

This SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) is made subject to approval by the Court, as defined herein, by and between Plaintiffs, Michael P. Gilmor, Shellie Gilmor, Michael Harris, Lois A. Harris, Leo E. Parvin, Jr., Debra Mooney, Derrick Rockett, Alethia Rockett, William Hudson, James Woodward, Kathleen Woodward, and Patricia Ann Worthy, (the “Named Plaintiffs”), as the proposed representatives of the “Wilmington Settlement Class,” as defined herein, and Defendant Wilmington Trust Company individually and/or as the former trustee, owner trustee, co-owner trustee, or indenture trustee of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, and Impac CMB Trust Series 2003-5 (collectively “Wilmington” or “Settling Defendant”). The Named Plaintiffs and Wilmington are collectively referred to as the “Parties.”

WHEREAS, the Named Plaintiffs are pursuing the civil action currently pending before the United States District Court for the Western District of Missouri (the “Court”), styled *Gilmor v. Preferred Credit Corporation*, Case No. 10-0189-CV-W-ODS (the “Litigation”); and

WHEREAS, the Named Plaintiffs are asserting claims against Preferred Credit Corporation (“PCC”), Wilmington and a number of other Defendants for alleged violations of the Missouri Second Mortgage Loans Act (“MSMLA”), Mo.Rev.Stat. §§ 408.231-408.241; and

WHEREAS, the Named Plaintiffs, among other things, seek to recover compensatory and punitive damages and other relief in the Litigation on their own behalf,

and on behalf of a class of persons similarly situated as a result of certain loan fees and interest amounts that the Named Plaintiffs contend PCC and Wilmington directly or indirectly charged, contracted for or received in connection with certain loans made to the Wilmington Settlement Class; and

WHEREAS, on January 2, 2003, the Circuit Court of Clay County, Missouri, the forum before which the Litigation was then pending, certified a litigation class comprised of those persons who obtained a Missouri second mortgage loan from PCC on or after June 27, 1994 and who paid or financed the payment of certain fees at or before the closing (the "Litigation Class"); and

WHEREAS, notice of the Litigation and certification order was thereafter provided to the Litigation Class, notifying the members of the Litigation Class of their right to opt out of the Litigation Class; and

WHEREAS, none of the Named Plaintiffs elected to opt out of and exclude themselves from the Litigation Class; and

WHEREAS, Wilmington denies the claims and causes of action being asserted against it in the Litigation, denies and disputes that it is in any way liable to the Named Plaintiffs, Wilmington Settlement Class, the "Non-Wilmington Plaintiff Borrowers," as defined herein, or the "Non-Settling Defendants," as defined herein, and denies any basis for the recovery of punitive damages from Wilmington; and

WHEREAS, counsel for the Named Plaintiffs and counsel for Wilmington independently represent that they have thoroughly investigated the facts relating to the claims alleged in the Litigation and the events and transactions underlying the Litigation, through formal and informal discovery, and have made a thorough study of the legal

principles applicable to the claims against Wilmington; and

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

WHEREAS, “Plaintiffs’ Counsel,” as defined herein, and “Counsel for Wilmington,” as defined herein, have engaged in arm’s length negotiations concerning the settlement of the claims and causes of action being asserted against Wilmington in the Litigation; and

WHEREAS, the Named Plaintiffs, on behalf of the Wilmington Settlement Class, and Plaintiffs’ Counsel have concluded that a settlement with Wilmington as stated herein will be fair, just, equitable, reasonable, adequate and in the best interests of the Named Plaintiffs and members of the Wilmington Settlement Class based upon their investigation, study, negotiations and discovery taken in the Litigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Litigation against Wilmington through trial, the delays and the risks and costs of further prosecution of the Litigation against Wilmington, the uncertainties of complex litigation, the benefits to be received pursuant to this “Settlement,” as defined herein, and the fact that the Named Plaintiffs, the Wilmington Settlement Class and/or the Non-Wilmington Plaintiff Borrowers may continue to pursue their claims on the “PCC Loans,” as defined herein, against PCC and the Non-Settling Defendants; and

WHEREAS, Wilmington desires to settle the claims being asserted against it in the Litigation on the terms and conditions set forth herein for the purpose of avoiding the

burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest all controversies that have been or could be raised against Wilmington in the Litigation; and

WHEREAS, the Parties acknowledge and agree that this Agreement constitutes a compromise in settlement of the claims and causes of action that have been or might be raised as to the “PCC-Wilmington Loans,” as defined herein, by the Named Plaintiffs and the Wilmington Settlement Class against Wilmington and the other “Released Persons,” as defined herein, but shall in no way release or affect the existing or future claims, causes of action, remedies, and/or rights to relief of (1) the Named Plaintiffs or other members of the Litigation Class against any person, association or entity other than Wilmington and other Released Persons; (2) the Non-Wilmington Plaintiff Borrowers; and (3) any members of the Wilmington Settlement Class who timely exclude themselves from the Settlement.

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

**1. Denial of Liability; No Admissions**

The Parties are entering into this Agreement for the sole purpose of resolving

vigorously disputed claims that have arisen between them and in the interest of avoiding the burdens, expense, and risk of further litigation. By entering into any preliminary settlement discussions, agreeing to the terms of this Agreement, or seeking the approval of this Settlement, the Parties are not making any admissions or concessions, whatsoever, with respect to any claims or defenses alleged or asserted, or any factual or legal assertions in the Litigation. Neither this Agreement nor any of its terms or provisions nor any of the negotiations between the Parties or their counsel shall be construed as an admission or concession by any of the Parties or their counsel of anything whatsoever, including but not limited to: any alleged violation or breach of contract or duty, any alleged fraud, misrepresentation or deception, or any alleged violation of any federal, state, or local law, rule, regulation, statute, guideline or legal requirement (or any other applicable law, rule, regulation, statute, guideline or legal requirement); the merits of any defenses that Wilmington asserted; or the propriety of class certification of the Wilmington Settlement Class if the Litigation were to be litigated rather than settled. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish: (a) any liability or admission on the part of Wilmington or its respective parent or subsidiary companies, or to establish the existence of any condition constituting a violation of or non-compliance with any federal, state, local or other applicable law, rule, regulation, statute, guideline or other legal requirement; (b) the truth or relevance of any fact alleged by Named Plaintiffs; (c) the existence of any class alleged by Named Plaintiffs; (d) the propriety of class certification if the Litigation were to be litigated rather than settled; (e) the validity of any claim or

any defense that has been or could have been asserted in the Litigation or in any other litigation; (f) that the consideration to be given to the Wilmington Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial; or (g) the propriety of class certification in any other proceeding or action. The Parties expressly agree that, in the event the Settlement does not become final and effective in accordance with Paragraph 13 hereof, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Agreement, or any effort to seek approval of the Agreement, to affect or prejudice any other Party's procedural or substantive rights in any ensuing litigation. Wilmington expressly reserves all procedural and substantive rights and defenses to all claims and causes of action and does not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

## **2. Definitions**

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

2.1. **Agreement.** "Agreement" is defined in the preamble of this Agreement.

2.2. **Class Counsel.** "Class Counsel" shall have the same meaning as "Plaintiffs' Counsel," defined herein.

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

2.4. **Counsel for Wilmington.** "Counsel for Wilmington" means Dorsey and Whitney LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402 and Polsinelli

Shughart, P.C., 1700 Twelve Wyandotte Plaza, 120 West 12th Street, Kansas City, Missouri 64105-1929.

2.5. **Court.** “Court” is defined in the WHEREAS clauses of this Agreement.

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

2.7. **Escrow Agent.** “Escrow Agent” is defined in Paragraph 4.b of this Agreement.

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

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

2.10. **Impac Defendants.** “Impac Defendants” means Impac Mortgage Holdings, Inc., IMH Assets Corporation, Impac Funding Corporation, Impac Secured Assets Corporation, Wingspan Portfolio Advisors, LLC and any and all joint or respective officers, directors, trustees, agents, parents, subsidiaries, related companies, predecessors, successors and assigns of each such Impac Defendant.

2.11. **Impac Trusts.** “Impac Trusts” means the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, and Impac CMB Trust Series 2003-5.

2.12. **Wilmington.** “Wilmington” is defined in the preamble to this Agreement.

2.13. **Wilmington Settlement Class.** “Wilmington Settlement Class” shall have the meaning set forth in Paragraph 3.a below.

2.14. **Wilmington Settlement Class Member.** “Wilmington Settlement Class Member” means any member of the Wilmington Settlement Class who does not timely opt out of the Settlement pursuant to Paragraph 9.a below. If a Wilmington Settlement Class Member has died or otherwise voluntarily or involuntarily transferred his or her rights under a PCC-Wilmington Loan, such Class Member’s heir, representative, successor or assign shall also be deemed to be a Wilmington Settlement Class Member. If a Wilmington Settlement Class Member filed for bankruptcy after obtaining his or her PCC-Wilmington Loan, then the bankruptcy trustee shall also be deemed an additional Wilmington Settlement Class Member as to the debtor Class Member’s particular loan; provided, however, that only one “Wilmington Settlement Class Member Payment” shall be made for any such debtor and trustee Wilmington Settlement Class Members.

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

2.16. **Litigation.** “Litigation” is defined in the WHEREAS clauses of this Agreement.

2.17. **Litigation Class.** “Litigation Class” is defined in the WHEREAS clauses of this Agreement.

2.18. **MSMLA.** “MSMLA” is defined in the WHEREAS clauses of this



Agreement.

2.19. **Named Plaintiffs.** “Named Plaintiffs” is defined in the preamble of this Agreement.

2.20. **Net Distributable Settlement Amount.** “Net Distributable Settlement Amount” means the “Net Settlement Amount” less: (a) the amount of any award for attorney’s fees or attorney compensation approved by the Court and awarded to Plaintiffs’ Counsel; and (b) any interest earned and attributable to the amount of such award while in escrow.

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

2.22. **Non-Wilmington Plaintiff Borrower.** “Non-Wilmington Plaintiff Borrower” means the members of the Litigation Class certified by the Clay County Court in the Litigation who obtained a PCC Loan that was not a “PCC-Wilmington Loan” including, but not limited to Ted Varns, Raye Ann Varns, Mark Shipman, Thomasina Shipman, William Jones, Marion Jones, Bruce James, Mary James, Kevin Schaefer, Susan Schaefer, David Warkentien, Nicole Warkentien, John Rumans, Jeanne Rumans, Jeffrey Weathersby, Joseph Black and Amy Black, each of whom is also a named plaintiff in the Litigation.

2.23. **Non-Settling Defendants.** “Non-Settling Defendants” means (a) PCC; (b) Advanta Mortgage Corporation, its predecessors, successors and assigns; (c)

JPMorgan Chase Bank, NA, individually and/or as the successor to The Chase Manhattan Bank, Chase Manhattan Mortgage Corporation or any other entity, as the purchaser, assignee, owner, holder and/or trustee of any PCC Loans and/or as the servicer and/or master servicer of any PCC Loans; (d) JPMorgan Chase Bank, N.A. as successor by merger to Chase Home Finance, LLC as the servicer or master servicer of any PCC loans; (e) EMC Mortgage Corporation; (f) Credit Suisse First Boston Mortgage Securities Corporation; (g) Deutsche Bank Trust Company Americas, formerly known as Bankers Trust Company, individually and in its capacities as trustee of the Preferred Mortgage Trust 1996-1, Preferred Mortgage Trust 1996-2, and Preferred Credit Trust 1997-1; (h) Preferred Mortgage Trust 1996-1, Preferred Mortgage Trust 1996-2, and Preferred Credit Trust 1997-1; (i) the Impac Defendants; (j) Defendant Deutsche Bank National Trust Company (f/k/a Bankers Trust of California N.A.), individually and in its capacities as indenture trustee of the Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5, and Impac Real Estate Asset Trust Series 2006-SD1; (k) Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5, and Impac Real Estate Asset Trust Series 2006-SD1; (l) Countrywide Home Loans, Inc. and BAC Home Loans Servicing, L.P.; (m) the Impac CMB Trust Series 1999-1 trust; (n) Bank of America, N.A., as successor by merger to LaSalle National Bank in its capacity as former trustee for Impac CMB Trust Series 1999-1; (o) Wells Fargo Bank, N.A. (f/k/a Wells Fargo Bank, MN, NA or Norwest Bank Minnesota, National Association), individually

and/or as trustee, owner trustee, co-owner trustee, or indenture trustee of the Impac CMB Trust Series 2000-1; (p) Impac CMB Trust Series 2000-1; (q) Litton Loan Servicing, L.P.; (r) any other current and/or former defendant named in the Litigation (other than the Settling Defendant with respect to the PCC-Wilmington Loans) including, without limitation, Defendants Wells Fargo Bank, N.A. (including any predecessor or other companies acquired or merged into Wells Fargo), Wendover Financial Services Corporation, Sovereign Bank, United Mortgage CB, LLC, and the joint or respective officers, directors, trustees, agents, parents, subsidiaries, affiliates, related companies, predecessors, successors and assigns of each such defendant; (s) any person, association or entity to whom any of the loans of any of the Non-Wilmington Plaintiff Borrowers were sold, assigned or otherwise transferred or conveyed; (t) any person, association or entity that purchased, was assigned or owned and/or held or serviced any of the loans of any of the Non-Wilmington Plaintiff Borrowers; or (u) any other person, association or entity who is not a Released Person as defined in Paragraph 2.33.

2.24. **Notice of Objection.** “Notice of Objection” is defined in Paragraph 9.d of this Agreement.

2.25. **Parties/Party.** “Parties/Party” is defined in the preamble of this Agreement.

2.26. **PCC.** “PCC” means Defendant Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation) as identified in the Seventh Amended Complaint in the Litigation.

2.27. **PCC Loan.** “PCC Loan” means any “Second Mortgage Loan,” as defined in § 408.231.1 RSMo, secured by a mortgage or a deed of trust on residential real

property located in the state of Missouri, that was originated by PCC on or after June 27, 1994.

