

SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) made subject to approval by the Court, as defined herein, by Plaintiffs Michael P. Gilmor, Shellie Gilmor, Michael Harris, Lois A. Harris, William Hudson, Debra Mooney, Derrick Rockett, Alethia Rockett, James Woodward and Kathleen Woodward (the “Named Plaintiffs”), as the proposed representatives of the “Wendover Settlement Class,” as defined herein, and Defendant Wendover Financial Services Corporation (“Wendover” or “Settling Defendant”). The Named Plaintiffs and Wendover 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 and

WHEREAS, the Named Plaintiffs are asserting claims against Preferred Credit Corporation (“PCC”), Wendover 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 Wendover directly or indirectly charged, contracted for or received in connection with certain loans made to the Wendover Settlement Class, which loans were for a period of time serviced by Wendover; 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, Wendover 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, Wendover Settlement Class, the “Non-Wendover Plaintiff Borrowers,” as defined herein, and the “Non-Settling Defendants,” as defined herein, and denies any basis for the recovery of punitive damages from Wendover; and

WHEREAS, counsel for the Named Plaintiffs and counsel for Wendover 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 Wendover; and

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

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

WHEREAS, the Named Plaintiffs, on behalf of the Wendover Settlement Class, and

Plaintiffs' Counsel have concluded that a settlement with Wendover as stated herein will be fair, just, equitable, reasonable, adequate and in the best interests of the Named Plaintiffs and members of the Wendover 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 Wendover through trial, the delays and the risks and costs of further prosecution of the Litigation against Wendover, 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 Wendover Settlement Class and/or the Non-Wendover Plaintiff Borrowers may continue to pursue their claims on the "PCC Loans," as defined herein, against PCC and the Non-Settling Defendants; and

WHEREAS, Wendover 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 Wendover 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-Wendover Loans," as defined herein, by the Named Plaintiffs and the Wendover Settlement Class against Wendover 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 Wendover and other Released Persons; (2) the Non-Wendover Plaintiff Borrowers; and (3) any members of the Wendover 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 “Wendover 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 Wendover asserted; or the propriety of class certification of the Wendover 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 Wendover or their respective parent, affiliate 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 Wendover 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. Wendover 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 Wendover.** “Counsel for Wendover” means Shook, Hardy & Bacon, LLP, 2555 Grand Blvd, Kansas City, Missouri 64108.

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, affiliates, related companies, predecessors, successors and assigns of each such Impac Defendant.

2.11. **IOLTA Account.** “IOLTA Account” is defined in Paragraph 4.c of this Agreement.

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

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

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

2.15. **Wendover Settlement Class Member Payment.** “Wendover Settlement Class Member Payment” means the portion of the “Net Distributable Settlement Funds” shown on **Schedule A** to be paid to the respective Wendover 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 Fund.** “Net Distributable Settlement Fund” means the “Net Settlement Fund” 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 Fund.** "Net Settlement Fund" 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-Wendover Plaintiff Borrower.** "Non-Wendover 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-Wendover Loan" including, but not limited to, Leo Parvin, 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 Patricia Ann Worthy, 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-SD, (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-SD, (l) LaSalle National Bank, now known as Bank of America, N.A., individually and/or as trustee, owner trustee, co-owner trustee, or indenture trustee of the Impac CMB Trust Series 1999-1 trust, (m) the Impac CMB Trust Series 1999-1 trust, (n) Wilmington Trust Company individually and/or as trustee, owner trustee, co-owner trustee, or indenture trustee of the 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, Impac Real Estate Asset Trust Series 2006-SD or Impac CMB Trust Series 1999-1, Impac CMB Trust Series 2000-1, (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 Wendover as the servicer of the PCC-Wendover Loans) including, without

limitation, Defendants Wilmington Trust Company, Wells Fargo Bank, N.A. (including any predecessor or other companies acquired or merged into Wells Fargo), Countrywide Home Loans, Inc. and BAC Home Loans Servicing, L.P., 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-Wendover Plaintiff Borrowers were sold, assigned or otherwise transferred or conveyed; (t) any person, association or entity that serviced any of the loans of any of the Non-Wendover 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 Preferred Credit Corporation (“PCC”) on or after June 27, 1994.

2.28. **PCC-Wendover Loan.** “PCC-Wendover Loan” means any Loan that was originated by Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation), and that was serviced by Wendover.

