Proceeds collected by the Servicer of all Mortgage Loans during the related Collection Period (to the extent such Net Liquidation Proceeds are related to principal) to the extent actually received by the Trustee,

(vi) any amounts released from the Pre-Funding Account as a prepayment of such Class A Certificates on the Remittance Date which immediately follows the end of the Funding Period,

(vii) the proceeds received by the Trustee of any termination of the Trust Fund (to the extent such proceeds are related to principal),

(viii) the amount of any Overcollateralization Deficit for such Remittance Date, and

(ix) without duplication of amounts distributed under clause (viii) above, the amount of any Overcollateralization Increase Amount for such Remittance Date;

minus

(x) the amount of any Overcollateralization Reduction Amount for such Remittance Date.

"Class B Accrued Interest" shall mean, with respect to any Remittance Date, (i) the sum of (x) the Class B Accrued Interest immediately prior to such Remittance Date plus (y) the product of (1) one-twelfth of the Class B Pass-Through Rate and (2) the Class B Principal Balance immediately prior to such Remittance Date; provided, that if the sum of (x) and (y) would, on any Remittance Date, exceed $661,598.00, then the amount described in clause (y) shall equal $661,598.00 minus the amount described in clause (x), minus (ii) the aggregate, cumulative amounts previously applied in reduction of the Class B Accrued Interest pursuant to Section 6.5(vi)(x) on all prior Remittance Dates.

"Class B Certificate" shall mean any Certificate denominated as a "Class B Certificate" on the face thereof and subordinate to the Class A Certificates in right of payment to the extent set forth herein, which Certificates shall be executed, authenticated and delivered by the Trustee in accordance with the procedures set forth herein and shall be in the form of Exhibit B-2 hereto and evidencing an interest designated as a "regular interest" in the Upper-Tier REMIC for the purposes of the REMIC Provisions.

"Class B Certificateholder" shall mean a Holder of a Class B Certificate.

"Class B Final Scheduled Remittance Date" shall mean the September, 2012 Remittance Date.

"Class B Pass-Through Rate" means, on and prior to the Remittance Date on which the Class B Accrued Interest equals $661,598.00, 24.69%; for each Remittance Date thereafter, 0%.

"Class B Principal Balance" shall mean, as of any time of determination, the Original Class B Principal Balance plus the product of (i) the Principal Balance (as of the

related Subsequent Cut-Off Date) of each Subsequent Mortgage Loan acquired by the Trust Fund and (ii) 3.50%, less any amounts distributed with respect to principal thereon on all prior Remittance Dates.

"Class C Certificate" shall mean any Certificate denominated as a "Class C Certificate" on the face thereof and subordinate to the Class A Certificates and the Class B Certificates in the right of payment to the extent set forth herein, which Certificates shall be executed, authenticated and delivered by the Trustee in accordance with the procedures set forth herein and shall be in the form of Exhibit B-3 hereto and evidencing an interest designated as a "regular interest" in the Upper-Tier REMIC for the purpose of the REMIC Provisions.

"Class C Certificateholder" shall mean a Holder of a Class C Certificate.

"Class C Distribution Amount" shall mean, as to the Class C Certificates and any Remittance Date, the sum of (i) the lesser of (x) the Class C Formula Distribution Amount and (y) the Available Funds after making the distributions described in clauses (i) - (vi) of Section 6.5 on such Remittance Date and (ii) on and after the Class B Final Scheduled Remittance Date, the amount of the Overcollateralization Reduction Amount for such Remittance Date (such amount being, on the Class B Final Scheduled Remittance Date, the excess of the Overcollateralization Reduction Amount for such Remittance Date over the amount distributed to the Class B Certificateholders on such Class B Final Scheduled Remittance Date).

"Class C Final Scheduled Remittance Date" shall mean the Remittance Date in September, 2012.

"Class C Formula Distribution Amount" shall mean, as to the Class C Certificates and any Remittance Date, the excess, if any, of (i) the product of (x) one-twelfth of the weighted average Net Mortgage Interest Rate as of the beginning of the immediately preceding Collection Period and (y) the Pool Principal Balance as of the beginning of the immediately preceding Collection Period over (ii) the Class A Interest Distribution Amount for such Remittance Date.

"Class LT1 Certificates" means the uncertificated class of interests in the Lower-Tier REMIC, as described in and designated in Section 10.1 hereof.

"Class LT2 Certificates" means the uncertificated class of interests in the Lower-Tier REMIC, as described in and designated in Section 10.1 hereof.

"Class RL Certificates" shall mean those Certificates executed, authenticated and delivered by the Trustee in the form of Exhibit B-4 hereto, which represent certain residual rights to distributions from the Lower-Tier REMIC.

"Class RU Certificates" shall mean those Certificates executed, authenticated and delivered by the Trustee in the form of Exhibit B-5 hereto, which represent certain residual rights to distributions from the Upper-Tier REMIC.

"Clean-Up Call Date" shall mean the first date on which the Holder of the Residual Certificates can exercise its option set forth in Section 8.1(b).

"Closing Date" shall mean June 20, 1996.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collection Account" shall mean the Eligible Account established and maintained by the Servicer for the benefit of the Certificateholders and the Certificate Insurer pursuant to Section 5.3(a) hereof.

"Collection Period" shall mean, with respect to each Remittance Date, the period beginning on the opening of business on the first day of the calendar month preceding the calendar month in which such Remittance Date occurs, and ending at the close of business on the last day of the calendar month preceding the calendar month in which such Remittance Date occurs.

"Combined Loan-to-Value Ratio" shall mean, with respect to any Mortgage Loan, the sum of (x) any outstanding (as of the date of origination of such Mortgage Loan) first mortgage balance plus (y) the original principal balance of the Mortgage Loan as of the Cut-Off Date, divided by the Appraised Value of such Mortgaged Property.

"Commission" shall mean the Securities and Exchange Commission.

"Compensating Interest" shall have the meaning defined in Section 6.9 hereof.

"Credit Bureau Risk Score" shall mean a statistical ranking of likely future credit performance developed by Fair, Isaac & Company and the three national credit repositories, Equifax, TransUnion and TRW; such score is obtained from one of the three national credit repositories previously stated and is used by the Seller to provide a means of analysis to assist in underwriting to estimate the probability that a mortgage loan will be paid in accordance with its terms.

"Curtailment" shall mean, with respect to a Mortgage Loan, any payment of principal received during a Collection Period as part of a payment that is in excess of the amount of the Monthly Payment due for such Collection Period and which is neither intended to satisfy the Mortgage Loan in full, intended as an advance payment of an amount due in a subsequent Collection Period, nor intended to cure a delinquency.

"Cut-Off Date" shall mean the opening of business on June 1, 1996.

"Deleted Mortgage Loan" shall mean a Mortgage Loan replaced by a Qualified Substitute Mortgage Loan.

"Delinquency Interest Advance" shall mean, with respect to any Delinquent Mortgage Loan and Collection Period, the interest due, but not collected, with respect to such Mortgage Loan during such Collection Period.

"Delinquent" shall mean a Mortgage Loan is "delinquent" if any payment due thereon is not made by the close of business on the Due Date therefor. A Mortgage Loan is "30 days delinquent" if such payment has not been received by the close of business on the corresponding day of the month immediately succeeding the month in which such payment was due, or, if there is no such corresponding day (e.g., as when a 30-day month follows a 31-day month in which a payment was due on the 31st day of such month) then on the last day of such immediately succeeding month. Similarly for "60 days delinquent," "90 days delinquent" and so on.

"Depositor" shall mean Preferred Mortgage SPC Funding Corp., a Delaware corporation, and any successor thereto.

"Determination Date" shall mean, with respect to each Remittance Date, the 15th day of each calendar month in which such Remittance Date occurs or, if such 15th day is not a Business Day, the Business Day immediately preceding such 15th day.

"Disqualified Organization" shall mean any of (i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing (other than an instrumentality which is a corporation if all of its activities are subject to tax and, except for the FHLMC, a majority of its board of directors is not selected by such governmental unit), (ii) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, (iii) any organization (other than certain farmers' cooperatives described in Section 521 of the Code) which is exempt from the tax imposed by Chapter 1 of the Code (unless such organization is subject to the tax imposed by Section 511 of the Code on unrelated business taxable income), or rural electric and telephone cooperatives described in Section 1381(a)(2)(C) of the Code and (iv) any other Person so designated by the Trustee based upon an Opinion of Counsel provided to the Trustee that the holding of an ownership interest in a Residual Certificate by such Person may cause the Trust Fund or any Person having an ownership interest in any Class of Certificates (other than such Person) to incur liability for any federal tax imposed under the Code that would not otherwise be imposed but for the transfer of an ownership interest in the Residual Certificate to such Person. The terms "United States", "State" and "international organization" shall have the meanings set forth in section 7701 of the Code.

"Due Date" shall mean the day of each calendar month specified in the related Mortgage Note.

"Eligible Account" shall mean either (A) a segregated account or accounts maintained with an institution (which may include the Trustee, provided such institution otherwise meets these requirements) whose deposits are insured by the FDIC, the unsecured and uncollateralized long term debt obligations of which institution shall be rated A or better by S&P and Aa1 or better by Moody's and in the highest short term rating by each of the Rating Agencies, and which is (i) a federal savings and loan association duly organized, validly existing and in good standing under the federal banking laws, (ii) an institution duly organized, validly existing and in good standing under the applicable laws of any state, (iii) a national banking association (including the Trustee) duly organized, validly existing and in good standing under the federal banking laws, (iv) a principal subsidiary of a bank holding company, or (v) approved in writing by the Certificate Insurer and each of the Rating Agencies or (B) a segregated trust account or accounts maintained with the trust department of a federal or state chartered depository institution acceptable to each Rating Agency and the Certificate Insurer (the Trustee shall be deemed acceptable, provided that the Trustee otherwise meets these requirements), having capital and surplus of not less than $100,000,000, acting in its fiduciary capacity.

"ERISA" shall have the meaning defined in Section 4.2(i) hereof.

"Event of Default" shall have the meaning described in Section 7.1.

"Excess Overcollateralization Amount" shall mean, with respect to any Remittance Date, the difference, if any, between (a) the Overcollateralization Amount that would exist on such Remittance Date after taking into account all distributions to be made on such Remittance Date (exclusive of any reductions thereto attributable to Overcollateralization Reduction Amounts on such Remittance Date) and (b) the Required Overcollateralization Level for such Remittance Date.

"FDIC" shall mean the Federal Deposit Insurance Corporation and any successor thereto.

"FHLMC" shall mean the Federal Home Loan Mortgage Corporation and any successor thereto.

"Fiscal Agent shall mean State Street Bank and Trust Company, N.A.

"FNMA" shall mean the Federal National Mortgage Association and any successor thereto.

"Foreclosure Profits" shall mean, as to any Remittance Date, the excess, if any, of (i) Net Liquidation Proceeds in respect of each Mortgage Loan that became a Liquidated Loan during the month immediately preceding the month of such Remittance Date over (ii) the sum of the unpaid Principal Balance of each such Liquidated Loan plus accrued and unpaid interest at the applicable Mortgage Interest Rate on the unpaid Principal Balance thereof from the Due Date to which interest was last paid by the Mortgagor (or, in the case of a Liquidated Loan that had been an REO Mortgage Loan, from the Due Date to which

interest was last deemed to have been paid pursuant to Section 5.11 to the first day of the month following the month in which such Mortgage Loan became a Liquidated Loan).

"Funding Period" shall mean the period beginning on the Closing Date and ending on the earlier of the date on which (a) the amount on deposit in the Pre-Funding Account is less than $50,000.00, (b) the date on which an Event of Default occurs hereunder or (c) the close of business on September 15, 1996.

"Hazardous Materials" shall mean any dangerous, toxic or hazardous pollutants, chemical wastes or substances, including, without limitation, those identified pursuant to CERCLA or any other federal, state or local environmental related laws now existing or hereafter enacted.

"Insurance Proceeds" shall mean proceeds paid by any insurer pursuant to any insurance policy covering a Mortgage Loan to the extent such proceeds are not applied to the restoration of the related Mortgaged Property or released to the related Mortgagor in accordance with Accepted Servicing Practices or pursuant to applicable law plus amounts required to be paid by the Servicer pursuant to Section 5.6. "Insurance Proceeds" do not include "Insured Payments."

"Insured Distribution Amount" shall mean, with respect to any Remittance Date, the sum of (a) the Class A Interest Distribution Amount with respect to such Remittance Date and (b) the Overcollateralization Deficit, if any, as of such Remittance Date.

"Insured Payment" shall mean, the sum of (i) with respect to any Remittance Date, the related Available Funds Shortfall plus (ii) any unpaid Preference Amount.

"Interest Collections" shall mean all amounts (including, without limitation, Monthly Payments (or Delinquency Interest Advances in respect thereof) and Liquidation Proceeds) collected on any Mortgage Loan allocable to interest pursuant to the terms of the related Mortgage Note, or if no provision for allocation is made therein, pursuant to the terms hereof.

"Late Payment Rate" shall have the meaning assigned thereto in the Certificate Insurance Agreement.

"Liquidated Loan" shall mean a Mortgage Loan as to which the Servicer, in its good faith, reasonable business judgment, has determined that all amounts which will be recovered with respect to such Mortgage Loan have been so recovered (exclusive of a possibility of a deficiency judgment).

"Liquidation Expenses" shall mean expenses incurred by the Servicer in connection with the charge-off or liquidation of any defaulted Mortgage Loan, REO Mortgage Loan or REO Property (including, without limitation, legal fees and expenses, committee or referee fees, and, if applicable, brokerage commissions and conveyance taxes), any unreimbursed amount expended by the Servicer pursuant to Sections 5.5, 5.6 and 5.11

respecting the related Mortgage Loan and any unreimbursed expenditures for real property taxes or for property restoration or preservation of the related Mortgaged Property. Liquidation Expenses shall not include any previously incurred expenses in respect of an REO Mortgage Loan which have been netted against related REO Proceeds.

"Liquidation Proceeds" shall mean amounts, if any, received by the Servicer (including Insurance Proceeds) in connection with the liquidation of Liquidated Loans or property acquired in respect thereof, whether through foreclosure, sale or otherwise, including payments in connection with such Mortgage Loans received from the Mortgagor, other than amounts required to be paid to the Mortgagor pursuant to the terms of the applicable Mortgage or to be applied otherwise pursuant to law.

"Loan Repurchase Price" shall have the meaning defined in Section 2.4(b).

"Lower-Tier Interests"" means the uncertificated classes of interests in the Lower-Tier REMIC, as described and designated in Section 10.1(c) hereof.

"Lower-Tier REMIC" means the segregated pool of assets held by the Trust Fund consisting of the Mortgage Loans, the Collection Account, the Certificate Insurance Policy and the Certificate Account.

"Majority Certificateholders" shall mean the Holder or Holders of Class A Certificates evidencing a Percentage Interest in excess of 50% in the aggregate; once the Class A Certificates have been paid in full, then the Holder or Holders of Class C Certificates evidencing a Percentage Interest in excess of 50% in the aggregate.

"Maturity Date" shall mean the latest possible maturity date as defined in Section 1.860G-1(a)(4)(iii) of the Treasury regulations, by which the Certificates representing a regular interest in the REMIC of the Trust Fund would be reduced to zero as determined under a hypothetical scenario that assumes, among other things, that (a) scheduled interest and principal payments on the Mortgage Loans are received in a timely manner, with no delinquencies or losses, (b) there are no principal prepayments on the Mortgage Loans, (c) the Depositor and the Seller will not repurchase any Mortgage Loan and neither the Seller, the Servicer nor the Certificate Insurer will exercise its option to purchase the Mortgage Loans and thereby cause a termination of the REMIC of the Trust Fund, and (d) the Mortgage Loans generally have an original term to maturity of 180 months and, on a latest maturing loan basis, a remaining term to maturity of 180 months.

"Maximum Collateral Amount" shall mean an amount equal to the sum of (i) the Original Pool Principal Balance and (ii) the Principal Balance (as of the related Subsequent Cut-Off Date) of each Subsequent Mortgage Loan acquired by the Trust Fund.

"Monthly Payment" shall mean, as to any Mortgage Loan (including any REO Mortgage Loan) and any Due Date, the scheduled payment of principal and interest due thereon by such Due Date (after adjustment for any Curtailments and Deficient Valuations occurring prior to such Due Date but before any adjustment to such amortization schedule by

reason of any bankruptcy, other than Deficient Valuations or similar proceeding or any moratorium or similar waiver or grace period). With respect to any Monthly Payment made by or on behalf of a Mortgagor and received by the Servicer, 100% of the principal payment portion of such Monthly Payment shall be applied to the outstanding Principal Balance until such Principal Balance shall be reduced to zero; the interest payment portion of such Monthly Payment shall be appropriately allocated to the balance of such Mortgage Loan as provided for herein.

"Moody's" shall mean Moody's Investors Service, Inc., a corporation organized and existing under Delaware law, or any successor thereto and if such corporation no longer for any reason performs the services of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized rating agency designated by the Certificate Insurer.

"Mortgage" shall mean the mortgage, deed of trust or other instrument creating a first or second lien on the Mortgaged Property.

"Mortgage File" shall include the Mortgage Loan documents described in Section 2.3 hereof.

"Mortgage Interest Rate" shall mean, as to any Mortgage Loan, the per annum rate at which interest accrues on the unpaid principal balance thereof.

"Mortgage Loan" shall mean (i) each closed-end home equity loan identified on the Mortgage Loan Schedule on the Closing Date, (ii) any additional such closed-end home equity loans identified on the Mortgage Loan Schedule after the Closing Date, as such schedule is amended and supplemented from time to time to reflect the substitution of Qualified Substitute Mortgage Loans for loans deleted from the Trust Fund, (iii) from and after the date a mortgage loan becomes a Subsequent Mortgage Loan in accordance with Section 6.11 hereof, each Subsequent Mortgage Loan and (iv) the related Mortgage. Unless otherwise clearly indicated by the context, Mortgage Loan shall be deemed to refer to the related REO Mortgage Loan and REO Property.

"Mortgage Loan Interest Shortfall" shall mean, with respect to any Remittance Date, as to any Mortgage Loan, any Prepayment Interest Shortfall for which no payment of Compensating Interest is paid.

"Mortgage Loan Schedule" shall mean the list of the Mortgage Loans transferred to the Trustee on the Closing Date as part of the Trust Fund and attached hereto as Exhibit C (and also provided to the Trustee and the Certificate Insurer on a computer readable magnetic tape or disk) and any Subsequent Mortgage Loans transferred to the Trustee pursuant to any Subsequent Transfer Instrument as provided in Section 6.11 and attached to such Subsequent Transfer Instrument as an Exhibit (and also provided to the Trustee and the Certificate Insurer on a computer readable magnetic tape or disk). The Mortgage Loan Schedule shall set forth at a minimum the following information as to each Mortgage Loan:

(i) the Mortgage Loan identifying number;

(ii) the Mortgagor's name;

(iii) the original Principal Balance of the Mortgage Loan;

(iv) the Due Date;

(v) the date of the first Monthly Payment;

(vi) the origination date;

(vii) the Principal Balance of the Mortgage Loan as of the Cut-Off Date or with respect to Subsequent Mortgage Loans, the Subsequent Cut-Off Date;

(viii) the city, state and zip code of the Mortgaged Property;

(ix) the type of Mortgaged Property;

(x) the current Monthly Payment as of the Cut-Off Date (and with respect to any Subsequent Mortgage Loan, the current Monthly Payment as of the Subsequent Cut-Off Date applicable thereto);

(xi) the original number of months to maturity;

(xii) the scheduled maturity date;

(xiii) the Principal Balance of such Mortgage Loan as of the Cut-Off Date (or, with respect to any Qualified Substituted Mortgage Loans, the revised Principal Balance as of the date of such substitution);

(xiv) as of the Cut-Off Date, Substitution Date or Subsequent Cut-Off Date, as applicable, the remaining number of months to stated maturity;

(xv) the Second Mortgage Ratio at origination and the Combined Loan-to-Value Ratio as of the Cut-Off Date;

(xvi) the Mortgage Interest Rate at origination;

(xvii) the Mortgage Interest Rate as of the Cut-Off Date, or, with respect to Subsequent Mortgage Loans, the Subsequent Cut-Off Date applicable thereto (the "Current Mortgage Interest Rate");

(xviii) the Appraised Value;

(xix) the occupancy status; and

(xx) the lien priority of each Mortgage Loan.

Such "Mortgage Loan Schedule" may consist of multiple reports that collectively set forth all of the information required, including the aggregate number of Mortgage Loans and the aggregate Principal Balance as of the Cut-Off Date. In addition, a summary of the information regarding the Mortgage Loans shall be included as a part of the Mortgage Loan Schedule which summary shall include such consolidated and aggregated information as may be requested by the Trustee and the Certificate Insurer from time to time.

"Mortgage Note" shall mean the original, executed note or other evidence of indebtedness evidencing the indebtedness of a Mortgagor under a Mortgage Loan.

"Mortgaged Property" shall mean the underlying property securing a Mortgage Loan, consisting of a fee simple estate in a single parcel of land improved by a Residential Dwelling.

"Mortgaged Property State" shall mean any state in which any Mortgaged Property is located.

"Mortgagor" shall mean the obligor on a Mortgage Note.

"Net Foreclosure Profits" shall mean, as to any Remittance Date, the excess, if any, of (i) the aggregate Foreclosure Profits with respect to such Remittance Date over (ii) the aggregate Realized Losses with respect to such Remittance Date.

"Net Liquidation Proceeds" shall mean, as to any Liquidated Loan, Liquidation Proceeds net of Liquidation Expenses and net of any unreimbursed Delinquency Interest Advances or Servicing Advances made by the Servicer with respect to the related Mortgage Loan. For all purposes of this Agreement, Net Liquidation Proceeds shall be allocated first to accrued and unpaid interest on the related Mortgage Loan and then to the unpaid principal balance thereof.

"Net Monthly Excess Cashflow" shall mean, as of any Remittance Date, an amount equal to (x) the Available Funds minus (y) the sum of (i) sum of the Class A Interest Distribution Amount and the amount described in clause (b) of the definition of Class A Principal Distribution Amount (calculated for this purpose without regard to any Overcollateralization Increase Amount or portion thereof included therein); and (ii) the Reimbursement Amount, if any, for such Remittance Date.

"Net Mortgage Interest Rate" shall mean, with respect to each Mortgage Loan at any time of determination, a rate equal to (i) the Mortgage Interest Rate on such Mortgage Loan minus (ii) the sum of the per annum rates used to determine the Servicing Fee and Trustee Fee and the Premium Percentage. Any regular monthly computation of interest at

such rate shall be based upon annual interest at such rate on the applicable amount divided by twelve.

"Net REO Proceeds" shall mean, as to any REO Mortgage Loan, REO Proceeds net of any related expenses of the Servicer.

"Nonrecoverable Advance" shall mean, with respect to any Mortgage Loan, (a) any Delinquency Interest Advance or Servicing Advance previously made and not reimbursed from late collections pursuant to Section 5.4(b), or (b) a Delinquency Interest Advance or Servicing Advance proposed to be made in respect of a Mortgage Loan or REO Property either of which, in the good faith business judgment of the Servicer, as evidenced by an Officer's Certificate delivered to the Certificate Insurer and the Trustee, would not be ultimately recoverable pursuant to Section 5.4.

"Officer's Certificate" shall mean a certificate signed by the Chairman of the Board, the President or a Vice President and the Treasurer, the Secretary or one of the Assistant Treasurers or Assistant Secretaries of the Seller and/or the Servicer, or the Depositor, as required by this Agreement.

"Opinion of Counsel" shall mean a written opinion of counsel, who may, without limitation, be counsel for the Seller, the Servicer, the Trustee, a Certificateholder or a Certificateholder's prospective transferee or the Certificate Insurer (including except as otherwise provided herein, in-house counsel) reasonably acceptable to each addressee of such opinion and experienced in matters relating to the subject of such opinion; except that any opinion of counsel relating to (a) the qualification of the Trust Fund as a REMIC or (b) compliance with the REMIC Provisions must be an opinion of counsel who (i) is in fact independent of the Depositor, the Seller, the Servicer and the Trustee, (ii) does not have any direct financial interest or any material indirect financial interest in the Depositor, the Seller, the Servicer or the Trustee or any Affiliate thereof, (iii) is not connected with the Depositor or the Seller or the Servicer or the Trustee as an officer, employee, director or person performing similar functions and (iv) is reasonably acceptable to the Certificate Insurer. The Certificate Insurer shall be an addressee on each Opinion of Counsel relating to, or otherwise affecting, the Trust Fund and the Class A Certificates.

"Original Class A Principal Balance" shall mean, as of the Startup Date and as to the Class A Certificates, $40,000,000.

"Original Class B Principal Balance" shall mean, as of the Startup Date and as to the Class B Certificates, $1,071,834.

"Original Pool Principal Balance" shall mean the Pool Principal Balance as of the Cut-off Date, which amount is equal to $30,623,836.

"Original Pre-Funded Amount" shall mean $10,447,998.

"Outstanding Mortgage Loan" shall mean, as to any Due Date, a Mortgage Loan (including an REO Mortgage Loan) which has not been prepaid in full prior to such Due Date, which did not become a Charged-off Loan prior to such Due Date and which was not repurchased by the Seller prior to such Due Date pursuant to Section 2.4 and which is not a Deleted Mortgage Loan.

"Overcollateralization Amount" shall mean, as of any Remittance Date, the amount, if any, by which (a) the Pool Principal Balance plus the Pre-Funded Amount (exclusive of any investment earning thereon) as of the close of business on the last day of the related Collection Period exceeds (b) the Class A Principal Balance as of such Remittance Date (after taking into account the payment of the Class A Principal Distribution Amount on such Remittance Date, but without regard to any portion thereof funded by the proceeds of an Insured Payment); provided, however, that such amount shall not be less than zero.

"Overcollateralization Deficiency Amount" shall mean, with respect to any Remittance Date, the amount, if any, by which (a) the Required Overcollateralization Level applicable to such Remittance Date exceeds (b) the Overcollateralization Amount applicable to such Remittance Date prior to taking into account the payment of any related Overcollateralization Increase Amounts on such Remittance Date.

"Overcollateralization Deficit" shall mean, as of any Remittance Date, the amount, if any, by which (a) the aggregate Class A Principal Balance (after taking into account the payment of the Class A Principal Distribution Amount (other than payments in respect thereof under the Certificate Insurance Policy) on such date) exceeds (b) the Pool Principal Balance plus the Pre-Funded Amount, each determined as of the end of the immediately preceding Collection Period.

"Overcollateralization Increase Amount" shall mean, with respect to any Remittance Date, the lesser of (a) the Overcollateralization Deficiency Amount as of such Remittance Date (after taking into account the payment of the Class A Principal Distribution Amount on such Remittance Date (other than clause (viii) thereof) and (b) the amount of Net Monthly Excess Cashflow on such Remittance Date.

"Overcollateralization Reduction Amount" shall mean, with respect to any Remittance Date, an amount equal to the lesser of (a) the Excess Overcollateralization Amount for such Remittance Date and (b) the Principal Remittance Amount for the prior Collection Period.

"Ownership Interest" shall mean, as to any Certificate, any ownership or security interest in such Certificate, including any interest in such Certificate as the Holder thereof and any other interest therein, whether direct or indirect, legal or beneficial, as owner or as pledgee.

"Owner-Occupied Mortgaged Property" shall mean a Residential Dwelling as to which (a) the related Mortgagor represented an intent to occupy as such Mortgagor's primary

residence at the origination of the Mortgage Loan, and (b) the Seller has no actual knowledge that such Residential Dwelling is not so occupied.

"Percentage Interest" shall mean, with respect to a Class A Certificate, the portion evidenced by such Certificate, expressed as a percentage rounded to four decimal places, equal to a fraction the numerator of which is the original denomination of such Certificate and the denominator of which is the Original Class A Principal Balance, and with respect to a Class B, Class C, Class RL or RU Certificate, the portion evidenced thereby as stated on the face of such Certificate.

"Permitted Investments" shall mean, as used herein, Permitted Investments shall include the following:

(a) direct general obligations of, or obligations fully and unconditionally guaranteed as to the timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided such obligations are backed by the full faith and credit of the United States and any obligation of, or guaranties by, FHLMC or FNMA (other than senior debt obligations and mortgage pass-through certificates guaranteed by FHLMC or FNMA) shall be a Permitted Investment; provided, that at the time of such investment, such investment is acceptable to the Certificate Insurer, but excluding any of such securities whose terms do not provide for payment of a fixed dollar amount upon maturity or call for redemption;

(b) federal funds and certificates of deposit, time and demand deposits and banker's acceptances issued by any bank or trust company incorporated under the laws of the United States or any state thereof and subject to supervision and examination by federal or state banking authorities, provided that at the time of such investment or contractual commitment providing for such investment the short-term debt obligations of such bank or trust company at the date of acquisition thereof have been rated A-1 + by S&P and P-1 by Moody's;

(c) commercial paper (having original maturities of not more than 180 days) rated A-1 + by S&P and P-1 by Moody's;

(d) investments in money market funds rated "AAAm" or "AAAm-G" by S&P and Aaa by Moody's; and

(e) investments approved by the Rating Agencies and the Certificate Insurer in writing delivered to the Trustee;

provided, that each such Permitted Investment shall be a "permitted investment" within the meaning of Section 860G(a)(5) of the Code and that no instrument described hereunder shall evidence either the right to receive (x) only interest with respect to the obligations underlying such instrument or (y) both principal and interest payments derived from obligations underlying such instrument and the interest and principal payments with respect to such instrument provided a yield to maturity at par greater than 120% of the yield to maturity at

par of the underlying obligations; and provided, further, that no instrument described hereunder may be purchased at a price greater than par if such instrument may be prepaid or called at a price less than its purchase price prior to stated maturity.

"Permitted Transferee" shall mean any Person other than a Non-United States Person or Disqualified Organization.

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, limited liability company, trust, national banking association, unincorporated organization or government or any agency or political subdivision thereof.

"Placement Agent" shall mean Merrill Lynch & Co.

"Plan" shall have the meaning defined in Section 4.2(i).

"Pool Cumulative Realized Losses" shall mean, with respect to any period, the sum of all Realized Losses with respect to the Mortgage Loans experienced during such period.

"Pool Delinquency Rate" shall mean with respect to any Collection Period, the fraction, expressed as a percentage, equal to (x) the aggregate principal balances of all Mortgage Loans 60 or more days Delinquent (including all foreclosures and REO Properties) as of the close of business on the last day of such Collection Period over (y) the Pool Principal Balance as of the close of business on the last day of such Collection Period.

"Pool Principal Balance" shall mean the sum of the aggregate Principal Balances of the Outstanding Mortgage Loans in the Trust Fund as of any date of determination.

"Pool Rolling Three Month Delinquency Rate" shall mean as of any Remittance Date, the fraction, expressed as a percentage, equal to the average of the Pool Delinquency Rates for each of the three (or one and two, in the case of the first and second Remittance Dates) immediately preceding Collection Periods.

"Preference Amount" shall mean any amount previously distributed to a Class A Certificateholder that is recoverable and sought to be recovered as a voidable preference by a trustee in bankruptcy pursuant to the U.S. Bankruptcy Code as amended from time to time, in accordance with a final nonappealable order of a court having competent jurisdiction.

"Preference Claim" shall have the meaning defined in Section 6.4(f).

"Pre-Funding Account" shall mean the Eligible Account established and maintained pursuant to Section 6.11 as defined therein.

"Pre-Funded Amount" shall mean, with respect to any Determination Date, the amount on deposit in the Pre-Funding Account.

"Premium Percentage" shall have the meaning assigned thereto in the Certificate Insurance Agreement.

"Prepayment Assumption" shall mean a constant prepayment rate of 15%, used solely for determining the accrual of original issue discount and market discount on the Certificates for federal income tax purposes.