2.28. **PCC-Wilmington Loan.** “PCC-Wilmington Loan” means any PCC Loan that was purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by the Settling Defendant or any of the Impac Trusts.

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

2.30. **Preliminary Approval Order.** “Preliminary Approval Order” means an Order of the Court preliminarily approving the Settlement, conditionally or preliminarily certifying a class for settlement purposes, directing the issuance of a class notice and scheduling a settlement hearing in accordance with Fed.R.Civ.P. 23, in a form substantially similar to that attached hereto as **Exhibit B**.

2.31. **Qualified Settlement Fund.** “Qualified Settlement Fund” is defined in Paragraph 4.c

2.32. **Released Claims.** “Released Claims” means any and all claims, demands, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, liens, costs, surcharges, losses, attorney’s fees, expenses or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential or punitive damages, as well as any and all claims for compensatory, punitive or treble damages, penalties, attorney’s fees, costs or expenses, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent

or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, relate to, or arise out of the PCC-Wilmington Loans and which any one or more of the Releasers have had, or now have against the Released Persons, as defined in Paragraph 2.33, from the beginning of time up through and including the Effective Date (“Claims”), including but not limited to, any and all Claims arising out of or relating to: (1) allegations that are or could have been asserted against the Released Persons in the Litigation in any way relating to the Wilmington Settlement Class Members’ PCC-Wilmington Loans; (2) any activities of the Released Persons with respect to the PCC-Wilmington Loans including, without limitation, any alleged representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act, deceptions, acts of unconscionability, unfair business practices, breaches of contract, usury, unfulfilled promises, breaches of warranty or fiduciary duty, conspiracy, excessive fees collected, or violations of any consumer protection statute, any state unfair trade practice statute, or any other body of case, statutory or common law or regulation, federal or state, including but not limited to the Missouri Second Mortgage Loans Act, Mo.Rev.Stat. § 408.231, *et seq.*, or any other similar state statute; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, 12 C.F.R. part 226; the Home Ownership and Equity Protection Act, 15 U.S.C. §§ 1639, *et seq.*, and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, *et seq.*, and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801, *et seq.*, and its implementing regulation, 12

C.F.R. part 203; the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.*; and the Federal Trade Commission Act, 15 U.S.C. §§ 45, *et seq.*; and/or (3) any conduct undertaken by any of the Released Persons to defend the Litigation, including but not limited to, any alleged improper discovery conduct and/or any request for sanctions in this Litigation. It is the intention of the Releasers to provide a general release of the Released Claims against the Released Persons; provided, however, that anything in this Agreement to the contrary notwithstanding, the term Released Claims does not include: (1) any claims of any kind or type of the Releasers against any person, association or entity that is not a Released Person, whether such claims arise out of or relate to PCC-Wilmington Loans or some other conduct, transaction, loan or occurrence; (2) any claims of any kind or type of the Releasers against any person, association or entity in connection with a loan and/or loan transaction originated or made by a person, association or entity other than PCC, notwithstanding the fact that the loan, in whole or in part, was purchased by, assigned or conveyed to, or otherwise owned and/or held by Wilmington; (3) any claims of any kind or type by any Non-Wilmington Plaintiff Borrower with respect to the PCC Loans; and/or (4) any claims of any kind or type against Wilmington or any other entity, as the purchaser, assignee, owner, holder and/or trustee of a PCC Loan other than the PCC-Wilmington Loans and/or as the servicer and/or master servicer of any PCC Loans other than the PCC-Wilmington Loans.

2.33. **Released Persons.** “Released Persons” shall mean the following: (a) Wilmington, individually and together with all of its parent companies and subsidiaries,

and each of Wilmington's respective past and present officers, directors, shareholders, employees, attorneys (including consultants hired by counsel), accountants, insurers, heirs, executors, and administrators, and each of its respective affiliates, predecessors, successors, and assigns and includes Wilmington Trust Company individually and/or as the former trustee, owner trustee, co-owner trustee, or indenture trustee of any of the Impac Trusts; and (b) any person, association, or entity to whom any of the Impac Trusts sold, assigned, or conveyed PCC-Wilmington Loans and any subsequent purchaser or assignee of those loans. Notwithstanding anything in this Agreement to the contrary, the term "Released Persons" does not include any of the Non-Settling Defendants as defined in Paragraph 2.23 above.

2.34. **Releasers.** "Releasers" means the Named Plaintiffs and the other Wilmington Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The Releasers shall not include any of the following: (a) any members of the Wilmington Settlement Class who timely opt out of the Settlement in accordance with Paragraph 9 below; (b) any persons not identified on **Exhibit D, attached**, other than the heirs, representatives, successors, assigns, or bankruptcy trustees that are members of the Wilmington Settlement Class pursuant to Paragraph 3.a.; or (c) the Non-Wilmington Plaintiff Borrowers. It is understood that the releases to be given by the "Releasers," as defined herein, shall only release the Released Persons from the Released Claims, and nothing more, as provided herein.

2.35. **Settlement.** "Settlement" means the compromise in settlement memorialized by this Agreement.

2.36. **Settlement Amount.** “Settlement Amount” means the amounts to be delivered by Wilmington in accordance with Paragraph 4.a below.

2.37. **Settlement Fund Administrator.** “Settlement Fund Administrator” means the person who shall serve as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation 1.468B-2(k)(3).

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

2.39. **Settlement Opt Outs.** “Settlement Opt Outs” is defined in Paragraph 4.d of this Agreement.

2.40. **Settlement Payment.** “Settlement Payment” is defined in Paragraph 4.a of this Agreement.

2.41. **Settlement Payment Date.** “Settlement Payment Date” is defined in Paragraph 4.b of this Agreement.

### **3. Certification of the Wilmington Settlement Class**

a. The Named Plaintiffs and Plaintiffs’ Counsel shall file a motion requesting that the Court approve a settlement for a class of persons for purposes of settlement only (referred to and defined herein as the “Wilmington Settlement Class”), defined as follows:

All persons who, on or after June 27, 1994, obtained a “Second Mortgage Loan,” as defined in Mo.Rev.Stat. § 408.231.1, that was secured in whole or in part by a mortgage or a deed of trust on residential real property located in the state of Missouri, that was originated by Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation), and that was purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by Wilmington Trust Company or by any of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB



Trust Series 2003-5, and who did not timely exercise their right and option to opt out and exclude themselves from the litigation class that the Circuit Court of Clay County, Missouri certified on January 2, 2003, in *Gilmor v. Preferred Credit Corporation*, Case No. CV100-4263-CC.

If a member of the Wilmington Settlement Class has died or otherwise voluntarily or involuntarily transferred his or her rights under a PCC-Wilmington Loan, such member's heir, representative, successor or assign shall also be deemed to be the member of the Wilmington Settlement Class. If a member of the Wilmington Settlement Class filed for bankruptcy after obtaining his or her PCC-Wilmington Loan, then the bankruptcy trustee shall also be deemed to be a member of the Wilmington Settlement Class Member as to the debtor Class Member's particular loan.

b. A list of all members of the Wilmington Settlement Class, other than the heirs, representatives, successors, assigns, or bankruptcy trustees that are members of the Wilmington Settlement Class pursuant to the preceding Paragraph, is attached hereto as **Exhibit D**, but said Exhibit shall be filed under seal with the Court pursuant to the terms of the Stipulated Protective Order entered July 30, 2009, to protect the private information of the Wilmington Settlement Class.

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

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

**4. Settlement Consideration and Distribution of the Settlement Amount to the Wilmington Settlement Class Members**

a. The cash settlement consideration to be paid by Wilmington to the Wilmington Settlement Class Members is a cash payment of \$800,000.00 (the "Settlement Payment").

b. Within five (5) business days after entry of the Final Judgment and receipt by Counsel for Wilmington in writing of appropriate wiring instructions and a completed W-9 Tax Form from Plaintiffs' Counsel (the "Settlement Payment Date"),

Wilmington shall wire at its own expense the Settlement Payment to an interest-bearing escrow account that the Parties shall establish pursuant to mutually agreeable terms at Missouri Bank & Trust, 1044 Main Street, Kansas City, Missouri (the “Escrow Agent”). All interest earned on the Settlement Payment while in escrow shall be added to and included within the definition of Settlement Payment, the allocable share of which shall be paid to the persons identified on **Schedule A** in proportion to his, her or their share of the Net Distributable Settlement Amount. The Settlement Payment, including any interest earned in escrow, shall be returned to Wilmington if the Settlement is rescinded, terminated, vacated, or the Effective Date does not arrive for any other reason. The Settlement Payment while in the escrow account shall be invested in a manner that generates the highest return that can be obtained without risk to the principal. Plaintiffs’ Counsel will be solely responsible for managing the investment of the Settlement Payment while in escrow.

c. The Parties’ escrow agreement shall provide that the Settlement Payment and any interest thereon will be transferred to an account at Missouri Bank and Trust (the “Qualified Settlement Fund”) upon the delivery of Plaintiffs’ Counsel’s Certification Letter. Class Counsel shall establish the Settlement Fund on or before the Effective Date, subject to subsequent funding in accordance with this Agreement and the escrow agreement between the Parties. The Parties intend that this account will qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code of 1986, as amended (the “Code”), that the Qualified Settlement Fund shall be established, operated and managed in accordance with Treasury Regulations Sections 1.468B-1 to 1.468B-5, and that all transfers of cash or property to or from the Qualified Settlement

Fund shall be made in compliance with such Treasury Regulations. Plaintiffs, Plaintiffs' Counsel, Wilmington and Wilmington's Counsel acknowledge and agree that Wilmington, not the Escrow Agent, is the Transferor of the Settlement Payment within the meaning of 26 CFR §1.468B-1(d)(1). The Settlement Fund Administrator shall make all payments required to be made to Class Counsel, the Named Plaintiffs and Class Members pursuant to the terms of this Agreement, pay all taxes imposed on the income of the Qualified Settlement Fund, and arrange for the preparation and filing of all tax reports, tax forms and tax returns required to be filed by the Qualified Settlement Fund, including all Forms 1099. All taxes on the income of the Qualified Settlement Fund, and all costs and expenses related to the opening, operation, management and closing of the Qualified Settlement Fund, shall be paid solely out of the Qualified Settlement Fund. All distributions from the Qualified Settlement Fund shall be made by the Settlement Fund Administrator in accordance with the terms of this Agreement. Wilmington has no responsibility for or liability with respect to the investment, allocation or distribution of funds of the Qualified Settlement Fund; the determination, administration, calculation, or payment of claims or distributions from the Qualified Settlement Fund; the payment or withholding of any taxes or the filing of any tax returns, forms or notices with respect to the income of or distributions from the Qualified Settlement Fund. Wilmington shall supply to the Settlement Fund Administrator the statement described in Treasury Regulation Section 1.468B-3(e)(2), 26 C.F.R. § 1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which Wilmington makes a transfer to the Qualified Settlement Fund. The Settlement Fund Administrator, subject to such supervision and direction of the Court as may be necessary, shall be solely responsible

for and shall administer and oversee the distribution of the Settlement Payment, Net Settlement Amount, and Net Distributable Settlement Amount in accordance with the terms of this Agreement and **Schedule A**, which shall be filed under seal with the Court pursuant to the terms of the Stipulated Protective Order to protect the privacy of the members of the Wilmington Settlement Class.

d. If any member(s) of the Wilmington Settlement Class timely opt out and exclude themselves from the Settlement (the “Settlement Opt Out(s)”), the name(s) of the “opt out” class member(s) shall be removed from **Schedule A** and the portion of the Net Distributable Settlement Amount attributable to said “opt outs” shall remain a part of the Net Distributable Settlement Amount and will be reallocated to the Wilmington Settlement Class Members pro rata. The Parties shall submit any required revisions to **Schedule A** to the Court under seal prior to the Final Hearing Date.

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

f. Upon release of the Settlement Payment by the Escrow Agent to the Qualified Settlement Fund, the Settlement Fund Administrator shall calculate the Net Settlement Amount and Net Distributable Settlement Amount based on the amount of the total resulting Settlement Amount. As soon as practicable after the Settlement Payment is released to the Qualified Settlement Fund, the Settlement Fund Administrator shall: (1) distribute to the Named Plaintiffs the amount of any incentive award approved by the Court pursuant to Paragraph 5.a. of this Agreement and any interest attributable to said

amount while in escrow; (2) distribute to Plaintiffs' Counsel the amount of any award of litigation expenses and/or costs approved by the Court pursuant to Paragraph 5.b. of this Agreement and any interest attributable to said amount while in escrow; and (3) distribute to Plaintiffs' Counsel the amount of any award of attorney's fees approved by the Court pursuant to Paragraph 5.c. of this Agreement and any interest attributable to said amount while in escrow. In addition, the Settlement Fund Administrator shall distribute the Net Distributable Settlement Amount, plus any interest earned on said Net Settlement Amount while in escrow, to the Wilmington Settlement Class Members (i.e., those members of the Wilmington Settlement Class, if any, who did not timely opt out) in the amounts and to the addresses shown on **Schedule A**, or as the Court may otherwise determine and approve. Such distributions to the Wilmington Settlement Class Members are the Wilmington Settlement Class Member Payments. The Settlement Fund Administrator shall distribute the Wilmington Settlement Class Member Payments to the Wilmington Settlement Class Members within 30 days of the Effective Date by checks mailed to the Wilmington Settlement Class Members or, in the event of a Wilmington Settlement Class Member bankruptcy under Chapter 7, to the Chapter 7 bankruptcy trustee for said Wilmington Settlement Class Member, with notice of said mailing to said Wilmington Settlement Class Member. The Settlement Fund Administrator will re-mail any returned checks to any new address disclosed. To the extent any check is returned a second time, the Settlement Fund Administrator shall undertake reasonable efforts to locate a current address for said Wilmington Settlement Class Member. If any Wilmington Settlement Class Member refuses to accept receipt of a Wilmington Settlement Class Member Payment check, or does not cash a Wilmington Settlement

Class Member Payment check within 30 days of receipt, the Settlement Fund Administrator shall undertake reasonable efforts to locate and/or contact the Wilmington Settlement Class Member and inquire about receiving and/or cashing the check. Within 210 days of the Effective Date, the Settlement Fund Administrator shall file a report with the Court confirming that the entirety of the Net Distributable Settlement Amounts/ Wilmington Settlement Class Member Payments was distributed to the Wilmington Settlement Class Members pursuant to the original or any revised **Schedule A** and checks cashed or, if such a confirmation cannot be provided, outlining the steps that remain to distribute any unclaimed portion of the Net Distributable Settlement Amounts to the Wilmington Settlement Class Members. The Settlement Fund Administrator shall reallocate the amounts of any unclaimed checks to the paid Wilmington Settlement Class Members pro rata based on their allocable share of their total paid distributions of claimed checks at such time as the Settlement Fund Administrator determines appropriate in its sole discretion, but which in any event shall be prior to the expiration of any period of escheatment.

g. The Settlement Fund Administrator shall be responsible for preparing, filing and addressing any requisite IRS Form 1099s. Wilmington Settlement Class Members shall be responsible for any taxes due or any tax liability arising out of the distribution of the Settlement Amount.

h. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to or arising out of the investment, allocation or distribution of the Settlement Amount to the Wilmington Settlement Class Members, the determination, administration, calculation, or payment of claims, the payment or

withholding of taxes, or any losses incurred in connection therewith.