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. **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-Wendover Loans and which any one or more of the Releasers have had, or now have against the Released Persons, as defined in Paragraph 2.32, 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 Wendover Settlement Class Members’ PCC-Wendover Loans; (2) any activities of the Released Persons with respect to the PCC-Wendover Loans including, without limitation, any alleged representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act,

deceptions, acts of unconscionability, unfair business practices, breaches of contract, usury, unfulfilled promises, breaches of warranty or fiduciary duty, conspiracy, excessive fees collected, or violations of any consumer protection statute or merchandising practices act, any state unfair trade practice statute, or any other body of case, statutory or common law or regulation, federal or state, including but not limited to the Missouri Second Mortgage Loans Act, 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.*; (3) the review, underwriting, origination, purchase, sale, servicing, collection and/or satisfaction of the PCC-Wendover Loans; and/or (4) any conduct undertaken by any of the Released Persons to defend the Litigation. It is the intention of the Releasers to provide a general release of the Released Claims against the Released Persons; provided, however, that anything in this Agreement to the contrary notwithstanding, the term Released Claims does not include: (1) any claims of any kind or type 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-Wendover 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 or serviced by Wendover; and/or (3) any claims of any kind or type by any Non-Wendover Plaintiff Borrower with respect to the PCC Loans.

2.32. **Released Persons.** “Released Persons” shall mean Wendover, individually and together with all of its affiliates, parent companies and subsidiaries, and each of Wendover’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, predecessors, successors, and assigns and includes Wendover Funding, Inc. and Wendover Financial Services Corporation. 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.

2.33. **Releasers.** “Releasers” means the Named Plaintiffs and the other Wendover 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 Wendover Settlement Class who timely opt out of the Settlement in accordance with Paragraph 9 below; (b) any persons not identified on **Exhibit D, attached**; or (c) the Non-Wendover 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.

2.34. **Settlement.** “Settlement” means the compromise in settlement memorialized

by this Agreement.

2.35. **Settlement Fund.** “Settlement Fund” means the amounts to be delivered by Wendover in accordance with Paragraph 4.a below.

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

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

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

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

### **3. Certification of the Wendover 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 “Wendover 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 serviced by Wendover Financial Services Corporation, 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

b. A list of all members of the Wendover Settlement Class 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 Wendover 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 13, 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 Wendover 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, shall not be discoverable or admissible in the Litigation or otherwise.

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

a. The cash settlement consideration to be paid by Wendover to the

Wendover Settlement Class Members is a cash payment of \$100,000.00 (the “Settlement Payment”).

b. Within five (5) business days after entry of the Final Judgment and receipt by Counsel for Wendover in writing of appropriate wiring instructions and a completed W-9 Tax Form from Plaintiffs’ Counsel (the “Settlement Payment Date”), Wendover 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 Fund. The Settlement Payment, including any interest earned in escrow, shall be returned to Wendover 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 Initial Settlement Payment while in escrow.

c. The Parties’ escrow agreement shall provide that the Settlement Payment and any interest thereon will be released to Plaintiffs’ Counsel from escrow the first business day after the Effective Date. Plaintiffs’ Counsel shall deposit the Settlement Payment and interest into an IOLTA account at Missouri Bank and Trust (the “IOLTA Account”). Plaintiffs’ Counsel, 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 Fund, and Net Distributable Settlement Fund 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 Wendover Settlement Class.

d. If any member(s) of the Wendover 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 Fund attributable to said “opt outs” shall remain a part of the Net Distributable Settlement Fund and will be reallocated to the Wendover 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 Fund shall not be reduced as a result of any member(s) of the Wendover 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 Plaintiffs’ Counsel, Plaintiffs’ Counsel shall calculate the Net Settlement Fund and Net Distributable Settlement Fund based on the amount of the total resulting Settlement Fund and distribute the Net Distributable Settlement Fund, plus any interest earned on said Net Settlement Fund while in escrow, to the Wendover Settlement Class Members (i.e., those members of the Wendover 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 Wendover Settlement Class Members are the Wendover Settlement Class

Member Payments. Plaintiffs' Counsel shall distribute the Wendover Settlement Class Member Payments to the Wendover Settlement Class Members within 30 days of the Effective Date by checks mailed to the Wendover Settlement Class Members or, in the event of a Wendover Settlement Class Member bankruptcy under Chapter 7, to the Chapter 7 bankruptcy trustee for said Wendover Settlement Class Member, with notice of said mailing to said Wendover Settlement Class Member. Plaintiffs' Counsel will re-mail any returned checks to any new address disclosed. To the extent any check is returned a second time, Plaintiffs' Counsel shall undertake reasonable efforts to locate a current address for said Wendover Settlement Class Member. If any Wendover Settlement Class Member refuses to accept receipt of a Wendover Settlement Class Member Payment check, or does not cash a Wendover Settlement Class Member Payment check within 30 days of receipt, Plaintiffs' Counsel shall undertake reasonable efforts to locate and/or contact the Wendover Settlement Class Member and inquire about receiving and/or cashing the check. Within 210 days of the Effective Date, Plaintiffs' Counsel shall file a report with the Court confirming that the entirety of the Net Distributable Settlement Funds/ Wendover Settlement Class Member Payments was distributed to the Wendover 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 Funds to the Wendover Settlement Class Members. Plaintiffs' Counsel shall reallocate the amounts of any unclaimed checks to the paid Wendover Settlement Class Members pro rata based on their allocable share of their total paid distributions of claimed checks at such time as Plaintiffs' Counsel determines appropriate in their sole discretion, but which in any event shall be prior to the expiration of any period of escheatment.