"Prepayment Interest Shortfall" shall mean, with respect to any Remittance Date, for each Mortgage Loan that was the subject during the related Collection Period of a Principal Prepayment, an amount equal to the excess, if any, of (a) 30 days' interest on the Principal Balance of such Mortgage Loan at a per annum rate equal to the Mortgage Interest Rate, minus the rate at which the Servicing Fee is calculated over (b) the amount of interest actually remitted by the Mortgagor in connection with such Principal Prepayment less the Servicing Fee for such Mortgage Loan in such month.

"Principal Balance" shall mean, as to any Mortgage Loan and Remittance Date, initially the outstanding principal balance of such Mortgage Loan as of the Cut-Off Date or the related Subsequent Cut-Off Date, as applicable, and thereafter, as of any Remittance Date such balance as of the last day of the Collection Period related to such Remittance Date after giving effect to Principal Prepayments received and payments of principal collected during such Collection Period and any Curtailments applied by the Servicer in reduction of the unpaid principal balance of such Mortgage Loan as of such Due Date; once a Mortgage Loan becomes a Charged-off Loan, its Principal Balance, for purposes of the Trust Fund, will thereafter be considered to be zero.

"Principal Prepayment" shall mean any payment or other recovery of principal on a Mortgage Loan equal to the outstanding principal balance thereof, received in advance of the final scheduled Due Date which is not intended as an advance payment of a scheduled Monthly Payment.

"Principal Remittance Amount" shall mean, as of any Remittance Date, the sum, without duplication of the amounts specified in clauses (b)(ii) through (v) and (vii) of the definition of Class A Principal Distribution Amount for such Remittance Date.

"Qualified Mortgage" shall have the meaning set forth from time to time in the definition of "Qualified Mortgage" at Section 860G(a)(3) of the Code (or any successor statute thereto).

"Qualified Substitute Mortgage Loan" shall mean a mortgage loan or mortgage loans which on the date of substitution (a) has or have a mortgage interest rate or rates of not less than (and not more than two percentage points more than) the Mortgage Interest Rate for the Deleted Mortgage Loan for which it is to be substituted, (b) relates or relate to a detached one-family residence or to the same type of Residential Dwelling as the Deleted Mortgage Loan for which it is to be substituted and in each case has or have the same or a better lien priority as the Deleted Mortgage Loan for which it is to be substituted and has or have the same occupancy status or is an Owner-Occupied Mortgaged Property, (c) matures or mature

no later than (and not more than one year earlier than) the Deleted Mortgage Loan for which it is to be substituted, (d) has or have a Second Mortgage Ratio or Combined Loan-to-Value Ratios at the time of such substitution no higher than the Second Mortgage Ratio or the Combined Loan-to-Value Ratio of the Deleted Mortgage Loan for which it is to be substituted, (e) has or have a principal balance or principal balances (after deduction of all payments received on or prior to the date of substitution) not substantially less and not more than the Principal Balance of the Deleted Mortgage Loan for which it is to be substituted as of such date, (f) satisfies or satisfy the criteria set forth from time to time in the definition of "qualified replacement mortgage" at Section 860G(a)(4) of the Code (or any successor statute thereto), (g) has or have an applicable borrower or borrowers with the same or better traditionally ranked credit status as the borrower or borrowers under the Deleted Mortgage Loan for which it is to be substituted, and (h) complies or comply as of the date of substitution with each representation and warranty set forth in Section 3.3 herein.

"Rating Agency" shall mean S&P or Moody's.

"Realized Loss" shall mean, with respect to each Mortgage Loan which became a Charged-off Loan, the excess, if any, of (i) the Principal Balance of such Mortgage Loan as of the date of charge-off and accrued interest thereon over (ii) Net Liquidation Proceeds, if any, realized thereon and allocated to principal and accrued interest.

"Record Date" shall mean, with respect to any Remittance Date, the close of business on the last Business Day of the calendar month immediately preceding the month in which such Remittance Date occurs. The Record Date for the first Distribution Date shall be the Closing Date.

"Reimbursement Amount" shall mean, as of any Remittance Date, the sum of (i) all Insured Payments (as defined in the Certificate Insurance Policy) previously paid by the Certificate Insurer and in each case not previously repaid to the Certificate Insurer pursuant to Section 6.5(iii) hereof; plus (ii) interest accrued on each such Insured Payment not previously repaid calculated at the rate specified in the Certificate Insurance Agreement from the date such Insured Payment was made and (b)(i) any amounts then due and owing to the Certificate Insurer under the Certificate Insurance Agreement, as certified to the Trustee by the Certificate Insurer plus (ii) interest on such amounts at the rate specified in the Certificate Insurance Agreement. The Certificate Insurer shall notify the Trustee and the Depositor of the amount of any Reimbursement Amount.

"Released Mortgaged Property Proceeds" shall mean, as to any Mortgage Loan, proceeds received by the Servicer in connection with (a) a taking of an entire Mortgaged Property by exercise of the power of eminent domain or condemnation or (b) any release of part of the Mortgaged Property from the lien of the related Mortgage, whether by partial condemnation, sale or otherwise; which are not released to the Mortgagor in accordance with applicable law, Accepted Servicing Practices and this Agreement.

"REMIC" shall mean a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code.

"REMIC Provisions" shall mean provisions of the federal income tax law relating to real estate mortgage investment conduits, which appear at Sections 860A through 860G of Subchapter M of Chapter I of the Code, and related provisions, and temporary and final regulations promulgated thereunder and published rulings, notices and announcements, as the foregoing may be in effect from time to time.

"Remittance Date" shall mean the 25th day of any month or if such 25th day is not a Business Day, the first Business Day immediately following, commencing on July 25, 1996.

"REO Disposition" shall mean the final sale by the Servicer of a Mortgaged Property acquired by the Servicer in foreclosure or by deed in lieu of foreclosure.

"REO Mortgage Loan" shall mean any Mortgage Loan which is not a Liquidated Mortgage Loan and as to which the indebtedness evidenced by the related Mortgage Note is discharged and the related Mortgaged Property is held as part of the Trust Fund.

"REO Proceeds" shall mean proceeds received in respect of any REO Mortgage Loan (including, without limitation, proceeds from the rental of the related Mortgaged Property).

"REO Property" shall have the meaning described in Section 5.11.

"Request for Release" shall mean a request for release in substantially the form attached as Exhibit G hereto.

"Required Overcollateralization Level" shall mean, for each Remittance Date, the amount determined as follows:

(a) for any Remittance Date occurring during the period commencing on the Closing Date and ending on the later of (x) the date upon which principal payments on the Mortgage Loans equal to one-half of the sum of (1) the Original Pool Principal Balance plus (2) the aggregate Principal Balances (as of the related Subsequent Cut-Off Dates) of all Subsequent Mortgage Loans acquired by the Trust Fund have been received by the Class A Certificateholders and (y) the thirtieth Remittance Date following the Closing Date, the greater of the following:

(i) the product of (x) $40,000,000 and (y) the Target Percentage applicable to such Remittance Date; and

(ii) two times an amount equal to (x) the aggregate Principal Balances of all Mortgage Loans which are 91 or more days Delinquent (including REO Properties) minus (y) five times the Net Monthly Excess Cashflow for such Remittance Date; and

(b) for any Remittance Date occurring after the end of the period in clause (a) above, the greatest of the following:

(i) the lesser of (A) the product of (x) $40,000,000 and (y) the Target Percentage applicable to such Remittance Date and (B) the product of (i) the Class A Principal Balance immediately preceding such Remittance Date and (ii) two times the Target Percentage applicable to such Remittance Date;

(ii) two times the difference of (A) the aggregate Principal Balances of all Mortgage Loans which are 91 or more days Delinquent (including REO Properties) and (B) five times the Net Monthly Excess Cashflow for such Remittance Date; and

(iii) an amount equal to 0.50% of the sum of (1) the Original Pool Principal Balance plus (2) the aggregate Principal Balances (as of the related Subsequent Cut-Off Dates) of all Subsequent Mortgage Loans acquired by the Trust Fund.

Notwithstanding anything to the contrary set forth in clauses (a) or (b) above, on or after any Remittance Date on which an Insured Payment is made, or any Remittance Date on which an Event of Default has occurred and is continuing, the Required Overcollateralization Level shall be equal to the Required Overcollateralization Level as of the Remittance Date immediately prior to the Remittance Date on which either such event occurred.

"Residential Dwelling" shall mean a one -to four-family dwelling, a unit in a planned unit development, a unit in a condominium development or a townhouse.

"Residual Certificate" means any Class RL Certificate or any Class RU Certificate.

"Residual Certificateholder" means the person in whose name a Residual Certificate is registered on the Certificate Register.

"Responsible Officer" shall mean, when used with respect to the Trustee, any officer assigned to the Corporate Trust Department (or any successor thereto), including any Vice President, Assistant Vice President, Senior Trust Officer, Trust Officer, Assistant Trust Officer, any Assistant Secretary, any trust officer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and to whom, with respect to a particular matter, such matter is referred because of such officer's knowledge of and familiarity with the particular subject. When used with respect to the Seller or the Servicer, the President or any Vice President, Assistant Vice President, or any Secretary or Assistant Secretary.

"S&P" shall mean Standard & Poor's Ratings Services, a division of McGraw Hill, Inc., or any successor thereto and if such corporation no longer for any reason performs

the services of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized statistical rating organization designated by the Certificate Insurer.

"Second Mortgage Ratio" shall mean, with respect to any Mortgage Loan, an amount equal to the ratio (expressed as a percentage) of the original principal balance of such Mortgage Loan to the sum of (i) the original principal balance of such Mortgage Loan and (ii) the principal balance at the time of origination of any senior liens (computed at the time of origination of such Mortgage Loan).

"Seller" shall mean T.A.R. Preferred Mortgage Corporation, a California corporation.

"Servicer" shall mean Advanta Mortgage Corp. USA, a Delaware corporation, or any successor appointed as herein provided.

"Servicer Account" shall mean the Eligible Account created and maintained pursuant to Section 5.7.

"Servicer Employees" shall have the meaning as defined in Section 5.8 hereof.

"Servicer Remittance Amount" shall mean, with respect to any Servicer Remittance Date, an amount equal to the sum of (i) all scheduled and unscheduled collections of principal on the Mortgage Loans (including Principal Prepayments, Curtailments, Net REO Proceeds and Net Liquidation Proceeds, if any, and any amounts deposited in the Collection Account in connection with a complete plan of liquidation of the assets of the Trust or termination of the Trust) collected by the Servicer during the Collection Period and all interest due during such Collection Period and received by the Servicer on or prior to the related Determination Date, plus (ii) all Delinquency Interest Advances made by the Servicer with respect to interest payments due to be received on the Mortgage Loans during the related Collection Period plus (iii) the amount of Compensating Interest due with respect to the related Collection Period, plus (iv) any other amounts required to be deposited in the Collection Account pursuant to this Agreement, but excluding, without duplication, the following:

(a) amounts received on particular Mortgage Loans as late payments of principal or interest and respecting which the Servicer has previously made an unreimbursed Delinquency Interest Advance or Servicing Advance;

(b) the portion of Liquidation Proceeds used to reimburse any unreimbursed Delinquency Interest Advances or Servicing Advances by the Servicer;

(c) the Servicing Fee;

(d) that portion of Liquidation Proceeds and REO Proceeds which represents any unpaid Servicing Fee;

(e) all income from Permitted Investments that is held in the Collection Account for the account of the Servicer;

(f) all amounts in respect of late fees, assumption fees, prepayment fees and similar fees;

(g) all other amounts which are explicitly reimbursable to the Servicer hereunder, including (i) as provided in Section 5.4 hereof; and (ii) any unreimbursed and accrued Liquidation Expenses; and

(h) the portion of Net Foreclosure Profits representing any unpaid Servicing Fee.

"Servicer Remittance Date" shall mean, with respect to any Remittance Date, the 18th day of the month in which such Remittance Date occurs, or if such day is not a Business Day, the first Business Day preceding such 18th day.

"Servicer Trigger Event" has the meaning set forth in Section 7.1(c) hereof.

"Servicing Advances" shall mean all reasonable and customary "out-of-pocket" costs and expenses incurred in the performance by the Servicer of its servicing obligations, including, but not limited to, the cost of (a) the preservation, restoration and protection of the Mortgaged Property, (b) any enforcement proceedings, including foreclosures, (c) expenditures relating to the purchase or maintenance of a first lien not included in the Trust Fund on the Mortgaged Property, (d) the management and liquidation of the REO Property, including reasonable fees paid to any independent contractor in connection therewith, (e) compliance with the obligations under Sections 5.5, 5.9 or 5.11, all of which reasonable and customary out-of-pocket costs and expenses are reimbursable to the Servicer to the extent provided in Section 5.4(a) and (b) and 5.11.

"Servicing Compensation" shall mean the Servicing Fee and other amounts to which the Servicer is entitled pursuant to Section 5.13.

"Servicing Fee" shall mean, as to each Remittance Date, the annual fee payable to the Servicer, which is calculated as an amount equal to the product of (a) 0.65% per annum and (b) the aggregate Principal Balance of the Mortgage Loans (except any Charged-off Loan as to which the Servicer is not pursuing any collection activity). Such fee shall be calculated and payable monthly. The Servicing Fee includes any servicing fees owed or payable to any Subservicer.

"Servicing Officer" shall mean any officer of the Servicer involved in, or responsible for, the administration and servicing of the Mortgage Loans whose name and specimen signature appear on a list of servicing officers furnished to the Trustee and the Certificate Insurer by the Servicer, as such list may from time to time be amended.

"Startup Date" shall mean the day designated as such pursuant to Section 10.1(d) hereof.

"Step-Up Remittance Date" shall mean the first Remittance Date which follows the Clean-Up Call Date by at least fifteen Business Days.

"Subsequent Cut-Off Date" shall mean, with respect to those Subsequent Mortgage Loans which are transferred and assigned to the Trust Fund pursuant to a Subsequent Transfer Instrument the opening of business on the first day of the month in which the related Subsequent Transfer Date occurs.

"Subsequent Mortgage Loan" shall mean a Mortgage Loan assigned and transferred by the Depositor to the Trustee pursuant to Section 6.11, such Mortgage Loan being identified on the Mortgage Loan Schedule attached to a Subsequent Transfer Instrument.

"Subsequent Transfer Date" shall mean the date on which a Subsequent Mortgage Loan is transferred and assigned to the Trustee.

"Subsequent Transfer Instrument" shall mean each Subsequent Transfer Instrument dated as of a Subsequent Transfer Date executed by the Trustee, the Seller and the Depositor substantially in the form of Exhibit O, by which Subsequent Mortgage Loans are transferred and assigned to the Trustee.

"Subservicer" shall mean any Person with whom the Servicer has entered into a Subservicing Agreement and who satisfies the requirements set forth in Section 5.2(a) hereof in respect of the qualification of a Subservicer.

"Subservicing Agreement" shall mean any agreement between the Servicer and any Subservicer relating to subservicing and/or administration of certain Mortgage Loans as provided in Section 5.2(b), a copy of which shall be delivered, along with any modifications thereto, to the Trustee and the Certificate Insurer.

"Substitution Adjustment" shall mean, as to any date on which a substitution occurs pursuant to Section 2.4 or 3.3, the amount (if any) by which the aggregate Principal Balances (after application of principal payments received on or before the date of substitution of any Qualified Substitute Mortgage Loans as of the date of substitution) of the related Qualified Substitute Mortgage Loans are less than the aggregate of the Principal Balances of the related Deleted Mortgage Loans together with 30 days' interest thereon at the Mortgage Interest Rate plus any unreimbursed Servicing Advances and any unreimbursed Delinquency Interest Advances with respect to such Deleted Mortgage Loan.

"Target Percentage" shall mean, initially, 8.5%, provided, however, that the Target Percentage shall be increased to 10.25% if:

(i) on any Remittance Date, the Pool Rolling Three Month Delinquency Rate for each of the three (or one or two, in the case of the first and second Remittance Dates) immediately preceding Collection Periods, is 4.00% or greater; or

(ii) (a) on any Remittance Date occurring before June 1, 1997, the aggregate Pool Cumulative Realized Losses since the Cut-off Date exceed 1.5% of the Maximum Collateral Amount, (b) on any Remittance Date on or after June 1, 1997 and before June 1, 1998, the aggregate Pool Cumulative Realized Losses since the Cut-off Date exceed 3.0% of the Maximum Collateral Amount, (c) on any Remittance Date on or after June 1, 1998 and before June 1, 1999, the aggregate Pool Cumulative Realized Losses since the Cut-off Date exceed 4.5% of the Maximum Collateral Amount, (d) on any Remittance Date on or after June 1, 1999 and before June 1, 2000, the aggregate Pool Cumulative Realized Losses since the Cut-off Date exceed 6.0% of the Maximum Collateral Amount, or (e) on any Remittance Date on or after June 1, 2000, the aggregate Pool Cumulative Realized Losses since the Cut-off Date exceed 7.5% of the Maximum Collateral Amount;

provided, further, however, that if the Target Percentage has increased to 10.25% pursuant to application of clause (i) above, the Target Percentage may thereafter revert to 8.50% if (x) the Pool Rolling Three Month Delinquency Rate has remained below 4.00% for six consecutive Remittance Dates and (y) Pool Cumulative Realized Losses remain below the levels set forth in clause (ii) above.

"Tax Matters Person" shall mean the Person or Persons appointed pursuant to Section 10.1(e) from time to time to act as the "tax matters person" (within the meaning of the REMIC Provisions) of a REMIC of the Trust Fund.

"Tax Return" shall mean the federal income tax return on Internal Revenue Service Form 1066, "U.S. Real Estate Mortgage Investment Conduit Income Tax Return," including Schedule Q thereto, Quarterly Notice to Residual Interest Holders of REMIC Taxable Income or Net Loss Allocation, or any successor forms, to be filed on behalf of the Trust Fund due to its classification as a REMIC under the REMIC Provisions, together with any and all other information reports or returns that may be required to be furnished to the Certificateholders or filed with the Internal Revenue Service or any other governmental taxing authority under any applicable provision of federal, state or local tax laws.

"Total Expected Losses" shall mean, as of Remittance Date, the sum, as of such Remittance Date, of (x) Pool Cumulative Realized Losses since the Cut-Off Date and (y) the sum of (i) 25% of the aggregate Principal Balances of all Mortgage Loans 30-59 days Delinquent as of the end of the preceding Collection Period, (ii) 50% of the aggregate Principal Balances of all Mortgage Loans 60-89 days Delinquent as of the end of the preceding Collection Period and (iii) 100% of the aggregate Principal Balances of all Mortgage Loans 90 or more days Delinquent at the end of the preceding Collection Period.

"Transfer" shall mean any direct or indirect transfer, sale, pledge, hypothecation or other form of assignment of any Ownership Interest in a Certificate.

"Transfer Affidavit and Agreement" shall have the meaning as defined in Section 4.2(f)(ii).

"Transferee" shall mean any Person who is acquiring by Transfer any Ownership Interest in a Certificate.

"Transferor" shall mean any Person who is disposing by Transfer any Ownership Interest in a Certificate.

"Trust Fund" shall mean the segregated pool of assets subject hereto, and to be administered hereunder, consisting of: (a) such Mortgage Loans as from time to time are subject to this Agreement, together with the Mortgage Files relating thereto and all collections thereon and proceeds thereof on and after the Cut-Off Date (other than Monthly Payments due on each Mortgage Loan up to and including any Due Date prior to the Cut-Off Date), (b) such assets as from time to time are identified as REO Property and collections thereon and proceeds thereof, (c) amounts (including Permitted Investments as may be held from time to time, except as otherwise provided herein) on deposit in each Account, (d) the Trustee's rights with respect to the Mortgage Loans under the Certificate Insurance Policy and all insurance policies required to be maintained pursuant to this Agreement and any Insurance Proceeds, (e) Liquidation Proceeds, (f) Released Mortgaged Property Proceeds, (g) amounts (including Permitted Investments as may be held from time to time) on deposit in the Capitalized Interest Account and the Pre-Funding Account, (h) all of the income, payments and proceeds of each of the foregoing, except to the extent provided herein and (i) the rights and remedies of the Trustee against any representation or warranty made to the Trustee hereby.

"Trustee" shall mean Bankers Trust Company, or its successor in interest, or any successor trustee appointed as herein provided.

"Trustee Fee" shall mean, as to any Remittance Date, the fee payable to the Trustee in respect of its services as Trustee that accrues at a monthly rate equal to 1/12 of 0.025% of the Pool Principal Balance of each Outstanding Mortgage Loan and the amount of funds in the Pre-Funding Account as of the opening of the immediately preceding Collection Period.

"Trustee's Mortgage File" shall mean the documents delivered to the Trustee or its designated agent pursuant to Section 2.3.

"Trustee's Remittance Report" shall have the meaning as defined in Section 6.7.

"United States Person" shall mean a citizen or resident of the United States, a corporation, partnership or other entity created or organized in, or under the laws of, the United States or any political subdivision thereof, or an estate or trust whose income from sources without the United States is includible in gross income for United States federal income tax purposes regardless of its connection with the conduct of a trade or business within the United States.

"Unpaid REO Amortization" shall mean, as to any REO Mortgage Loan and any month, the aggregate of the installments of principal and accrued interest (adjusted to the related Net Mortgage Interest Rate) deemed to be due in such month and in any prior months that remain unpaid, calculated in accordance with Section 5.11.

"Upper-Tier REMIC" means the segregated pool of assets held by the Trust Fund consisting of the Lower-Tier Interests (except for the RL Lower-Tier Interest, as set forth in the chart in Section 10.1(c) hereof).

Section 1.2 Provisions of General Application. (a) All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

(b) The terms defined in this Article include the plural as well as the singular.

(c) The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole. All references to Articles and Sections shall be deemed to refer to Articles and Sections of this Agreement.

(d) Reference to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such statutes.

(e) All calculations of interest (other than with respect to the Mortgage Loans, or as otherwise specifically set forth herein) provided for herein shall be made on the basis of actual days elapsed divided by a year comprised of 360 days. All calculations of interest with respect to any Mortgage Loan provided for herein shall be made in accordance with the terms of the related Note and Mortgage or, if such documents do not specify the basis upon which interest accrues thereon, on the basis of dividing actual days elapsed by a 360 day year.

(f) Any Mortgage Loan payment is deemed to be received on the date such payment is actually received by the Servicer; provided, however, that for purposes of calculating distributions on the Certificates prepayments with respect to any Mortgage Loan are deemed to be received on the date they are applied in accordance with customary servicing practices consistent with the terms of the related Note and Mortgage to reduce the outstanding principal balance of such Mortgage Loan on which interest accrues.

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ARTICLE II

Establishment of the Trust
Sale and Conveyance of the Trust Fund

Section 2.1 Sale and Conveyance of Trust Fund; Priority and Subordination of Ownership Interests; Establishment of the Trust. (a) The Seller, as of the Closing Date, does hereby sell, transfer, assign, set over and convey to the Depositor without recourse but subject to the provisions in this Section 2.1 and the other terms and provisions of this Agreement, all of the right, title and interest of the Seller in and to the Mortgage Loans, together with the Mortgage Files relating thereto and all collections thereon and proceeds thereof on and after the Cut-Off Date, it is intended that the conveyance of the Mortgage Loans, together with the Mortgage Files relating thereto and all collections thereon and proceeds thereof on and after the Cut-Off Date, by the Seller to the Depositor as provided in this Section 2.1(a) be, and be construed as, a sale of the Mortgage Loans, together with the Mortgage Files relating thereto and all collections thereon and proceeds thereof on and after the Cut-Off Date, by the Seller to the Depositor and it is, further, not intended that such conveyance be deemed a pledge by the Seller to the Depositor of the Mortgage Loans, together with the Mortgage Files relating thereto and all collections thereon and proceeds thereof on and after the Cut-Off Date, to secure a debt or other obligation of the Seller. However, in the event that the Mortgage Loans, together with the Mortgage Files relating thereto and all collections thereon and proceeds thereof on and after the Cut-Off Date, are held to be property of the Seller or if for any reason this Agreement is held or deemed to create a security interest in the Mortgage Loans, together with the Mortgage Files relating thereto and all collections thereon and proceeds thereof on and after the Cut-Off Date, then it is intended that, (i) this Agreement shall also be deemed to be a security agreement within the meaning of Articles 8 and 9 of the New York Uniform Commercial Code; (ii) the conveyance provided for in this Section 2.1(a) shall be deemed to be a grant by the Seller to the Depositor of a security interest in all of the Seller's right, title and interest in and to the Mortgage Loans and all amounts payable to the holders of the Mortgage Loans in accordance with the terms thereof and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, instruments, securities or other property, including without limitation all amounts from time to time held or invested in the Certificate Account, the Collection Account, the Pre-Funding Account and the Capitalized Interest Account, whether in the form of cash, instruments, securities or other property; (iii) the possession by the Depositor or its respective agents of Mortgage Notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to the New York Uniform Commercial Code and the Uniform Commercial Code of any other applicable jurisdiction (including, without limitation, Sections 9-305, 8-313 or 8-321 thereof); and (iv) notifications to persons holding such property, and acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of the Depositor shall be made for the purpose of perfecting such security interest under applicable law. The Seller and the Depositor, as directed by the Servicer, the Certificate Insurer or the Seller shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that, if this Agreement were deemed to create a security interest in the Mortgage

Loans, together with the Mortgage Files relating thereto and all collections thereon and proceeds thereof on and after the Cut-Off Date, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of the Agreement, including the filing by the Seller or the Depositor of any financing statements and continuation statement evidencing such security interest.

In connection with the sale, transfer, assignment and conveyance from the Seller to the Depositor, the Seller has filed, or shall cause to be filed, in the appropriate office or offices in the States of California and New York, a UCC-1 financing statement executed by the Seller as debtor, naming the Depositor as secured party and listing the Mortgage Loans and the other property described above as collateral. The characterization of the Seller as a debtor and the Depositor as the secured party in such financing statements is solely for protective purposes and shall in no way be construed as being contrary to the intent of the parties that this transaction be treated as a sale of the Seller's entire right, title and interest in the Mortgage Loans to the Depositor. In connection with such filing, the Depositor agrees that it shall cause to be filed all necessary continuation statements thereof and to take or cause to be taken such actions and execute such documents as are necessary to perfect and protect the Trustee's, the Certificateholders' and the Certificate Insurer's interests in the Mortgage Loans.

(b) The Depositor, as of the Closing Date, does hereby sell, transfer, assign, set over and convey to the Trust Fund for the benefit of the Certificateholders, as their respective interests may, from time to time appear and the Certificate Insurer without recourse but subject to the provisions in this Section 2.1 and the other terms and provisions of this Agreement, all of the right, title and interest of the Depositor in and to the Trust Fund, exclusive of the obligations of the Depositor, Seller or any other party with respect to the Mortgage Loans.

It is intended that the conveyance of the Mortgage Loans by the Depositor to the Trustee as provided in this Section 2.1(b) and of the Subsequent Mortgage Loans and the related property pursuant to Section 2.9 be, and be construed as, a sale of the Mortgage Loans by the Depositor to the Trustee for the benefit of the Certificateholders and the Certificate Insurer, and it is, further, not intended that such conveyance be deemed a pledge of the Mortgage Loans by the Depositor to the Trustee to secure a debt or other obligation of the Depositor. However, in the event that the Mortgage Loans are held to be property of the Depositor or if for any reason this Agreement is held or deemed to create a security interest in the Mortgage Loans, then it is intended that, (a) this Agreement shall also be deemed to be a security agreement within the meaning of Articles 8 and 9 of the New York Uniform Commercial Code; (b) the conveyance provided for in this Section 2.1 shall be deemed (1) to be a grant by the Depositor to the Trustee of a security interest in all of the Depositor's right, title and interest in and to the Mortgage Loans and all amounts payable to the holders of the Mortgage Loans in accordance with the terms thereof and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, instruments, securities or other property, including, without limitation, all amounts from time to time held or invested in the Certificate Account, the Collection Account, the Pre-Funding Account and the

Capitalized Interest Account, whether in the form of cash, instruments, securities or other property and (2) an assignment by the Depositor to the Trustee of any security interest in any and all of the Depositor's right (including the power to convey title thereto), title and interest, whether now owned or hereafter acquired, in and to the property described in the foregoing clause (b) granted by the Seller to the Depositor pursuant to clause (a) above; (c) the possession by the Trustee or its agent of Mortgage Notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to the New York Uniform Commercial Code and the Uniform Commercial Code of any other applicable jurisdiction (including, without limitation, Section 9-305, 8-313 or 8-321 thereof); and (d) notifications to persons holding such property, and acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of the Trustee shall be made for the purpose of perfecting such security interest under applicable law. The Depositor and the Trustee, as directed by the Servicer, the Certificate Insurer or the Depositor, shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that, if this Agreement were deemed to create a security interest in the Mortgage Loans, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of the Agreement, including the filing by the Depositor of any financing statements and continuation statements evidencing such security interest.

In connection with the sale, transfer, assignment, and conveyance, from the Depositor to the Trust Fund, the Depositor has filed, or shall cause to be filed, in the appropriate office or offices in the States of Delaware and New York, a UCC-1 financing statement executed by the Depositor as debtor, naming the Trustee as secured party and listing the Mortgage Loans and the other property described above as collateral. The characterization of the Depositor as a debtor and the Trustee as the secured party in such financing statements is solely for protective purposes and shall in no way be construed as being contrary to the intent of the parties that this transaction be treated as a sale of the Depositor's entire right, title and interest in the Mortgage Loans to the Trust Fund. In connection with such filing, the Depositor agrees that it shall cause to be filed all necessary continuation statements thereof and to take or cause to be taken such actions and execute such documents as are necessary to perfect and protect the Trustee's, the Certificateholders' and the Certificate Insurer's interests in the Mortgage Loans.

(c) The rights of the Certificateholders to receive payments with respect to the Mortgage Loans in respect of the Certificates, and all ownership interests of the Certificateholders, in such payments, shall be as set forth in this Agreement. In this regard, all rights of the Class B Certificateholders, the Class C Certificateholders and the Residual Certificateholders to receive payments in respect of the Class B Certificateholders, the Class C Certificateholders and the Residual Certificates, respectively, are subject and subordinate to the preferential rights of the Class A Certificateholders to receive payments in respect of the Class A Certificates and to the Certificate Insurer's rights to be reimbursed for Insured Payments together with interest thereon at the rate specified in the Certificate Insurance Agreement. In accordance with the foregoing, the ownership interest of the Class B Certificateholders, the Class C Certificateholders, and the Residual Certificateholders in

amounts deposited in the Certificate Account, the Collection Account, the Pre-Funding Account or the Capitalized Interest Account from time to time shall not vest unless and until such amounts are distributed in respect of the Class B Certificateholders, the Class C Certificateholders and the Residual Certificates in accordance with the terms of this Agreement.

Section 2.2 Possession of Mortgage Files; Access to Mortgage Files. (a) Upon the issuance of the Certificates, the ownership of each Mortgage Note, the Mortgage and the contents of the related Mortgage File related to each Mortgage Loan is vested in the Trustee for the benefit of the Certificateholders and the Certificate Insurer, as their respective interests may, from time to time, appear.

(b) The Trustee shall or cause to afford the Depositor, the Certificate Insurer and the Servicer reasonable access to all records and documentation regarding the Mortgage Loans relating to this Agreement, such access being afforded at customary charges, upon reasonable request and during normal business hours at the offices of the Trustee.