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

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

**5. Incentive Award and Attorney's Fees and Costs**

a. The Named Plaintiffs may petition the Court for the payment of an incentive award in a total amount not to exceed the respective amounts stated on **Schedule B** for the Named Plaintiffs in recognition of services rendered for the benefit of the Wilmington Settlement Class in connection with the Litigation. The amount of any incentive award approved by the Court, and any interest attributable to said amount while in escrow, shall be deducted from the Settlement Amount to determine the Net Settlement Amount from which any award of attorney's fees to Plaintiffs' Counsel shall be deducted before the balance is distributed to the Wilmington Settlement Class Members as the Net Distributable Settlement Amount in accordance with Schedule A. Wilmington will not object to the Named Plaintiffs applying to the Court for and/or receiving an incentive award in the above-stated amount. To the extent the Court approves an incentive award in an amount less than the not to exceed amount stated



above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Amount.

b. Plaintiffs' Counsel and/or the Named Plaintiffs may petition the Court for an award of litigation expenses and/or court costs not to exceed \$16,372.88. The amount of any such award, and any interest attributable to said amount(s) while in escrow, shall also be deducted from the Settlement Amount to determine the Net Settlement Amount from which any award of attorney's fees to Plaintiffs' Counsel shall be deducted before the balance is distributed to the Wilmington Settlement Class Members as the Net Distributable Settlement Amount in accordance with Schedule A. Wilmington will not object to Plaintiffs' Counsel and/or the Named Plaintiffs applying to the Court for, and receiving, an award of expenses and/or costs in the above amount. To the extent the Court awards expenses and/or costs in an amount that is less than the not to exceed amount stated above, the difference and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Amount.

c. Plaintiffs' Counsel and/or the Named Plaintiffs may also petition the Court for an award of attorney's fees not to exceed forty-five percent (45%) of the Net Settlement Amount, which award of attorney's fees is estimated to be \$342,732.20 if the Court approves the award as will be proposed. The amount of any such fee award approved by the Court, and any interest attributable to said amount while in escrow, shall be deducted from the Net Settlement Amount to determine the Net Distributable Settlement Amount and the individual Wilmington Settlement Class Member Payments. Wilmington will not object to Plaintiffs' Counsel and/or the Named Plaintiffs applying to

the Court for, and receiving, an award of attorney's fees in the above amount. To the extent the Court awards attorney's fees in an amount that is less than the not to exceed amount stated above, the difference and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Distributable Settlement Amount.

d. Except as provided in this Paragraph 5, each Party shall bear its own attorney's fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Litigation, and specifically, without limitation, Wilmington shall bear no other attorney's fees, court costs or expenses.

**6. Releases**

a. On the Effective Date, in exchange for the agreement by Wilmington to make available and pay the Settlement Amount pursuant to the terms and conditions of this Agreement, and for other good and valuable consideration, Releasors, by operation of this Release, the Final Approval Order, and Final Judgment, shall be deemed without further action by any person or the Court (i) to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the Released Persons of and from any and all Released Claims; (ii) to have consented to dismiss with prejudice the Released Claims of the Releasors against the Released Persons in the Litigation; and (iii) to be forever barred and enjoined from instituting or further prosecuting in any forum whatsoever including, but not limited to, any state, federal, or foreign court, or regulatory agency, the Released Claims. The Parties agree that the Released Persons will suffer irreparable harm if any Wilmington Settlement Class Member takes action inconsistent with this Paragraph 6.a, and that, in such event, the

Released Persons may seek an injunction as to such action without further showing of irreparable harm.

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

c. Subject to Court approval, each Wilmington Settlement Class Member shall be bound by this Agreement and all of their claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Litigation or the Settlement in the form of the Class Mail Notice or otherwise. The releases and agreements contained in this Paragraph 6 shall apply to and bind all Wilmington Settlement Class Members, including those Wilmington Settlement Class Members whose Class Mail Notices are returned as undeliverable, and those for whom no current address can be found, if any.

**7. Representations and Stipulations**

a. Wilmington represents, warrants and declares that (i) it has no independent knowledge or information regarding the identity of the members of the

Wilmington Settlement Class and has no loan documents or loan payment and payoff information on which the distribution of the individual Wilmington Settlement Class other than the documents and information produced by other parties in the Litigation; and (ii) it is not aware of any members of the Wilmington Settlement Class who have not been identified on **Exhibit D** other than the heirs, representatives, successors, assigns, or bankruptcy trustees that are members of the Wilmington Settlement Class pursuant to Paragraph 3.a.

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

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

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

Loans.

iii. Use of Discovery Information. The Parties agree to comply with the terms of the Stipulated Protective Order entered July 30, 2009, except as the Parties have previously agreed or may hereafter agree in writing.

c. Plaintiffs' Counsel represent and warrant to Wilmington that they have acted in good faith in obtaining and analyzing information identifying the members of the Wilmington Settlement Class and are not aware of any members of the Wilmington Settlement Class who have not been identified on **Exhibit D** other than the heirs, representatives, successors, assigns, or bankruptcy trustees that are members of the Wilmington Settlement Class pursuant to Paragraph 3.a. Plaintiffs' Counsel further represent and warrant to Wilmington that they have not been informed of any intention on the part of any member of the Wilmington Settlement Class to opt out of the Settlement and that they have not been retained by any existing client or contacted by any potential client to commence a new lawsuit or pursue any claims or right of relief against Wilmington or other Released Persons with respect to any of the Released Claims. In addition, Plaintiffs' Counsel agree that they will not solicit any member or members of the Wilmington Settlement Class who opt(s) out of the Wilmington Settlement Class and Settlement with respect to the Released Claims.

**8. Preliminary Approval Order**

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

a. Certifying the proposed Wilmington Settlement Class pursuant to Fed.R.Civ.P. 23 for settlement purposes;

- b. Preliminarily approving the Agreement as fair, reasonable and adequate under Fed.R.Civ.P. 23 subject to a final determination by the Court;
- c. Approving the appointment of the Named Plaintiffs as representatives of the Wilmington Settlement Class for settlement purposes;
- d. Approving the appointment of Plaintiffs' Counsel as counsel for the Wilmington Settlement Class for settlement purposes;
- e. Approving a form of mailed notice substantially similar to the Class Mail Notice attached as **Exhibit A** to be sent to the members of the Wilmington Settlement Class;
- f. Directing Plaintiffs' Counsel to mail the Class Mail Notice promptly after entry by the Court of the Preliminary Approval Order to the Wilmington Settlement Class by first-class mail to the last known address of such persons;
- g. Establishing a procedure for members of the Wilmington Settlement Class to opt out and setting a date, approximately sixty (60) days after the mailing of the Class Mail Notice, after which no member of the Wilmington Settlement Class shall be allowed to opt out of the Wilmington Settlement Class;
- h. Establishing a procedure for Wilmington Settlement Class Members to object to the Settlement and setting a date, approximately sixty (60) days after the mailing of the Class Mail Notice, after which no Wilmington Settlement Class Members shall be allowed to object;
- i. Establishing a procedure for motions to intervene in the Litigation and setting a date, approximately sixty (60) days after the mailing of the Class Mail Notice, after which no one shall be allowed to intervene;

j. Scheduling a hearing on final approval of the Settlement and Agreement, which shall not occur earlier than ninety-five (95) days after entry of the Preliminary Approval Order, and establishing a procedure for the Wilmington Settlement Class Members to appear at the hearing;

k. Staying the Litigation as against Wilmington until further order of the Court, other than as may be necessary to effectuate the Settlement and carry out the terms of the Agreement or the responsibilities related or incidental thereto; and

l. Containing such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable.

**9. Class Member Opt Outs, Class Member Objections and Intervention**

a. Procedure for Opt Outs. The deadline for opt out requests shall be set forth in the Preliminary Approval Order. Any request to opt out must be in writing and must include the name, address, telephone number, and last four digits of the Social Security Number of the class member seeking to opt out and a statement that the class member and all other borrowers named on the class member's promissory note are seeking exclusion. Any opt out request must be personally signed by each person who was a party to the promissory note in connection with the class member's PCC-Wilmington Loan, unless such person is deceased or legally incompetent. In the event a party to the promissory note is deceased or legally incompetent, the personal representative or guardian must sign the opt out request. Any opt out request must include a reference to "Gilmor v. Preferred Credit Corporation, Case No. 10-0189-CV-W--ODS" and be mailed to:

R. Frederick Walters, Esq.  
Walters Bender Strohbahn & Vaughan, P.C.

2500 City Center Square  
1100 Main Street  
Kansas City, MO 64105  
(on behalf of the Wilmington Settlement  
Class)

and

Peter W. Carter, Esq.  
Paul R. Dieseth, Esq.  
Dorsey & Whitney LLP  
50 South Sixth Street  
Suite 1500  
Minneapolis, MN 55402  
(on behalf of Wilmington)

To be considered timely and effective, any opt out request must be received on or prior to the date established by the Court in the Preliminary Approval Order. No person may opt out of the Settlement by having an actual or purported agent or attorney submit an opt out request on said person's behalf. Nor may an opt out request be submitted or made on behalf of a group of persons. Each member of the Wilmington Settlement Class who does not submit an opt out request substantially in compliance with this Paragraph 9 shall be included in the Wilmington Settlement Class and deemed a Wilmington Settlement Class Member. For purposes of determining timeliness, an opt out request shall be deemed to have been submitted when received by either Class Counsel or Counsel for Wilmington. Class Counsel and Counsel for Wilmington shall notify each other in writing upon receipt of any opt out request. Class Counsel shall provide the Court with a list of any persons who timely and adequately file a request to opt out of and be excluded from the Settlement on or before the date of the Final Approval Hearing.

b. Effect of Opt Outs By Members of the Wilmington Settlement Class. If 8 or more members of the Wilmington Settlement Class opt out of the



Settlement, Wilmington (acting individually and in its sole discretion) may rescind this Agreement, in which event each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement and any orders entered in connection therewith shall be vacated, rescinded, canceled, and annulled. If the Agreement is rescinded pursuant to this Paragraph 9.b, the Parties shall return to the status quo in the Litigation as if the Parties had not entered into this Agreement and any Party may reassert their claims against the other Party or Parties as provided in Paragraph 13. In addition, and in such event, this Agreement and all negotiations, court orders and proceedings relating thereto, shall be without prejudice to the rights of the Parties, and each of them, and evidence of or relating to the Agreement and all negotiations shall not be admissible or discoverable in the Litigation or otherwise. The Parties must exercise their option pursuant to this Paragraph 9.b at least seven (7) business days prior to the Final Hearing Date, by giving written notice of such exercise to the other Parties.

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

d. Procedure for Objections to Settlement. Any Wilmington

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

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

and

**Peter W. Carter, Esq.**  
**Paul R. Dieseth, Esq.**  
Dorsey & Whitney LLP  
50 South Sixth Street  
Suite 1500  
Minneapolis, MN 55402  
(on behalf of Wilmington)

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

- (i) The name, address, and telephone number of the class member filing the objection;
- (ii) A statement of each objection asserted;
- (iii) A detailed description of the facts underlying each objection;
- (iv) Any loan documents in the possession or control of the objector and relied upon by the objector as a basis for the objection;

- (v) If the objector is represented by counsel, a detailed description of the legal authorities supporting each objection;
- (vi) If the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts;
- (vii) If the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documents by attaching them to the objection and provide any other evidence that the objector intends to present;
- (viii) A statement of whether the objector intends to appear at the hearing;
- (ix) A copy of any exhibits which the objector may offer during the hearing; and
- (x) A reference to “Gilmor v. Preferred Credit Corporation, Case No. 10-0189-CV-W-ODS.”

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

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

**10. Final Judgment**

a. The Named Plaintiffs and Plaintiffs' Counsel agree that they will request the Court to enter, after the hearing on final approval of this Agreement, a Final Judgment substantially in the form attached as **Exhibit C**. In accordance with **Exhibit C**, the Final Judgment will certify the Wilmington Settlement Class and find that the Settlement and this Agreement are fair, reasonable, and adequate and in the best interests of the Wilmington Settlement Class, will dismiss all petitions, complaints, claims and motions of the Named Plaintiffs on behalf of the Wilmington Settlement Class Members pending against Wilmington in the Litigation on the merits and with prejudice as to the Releasers, declare that the Wilmington Settlement Class Members are bound by the releases set forth in Paragraph 6 of this Agreement as of the Effective Date, find and/or conclude that the Non-Wilmington Plaintiff Borrowers cannot recover any damages, penalties or other relief from Wilmington with respect to the PCC Loans because the PCC Loans of the Non-Wilmington Borrowers are not PCC-Wilmington Loans (which finding and/or conclusion shall not be deemed a holding that the Non-Wilmington Plaintiff Borrowers have released any claims of any kind or type with respect to the PCC Loans), contain an express determination by the Court that "there is no just reason for delay," and reserve continuing jurisdiction over the enforcement of this Agreement, the administration and distribution of the Settlement Amounts and, if necessary, vacating and/or setting aside the Final Judgment in the event the Settlement does not (or cannot) become effective pursuant to Paragraph 12 below. The Final Approval Order will require the Parties to carry out the provisions of this Agreement.