g. Plaintiffs' Counsel shall be responsible for preparing, filing and addressing any requisite IRS Form 1099s. Wendover Settlement Class Members shall be responsible for any taxes due or any tax liability arising out of the distribution of the Settlement Fund.

h. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to or arising out of the investment, allocation or distribution of the Settlement Fund to the Wendover 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 Wendover 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-Wendover Loan, regardless of whether a payment check has been made out to all or only some of the Wendover Settlement Class Members' co-borrowers.

j. No person shall have any claim against the Released Persons, Plaintiffs' Counsel, or any agent designated pursuant to this Agreement based upon any distributions 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 Wendover 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 Fund to determine the Net Settlement Fund from which any award of attorney's fees to Plaintiffs' Counsel shall be deducted before the balance is distributed to the Wendover Settlement Class Members as the Net Distributable Settlement Fund in accordance with Schedule A. Wendover will not object to the Named Plaintiffs applying to the Court for and/or receiving an incentive award in the above-stated amount. To the extent the Court approves an incentive award in an amount less than the not to exceed amount stated above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Fund.

b. Plaintiffs' Counsel and/or the Named Plaintiffs may petition the Court for an award of litigation expenses and/or court costs not to exceed \$ 13,975.19. The amount of any such award, and any interest attributable to said amount(s) while in escrow, shall also be deducted from the Settlement Fund to determine the Net Settlement Fund from which any award of attorney's fees to Plaintiffs' Counsel shall be deducted before the balance is distributed to the Wendover Settlement Class Members as the Net Distributable Settlement Fund in accordance with Schedule A. Wendover will not object to Plaintiffs' Counsel and/or the Named Plaintiffs applying to the Court for, and receiving, an award of expenses and/or costs in the above amount. To the extent the Court awards expenses and/or costs in an amount that is less than the not to exceed amount stated above, the difference and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Fund.

c. Plaintiffs' Counsel and/or the Named Plaintiffs may also petition the Court for an award of attorney's fees not to exceed forty-five percent (45%) of the Net Settlement

Fund, which award of attorney's fees is estimated to be \$ 37,811.16 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 Fund to determine the Net Distributable Settlement Fund and the individual Wendover Settlement Class Member Payments. Wendover 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 Fund.

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, Wendover shall bear no other attorney's fees, court costs or expenses.

## **6. Releases**

a. On the Effective Date, in exchange for the agreement by Wendover to make available and pay the Settlement Fund pursuant to the terms and conditions of this Agreement, and for other good and valuable consideration, Releasers, 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 Releasers 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 Wendover 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 Wendover 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 Wendover 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 Wendover Settlement Class Members, including those Wendover 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. Wendover represents, warrants and declares that (i) it has acted in good faith and has used its best efforts in identifying the members of the Wendover Settlement Class and in producing the loan documents and loan payment and payoff information on which it understands the distribution of the individual Wendover Settlement Class Member Payments shown on Schedule A is based; and (ii) based on said efforts, Wendover is not aware of any members of the Wendover Settlement Class who have not been identified on **Exhibit D**.

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

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

ii. Claims of the Non-Wendover 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-Wendover Plaintiff Borrowers are not PCC-Wendover Loans, and thus, the Non-Wendover Plaintiff Borrowers cannot recover any damages, penalties or other relief from Wendover with respect to their PCC Loans. The Parties agree that a finding and/or conclusion to this effect shall be included in the Final Judgment, but such a finding and/or conclusion by the Court shall not in any way be deemed a holding that the Non-Wendover 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.

c. Plaintiffs' Counsel represent and warrant to Wendover that they have not been informed of any intention on the part of any member of the Wendover 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 Wendover 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 Wendover Settlement Class who opt(s) out of the Wendover 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 Wendover 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 Wendover Settlement Class for settlement purposes;
- d. Approving the appointment of Plaintiffs' Counsel as counsel for the Wendover 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 Wendover 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 Wendover Settlement Class by first-class mail to the last known address of such persons;

g. Establishing a procedure for members of the Wendover 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 Wendover Settlement Class shall be allowed to opt out of the Wendover Settlement Class;

h. Establishing a procedure for Wendover 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 Wendover 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 Wendover Settlement Class Members to appear at the hearing;

k. Staying the Litigation as against Wendover 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-Wendover 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 Wendover Settlement Class)

and

Todd Ruskamp Esq.  
Shook, Hardy & Bacon, LLP  
2555 Grand Blvd  
Kansas City, Missouri 64108  
(on behalf of Wendover)