Section 2.3 Delivery of Mortgage Loan Documents. (a) In connection with each conveyance pursuant to Section 2.1 or 2.9 hereof, the Depositor has delivered or does hereby agree to deliver or cause to be delivered to the Trustee the Certificate Insurance Policy and each of the following documents for each Mortgage Loan sold by the Seller to the Depositor and sold by the Depositor to the Trust Fund:

(i) The original Mortgage Note, bearing all intervening endorsements showing a complete chain of endorsements from the originator of such Mortgage Loan to the Seller endorsed by the Seller endorsed without recourse in the following form: "Pay to the order of Bankers Trust Company, as Trustee for the benefit of the Certificateholders and the Certificate Insurer for Preferred Mortgage Asset-Backed Certificates Series 1996-1, without recourse" and signed in the name of the Seller by an authorized officer;

(ii) The original Mortgage with evidence of recording indicated thereon; provided, however, that if such Mortgage has not been returned from the applicable recording office, a copy of the Mortgage certified by an authorized officer of the Seller (such original recorded Mortgage shall be delivered when so returned);

(iii) An original assignment of the original Mortgage, in suitable form for recordation in the jurisdiction in which the related Mortgaged Property is located, in the name of the Seller signed by an authorized officer (with evidence of submission for recordation of such assignment in the appropriate real estate recording office for such Mortgaged Property); provided, however, that Assignments of Mortgages shall not be required to be submitted for recording with respect to any Mortgage Loan which relates to the Trustee's Mortgage File if the Trustee, each of the Rating Agencies and the Certificate Insurer shall have received an opinion of counsel at the expense of the Seller satisfactory to the Trustee, each of the Rating Agencies and the Certificate Insurer stating that, in such counsel's opinion, the failure to record such

Assignment of Mortgage shall not have a materially adverse effect on the security interest of the Trustee in the Mortgage; provided, further, that any Assignment of Mortgage for which an opinion has been delivered shall be recorded by the Seller upon the earlier to occur of (i) receipt by the Trustee of the Certificate Insurer's written direction to record such Mortgage, (ii) the occurrence of any Event of Default, as such term is defined in this Pooling and Servicing Agreement, or (iii) a bankruptcy or insolvency proceeding involving the Mortgagor is initiated or foreclosure proceedings are initiated against the Mortgaged Property as a consequence of an event of default under the Mortgage Loan; provided, further, that if the related Mortgage has not been returned from the applicable recording office, a copy of the Mortgage certified by an authorized officer of the Seller (such original assignment shall be delivered when so returned);

(iv) The original of any intervening Assignments of the Mortgage with evidence of recording thereon showing a complete chain of assignment from the originator of such Mortgage Loan to the Seller;

(v) The original of any assumption, modification, consolidation or extension agreements with evidence of recording thereon; and

(vi) The policy of title insurance (or a commitment for title insurance, if the policy is being held by the title insurance company pending recordation of the Mortgage) issued with respect to such Mortgage Loan;

provided, however, that in the case of any Mortgage Loans which have been prepaid in full after the Cut-Off Date and prior to the date of the execution of this Agreement, the Depositor, in lieu of delivering the above documents, hereby delivers to the Trustee a certification of an officer of the Seller of the nature set forth in Exhibit N attached hereto; and provided, further, however, that as to certain Mortgages or assignments thereof which have been delivered or are being delivered to recording offices for recording and have not been returned to the Seller in time to permit their delivery hereunder at the time of such transfer, in lieu of delivering such original documents, the Depositor is delivering to the Trustee a true copy thereof with a certification by the Seller on the face of such copy substantially as follows: "certified true and correct copy of original which has been transmitted for recordation." The Seller agrees that it will deliver such original documents, together with any related policy of title insurance not previously delivered, on behalf of the Depositor to the Trustee promptly after they are received, and no later than 120 days after the Closing Date; provided, however, that in those instances where the public recording office retains the original Mortgage or Assignment of Mortgage after it has been recorded or such original document has been lost by the recording office, the Seller shall be deemed to have satisfied its obligations hereunder if it shall have delivered to the Trustee a copy of such original Mortgage or Assignment of Mortgage certified by the public recording office to be a true copy of the recorded original thereof. The Seller agrees, at its own expense, to record (or to provide the Trustee with evidence of recordation thereof) each assignment within 60 days of the Closing Date in the appropriate public office for real property records, provided that such assignments are redelivered by the Trustee to the Seller upon the Seller's written

request and at the Seller's expense, unless the Seller (at its expense) furnishes to the Trustee, the Certificate Insurer and the Rating Agencies an Opinion of Counsel reasonably acceptable to the Trustee and the Certificate Insurer to the effect that recordation of such assignment is not necessary under applicable state law to preserve the Trustee's interest in the related Mortgage Loan against the claim of any subsequent transferee of such Mortgage Loan or any successor to, or creditor of, the Seller.

Within a period of 21 days from the Closing Date, the Trustee, at the Seller's expense shall complete the endorsement of each Mortgage Note such that the final endorsement appears in the following form:

(i) "Pay to the order of Bankers Trust Company, as Trustee for the benefit of the Certificateholders and the Certificate Insurer for Preferred Mortgage Asset-Backed Certificates Series 1996-1, without recourse".

Within a period of 21 days from the Closing Date, the Trustee, at the Seller's expense, shall also complete each Assignment of Mortgage such that the final Assignment of Mortgage appears in the following form:

"Bankers Trust Company, as Trustee for the benefit of the Certificateholders and the Certificate Insurer for Preferred Mortgage Asset-Backed Certificates Series 1996-1."

(b) In the event that any additional original documents are required pursuant to the terms of this Section 2.3 to be a part of a Mortgage File, the Seller or the Depositor, respectively, shall promptly deliver written notice to the Trustee that such additional original documents are required hereunder and deliver such original documents to the Trustee. In acting as custodian of any such original document, the Servicer agrees further that it does not and will not have or assert any beneficial ownership interest in the Mortgage Loans or the Mortgage Files.

(c) In the event that any Mortgage Note required to be delivered pursuant to this Section 2.3 is conclusively determined by any of the Seller, the Servicer or the Trustee to be lost, stolen or destroyed the Seller shall, within 14 days of the Closing Date, deliver to the Trustee a "lost note affidavit" in form and substance acceptable to the Trustee, and shall simultaneously therewith request the obligor on such Mortgage Note to execute and return a replacement Mortgage Note, and shall further agree to hold the Trustee and the Certificate Insurer harmless from any loss or damage resulting from any action taken in reliance on the delivery and possession by the Trustee of such lost note affidavit. Upon the receipt of such replacement Mortgage Note, the Trustee shall return the lost note affidavit. Delivery by the Seller of such lost note affidavit shall not affect the obligations of the Seller hereunder with respect to the related Mortgage Loan.

(d) Promptly after the Closing Date, the Seller shall, with respect to each Mortgage Loan, cause to be recorded in the appropriate public office for real property records, where permitted by applicable law and where applicable law does not require that

a second mortgagee be named as a party defendant in foreclosure or comparable proceedings in order to foreclose or otherwise preempt such mortgagee's equity of redemption, a request for notice of any action by or on behalf of any mortgagee under the related first lien.

Section 2.4 Acceptance by Trustee of the Trust Fund; Certain Substitutions; Certification by Trustee. (a) The Trustee agrees to execute and deliver to the Depositor, the Certificate Insurer, the Servicer and the Seller on or prior to the Closing Date an acknowledgment of receipt of the related Certificate Insurance Policy and, with respect to each Mortgage Loan, the original Mortgage Note (with any exceptions noted), in the form attached as Exhibit D hereto and declares that it will hold such documents and any amendments, replacements or supplements thereto, as well as any other assets included in the definition of Trust Fund and delivered to the Trustee, as Trustee in trust upon and subject to the conditions set forth herein for the benefit of the Certificateholders and the Certificate Insurer. The Trustee agrees, for the benefit of the Certificateholders and the Certificate Insurer, to review (or cause to be reviewed) each Trustee's Mortgage File prior to the Closing Date (with respect to the Mortgage Loans) and to deliver to the Seller, the Servicer, the Depositor and the Certificate Insurer a certification in the form attached hereto as Exhibit E to the effect that, as to each Mortgage Loan listed in the related Mortgage Loan Schedule (other than any Mortgage Loan paid in full or any Mortgage Loan specifically identified in such certification as not covered by such certification), (i) all Mortgage Notes required to be delivered to it pursuant to Section 2.3(a)(i) hereof are in its possession, (ii) each such Mortgage Note has been reviewed by it, has been, to the extent required, executed and has not been mutilated, damaged, torn or otherwise physically altered (handwritten additions, changes or corrections shall not constitute physical alteration if initialled by the Mortgagor), appears regular on its face and relates to such Mortgage Loan. The Trustee shall be under no duty or obligation to inspect, review or examine any such documents, instruments, certificates or other papers to determine that they are genuine, enforceable, or appropriate for the represented purpose or that they are other than what they purport to be on their face.

Within thirty (30) days after the Closing Date and within thirty (30) days of receipt of a Subsequent Mortgage Loan or Qualified Substitute Mortgage Loan, the Trustee shall deliver (or cause to be delivered) to the Servicer, the Seller, the Depositor and the Certificate Insurer a final certification in the form attached hereto as Exhibit F to the effect that, as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or any Mortgage Loan specifically identified in such certification as not covered by such certification), and as to any document noted as an exception included in the Trustee's initial certification, (i) all documents required to be delivered to it pursuant to Section 2.3 hereof are in its possession, (ii) each such document has been reviewed by it, has been, to the extent required, executed and has not been mutilated, damaged, torn or otherwise physically altered (handwritten additions, changes or corrections shall not constitute physical alteration if initialled by the Mortgagor), appears regular on its face and relates to such Mortgage Loan.

(b) If the Certificate Insurer or the Trustee during the process of reviewing the Trustee's Mortgage Files finds any document constituting a part of a Trustee's Mortgage File which is not executed, has not been received, is unrelated to the Mortgage Loan

identified in the related Mortgage Loan Schedule, or does not conform to the requirements of Section 2.3 or the description thereof as set forth in the related Mortgage Loan Schedule, the Trustee or the Certificate Insurer, as applicable, shall promptly so notify the Servicer, the Seller, the Depositor, the Certificate Insurer and the Trustee. In performing any such review, the Trustee may conclusively rely on the Seller as to the purported genuineness of any such document and any signature thereon. It is understood that the scope of the Trustee's review of the Mortgage Files is limited solely to confirming that the documents listed in Section 2.3 have been executed and received and relate to the Mortgage Files identified in the related Mortgage Loan Schedule. The Seller agrees to use reasonable efforts to cause to be remedied a material defect in a document constituting part of a Mortgage File of which it is so notified by the Trustee. If, however, within 60 days after the Trustee's notice to it respecting such defect the Seller has not caused to be remedied the defect and the defect materially and adversely affects the interest of the Certificateholders in the related Mortgage Loan or the interests of the Certificate Insurer, the Trustee shall enforce the Seller's obligation to either (i) substitute in lieu of such Mortgage Loan a Qualified Substitute Mortgage Loan in the manner and subject to the conditions set forth in Section 3.4 hereof or (ii) purchase such Mortgage Loan at a purchase price equal to the outstanding Principal Balance of such Mortgage Loan as of the date of purchase, plus the greater of (x) all accrued and unpaid interest thereon and (y) 30 days' interest thereon, computed at the related Mortgage Interest Rate, plus the amount of any unpaid and accrued Servicing Fees, any unreimbursed Delinquency Interest Advances and Servicing Advances made by the Servicer with respect to such Mortgage Loan, which purchase price shall be deposited in the Collection Account prior to the next succeeding Servicer Remittance Date, after deducting therefrom any amounts received in respect of such repurchased Mortgage Loan or Loans and being held in the Collection Account for future distribution to the extent such amounts have not yet been applied to principal or interest on such Mortgage Loan (the "Loan Repurchase Price"); provided, however, that the Seller may not, pursuant to clause (ii) preceding, purchase the Principal Balance of any Mortgage Loan that is not in default or as to which no default is imminent unless the Seller has theretofore delivered an Opinion of Counsel knowledgeable in federal income tax matters which states that such a purchase would not constitute a prohibited transaction under the Code.

(c) Upon receipt by the Trustee of a certification of a Servicing Officer of such substitution or purchase and, in the case of a substitution, upon receipt of the related Trustee's Mortgage File for the applicable Qualified Substitute Mortgage Loan or Loans, and the deposit of the amounts described above into the Collection Account (which certification shall be in the form of Exhibit G hereto), the Trustee shall release to the Servicer for release to the Seller the related Trustee's Mortgage File and shall execute, without recourse, and deliver such instruments of transfer furnished by the Seller as may be necessary to transfer such Mortgage Loan to the Seller. The Trustee shall promptly notify the Certificate Insurer if the Seller fails to repurchase or substitute for a Mortgage Loan in accordance with the foregoing.

Section 2.5 [RESERVED].

Section 2.6 Execution of Certificates. The Trustee acknowledges the assignment to it of the Mortgage Loans and the delivery to it of the Trustee's Mortgage Files relating thereto and, concurrently with such delivery, has executed, authenticated and delivered to or upon the order of the Depositor, in exchange for the Mortgage Loans, the Trustee's Mortgage Files and the other assets included in the definition of Trust Fund, Certificates duly authenticated by the Trustee, in Authorized Denominations, evidencing the entire beneficial ownership interest in the Trust Fund.

Section 2.7 Application of Principal and Interest. In the event that Net Liquidation Proceeds on a Liquidated Mortgage Loan are less than the outstanding Principal Balance of the related Mortgage Loan plus accrued interest thereon, or any Mortgagor makes a partial payment of any Monthly Payment due on a Mortgage Loan, such Net Liquidation Proceeds or partial payment shall be applied to payment of the related Mortgage Note as provided therein, and if not so provided, first to interest accrued at the Mortgage Interest Rate, then to the principal owed on such Mortgage Loan.

Section 2.8 Further Assurances; Powers of Attorney. (a) The Depositor and the Servicer shall take no action inconsistent with the Trust's ownership of the Trust Fund and shall indicate or shall cause to be indicated in its records and records held on its behalf that ownership of each Mortgage Loan and the assets in the Trust Fund are held by the Trustee on behalf of the Trust Fund. In addition, the Depositor and the Servicer shall respond to any inquiries from third parties with respect to ownership of a Mortgage Loan or any other asset in the Trust Fund by stating that it is not the owner of such asset and that ownership of such Mortgage Loan or other Trust Fund asset is held by the Trustee on behalf of the Trust Fund.

(b) The Servicer agrees that, from time to time, at the Seller's expense, it shall cause the Seller (and the Depositor also agrees that it shall), promptly to execute and deliver all further instruments and documents, and take all further action, that may be necessary or appropriate, or that the Servicer or the Trustee or the Certificate Insurer may reasonably request, in order to perfect, protect or more fully evidence the transfer of ownership of the Trust Fund or to enable the Trustee to exercise or enforce any of its rights hereunder. Without limiting the generality of the foregoing, the Servicer, the Seller and the Depositor will, upon the request of the Servicer or of the Trustee execute and file (or cause to be executed and filed) such real estate flings, financing or continuation statements, or amendments thereto or assignments thereof, and such other instruments or notices, as may be necessary or appropriate.

(c) The Depositor hereby grants to the Servicer and the Trustee powers of attorney to execute all documents on its behalf under this Agreement as may be necessary or desirable to effectuate the foregoing.

Section 2.9 Conveyance of the Subsequent Mortgage Loans. (a) Subject to the conditions set forth in Section 2.3 above and paragraph (b) below in consideration of the Trustee's delivery on the related Subsequent Transfer Dates to or upon the order of the Depositor of all or a portion of the balance of funds in the Pre-Funding Account, the

Depositor shall on any Subsequent Transfer Date sell, transfer, assign, set over and convey without recourse to the Trustee but subject to the other terms and provisions of this Agreement all of the right, title and interest of the Depositor in and to (i) the Subsequent Mortgage Loans identified on the Mortgage Loan Schedule attached to the related Subsequent Transfer Instrument delivered by the Depositor on such Subsequent Transfer Date, (ii) principal due and interest accruing on the Subsequent Mortgage Loans on and after the related Subsequent Cut-Off Date and (iii) all items with respect to such Subsequent Mortgage Loans to be delivered pursuant to Section 2.3 above and the other items in the related Mortgage Files; provided, however, that the Depositor reserves and retains all right, title and interest in and to principal received and interest accruing on the Subsequent Mortgage Loans prior to the related Subsequent Cut-Off Date. The transfer to the Trustee by the Depositor of the Subsequent Mortgage Loans identified on the Mortgage Loan Schedule shall be absolute and is intended by the Depositor, the Servicer, the Trustee and the Certificateholders to constitute and to be treated as a sale of the Subsequent Mortgage Loans by the Depositor to the Trust Fund. The related Mortgage File for each Subsequent Mortgage Loan shall be delivered to the Trustee three Business Days (or such shorter period as may be agreed between the Depositor and the Trustee) prior to the Subsequent Transfer Date.

The purchase price paid by the Trustee from amounts released from the Pre-Funding Account shall be 96.50% of the aggregate Principal Balances as of the related Subsequent Cut-Off Date of the Subsequent Mortgage Loans so transferred. This Agreement shall constitute a fixed-price purchase contract in accordance with Section 860G(a)(3)(A)(ii) of the Code.

(b) The Depositor shall transfer to the Trustee the Subsequent Mortgage Loans and the other property and rights related thereto described in Section 2.9 (a) above, and the Trustee shall release funds from the Pre-Funding Account, only upon the satisfaction of each of the following conditions on or prior to the related Subsequent Transfer Date:

(i) the Depositor shall have provided the Trustee and the Certificate Insurer no later than five Business Days prior to the Subsequent Transfer Date an Addition Notice and shall have provided any information reasonably requested by the Trustee or the Certificate Insurer with respect to the Subsequent Mortgage Loans;

(ii) the Depositor shall have delivered to the Trustee a duly executed Subsequent Transfer Instrument, which shall include a Mortgage Loan Schedule, listing the Subsequent Mortgage Loans;

(iii) as of each Subsequent Transfer Date, the Depositor shall not be insolvent nor shall it have been made insolvent by such transfer nor shall it be aware of any pending insolvency;

(iv) such sale and transfer shall not result in a material adverse tax consequence to the Trust Fund or the Certificateholders;

(v) the Funding Period shall not have terminated;

(vi) the Depositor shall have delivered to the Trustee an Officer's Certificate, substantially in the form delivered at closing, confirming the satisfaction of each condition precedent and representations specified in this Section 2.9(b) and Section 2.9(c) following and in the related Subsequent Transfer Instrument;

(vii) the Depositor shall have delivered to the Trustee and the Certificate Insurer Opinions of Counsel addressed to the Certificate Insurer, the Rating Agencies and the Trustee with respect to the transfer of the Subsequent Mortgage Loans substantially in the form of the Opinions of Counsel delivered to the Certificate Insurer and the Trustee on the Closing Date regarding certain bankruptcy, tax and corporate matters; and

(viii) the Trustee shall have delivered to the Certificate Insurer and the Depositor an Opinion of Counsel addressed to the Depositor, the Rating Agencies and the Certificate Insurer with respect to the Subsequent Transfer Instrument substantially in the form of the Opinion of Counsel delivered to the Certificate Insurer and the Depositor on the Closing Date regarding certain corporate matters relating to the Trustee.

(c) The obligation of the Trust Fund to purchase a Subsequent Mortgage Loan on any Subsequent Transfer Date is subject to the following representations and warranties of the Seller and the Depositor with respect to such Subsequent Mortgage Loan being satisfied (i) such Subsequent Mortgage Loan may not be more than 30 days Delinquent as of the related Subsequent Cut-Off Date; (ii) the remaining term to maturity of such Subsequent Mortgage Loan may not exceed 15 years; (iii) such Subsequent Mortgage Loan has a Mortgage Interest Rate of at least 9.6%; (iv) such Subsequent Mortgage Loan has a CLTV no greater than 100%; (v) such Subsequent Mortgage Loan is a fully amortizing loan with level payments over 15 years; (vi) such Subsequent Mortgage Loan is secured by a Residential Dwelling; (vii) the related Trustee's Mortgage File with respect to such Subsequent Mortgage Loan shall have been delivered to the Trustee; (viii) no such Subsequent Mortgage Loan is secured by an investor property or associated with the purchase of a home; and (ix) following the purchase of such Subsequent Mortgage Loans by the Trust Fund, the Mortgage Loans (including the Subsequent Mortgage Loans) (a) will have a weighted average Mortgage Interest Rate of a least 13.25%; (b) will have a weighted average remaining term to stated maturity of not more than 180 months; (c) will have a weighted average CLTV of not more than 92.4%; (d) will not include any Balloon Loans; (e) will have no Mortgage Loan with a principal balance in excess of $60,000; (f) will not have any non-owner occupied properties; (g) will have a weighted average Second Mortgage Ratio of not more than 23.6%; (h) will not have a concentration in a single zip code in excess of 2% by aggregate principal balance; (i) will not have a concentration in Los Angeles County, California in excess of 19.50% by aggregate principal balance; (j) will not have concentration in any other county in excess of 8% by aggregate principal balance; (k) will not have a concentration of Credit Bureau Risk Scores under 620 in excess of 1.5% by aggregate principal balance; (l) will not have a concentration of Mortgage Loans with self employed mortgagors in excess of 4% by aggregate principal balances; (m) will have a weighted average Credit Bureau Risk Score of at least 680 and a weighted average DTI of no more than 42% and (n) such Subsequent

Mortgage Loan satisfies all representations and warranties set forth in Section 3.3 hereof as of the related Subsequent Transfer Date. Such requirements may be waived or modified in writing by the Certificate Insurer; provided that, if the Certificate Insurer waives or modifies any such requirements because such Subsequent Mortgage Loans do not satisfy such requirements, the Certificate Insurer, in its sole discretion, may modify the definitions of "Required Overcollateralization Level" and/or "Target Percentage," without the consent of any party hereto or any Certificateholder; provided, further, that the Certificate Insurer agrees to notify the Depositor and the Trustee in writing of any modifications to the definitions of "Required Overcollateralization Level" and/or "Target Percentage" no later than the Determination Date immediately preceding a Remittance Date (or such shorter period as the Trustee shall reasonably agree).

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ARTICLE III

Representations and Warranties

Section 3.1 Representations of the Servicer. The Servicer hereby represents and warrants to the Trustee, the Depositor, the Certificate Insurer and the Certificateholders as of the Closing Date:

(a) The Servicer is a Delaware corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and is in compliance with the laws of each state in which any Mortgaged Property is located to the extent necessary to enable it to perform its obligations under the terms of this Agreement; the Servicer has the full corporate power and authority to execute and deliver this Agreement and to perform in accordance herewith: the execution, delivery and performance of this Agreement by the Servicer and the consummation of the transactions contemplated hereby have been duly and validly authorized; this Agreement evidences the legal, valid, binding and enforceable obligation of the Servicer; and all requisite corporate action has been taken by the Servicer to make this Agreement valid and binding upon the Servicer in accordance with its terms;

(b) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will conflict with or result in a breach of any of the terms, conditions or provisions of the Servicer's charter or by-laws or any legal restriction or any agreement or instrument to which the Servicer is now a party or by which it is bound, or constitute a default or result in an acceleration under any of the foregoing, or result in the violation of any law, rule, regulation, order, judgment or decree to which the Servicer or its property is subject, or impair the ability of the Trustee (or the Servicer as the agent of the Trustee) to realize on the Mortgage Loans, or impair the value of the Mortgage Loans;

(c) The Servicer is an approved seller/servicer of conventional residential mortgage loans for FNMA and FHLMC;

(d) There is no action, suit, proceeding or investigation pending or, to the knowledge of the Servicer, threatened against the Servicer which, either in any one instance or in the aggregate, may result in any material adverse change in the business, operations, financial condition, properties or assets of the Servicer, or in any material impairment of the right or ability of the Servicer to carry on its business substantially as now conducted, or of any action taken or to be taken in connection with the obligations of the Servicer contemplated herein, or which would materially impair the ability of the Servicer to perform under the terms of this Agreement;

(e) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Servicer of or compliance by the Servicer with this Agreement or the Mortgage Loans

or the consummation of the transactions contemplated by this Agreement or, if required, such approval has been obtained prior to the Closing Date; and

(f) Neither this Agreement nor any statement, report or other document furnished by the Servicer pursuant to this Agreement or in connection with the transactions contemplated hereby contains any untrue statement of material fact regarding the Servicer or omits to state a material fact necessary to make the statements regarding the Servicer contained herein or therein not misleading.

It is understood and agreed that the representations, warranties and covenants set forth in this Section 3.1 shall survive the delivery of the respective Mortgage Files to the Trustee or to a custodian, as the case may be, and inure to the benefit of the Trustee.

Section 3.2 Representations, Warranties and Covenants of the Depositor and the Seller. (a) The Depositor hereby represents, warrants and covenants to the Trustee and the Certificate Insurer that as of the Closing Date or as of such date specifically provided herein:

(i) The Depositor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

(ii) The Depositor has the corporate power and authority to convey the Mortgage Loans and to execute, deliver and perform, and to enter into and consummate transactions contemplated by, this Agreement;

(iii) This Agreement has been duly and validly authorized, executed and delivered by the Depositor, all requisite corporate action having been taken, and, assuming the due authorization, execution and delivery hereof by the Servicer and the Trustee, constitutes or will constitute the legal, valid and binding agreement of the Depositor, enforceable against the Depositor in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally, and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(iv) No consent, approval, authorization or order of, or registration or filing with, or notice to, any governmental authority or court is required for the execution, delivery and performance of or compliance by the Depositor with this Agreement or the consummation by the Depositor of any of the transactions contemplated hereby, except as have been received or obtained on or prior to the Closing Date;

(v) None of the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby or thereby, or the fulfillment of or compliance with the terms and conditions of this Agreement, (a) conflicts or will conflict with or results or will result in a breach of, or constitutes or will constitute a default or results or will result in an acceleration (I) under the charter or bylaws of

the Depositor, or (II) of any term, condition or provision of any material indenture, deed of trust, contract or other agreement or instrument to which the Depositor or any of its subsidiaries is a party or by which it or any of its subsidiaries is bound; (b) results or will result in a violation of any law, rule, regulation, order, judgment or decree applicable to the Depositor of any court or governmental authority having jurisdiction over the Depositor or its subsidiaries; or (c) results in the creation or imposition of any lien, charge or encumbrance which would have a material adverse effect upon the Mortgage Loans or any documents or instruments evidencing or securing the Mortgage Loans;

(vi) There are no actions, suits or proceedings before or against or investigations of, the Depositor pending, or to the knowledge of the Depositor, threatened, before any court, administrative agency or other tribunal, and no notice of any such action, which, in the Depositor's reasonable judgment, might materially and adversely affect the performance by the Depositor of its obligations under this Agreement, or the validity or enforceability of this Agreement; and

(vii) The Depositor is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency that would materially and adversely affect its performance hereunder.

(b) The Seller hereby represents, warrants and covenants to the Trustee and the Certificate Insurer that as of the Closing Date or as of such date specifically provided herein:

(i) The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of California;

(ii) The Seller has the corporate power and authority to convey the Mortgage Loans and to execute, deliver and perform, and to enter into and consummate transactions contemplated by, this Agreement;

(iii) This Agreement has been duly and validly authorized, executed and delivered by the Seller, all requisite corporate action having been taken, and, assuming the due authorization, execution and delivery hereof by the Servicer, the Depositor and the Trustee, constitutes or will constitute the legal, valid and binding agreement of the Seller, enforceable against the Seller in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally, and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(iv) No consent, approval, authorization or order of, or registration or filing with, or notice to, any governmental authority or court is required for the execution, delivery and performance of or compliance by the Seller with this Agreement or the

consummation by the Seller of any of the transactions contemplated hereby, except as have been received or obtained on or prior to the Closing Date;

(v) None of the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby or thereby, or the fulfillment of or compliance with the terms and conditions of this Agreement, (i) conflicts or will conflict with or results or will result in a breach of, or constitutes or will constitute a default or results or will result in an acceleration (A) under the charter or bylaws of the Seller, or (B) of any term, condition or provision of any material indenture, deed of trust, contract or other agreement or instrument to which the Seller or any of its subsidiaries is a party or by which it or any of its subsidiaries is bound; (ii) results or will result in a violation of any law, rule, regulation, order, judgment or decree applicable to the Seller of any court or governmental authority having jurisdiction over the Seller or its subsidiaries; or (iii) results in the creation or imposition of any lien, charge or encumbrance which would have a material adverse effect upon the Mortgage Loans or any documents or instruments evidencing or securing the Mortgage Loans;

(vi) There are no actions, suits or proceedings before or against or investigations of, the Seller pending, or to the knowledge of the Seller, threatened, before any court, administrative agency or other tribunal, and no notice of any such action, which, in the Seller's reasonable judgment, might materially and adversely affect the performance by the Seller of its obligations under this Agreement, or the validity or enforceability of this Agreement; and

(vii) The Seller is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency that would materially and adversely affect its performance hereunder.

It is understood and agreed that the representations, warranties and covenants set forth in this Section 3.2 shall survive delivery of the respective Mortgage Files to the Trustee or to a custodian, as the case may be, and shall inure to the benefit of the Trustee and the Certificate Insurer.