**11. Certifications to the Court**

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

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

c. On or before the Final Hearing Date, Counsel for Wilmington shall file with the Court an affidavit certifying that Wilmington provided all notices required by 28 U.S.C. § 1715(b) and CAFA.

**12. Effectiveness of Settlement Agreement**

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

i. This Agreement has been signed by the Named Plaintiffs, Wilmington, Plaintiffs' Counsel, and Counsel for Wilmington;

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

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

iv. A Final Judgment has been entered by the Court, in a form

substantially similar to that attached as **Exhibit C**, as provided in Paragraph 10.a; and

v. The Final Judgment entered as provided in Paragraphs 10.a has become final because of (a) the expiration of the time for appeals therefrom without any appeal having been taken or, (b) if review of the order, or any portion thereof, is sought by any person, the matter has been fully and finally resolved by the appellate court(s) and the time for seeking any higher level of appellate review has expired.

b. If any material portion of the Agreement, the Final Approval Order, or the Final Judgment, other than those provisions included in Paragraph 5 of the Agreement, is vacated, voided, modified, or otherwise altered by the Court or on appeal, any Party may, in its sole discretion, within seven (7) calendar days of such ruling, declare that the Agreement has failed to become effective and in such circumstances the Agreement shall cease to be of any force and effect as provided in Paragraph 13.

**13. Failure of Condition**

If, for any reason, this Agreement fails to become effective as provided in Paragraphs 3, 9 and/or 12, each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement, any dismissal entered pursuant to this Agreement, the Final Judgment and any orders entered in connection with the Settlement, dismissal order or Final Judgment, shall be vacated, rescinded, canceled, annulled and deemed “void” and/or “no longer equitable” and/or set aside for a reason that otherwise “justifies relief” for purposes of Fed.R.Civ.P. 60 and/or Mo. Rule 74.06 and the Parties shall be returned to the status quo prior to entering into this Agreement with respect to the Litigation as if this Agreement had never been entered into, except that the provisions of Paragraph 1 hereof shall survive and remain binding on the Parties and effective in all

respects regardless of the reasons for such failure of condition and any Party may reassert their claims against the other Party or Parties in the Litigation; provided, however, that if at such time the Litigation is terminated or otherwise concluded, or if the Named Plaintiffs and/or the Wilmington Settlement Class Members are precluded from reasserting their claims against Wilmington in the Litigation after requesting the Court to allow them to do so, then the Named Plaintiffs and the Wilmington Settlement Class Members may commence a new lawsuit or proceeding against Wilmington, or any one or more of them, to pursue the claims and causes of action that they are currently asserting in the Litigation as if the claims had been reasserted in the Litigation as stated herein; provided further, however, that any such re-commenced lawsuit shall be filed in the United States District Court for the Western District of Missouri, Western Division. In such event, claims time-barred as of the date of this Agreement remain so and the Settling Defendant shall retain all defenses, privileges and immunities that existed prior to the execution of the Agreement. Further, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all parties hereto, and evidence relating to the Agreement and all negotiations relating thereto shall not be admissible or discoverable in the Litigation or otherwise.

**14. Class Notice Forms**

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

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

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

**15. Public Comments and Press Releases**

a. All Parties and their respective counsel agree that they will not issue any press release related to the Settlement. It is expressly understood and agreed that a Party's website is not the "press" and that the publication and/or a description of information and documents on a Party's website is not a "press release."

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

c. No Party and no counsel shall make any public comments that would undermine the Settlement, adversely affect the ability of the Parties to obtain final



approval of the Settlement, or disparage any other Party or counsel for any Party.

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

**16. CAFA Notice**

Wilmington at its sole expense shall prepare and serve on the appropriate official(s) all notices required by 28 U.S.C. § 1715(b) and CAFA within ten (10) days after this Agreement is filed with the Court.

**17. General Provisions**

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

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

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

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

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

f. Governing Law. This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the state of Missouri, without regard to conflict of laws rules. This Agreement shall be enforced in the United States District Court for the Western District of Missouri, Western Division. Wilmington, the Named Plaintiffs and the Wilmington Settlement Class Members waive any objection that each such Party may now have or hereafter have to the venue of any suit, action, or proceeding that may be brought to enforce the Agreement, and irrevocably consent to the jurisdiction of said District Court solely for the purposes of any such suit, action or

proceeding; and agree to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding.

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

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

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

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

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

l. No Other Financial Obligations on Wilmington. Wilmington shall not be liable or obligated to pay any fees, expenses, costs or disbursements to the Named


Plaintiffs, Plaintiffs' Counsel, the Settlement Fund Administrator or the Wilmington Settlement Class Members, either directly or indirectly, in connection with the Litigation or the administration of this Agreement, other than the amounts expressly provided for herein. Any miscellaneous settlement administration expenses of any kind shall be advanced by Plaintiffs' Counsel and reimbursed from the Settlement Amounts, subject to the Court's approval.

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

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

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed as of the \_\_\_ day of February 2013.

Dated: February   8  , 2013

  
\_\_\_\_\_  
MICHAEL P. GILMOR on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February   , 2013

\_\_\_\_\_  
SHELLIE GILMOR on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February   , 2013

\_\_\_\_\_  
MICHAEL E. HARRIS, on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February   , 2013

\_\_\_\_\_  
LOIS A. HARRIS, on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February   , 2013

\_\_\_\_\_  
WILLIAM HUDSON on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February   , 2013


\_\_\_\_\_  
DEBRA MOONEY, on her own behalf and on behalf of the Wilmington Settlement Class Members.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed as of the \_\_\_ day of February 2013.

Dated: February \_\_\_, 2013

\_\_\_\_\_  
MICHAEL P. GILMOR on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February 4, 2013

  
\_\_\_\_\_  
SHELLIE GILMOR on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

\_\_\_\_\_  
MICHAEL E. HARRIS, on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

\_\_\_\_\_  
LOIS A. HARRIS, on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

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WILLIAM HUDSON on his own behalf and on behalf of the Wilmington Settlement Class Members.

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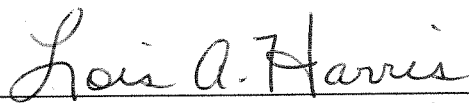
Dated: February \_\_\_, 2013

\_\_\_\_\_  
SHELLIE GILMOR on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February 1, 2013

  
\_\_\_\_\_  
MICHAEL E. HARRIS, on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February 1, 2013

  
\_\_\_\_\_  
LOIS A. HARRIS, on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

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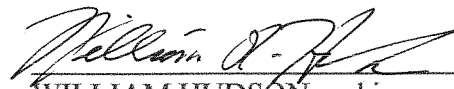
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Dated: February \_\_\_, 2013

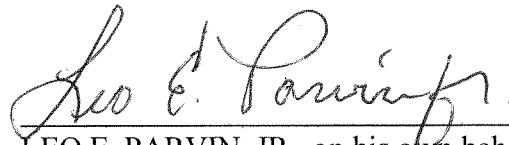
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WILLIAM HUDSON on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

  
DEBRA MOONEY, on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February 1, 2013



\_\_\_\_\_  
LEO E. PARVIN, JR., on his own behalf and on  
behalf of the Wilmington Settlement Class  
Members.

Dated: February \_\_\_\_, 2013

\_\_\_\_\_  
DERRICK ROCKETT on his own behalf and on  
behalf of the Wilmington Settlement Class  
Members.

Dated: February \_\_\_\_, 2013

\_\_\_\_\_  
ALETHIA ROCKETT on her own behalf and on  
behalf of the Wilmington Settlement Class  
Members.

Dated: February \_\_\_\_, 2013

\_\_\_\_\_  
JAMES WOODWARD, on his own behalf and  
on behalf of the Wilmington Settlement Class  
Members.

Dated: February \_\_\_\_, 2013

\_\_\_\_\_  
KATHLEEN WOODWARD, on her own behalf  
and on behalf of the Wilmington Settlement  
Class Members.

Dated: February \_\_\_\_, 2013

\_\_\_\_\_  
PATRICIA ANN WORTHY, on her own behalf  
and on behalf of the Wilmington Settlement  
Class Members

Dated: February \_\_\_, 2013

---

LEO E. PARVIN, JR., on his own behalf and on behalf of the Wilmington Settlement Class Members.


Dated: February 4, 2013



---

DERRICK ROCKETT on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February 7, 2013



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ALETHIA ROCKETT on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

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JAMES WOODWARD, on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

---

KATHLEEN WOODWARD, on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

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PATRICIA ANN WORTHY, on her own behalf and on behalf of the Wilmington Settlement Class Members

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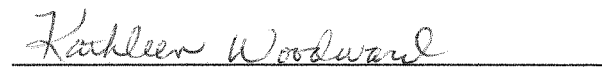
Dated: February 1, 2013



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JAMES WOODWARD, on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February 1, 2013



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KATHLEEN WOODWARD, on her own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

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PATRICIA ANN WORTHY, on her own behalf and on behalf of the Wilmington Settlement Class Members

Dated: February \_\_\_, 2013

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LEO E. PARVIN, JR., on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

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Dated: February \_\_\_, 2013

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JAMES WOODWARD, on his own behalf and on behalf of the Wilmington Settlement Class Members.

Dated: February \_\_\_, 2013

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KATHLEEN WOODWARD, on her own behalf and on behalf of the Wilmington Settlement Class Members.

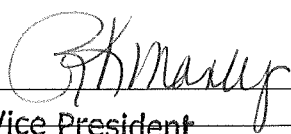
Dated: February 4, 2013

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*Patricia Ann Worthy*  
PATRICIA ANN WORTHY, on her own behalf and on behalf of the Wilmington Settlement Class Members

WILMINGTON TRUST COMPANY  
individually and/or as former trustee,  
owner trustee, co-owner trustee, or  
indenture trustee of the following  
terminated trusts: Impac Secured Assets  
CMN Trust Series 1998-1, Impac CMB  
Trust Series 1999-1, Impac CMB Trust  
Series 1999-2, Impac CMB Trust Series  
2000-1, Impac CMB Trust Series 2000-  
2, Impac CMB Trust Series 2001-4,  
Impac CMB Trust Series 2002-1, Impac  
CMB Trust Series 2003-5

Dated: February 7, 2013

By:   
Title: Vice President

Plaintiffs' Counsel

Dated: February \_\_\_\_, 2013

By: \_\_\_\_\_

Attorneys' Lien Released and Waived,  
as of Final Approval and Payment of  
Sums Ordered For Attorney's Fees and  
Costs

Dated: February \_\_\_\_\_, 2013

By: \_\_\_\_\_  
Walters Bender Strohbehn & Vaughan,  
P.C.

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owner trustee, co-owner trustee, or  
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2000-1, Impac CMB Trust Series 2000-  
2, Impac CMB Trust Series 2001-4,  
Impac CMB Trust Series 2002-1, Impac  
CMB Trust Series 2003-5

Dated: February \_\_\_, 2013

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Plaintiffs' Counsel

Dated: February 8, 2013

By: Roy Frederick Walter

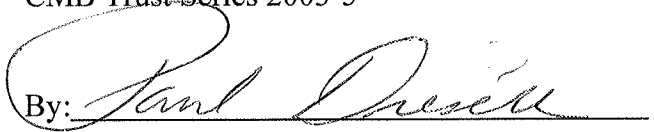
Attorneys' Lien Released and Waived,  
as of Final Approval and Payment of  
Sums Ordered For Attorney's Fees and  
Costs

Dated: February 8, 2013

By: Roy Frederick Walter  
Walters Bender Strohbehn & Vaughan,  
P.C.

Counsel for Wilmington Trust Company individually and/or as former trustee, owner trustee, co-owner trustee, or indenture trustee of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5

Dated: February 7, 2013

By: 

### **EXHIBITS AND SCHEDULES**

Schedule A – Proposed Distribution Schedule of Net Distributable Settlement Amount/Wilmington Settlement Class Member Payments

Schedule B – Proposed Schedule of Incentive Awards

Exhibit A – Class Mail Notice

Exhibit B – Preliminary Approval Order

Exhibit C – Final Judgment

Exhibit D – Wilmington Settlement Class Mailing List



**SCHEDULE A**  
to Settlement Agreement dated February 8, 2013

**ORIGINAL EXHIBIT FILED  
UNDER SEAL**

**SCHEDULE B**  
**PROPOSED SCHEDULE OF INCENTIVE AWARDS**

<b><u>NAMED PLAINTIFFS</u></b>	<b><u>PROPOSED INCENTIVE AWARD</u></b>
<b>Michael P. Gilmor Shellie Gilmor</b>	<b>\$4,000</b>
<b>Michael E. Harris Lois A. Harris</b>	<b>\$4,000</b>
<b>Leo E. Parvin, Jr.</b>	<b>\$4,000</b>
<b>Patricia Ann Worthy</b>	<b>\$2,000</b>
<b>Derrick Rockett Alethia Rockett</b>	<b>\$2,000</b>
<b>William Hudson</b>	<b>\$2,000</b>
<b>James Woodward Kathleen Woodward</b>	<b>\$2,000</b>
<b>Debra Mooney</b>	<b>\$2,000</b>

**EXHIBIT A: PROPOSED CLASS MAIL NOTICE**

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

**SUMMARY OF ATTACHED NOTICE OF PROPOSED  
CLASS ACTION SETTLEMENT**

*If you obtained a "Second Mortgage Loan" on your Missouri home from Preferred Credit Corporation (formerly "T.A.R. Preferred Mortgage Corporation") on or after June 27, 1994 that was purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by Wilmington Trust Company or by any of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5, you could receive a payment from a class action settlement.*

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- The settlement will provide \$800,000.00 to pay the claims of borrowers whose loans from Preferred Credit Corporation were purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by Wilmington or by any of the Impac Trusts.
- The settlement resolves claims that Wilmington is liable to the borrowers for damages including the fees and interest charged and paid on the loans; avoids the costs and risks to you from continuing the lawsuit; pays money to borrowers like you; and releases Wilmington from liability for the loans.
- The parties disagree on how much money, if any, would be recovered if the borrowers won a trial. Plaintiffs think they would recover more than the amount of the settlement if they won a trial. Wilmington thinks that Plaintiffs would not recover anything at a trial.
- Court-appointed lawyers for the borrowers will ask the Court for up to \$359,105.08, to be paid from the settlement as fees and expenses for investigating the facts, litigating the claims for over 11 years, and negotiating the settlement.