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 Wendover Settlement Class who does not submit an opt out request substantially in compliance with this Paragraph 9 shall be included in the Wendover Settlement Class and deemed a Wendover 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 Wendover. Class Counsel and Counsel for Wendover 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 Wendover Settlement Class. If class members for three (3) or more loans of the Wendover Settlement Class opt out of the Settlement, either the Wendover Settlement Class (via the Named Plaintiffs acting jointly and in their sole discretion) or Wendover (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 Wendover Settlement Class has filed for bankruptcy under Chapter 7 after obtaining his, her, or their PCC-Wendover Loan, if the member of the Wendover 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 Wendover Settlement Class shall be deemed to have opted out of the Settlement. If neither the member of the Wendover 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 Wendover 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 Strohbehn & Vaughan, P.C.  
2500 City Center Square  
1100 Main Street  
Kansas City, MO 64105  
(on behalf of the Wendover Settlement Class)

and

Todd Ruskamp, Esq.  
Shook, Hardy & Bacon, LLP  
2555 Grand Blvd  
Kansas City, Missouri 64108  
(on behalf of Wendover)

**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 Wendover 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 Wendover Settlement Class Member intervenes, such Wendover Settlement Class Member shall be bound by this Agreement and will be entitled to receive only a pro rata payment from the Net Distributable Settlement Fund.

**10. Final 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 Wendover Settlement Class and find that the Settlement and this Agreement are fair, reasonable, and adequate and in the best interests of the Wendover Settlement Class, will dismiss all petitions, complaints, claims and motions of the Named Plaintiffs on behalf of the Wendover Settlement Class Members pending against Wendover in the Litigation on the merits and with prejudice as to the Releasors, declare that the Wendover 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-Wendover Plaintiff Borrowers cannot recover any damages, penalties or other relief from Wendover with respect to the PCC Loans because the PCC Loans of the Non-Plaintiff Wendover Borrowers are not PCC-Wendover Loans (which finding and/or conclusion shall not be deemed a holding that the Non-Wendover 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 Funds 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 13 below. The Final Judgment 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 Wendover shall file with the Court an affidavit certifying that Wendover 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, Wendover, Plaintiffs' Counsel, and Counsel for Wendover;

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

Wendover 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 judgment, 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 Wendover Settlement Class Members are precluded from reasserting their claims against Wendover in the Litigation after requesting the Court to allow them to do so, then the Named Plaintiffs and the Wendover Settlement Class Members may commence a new lawsuit or proceeding against Wendover, 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 retain all defenses, privileges and immunities they had 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 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 Wendover 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., Accurant, Intelius). Plaintiffs' Counsel will re-mail any returned notices to any new address disclosed. To the extent any notice

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

b. Subject to Court approval, all Wendover 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 Wendover 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 Wendover Settlement Class Members and/or any other client.

**16. CAFA Notice**

Wendover 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 the Settlement 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 Wendover Settlement Class Members on the one hand and Wendover 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 Wendover 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. Wendover, the Named Plaintiffs and the Wendover 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 Wendover 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 Wendover 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 Wendover. Wendover shall not be liable or obligated to pay any fees, expenses, costs or disbursements to the Named Plaintiffs, Plaintiffs' Counsel or the Wendover 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 Funds, 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 December 2012.

Dated: December \_\_\_, 2012

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

Dated: December \_\_\_, 2012

\_\_\_\_\_  
SHELLIE GILMOR, on her own behalf and on behalf of the Wendover Settlement Class Members

Dated: December \_\_\_, 2012

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

Dated: December \_\_\_, 2012

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

Dated: December \_\_\_, 2012

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

Dated: December \_\_\_, 2012

\_\_\_\_\_  
DERRICK ROCKETT, on his own behalf and on behalf of the Wendover Settlement Class Members

Dated: December \_\_\_, 2012

\_\_\_\_\_  
ALETHIA ROCKETT, on her own behalf and  
on behalf of the Wendover Settlement Class  
Members

Dated: December \_\_\_, 2012

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

Dated: December \_\_\_, 2012

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

Dated: December \_\_\_, 2012

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

Wendover Financial Services Corporation

Dated: December \_\_\_, 2012

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

Plaintiffs' Counsel

Dated: December \_\_\_, 2012

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



Counsel for Wendover Financial Services  
Corporation

Dated: December \_\_\_\_, 2012

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

Attorney's Lien Waived and Released:

\_\_\_\_\_  
Attorneys for Wendover Settlement Class

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## **EXHIBITS AND SCHEDULES**

Schedule A – Proposed Distribution Schedule of Net Distributable Settlement Fund/Wendover 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 – Wendover Settlement Class Mailing List