Section 3.3 Representations and Warranties Relating to the Mortgage Loans. The Seller represents and warrants to the Depositor, the Trustee, the Servicer and the Certificate Insurer as of the Closing Date that, as to each Mortgage Loan, and as of the Subsequent Transfer Date, as to each Subsequent Mortgage Loan immediately prior to the sale and transfer of such Mortgage Loan by the Seller to the Depositor:

(a) The Mortgage Loans had, as of the Cut-Off Date, an aggregate Principal Balance equal to $30,623,836, and all of the information set forth in the Mortgage Loan Schedule is complete, true and correct;

(b) All payments required to be made up to the Cut-Off Date for the Mortgage Loan under the terms of the Mortgage Note have been made and credited, except, unless

otherwise specified on the Mortgage Loan Schedule, no payment required under the Mortgage Loan is more than 30 days delinquent nor has any payment under the Mortgage Loan been delinquent for more than 30 days more than once in the 12 months preceding the Cut-Off Date; and the first Monthly Payment has been made or shall be made, as the case may be, with respect to the Mortgage Loan on the Due Date or within the grace period;

(c) There are no defaults in complying with the terms of the Mortgage, and all taxes, governmental assessments, insurance premiums, water, sewer and municipal charges which have become liens against the Mortgaged Property, leasehold payments or ground rents which previously became due and owing have been paid. The Seller has not advanced funds, or induced, solicited or knowingly received any advance of funds by a party other than the Mortgagor, directly or indirectly, for the payment of any amount required under the Mortgage Loan;

(d) The terms of the Mortgage Note and Mortgage have not been impaired, waived, altered or modified in any respect, except by a written instrument which has been recorded, if necessary to protect the interests of the Trustee on behalf of the Certificateholders and the Certificate Insurer and which has been delivered to the Trustee. The substance of any such waiver, alteration or modification has been approved by the title insurer, to the extent required by the policy, and its terms are reflected on the Mortgage Loan Schedule. No Mortgagor has been released, in whole or in part, except in connection with an assumption agreement approved by the title insurer, to the extent required by the policy, and which assumption agreement is part of the Mortgage File delivered to the Trustee and the terms of which are reflected in the Mortgage Loan Schedule;

(e) The Mortgage Loan is not subject to any right of rescission, set-off, counterclaim or defense, including, without limitation, the defense of usury, nor will the operation of any of the terms of the Mortgage Note or the Mortgage, or the exercise of any right thereunder, render either the Mortgage Note or the Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, recoupment, counterclaim or defense, including, without limitation, the defense of usury, and no such right of rescission, set-off, recoupment, counterclaim or defense has been asserted with respect thereto, and no Mortgagor was a debtor in any state or federal bankruptcy or insolvency proceeding at the time the Mortgage Loan was originated;

(f) Pursuant to the terms of the Mortgage, the Mortgaged Property is subject to fire and casualty insurance with a standard mortgagee clause and extended coverage which provides guaranteed replacement value of the improvements securing such Mortgage Loan, or coverage in the amount of the full replacement value of the improvements securing such Mortgage Loan or the amount of the unpaid principal balance of the first mortgage plus the unpaid principal balance of the Mortgage Loan, whichever is less. The fire and casualty insurance is standard in the industry for property similar (in terms of the property type, value and location) to the Mortgaged Property. If the Mortgaged Property is in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards (and such flood insurance has been made available), a flood insurance policy is in effect with respect to the Mortgaged Property meeting the requirements of the current

guidelines of the Federal Insurance Administration with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (i) the unpaid principal balance of the Mortgage Loan, (ii) the full insurable value of the Mortgaged Property or (iii) the maximum amount of insurance available under the Flood Disaster Protection Act of 1973. To the best of Seller's knowledge, all such insurance policies (collectively, the "hazard insurance policy") meet the requirements of the current guidelines of the Federal Insurance Administration, conform to the requirements of the FNMA Sellers' Guide and the FNMA Servicers' Guide, and are a standard policy of insurance for the locale where the Mortgaged Property is located. It is understood and agreed that such insurance is with insurers approved by the Servicer and that no earthquake or other additional insurance is to be required of any Mortgagor or to be maintained on property acquired in respect of a defaulted loan, other than pursuant to such applicable laws and regulations as shall at any time be in force and as shall require such additional insurance. The hazard insurance policy names (and will name) the Mortgagor as the insured and contains a standard mortgagee loss payable clause in favor of the Seller, and its successors and assigns. The Seller has caused and will cause to be performed any and all acts required to be performed to preserve the rights and remedies of the Trustee in any hazard insurance policies applicable to the Mortgage Loans including, without limitation, any necessary notifications of insurers and assignments of policies or interests therein. The Mortgage obligates the Mortgagor thereunder to maintain the hazard insurance policy at the Mortgagor's cost and expense, and on the Mortgagor's failure to do so, authorizes the holder of the Mortgage to obtain and maintain such insurance at such Mortgagor's cost and expense, and to seek reimbursement therefor from the Mortgagor; provided, however, that the addition of any such cost shall not be taken into account for purposes of calculating the principal amount of the Mortgage Note or the Mortgage Loan secured by the Mortgage Note. Where required by state law or regulation, the Mortgagor has been given an opportunity to choose the carrier of the required hazard insurance, provided the policy is not a "master" or "blanket" hazard insurance policy covering a condominium or the common facilities of a planned unit development. To the best of Seller's knowledge, the hazard insurance policy is the valid and binding obligation of the insurer, is in full force and effect, and will be in full force and effect and inure to the benefit of the Trustee upon the consummation of the transactions contemplated by this Agreement. The Seller has not engaged in, has knowledge of the Mortgagor's or any subservicer's having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either. To the best of Seller's knowledge, in connection with the issuance of the hazard insurance policy, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Seller;

(g) Any and all requirements of any federal, state or local law, including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws applicable to the Mortgage Loan have been complied with and the consummation of the transactions contemplated hereby will not involve the violation of any such laws;

(h) The Mortgage has not been satisfied, canceled, subordinated (other than in connection with a refinancing of the first mortgage on the Mortgaged Property) or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission. The Seller has not waived the performance by the Mortgagor of any action, if the Mortgagor's failure to perform such action would cause the Mortgage Loan to be in default, nor has the Seller waived any default resulting from any action or inaction by the Mortgagor;

(i) The Mortgaged Property is located in the state identified in the Mortgage Loan Schedule and consists of a fee simple estate in a one or more parcels of real property improved by a one- to four-family residential dwelling;

(j) The Mortgage is a valid, subsisting, enforceable and perfected second lien on the Mortgaged Property, including all buildings on the Mortgaged Property and all installations and mechanical, electrical, plumbing, heating and air conditioning systems located in or annexed to such buildings, and all additions, alterations and replacements made at any time with respect to the foregoing. The lien of the Mortgage is subject only to:

(i) in the case of Mortgage Loans in a second priority lien position, a first mortgage;

(ii) the lien of current real property taxes and assessments not yet due and payable;

(iii) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to prudent mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Mortgage Loan and referred to or otherwise considered in the appraisal made for the originator of the Mortgage Loan; and

(iv) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Mortgage Loan establishes and creates a valid, subsisting and enforceable second lien and second priority security interest on the property described therein and immediately prior to the sale of such Mortgage Loan to the Depositor pursuant to this Agreement, the Seller had full right to sell and assign the same to the Depositor. As of the date of origination of the Mortgage Loan, the Mortgaged Property was not subject to a mortgage, deed of trust, deed to secure debt or other security instrument creating a lien subordinate to the lien of the Mortgage;

(k) The Mortgage Note and the Mortgage and every other agreement, if any, executed and delivered by the Mortgagor in connection with the Mortgage Loan are genuine, and each is the legal, valid and binding obligation of the maker thereof enforceable in accordance with its terms. All parties to the Mortgage Note and the Mortgage and any other related agreement had legal capacity to enter into the Mortgage Loan and to execute and deliver the Mortgage Note, the Mortgage and such other related agreements, and the Mortgage Note and the Mortgage and such other related agreements have been duly and properly executed by such parties. The Seller has reviewed, or has caused to be reviewed, all of the documents constituting the Mortgage File and have made such inquiries as it deems necessary to make and confirm the accuracy of the representations set forth herein;

(l) The Mortgage Loan has been closed and any proceeds of the Mortgage Loan drawn by the Mortgagor as of the Cut-Off Date have been fully disbursed and there is no requirement for future advances thereunder. All costs, fees and expenses incurred in making or closing the Mortgage Loan and the recording of the Mortgage were paid or will be paid, and the Mortgagor is not entitled to any refund of any amounts paid or due under the Mortgage Note or Mortgage;

(m) At the time of the sale of the Mortgage Loan to the Depositor under this Agreement, (i) the Seller was the sole owner and holder of the Mortgage Loan, (ii) the Mortgage Loan was not assigned to any Person other than the Trustee on behalf of the Trust Fund, or pledged, unless such assignment or pledge has been duly released, (iii) the Seller had good, indefeasible and marketable title thereto, (iv) the Seller had full right to transfer and sell the Mortgage Loan therein to the Depositor free and clear of any encumbrance, equity interest, participation interest, lien, pledge, charge, claim or security interest, and (v) the Seller had full right and authority subject to no interest or participation of, or agreement with, any other party, to sell and assign each Mortgage Loan to the Depositor under this Agreement, and following the sale of each Mortgage Loan, the Depositor will own such Mortgage Loan free and clear of any encumbrance, equity interest, participation interest, lien, pledge, charge, claim or security interest;

(n) All parties which had any interest in the Mortgage Loan, whether as mortgagee, assignee, pledgee or otherwise, and including, without limitation, the Seller, are (or, during the period in which they held and disposed of such interest, were) (i) in compliance with any and all applicable licensing requirements of the laws of the state wherein the Mortgaged Property is located to the extent required to avoid a material adverse effect to the interest of the Trustee on behalf of the Certificateholders and the Certificate Insurer, (ii) (1) organized under the laws of such state, or (2) qualified to do business in such state, or (3) federal savings and loan associations, savings banks, or national banks having principal offices in such state, or (4) not doing business in such state;

(o) The Mortgage Loan has an original Combined Loan-to-Value ratio (calculated at the time of origination by dividing the outstanding principal amount of the first and second Mortgage Loan by the appraised value of the Mortgaged Property) equal to or less than 100.18%;

(p) Each Mortgage Loan is covered by a limited liability lender's title insurance policy or other generally acceptable form of policy of insurance issued by a title insurer qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring the Seller, its successors and assigns, as to the priority of its lien of the Mortgage in the original principal amount of the Mortgage Loan, and subject only to the exceptions contained in clauses (i), (ii), (iii) and (iv) of paragraph (j) above. Where required by state law or regulation, the Mortgagor has been given the opportunity to choose the carrier of the required mortgage title insurance. Immediately prior to the sale of the Mortgage Loan to the Depositor under the terms of this Agreement, the Seller, its successors and assigns were the sole insureds of such lender's title insurance policy. Such lender's title insurance policy is in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender's title insurance policy, and no prior holder of the Mortgage, including the Seller, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy. In connection with the issuance of such lender's title insurance policy, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Seller;

(q) There is no default, breach, violation or event of acceleration existing under the Mortgage or the Mortgage Note and no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and neither the Seller nor its predecessors have waived any default, breach, violation or event of acceleration;

(r) After reasonable due diligence, there are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under the law could give rise to such liens) affecting the related Mortgaged Property which are or may be liens prior to, or equal or coordinate with, the lien of the related Mortgage;

(s) To the best of Seller's knowledge, all improvements which were considered in determining the Appraised Value of the Mortgaged Property lay wholly within the boundaries and building restriction lines of the Mortgaged Property and no improvements on adjoining properties encroach upon the Mortgaged Property. To the best of Seller's knowledge, no improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning law or regulation; provided, that in no event shall a legal nonconforming use of the Mortgaged Property be considered a violation of any such zoning law or regulation;

(t) The Mortgage Note is payable on the day specified in such Mortgage Note;

(u) The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial

foreclosure. Upon default by a Mortgagor on a Mortgage Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Mortgage Loan will be able to deliver good and merchantable title to the Mortgaged Property. There is no homestead or other exemption available to the Mortgagor which would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage subject to applicable federal and state laws and judicial precedent with respect to bankruptcy and right of redemption;

(v) To the best of Seller's knowledge, all inspections, licenses and certificates required to be made are issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including, but not limited to, certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities;

(w) The Mortgage Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage and the security interest of any applicable security agreement or chattel mortgage referred to in (j) above;

(x) In the event the Mortgage constitutes a deed of trust, a trustee, authorized and duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by the Trustee out of the assets of the Trust Fund to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor, provided that this representation and warranty shall in no way obligate the Trustee to pay any such amounts;

(y) The Mortgage Note, the Mortgage, the related Assignment of Mortgage and any other documents required to be delivered by the Seller have been delivered to the Trustee in accordance with the Pooling and Servicing Agreement. The Trustee is in possession of a complete, true and accurate Mortgage File in accordance with the Pooling and Servicing Agreement,

(z) The Mortgage contains a provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the Mortgagee thereunder, at the option of the Mortgagee;

(aa) Each of the Mortgage and the Assignment of Mortgage is in recordable form and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located;

(ab) The Mortgage Loan does not contain provisions pursuant to which Monthly Payments are paid or partially paid with funds deposited in any separate account established by the Seller, the Mortgagor or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor, nor does it contain any other similar provisions currently in effect which may constitute a "buydown" provision. The Mortgage Loan is not

a graduated payment mortgage loan and the Mortgage Loan does not have a shared appreciation or other contingent interest feature;

(ac) There is no proceeding pending or, to the best of Seller's knowledge, threatened, for the total or partial condemnation of the Mortgaged Property; the Mortgaged Property is undamaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado, other types of water damage, or other casualty so as to affect adversely the value of the Mortgaged Property as security for the Mortgage Loan or the use for which the premises were intended and each Mortgaged Property is in good repair; and there have not been any condemnation proceedings with respect to the Mortgaged Property and the Seller has no knowledge of any such proceedings in the future;

(ad) The origination and collection practices with respect to the Mortgage Loan have been, and in all respects are in accordance with Accepted Servicing Practices, and with all applicable laws and regulations;

(ae) The Mortgage File contains an appraisal of the related Mortgage Property of the Mortgage Loan application by an independent appraiser acceptable to the Seller;

(af) The Mortgagor has not notified the Seller, and the Seller has no knowledge of any relief requested or allowed to the Mortgagor under the Soldiers' and Sailors' Civil Relief Act of 1940;

(ag) There exists no violation of any local, state, or federal environmental law, rule or regulation in respect of the Mortgaged Property which violation has or could have a material adverse effect on the market value of such Mortgaged Property. There is no pending action or proceeding directly involving the related Mortgaged Property in which compliance with any environmental law, rule or regulation is in issue; and nothing further remains to be done to satisfy in full all requirements of each such law, rule or regulation constituting a prerequisite to the use and employment of such Mortgaged Property;

(ah) Any and all requirements of any federal, state or local law, including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws, applicable to the Mortgage Loan have been complied with, and the Seller has and shall maintain in its possession, available for the Trustee's inspection, and shall deliver to the Trustee upon demand, evidence of compliance with all such requirements;

(ai) The Mortgage Loans are representative of the mortgage loans in the Seller's portfolio of closed-end fixed rate loans secured by one-to-four family residential properties;

(aj) All information regarding the Mortgage Loans which could reasonably be expected to adversely affect the value or the marketability of any Mortgaged Property or Mortgage Loan and of which the Seller is aware has been provided by the Seller to the Depositor and the Certificate Insurer;

hereafter in effect affecting the enforcement of creditors' rights in general and except as such enforceability may be limited by general principles of equity (whether considered in a proceeding at law or in equity); no instrument of release or waiver has been executed in connection with any Mortgage Loan and no Mortgagor has been released, in whole or in part;

(av) The Mortgage Loans are not being transferred with any intent to hinder, delay or defraud any creditors;

(aw) As of the Closing Date, the Seller has not received, and is not aware of, a notice of default of any senior mortgage loan related to a Mortgaged Property which has not been cured;

(ax) No selection procedure reasonably believed by the Seller to be materially adverse to the interests of the Certificateholders or the Certificate Insurer was utilized in selecting the Mortgage Loans; and

(ay) Each Mortgage was recorded or will be recorded (if necessary) and all subsequent assignments of the original Mortgage have been recorded in the appropriate jurisdictions wherein such recordation is necessary to perfect the lien thereof as against creditors of the Seller.

(az) The Mortgage Note related to each Mortgage Loan bears a fixed coupon rate of at least 9.80% per annum.

(ba) With respect to each Mortgage Loan, the payments required of the related Mortgagor are and will be such that the Mortgage Loan will fully amortize over its term. No Mortgage Loan requires a balloon payment at the end of its term.

(bb) No more than 8.5% of the Mortgage Loans are secured by condominiums, townhouse or planned unit developments.

(bc) None of the Mortgage Loans are secured by investor-owned properties.

(bd) All of the Mortgage Loans are second mortgage loans and no Mortgage Loan is a third mortgage loan.

(be) With respect to each Mortgage Loan that is not a first mortgage loan, either (i) no consent for the Mortgage Loan is required by the holder of the related prior lien or (ii) such consent has been obtained and has been delivered to the Trustee.

(bf) With respect to each Mortgage Loan that is not a first mortgage loan, the related prior lien does not provide for negative amortization.

(bg) With respect to each Mortgage Loan that is not a first mortgage loan, the maturity date of the Mortgage Loan is prior to the maturity date of the related prior lien if such lien provides for a balloon payment.

(bh) No Mortgage Loan has a remaining term is excess of 180 months.

(bi) No Mortgage Loan was made in connection with (i) the construction of a Mortgaged Property or (ii) facilitating the trade-in or exchange or a Mortgaged Property.

(bj) None of the Mortgage Loans are second homes and none of the Mortgage Loans are non-owner occupied.

(bk) No funds provided to a borrower from a second Mortgage Loan were used as a down payment for a first mortgage loan of the same Mortgaged Property.

Section 3.4 Purchase and Substitution. (a) It is understood and agreed that the representations and warranties set forth herein shall survive delivery of the Certificates to the Certificateholders. With respect to any representation or warranty contained in Section 3.2 or 3.3 that is made to the best of the Seller's knowledge, if it is discovered by the Servicer, any Subservicer, the Depositor, the Trustee, the Certificate Insurer or any Certificateholder that the substance of such representation and warranty was inaccurate as of the Closing Date (or in the case of the Subsequent Mortgage Loans, as of the respective Subsequent Transfer Date) and such inaccuracy materially and adversely affects the value of the related Mortgage Loan or the interest of the Certificate Insurer, then notwithstanding the Seller's lack of knowledge with respect to the inaccuracy at the time the representation or warranty was made, such inaccuracy shall be deemed a breach of the applicable representation or warranty. Upon discovery by the Seller, the Depositor, the Servicer, any Subservicer, the Trustee or the Certificate Insurer of a breach of any representations and warranties which materially and adversely affects the value of the Mortgage Loans or the interest of the Certificateholders, or which materially and adversely affects the interests of the Certificate Insurer or the Certificateholders in the related Mortgage Loan in the case of a representation and warranty relating to a particular Mortgage Loan (notwithstanding that such representation and warranty was made to the Seller's best knowledge), the party discovering such breach shall give prompt written notice to the others. Subject to the last paragraph of this Section 3.4, within 60 days of the earlier of its discovery or its receipt of notice of any breach of a representation or warranty, the Seller shall be required to (i) promptly cure such breach in all material respects, (ii) purchase such Mortgage Loan on the next succeeding Servicer Remittance Date, in the manner and at the related Loan Repurchase Price, or (iii) remove such Mortgage Loan from the Trust Fund (in which case the Mortgage Loan shall become a Deleted Mortgage Loan) and substitute one or more Qualified Substitute Mortgage Loans; provided, that, such substitution is effected not later than the date which is two years after the Startup Date or at such later date, if the Trustee and the Certificate Insurer receive an Opinion of Counsel to the effect that such substitution will not constitute a prohibited transaction for the purposes of the REMIC provisions of the Code or cause the Trust Fund to fail to qualify as a REMIC at any time any Certificates are outstanding. Any such substitution shall be accompanied by payment by the Seller of the Substitution Adjustment, if any, to the Servicer to be deposited in the Collection Account.

(b) As to any Deleted Mortgage Loan for which the Seller substitutes a Qualified Substitute Mortgage Loan or Loans, the Seller shall be required to effect such

substitution by delivering to the Trustee a certification in the form attached hereto as Exhibit G, executed by a Servicing Officer and the documents described in Sections 2.3(a)(i)-(vi) for such Qualified Substitute Mortgage Loan or Loans.

(c) The Servicer shall deposit in the Collection Account all payments received in connection with such Qualified Substitute Mortgage Loan or Loans after the date of such substitution. Monthly Payments received with respect to Qualified Substitute Mortgage Loans on or before the date of substitution will be retained by the Seller. The Trust Fund will own all payments received on the Deleted Mortgage Loan on or before the date of substitution, and the Seller shall thereafter be entitled to retain all amounts subsequently received in respect of such Deleted Mortgage Loan. The Servicer shall give written notice to the Trustee and the Certificate Insurer that such substitution has taken place and shall amend the Mortgage Loan Schedule to reflect the removal of such Deleted Mortgage Loan from the terms of this Agreement and the substitution of the Qualified Substitute Mortgage Loan. Upon such substitution, such Qualified Substitute Mortgage Loan or Loans shall be subject to the terms of this Agreement in all respects.

(d) It is understood and agreed that the obligations of the Seller to cure, purchase or substitute for a defective Mortgage Loan constitute the sole remedies of the Trustee, the Certificate Insurer and the Certificateholders with respect to a breach of the representations and warranties of the Seller set forth in Sections 3.2 and 3.3. The Trustee shall give prompt written notice to the Certificate Insurer and each of the Rating Agencies of any repurchase or substitution made pursuant to this Section 3.4 or Section 2.4(b) hereof.

(e) Upon discovery by the Servicer, the Trustee, the Certificate Insurer or any Certificateholder that any Mortgage Loan does not constitute a Qualified Mortgage, the party discovering such fact shall promptly (and in any event within 5 days of the discovery) give written notice thereof to the other parties and the Certificate Insurer. In connection therewith, the Seller shall be required to repurchase or substitute a Qualified Substitute Mortgage Loan for the affected Mortgage Loan within 60 days of the earlier of such discovery by any of the foregoing parties, or the Trustee's or the Seller's receipt of notice, in the same manner as it would a Mortgage Loan for a breach of representation or warranty contained in Section 3.2 or 3.3. The Trustee shall reconvey to the Seller the Mortgage Loan to be released pursuant hereto in the same manner, and on the same terms and conditions, as it would a Mortgage Loan repurchased for breach of a representation or warranty contained in Section 3.2 or 3.3 herein.

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Class B, Class C or Residual Certificate is to made under this Section 4.2(e)(i), (a) the Trustee shall require an Opinion of Counsel acceptable to and in form and substance satisfactory to the Trustee and the Depositor that such transfer shall be made pursuant to an exemption, describing the application exemption and the basis therefor, from said Act and laws or is being made pursuant to said Act and laws, which Opinion of Counsel shall not be an expense of the Trustee, the Depositor or the Servicer, provided that such Opinion of Counsel will not be required in connection with the initial transfer of any such Certificate by the Depositor or any affiliate thereof, to a non-affiliate of the Depositor and (b) the Trustee shall require the transferee to execute a representation letter, substantially in the form of Exhibit H hereto, and Trustee shall require the transferor to execute a representation letter, substantially in the form of Exhibit I hereto, each acceptable to and in form and substance satisfactory to the Depositor and the Trustee certifying to the Depositor and the Trustee the facts surrounding such transfer, which representation letters shall not be an expense of the Trustee, the Depositor or the Servicer, provided that such representation letter will not be required in connection with any transfer of any such Certificate by the Depositor to an affiliate of the Depositor. Any such Certificateholder desiring to effect such transfer shall, and does hereby agree to, indemnify the Trustee, the Depositor, the Servicer and the Certificate Insurer against any liability that may result if the transfer is not so exempt or is not made in accordance with such applicable federal and state laws.

(ii) Transfers of Certificates may be made in accordance with Section 4.2(e)(ii) if the prospective transferee of a Certificate provides the Trustee and the Depositor with an investment letter substantially in the form of Exhibit J attached hereto, which investment letter shall not be an expense of the Trustee, the Depositor or the Servicer, and which investment letter states that, among other things, such transferee is a "qualified institutional buyer" as defined under Rule 144A. Such transfers shall be deemed to have complied with the requirements of Section 4.2(e)(i) hereof; provided, however, that no Transfer of any of the Certificates may be made pursuant to this Section 4.2(e)(ii) by the Depositor. Any such Certificateholder desiring to effect such transfer shall, and does hereby agree to indemnify the Trustee, the Depositor, the Servicer and the Certificate Insurer against any liability that may result if the transfer is not so exempt or is not made in accordance with such applicable federal and state laws.

(f) Each Person who has or who acquires any Ownership Interest in a Residual Certificate shall be deemed by the acceptance or acquisition of such Ownership Interest to have agreed to be bound by the following provisions and to have irrevocably appointed the Trustee or its designee as its attorney-in-fact to negotiate the terms of any mandatory sale under subclause (vii) below and to execute all instruments of transfer and to do all other things necessary in connection with any such sale, and the rights of each Person acquiring any Ownership Interest in a Residual Certificate are expressly subject to the following provisions:

(i) Each Person holding or acquiring any Ownership Interest in a Residual Certificate shall be a Permitted Transferee and shall promptly notify the Trustee of any change or impending change in its status as either a United States Person or a Permitted Transferee.

(ii) In connection with any proposed Transfer of any Ownership Interest in a Residual Certificate, the Trustee shall require delivery to it, and shall not register the Transfer of any Residual Certificate until its receipt of, an affidavit and agreement (a "Transfer Affidavit and Agreement") attached hereto as Exhibit K from the proposed Transferee, representing and warranting, among other things, that such Transferee is a Permitted Transferee, that it is not acquiring its Ownership Interest in the Residual Certificate that is the subject of the proposed Transfer as a nominee, trustee or agent for any Person that is not a Permitted Transferee, that for so long as it retains its Ownership Interest in a Residual Certificate, it will endeavor to remain a Permitted Transferee, and that it has reviewed the provisions of this Section 4.2(f) and agrees to be bound by them.

(iii) Notwithstanding the delivery of a Transfer Affidavit and Agreement by a proposed Transferee under clause (ii) above, if a Responsible Officer of the Trustee has actual knowledge that the proposed Transferee is not a Permitted Transferee, no Transfer of an Ownership Interest in a Residual Certificate to such proposed Transferee shall be effected.

(iv) Each Person holding or acquiring any Ownership Interest in a Residual Certificate shall agree (x) to require a Transfer Affidavit and Agreement from any other Person to whom such Person attempts to transfer its Ownership Interest in a Residual Certificate and (y) not to transfer its Ownership Interest unless it provides a certificate (attached hereto as Exhibit L) to the Trustee stating that, among other things, it has no actual knowledge that such other Person is not a Permitted Transferee.

(v) Each Person holding or acquiring an Ownership Interest in a Residual Certificate, by purchasing an Ownership Interest in such Certificate, agrees to give the Trustee written notice that it is a "pass-through interest holder" within the meaning of temporary Treasury Regulation Section 1.67-3T(a)(2)(i)(A) immediately upon acquiring an Ownership Interest in a Residual Certificate, if it is, or is holding an Ownership Interest in a Residual Certificate on behalf of, a "pass-through interest holder."

(vi) The Trustee will register the Transfer of any Residual Certificate only if it shall have received the Transfer Affidavit and Agreement. In addition, no Transfer of a Residual Certificate shall be made unless the Trustee shall have received a representation letter from the Transferee of such Certificate to the effect that such Transferee is a Permitted Transferee and is not a "disqualified organization" (as defined in Section 860E(e)(5) of the Code).

(vii) Any attempted or purported transfer of any Ownership Interest in a Residual Certificate in violation of the provisions of this Section 4.2 shall be absolutely null and void and shall vest no rights in the purported

transferee. If any purported transferee shall become a Holder of a Residual Certificate in violation of the provisions of this Section 4.2, then the last preceding Permitted Transferee shall be restored to all rights as Holder thereof retroactive to the date of registration of transfer of such Residual Certificate. The Trustee shall notify the Servicer upon receipt of written notice or discovery by a Responsible Officer that the registration of transfer of a Residual Certificate was not in fact permitted by this Section 4.2. Knowledge shall not be imputed to the Trustee with respect to an impermissible transfer in the absence of such a written notice or discovery by a Responsible Officer. The Trustee shall be under no liability to any Person for any registration of transfer of a Residual Certificate that is in fact not permitted by this Section 4.2 or for making any payments due on such Certificate to the Holder thereof or taking any other action with respect to such Holder under the provisions of this Agreement so long as the transfer was registered after receipt of the related Transfer Affidavit and Transfer Certificate. The Trustee shall be entitled, but not obligated to recover from any Holder of a Residual Certificate that was in fact not a Permitted Transferee at the time it became a Holder or, at such subsequent time as it became other than a Permitted Transferee, all payments made on such Residual Certificate at and after either such time. Any such payments so recovered by the Trustee shall be paid and delivered by the Trustee to the last preceding Holder of such Certificate.

(viii) If any purported transferee shall become a Holder of a Residual Certificate in violation of the restrictions in this Section 4.2, then the Trustee or its designee shall have the right, without notice to the Holder or any prior Holder of such Residual Certificate, to sell such Residual Certificate to a purchaser selected by the Trustee or its designee on such reasonable terms as the Trustee or its designee may choose. Such purchaser may be the Trustee itself or any Affiliate of the Trustee. The proceeds of such sale, net of commissions, expenses and taxes due, if any, will be remitted by the Trustee to the last preceding purported transferee of such Residual Certificate, except that in the event that the Trustee determines that the Holder or any prior Holder of such Residual Certificate may be liable for any amount due under this Section 4.2 or any other provision of this Agreement, the Trustee may withhold a corresponding amount from such remittance as security for such claim. The terms and conditions of any sale under this subclause (viii) shall be determined in the sole discretion of the Trustee or its designee, and it shall not be liable to any Person having an Ownership Interest in a Residual Certificate as a result of its exercise of such discretion.

(g) The Trustee shall make available to the Internal Revenue Service and those Persons specified by the REMIC Provisions, all information necessary to compute any tax imposed (A) as a result of the transfer of an ownership interest in a Residual Certificate to any Person who is a Disqualified Organization, including the information regarding "excess inclusions" of such Residual Certificates required to be provided to the Internal Revenue Service and certain Persons as described in Treasury Regulations Sections 1.860D-1(b)(5) and

1.860E-2(a)(5), and (B) as a result of any regulated investment company, real estate investment trust, common trust fund, partnership, trust, estate or organization described in Section 1381 of the Code holds an Ownership Interest in a Residual Certificate having as among its record holders at any time any Person who is a Disqualified Organization. The Trustee may charge and shall be entitled to reasonable compensation for providing such information as may be required from those Persons which may have had a tax imposed upon them as specified in clauses (A) and (B) of this paragraph for providing such information.

(h) The provisions of Section 4.2 may be modified, added to or eliminated, provided that there shall have been delivered to the Trustee and the Certificate Insurer an Opinion of Counsel to the effect that such modification of, addition to or elimination of such provisions will not cause the Trust Fund to cease to qualify as a REMIC and will not cause (x) the Trust Fund to be subject to an entity-level tax caused by the Transfer of any Ownership Interest in a Residual Certificate to a Person that is not a Permitted Transferee or (y) a Person other than the prospective transferee to be subject to a REMIC-related tax caused by the Transfer of an Ownership Interest in a Residual Certificate to a Person that is not a Permitted Transferee.

(i) No transfer of a Class B Certificate, a Class C Certificate or a Residual Certificate or any interest therein shall be made to any (a) employee benefit plans (as defined in Section 3(3) of ERISA) subject to the provisions of Title I of ERISA, (b) plans described in section 4975(e)(1) of the Code, including individual retirement accounts or Keogh plans, (c) any entities whose underlying assets include assets of a plan described in (a) or (b) above by reason of such a plan's investment in such entities (each a "Plan"). Prior to the earlier of (i) the date on which the Funding Period expires and (ii) the date on which the U.S. Department of Labor amends Prohibited Transaction Class Exemption 90-32 to permit the use of pre-funding accounts thereunder, no transfer of a Class A Certificate shall be made to any Plan. The Trustee and the Servicer shall require the prospective transferee of any Class B Certificate, Class C Certificate or Residual Certificate to certify (in the form of Exhibit M-1 hereto) that it is not a Plan. The Trustee and the Servicer shall require the prospective transferee of any Class A Certificate (1) if such proposed transfer shall occur during the period the proposed transfer of the Class A Certificates is not permitted to be made to Plans (as described above), to certify (in the form of Exhibit M-1 hereto) that it is not a Plan or (2) if such proposed transfer shall occur after such period, to execute a certificate in the form of Exhibit M-2 hereto.

(j) Subject to the restrictions set forth in this Agreement, upon surrender for registration of transfer of any Certificate at the office or agency of the Trustee located in New York, New York, the Trustee shall execute, authenticate and deliver in the name of the designated transferee or transferees, a new Certificate of the same Class and evidencing the same Percentage Interest, and in any other case, the equivalent undivided beneficial ownership interest in the Trust Fund and dated the date of authentication by the Trustee. At the option of the Certificateholders, Certificates may be exchanged for other Certificates of Authorized Denominations of a like aggregate undivided beneficial ownership interest, upon surrender of the Certificates to be exchanged at such office. Whenever any Certificates are so surrendered for exchange, the Trustee shall execute, authenticate and deliver the

Certificates which the Certificateholder making the exchange is entitled to receive. No service charge shall be made for any transfer or exchange of Certificates, but the Trustee may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Certificates. All Certificates surrendered for transfer and exchange shall be cancelled by the Trustee.

Section 4.3 Mutilated, Destroyed, Lost or Stolen Certificates. If (a) any mutilated Certificate is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Certificate, and (b) there is delivered to the Certificate Insurer and the Trustee such security or indemnity as may reasonably be required by each of them to save each of them harmless, then, in the absence of notice to the Certificate Insurer and the Trustee that such Certificate has been acquired by a bona fide purchaser, the Trustee shall execute, authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like tenor and representing an equivalent beneficial ownership interest, but bearing a number not contemporaneously outstanding. Upon the issuance of any new Certificate under this Section 4.3, the Trustee may require the payment by the transferee Certificateholder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and their fees and expenses connected therewith. Any duplicate Certificate issued pursuant to this Section 4.3 shall constitute complete and indefeasible evidence of ownership in the Trust Fund, as if originally issued, whether or not the mutilated, destroyed, lost or stolen Certificate shall be found at any time.