Your legal rights are affected whether you act or don't act. Read this notice carefully.

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<b>DO NOTHING</b>	You will be a member of the Settlement Class and receive a payment ranging from an estimated \$660.24 to \$8,813.78 (\$2,830.37 on average).
<b>EXCLUDE YOURSELF</b>	Get no payment. You will be free to retain your own lawyer at your own expense and pursue whatever legal rights you have against Wilmington separately.
<b>OBJECT/ INTERVENE</b>	Write to the Court about why you don't like the settlement. You may also retain your own lawyer at your own expense and appear in the case.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in the attached notice.

The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. Please be patient.

### QUESTIONS OR NEED MORE INFORMATION?

CALL 1-877-472-6620 Toll Free

-- OR VISIT --

[WWW.WBSVLAW.COM](http://WWW.WBSVLAW.COM) "GILMOR-WILMINGTON SETTLEMENT."

**EXHIBIT A: PROPOSED CLASS MAIL NOTICE**

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

*The United States District Court for the Western District of Missouri  
has authorized this Notice. This is not a solicitation from a lawyer.  
Please read this Notice carefully and completely.*

THIS NOTICE AND ANNOUNCEMENT APPLIES TO YOU BECAUSE YOU ARE AMONG A CLASS OF PERSONS WHO, ON OR AFTER JUNE 27, 1994, OBTAINED A “SECOND MORTGAGE LOAN” AS DEFINED UNDER MISSOURI LAW THAT WAS SECURED BY A MORTGAGE OR A DEED OF TRUST ON RESIDENTIAL REAL PROPERTY LOCATED IN THE STATE OF MISSOURI, ORIGINATED BY PREFERRED CREDIT CORPORATION (FORMERLY “T.A.R. PREFERRED MORTGAGE CORPORATION”) (“PCC”) AND THAT WAS PURCHASED BY, ASSIGNED OR CONVEYED TO, OR OTHERWISE OWNED AND/OR HELD BY OR SERVICED BY WILMINGTON TRUST COMPANY OR BY ANY OF THE FOLLOWING TERMINATED TRUSTS: IMPAC SECURED ASSETS CMN TRUST SERIES 1998-1, IMPAC CMB TRUST SERIES 1999-1, IMPAC CMB TRUST SERIES 1999-2, IMPAC CMB TRUST SERIES 2000-1, IMPAC CMB TRUST SERIES 2000-2, IMPAC CMB TRUST SERIES 2001-4, IMPAC CMB TRUST SERIES 2002-1, IMPAC CMB TRUST SERIES 2003-5 (THE “IMPAC TRUSTS”).

PURSUANT TO A SETTLEMENT REACHED WITH WILMINGTON TRUST COMPANY, INDIVIDUALLY AND AS A FORMER TRUSTEE, OWNER TRUSTEE, CO-OWNER TRUSTEE OR INDENTURE TRUSTEE OF ANY OF THE IMPAC TRUSTS (“WILMINGTON” OR “SETTLING DEFENDANT”) YOU MAY BE ENTITLED TO RECEIVE A SETTLEMENT PAYMENT. CLASS MEMBERS WHO DO NOT EXCLUDE THEMSELVES FROM THE SETTLEMENT WILL RECEIVE A PAYMENT RANGING FROM AN ESTIMATED \$660.24 TO \$8,813.78 (\$2,830.37, ON AVERAGE) WITH RESPECT TO THE SUBJECT “PCC-WILMINGTON LOANS.” ANY SUCH PAYMENT WILL BE IN ADDITION TO ANY OTHER PAYMENT YOU RECEIVE PURSUANT TO ANY OTHER SETTLEMENT. CLASS MEMBERS CAN REVIEW WHAT PLAINTIFFS’ COUNSEL CURRENTLY ESTIMATES THE AMOUNT OF THEIR “WILMINGTON SETTLEMENT CLASS MEMBER PAYMENT” TO BE BY VISITING THE WEBSITE OF PLAINTIFFS’ COUNSEL, [www.wbsvlaw.com](http://www.wbsvlaw.com), AND CLICKING ON THE LINK “GILMOR-WILMINGTON SETTLEMENT.”

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY!**

## WHAT THIS NOTICE CONTAINS

1.	WHY SHOULD I READ THIS NOTICE? .....	3
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## 1. WHY SHOULD I READ THIS NOTICE?

This Notice has been mailed to you because the parties' records show that you obtained a second mortgage loan that was originated by Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation) on or after June 27, 1994, that was purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by Wilmington Trust Company or by any of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5 (the "Impac Trusts"). Your second mortgage loan is currently the subject of the class action lawsuit originally filed in the Circuit Court of Clay County, Missouri styled *Gilmor v. Preferred Credit Corporation*, Case No. CV100-4263-CC, and which is currently pending before the United States District Court for the Western District of Missouri, Western Division, as Case No. 10-0189-CV-W-ODS (the "Lawsuit" or "Litigation"). You (and any co-borrower(s) on your second mortgage loan) may be eligible to receive money from a proposed settlement (the "Settlement") executed February \_\_, 2013 by Michael P. Gilmor, Shellie Gilmor, Michael Harris, Lois A. Harris, Leo E. Parvin, Jr., Debra Mooney, Derrick Rockett, Alethia Rockett, William Hudson, James Woodward, Kathleen Woodward, and Patricia Ann Worthy, (the "Named Plaintiffs"), on the one hand, and Wilmington Trust Company individually and/or as former trustee, owner trustee, co-owner trustee, or indenture trustee of the Impac Trusts ("Wilmington" or "Settling Defendant"), on the other hand. Please share this Notice with any co-borrower(s) on your loan(s).

This Notice generally describes the Lawsuit, your rights under the proposed Settlement, which has been preliminarily approved by the United States District Court for the Western District of Missouri in Case No. 10-0189-CV-W-ODS (the "Court"), and the date and time of a public "Fairness Hearing" that will be held by the Court to consider the fairness of the proposed Settlement.

## 2. WHAT IS THE LAWSUIT ABOUT?

A class action lawsuit was commenced on June 27, 2000 in the Circuit Court of Clay County, Missouri, styled *Michael and Shellie Gilmor v. Preferred Credit Corporation, et al.* Case No. CV100-4263-CC. The Gilmors filed the lawsuit on their own behalf, and on behalf of a proposed class of other borrowers who also obtained junior or "second" mortgage loans secured by Missouri residential real estate from Preferred Credit Corporation (formerly T.A.R. Preferred Mortgage Corporation) ("PCC").

In the Lawsuit, the plaintiffs allege that PCC violated the Missouri Second Mortgage Loans Act, Mo.Rev.Stat. §§ 408.231-408.241 by directly or indirectly charging, contracting for and/or receiving a number of different settlement charges or loan fees in connection with its Missouri second mortgage loans. The plaintiffs also allege in the Lawsuit that PCC conveyed and assigned its Missouri second mortgage loans after making them and that the entities that purchased, acquired or otherwise owned or held the loans are derivatively liable as the assignees and holders of the second mortgage loans for PCC's violations of Missouri law. In addition, the plaintiffs allege that the entities that purchased, acquired or otherwise owned and/or serviced the

Missouri loans also violated the Missouri Second Mortgage Loans Act by directly or indirectly charging, contracting for and/or receiving the illegal settlement charges and loan fees, as well as interest, on the loans.

Wilmington denies that all of the alleged settlement charges by PCC violated the Missouri Second Mortgage Loan Act and denies that it is derivatively liable for any violations of the law. Wilmington also denies that it is a purchaser, assignee or owner and/or holder or servicer of the PCC-Wilmington Loans, and that it directly or indirectly charged, contracted for or received any settlement charges or loan fees in violation of the Missouri Second Mortgage Loans Act. Wilmington also denies that there is liability under the Act for any interest paid on the loans.

On January 2, 2003, the Circuit Court of Clay County certified a litigation class in the Lawsuit comprised of those persons who obtained a second mortgage loan from PCC on or after June 27, 1994 (the "Litigation Class"). Notice was provided to the members of the Litigation Class of their opportunity to opt out and exclude themselves from the Settlement and Litigation Class that had been certified.

The Named Plaintiffs (as representatives of the "Wilmington Settlement Class" whose PCC Loans were purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced for a period time by Wilmington or by any of the Impac Trusts) and Wilmington have now agreed to settle and resolve the Lawsuit as between them on terms that are summarized in this Notice. The complete details of the proposed Settlement are contained in a "Settlement Agreement and Release" filed with the Court (the "Agreement") by the Named Plaintiffs and Wilmington. The Named Plaintiffs and Wilmington are collectively referred to in this Notice and other settlement papers as the "Parties."

On February \_\_, 2013, the Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate. The Court will conduct a "fairness hearing" on \_\_\_\_\_, 2013 to consider, among other things, whether the Settlement should be finally approved. The proposed Settlement will become effective only if it is finally approved by the Court, provided all other terms and conditions of the Settlement are met.

### **3. WHO IS COVERED BY THE PROPOSED SETTLEMENT?**

According to the parties' records, you are a member of the Wilmington Settlement Class and will be covered by the Settlement. The Settlement Class includes all persons who, on or after June 27, 1994, obtained a "Second Mortgage Loan," as defined in Mo.Rev.Stat. § 408.231.1, that was secured in whole or in part by a mortgage or a deed of trust on residential real property located in the state of Missouri, that was originated by Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation), and that was purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by Wilmington or by any of the Impac Trusts, and who did not timely exercise their right and option to opt out and exclude themselves from the litigation class that the Circuit Court of Clay County, Missouri previously certified on January 2, 2003, in *Gilmor v. Preferred Credit Corporation*, Case No. CV100-4263-CC.



#### 4. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

The following is only a summary of some of the terms and conditions of the proposed Settlement. For more information, you may obtain a copy of the executed Agreement by contacting Plaintiffs' Counsel at the address listed in Section 7 of this Notice, or by visiting the website of Plaintiffs' Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com), and clicking on the link "Gilmor-Wilmington Settlement."

- A. The total amount that Wilmington has agreed to pay in settlement (the "Settlement Amount") is \$800,000.00. If the Court approves the proposed Settlement, the members of the Wilmington Settlement Class who do not exclude themselves from the Settlement will receive a settlement payment ranging from an estimated \$660.24 to \$8,813.78 (\$2,830.37 on average). The amount of each such "Wilmington Settlement Class Member Payment" represents a pro rata share of the "Net Distributable Settlement Amount" and is determined per loan based on the following: (a) the allegedly illegal loan fees charged, contracted for or received in connection with the loan; (b) the interest paid on the loan; and (c) an additional sum properly characterized as "prejudgment interest."

The "Net Distributable Settlement Amount" is a percentage of the "Net Settlement Amount." The "Net Settlement Amount" is calculated by subtracting the following amounts from the \$800,000.00 Settlement Amount: (a) the amount of any incentive awards made to the Named Plaintiffs by the Court; and (b) the amount of any litigation expenses and/or court costs awarded to Plaintiffs' Counsel by the Court. The "Net Distributable Settlement Amount" is estimated to be \$418,894.92 (approximately 55%) of the Net Settlement Amount. The Named Plaintiffs and Plaintiffs' Counsel will ask the Court to award the remaining \$342,732.20, (approximately 45%) of the Net Settlement Amount as an attorney's fee award to Plaintiffs' Counsel for services and work in this case and the Settlement with Wilmington. The amount of the incentive, expense and attorney's fees awards that the Named Plaintiffs and Plaintiffs' Counsel will ask the Court to approve and make are explained in Section 10 of this Notice. Wilmington Settlement Class Members can review what Plaintiffs' Counsel currently estimates the amount of their individual Wilmington Settlement Class Member Payment to be by visiting the website of Plaintiffs' Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com), and clicking on the link "Gilmor-Wilmington Settlement."

- B. The settlement payment to be made to a Wilmington Settlement Class Member will be in addition to any other payment that the Wilmington Settlement Class Member becomes entitled to receive as a member of any other settlement class in the Litigation.
- C. If the Court approves the Settlement and it becomes effective in accordance with the terms of the Agreement, the members of the Wilmington Settlement Class who do not exclude themselves from the Settlement will receive their Wilmington Settlement Class Member Payment for the loan by check. The check will be mailed by first-class mail, postage prepaid, to the Wilmington Settlement Class Members, or to the bankruptcy trustee for those Wilmington Settlement Class Members who filed a Chapter 7 bankruptcy after obtaining their loan. The check will be mailed by the Settlement Fund Administrator and will not come from Wilmington directly. **Joint borrowers, such as a husband and wife,**

will receive a single payment per loan, even if they are separated or divorced. Any Wilmington Settlement Class Member who receives a payment under the Settlement is personally and solely responsible for distributing or allocating the payment between or among any co-borrower(s), regardless of whether the check is made payable to all or only some of the Wilmington Settlement Class Member's co-borrowers. Wilmington Settlement Class Members will also be responsible for paying any taxes due on any Wilmington Settlement Class Member Payment received. Wilmington Settlement Class Members are strongly encouraged to consult with their own tax advisor concerning the tax effects of any money received pursuant to this Settlement. Plaintiffs' Counsel cannot provide you with any tax advice.