Section 4.4 Persons Deemed Owners. Prior to due presentation of a Certificate for registration of transfer and subject to the provisions of Section 4.2 and Article XI, the Servicer, the Depositor, the Seller, the Certificate Insurer and the Trustee may treat the Person in whose name any Certificate is registered as the owner of such Certificate for the purpose of receiving remittances pursuant to Section 6.5 and for all other purposes whatsoever, and the Servicer, the Depositor, the Seller, the Certificate Insurer and the Trustee shall not be affected by notice to the contrary.

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ARTICLE V

Administration and Servicing of the Mortgage Loans

Section 5.1 Appointment of the Servicer. (a) Advanta Mortgage Corp. USA agrees to act as the Servicer and to perform all servicing duties under this Agreement subject to the terms hereof.

(b) The Servicer shall service and administer the Mortgage Loans on behalf of the Trustee and the Certificate Insurer and shall have full power and authority, acting alone or through one or more Subservicers, to do any and all things in connection with such servicing and administration which it may deem necessary or desirable. Without limiting the generality of the foregoing, the Servicer, in its own name or the name of a Subservicer, may, and is hereby authorized and empowered by the Trustee to, execute and deliver, on behalf of itself, the Certificateholders and the Trustee or any of them, any and all instruments of satisfaction or cancellation, or of partial or full release or discharge and all other comparable instruments, with respect to the Mortgage Loans, the insurance policies and accounts related thereto and the properties subject to the Mortgages. Upon the execution and delivery of this Agreement, and from time to time as may be required thereafter, the Trustee shall furnish the Servicer or its Subservicers with any powers of attorney and such other documents as may be necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties hereunder.

In servicing and administering the Mortgage Loans, the Servicer shall employ procedures consistent with Accepted Servicing Practices and in a manner consistent with recovery under any insurance policy required to be maintained by the Servicer pursuant to this Agreement. The Servicer shall notify the Certificate Insurer and the Seller of any material changes to its Accepted Servicing Practices.

In servicing and administering the Mortgage Loans, the Servicer may, in its sole discretion, and is hereby authorized to obtain and use consumer reports, including but not limited to Credit Bureau Risk Scores, on behalf of the Trust Fund for any lawful purpose, including but not limited to account review and collection activities.

Costs incurred by the Servicer in effectuating the timely payment of taxes and assessments on the property securing a Mortgage Note and foreclosure costs may be added by the Servicer to the amount owing under such Mortgage Note where the terms of such Mortgage Note so permit; provided, however, that the addition of any such cost shall not be taken into account for purposes of calculating the principal amount of the Mortgage Note and the Mortgage Loan secured by the Mortgage Note or distributions to be made to Certificateholders. Such costs shall be recoverable by the Servicer pursuant to Section 5.9. Notwithstanding any other provision of this Agreement, the Servicer shall at all times service the Mortgage Loans in a manner consistent with the provisions of this Section 5.1(b).

(c) Subject to Section 5.11, the Servicer is hereby authorized and empowered to execute and deliver on behalf of the Trustee and each Certificateholder, all instruments of satisfaction or cancellation, or of partial or full release, discharge and all other comparable

instruments, with respect to the Mortgage Loans and with respect to the Mortgaged Properties. If reasonably required by the Servicer, the Trustee shall execute any powers of attorney furnished to the Trustee by the Servicer and other documents necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties under this Agreement.

(d) On and after such time as the Trustee receives the resignation of, or notice of the removal of, the Servicer from its rights and obligations under this Agreement, and with respect to resignation pursuant to Section 5.23, after receipt by the Trustee and the Certificate Insurer of the Opinion of Counsel required pursuant to Section 5.23, the Trustee or its designee approved by the Certificate Insurer or other successor servicer approved by the Certificate Insurer shall assume all of the rights and obligations of the Servicer, subject to Section 7.2 hereof. The Servicer shall, upon request of the Trustee but at the expense of the Servicer, deliver to the Trustee all documents and records relating to the Mortgage Loans and an accounting of amounts collected and held by the Servicer and otherwise use its best efforts to effect the orderly and efficient transfer of servicing rights and obligations to the assuming party.

(e) The Servicer shall deliver a list of Servicing Officers to the Trustee and the Certificate Insurer by the Closing Date, which list may, from time to time, be amended, modified or supplemented by the subsequent delivery to the Trustee and the Certificate Insurer of any superseding list of Servicing Officers.

Section 5.2 Subservicing Agreements Between the Servicer and Subservicers. (a) The Servicer may, subject to the prior written approval of the Certificate Insurer, enter into Subservicing Agreements with Subservicers for the performance of servicing and administration of the Mortgage Loans. Each Subservicer shall be either (i) a depository institution the accounts of which are insured by the FDIC or (ii) another entity that engages in the business of originating, acquiring or servicing mortgage loans, and in either case shall be authorized to transact business in the state or states where the related Mortgaged Properties it is to service are situated. In addition, each Subservicer will obtain and preserve its qualifications to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, the Certificates and any of the Mortgage Loans and to perform or cause to be performed its duties under the related Subservicing Agreement which shall provide that the Subservicer's rights shall automatically terminate upon the termination, resignation or other removal of the Servicer under this Agreement. Each account used by any Subservicer for the deposit of payments on any of the Mortgage Loans shall be an Eligible Account.

(b) Notwithstanding any Subservicing Agreement or arrangement with a collection agency, any of the provisions of this Agreement relating to agreements or arrangements between the Servicer and a Subservicer or any collection agency or reference to actions taken through a Subservicer, a collection agency or otherwise, the Servicer shall remain obligated and primarily liable to the Trustee, the Certificate Insurer and the Certificateholders for the servicing and administering of the Mortgage Loans in accordance with the provisions of this Agreement without diminution of such obligation or liability by virtue of such Subservicing Agreements or arrangements with a Subservicer or any collection

agency or by virtue of indemnification from the Subservicer or any collection agency and to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Mortgage Loans. For purposes of this Agreement, the Servicer shall be deemed to have received payments on Mortgage Loans when the Subservicer or any collection agency, as the case may be, has received such payments.

In the event the Servicer shall for any reason no longer be the Servicer (including by reason of an Event of Default), the Trustee or its designee may, with the prior written consent of the Certificate Insurer, or shall, at the direction of the Certificate Insurer, either (i) assume all of the rights and obligations of the Servicer under each Subservicing Agreement that the Servicer may have entered into or (ii) notwithstanding anything to the contrary contained in each such Subservicing Agreement, terminate the related Subservicer without being required to pay any fee in connection therewith.

Section 5.3 Collection of Certain Mortgage Loan Payments; Collection Account. (a) The Servicer shall use its best efforts to collect all payments called for under the terms and provisions of the Mortgage Loans, and shall, to the extent such procedures shall be consistent with this Agreement and any applicable primary mortgage insurance policy, follow such collection procedures as shall constitute Accepted Servicing Practices. The Servicer may utilize the services of any collection agencies in connection with its collection efforts. The costs of any such collection agency shall be a "Servicing Advance."

The Servicer shall establish and maintain in the name of the Trustee the Collection Account (collectively, the "Collection Account"), in trust for the benefit of the Holders of the Certificates and the Certificate Insurer. The Servicer shall promptly provide notice to the Certificate Insurer, the Trustee and each Rating Agency of any creation and establishment of a Collection Account hereunder. The Collection Account shall be established and maintained as an Eligible Account.

The Servicer shall deposit in the Collection Account any amounts representing Monthly Payments on the Mortgage Loans due or to be applied as of a date after the Cut-Off Date, and thereafter, on a daily basis within two Business Days of receipt (except as otherwise permitted herein), the following payments and collections received or made by it (other than in respect of principal of and interest on the Mortgage Loans due on or before the Cut-Off Date):

(i) all payments received after the Cut-Off Date on account of principal on the Mortgage Loans and all Principal Prepayments, Curtailments and all Net REO Proceeds collected after the Cut-Off Date;

(ii) all payments received after the Cut-Off Date on account of interest on the Mortgage Loans (other than payments of interest that accrued on each Mortgage Loan up to and including the Due Date immediately preceding the Cut-Off Date);

(iii) all Net Liquidation Proceeds;

(iv) all Insurance Proceeds;

(v) all Released Mortgaged Property Proceeds;

(vi) any amounts payable in connection with the repurchase of any Mortgage Loan and the amount of any Substitution Adjustment pursuant to Sections 2.4 and 3.4 hereof; and

(vii) any amount expressly required to be deposited in the Collection Account in accordance with certain provisions of this Agreement, including, without limitation amounts in respect of the termination of the Trust Fund, and amounts referenced in Sections 2.4(b), 3.4, 5.3, 5.6, and 6.6(d) of this Agreement;

provided, however, that the Servicer shall be entitled, at its election to pay to itself the applicable Servicing Fee. All other amounts shall be deposited in the Collection Account not later than the second Business Day following the day of receipt by the Servicer.

The Servicer may direct, in writing, the institution maintaining the Collection Account to invest the funds in the Collection Account, only in Permitted Investments. No Permitted Investment shall be sold or disposed of at a gain prior to maturity unless the Servicer has obtained an Opinion of Counsel delivered to the Trustee and the Certificate Insurer (at the Servicer's expense) that such sale or disposition will not cause the Trust Fund to be subject to the tax on income from prohibited transactions imposed by Code Section 860F(a)(1), otherwise subject the Trust Fund to tax or cause the Trust Fund to fail to qualify as a REMIC. All income (other than any gain from a sale or disposition of the type referred to in the preceding sentence) realized from any such Permitted Investment shall be for the benefit of the Servicer as additional servicing compensation. The amount of any losses incurred in respect of any such investments shall be deposited in the Collection Account by the Servicer out of its own funds immediately as realized.

The foregoing requirements for deposit in the Collection Account shall be exclusive, it being understood and agreed that, without limiting the generality of the foregoing, payments in the nature of those described in the last paragraph of Section 5.13 and payments in the nature of prepayment charges, late payment charges or assumption fees need not be deposited by the Servicer in the Collection Account. Notwithstanding any provision herein to the contrary, if the Servicer deposits in the Collection Account any amount not required to be deposited therein, it may at any time withdraw such amount from the Collection Account. All funds deposited by the Servicer in the Collection Account shall be held therein for the account of the Trustee in trust for the Certificateholders and the Certificate Insurer until disbursed in accordance with Section 6.1 or withdrawn in accordance with Section 5.4.

(b) Prior to the time of their required deposit in the Collection Account, all amounts required to be deposited therein may be deposited in an account in the name of Servicer, provided that such account is an Eligible Account. The Servicer hereby

acknowledges all such related funds shall be held in trust for the benefit of the Certificateholders and the Certificate Insurer pursuant to the terms hereof.

(c) The Collection Account may, upon written notice by the Trustee to the Certificate Insurer, be transferred by the Servicer to a different depository so long as such transfer is to an Eligible Account.

Section 5.4 Permitted Withdrawals from the Collection Account. The Servicer may, from time to time, make withdrawals from the Collection Account for the following purposes, without duplication:

(a) to pay to itself from any funds in the Collection Account any accrued and unpaid Servicing Fees and unreimbursed Delinquency Interest Advances and Servicing Advances, provided, however, that Servicing Advances may only be reimbursed from late collections on the related Mortgage Loan;

(b) to reimburse itself for any Delinquency Interest Advances or Servicing Advances determined in good faith to have become Nonrecoverable Advances, such reimbursement to be made from any funds in the Collection Account;

(c) to withdraw from the Collection Account any Preference Amount received from a Mortgagor;

(d) to withdraw any funds deposited in the Collection Account that were not required to be deposited therein;

(e) to withdraw from the Collection Account any funds needed to pay itself Servicing Compensation pursuant to Section 5.13 hereof to the extent not retained or paid pursuant to Section 5.3, 5.4 or 5.13;

(f) to withdraw from the Collection Account to pay to the Seller with respect to each Mortgage Loan or property acquired in respect thereof that has been repurchased or replaced pursuant to Section 2.4 or 3.4 or to pay to itself with respect to each Mortgage Loan or property acquired in respect thereof that has been purchased pursuant to Section 8.1, all amounts received thereon and not required to be distributed as of the date on which the related repurchase or purchase price or Principal Balance, as the case may be, was determined as a result of such repurchase or replacement;

(g) to withdraw from the Collection Account to pay to the Seller with respect to each Mortgage Loan any interest accrued and unpaid on such Mortgage Loan prior to the Cut-Off Date, to the extent received;

(h) to transfer funds from the Collection Account necessary to make deposits to the Certificate Account (which shall include the Trustee Fee) in the amounts and in the manner provided for herein;

(i) to pay itself any interest earned on or investment income earned with respect to funds in the Collection Account;

(j) to reimburse itself or the Depositor pursuant to 11.1; and

(k) to clear and terminate the Collection Account upon the termination of this Agreement.

Section 5.5 Payment of Taxes, Insurance and Other Charges. With respect to each Mortgage Loan as to which the Servicer maintains escrow accounts, the Servicer shall maintain accurate records reflecting the status of ground rents, taxes, assessments, water rates and other charges which are or may become a lien upon the Mortgaged Property and the status of primary mortgage guaranty insurance premiums, if any, and casualty insurance coverage and shall obtain, from time to time, all bills for the payment of such charges (including renewal premiums) and shall effect payment thereof prior to the applicable penalty or termination date and at a time appropriate for securing maximum discounts allowable, employing for such purpose deposits of the Mortgagor in any escrow account which shall have been estimated and accumulated by the Servicer in amounts sufficient for such purposes, as allowed under the terms of the Mortgage. To the extent that a Mortgage does not provide for escrow payments, the Servicer shall, if it has received notice of a default or deficiency, monitor such payments to determine if they are made by the Mortgagor.

Section 5.6 Maintenance of Casualty Insurance. With respect to each Mortgage Loan, the Servicer shall maintain accurate records reflecting casualty insurance coverage. For each Mortgage Loan, the Servicer shall maintain or cause to be maintained, to the extent required by the related Mortgage Loan to be maintained by the Mortgagor, fire and casualty insurance with a standard mortgagee clause and extended coverage in an amount which is not less than the replacement value of the improvements securing such Mortgage Loan or the unpaid principal balance of such Mortgage Loan, whichever is less. If, upon origination of the Mortgage Loan, the Mortgaged Property was in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards (and such flood insurance has been made available) the Servicer will cause to be maintained, to the extent required by the related Mortgage Loan to be maintained by the Mortgagor, a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (i) the unpaid principal balance of the Mortgage Loan, (ii) the full insurable value of the Mortgaged Property and (iii) the maximum amount of insurance available under the Flood Disaster Protection Act of 1973. With respect to each Mortgage Loan, the Servicer shall also maintain fire insurance with extended coverage and, if applicable, flood insurance on REO Property in an amount which is at least equal to the lesser of (i) the maximum insurable value of the improvements which are a part of such property and (ii) the principal balance owing on such Mortgage Loan at the time of such foreclosure or grant of deed in lieu of foreclosure. It is understood and agreed that such insurance shall be with insurers approved by the Servicer and that no earthquake or other additional insurance is to be required of any Mortgagor or to be maintained on property acquired in respect of a defaulted loan, other than pursuant to such applicable laws and regulations as shall at any time be in force and as shall require such additional insurance.

Pursuant to Section 5.3, any amounts collected by the Servicer under any insurance policies maintained pursuant to this Section 5.6 (other than amounts to be applied to the restoration or repair of the related Mortgaged Property or released to the Mortgagor in accordance with Accepted Servicing Practices and applicable law) shall be deposited into the Collection Account, subject to withdrawal pursuant to Section 5.4. Any cost incurred by the Servicer in maintaining any such insurance shall be added to the amount owing under the Mortgage Loan where the terms of the Mortgage Loan so permit; provided, however, that the addition of any such cost shall not be taken into account for purposes of calculating the principal amount of the Mortgage Note or the Mortgage Loan secured by the Mortgage Note or the distributions to be made to the Certificateholders. Such costs shall be recoverable by the Servicer pursuant to Section 5.4. In the event that the Servicer shall obtain and maintain a blanket policy issued by an insurer that is acceptable to FNMA or FHLMC, insuring against hazard losses on all of the Mortgage Loans, it shall conclusively be deemed to have satisfied its obligation as set forth in the second and third sentences of this Section 5.6, it being understood and agreed that such policy may contain a deductible clause, in which case the Servicer shall, in the event that there shall not have been maintained on the related mortgaged or acquired property an insurance policy complying with the second and third sentences of this Section 5.6 and there shall have been a loss which would have been covered by such a policy had it been maintained, be required to deposit from its own funds into the Collection Account the amount not otherwise payable under the blanket policy because of such deductible clause.

Section 5.7 Servicer Account. In addition to the Collection Account, the Servicer shall be permitted to establish and maintain one or more Servicer Accounts (collectively, the "Servicer Account"), which shall be an Eligible Account, in which the Servicer may deposit all payments by, and collections from, the Mortgagors received in connection with the Mortgage Loans prior to the Servicer's deposit of all such funds required to be deposited into the Collection Account. Withdrawals may be made out of such collections in the Servicer Account to reimburse the Servicer for any required advances not otherwise made from amounts on deposit in the Collection Account or for any refunds made by the Servicer of any sums determined to be overages, or to pay any interest owed to Mortgagors on such account to the extent required by law, and in order to terminate and clear the Servicer Account upon the termination of this Agreement upon the termination of the Trust Fund.

Section 5.8 Fidelity Bond; Errors and Omissions Policy. (a) The Servicer shall maintain with a responsible company, and at its own expense, a blanket fidelity bond (a "Fidelity Bond") and an errors and omissions insurance policy (an "Errors and Omissions Policy"), in a minimum amount acceptable to FNMA or otherwise in an amount as is commercially available at a cost that is not generally regarded as excessive by industry standards, with broad coverage on all officers, employees or other persons acting in any capacity requiring such persons to handle funds, money, documents or papers relating to the Mortgage Loans ("Servicer Employees"). Any such fidelity bond and errors and omissions insurance shall protect and insure the Servicer against losses, including losses resulting from forgery, theft, embezzlement, fraud, errors and omissions and negligent acts of such Servicer Employees. Such fidelity bond shall also protect and insure the Servicer against losses in connection with the release or satisfaction of a Mortgage Loan without having obtained

payment in full of the indebtedness secured thereby. No provision of this Section 5.8 requiring such fidelity bond and errors and omissions insurance shall diminish or relieve the Servicer from its duties and obligations as set forth in this Agreement.

(b) The Servicer shall be deemed to have complied with this provision if one of its respective Affiliates has such a Fidelity Bond and Errors and Omissions Policy and, by the terms of such fidelity bond and errors and omission policy, the coverage afforded thereunder extends to the Servicer and the Servicer Employees. The Servicer shall cause each and every Subservicer for it to maintain a policy of insurance covering errors and omissions and a fidelity bond which would meet the requirements of Section 5.8(a) hereof.

Section 5.9 Collection of Taxes, Assessments and Other Items. The Servicer shall deposit all payments by Mortgagors for taxes, assessments, primary mortgage or hazard insurance premiums or comparable items in the Servicer Account. Withdrawals from the Servicer Account may be made to effect payment of taxes, assessments, primary mortgage or hazard insurance premiums or comparable items, to reimburse the Servicer out of related collections for any advances made in the nature of any of the foregoing, to refund to any Mortgagors any sums determined to be overages, or to pay any interest owed to Mortgagors on such account to the extent required by law or to clear and terminate the Servicer Account at the termination of this Agreement upon the termination of the Trust Fund. The Servicer shall advance the payments referred to in the first sentence of this Section 5.9 that are not timely paid by the Mortgagors on the date when the tax, assessment, premium or other cost for which such payment is intended is due, but the Servicer shall be required to so advance only to the extent that such advances, in the good faith judgment of the Servicer, will be recoverable by the Servicer pursuant to Section 5.4 out of Liquidation Proceeds, Insurance Proceeds or otherwise.

Section 5.10 Enforcement of Due-on-Sale Clauses; Assumption Agreements. In any case in which a Mortgaged Property is about to be conveyed by the Mortgagor (whether by absolute conveyance or by contract of sale, and whether or not the Mortgagor remains liable thereon) and the Servicer has knowledge of such prospective conveyance, the Servicer shall effect assumptions in accordance with the terms of any due-on-sale provision contained in the related Mortgage Note or Mortgage. The Servicer shall enforce any due-on-sale provision contained in such Mortgage Note or Mortgage to the extent the requirements thereunder for an assumption of the Mortgage Loan have not been satisfied to the extent permitted under the terms of the related Mortgage Note, unless such provision is not exercisable under applicable law and governmental regulations or in the Servicer's judgment, such exercise is reasonably likely to result in legal action by the Mortgagor, or such conveyance is in connection with a permitted assumption of the related Mortgage Loan. Subject to the foregoing, the Servicer is authorized to take or enter into an assumption agreement from or with the Person to whom such property is about to be conveyed, pursuant to which such person becomes liable under the related Mortgage Note and, unless prohibited by applicable state law, the Mortgagor remains liable thereon, provided that the Mortgage Interest Rate with respect to such Mortgage Loan shall remain unchanged. The Servicer is also authorized to release the original Mortgagor from liability upon the Mortgage Loan and substitute the new Mortgagor as obligor thereon. In connection with such assumption or substitution, the Servicer shall apply such underwriting standards and follow such practices

and procedures as shall be normal and usual for mortgage loans similar to the Mortgage Loans and as it applies to mortgage loans owned solely by it. The Servicer shall notify the Trustee that any such assumption or substitution agreement has been completed by forwarding to the Trustee the original copy of such assumption or substitution agreement, which copy shall be added by the Trustee to the related Mortgage File and shall, for all purposes, be considered a part of such Mortgage File to the same extent as all other documents and instruments constituting a part thereof. In connection with any such assumption or substitution agreement, the Mortgage Interest Rate of the related Mortgage Note and the payment terms shall not be changed. Any fee collected by the Servicer for entering into an assumption or substitution of liability agreement will be retained by the Servicer as servicing compensation.

Notwithstanding the foregoing paragraph or any other provision of this Agreement, the Servicer shall not be deemed to be in default, breach or any other violation of its obligations hereunder by reason of any conveyance by the Mortgagor of the property subject to the Mortgage or any assumption of a Mortgage Loan by operation of law which the Servicer in good faith determines it may be restricted by law from preventing, for any reason whatsoever, or if the exercise of such right would impair or threaten to impair any recovery under any applicable insurance policy or, in the Servicer's judgment, be reasonably likely to result in legal action by the Mortgagor.

Section 5.11 Realization upon Defaulted Mortgage Loans. (a) In the event that any payment due under any Mortgage Loan is not paid when the same becomes due and payable, or in the event the Mortgagor fails to perform any other covenant or obligation under the Mortgage Loan and such failure continues beyond any applicable grace period, the Servicer shall take such action as it shall deem to be in the best interest of the Certificateholders and the Certificate Insurer. With respect to any Charged-off Loan as to which no satisfactory arrangements can be made for collection of delinquent payments in accordance with the provisions of Section 5.1, and in accordance with the standard of care specified in Section 5.1, in the event that in the Servicer's reasonable judgment a foreclosure or the taking of title to a related Mortgaged Property is likely to result in a positive economic benefit to the Trust Fund by creating Net Liquidation Proceeds, the Servicer shall foreclose upon or otherwise comparably effect the ownership thereof in the name of Trustee for the benefit of the Certificateholders and the Certificate Insurer. The Servicer shall give the Trustee and the Certificate Insurer notice of the election of remedies made pursuant to this Section 5.11. In connection with any foreclosure or other conversion, the Servicer shall exercise collection and foreclosure procedures with the same degree of care and skill as it customarily employs and exercises in collecting and foreclosing on mortgage loans for its own account and in accordance with accepted collection and foreclosure practices of prudent lending institutions and servicers of loans similar to the Mortgage Loans and giving due consideration to the Certificateholders' and the Certificate Insurer's reliance on the Servicer. Any amounts advanced in connection with such foreclosure or other action shall constitute "Servicing Advances". The foregoing is subject to the proviso that the Servicer shall not expend its own funds in connection with any foreclosure or to restore any damaged property unless it shall determine that (i) such foreclosure and/or restoration will increase the proceeds of liquidation of the Mortgage Loan to Certificateholders after reimbursement to itself for such expenses and (ii) such expenses will be recoverable to it through Liquidation Proceeds

(respecting which it shall reimburse itself for such expense prior to the deposit in the Collection Account of such proceeds). The Servicer shall be entitled to reimbursement of the Servicing Fee and other amounts due it, if any, to the extent, but only to the extent, that withdrawals from the Collection Account with respect thereto are permitted under Section 5.4.

In the event that title to any Mortgaged Property is acquired in foreclosure or by deed in lieu of foreclosure (an "REO Property"), the deed or certificate of sale shall be issued to the Trustee, or to the Servicer in the name of the Trustee on behalf of the Trustee and the Certificateholders and the Certificate Insurer. Notwithstanding any such acquisition of title and cancellation of the related Mortgage Loan, such REO Mortgage Loan shall be considered to be a Mortgage Loan held in the Trust Fund until such time as the related Mortgaged Property shall be sold and such REO Mortgage Loan becomes a Liquidated Loan. Consistent with the foregoing, for purposes of all calculations hereunder, so long as such REO Mortgage Loan shall be considered to be an Outstanding Mortgage Loan:

(i) It shall be assumed that, notwithstanding that the indebtedness evidenced by the related Mortgage Note shall have been discharged, such Mortgage Note and the related amortization schedule in effect at the time of any such acquisition of title (after giving effect to any previous Curtailments and before any adjustment thereto by reason of any bankruptcy or similar proceeding or any moratorium or similar waiver or grace period) shall be assumed to remain in effect, except that such schedule shall be adjusted to reflect the application of Net REO Proceeds received in any month pursuant to the succeeding clause.

(ii) Net REO Proceeds received in any month shall be deemed to have been received first in payment of the accrued interest that remained unpaid on the date that such Mortgage Loan became an REO Mortgage Loan, with the excess thereof, if any, being deemed to have been received in respect of the delinquent principal installments that remained unpaid on such date. Thereafter, Net REO Proceeds received in any month shall be applied to the payment of installments of principal and accrued interest on such Mortgage Loan deemed to be due and payable in accordance with the terms of such Mortgage Note and such amortization schedule. If such Net REO Proceeds exceed the then Unpaid REO Amortization, the excess shall be treated as a Curtailment received in respect of such Mortgage Loan.

In the event that the Trust Fund acquires any Mortgaged Property as aforesaid or otherwise in connection with a default or imminent default on a Mortgage Loan, such Mortgaged Property shall be disposed of by or on behalf of the Trust Fund within two years after its acquisition thereby unless (a) the Servicer shall have provided to the Trustee and the Certificate Insurer an Opinion of Counsel (at the expense of the Trust Fund) to the effect that the holding by the Trust Fund of such Mortgaged Property subsequent to two years after its acquisition (and specifying the period beyond such two-year period for which the Mortgaged Property may be held) will not cause the Trust Fund to be subject to the tax on prohibited transactions imposed by Code Section 860F(a)(1), otherwise subject the Trust Fund to tax or

cause the Trust Fund to fail to qualify as a REMIC at any time that any Certificates are outstanding, or (b) the Servicer or the Trustee (at the Trust Fund's expense) shall have applied for, at least 60 days prior to the expiration of such two-year period, an extension of such two-year period in the manner contemplated by Code Section 856(e)(3), in which case the two-year period shall be extended by the applicable period. The Servicer shall further ensure that the Mortgaged Property is administered so that it constitutes "foreclosure property" within the meaning of Code Section 860G(a)(8) at all times, that the sale of such property does not result in the receipt by the Trust Fund of any income from non-permitted assets as described in Code Section 860F(a)(2)(B), and that the Trust Fund does not derive any "net income from foreclosure property" within the meaning of Code Section 860G(c)(2) with respect to such property.

Any REO Disposition shall be for cash only (unless changes in the REMIC Provisions made subsequent to the Startup Date allow for a sale for other consideration).

In lieu of foreclosing upon any defaulted Mortgage Loan, the Servicer may, in its discretion, permit the assumption of such Mortgage Loan if, in the Servicer's judgment, such default is unlikely to be cured and if the assuming borrower satisfies the Servicer's good faith underwriting guidelines with respect to mortgage loans owned by the Servicer. In connection with any such assumption, the Mortgage Interest Rate of the related Mortgage Note and the payment terms shall not be changed. Any fee collected by the Servicer for entering into an assumption agreement will be retained by the Servicer as servicing compensation. Alternatively, the Servicer may encourage the refinancing of any defaulted Mortgage Loan by the Mortgagor.

Notwithstanding the foregoing, prior to instituting foreclosure proceedings or accepting a deed-in-lieu of foreclosure with respect to any Mortgaged Property, the Servicer shall make, or cause to be made, inspection of the Mortgaged Property in accordance with the Accepted Servicing Practices and, with respect to environmental hazards, such procedures as are required by the provisions of the FNMA's selling and servicing guide applicable to single-family homes and in effect on the date hereof. The Servicer shall be entitled to rely upon the results of any such inspection made by others. In cases where the inspection reveals that such Mortgaged Property is potentially contaminated with or affected by hazardous wastes or hazardous substances, the Servicer shall promptly give written notice of such fact to the Certificate Insurer, the Trustee and each Class A Certificateholder. The Servicer shall not proceed with any foreclosure proceedings or accept a deed in lieu of foreclosure for such Mortgaged Property without the prior written consent of the Certificate Insurer.

In addition to the foregoing, the Depositor may purchase from the Trust Fund any Charged-off Loan (or any Mortgage Loan which will imminently become a Charged-off Loan) by depositing in the Certificate Account an amount equal to the Loan Repurchase Price.

(b) Upon becoming aware that a first lien mortgage loan relating to any Mortgage Loan has come into default or of any action that the related mortgagee has taken or may take in respect thereof, the Servicer shall, consistent with the REMIC Provisions, take such actions as it shall deem necessary or advisable, as shall be normal and usual in its

general mortgage servicing activities and as shall be required or permitted by Accepted Servicing Practices. In taking such actions, the Servicer may advance such funds as are necessary to cure such default, maintain such first lien mortgage loan relating to any Mortgage Loan, acquire the related mortgagee's interest therein or redeem the related Mortgaged Property. The Servicer, however, shall not be required to expend its own funds in connection therewith unless it shall determine that such expense will be recoverable to it. All such expenses shall be included as Liquidation Expenses pursuant to the definition thereof, and shall be reimbursable from the related Liquidation Proceeds in accordance with Section 5.4.

Section 5.12 Trustee to Cooperate; Release of Mortgage Files. Upon the payment in full of any Mortgage Loan, or the receipt by the Servicer of a notification that payment in full will be escrowed in a manner customary for such purposes, the Servicer shall (i) immediately deliver to the Trustee a notice substantially in the form of the Request for Release of Documents attached hereto as Exhibit G (which request shall include a statement to the effect that all amounts received in connection with such payment which are required to be deposited in the Collection Account pursuant to Section 5.3 have been or shall be so deposited) and executed by a Servicing Officer and (ii) request delivery to it of the Mortgage File. Upon receipt of such Request for Release of Documents, the Trustee, or the Custodian on its behalf, shall promptly release the related Mortgage File to the Servicer. Upon any such payment in full, the Servicer is authorized to give, as agent for the Trustee and the mortgagee under the Mortgage which secured the Mortgage Loan, an instrument of satisfaction (or assignment of mortgage without recourse) regarding the property subject to such Mortgage, which instrument of satisfaction or assignment, as the case may be, shall be delivered to the Person or Persons entitled thereto against receipt therefor of such payment, it being understood and agreed that no expenses incurred in connection with such instrument of satisfaction or assignment, as the case may be, shall be chargeable to the Collection Account. In connection therewith, the Trustee shall execute and return to the Servicer any required power of attorney provided to the Trustee by the Servicer and other required documentation in accordance with Section 5.1(b). From time to time and as appropriate for the servicing or foreclosure of any Mortgage Loan and in accordance with Accepted Servicing Practices, the Trustee shall, upon request of the Servicer and delivery to the Trustee of a Request for Release of Documents signed by a Servicing Officer, release, or cause the Custodian to release, the related Mortgage File to the Servicer and shall execute such documents as shall be necessary to the prosecution of any such proceedings. Such Request for Release of Documents shall obligate the Servicer to return the Mortgage File to the Trustee when the need therefor by the Servicer no longer exists unless the Mortgage Loan shall be liquidated, in which case, upon receipt of a certificate of a Servicing Officer similar to the Request for Release of Documents or an additional Request for Release of Documents hereinabove specified, the Mortgage File shall be delivered by the Trustee to the Servicer.

Section 5.13 Servicing Fee; Servicing Compensation. (a) The Servicer shall be entitled, to pay itself the Servicing Fee pursuant to Section 5.3.

The aggregate Servicing Fee is reserved for the administration of the Trust Fund and, in the event of replacement of the Servicer as servicer of the Mortgage Loans, for the payment of other expenses related to such replacement. The Trustee, in its capacity as

successor servicer, shall not be liable for the costs of replacement of a predecessor servicer, unless the Trustee is the predecessor servicer.

The aggregate Servicing Fee shall be offset as provided in Section 5.19. The Servicer shall be required to pay all expenses incurred by it in connection with its servicing activities hereunder (including maintenance of the hazard insurance required by Section 5.5) and shall not be entitled to reimbursement therefor except as specifically provided herein.

(b) Servicing compensation in the form of assumption fees, late payment charges, tax service fees, fees for statement of account or payoff of the Mortgage Loan (to the extent permitted by applicable law) or otherwise shall be retained by the Servicer and are not required to be deposited in the Collection Account.

Section 5.14 Reports to the Trustee; Collection Account Statements. Not later than 15 days after each Remittance Date, the Servicer shall provide to the Trustee, the Certificate Insurer, the Placement Agent and the Depositor a statement, certified by a Servicing Officer, setting forth the status of the Collection Account as of the close of business on the last day of the immediately preceding calendar month, stating that all distributions required by this Agreement to be made by the Servicer on behalf of the Trustee have been made (or if any required distribution has not been made by the Servicer, specifying the nature and status thereof) and showing, for the period covered by such statement, the aggregate of deposits into and withdrawals from the Collection Account for each category of deposit specified in Section 5.3 and each category of withdrawal specified in Section 5.4 and the aggregate of deposits into the Certificate Account specified in Section 6.1(c). Copies of such statement shall be provided by the Trustee to any Certificateholder upon request.

Section 5.15 Annual Statement as to Compliance. The Servicer will deliver to the Trustee, the Certificate Insurer, the Placement Agent, and each of the Rating Agencies not later than the last day of the fifth month subsequent to the end of the Servicer's fiscal year beginning in 1996, an Officers' Certificate stating as to each signer thereof, that (i) a review of the activities of the Servicer during the preceding calendar year and of its performance under this Agreement has been made under such officer's supervision, and (ii) to the best of such officer's knowledge, based on such review, the Servicer has fulfilled all its obligations under this Agreement throughout such year, or if there has been a default in the fulfillment of any such obligation, specifying each such default known to such officer and the nature and status thereof and (iii) the Servicer has in full force and effect a blanket fidelity bond and an errors and omissions insurance policy in accordance with the terms and requirements of Section 5.8 hereof. Such Officers' Certificate shall be accompanied by the statement described in Section 5.16 of this Agreement. Copies of such statement shall, upon request, be provided to any Certificateholder by the Servicer, or by the Trustee at the Servicer's expense if the Servicer shall fail to provide such copies.

Section 5.16 Annual Independent Public Accountants' Servicing Report. Not later than the last day of the fifth month subsequent to the end of the Servicer's fiscal year, beginning in 1996, the Servicer, at its expense, shall cause a firm of nationally recognized independent public accountants to furnish a statement to the Trustee, the Certificate Insurer, the Placement Agent, each of the Rating Agencies, each Certificateholder to the effect that,

on the basis of an examination of certain documents and records relating to the servicing of the mortgage loans being serviced by the Servicer under pooling and servicing agreements similar to this Agreement (which agreements shall be described in a schedule to such statement), conducted substantially in compliance with the Uniform Single Attestation Program for Mortgage Bankers, such firm is of the opinion that such servicing has been conducted in compliance with this Agreement. Copies of such statement shall, upon request, be provided to Certificateholders by the Servicer, or by the Trustee at the Servicer's expense if the Servicer shall fail to provide such copies. For purposes of such statement, such firm may conclusively presume that any pooling and servicing agreement which governs mortgage pass-through certificates offered by the Depositor (or any predecessor or successor thereto) in a registration statement under the Securities Act of 1933, as amended, is similar to this Agreement, unless such other pooling and servicing agreement expressly states otherwise.

Section 5.17 [Reserved].

Section 5.18 Reports to be Provided by the Servicer. The Servicer agrees to make available on a reasonable basis to the Certificate Insurer a knowledgeable financial or accounting officer for the purpose of answering reasonable questions respecting recent developments affecting the Servicer or the financial statements of the Servicer and to permit the Certificate Insurer to inspect the Servicer's servicing facilities during normal business hours for the purpose of satisfying the Certificate Insurer that the Servicer has the ability to service the Mortgage Loans in accordance with this Agreement.

Section 5.19 Adjustment of Servicing Compensation in Respect of Prepaid Mortgage Loans. The aggregate amount of the Servicing Fees that the Servicer shall be entitled to receive with respect to all of the Mortgage Loans and each Remittance Date shall be offset on such Remittance Date by an amount equal to the aggregate Prepayment Interest Shortfall with respect to all Mortgage Loans which were subjects of Principal Prepayments during the Collection Period applicable to such Remittance Date. The amount of any offset against the aggregate Servicing Fee with respect to any Remittance Date under this Section 5.19 shall be limited to the aggregate amount of the Servicing Fees otherwise payable to the Servicer and any Subservicer (without adjustment on account of Prepayment Interest Shortfalls) with respect to (i) scheduled payments having the Due Date occurring in Collection Period applicable to such Remittance Date, and (ii) Principal Prepayments and Liquidation Proceeds applicable to such Remittance Date, and the rights of the Certificateholders to the offset of the aggregate Prepayment Interest Shortfalls shall not be cumulative.

Section 5.20 Delinquency Interest Advances. By 3:00 p.m. New York time on each Servicer Remittance Date, the Servicer shall make a Delinquency Interest Advance with respect to delinquent interest on each Mortgage Loan which was a Delinquent Mortgage Loan with respect to the related Collection Period by depositing such Delinquency Interest Advance into the Certificate Account; provided, however, that the Servicer will not be required to make any Delinquency Interest Advance if the Servicer has determined in accordance with customary mortgage loan servicing practices that all amounts which it expects to receive with respect to such Mortgage Loan have been received. Such deposit may be made in whole or in part or in part from funds in the Collection Account being held for future distribution or withdrawal on or in connection with Remittance Dates in subsequent

months. Any funds being held for future distribution to Certificateholders and so used shall be replaced by Servicer from its own funds by deposit in the Certificate Account on or before the Business Day preceding any such future Servicer Remittance Date to the extent that funds in the Certificate Account on such Servicer Remittance Date shall be less than payments to Certificateholders required to be made on such date.

The Servicer shall be permitted to reimburse itself for any Delinquency Interest Advance from any subsequent collections or Net Liquidation Proceeds relating to such Mortgage Loan. If not theretofore recovered by the Servicer, and the Servicer determines that any Delinquency Interest Advance was a Nonrecoverable Advance, such Delinquency Interest Advance shall be recoverable pursuant to Section 5.4 hereof.

Section 5.21 [Reserved].

Section 5.22 Maintenance of Corporate Existence and Licenses; Merger or Consolidation of the Servicer. (a) The Servicer will keep in full effect its existence, rights and franchises as a corporation, will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction necessary to protect the validity and enforceability of this Agreement or any of the Mortgage Loans and to perform its duties under this Agreement and will otherwise operate its business so as to cause the representations and warranties under Section 3.1 to be true and correct at all times under this Agreement.

(b) Any Person into which the Servicer may be merged or consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any Person succeeding to the business of the Servicer, shall be an established mortgage loan servicing institution acceptable to the Certificate Insurer that has a net worth of at least $15,000,000 and is a Permitted Transferee, and in all events shall be the successor of the Servicer without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. The Servicer shall send notice of any such merger or consolidation to the Trustee and the Certificate Insurer.

Section 5.23 Assignment of Agreement by Servicer; Servicer Not to Resign. The Servicer shall not assign this Agreement nor resign from the obligations and duties hereby imposed on it except by mutual written consent of the Servicer, the Seller, the Depositor, the Certificate Insurer and the Trustee or upon the determination that the Servicer's duties hereunder are no longer permissible under applicable law and that such incapacity cannot be cured by the Servicer without the incurrence, in the reasonable judgment of the Certificate Insurer, of unreasonable expense. Any such determination that the Servicer's duties hereunder are no longer permissible under applicable law permitting the resignation of the Servicer shall be evidenced by a written Opinion of Counsel (who may be counsel for the Servicer) to such effect delivered to the Trustee, the Seller, the Depositor and the Certificate Insurer. No such resignation shall become effective until the Trustee or a successor appointed in accordance with the terms of this Agreement has assumed the Servicer's responsibilities and obligations hereunder in accordance with Section 7.2. The Servicer shall provide the Trustee, each of the Rating Agencies and the Certificate Insurer with 30 days prior written notice of its intention to resign pursuant to this Section 5.23.

Section 5.24 Information Reports to be Filed by the Servicer. The Servicer or Subservicers shall file information returns with respect to the receipt of mortgage interest received in a trade or business, reports of foreclosures and abandonments of any Mortgaged Property and cancellation of indebtedness income with respect to any Mortgaged Property as required by Sections 6050H, 6050J and 6050P of the Code, respectively.

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ARTICLE VI

Distributions and Payments

Section 6.1 Establishment of Certificate Account; Deposits to the Certificate Account. (a) The Trustee shall establish and maintain the Certificate Account which shall be titled "Certificate Account, Bankers Trust Company, as trustee for the registered holders of Preferred Mortgage Asset-Backed Certificates, Series 1996-1 and MBIA Insurance Corporation as Certificate Insurer" and which shall be an Eligible Account. Notice of the establishment of the Certificate Account shall be promptly provided in writing to each of the Servicer, the Rating Agencies and the Certificate Insurer.

(b) Subject to Section 6.6 hereof, the Servicer may direct the Trustee in writing to invest the funds in the Certificate Account only in Permitted Investments which mature not later than the Business Day prior to the Remittance Date. No Permitted Investment shall be sold or disposed of at a gain prior to maturity unless the Servicer has delivered to the Trustee and the Certificate Insurer an Opinion of Counsel (at the Servicer's expense) that such sale or disposition will not cause the Trust Fund to be subject to the tax on income from prohibited transactions imposed by Code Section 860F(a)(1), otherwise subject the Trust Fund to tax or cause the REMIC 1996-1 to fail to qualify as a REMIC. All income (other than any gain from a sale or disposition of the type referred to in the preceding sentence) realized from any such Permitted Investment shall be for the benefit of the Servicer as additional servicing compensation. The amount of any losses incurred in respect of any such investments shall be deposited in the Certificate Account by the Servicer out of its own funds immediately as realized.

(c) On each Servicer Remittance Date, the Servicer shall cause to be deposited in the Certificate Account, from related funds on deposit in the Collection Account, an amount equal to the related Servicer Remittance Amount.

(d) The Trustee shall make deposits to the Certificate Account pursuant to Section 6.11 and 6.12.

Section 6.2 Permitted Withdrawals From the Certificate Account. The Trustee shall, in accordance with the Servicer's written directions to the Trustee as described in Section 6.5, withdraw or cause to be withdrawn funds from the Certificate Account for the following purposes:

(i) to effect the distributions described in Section 6.5;

(ii) to pay the Servicer any interest earned on or investment income earned with respect to funds in the Certificate Account;

(iii) to return to the Collection Account any amount deposited in the Certificate Account that was not required to be deposited therein;

(iv) to pay to itself the Trustee Fee in accordance with Section 9.5; and

(v) to clear and terminate the Certificate Account upon termination of the Trust Fund pursuant to Article VIII.

The Trustee shall keep and maintain a separate accounting for withdrawals from the Certificate Account pursuant to each of subclauses (i) through (vi) listed above.

Section 6.3 Collection of Money. Except as otherwise expressly provided herein, the Trustee may demand payment or delivery of all money and other property payable to or receivable by the Trustee pursuant to this Agreement, including, but not limited to, (a) all payments due on the Mortgage Loans in accordance with the respective terms and conditions of such Mortgage Loans and required to be paid over to the Trustee by the Servicer or by any Subservicer and (b) Insured Payments. The Trustee shall hold all such money and property received by it, as part of the Trust Fund and shall apply it as provided in this Agreement.

Section 6.4 The Certificate Insurance Policy. (a) Subject to receipt of the report referenced in Section 6.5, within three Business Days after each Determination Date, the Trustee shall determine with respect to the immediately following Remittance Date the amount to be on deposit in the Certificate Account on such Remittance Date less the amounts described in clauses (i) and (ii) of Section 6.5 for the related Remittance Date, and not including the amount of any Insured Payment which is required to be deposited in the related Certificate Account for such Remittance Date. The amounts described in the preceding sentence with respect to each Remittance Date are the "Available Funds" for such Remittance Date.

(b) If on any Remittance Date there is an Available Funds Shortfall, the Trustee shall complete a Notice in the form of Exhibit A to the Certificate Insurance Policy and submit such Notice to the Certificate Insurer no later than 12:00 noon New York City time on the third Business Day preceding such Remittance Date as a claim for an Insured Payment in an amount equal to such Available Funds Shortfall.

(c) The Trustee shall establish a separate Eligible Account for the benefit of Holders of the Certificates and the Certificate Insurer referred to herein as the "Certificate Insurance Payments Account" over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall deposit upon receipt any amount paid under the Certificate Insurance Policy in the Certificate Insurance Payments Account and distribute such amount only for purposes of payment to Certificateholders of the portion of the Insured Distribution Amount for which a claim was made and such amount may not be applied to satisfy any costs, expenses or liabilities of the Servicer, the Trustee or the Trust Fund. Amounts paid under the Certificate Insurance Policy, to the extent needed to pay the Insured Distribution Amount, shall be transferred by the Trustee from the Certificate Insurance Payments Account to the Certificate Account on the related Remittance Date and disbursed by the Trustee to the Class A Certificateholders in accordance with Section 6.5. It shall not be necessary for payments made under the Certificate Insurance Policy to be made by checks or wire transfers separate from other amounts distributed pursuant to Section 6.5. However, the amount of any payment of principal of or interest on the Class A Certificates to be paid from funds transferred from the Certificate Insurance Payments Account shall be noted as

provided in paragraph (d) below. Funds held in the Certificate Insurance Payments Account shall not be invested. Any funds remaining in the Certificate Insurance Payments Account on the first Business Day following a Remittance Date shall be returned to the Certificate Insurer by the Trustee pursuant to the written instructions of the Certificate Insurer by the end of such Business Day.

(d) The Trustee shall keep a complete and accurate record of the amount of interest and principal paid in respect of any Class A Certificate from moneys received under the Certificate Insurance Policy. The Certificate Insurer shall have the right to inspect such records at reasonable times during normal business hours upon one Business Day's prior notice to the Trustee.

(e) In the event that the Trustee has received a certified copy of an order of the appropriate court that any amount distributed on the Class A Certificates, including any amounts represented by an Insured Payment, has been voided in whole or in part as a preference payment under applicable bankruptcy law that constitutes a Preference Amount under the Certificate Insurance Policy, the Trustee shall so notify the Certificate Insurer, shall comply with the provisions of the Certificate Insurance Policy to obtain payment by the Certificate Insurer of such voided amount distributed, and shall, at the time it provides notice to the Certificate Insurer, notify, by mail to Class A Certificateholders of the affected Class A Certificates that, in the event any Class A Certificateholder's amount distributed is so recovered, such Class A Certificateholder will be entitled to payment pursuant to the Certificate Insurance Policy, a copy of which shall be made available through the Trustee, the Certificate Insurer or the Certificate Insurer's fiscal agent, if any, and the Trustee shall furnish to the Certificate Insurer or its fiscal agent, if any, its records evidencing the payments which have been made by the Trustee and subsequently recovered from Certificateholders, and dates on which such payments were made.

(f) The Trustee shall promptly notify the Certificate Insurer of any proceeding or the institution of any action, of which a Responsible Officer of the Trustee has actual knowledge, seeking the avoidance as a preferential transfer under applicable bankruptcy, insolvency, receivership or similar law (a "Preference Claim") of any distribution made with respect to the Certificates. Each Certificateholder, by its purchase of Certificates, the Seller, the Depositor, the Servicer and the Trustee agree that, the Certificate Insurer (so long as no Certificate Insurer Default exists) may at any time during the continuation of any proceeding relating to a Preference Claim direct all matters relating to such Preference Claim, including, without limitation, (i) the direction of any appeal of any order relating to such Preference Claim and (ii) the posting of any surety, supersedeas or performance bond pending any such appeal. In addition and without limitation of the foregoing, the Certificate Insurer shall be subrogated to, and each Certificateholder, the Servicer, the Seller, the Depositor and the Trustee hereby delegate and assign to the Certificate Insurer, to the fullest extent permitted by law, the rights of the Servicer, the Trustee, the Depositor, the Seller and each Certificateholder in the conduct of any such Preference Claim, including, without limitation, all rights of any party to any adversary proceeding or action with respect to any court order issued in connection with any such Preference Claim.

Section 6.5 Distributions. No later than 12:00 noon California time on the Business Day following the Determination Date, the Servicer shall deliver to the Trustee and the Certificate Insurer a report in computer-readable form (including electronic transmission) containing such information as to the Mortgage Loans as of such date and such other information as the Trustee and the Certificate Insurer may reasonably require. With respect to funds on deposit in the Certificate Account (inclusive of amounts transferred from the Certificate Insurance Payments Account, the Pre-Funding Account and the Capitalized Interest Account), on each Remittance Date, the Trustee shall make the following allocations, disbursements and transfers in the following order of priority, and each such allocation, transfer and disbursement shall be treated as having occurred only after all preceding allocations, transfers and disbursements have occurred:

(i) to the Certificate Insurer, the Certificate Insurance Policy Premium Amount;

(ii) to the Trustee, an amount equal to the Trustee Fees then due to it;

(iii) to the Certificate Insurer, the lesser of (x) an amount equal to (i) the Available Funds minus (ii) the Insured Distribution Amount for such Remittance Date and (y) the outstanding Reimbursement Amount, if any, as of such Remittance Date;

(iv) to the Class A Certificateholders, an amount equal to the Class A Interest Distribution Amount;

(v) to the Class A Certificateholders, an amount equal to the lesser of (a) the Class A Principal Distribution Amount and (b) the amount remaining in the Certificate Account after distributions pursuant to clauses (i) through (iv) above;

(vi) to the Class B Certificateholders, on any Remittance Date on which the Overcollateralization Reduction Amount is greater than zero, the amount of such Overcollateralization Reduction Amount shall be applied, on and prior to the Class B Final Scheduled Remittance Date;

(x) to reduce the Class B Accrued Interest until the Class B Accrued Interest has been reduced to zero;

(y) to reduce the Class B Principal Balance until the Class B Principal Balance has been reduced to zero;

(vii) to the Holders of the Class C Certificates, the Class C Distribution Amount;

(viii) to the Holders of the Class RU Certificates, the amount remaining on such Remittance Date, if any.

Notwithstanding clause (iv) above, the aggregate amounts distributed on all Remittance Dates to the Holders of the Class A Certificates on account of the Class A Principal Distribution Amount shall not exceed the Original Class A Principal Balance.

Section 6.6 Investment of Accounts. (a) So long as no Event of Default shall have occurred and be continuing, and consistent with any requirements of the Code, all or a portion of any Account (other than the Certificate Insurance Payments Account) held by the Trustee shall be invested and reinvested by the Trustee, as directed in writing by the Servicer (with respect to the Collection Account and the Certificate Account) or the Depositor (with respect to the Pre-Funding Account and the Capitalized Interest Account), in one or more Permitted Investments bearing interest or sold at a discount. If an Event of Default shall have occurred and be continuing or if the Servicer or the Depositor do not provide investment directions, the Trustee shall invest all Accounts in Permitted Investments described in paragraph (d) of the definition of Permitted Investments. No such investment in any Account shall mature later than the Business Day immediately preceding the next Remittance Date (except that if such Permitted Investment is an obligation of the Trustee, then such Permitted Investment shall mature not later than such Remittance Date). Notwithstanding anything to the contrary in this Section 6.6(a), all amounts received under the Certificate Insurance Policy shall remain uninvested.

(b) If any amounts are needed for disbursement from any Account (other than the Certificate Insurance Payments Account) held by the Trustee and sufficient uninvested funds are not available to make such disbursement, the Trustee shall cause to be sold or otherwise converted to cash a sufficient amount of the investments in such Account. The Trustee shall not be liable for any investment loss or other charge resulting therefrom unless the Trustee's failure to perform in accordance with this Section 6.6 is the cause of such loss or charge or the Trustee is the obligor of the related investment.

(c) Subject to Section 9.1 hereof, the Trustee shall not in any way be held liable by reason of any insufficiency in any Account held by the Trustee resulting from any investment loss on any Permitted Investment included therein (except as provided in subsection (b) of this Section 6.6).

(d) So long as no Event of Default shall have occurred and be continuing, all net income and gain realized from investment of, and all earnings on, funds deposited in the Collection Account shall be for the benefit of the Servicer as servicing compensation (in addition to the Servicing Fee). The Servicer shall deposit in the Collection Account and the Certificate Account and the Depositor shall deposit in the Pre-Funding Account and the Capitalized Interest Account, the amount of any loss incurred in respect of any Permitted Investment held therein which is in excess of the income and gain thereon immediately upon realization of such loss, without any right to reimbursement therefor from its own funds.

Section 6.7 Reports by Trustee. (a) On each Remittance Date the Trustee shall, based on a report delivered to it by the Servicer on the Determination Date, as described in Section 6.5 hereof, provide to each Holder, to the Certificate Insurer, to the Depositor, to the Servicer, to the Placement Agent, to S&P and to Moody's a written report

(the "Trustee Remittance Report"), setting forth information, including, without limitation, the following information:

(i) the amount of the distributions made on such Remittance Date with respect to the Class A Certificates, the Class B Certificates, the Class C Certificates and any Residual Certificates;

(ii) the amount of such distributions allocable to principal, separately identifying the aggregate amount of any Prepayments, Curtailments, any Pre-Funded Amounts distributed as a prepayment or other unscheduled recoveries of principal included therein;

(iii) the amount of such distributions allocable to interest and the calculation thereof;

(iv) the amount of any Net Liquidation Proceeds and Net REO Proceeds included in such distributions and the calculation thereof:

(v) the principal amount of the Class A Certificates and Class B Certificates (based on a Certificate in an original principal amount of $1,000) then outstanding in each case after giving effect to any principal payments made on such Remittance Date:

(vi) the amount of any Insured Payment included in the amounts distributed to the Class A Certificateholders on such Remittance Date, together with any Reimbursement Amount paid to the Certificate Insurer;

(vii) the Required Overcollateralization Level and the Overcollateralization Amount as of such Remittance Date;

(viii) the total of any Substitution Adjustments and any Loan Repurchase Price amounts included in such distribution;

(ix) the amounts, if any, of any Realized Losses for the related Collection Period; and

(x) for Remittance Dates during the Funding Period, the remaining Pre-Funded Amount.

Items (i), (ii) and (iii) above shall, with respect to the Class A Certificates, be presented on the basis of a Certificate having a $1,000 denomination. In addition, by January 31 of each calendar year following any year during which the Certificates are outstanding, the Trustee shall furnish a report to the Certificate Insurer and to each Holder of record if so requested in writing at any time during each calendar year as to the aggregate of amounts reported pursuant to (i), (ii) and (iii) with respect to the Certificates for such calendar year.

(b) All distributions made to the Certificateholders according to Class or type of Certificate on each Remittance Date will be made on a pro rata basis among the Certificateholders as of the next preceding Record Date based on the Percentage Interest represented by their respective Certificates, and shall be made by wire transfer of immediately available funds to the account of such Certificateholder at a bank or other entity having appropriate facilities therefor, if, in the case of a Class A Certificateholder, such Certificateholder shall own of record Class A Certificates having an aggregate initial Class A Principal Balance of at least $1,000,000 appearing in the Certificate Register and shall have provided complete wiring instructions at least five Business Days prior to the Record Date, and otherwise by check mailed to the address of such Certificateholder appearing in the Certificate Register.

(c) In addition, on each Remittance Date the Trustee will distribute to each Holder, to the Certificate Insurer, to the Placement Agent, to the Depositor, to each of the Rating Agencies, together with the information described in subsection (a) preceding, the following information with respect to the Mortgage Loans as of the close of business on the last Business Day of the prior Collection Period (except as otherwise provided in clause (v) below), which is hereby required to be prepared by the Servicer and furnished to the Trustee for such purpose on or prior to the related Servicer Remittance Date:

(i) the total number of Mortgage Loans and the aggregate Principal Balances thereof, together with the number, aggregate Principal Balances of such Mortgage Loans and the percentage of the aggregate Principal Balances of such Mortgage Loans to the aggregate Principal Balance of all Mortgage Loans (A) 30-59 days Delinquent, (B) 60-89 days Delinquent and (C) 90 or more days Delinquent;

(ii) the number, aggregate Principal Balances of all Mortgage Loans and percentage of the aggregate Principal Balances of such Mortgage Loans to the aggregate Principal Balance of all Mortgage Loans in foreclosure proceedings and the number, aggregate Principal Balances of all Mortgage Loans and percentage of any such Mortgage Loans that are also included in any of the statistics described in the foregoing clause (i);

(iii) the number, aggregate Principal Balances of all Mortgage Loans and percentage of the aggregate Principal Balances of such Mortgage Loans to the aggregate Principal Balance of all Mortgage Loans relating to Mortgagors in bankruptcy proceedings and the number, aggregate Principal Balances of all Mortgage Loans and percentage of any such Mortgage Loans that are also included in any of the statistics described in the foregoing clause (i);

(iv) the number, aggregate Principal Balances of all Mortgage Loans and percentage of the aggregate Principal Balances of such Mortgage Loans to the aggregate Principal Balance of all REO Mortgage Loans and the number, aggregate Principal Balances of all Mortgage Loans and percentage of any such Mortgage Loans that are also included in any of the statistics described in the foregoing clause (i);

(v) the weighted average Mortgage Interest Rate and the Net Mortgage Interest Rate as of the Due Date occurring in the Collection Period related to such Remittance Date;

(vi) the weighted average remaining term to stated maturity of all Mortgage Loans; and

(vii) the book value of any REO Property.

Section 6.8 Additional Reports by Trustee. (a) The Trustee shall report to the Depositor, the Servicer and the Certificate Insurer with respect to the amount then held in each Account (including investment earnings accrued or scheduled to accrue) held by the Trustee and the identity of the investments included therein, as the Depositor, the Servicer or the Certificate Insurer may from time to time request in writing.

(b) From time to time, at the request of the Certificate Insurer, the Trustee shall report to the Certificate Insurer with respect to its actual knowledge, without independent investigation, of any breach of any of the representations or warranties relating to individual Mortgage Loans set forth in Section 3.2 or 3.3 hereof.

Section 6.9 Compensating Interest. By 3:00 pm New York time on each Servicer Remittance Date, the Servicer or any Subservicer shall remit to the Trustee (without right of reimbursement therefor) for deposit into the Certificate Account an amount equal to the lesser of (a) the aggregate of the Prepayment Interest Shortfalls for the related Remittance Date resulting from Principal Prepayments during the related Collection Period and (b) its aggregate Servicing Fees received in the related Collection Period (the "Compensating Interest").

Section 6.10 Effect of Payments by the Certificate Insurer; Subrogation. Anything herein to the contrary notwithstanding, any payment with respect to principal of or interest on the Certificates which is made with moneys received pursuant to the terms of the Certificate Insurance Policy shall not be considered payment of the Certificates from the Trust Fund. The Depositor, the Servicer and the Trustee acknowledge, and each Holder by its acceptance of a Certificate agrees, that without the need for any further action on the part of the Certificate Insurer, the Depositor, the Servicer, the Trustee or the Certificate Registrar (i) to the extent the Certificate Insurer makes payments, directly or indirectly, on account of principal of or interest on the Certificates to the Holders of such Certificates, the Certificate Insurer will be fully subrogated to, and each Certificateholder, the Depositor, the Servicer and the Trustee hereby delegate and assign to the Certificate Insurer, to the fullest extent permitted by law, the rights of such Holders to receive such principal and interest from the Trust Fund, including, without limitation, any amounts due to the Certificateholders in respect of securities law violations arising from the offer and sale of the Certificates, and (ii) the Certificate Insurer shall be paid such amounts but only from the sources and in the manner provided herein for the payment of such amounts. The Depositor, the Seller and Trustee and the Servicer shall cooperate in all respects with any reasonable request by the Certificate Insurer for action to preserve or enforce the Certificate Insurer's rights or interests under this

Agreement without limiting the rights or affecting the interests of the Holders as otherwise set forth herein.

Section 6.11 Pre-Funding Account.

(a) No later than the Closing Date, the Trustee shall establish and maintain with itself one or more segregated trust accounts that are Eligible Accounts, which shall be titled "Pre-Funding Account, Bankers Trust Company, as trustee for the registered holders of Preferred Home Equity Loan Pass-Through Certificates, Series 1996-1 and MBIA Insurance Corporation, as Certificate Insurer" (the "Pre-Funding Account"). On the Closing Date, the Trustee shall from the proceeds of the sale of the Class A Certificates deposit in the Pre-Funding Account and retain therein the Original Pre-Funded Amount. Funds deposited in the Pre-Funding Account shall be held in trust by the Trustee for the Holders of the Certificates and the Certificate Insurer for the uses and purposes set forth herein. For federal income tax purposes, the Depositor shall be the owner of the Pre-Funding Account and shall report all items of income, deduction, gain or loss arising therefrom. All income and gain realized from investment of funds deposited in the Pre-Funding Account shall be transferred to the Capitalized Interest Account on the Business Day immediately preceding each Remittance Date.

(b) Amounts on deposit in the Pre-Funding Account shall be withdrawn by the Trustee as follows:

(i) On any Subsequent Transfer Date, the Trustee, upon written direction from the Depositor, shall withdraw from the Pre-Funding Account and pay to the Depositor an amount equal to 96.5% of the Principal Balances of the Subsequent Mortgage Loans transferred and assigned to the Trustee on such Subsequent Transfer Date upon satisfaction of the conditions set forth in Sections 2.3 and 2.9(b) above with respect to such transfer and assignment; and

(ii) If the Pre-Funded Amount has not been reduced to zero during the Funding Period, or if the Pre-Funded Amount has been reduced to $50,000 or less on the immediately succeeding Determination Date, the Trustee shall deposit into the Certificate Account any amounts remaining in the Pre-Funding Account.

Section 6.12 Capitalized Interest Accounts.