- D. The proposed Settlement will become effective only if approved by the Court and all other terms and conditions as to effectiveness as stated in the Agreement are met. If the proposed Settlement is approved and becomes effective, the Court will enter a judgment that releases and discharges Wilmington and certain other entities and/or persons, as of the Effective Date from certain claims that were or could have been asserted against Wilmington with respect to the PCC-Wilmington Loans in the Lawsuit. The Releases are further discussed and set out in Section 11 of this Notice.

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

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

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

#### **6. CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?**

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

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

If you do wish to exclude yourself from the Settlement, you must send a request for exclusion by first-class mail, postage prepaid, to Plaintiffs' Counsel and Counsel for Wilmington (the names and addresses are provided in Section 7 below). To be effective, your request for exclusion must be in writing and be **received** by Plaintiffs' Counsel and Counsel for Wilmington at the addresses below on or before \_\_\_\_\_, 2013. The request for exclusion must include: (a) your name, address, telephone number and the last four digits of your social security number; (b) a

statement that you and all other borrowers named on the promissory note for your loan are seeking exclusion from the Settlement; (c) your signature and the signature of any other borrower(s) named on the promissory note for your loan; and (d) a reference to “Gilmor v. Preferred Credit Corporation, Case No. 10-0189-CV-W-ODS.” The request for exclusion must be signed personally by you and any other borrower(s) named on the promissory note for your loan or the personal representative of any such person if deceased or legally incompetent. No request for exclusion may be made on behalf of a group of Wilmington Settlement Class members. Nor may any member(s) of the Wilmington Settlement Class opt out or exclude themselves from the Wilmington Settlement Class by having an agent or attorney sign and submit an exclusion request form on their behalf. A request for exclusion form must be signed personally by you and any other borrower(s) named on the promissory note for your loan. Your request for exclusion must be timely **received** to be effective.

If you exclude yourself from the Settlement, you will not be bound by any Final Approval Order or Final Judgment entered in the case with respect to the Wilmington Settlement Class and you will be free to continue pursuing whatever legal rights you may have against Wilmington.

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

A hearing on whether to grant final approval of the Settlement will be held before the Honorable Ortrie D. Smith of the United States District Court for the Western District of Missouri on \_\_\_\_\_, 2013, at \_\_\_\_\_ a.m., in Room 8552, Charles Evans Whittaker Courthouse, 400 E. Ninth Street, Kansas City, MO 64106 (the “Fairness Hearing”). There is no need for you to attend the Fairness Hearing if you simply wish to benefit from the Settlement. The purpose of the Fairness Hearing is to determine, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable and adequate; (b) whether the Named Plaintiffs are adequate representatives of the proposed Wilmington Settlement Class; (c) whether Plaintiffs’ Counsel are entitled to attorney’s fees and expenses and, if so, how much; (d) whether the Named Plaintiffs should be entitled to a payment for their services as representatives of the Wilmington Settlement Class and, if so, how much; and (e) whether the Final Order and Judgment should be entered dismissing the Lawsuit with prejudice on the merits as to Wilmington.

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

At the Fairness Hearing, the Court will consider the statements of the parties and any objections that may have been made. Any member of the Wilmington Settlement Class who has not filed a timely written request for exclusion has the right to object to the proposed Settlement. If you want to object, you must file a written objection with the Clerk of the United States District Court, Charles Evans Whittaker Courthouse, 400 E. Ninth Street, Kansas City, MO 64106, no later than \_\_\_\_\_, 2013. All persons wishing to object must also send a copy of their written objection to Plaintiffs’ Counsel and Counsel for Wilmington (the names and addresses are stated below). The objection must include: (a) your name, address, and telephone number; (b) a statement of each objection to the proposed Settlement that you wish to assert; (c) a detailed description of the facts supporting each of the objections; (d) copies of any loan documents in

your possession or control that you rely on as a basis for your objections; (e) the names of all witnesses, and the report(s) from any proposed experts you intend to call at the Fairness Hearing; (f) copies of any exhibits that you intend to rely on at the hearing; (g) a reference to “Gilmor v. Preferred Credit Corporation, Case No. 10-0189-CV-W-ODS”; (h) a statement of whether you intend to appear at the Fairness Hearing in person or through an attorney; and (i) if you are represented by an attorney, a detailed description of the legal authorities supporting each of your objections.

Any member of the Wilmington Settlement Class who has not filed a timely written request for exclusion has the right to appear and/or enter an appearance at the Fairness Hearing. Attendance at the final hearing is not necessary. If you do wish to appear at the Hearing, you or your attorney must: (a) file a Notice of Appearance with the Clerk of the United States District Court, Charles Evans Whittaker Courthouse, 400 E. Ninth Street, Kansas City, MO 64106 no later than \_\_\_\_\_, **2013**; and (b) serve the Notice of Appearance on Plaintiffs’ Counsel and Counsel for Wilmington. Any subjects to be raised at the Fairness Hearing must be contained in a written objection filed with the Court in the manner set out above. If you wish to call witnesses or present other evidence at the Fairness Hearing, you must identify the witnesses in your written objection. In addition, you must attach to your objection any exhibits or other documents on which you intend to rely and describe any other evidence you intend to present at the Hearing.

The addresses for Plaintiffs’ Counsel and Counsel for Wilmington are as follows:

**Plaintiffs’ Counsel**

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

**Counsel for Wilmington**

Peter W. Carter, Esq.  
Paul R. Dieseth, Esq.  
Dorsey & Whitney LLP  
50 South Sixth Street  
Suite 1500  
Minneapolis, MN 55402

Any member of the Wilmington Settlement Class who has not filed a timely written request for exclusion may also request to intervene in the Lawsuit, in person or through an attorney retained at the Wilmington Settlement Class Member’s own expense. A request or motion to intervene must be in writing and reference “Gilmor v. Preferred Credit Corporation, Case No. 10-0189-CV-W-ODS” and otherwise comply with the Federal Rules of Civil Procedure and applicable law. A request to intervene must be filed with the Clerk of the United States District Court, Charles Evans Whittaker Courthouse, 400 E. Ninth Street, Kansas City, MO 64106, no later than \_\_\_\_\_, **2013**. Any persons wishing to intervene must also send a copy of their written request to intervene to Plaintiffs’ Counsel and Counsel for Wilmington at the addresses above.

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

## **8. WHO REPRESENTS THE WILMINGTON SETTLEMENT CLASS?**

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

## **9. WHAT ARE THE REASONS FOR SETTLEMENT?**

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

The Court has not ruled on the merits of the claims or defenses in this case, and Wilmington has denied and continues to deny each and every claim asserted against them. Wilmington denies and continues to deny all charges of wrongdoing or liability against them arising out of or relating to any of the conduct, statements, acts, or omissions alleged, or that could have been alleged in the Lawsuit. Nonetheless, Wilmington has concluded that further litigation and a trial of the claims would be protracted, burdensome, and expensive, and that it is desirable that the Lawsuit be fully and finally settled as against them in the manner and on the terms and conditions set forth in the Agreement.

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

Yes. The Named Plaintiffs, as representatives of the Wilmington Settlement Class, will make an application to the Court for approval of what is called an "incentive award." Such awards are used and made in class action lawsuits to provide an "incentive" to individuals like the Named Plaintiffs to file and prosecute class action lawsuits for the benefit of a class of people they do not know. The award also compensates the representatives of a class for their work and time (over 10 years of service in this case) as class representatives (being interviewed, reviewing documents, meeting and conferring with class counsel, etc.) The Named Plaintiffs will ask the Court to approve and make an incentive award in this case of up to \$4,000.00 per couple (\$22,000.00 total) for the Named Plaintiffs' time, services and expenses throughout the course of the Lawsuit. Wilmington will not object to the Named Plaintiffs' application, but the Court must still determine and approve the amount of any incentive award to be made as "reasonable." Any incentive award made to the Named Plaintiffs will be paid from the Settlement Amount in order

to determine the Net Settlement Amount and Net Distributable Settlement Amount, the latter of which will be distributed to the Wilmington Settlement Class Members as “Wilmington Settlement Class Member Payments” as described in Section 4 above.

Plaintiffs’ Counsel has prosecuted this litigation on a contingency fee basis and has incurred or advanced all of the costs associated with the Lawsuit since it was first filed in June 2000. Plaintiffs’ Counsel has not yet been paid for their work or received reimbursement for the expenses incurred or advanced on behalf of the Plaintiffs and the members of the Wilmington Settlement Class and the other members of the Litigation Class. The Court must determine and approve the amount of any such awards of attorney’s fees and litigation expenses to be made to Plaintiffs’ Counsel. The amount of any such award must be reasonable based on a number of factors including, but not limited to, the nature and extent of the work involved, the difficulty of the case and the issues presented, the skill needed to conduct the case properly, the experience, reputation and ability of the lawyers, the contingency or certainty of compensation, the customary charges for similar work, and the amount involved in the controversy and the benefits resulting to the client.

Based on these and other factors, and as a part of the Settlement, Plaintiffs’ Counsel and/or the Named Plaintiffs will request the Court to approve an award of attorney’s fees and litigation expenses not to exceed the following amounts: (a) \$16,372.88 for an allocated share of the more than \$493,773.62 of litigation expenses and costs that Plaintiffs’ Counsel has incurred and advanced in connection with the Lawsuit/Claims as of October 15, 2012; and (b) approximately 45% of the “Net Settlement Amount” as defined above in Section 4 of this Notice. The amounts of any such expense and attorney’s fees awards made to Plaintiffs’ Counsel will be deducted and paid from the Settlement Amount and Net Settlement Amount, respectively, before the Wilmington Settlement Class Member Payments are distributed to the Wilmington Settlement Class Members as described in Section 4 above.

Wilmington will not object to the above applications for expenses and attorney’s fees by Plaintiffs’ Counsel, but the Court must also determine and approve the amount of any such expense and attorney’s fee awards as “reasonable.” If the Court approves and makes the expense and attorney’s fees awards as proposed, the Wilmington Settlement Class Members will receive \$418,894.92 (approximately 55%) of the Net Settlement Amount. Any such settlement payment will be in addition to any other payment that a Wilmington Settlement Class Member receives pursuant to any other settlement in the Litigation. Plaintiffs’ Counsel will receive the remaining \$342,732.20 (approximately 45%) of the Net Settlement Amount under the Settlement as proposed.

The range and average of the Settlement Payments described above in Section 4 of this Notice have been estimated with the expectation that the Court will approve as reasonable the applications for the above stated incentive, expense and attorney’s fees awards given, among other things, the Named Plaintiffs’ years of service as representatives of the Wilmington Settlement Class, the complexity of the case, the nature and extent of the legal work provided by Plaintiffs’ Counsel since 2000, the other settlements involving the PCC-Wilmington Loans, and the results obtained for the Wilmington Settlement Class. If the Court approves an incentive award or an award of expenses or attorney’s fees in an amount less than that applied for, the

difference shall be reallocated to the Net Settlement Amount or the Net Distributable Settlement Amount, as applicable.

## 11. WHAT CLAIMS WILL BE RELEASED UNDER THE SETTLEMENT?

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

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

The term “**Releasers**” is defined in the Agreement at paragraph 2.34 as:

[T]he Named Plaintiffs and the other Wilmington Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The Releasers shall not include any of the following: (a) any members of the Wilmington Settlement Class who timely opt out of the Settlement in accordance with Paragraph 9 below; (b) any persons not identified on Exhibit D, attached, other than the heirs, representatives, successors, assigns, or bankruptcy trustees that are members of the Wilmington Settlement Class pursuant to Paragraph 3.a.; or (c) the Non-Wilmington Plaintiff Borrowers. It is understood that the releases to be given by the “Releasers,” as defined herein, shall only release the Released Persons from the Released Claims, and nothing more, as provided herein.

The term “**Released Persons**” is defined in the Agreement at paragraph 2.33 as:

Wilmington, individually and together with all of its parent companies and subsidiaries, and each of Wilmington’s respective past and present officers, directors, shareholders, employees, attorneys (including consultants hired by counsel), accountants, insurers, heirs, executors, and administrators, and each of its respective affiliates, predecessors, successors, and assigns and includes Wilmington Trust Company individually and/or as the former trustee, owner trustee, co-owner trustee, or indenture trustee of any of the Impac Trusts. Notwithstanding anything in this Agreement to the contrary, the term “Released Persons” does not include any of the Non-Settling Defendants as defined in Paragraph 2.23 above.