(a) No later than the Closing Date, the Trustee shall establish and maintain with itself a separate, aggregated trust account, which shall be an Eligible Account, titled "Capitalized Interest Account, Bankers Trust Company, as trustee for the registered holders of Preferred Home Equity Loan Pass-Through Certificates, Series 1996-1 and MBIA Insurance Corporation, as Certificate Insurer" (the "Capitalized Interest Account"). On the Closing Date, the Trustee shall from proceeds of the sale of the Class A Certificates deposit in the Capitalized Interest Account and retain therein the Capitalized Interest Amount. In addition, the Trustee shall deposit into the Capitalized Interest Account all income and gain

on investments in the Pre-Funding Account pursuant to Section 6.11. Funds deposited in the Capitalized Interest Account shall be held in trust by the Trustee for the Holders of the Certificates and the Certificate Insurer for the uses and purposes set forth herein. For federal income tax purposes, the Depositor shall be the owner of the Capitalized Interest Account and shall report all items of income, deduction, gain or loss arising therefrom. The Depositor shall deposit in the Capitalized Interest Account the amount of any net loss incurred in respect of any such Permitted Investment immediately upon realization of such loss, without any right of reimbursement.

(b) On each of the first three Remittance Dates, the Trustee shall withdraw from the Capitalized Interest Account and deposit in the Certificate Account the related Capitalized Interest Addition.

(c) On each Determination Date following the conveyance of a Subsequent Mortgage Loan to the Trustee, funds on deposit in the Capitalized Interest Account in an amount equal to the product of (i) the Principal Balance of such Subsequent Mortgage Loan and (ii) the Class A Pass-Through Rate, and (iii) a fraction, the numerator of which is the number of days from the Subsequent Cut-Off Date to September 1, 1996 and the denominator of which is 360, shall be remitted immediately to the Depositor.

(d) Upon the earliest of (i) termination of the Trust Fund in accordance with Section 8.1 or (ii) the first Remittance Day following the end of the Funding Period, any amount remaining on deposit in the Capitalized Interest Account after distributions pursuant to Section 6.12(b) above shall be withdrawn by the Trustee and paid to the Depositor.

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ARTICLE VII

Default

Section 7.1 Events of Default. (a) In case one or more of the following Events of Default by the Servicer shall occur and be continuing, that is to say:

(i) any failure by the Servicer to remit to the Trustee any payment, other than a Servicing Advance, required to be made by the Servicer under the terms of this Agreement which continues unremedied for two days after the date upon which such payment was required to be made;

(ii) the failure by the Servicer to make any required Servicing Advance which failure continues unremedied for a period of 30 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer by the Trustee or to the Servicer and the Trustee by any Certificateholder or the Certificate Insurer;

(iii) any failure on the part of the Servicer duly to observe or perform in any material respect any other of the covenants or agreements on the part of the Servicer contained in this Agreement or in the Certificate Insurance Agreement, or the failure of any representation and warranty made pursuant to Section 3.1 to be true and correct which continues unremedied for a period of 30 days (or 15 days in the case of a failure to pay the premium for any insurance policy which is required to be maintained under this Agreement) after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer, as the case may be, by the Depositor or the Trustee or to the Servicer and the Trustee by any Certificateholder or the Certificate Insurer;

(iv) a decree or order of a court or agency or supervisory authority having jurisdiction in an involuntary case under any present or future federal or state bankruptcy, insolvency or similar law or for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against the Servicer and such decree or order shall have remained in force, undischarged or unstayed for a period of 60 days;

(v) the Servicer shall consent to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Servicer or of or relating to all or substantially all of the Servicer's property;

(vi) the Servicer shall admit in writing its inability to pay its debts as they become due, file a petition to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations; or

(vii) a Servicer Trigger Event that the Certificate Insurer declares is an Event of Default.

(b) If an Event of Default described in this Section shall occur, then, and in each and every such case, so long as such Event of Default shall not have been remedied or waived pursuant to Section 7.3: (1) with respect solely to clause (i) above, if such payment is not made on the second day after the date upon which such payment was required to be made, the Trustee shall give immediate telephonic notice of such failure to a Responsible Officer of the Servicer and to the Certificate Insurer and the Trustee shall terminate all of the rights and obligations of the Servicer under this Agreement and the Trustee, or a successor Servicer appointed in accordance with Section 7.2, shall immediately make such payment and assume, pursuant to Section 7.2, the duties of a successor Servicer and (2) with respect to clauses (ii), (iii), (iv), (v), (vi) and (vii) above, the Trustee shall, but only at the direction of the Certificate Insurer or the Majority Certificateholders and with the prior written consent of the Certificate Insurer, by notice in writing to the Servicer and a Responsible Officer of the Trustee, and in addition to whatever rights such Certificateholders may have at law or equity to damages, including injunctive relief and specific performance, terminate all the rights and obligations of the Servicer under this Agreement and in and to the Mortgage Loans and the proceeds thereof, as servicer.

Upon receipt by the Servicer of such written notice, all authority and power of the Servicer under this Agreement, whether with respect to the Mortgage Loans or otherwise, shall, subject to Section 7.2, pass to and be vested in the Trustee or its designee approved by the Certificate Insurer and the Trustee is hereby authorized and empowered to execute and deliver, on behalf of the Servicer, as attorney-in-fact or otherwise, at the expense of the Servicer, any and all documents and other instruments and do or cause to be done all other acts or things necessary or appropriate to effect the purposes of such notice of termination, including, but not limited to, the transfer and endorsement or assignment of the Mortgage Loans and related documents. The Servicer agrees to cooperate (and pay any related costs and expenses) with the Trustee in effecting the termination of the Servicer's responsibilities and rights hereunder, including, without limitation, the transfer to the Trustee or its designee for administration by it of all amounts which shall at the time be credited by the Servicer to the Collection Account or the Servicer Account or thereafter received with respect to the Mortgage Loans. The Trustee shall promptly notify the Certificate Insurer, each Certificateholder and each of the Rating Agencies of the occurrence of an Event of Default.

(c) Upon the occurrence of a Servicer Trigger Event, the Certificate Insurer may require that an audit of the Servicer's servicing practices be performed, at the expense of the Seller, by a Person selected by the Certificate Insurer. The Servicer shall promptly provide the Certificate Insurer the written results of such audit. If, upon being furnished with the results of such audit, the Certificate Insurer reasonably concludes that the Servicer's servicing practices have not been in compliance with the Accepted Servicing Practices, the Certificate Insurer may declare an Event of Default and may remove the Servicer by giving written notice of such determination to the Seller, the Servicer and the Trustee.

As used above, "Servicer Trigger Event" means (a) prior to the Remittance Date in July 2001, Total Expected Losses exceed 7.75% of the Maximum Collateral Amount or (b) on and after the Remittance Date in July 2001, Total Expected Losses exceed 12.00% of the Maximum Collateral Amount.

Section 7.2 Trustee to Act; Appointment of Successor. (a) On and after the time the Servicer receives a notice of termination pursuant to Section 7.1, or the Trustee receives the resignation of the Servicer evidenced by an Opinion of Counsel pursuant to Section 5.23, or the Servicer is removed as Servicer pursuant to Article VII, in which event the Trustee shall promptly notify the Certificate Insurer and each of the Rating Agencies, except as otherwise provided in Section 7.1, the Trustee shall be the successor in all respects to the Servicer in its capacity as servicer under this Agreement and the transactions set forth or provided for herein and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof arising on or after the date of succession; provided, however, that the Trustee shall not be liable for any actions or the representations and warranties of any servicer prior to it and including, without limitation, the obligations of the Servicer set forth in Section 3.4. The Trustee, as successor servicer, or any other successor servicer shall be obligated to pay Compensating Interest pursuant to Section 6.9 hereof; the Trustee, as successor servicer shall be obligated to make advances pursuant to Section 5.20 unless, and only to the extent the Trustee, as successor servicer or any other successor servicer determines reasonably and in good faith that such advances would not be recoverable, such determination to be evidenced by a certification of a Responsible Officer of the Trustee, as successor servicer or any other successor servicer delivered to the Certificate Insurer.

(b) Notwithstanding the above, the Trustee may, if it shall be unwilling to so act, or shall, if it is unable to so act or if the Majority Certificateholders with the consent of the Certificate Insurer or the Certificate Insurer so requests in writing to the Trustee, appoint, pursuant to the provisions set forth in paragraph (c) below, or petition a court of competent jurisdiction to appoint, any established mortgage loan servicing institution acceptable to the Certificate Insurer that has a net worth of not less than $15,000,000 as the successor to the Servicer hereunder in the assumption of all or any part of the responsibilities, duties or liabilities of the Servicer hereunder.

(c) In the event the Trustee is the successor servicer, it shall be entitled to the Servicing Compensation and other funds pursuant to Section 5.13 hereof as the Servicer if the Servicer had continued to act as servicer hereunder. In the event the Trustee is unable or unwilling to act as successor servicer, the Trustee shall solicit, by public announcement, bids from housing and home finance institutions, banks and mortgage servicing institutions meeting the qualifications set forth above. Such public announcement shall specify that the successor servicer shall be entitled to the full amount of the aggregate Servicing Fees hereunder as servicing compensation, together with the other Servicing Compensation. Within thirty days after any such public announcement, the Trustee shall negotiate and effect the sale, transfer and assignment of the servicing rights and responsibilities hereunder to the qualifying party submitting the highest qualifying bid. The Trustee shall deduct from any sum received by the Trustee from the successor to the Servicer in respect of such sale, transfer and assignment all costs and expenses of any public announcement and of any sale,

transfer and assignment of the servicing rights and responsibilities hereunder and the amount of any unreimbursed Servicing Advances and Delinquency Interest Advances owed to the Trustee. After such deductions, the remainder of such sum shall be paid by the Trustee to the Servicer at the time of such sale, transfer and assignment to the Servicer's successor.

(d) The Trustee and such successor shall take such action, consistent with this Agreement, as shall be necessary to effectuate any such succession. The Servicer agrees to cooperate with the Trustee and any successor servicer in effecting the termination of the Servicer's servicing responsibilities and rights hereunder and shall promptly provide the Trustee or such successor servicer, as applicable, at the Servicer's cost and expense, all documents and records reasonably requested by it to enable it to assume the Servicer's functions hereunder and shall promptly also transfer to the Trustee or such successor servicer, as applicable, all amounts that then have been or should have been deposited in the Collection Account by the Servicer or that are thereafter received with respect to the Mortgage Loans. Any collections received by the Servicer after such removal or resignation shall be held by the Servicer in trust for the benefit of the Certificateholders and the Certificate Insurer and shall be endorsed by it to the Trustee and remitted directly to the Trustee or, at the direction of the Trustee, to the successor servicer. Neither the Trustee nor any other successor servicer shall be held liable by reason of any failure to make, or any delay in making, any distribution hereunder or any portion thereof caused by (i) the failure of the Servicer to deliver, or any delay in delivering, cash, documents or records to it, or (ii) restrictions imposed by any regulatory authority having jurisdiction over the Servicer hereunder. No appointment of a successor to the Servicer hereunder shall be effective until the Trustee and the Certificate Insurer shall have consented thereto, and written notice of such proposed appointment shall have been provided by the Trustee to the Certificate Insurer and to each Certificateholder. The Trustee shall not resign as servicer until a successor servicer reasonably acceptable to the Certificate Insurer has been appointed and has assumed the Servicer's responsibilities and obligations hereunder.

(e) Pending appointment of a successor to the Servicer hereunder, the Trustee shall act in such capacity as hereinabove provided. In connection with such appointment and assumption, the Trustee may make such arrangements for the compensation of such successor out of payments on Mortgage Loans as it and such successor shall agree; provided, however, that no such compensation shall be in excess of that permitted the Servicer pursuant to Section 5.13, together with other Servicing Compensation. The Servicer, the Trustee and such successor shall take such action, consistent with this Agreement, as shall be necessary to effectuate any such succession.

Section 7.3 Waiver of Defaults. The Certificate Insurer or the Majority Certificateholders may, on behalf of all Certificateholders, and subject to the consent of the Certificate Insurer, waive any events permitting removal of the Servicer as servicer pursuant to this Article VII; provided, however, that the Majority Certificateholders may not waive a default in making a required distribution on a Certificate without the consent of the holder of such Certificate. Upon any waiver of a past default, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default

or impair any right consequent thereto except to the extent expressly so waived. Notice of any such waiver shall be given by the Trustee to each of the Rating Agencies.

Section 7.4 Mortgage Loans, Trust Fund and Accounts Held for Benefit of the Certificate Insurer. (a) The Trustee shall hold the Trust Fund and the Mortgage Files for the benefit of the Certificateholders and the Certificate Insurer and all references in this Agreement and in the Certificates to the benefit of Holders of the Certificates shall be deemed to include the Certificate Insurer. The Trustee shall cooperate in all reasonable respects with any reasonable request by the Certificate Insurer for action to preserve or enforce the Certificate Insurer's rights or interests under this Agreement and the Certificates unless, as stated in an Opinion of Counsel addressed to the Trustee and the Certificate Insurer, such action is adverse to the interests of the Certificateholders or diminishes the rights of the Certificateholders or imposes additional burdens or restrictions on the Certificateholders.

(b) The Servicer hereby acknowledges and agrees that it shall service the Mortgage Loans for the benefit of the Certificateholders and for the benefit of the Certificate Insurer, and all references in this Agreement to the benefit of or actions on behalf of the Certificateholders shall be deemed to include the Certificate Insurer.

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ARTICLE VIII

Termination

Section 8.1 Termination. (a) Subject to Section 8.2, this Agreement shall terminate upon notice to the Trustee and the Certificate Insurer of either: (i) the later of the distribution to Certificateholders of the final payment or collection with respect to the last Mortgage Loan (or Delinquency Interest Advances of same by the Servicer), or the disposition of all funds with respect to the last Mortgage Loan and the remittance of all funds due hereunder and the payment of all amounts due and payable to the Certificate Insurer and the Trustee or (ii) mutual consent of the Servicer, the Certificate Insurer and all Certificateholders in writing; provided, however, that in no event shall the Trust Fund established by this Agreement terminate later than twenty-one years after the death of the last survivor of the descendants of John D. Rockefeller, alive as of the date hereof.

(b) In addition, subject to Section 8.2, the holder of a 50.01% Percentage Interest or greater of the Class RL Certificates or the Servicer (or the Certificate Insurer, if the Servicer fails to exercise such option) may, at its option and at its sole cost and expense, terminate this Agreement on any date on which the related Pool Principal Balance is less than 10% of the Maximum Collateral Amount (if the holders of the Class RL Certificates exercises this option) or is less than 5% of the Maximum Collateral Amount (if the Servicer or the Certificate Insurer exercises this option), by purchasing, on the next succeeding Remittance Date, all of the outstanding Mortgage Loans and REO Properties at a price equal to the sum of (i) the greater of (x) 100% of the Principal Balance of each Outstanding Mortgage Loan and each REO Property and (y) the fair market value (disregarding accrued interest) of the Mortgage Loans and REO Properties, determined as the average of three written bids (copies of which are to be delivered to the Trustee and the Certificate Insurer by the Servicer and the reasonable cost of which may be deducted from the final purchase price provided that such deduction will not cause a draw on the Certificate Insurance Policy) made by nationally recognized dealers acceptable to the Certificate Insurer and based on a valuation process which would be used to value comparable mortgage loans and REO property, (ii) the greater of (x) the aggregate amount of accrued and unpaid interest on the Mortgage Loans through the related Collection Period and (y) 30 days' accrued interest thereon at a rate equal to the Mortgage Interest Rate, (iii) and in the event the Holders of the Residual Certificates or the Certificate Insurer exercises such option, plus any unpaid and accrued Servicing Fees or in the event the Servicer exercises such option, net of the Servicing Fee, and (iv) any unreimbursed amounts due to the Certificate Insurer hereunder or under the Certificate Insurance Agreement (the "Termination Price"). Any such purchase shall be accomplished by deposit into the Certificate Account of the Termination Price. No such termination is permitted without the prior written consent of the Certificate Insurer (i) if it would result in a draw on the Certificate Insurance Policy and (ii) unless the Servicer shall have delivered to the Certificate Insurer an Opinion of Counsel reasonably satisfactory to the Certificate Insurer stating that no amounts paid hereunder are subject to recapture as preferential transfers under the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended.

(c) If on any Remittance Date, the Servicer determines that there are no Outstanding Mortgage Loans and no other funds or assets in the Trust Fund other than funds

in the Certificate Account, the Servicer shall send a final distribution notice promptly to the Certificate Insurer and to each such Certificateholder in accordance with paragraph (d) below.

(d) Notice of any termination, specifying the Remittance Date upon which the Trust Fund will terminate and the Certificateholders shall surrender their Certificates to the Trustee for payment of the final distribution and cancellation, shall be given promptly by the Servicer by letter to the Certificate Insurer and to each of the Certificateholders identified to the Servicer by the Trustee as the Certificateholders of record as of the most recent Record Date, and shall be mailed during the month of such final distribution before the Servicer Remittance Date in such month, specifying (i) the Remittance Date upon which final payment of the Certificates will be made upon presentation and surrender of Certificates at the office of the Trustee therein designated, (ii) the amount of any such final payment and (iii) that the Record Date otherwise applicable to such Remittance Date is not applicable, payments being made only upon presentation and surrender of the Certificates at the office of the Trustee therein specified. The Servicer shall give such notice to the Trustee therein specified. The Servicer shall give such notice to the Trustee at the time such notice is given to Certificateholders. The rights of the Certificate Insurer hereunder shall terminate (i) upon the deposit by the Servicer with the Trustee of a sum sufficient to purchase all of the Mortgage Loans and REO Properties as set forth above and when the Class A Principal Balance has been reduced to zero and (ii) when the Certificate Insurer has received all amounts owing to it hereunder and under the Certificate Insurance Agreement.

(e) In the event that all of the Certificateholders shall not surrender their Certificates for cancellation within six months after the time specified in the above-mentioned written notice, the Trustee shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. If within six months after the second notice, all of the Certificates shall not have been surrendered for cancellation, the Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining Certificateholders concerning surrender of their Certificates and the cost thereof shall be paid out of the funds and other assets which remain subject hereto. If within nine months after the second notice all the Certificates shall not have been surrendered for cancellation, the Residual Certificateholders shall be entitled to all unclaimed funds and other assets which remain subject hereto and the Trustee upon transfer of such funds shall be discharged of any responsibility for such funds and the Certificateholders shall look only to the Residual Certificateholders for payment. Such funds shall remain uninvested.

Section 8.2 Additional Termination Requirements. (a) In the event that any Class RL Certificateholder, the Servicer or the Certificate Insurer (any of which, an "Exercising Party") exercises its purchase option as provided in Section 8.1, the Trust Fund shall be terminated in accordance with the following additional requirements, unless the Trustee and the Certificate Insurer have been furnished with an Opinion of Counsel to the effect that the failure of the Trust Fund to comply with the requirements of this Section 8.2 will not (i) result in the imposition of taxes on "prohibited transactions" of such REMIC as defined in Section 860F of the Code or (ii) cause such Trust Fund to fail to qualify as a REMIC at any time that any Class A Certificates are outstanding:

(i) Within 90 days prior to the final Remittance Date the Trustee shall adopt and the Trustee shall sign, a plan of complete liquidation of the Trust Fund meeting the requirements of a "Qualified Liquidation" under Section 860F of the Code and any regulations thereunder;

(ii) At or after the time of adoption of such a plan of complete liquidation, which plan shall include a description of the method for such liquidation and the price to be conveyed for all of the assets of the Trust Fund at the time of such liquidation, and at or prior to the final Remittance Date, the Trustee shall sell all of the assets of the Trust Fund to the Exercising Party for cash; and

(iii) At the time of the making of the final payment on the Certificates, the Trustee shall distribute or credit, or cause to be distributed or credited (A) to the Class A Certificateholders, the Class A Principal Balance, plus one month's interest thereon at the Class A Pass-Through Rate, (B) to the Certificate Insurer, all amounts due to it hereunder and under the Certificate Insurance Agreement, (C) to the Class B Certificateholders, the Class B Principal Balance and any Class B Accrued Interest then remaining unpaid, (D) to the Class C Certificates, any funds due to such Class C Certificateholders and (E) to the Residual Certificateholders, all of such REMIC's cash on hand after such payment to the Class A, Class B and Class C Certificateholders and the Certificate Insurer, and the Trust Fund shall terminate at such time.

(b) By their acceptance of the Certificates, the Holders thereof hereby agree to appoint the Trustee as their attorney in fact to: (i) adopt such a plan of complete liquidation (and the Certificateholders hereby appoint the Trustee as their attorney in fact to sign such plan) as appropriate or upon the written request of the Certificate Insurer and (ii) to take such other action in connection therewith as may be reasonably required to carry out such plan of complete liquidation all in accordance with the terms hereof.

Section 8.3 Accounting Upon Termination of Servicer. Upon termination of the Servicer, the Servicer shall, at its expense:

(a) deliver to its successor or, if none shall yet have been appointed, to the Trustee, the funds in any Account;

(b) deliver to its successor or, if none shall yet have been appointed, to the Trustee all Mortgage Files and related documents and statements held by it hereunder and a Mortgage Loan portfolio computer tape;

(c) deliver to its successor or, if none shall yet have been appointed, to the Trustee, the Certificate Insurer and, upon request, to the Certificateholders a full accounting of all funds, including a statement showing the Monthly Payments collected by it and a statement of monies held in trust by it for the payments or charges with respect to the Mortgage Loans; and

(d) execute and deliver such instruments and perform all acts reasonably requested in order to effect the orderly and efficient transfer of servicing of the Mortgage Loans to its successor and to more fully and definitively vest in such successor all rights, powers, duties, responsibilities, obligations and liabilities of the "Servicer" under this Agreement.

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ARTICLE IX

The Trustee

Section 9.1 Duties of Trustee. (a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Agreement. If an Event of Default has occurred and has not been cured or waived, the Trustee shall exercise such of the rights and power vested in it by this Agreement, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) The Trustee, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Trustee which are specifically required to be furnished pursuant to any provision of this Agreement, shall examine them to determine whether they conform on their face to the requirements of this Agreement; provided, however, that the Trustee shall not be responsible for the accuracy or content of any resolution, certificate, statement, opinion, report, document, order or other instrument furnished by the Servicer or the Seller hereunder. If any such instrument is found not to conform on its face to the requirements of this Agreement, the Trustee shall take action as it deems appropriate to have the instrument corrected and, if the instrument is not corrected to the Trustee's satisfaction, the Trustee will, at the expense of the Servicer, notify the Certificate Insurer and request written instructions as to the action it deems appropriate to have the instrument corrected, and if the instrument is not so corrected, the Trustee will provide notice thereof to the Certificate Insurer who shall then direct the Trustee as to the action, if any, to be taken.

(c) No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct; provided, however, that:

(i) Prior to the occurrence of an Event of Default, and after the curing of all such Events of Default which may have occurred, the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, no implied covenants or obligations shall be read into this Agreement against the Trustee and, in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement;

(ii) The Trustee shall not be personally liable for an error of judgment made in good faith by a Responsible Officer or other officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) The Trustee shall not be personally liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Certificate Insurer or with the consent of the Certificate Insurer, the Class A Certificateholders holding Class A Certificates evidencing Percentage Interests of at least 25%, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement;

(iv) The Trustee shall not be required to take notice or be deemed to have notice or knowledge of any default or Event of Default (except an Event of Default with respect to the nonpayment of any amount described in Section 7.1(a)), unless a Responsible Officer of the Trustee shall have received written notice thereof. In the absence of receipt of such notice, the Trustee may conclusively assume that there is no default or Event of Default (except a failure to make a Delinquency Interest Advance);

(v) The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability for the performance of any of its duties hereunder or the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it and none of the provisions contained in this Agreement shall in any event require the Trustee to perform, or be responsible for the manner of performance of, any of the obligations of the Servicer under this Agreement except during such time, if any, as the Trustee shall be the successor to, and be vested with the rights, duties powers and privileges of, the Servicer in accordance with the terms of this Agreement; and

(vi) Subject to the other provisions of this Agreement and without limiting the generality of this Section, the Trustee shall have no duty (A) to see to any recording, filing, or depositing of this Agreement or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refiling or redepositing of any thereof, (B) to see to any insurance, (C) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Trust, the Trust Fund, the Certificateholders or the Mortgage Loans, (D) to confirm or verify the contents of any reports or certificates of the Servicer delivered to the Trustee pursuant to this Agreement believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties.

Section 9.2 Certain Matters Affecting the Trustee. (a) Except as otherwise provided in Section 9.1:

(i) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, Officers' Certificate, Opinion of Counsel, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice,

request, consent, order, appraisal, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(ii) the Trustee may consult with counsel and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such opinion of counsel;

(iii) the Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Agreement or to institute, conduct or defend by litigation hereunder or in relation hereto at the request, or direction of the Certificate Insurer or any of the Certificateholders, pursuant to the provisions of this Agreement, unless such Certificateholders or the Certificate Insurer, as applicable, shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby; nothing contained herein shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured), to exercise such of the rights and powers vested in it by this Agreement, and to use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs;

(iv) the Trustee shall not be personally liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement;

(v) prior to the occurrence of an Event of Default hereunder and after the curing of all Events of Default which may have occurred, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing to do so by the Certificate Insurer or Holders of Class A Certificates evidencing Percentage Interests aggregating not less than 25%; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Agreement, the Trustee may require reasonable indemnity against such expense or liability as a condition to taking any such action;

(vi) the right of the Trustee to perform any discretionary act enumerated in this Agreement shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct in the performance of such act;

(vii) the Trustee shall not be required to give any bond or surety in respect of the execution of the Trust Fund created hereby or the powers granted hereunder; and

(viii) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys.

(b) Following the Startup Date, the Trustee shall not knowingly accept any contribution of assets to the Trust Fund, unless the Trustee and the Certificate Insurer shall have received an Opinion of Counsel (at the expense of the Servicer) to the effect that the inclusion of such assets in the Trust Fund will not cause the Trust Fund to fail to qualify as a REMIC at any time that any Certificates are outstanding or subject the Trust Fund to any tax under the REMIC Provisions or other applicable provisions of federal, state and local law or ordinances. The Trustee agrees to indemnify the Trust Fund, the Certificate Insurer and the Servicer for any taxes and costs, including any attorney's fees, imposed or incurred by the Trust Fund, the Certificate Insurer or the Servicer as a result of the breach of the Trustee's covenants set forth within this subsection (b).

Section 9.3 Not Liable for Certificates or Mortgage Loans. The recitals contained herein (other than the certificate of authentication on the Certificates) shall be taken as the statements of the Seller and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Agreement or of any Mortgage Loan or related document. The Trustee shall not be accountable for the use or application of any funds paid to the Servicer in respect of the Mortgage Loans or deposited in or withdrawn from the Collection Account by the Servicer. The Trustee shall not be responsible for the legality or validity of the Agreement or the validity, priority, perfection or sufficiency of the security for the Certificates issued or intended to be issued hereunder.

Section 9.4 Trustee May Own Certificates. The Trustee in its individual or any other capacity may become the owner or pledgor of Certificates with the same rights it would have if it were not Trustee, and may otherwise deal with the parties hereto.

Section 9.5 Payment of Trustee Fees. The Trustee shall withdraw from the Certificate Account on each Remittance Date and pay to itself the Trustee Fee. Except as otherwise provided in this Agreement, the Trustee and any director, officer, employee or agent of the Trustee shall be indemnified by the Trust Fund and held harmless against any loss, liability or "unanticipated out-of-pocket" expense incurred or paid to third parties (which expenses shall not include salaries paid to employees, or allocable overhead, of the Trustee) in connection with the acceptance or administration of its trusts hereunder, the Certificate Insurance Agreement or the Certificates, other than any loss, liability or expense incurred by reason of willful misfeasance, bad faith or negligence in the performance of duties hereunder or by reason of reckless disregard of obligations and duties hereunder. The provisions of this Section 9.5 shall survive the termination of this Agreement and the removal or resignation of the Trustee.

The Servicer covenants and agrees to indemnify the Trustee and the Certificate Insurer and any director, officer, employee or agent of either against any losses, liabilities, damages, claims or expenses (including reasonable legal fees and such related expenses) that may be sustained by the Trustee in connection with this Agreement and the Certificate Insurance Agreement related to the willful misfeasance, bad faith or negligence in the performance of the Servicer's duties hereunder.

Section 9.6 Eligibility Requirements for Trustee. The Trustee hereunder shall at all times be (a) a banking association organized and doing business under the laws

of any state or the United States of America subject to supervision or examination by federal or state authority, (b) authorized under such laws to exercise corporate trust powers, including taking title to the Trust Fund assets on behalf of the Certificateholders (c) having a combined capital and surplus of at least $50,000,000, (d) whose long-term deposits, if any, shall be rated at least BBB by S&P and Baa3 by Moody's (except as provided herein) or such lower long-term deposit rating as may be approved in writing by the Certificate Insurer, (e) whose short-term deposits rating is rated A-1+ by S&P and P-1 by Moody's, and (f) reasonably acceptable to the Certificate Insurer as evidenced in writing. If such banking association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 9.7.

Section 9.7 Resignation and Removal of the Trustee. (a) The Trustee may ~~at any time resign and be discharged from the trusts hereby created by giving at least 30~~ days' prior written notice thereof to the Servicer, the Certificate Insurer and to all Certificateholders. Upon receiving such notice of resignation, the Certificate Insurer may appoint a successor trustee and if the Certificate Insurer fails to appoint a successor trustee, the Servicer shall promptly appoint a successor trustee acceptable to the Certificate Insurer (which acceptance shall not be unreasonably withheld) by written instrument, in duplicate, which instrument shall be delivered to the resigning Trustee and to the successor trustee. A copy of such instrument shall be delivered to the Depositor, the Certificateholders, the Certificate Insurer and the Seller by the Servicer. Unless a successor trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee.

(b) If at any time the Trustee shall cease to be eligible in accordance with the provisions of Section 9.6 and shall fail to resign after written request therefor by the Servicer or the Certificate Insurer, or if at any time the Trustee shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Certificate Insurer may appoint a successor trustee and if the Certificate Insurer fails to appoint a successor trustee, the Servicer or the Certificate Insurer may remove the Trustee and the Servicer shall, within 30 days after such removal, appoint, subject to the approval of the Certificate Insurer, which approval shall not be unreasonably delayed, a successor trustee by written instrument, in duplicate, which instrument shall be delivered to the Trustee so removed and to the successor trustee. A copy of such instrument shall be delivered to the Depositor, the Certificateholders, the Certificate Insurer and the Seller by the Servicer.

(c) If the Trustee fails to perform in accordance with the terms of this Agreement, the Majority Certificateholders (with the consent of the Certificate Insurer, which consent shall not be unreasonably withheld) or the Certificate Insurer may remove the Trustee and appoint a successor trustee acceptable to the Certificate Insurer by written instrument or

instruments, in triplicate, signed by such Holders or their attorneys-in-fact duly authorized, one complete set of which instruments shall be delivered to the Servicer and the Certificate Insurer, one complete set to the Trustee so removed and one complete set to the successor Trustee so appointed.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section shall become effective upon acceptance of appointment by the successor trustee as provided in Section 9.8.

(e) Upon any termination of, or appointment of any successor to the Trustee hereunder, the Trustee shall promptly transfer all of the Residual Interest (as defined under the Code) of the Trust Fund to the successor Trustee.

Section 9.8 Successor Trustee. Any successor trustee appointed as provided in Section 9.7 shall execute, acknowledge and deliver to the Depositor, the Certificate Insurer, the Seller, the Servicer and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor hereunder, with the like effect as if originally named as trustee herein. The predecessor trustee shall deliver to the successor trustee all Mortgage Files and related documents and statements held by it hereunder, and the Servicer and the predecessor trustee shall execute and deliver such instruments and do such other things as may reasonably be required for more fully and certainly vesting and confirming in the successor trustee all such rights, powers, duties and obligations. No successor trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 9.6. Upon acceptance of appointment by a successor trustee as provided in this Section, the Servicer shall mail notice of the succession of such trustee hereunder to all Holders of Certificates at their addresses as shown in the Certificate Register (such Certificate Register shall be provided to the Servicer by the Successor Trustee) and to each of the Rating Agencies. If the Servicer fails to mail such notice within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Servicer.