The term “**Released Claims**” is defined in the Agreement at paragraph 2.32 as:

[A]ny and all claims, demands, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, liens, costs, surcharges, losses, attorney’s fees, expenses or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential or punitive damages, as well as any and all claims for compensatory, punitive or treble damages, penalties, attorney’s fees, costs or expenses, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, relate to, or arise out of the PCC-Wilmington Loans and which any one or more of the Releasers have had, or now have against the Released Persons, as defined in Paragraph 2.33, from the beginning of time up through and including the Effective Date (“Claims”), including but not limited to, any and all Claims arising out of or relating to: (1) allegations that are or could have been asserted against the Released Persons in the Litigation in any way relating to the Wilmington Settlement Class Members’ PCC-Wilmington Loans; (2) any activities of the Released Persons with respect to the PCC-Wilmington Loans including, without limitation, any alleged representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act, deceptions, acts of unconscionability, unfair business practices, breaches of contract, usury, unfulfilled promises, breaches of warranty or fiduciary duty, conspiracy, excessive fees collected, or violations of any consumer protection statute, any state unfair trade practice statute, or any other body of case, statutory or common law or regulation, federal or state, including but not limited to the Missouri Second Mortgage Loans Act, Mo.Rev.Stat. § 408.231, et seq., or any other similar state statute; the Truth in Lending Act, 15 U.S.C. § 1601, et seq., and its implementing regulations, 12 C.F.R. part 226; the Home Ownership and Equity Protection Act, 15 U.S.C. §§ 1639, et seq., and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq., and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801, et seq., and its implementing regulation, 12 C.F.R. part 203; the Fair Housing Act, 42 U.S.C. §§ 3601, et seq.; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq.; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, et seq.; and the Federal Trade Commission Act, 15 U.S.C. §§ 45, et seq.; and/or (3) any conduct undertaken by any of the Released Persons to defend the Litigation, including but not limited to, any alleged improper discovery conduct and/or any request for sanctions in this Litigation. It is the intention of the Releasers to provide a general release of the Released Claims against the Released Persons; provided, however, that anything in this Agreement to the contrary notwithstanding, the term Released Claims does not include: (1) any claims of any kind or type of the Releasers against any person, association or entity that is not a Released Person, whether such claims arise out of or relate to PCC-Wilmington Loans or some other conduct, transaction, loan or occurrence; (2) any claims of any kind or type of the Releasers against any person, association or entity in connection with a loan and/or loan transaction originated or made by a person, association or entity other than PCC, notwithstanding the fact that the loan, in whole or in part, was purchased by, assigned or conveyed to, or otherwise owned and/or held by Wilmington; (3) any claims of any kind or type by any Non-Wilmington Plaintiff Borrower with respect to the PCC Loans; and/or (4) any claims of any kind or type against Wilmington or any other entity, as



the purchaser, assignee, owner, holder and/or trustee of a PCC Loan other than the PCC-Wilmington Loans and/or as the servicer and/or master servicer of any PCC Loans other than the PCC-Wilmington Loans.

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

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

**13. WHERE DO I GET ADDITIONAL INFORMATION?**

This Notice is only a summary of the proposed Settlement and does not describe all of the terms and conditions of the Agreement. You are encouraged to review the Agreement and other related documents, all of which are available upon request from Plaintiffs' Counsel, or by visiting the website of Plaintiffs' Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com) and clicking on the link "Gilmor-Wilmington Settlement."

**14. WHAT ARE THE RELEVANT DATES?**

If you wish to request exclusion from the Wilmington Settlement Class or appear at the Fairness Hearing, these are the relevant dates:

- **Deadline for mailing a request for exclusion (must be received by): \_\_\_\_\_, 2013**
- **Deadline for filing and serving a notice of appearance, a motion to intervene or any written objection (must be received by the court by): \_\_\_\_\_, 2013**
- **Date and time of Fairness Hearing: \_\_\_\_\_, 2013 at \_\_\_\_\_ a.m.**

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

**PLEASE DO NOT CALL OR CONTACT THE COURT FOR INFORMATION.**

**This Notice is being sent pursuant to Rule 23 of the FEDERAL RULES OF CIVIL**

**PROCEDURE and BY ORDER OF THE  
DISTRICT COURT**

DATED: February \_\_\_\_, 2013

**EXHIBIT B: PROPOSED PRELIMINARY APPROVAL ORDER**

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

**ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

This case commenced in Clay County Circuit Court. On January 2, 2003, that court certified a litigation class comprised of those persons who obtained a Missouri residential second mortgage loan from Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation) (“PCC”) on or after June 27, 1994, and as is particularly described in the Court’s *Order Certifying Plaintiff Class* (the “Litigation Class”).

The case eventually found itself in this Court, and now pending is a motion to approve a Settlement Agreement (“Agreement”) with respect to certain plaintiffs and Defendant Wilmington Trust Company individually and/or as the former trustee, owner trustee, co-owner trustee, or indenture trustee of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5 (“Wilmington” or “Settling Defendant”). Specifically, the Agreement relates to the Missouri residential second mortgage

loans obtained from PCC that were purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by the Settling Defendant or by any of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5 (defined in the Agreement as the “PCC-Wilmington Loans”).

The Court has reviewed the Motion for Preliminary Approval of Class Action Settlement, the Suggestions in Support, and all of the exhibits attached thereto. Having done so, the motion (Doc. #\_\_\_) is granted, and the Court orders as follows:

1. The terms of the Agreement, and the Settlement as provided therein, are approved preliminarily as fair, reasonable and adequate to the Wilmington Settlement Class as defined in the Agreement, subject to further consideration at the Fairness Hearing described in Paragraph 14 below.

2. The definitions set forth in the Agreement are hereby incorporated by reference into this Order (with capitalized terms as set forth in the Agreement).

3. The Named Plaintiffs and Wilmington have executed the Agreement in order to settle and resolve the Litigation as between the Wilmington Settlement Class and Wilmington, subject to approval of the Court.

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

All persons who, on or after June 27, 1994, obtained a “Second Mortgage Loan,” as defined in Mo.Rev.Stat. § 408.231.1, that was secured in whole or in part by a

mortgage or a deed of trust on residential real property located in the state of Missouri, that was originated by Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation), and that was purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by Wilmington Trust Company or by any of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5, and who did not timely exercise their right and option to opt out and exclude themselves from the litigation class that the Circuit Court of Clay County, Missouri certified on January 2, 2003, in *Gilmor v. Preferred Credit Corporation*, Case No. CV100-4263-CC.

If a member of the Wilmington Settlement Class has died or otherwise voluntarily or involuntarily transferred his or her rights under a PCC-Wilmington Loan, such member's heir, representative, successor or assign shall also be deemed to be the member of the Wilmington Settlement Class. If a member of the Wilmington Settlement Class filed for bankruptcy after obtaining his or her PCC-Wilmington Loan, then the bankruptcy trustee shall also be deemed to be a member of the Wilmington Settlement Class Member as to the debtor Class Member's particular loan.

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

- a. The Wilmington Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Wilmington Settlement Class that predominate over questions affecting only individual members of the Wilmington Settlement Class;
- c. The claims of the Named Plaintiffs are typical of those of the members of the Wilmington Settlement Class;

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

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

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

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

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

9. The Class Mail Notice in a form substantially the same as that set forth in Exhibit A to the Parties' Agreement shall be mailed by Class Counsel by first-class mail, postage prepaid, to (a) all members of the Wilmington Settlement Class identified on Exhibit D of the Agreement, and (b) any known Chapter 7 bankruptcy trustees of any member of the Settlement Class for any Chapter 7 bankruptcy filed after origination of said class member's

loan. Such mailing shall be made within five (5) days of this Preliminary Approval Order. The Summary of Notice appearing in Exhibit A to the Parties' Agreement shall accompany the Class Mail Notice.

10. These notice methodologies (a) protect the interests of the Named Plaintiffs, the Wilmington Settlement Class, and Wilmington, (b) are the best notice practicable under the circumstances, and (c) are reasonably calculated to apprise the Wilmington Settlement Class of the proposed Settlement, the Agreement, and their right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the notice methodologies are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meet all applicable requirements of law, including, but not limited to, Fed.R.Civ.P. 23 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

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

12. The Qualified Settlement Fund to be funded by the Settling Defendant pursuant to Section 4(c) of the Agreement is hereby approved and Class Counsel is authorized and directed to establish the Qualified Settlement Fund pursuant to this Order and the terms of this Agreement. Class Counsel is hereby appointed Settlement Fund Administrator as defined in the Agreement and shall perform all settlement administration duties as described in the Agreement and this Order. All taxes, costs and expenses associated with the Qualified Settlement Fund and its administration shall be paid as provided in the Agreement.

13. Any member of the Wilmington Settlement Class desiring exclusion from the

Wilmington Settlement Class shall mail a request for exclusion (“Request for Exclusion”) to the Parties’ respective counsel. To be valid, the Request for Exclusion must be **received** on or before \_\_\_\_\_, **2013**. Such Request for Exclusion must be in writing and include: (a) the name, address, telephone number and the last four digits of the social security number of the class member seeking to opt out; (b) a statement that the class member and all other borrowers named on the class member’s promissory note are seeking exclusion; (c) the signature of each person who was a party to the promissory note made in connection with the class member’s loan, unless such person is deceased or legally incompetent, in which event the opt out submission shall be signed by said deceased or legally incompetent person’s personal representative or guardian; and (d) a reference to “Gilmor v. Preferred Credit Corporation, Case No. 10-0189-CV-W-ODS.” Any member of the Wilmington Settlement Class who does not properly and timely request exclusion from the Wilmington Settlement Class in full compliance with these requirements shall be included in the Wilmington Settlement Class and be bound by any judgment entered in this Action with respect to the Class.

The Parties are advised the Court may exercise its discretion to allow a class member to opt out of the class even if they do not strictly conform to the procedural requirements set forth above.

14. Within seven (7) days after the deadline for submitting Requests for Exclusion, Class Counsel shall file with the Court a sworn statement to identify those persons, if any, who timely submitted a Request for Exclusion. The originals of all Requests for Exclusion shall be retained by the Parties. Class Counsel shall also identify those persons, if any, whose efforts to be excluded were rejected because they failed to comply with paragraph 12 above and shall provide the Court with all communications received from such individuals.



15. A hearing (the “Fairness Hearing”) shall be held at \_\_\_\_ a.m. on \_\_\_\_\_, **2013**, in Room 8552, Charles Evans Whittaker Courthouse, 400 E. Ninth Street, Kansas City, MO 64106. At the Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or judgment in the Litigation with respect to the Wilmington Settlement Class; (c) the application for incentive awards for the services rendered by the Named Plaintiffs; (d) the application for attorney’s fees and for reimbursement of expenses by Class Counsel; and (e) other related matters. The Fairness Hearing may be postponed, adjourned or continued by Order of the Court without further notice to the Wilmington Settlement Class.

16. To be considered at the Fairness Hearing, any Wilmington Class Member desiring to file an objection or other comment on the Settlement shall be required to file all such objections and comments and all supporting pleadings on or before \_\_\_\_\_, **2013**, with service upon Class Counsel and Counsel for Wilmington. The objections of any Wilmington Class Member must be in writing, and must specifically include the following: (a) the name, address, and telephone number of the class member filing the objection; (b) a statement of each objection asserted; (c) a detailed description of the facts underlying each objection; (d) any loan documents in the possession or control of the objector and relied upon by the objector as a basis for the objection; (e) if the objector is represented by counsel, a detailed description of the legal authorities supporting each objection; (f) if the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts; (g) if the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documents by attaching them to the objection and provide any other evidence that the objector intends to present; (h) a statement of

whether the objector intends to appear at the hearing; (i) a copy of any exhibits which the objector may offer during the hearing; and (j) a reference to “Gilmor v. Preferred Credit Corporation, Case No. 10-0189-CV-W-ODS.”

The Parties are advised the Court may exercise its discretion to entertain objections that do not strictly conform to the procedural requirements set forth above.

17. Unless otherwise ordered by the Court, no objection to or other comment concerning the Settlement shall be heard unless timely filed in accordance with the respective guidelines specified above. Class Counsel and Counsel for Wilmington shall promptly furnish each other with copies of any and all objections or written requests for exclusion that come into their possession.

18. Any objector who does not make his or her objection in the manner provided in this Order shall be deemed to have waived any such objection and shall forever be barred from making any objection to the Settlement, including without limitation, the propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement. This provision does not apply to objections that are otherwise entertained by the Court.

19. Submissions of the Parties relative to the Settlement, including memoranda in support of the Settlement, applications for attorney’s fees and reimbursement of expenses by Class Counsel, and any applications for the payment of services rendered by the Named Plaintiffs shall be filed with the Clerk of the Court on or before \_\_\_\_\_, **2013**.

20. Any attorney hired by any objector for the purpose of appearing and/or making an objection shall file his or her entry of Appearance at the Class Member’s expense on or before \_\_\_\_\_, **2013**, with service on Class Counsel and Counsel for Wilmington per the

Federal Rules of Civil Procedure. The Court retains discretion to entertain late entries of appearance if circumstances warrant.

21. Any Wilmington Settlement Class Member may appear at the Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in the Class Mail Notice, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless, on or before \_\_\_\_\_, **2013**, such person has (a) filed with the Clerk of the Court a notice of such person's intention to appear; and (b) served copies of such notice upon Class Counsel and Counsel for Wilmington as required by the Federal Rules of Civil Procedure.

The Parties are advised the Court may exercise its discretion to entertain objections that do not strictly conform to the procedural requirements set forth above.

22. Any Wilmington Settlement Class Member may seek to intervene in the Litigation in person, or by counsel if a motion to intervene is filed and served as provided in the Notice. No person shall be permitted to intervene unless, on or before \_\_\_\_\_, **2013**, such person has (a) filed with the Clerk of the Court a valid motion to intervene and (b) served copies of such notice upon Class Counsel and Counsel for Wilmington as required by the Federal Rules of Civil Procedure.

23. On or before the Final Hearing Date Counsel for Wilmington shall file with the Court in the Litigation an affidavit verifying compliance with the notice requirements of the provisions of 28 U.S.C. § 1715(b) and CAFA.

24. All other events contemplated under the Agreement to occur after entry of this Order and before the Fairness Hearing shall be governed by the Agreement and the Class Mail Notice, to the extent not inconsistent herewith. Class Counsel and Counsel for Wilmington

shall take such further actions as are required by the Agreement.

25. The Parties shall be authorized to make non-material changes to the Class Mail Notice so long as Class Counsel and Counsel for Wilmington agree and one of the Parties files a notice thereof with the Court prior to the Fairness Hearing. Neither the insertion of dates nor the correction of typographical or grammatical errors shall be deemed a change to the Class Mail Notice.

26. All claims against and motions involving Wilmington with respect to the “PCC-Wilmington Loans” are hereby stayed and suspended until further order of this Court, other as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related or incidental thereto.

27. The claims of the Named Plaintiffs, the members of the Wilmington Settlement Class and/or the remaining members of the Litigation Class against any Defendant and/or person or entity other than Wilmington and other “Released Persons,” are **not** stayed or suspended by the Agreement, this Order, or otherwise. Only the “Released Claims” of the “Releasers” as against the “Released Persons,” as defined in the Agreement, are suspended and stayed.

28. If Final Approval of the Settlement does not occur, or if the Settlement does not become effective on or before the Effective Date as provided in the Agreement, or if the Settlement is rescinded or terminated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and this Order and all Orders issued pursuant to the Settlement shall be vacated, rescinded, canceled, annulled and deemed “void” and/or “no longer equitable” for purposes of Fed.R.Civ.P. 60, as provided in and subject to Paragraph 13

of the Agreement.

29. Neither this Order, the Agreement, nor any of their terms or provisions, nor any of the negotiations between the Parties or their counsel (nor any action taken to carry out this Order), is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of (i) the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention or assertion, (ii) the truth or relevance of any fact alleged by Plaintiffs, (iii) the existence of any class alleged by Plaintiffs, (iv) the propriety of class certification if the Litigation were to be litigated rather than settled, (v) the validity of any claim or any defense that has been or could have been asserted in the Litigation or in any other litigation; (vi) that the consideration to be given to Wilmington Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial; or (vii) the propriety of class certification in any other proceeding or action. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any way be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, or factual or legal positions of Wilmington, and shall not be offered or received in evidence in the Litigation or any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as is necessary (a) to enforce the terms of this Order and the Agreement or (b) to show, if appropriate, the recoveries obtained by the Named Plaintiffs and other Wilmington Class Members hereunder, including, without limitation, the damages, attorney's fees award and costs; provided, however, that this Order and the Agreement may be filed by Wilmington in any action filed against or by Wilmington, or any other Released Person, to support a defense

of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim. Wilmington expressly reserves all rights and defenses to any claims and does not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

SO ORDERED

Date: \_\_\_\_\_, 2013

\_\_\_\_\_  
ORTRIE D. SMITH, JUDGE  
UNITED STATES DISTRICT COURT

**EXHIBIT C: PROPOSED FINAL JUDGMENT**

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

**FINAL JUDGMENT APPROVING CLASS ACTION SETTLEMENT  
AND CERTIFYING A CLASS FOR SETTLEMENT PURPOSES**

Upon careful review and consideration of the Settlement and Release Agreement dated \_\_\_\_\_, 2013 (the “Agreement”), between Plaintiffs, Michael P. Gilmor, Shellie Gilmor, Michael Harris, Lois A. Harris, Leo E. Parvin, Jr., Debra Mooney, Derrick Rockett, Alethia Rockett, William Hudson, James Woodward, Kathleen Woodward, and Patricia Ann Worthy, (the “Named Plaintiffs”), and Defendant, Wilmington Trust Company individually and/or as former trustee, owner trustee, co-owner trustee, or indenture trustee of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5 (“Wilmington” or “Settling Defendant”), the evidence and arguments of counsel as presented at the Fairness Hearing held on \_\_\_\_\_, 2013, the memoranda filed with this Court, [and the timely objections to the proposed Settlement], and all other filings in connection

with the Parties' settlement as memorialized in the Agreement (the "Settlement"); and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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

a. The Agreement, filed with the Court on or about February \_\_, 2013; and

b. The following exhibits to the Agreement: (i) Schedule A (Proposed Distribution Schedule of "Net Distributable Settlement Amount," **filed under seal**); (ii) Schedule B (Proposed Schedule of Incentive Awards); (iii) Exhibit A (Proposed Class Mail Notice); (v) Exhibit B (Proposed Order Preliminarily Approving the Class Action Settlement); (vi) Exhibit C (Proposed Final Judgment); (vii) Exhibit D (list of members of the Wilmington Settlement Class, **filed under seal**);

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

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

3. **Final Class Certification.** The Wilmington Settlement Class, which this Court previously certified preliminarily, is hereby finally certified for settlement purposes pursuant to



Fed.R.Civ.P. 23, the Court finding that for purposes of settlement the Wilmington Settlement Class fully satisfies all of the applicable requirements of Rule 23 and due process.

The Wilmington Settlement Class is defined as follows:

All persons who, on or after June 27, 1994, obtained a “Second Mortgage Loan,” as defined in Mo.Rev.Stat. § 408.231.1, that was secured in whole or in part by a mortgage or a deed of trust on residential real property located in the state of Missouri, that was originated by Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation), and that was purchased by, assigned or conveyed to, or otherwise owned and/or held by or serviced by Wilmington Trust Company or by any of the following terminated trusts: Impac Secured Assets CMN Trust Series 1998-1, Impac CMB Trust Series 1999-1, Impac CMB Trust Series 1999-2, Impac CMB Trust Series 2000-1, Impac CMB Trust Series 2000-2, Impac CMB Trust Series 2001-4, Impac CMB Trust Series 2002-1, Impac CMB Trust Series 2003-5, and who did not timely exercise their right and option to opt out and exclude themselves from the litigation class that the Circuit Court of Clay County, Missouri certified on January 2, 2003, in *Gilmor v. Preferred Credit Corporation*, Case No. CV100-4263-CC.

If a member of the Wilmington Settlement Class has died or otherwise voluntarily or involuntarily transferred his or her rights under a PCC-Wilmington Loan, such member’s heir, representative, successor or assign shall also be deemed to be the member of the Wilmington Settlement Class. If a member of the Wilmington Settlement Class filed for bankruptcy after obtaining his or her PCC-Wilmington Loan, then the bankruptcy trustee shall also be deemed to be a member of the Wilmington Settlement Class Member as to the debtor Class Member’s particular loan. [No members of the Wilmington Settlement Class timely requested to be excluded from or “opted out” of the Wilmington Settlement Class.] OR [A list of those persons who have timely excluded themselves from the Wilmington Settlement Class, and who therefore are not bound by the Settlement and the Final Judgment, is attached hereto as **Exhibit 1** and incorporated herein and made a part hereof.]

4. **Adequacy of Representation.** There are no apparent conflicts of interest between the Named Plaintiffs and the Wilmington Settlement Class, or among the members of

the Wilmington Settlement Class. Plaintiffs' Counsel will fairly and adequately represent and protect the interests of the Wilmington Settlement Class. Accordingly, the Named Plaintiffs and R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the firm Walters Bender Strohbehm & Vaughan, P.C. ("Plaintiffs' Counsel" or "Class Counsel"), have satisfied the requirements of Rule 23 and are hereby appointed and approved as representatives of the Wilmington Settlement Class and Counsel for the Wilmington Settlement Class, respectively.

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

a. Constituted the best practicable notice to the members of the Wilmington Settlement Class under the circumstances of this Litigation;

b. Constituted notice that was reasonably calculated, under the circumstances, to apprise the members of the Wilmington Settlement Class of (i) the pendency of this Litigation and the proposed Settlement, (ii) their right to exclude themselves from the Wilmington Settlement Class and the proposed Settlement, (iii) their right to object to any aspect of the proposed Settlement (including, but not limited to, the following: final certification of the Wilmington Settlement Class; the fairness, reasonableness or adequacy of the Settlement as proposed; the adequacy of the Named Plaintiffs and/or Class Counsels' representation of the Wilmington Settlement Class; the proposed awards of attorney's fees and expenses; and the proposed incentive award), (iv) their right to appear at the Fairness Hearing if they did not exclude themselves from the Wilmington Settlement Class, and (v) the binding effect of the Orders and Judgment

in the Litigation on all members of the Wilmington Settlement Class who did not request exclusion;

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

d. Constituted notice that fully satisfied the requirements of Rule 23, due process, and any other applicable law.

6. **Compliance with CAFA.** The Court additionally finds that Wilmington has served proper notice under, and has complied in all other respects with, 28 U.S.C. § 1715(b) and CAFA.

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

8. **Binding Effect.** The terms of the Agreement and this Final Judgment shall be forever binding on all of the Wilmington Settlement Class Members and the Named Plaintiffs, individually and as representatives of said Class, as well as on their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The terms of the Agreement and Final Judgment shall have *res*

*judicata* and other preclusive effect as to the “Releasers” for the “Released Claims” as against the “Released Persons,” all as defined in the Agreement.

9. **Releases.** The Releasers, as defined in Paragraph 2.34 of the Agreement, shall be bound by the Releases provided in Paragraph 6 of the Agreement, which is incorporated herein in all respects, regardless of whether such persons received any compensation under the Agreement or Settlement. The Releases are effective as of the Effective Date specified in Paragraph 12 of the Agreement. The Court expressly adopts all defined terms in Paragraph 6 of the Agreement, including but not limited to, the definitions of the persons and claims covered by the Releases as set forth at Paragraphs 2.32 (Released Claims), 2.33 (Released Persons) and 2.34 (Releasers).

10. **Enforcement of Settlement.** Nothing in this Final Judgment shall preclude any action by any Party to enforce the terms of the Agreement.

11. **Additional Payment to the Named Plaintiffs.** The Court hereby awards the amounts listed on Schedule B (\$22,000.00 total) to be paid from the Settlement Amount to the Named Plaintiffs as incentive awards for their services as representatives of the Wilmington Settlement Class in this Litigation.

12. **Attorney’s Fees and Expenses.** Plaintiffs’ Counsel are awarded \$16,372.88 representing an allocated share of the litigation expenses and court costs that Plaintiffs’ Counsel has incurred and advanced as of October 15, 2012 in connection with the Litigation and the Settlement, which shall be deducted from the Settlement Amount as defined in the Agreement. In addition, the Court awards Plaintiffs’ Counsel Attorney’s fees of \$342,732.20, representing approximately 45 % of the “Net Settlement Amount” as defined in the Agreement. The Court finds and concludes that each of the above awards to Plaintiffs’ Counsel for work and services in

this case and in connection with the Settlement is reasonable for the reasons stated in *Plaintiffs' Application for Award of Attorney's Fees, Litigation Expenses and Court Costs* (Doc. #\_\_\_) and finds as follows:

**[As in other cases, Plaintiffs will include additional language for the Court to consider using in any final order that it signs in support of Plaintiffs' fee award.]**

13. **No Other Payments.** The preceding paragraphs of this Final Approval Order cover, without limitation, any and all claims for attorney's fees and expenses, costs or disbursements incurred by Plaintiffs' Counsel or any other counsel representing the Named Plaintiffs as representatives of the Wilmington Settlement Class or the Wilmington Settlement Class Members, or incurred by the Wilmington Settlement Class Members, in connection with or related in any manner to this Litigation, the Settlement of this Litigation, the administration of such Settlement, and/or the Released Claims, except to the extent otherwise specified in this Final Approval Order or the Agreement.

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

a. enforcing the terms and conditions of the Agreement and Settlement and resolving any disputes, claims or causes of action that, in whole or in part, are related to the administration and/or enforcement of the Agreement, Settlement, this Final Judgment (including, without limitation, whether a person is or is not a member of the Wilmington

Settlement Class or a Wilmington Settlement Class Member; and whether any claim or cause of action is or is not barred by this Final Approval Order and the Final Judgment);

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

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

15. **No Admissions.** Neither this Final Judgment, nor the Agreement, nor any of its terms or provisions, nor any of the negotiations between the Parties or their counsel, nor any action taken to carry out this Final Judgment, is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of: (a) the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention or assertion; (b) the truth or relevance of any fact alleged by Plaintiffs; (c) the existence of any class alleged by Plaintiffs; (d) the propriety of class certification if the Litigation were to be litigated rather than settled; (e) the validity of any claim or any defense that has been or could have been asserted in the Litigation or in any other litigation; (f) that the consideration to be given to Wilmington Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial; or (g) the propriety of class certification in any other proceeding or action. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, factual or legal positions of Wilmington, and shall not be offered or

received in evidence in this litigation or any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as necessary (i) to enforce the terms of this Order and the Agreement or to prove or show that a compromise in settlement of the Released Claims per the Agreement, in fact, was reached, or (ii) to show, if appropriate, the recoveries obtained by the Named Plaintiffs and other Wilmington Class Members' hereunder, including, without limitation, the damages, attorney's fees award and costs; provided, however, that this Order and the Agreement may be filed by Wilmington in any action against or by Wilmington or the Released Persons to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

16. **Dismissal of Litigation Against Defendant Wilmington.** This Litigation and all individual and class claims being asserted against Defendant Wilmington with respect to the "PCC-Wilmington Loans" are dismissed with prejudice and without fees or costs to any party, except as otherwise provided in the Agreement or this Final Judgment. The Litigation and all other claims and causes of action shall remain pending.

17. **Claims Reserved.** The dismissal of this Litigation and claims against Wilmington as provided in the Agreement and this Final Judgment shall in no way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or adjudication of any claims other than the Released Claims as to the Released Persons by the Releasers.

18. **Claims of Non-Wilmington Plaintiff Borrowers.** The Court finds and concludes that the "PCC Loans" of the "Non-Wilmington Plaintiff Borrowers" as defined in Paragraph 2.22 of the Agreement were not purchased by, assigned or conveyed to, or otherwise

owned and/or held by or serviced by the Settling Defendant and that, given this fact, as stipulated by the Parties, the Non-Wilmington Plaintiff Borrowers cannot recover any damages, penalties or other relief from Wilmington with respect to the PCC Loans. This finding and/or conclusion by the Court shall not be deemed or construed as a holding that any of the Non-Wilmington Plaintiff Borrowers have in any way released any claims, of whatever type or kind, with respect to any PCC Loans or otherwise.

19. **Contribution, Indemnity and Other Claims.** All claims for contribution, indemnity and other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, related to the Released Claims as defined in Paragraph 2.32 of the Agreement, which could have been brought in this Litigation by any person or party against a Released Person as defined in Paragraph 2.33 of the Agreement (unless such claim over is made with respect to a claim by a person or party who is not a Releaser as defined in Paragraph 2.34 of the Agreement), are permanently barred, prohibited and enjoined.



20. **No Just Reason for Delay.** The Court expressly determines that there is no just reason for delay for purposes of Fed.R.Civ.P. 54(b).

Dated: \_\_\_\_\_

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ORTRIE D. SMITH, JUDGE  
UNITED STATES DISTRICT COURT

**EXHIBIT D**  
to Settlement Agreement dated February 8, 2013

**ORIGINAL EXHIBIT FILED  
UNDER SEAL**