Section 9.9 Merger or Consolidation of Trustee. Any Person into which the Trustee may be merged or converted or with which it may be consolidated or any corporation or national banking association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or national banking association succeeding to the business of the trustee, shall be the successor of the Trustee hereunder, provided such corporation or national banking association shall be eligible under the provisions of Section 9.6, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.10 Appointment of Co-Trustee or Separate Trustee. (a) Notwithstanding any other provisions hereof, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Fund or property securing the same may at the time be located, the Servicer and the Trustee acting jointly shall

have the power and shall execute and deliver all instruments to appoint one or more Persons approved by the Trustee to act as co-trustee or co-trustees, jointly with the Trustee, or separate trustee or separate trustees, of all or any part of the Trust Fund, and to vest in such Person or Persons, in such capacity, such title to the Trust Fund, or any part thereof, and, subject to the other provisions of this Section 9.10, such powers, duties, obligations, rights and trusts as the Servicer and the Trustee may consider necessary or desirable. If the Servicer shall not have joined in such appointment within 15 days after the receipt by it of a request so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee alone shall have the power to make such appointment. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 9.6 hereunder and no notice to Holders of Certificates of the appointment of co-trustee(s) or separate trustee(s) shall be required under Section 9.8 hereof.

(b) In the case of any appointment of a co-trustee or separate trustee pursuant to this Section 9.10, all rights, powers, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed (whether as Trustee hereunder or as successor to the Servicer hereunder), the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Trust Fund or any portion thereof in any such jurisdiction) shall be exercised and performed by such separate trustee or co-trustee at the direction of the Trustee.

(c) Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article IX. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to all the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Trustee. Every such instrument shall be filed with the Trustee.

(d) Any separate trustee or co-trustee may, at any time, constitute the Trustee, its agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on its behalf and in its name. The Trustee shall not be responsible for any action or inaction of any such separate trustee or co-trustee, provided that the Trustee appointed such separate trustee or co-trustee with due care. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

Section 9.11 Retirement of Certificates. The Trustee shall, upon the retirement of the Certificates pursuant hereto or otherwise, furnish to the Certificate Insurer

a notice of such retirement, and, upon retirement of the Class A Certificates shall surrender the Certificate Insurance Policy to the Certificate Insurer for cancellation.

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ARTICLE X

REMIC Administration and Provisions

Section 10.1 REMIC Administration. (a) The Trust Fund shall elect that the Upper-Tier REMIC and the Lower-Tier REMIC shall be treated as REMICs under Section 860D of the Code. Such elections will be made on Form 1066 or other appropriate federal tax or information returns and any appropriate state returns for the taxable year ending on the last day of the calendar year in which the Certificates are issued. Any inconsistencies or ambiguities in this Agreement or in the administration of the Trust Fund shall be resolved in a manner that preserves the validity of such REMIC elections.

(b) The Class A Certificates, the Class B Certificates and the Class C Certificates are hereby designated as "regular interests" with respect to the Upper-Tier REMIC and the Class RU Certificates are hereby designated as the single class of "residual interest" with respect to the Upper-Tier REMIC. The Class LT1 and LT2 Certificates are hereby designated as "regular interests" with respect to the Lower-Tier REMIC and the Class RL Certificates are hereby designated as the single class of "residual interest" with respect to the Lower-Tier REMIC. The Trustee shall not permit the creation of any "interests" in the Trust Fund (within the meaning of Section 860G of the Code) other than the Upper-Tier and Lower-Tier REMIC regular interests and the interests represented by the Certificates.

(c) The beneficial ownership interest of the Lower-Tier REMIC shall be evidenced by the interests (the "Lower-Tier Interests") having the characteristics and terms as follows:

Class Designation	Companion Classes	Original Principal Balance	Interest Rate	Final Remittance Date
LT-1	A, C	$40,000,000.00	(1)	September 25, 2012
LT-2	B, C	1,071,834.00	(1)	September 25, 2012
RL	N/A	(2)	(2)	September 25, 2012

(1) The Weighted Average Mortgage Interest Rate, less 0.65%.
(2) The RL Certificate has no principal balance and does not bear interest.

The Lower-Tier Interests LT-1 and LT-2 shall be issued as non-certificated interests and recorded on the records of the Lower-Tier REMIC as being issued to and held by the Trustee on behalf of the Upper-Tier REMIC.

On each Payment Date, the Available Funds plus any Insured Payment amount shall be applied as principal and interest of particular Lower-Tier Interests, other than the RL Certificate, in amounts corresponding to the aggregate respective amounts required to be applied as principal and interest of their related Companion Classes (as set forth above) pursuant to the priorities set forth in Section 6.5 hereof.

No distributions will be made on the Class RL Certificate, except that any distribution of the proceeds of the final remaining assets of the Lower-Tier REMIC shall be distributed to the Holder thereof upon presentation and surrender of the Class RL Certificate.

(d) The Closing Date is hereby designated as the Startup Date of the Trust Fund within the meaning of Section 860G(a)(9) of the Code.

(e) The Trustee shall pay out of its own funds, without any right of reimbursement, any and all expenses relating to any tax audit of the Trust Fund (including, but nor limited to, any professional fees or any administrative or judicial proceedings with respect thereto that involved the Internal Revenue Service or state tax authorities), other than the expense of obtaining any tax related Opinion of Counsel not obtained in connection with such an audit and other than taxes, in either case except as specified herein; provided, however, that if such audit resulted from the negligence of the Servicer or the Depositor, then the Servicer or the Depositor, as the case may be, shall pay such expenses. The Trustee, as agent for the tax matters person, shall (i) act on behalf of the Trust Fund in relation to any tax matter or controversy involving the Trust Fund and (ii) represent the Trust Fund in any administrative or judicial proceeding relating to an examination or audit by any governmental taxing authority with respect thereto. The Holder of the largest Percentage Interest in the Residual Certificates of the related REMIC from time to time is hereby designated as Tax Matters Person with respect to the Trust Fund and hereby irrevocably appoints and authorizes the Trustee to act its agent to perform the duties of the Tax Matters Person with respect to the Trust Fund. To the extent authorized under the Code and the regulations promulgated thereunder, each Holder of a Residual Certificate hereby irrevocably appoints and authorizes the Trustee to be its attorney-in-fact for purposes of signing any Tax Returns required to be filed on behalf of the Trust Fund.

(f) The Trustee shall prepare or cause to be prepared, sign and file all of the Tax Returns in respect of the Trust Fund created hereunder, other than Tax Returns required to be filed by the Servicer pursuant to Section 5.24. The expenses of preparing and filing such returns shall be borne by the Trustee without any right of reimbursement therefor.

(g) The Trustee shall perform on behalf of the Trust Fund all reporting and other compliance duties that are the responsibility of the Trust Fund under the Code, the REMIC Provisions or other compliance guidance issued by the Internal Revenue Service or any state or local taxing authority. Among its other duties, as required by the Code, the REMIC Provisions or other such compliance guidance, the Trustee shall provide (i) to any Transferor of a Residual Certificate such information as is necessary for the application of any tax relating to the transfer of a Residual Certificate to any Person who is not a Disqualified Organization, (ii) to Certificateholders such information or reports as are required by the Code or the REMIC Provisions including reports relating to interest, original issue discount and market discount or premium (using the Prepayment Assumption) and (iii) to the Internal Revenue Service the name, title, address and telephone number of the person who will serve as the representative of the Trust Fund. In addition, the Depositor shall provide or cause to be provided to the Trustee, within ten (10) days after the Closing Date, all information or data that the Trustee reasonably determines to be relevant for tax purposes as to the valuations and issue prices of the Certificates, including, without

limitation, the price, yield, prepayment assumption and projected cash flow of the Certificates.

(h) The Trustee shall take such action and shall cause the Trust Fund created hereunder to take such action as shall be necessary to create or maintain the status of each of the Upper-Tier REMIC and the Lower-Tier REMIC as a REMIC under the REMIC Provisions (and the Servicer shall assist it, to the extent reasonably requested by the Trustee). The Trustee shall not take any action, cause the Trust Fund to take any action or fail to take (or fail to cause to be taken) any action that, under the REMIC Provisions, if taken or not taken, as the case may be, could (i) endanger the status of the Upper-Tier REMIC or the Lower-Tier REMIC as a REMIC or (ii) result in the imposition of a tax upon the Upper-Tier REMIC or the Lower-Tier REMIC (including but not limited to the tax on prohibited transactions as defined in Section 860F(a)(2) of the Code and the tax on contributions to a REMIC set forth in Section 860G(d) of the Code or the tax on net income from foreclosure property as defined in Section 860G(c) of the Code) (any such event, an "Adverse REMIC Event") unless the Trustee and the Certificate Insurer received an Opinion of Counsel (at the expense of the party seeking to take such action but in no event shall such Opinion of Counsel be an expense of the Trustee) to the effect that the contemplated action will not, with respect to the Upper-Tier REMIC or the Lower-Tier REMIC, endanger such status or result in an Adverse REMIC Event. The Servicer shall not take or fail to take any action (whether or not authorized hereunder) as to which the Trustee has advised it in writing that it has received an Opinion of Counsel (which such Opinion of Counsel shall not be an expense of the Trustee) to the effect that an Adverse REMIC Event could occur with respect to such action. In addition, prior to taking any action with respect to the Trust Fund or its assets, or causing the Trust Fund to take any action which is not expressly permitted under the terms of this Agreement, the Servicer will consult with the Certificate Insurer and with the Trustee or its designee, in writing, with respect to whether such action could cause an Adverse REMIC Event to occur with respect to the Upper-Tier REMIC or the Lower-Tier REMIC, and the Servicer shall not take any such action or cause the Trust Fund to take any such action as to which the Trustee or the Certificate Insurer has advised it in writing that an Adverse REMIC Event could occur. The Trustee may consult with counsel to make such written advice, and the cost of same shall be borne by the party seeking to take the action not permitted by this Agreement (but in no event shall such cost be an expense of the Trustee). At all times as may be required by the Code, the Trustee will ensure that substantially all of the assets of the Trust Fund will consist of "qualified mortgages" as defined in Section 860G(a)(3) of the Code and "permitted investments" as defined in Section 860G(a)(5) of the Code.

(i) In the event that any tax is imposed on "prohibited transactions" of the Upper-Tier REMIC or the Lower-Tier REMIC as defined in Section 860F(a)(2) of the Code, on "net income from foreclosure property" of the Upper-Tier REMIC or the Lower-Tier REMIC as defined in Section 860G(c) of the Code, on any contributions to the Upper-Tier REMIC or the Lower-Tier REMIC after the Startup Date therefor pursuant to Section 860G(d) of the Code, or any other tax is imposed by the Code or any applicable provisions of state or local tax laws, such tax shall be charged (i) to the Trustee pursuant to Section 10.3 hereof, if such tax arises out of or results from a breach by the Trustee of any of its obligations under this Article X, (ii) to the Servicer pursuant to Section 10.3 hereof, if such tax arises out of or results from a breach by the Servicer of any of its obligations under

Article V or this Article X, (ii) otherwise (iii) against amounts on deposit in the Certificate Account and shall be paid by withdrawal therefrom.

(j) On or before April 15 of each calendar year, commencing April 15, 1997, the Trustee shall deliver to the Servicer, the Certificate Insurer and each Rating Agency a Certificate from a Responsible Officer of the Trustee stating the Trustee's compliance with this Article X.

(k) The Servicer and the Trustee shall, for federal income tax purposes, maintain books and records with respect to the Upper-Tier REMIC or the Lower-Tier REMIC on a calendar year and on an accrual basis.

(l) The Trustee shall not accept any contributions of assets to the Trust Fund unless it and the Certificate Insurer shall have received an Opinion of Counsel (which such Opinion of Counsel shall not be an expense of the Trustee) to the effect that the inclusion of such assets in the Trust Fund will not cause the Upper-Tier REMIC or the Lower-Tier REMIC to fail to qualify as a REMIC at any time that any Certificates are outstanding or subject the Upper-Tier REMIC or the Lower-Tier REMIC to any tax under the REMIC Provisions or other applicable provisions of federal, state and local law or ordinances.

(m) Neither the Trustee nor the Servicer shall enter into any arrangement by which the Trust Fund will receive a fee or other compensation for services nor permit either the Upper-Tier REMIC or the Lower-Tier REMIC to receive any income from assets other than "qualified mortgages" as defined in Section 860G(a)(3) of the Code or "permitted investments" as defined in Section 860G(a)(5) of the Code.

(n) Solely for purposes of satisfying Section 1.860G-1(a)(4)(iii) of the Treasury Regulations, the "latest possible maturity date" by which the certificate principal balances of each Class of Certificates representing a regular interest in the Trust Fund would be reduced to zero is September 25, 2012, which is the Remittance Date one year following the latest scheduled maturity of any Mortgage Loan.

(o) Upon filing with the Internal Revenue Service, the Trustee shall furnish to the Holders of the Residual Certificates the Form 1066 and each Form 1066Q and shall respond promptly to written requests made not more frequently than quarterly by any Holder of Residual Certificates with respect to the following matters:

(A) the original projected principal and interest cash flows on the Closing Date on the regular and residual interests created hereunder and on the Mortgage Loans, based on the Prepayment Assumption;

(B) the projected remaining principal and interest cash flows as of the end of any calendar quarter with respect to the regular and residual interests created hereunder and the Mortgage Loans, based on the Prepayment Assumption;

(C) the Prepayment Assumption and any interest rate assumptions used in determining the projected principal and interest cash flows described above;

(D) the original issue discount (or, in the case of the Mortgage Loans, market discount) or premium accrued or amortized through the end of such calendar quarter with respect to the regular or residual interests created hereunder and with respect to the Mortgage Loans, together with each constant yield to maturity used in computing the same;

(E) the treatment of losses realized with respect to the Mortgage Loans or the regular interests created hereunder, including the timing and amount of any cancellation of indebtedness income of the REMIC with respect to such regular interests or bad debt deductions claimed with respect to the Mortgage Loans;

(F) the amount and timing of any non-interest expenses of the REMIC; and

(G) any taxes (including penalties and interest) imposed on the REMIC, including, without limitation, taxes on "prohibited transactions," "contributions" or "net income from foreclosure property" or state or local income or franchise taxes.

Section 10.2 Prohibited Transactions and Activities. Neither the Depositor, the Servicer nor the Trustee shall sell, dispose of, or substitute for any of the Mortgage Loans, except in connection with (i) the foreclosure of a Mortgage Loan, including but not limited to, the acquisition or sale of a Mortgaged Property acquired by deed in lieu of foreclosure, (ii) the bankruptcy of the Trust Fund, (iii) the termination of the Trust Fund pursuant to Article VIII of this Agreement, or (iv) a purchase of Mortgage Loans pursuant to Article II or III of this Agreement nor acquire any assets for the Trust Fund, nor sell or dispose of any investments in the Certificate Accounts for gain, nor accept any contributions to the Trust Fund after the Closing Date unless it and the Certificate Insurer has received an Opinion of Counsel (at the expense of the party seeking to cause such sale, disposition, substitution or acquisition but in no event shall such Opinion of Counsel be an expense of the Trustee) that such sale, disposition, substitution or acquisition will not (a) affect adversely the status of the Upper-Tier REMIC or the Lower-Tier REMIC as a REMIC or (b) cause the Upper-Tier REMIC or the Lower-Tier REMIC to be subject to a tax on "prohibited transactions" or "contributions" pursuant to the REMIC Provisions.

Section 10.3 Servicer and Trustee Indemnification. (a) The Trustee agrees to indemnify the Trust Fund, the Certificate Insurer, the Depositor and the Servicer for any taxes and costs (including, without limitation, any reasonably attorneys' fees) including without limitation, any reasonable attorneys' fees imposed on or incurred by the Upper-Tier REMIC, the Lower Tier REMIC, the Certificate Insurer, the Depositor or the Servicer, as a result of a breach of the Trustee's covenants set forth in this Article X.

(b) The Servicer agrees to indemnify the Trust Fund, the Certificate Insurer, the Depositor and the Trustee for any taxes and costs (including, without limitation, any reasonable attorneys' fees) imposed on or incurred by the Upper-Tier REMIC, the Lower-Tier REMIC, the Certificate Insurer, the Depositor or the Trustee, as a result of a breach of the Servicer's covenants set forth in this Article X or in Article V with respect to compliance with the REMIC Provisions, including, without limitation, any penalties arising from the

Trustee's execution of Tax Returns prepared by the Servicer pursuant to Section 5.24 that contain errors or omissions.

[Remainder of this page intentionally left blank]

ARTICLE XI

Miscellaneous Provisions

Section 11.1 Limitation on Liability of the Depositor and the Servicer. Neither the Depositor nor the Servicer nor any of the directors, officers, employees or agents of the Depositor or the Servicer shall be under any liability to the Trust, the Certificateholders or the Certificate Insurer for any action taken, or for refraining from the taking of any action, in good faith pursuant to this Agreement, or for errors in judgment; provided, however, that this provision shall not protect the Depositor or the Servicer or any such Person against any breach of warranties or representations made herein, or against any specific liability imposed on each such party pursuant to this Agreement or against any liability which would otherwise be imposed by reason of willful misfeasance, bad faith or negligence in the performance of duties or by reason of reckless disregard of obligations or duties hereunder. The Depositor or the Servicer and any director, officer, employee or agent of the Depositor or the Servicer may rely in good faith on any document of any kind which, prima facie, is properly executed and submitted by any appropriate Person respecting any matters arising hereunder. The Depositor, the Servicer and any director, officer, employee or agent of the Depositor or the Servicer shall be indemnified and held harmless by the Trust Fund against any loss, liability or expense incurred in connection with any legal action relating to this Agreement or the Certificates, with respect to the Servicer, other than any loss, liability or expense related to Servicer's servicing obligations with respect to any specific Mortgage Loan or Mortgage Loans (except as any such loss, liability or expense shall be otherwise reimbursable pursuant to this Agreement) or related to the Servicer's obligations under this Agreement, with respect to the Depositor, the Seller, or Servicer, as the case may be, or any loss, liability or expense incurred by reason of willful misfeasance, bad faith or negligence in the performance of duties hereunder or by reason of reckless disregard of obligations and duties hereunder. Neither the Depositor, nor the Servicer shall be under any obligation to appear in, prosecute or defend any legal action which is not incidental to its respective duties under this Agreement and which in its opinion may involve it in any expense or liability; provided, however, that the Depositor, or the Servicer may in its sole discretion undertake any such action which it may deem necessary or desirable with respect to this Agreement and the rights and duties of the parties hereto and the interests of the Certificateholders hereunder. In the event the Depositor or the Servicer take any action as described in the preceding sentence, the legal expenses and costs of such action, if previously approved by the Certificate Insurer, which approval shall not be unreasonably withheld, and any liability resulting therefrom will be expenses, costs and liabilities of the Trust Fund, and the Servicer or the Depositor, as the case may be, will be entitled to be reimbursed therefor out of funds in the Collection Account.

Section 11.2 Acts of Certificateholders; Certificateholders' Rights. (a) Except as otherwise specifically provided herein, whenever Certificateholder action, consent or approval is required under this Agreement, such action, consent or approval shall be deemed to have been taken or given on behalf of, and shall be binding upon, all Certificateholders if the Majority Certificateholders (with the consent of the Certificate Insurer, which consent shall not be unreasonably withheld) or the Certificate Insurer agrees to take such action or give such consent or approval.

(b) The death or incapacity of any Certificateholder shall not operate to terminate this Agreement or the Trust Fund, nor entitle such Certificateholder's legal representatives or heir to claim an accounting or to take any action or proceeding in any court for a partition or winding up of the Trust Fund, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

(c) No Certificateholder shall have any right to vote (except as expressly provided for herein) or in any manner otherwise control the operation and management of the Trust Fund, or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Certificates, be construed so as to constitute the Certificateholders from time to time as partners or members of an association; nor shall any Certificateholder be under any liability to any third person by reason of any action taken by the parties to this Agreement pursuant to any provision hereof or thereof.

Section 11.3 Amendment. (a) This Agreement may be amended from time to time by the Servicer, the Depositor and the Trustee by written agreement, upon the prior written consent of the Certificate Insurer (which consent shall not be unreasonably withheld), without notice to or consent of the Certificateholders to cure any ambiguity, to correct or supplement any provisions herein, to comply with any changes in the Code, or to make any other provisions with respect to matters or questions arising under this Agreement which shall not be inconsistent with the provisions of this Agreement; provided, however, that such action shall not, as evidenced by an Opinion of Counsel, at the expense of the party requesting the change, delivered to the Trustee and the Certificate Insurer, adversely affect in any material respect the interests of any Certificateholder; and provided, further, that no such amendment shall reduce in any manner the amount of, or delay the timing of, payments received on Mortgage Loans which are required to be distributed on any Certificate without the consent of the Holder of such Certificate, or change the rights or obligations of any other party hereto without the consent of such party. The Trustee shall give prompt written notice to Moody's and S&P of any amendment made pursuant to this Section 11.3 and shall promptly send copies of any such amendment to Moody's and S&P.

(b) This Agreement may be amended from time to time by the Servicer, the Depositor and the Trustee with the consent of the Certificate Insurer (which consent shall not be withheld if, in the Opinion of Counsel addressed to the Trustee and the Certificate Insurer, failure to amend would adversely affect the interests of the Certificateholders unless such consent would adversely affect the interests of the Certificate Insurer), the Majority Certificateholders for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Holders; provided, however, that no such amendment shall be made unless the Trustee and the Certificate Insurer receive an Opinion of Counsel, at the expense of the party requesting the change, that such change will not adversely affect the status of the Upper-Tier REMIC or the Lower-Tier REMIC as a REMIC or cause a tax to be imposed on such Upper-Tier REMIC or Lower-Tier REMIC; and provided, further, that no such amendment shall reduce in any manner the amount of, or delay the timing of, payments received on Mortgage Loans which are required to be distributed on any Certificate without the consent of the Holder of such Certificate or reduce the percentage for the Holders of which are required to

consent to any such amendment without the consent of Holders of 100% of Certificates affected thereby.

(c) It shall not be necessary for the consent of Holders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent shall approve the substance thereof.

Section 11.4 Recordation of Agreement. To the extent permitted by applicable law, this Agreement, or a memorandum thereof if permitted under applicable law, is subject to recordation in all appropriate public offices for real property records in all of the counties or other comparable jurisdictions in which any or all of the properties subject to the Mortgages are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by the Servicer at the Certificateholders' expense on direction and at the expense of Majority Certificateholders requesting such recordation, but only when accompanied by an Opinion of Counsel to the effect that such recordation materially and beneficially affects the interests of the Certificateholders or is necessary for the administration or servicing of the Mortgage Loans.

Section 11.5 Duration of Agreement. This Agreement shall continue in existence and effect until terminated as herein provided.

Section 11.6 Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given when delivered to (i) in the case of the Depositor, Preferred Mortgage SPC Funding Corp., 19782 MacArthur, Suite 260, Irvine, California 92715, Attention: Walter Villaume, President (ii) in the case of the Servicer, Advanta Mortgage Corp. USA, 16875 West Bernardo Drive, San Diego, California 92127, Attention: Senior Vice President Loan Servicing, (iii) in the case of the Seller, T.A.R. Preferred Mortgage Corporation, 19782 MacArthur, Suite 260, Irvine, California 92715, Attention: Walter Villaume, President, with an additional copy of such notice simultaneously delivered to the Servicer, (iv) in the case of the Trustee, Bankers Trust Company, 3 Park Plaza, 16th Floor, Irvine, California 92714, Attention: Preferred Mortgage Asset-Backed Certificates Series 1996-1, (v) in the case of the Certificateholders, as set forth in the Certificate Register, (vi) in the case of Moody's, 99 Church Street, New York, New York 10007 Attention: Home Equity Monitoring Department, (vii) in the case of S&P, 26 Broadway, New York, New York 10004 Attention: Residential Mortgage Surveillance Group, (viii) in the case of the Certificate Insurer, MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504, Attention: Insured Portfolio Management - SF, (ix) in the case of the Fiscal Agent, to State Street Bank and Trust Company, 61 Broadway, 15th Floor, New York, New York 10006, Attention: Municipal Registrar and Paying Agency (or such other address as the Fiscal Agent shall specify to the Trustee in writing) and (x) in the case of the Placement Agent, Merrill Lynch & Co., 250 Vesey Street, New York, New York 10281-1310, Attention: Michael McGovern. Any such notices shall be deemed to be effective with respect to any party hereto upon the receipt of such notice by such party, except that notices to the Certificateholders shall be effective upon mailing or personal delivery.

Section 11.7 Severability of Provisions. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held invalid for any reason whatsoever, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other covenants, agreements, provisions or terms of this Agreement.

Section 11.8 No Partnership. Nothing herein contained shall be deemed or construed to create a co-partnership or joint venture between the parties hereto and the services of the Servicer shall be rendered as an independent contractor and not as agent for the Certificateholders.

Section 11.9 Counterparts. This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed to be an original; such counterparts, together, shall constitute one and the same agreement.

Section 11.10 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the Certificateholders and their respective successors and permitted assigns.

Section 11.11 Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

Section 11.12 The Certificate Insurer Default. Any right conferred to the Certificate Insurer shall be suspended during any period in which a Certificate Insurer Default exists. At such time as the Certificates are no longer outstanding hereunder, and no amounts owed to the Certificate Insurer hereunder remain unpaid, the Certificate Insurer is no longer obligated under the Policy, the Certificate Insurer's rights hereunder shall terminate.

Section 11.13 Third Party Beneficiary. The parties agree that the Certificate Insurer is intended and shall have all rights of a third-party beneficiary of this Agreement.

Section 11.14 Intent of the Parties. It is the intent of the Depositor and Certificateholders that, for federal income taxes, state and local income or franchise taxes and other taxes imposed on or measured by income, the Certificates will be treated as evidencing beneficial ownership interests in a REMIC. The parties to this Agreement and the holder of each Certificate, by acceptance of its Certificate, and each beneficial owner thereof, agree to treat, and to take no action inconsistent with the treatment of, the Certificates in accordance with the preceding sentence for purposes of federal income taxes, state and local income and franchise taxes and other taxes imposed on or measured by income.

Section 11.15 GOVERNING LAW CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. (a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AS OPPOSED TO CONFLICT OF LAWS PROVISIONS) OF THE STATE OF NEW YORK.

(b) THE SERVICER, THE DEPOSITOR, THE SELLER AND THE TRUSTEE HEREBY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY, AND EACH WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY REGISTERED MAIL DIRECTED TO THE ADDRESS SET FORTH IN SECTION 11.6 HEREOF AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE DAYS AFTER THE SAME SHALL HAVE BEEN DEPOSITED IN THE U.S. MAILS, POSTAGE PREPAID. THE DEPOSITOR, THE SERVICER, THE SELLER AND THE TRUSTEE EACH HEREBY WAIVE ANY OBJECTION BASED ON FORUM NON CONVENIENS, AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF THE DEPOSITOR, THE SERVICER OR THE TRUSTEE TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT ANY OF THEIR RIGHTS TO BRING ANY ACTION OR PROCEEDING IN THE COURTS OF ANY OTHER JURISDICTION.

(c) THE DEPOSITOR, THE SERVICER, THE SELLER AND THE TRUSTEE EACH HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. INSTEAD, ANY DISPUTE WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

[End of Agreement.]

IN WITNESS WHEREOF, the Servicer, the Trustee, the Seller and the Depositor have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

PREFERRED MORTGAGE SPC FUNDING CORP., as Depositor

By:_____
Name: Todd A Rodriguez
Title: President

T.A.R. PREFERRED MORTGAGE CORPORATION, as Seller

By:_____
Name: Todd A. Rodriguez
Title: CEO

ADVANTA MORTGAGE CORP. USA, as Servicer

By:_____
Name: William P. Garland
Title:

BANKERS TRUST COMPANY, as Trustee

By:_____
Name: Michelle Lambott
Title: Assistant Vice President

IN WITNESS WHEREOF, the Servicer, the Trustee, the Seller and the Depositor have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

PREFERRED MORTGAGE SPC FUNDING CORP., as Depositor

By:_____
Name: Todd A. Rodriguez
Title: President

T.A.R. PREFERRED MORTGAGE CORPORATION, as Seller

By:_____
Name: Todd A. Rodriquez
Title: Chief Executive Officer

ADVANTA MORTGAGE CORP. USA, as Servicer

By:_____
Name: William P. Garland
Title: Senior Vice President

BANKERS TRUST COMPANY, as Trustee

By:_____
Name: Michelle Lambott
Title: Assistant Vice President

State of New York)
) ss.:
County of New York)

On the 20th day of June, 1996 before me, a Notary Public in and for the State of New York, personally appeared Todd A. Rodriguez, known to me to be President of Preferred Mortgage SFC Funding Corp., the corporation that executed the within instrument and also known to me to be the person who executed in on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunder to set my hand and affixed my official seal the day and year in this certificate first above written.

Mary Jane Constant
Notary Public

MARY JANE CONSTANT
Notary Public, State of New York
No. 01CO4950883
Qualified in New York County
Commission Expires Jan. 2, 1998

My Commission expires

ADV02530

343928.6

State of New York)
) ss.:
County of New York)

On the 20th day of June, 1996 before me, a Notary Public in and for the State of New York, personally appeared Todd A. Rodriguez, known to me to be Chief Executive Officer, of T.A.R. Preferred Mortgage Corporation, the corporation that executed the within instrument and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunder to set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

MARY JANE CONSTANT
Notary Public, State of New York
No. 01CO4960583
Qualified in New York County
Commission Expires Jan. 2, 1998

My Commission expires

State of California)
) ss.:
County of San Diego)

On the 20th day of June, 1996 before me, a Notary Public in and for the State of California, personally appeared William P. Garland, known to me to be a Senior Vice President, of Advanta Mortgage Corp. USA, the corporation that executed the within instrument and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunder to set my hand and affixed my official seal the day and year in this certificate first above written.

Susan C Keeh
Notary Public

SUSAN C. KEUH
Comm. # 1045657
NOTARY PUBLIC - CALIFORNIA
San Diego County
My Comm. Expires Nov. 27, 1998

My Commission expires 11/27/98

State of New York)
) ss.:
County of New York)

On the 20th day of June, 1996 before me, a Notary Public in and for the State of New York, personally appeared Michelle Lambott, known to me to be an Assistant Vice President, of Bankers Trust Company, the corporation that executed the within instrument and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunder to set my hand and affixed my official seal the day and year in this certificate first above written.

Mary Jane Constant

Notary Public

My Commission expires

MARY JANE CONSTANT
Notary Public, State of New York
No. 01CO4950683
Qualified in New York County
Commission Expires Jan. 2, 1998

ADV02533

343928.6

CERTIFICATE OF SERVICE

I, Karen B. Skomorucha, hereby certify that on June 27, 2011, I caused one copy of the foregoing document to be served upon the parties below in the manner indicated.

HAND DELIVERY
DRINKER BIDDLE & REATH LLP
ATTN: HOWARD A. COHEN
1100 NORTH MARKET STREET
SUITE 1000
WILMINGTON, DE 19801

FEDERAL EXPRESS
LATHAM & WATKINS LLP
ATTN: ROGER G. SCHWARTZ, AARON SINGER & CATHERINE M. MARTIN
885 THIRD AVENUE
NEW YORK, NY 10022

FEDERAL EXPRESS
DRINKER BIDDLE & REATH LLP
ATTN: ROBERT MALONE & MARITA S. ERBECK
500 CAMPUS DRIVE
FLORHAM PARK, NJ 07932

Karen B. Skomorucha (#4759)