

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

**MELBOURNE POFF and BARBARA  
POFF,**

**Plaintiffs,**

**v.**

**PHH MORTGAGE CORPORATION,**

**Defendant.**

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) **CIVIL ACTION NO.**

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) **4:20-cv-04018**  
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**STIPULATION OF SETTLEMENT AND RELEASE**

**TABLE OF EXHIBITS**

- Exhibit A: Class Notice
- Exhibit B: Operative Complaint
- Exhibit C: [proposed] Preliminary Approval Order

**IT IS HEREBY STIPULATED AND AGREED**, by and between Plaintiffs Melbourne Poff and Barbara Poff (“Plaintiffs”) and Defendant PHH Mortgage Corporation (“PHH”), individually and as successor by merger to Ocwen Loan Servicing, LLC (“Ocwen”), with all terms as defined below, each through their duly authorized counsel, that the above-captioned action, *Melbourne Poff and Barbara Poff v. PHH Mortgage Corporation*, No. 4:20-cv-04018 (S.D. Tex.) (the “Action”), is hereby settled on all of the terms and conditions set forth in this Stipulation of Settlement and Release, and that upon approval by the Court, final judgment shall be entered on the terms and conditions set forth herein.

**I. INTRODUCTION**

**1. The Litigation**

The Action concerns the PHH Defendants’ practice of charging Convenience Fees for borrowers’ use of purely optional, expedited online and telephonic payment methods.<sup>1</sup> Plaintiffs originally filed the Action in the United States District Court for the District of New Jersey on July 17, 2020, before the case was transferred to the Southern District of Texas on November 24, 2020. (Doc. 38). In the original complaint, Plaintiffs asserted claims on behalf of a putative class under the Texas Debt Collection Act (“TDCA”) and for breach of contract, all based on the PHH Defendants’ assessment of Convenience Fees agreed to by Plaintiffs when they sought to pay their mortgage using online or telephonic payment methods. (Doc. 1). After the Action was transferred to the Southern District of Texas, Plaintiffs filed an Amended Complaint on January 11, 2021. (Doc. 60). The Amended Complaint retained the TDCA class claims, dropped the breach of contract claims, and added a claim for declaratory relief for an FHA sub-class, seeking a

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<sup>1</sup> For most of the period at issue in this action, PHH used Speedpay, Inc.’s “Speedpay™” service to facilitate these kinds of online and telephonic payment methods, so the Convenience Fees charged by PHH were often referred to as “Speedpay” fees.

declaration that Speedpay fees are not legally chargeable to FHA borrowers and an injunction requiring PHH to comply with the TDCA. PHH responded to the Amended Complaint with a Motion to Dismiss. (Doc. 63). The Court dismissed Plaintiffs' injunctive relief claim while denying PHH's Motion to Dismiss the TDCA claim. (Doc. 72). After additional briefing and discovery on the TDCA's statute of limitations, the Court dismissed all TDCA claims based on payments made prior to July 17, 2018 (*i.e.*, two years before the filing of the initial complaint). (Doc. 77). This included all claims advanced by Ursula Williams, one of the three original named plaintiffs in this Action.

The Parties then decided to mediate the claims remaining in dispute and requested a settlement conference before United States Magistrate Judge Andrew M. Edison. (Doc. 79). The Parties participated in a mediation session before Magistrate Judge Edison on August 15, 2022. During that mediation session, the Parties reached a tentative agreement in principle on the principal terms of a potential settlement, which after further refinement and approval by the PHH Defendants' management, was reduced to an executed term sheet several weeks later.

In relevant part, the Parties agreed to resolve claims based on Convenience Fee payments made between July 17, 2018 and the date of execution of this Agreement by borrowers on residential mortgage loans with mortgaged property located in Texas (but excluding borrowers who have been given the opportunity to participate in certain previously approved or proposed class action settlements concerning Convenience Fees charged by Ocwen or PHH). This time period is consistent with the Court's ruling on the statute of limitations for Plaintiffs' TDCA claims in its order granting summary judgment to PHH on all TDCA claims based on payments made before July 17, 2018. The Parties further agreed that members of the approved settlement class *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala Aug.

1, 2019), and potential members of the proposed FDCPA settlement class in *Morris v. PHH Mortgage Corp.*, Case No. 0:20-CV-60633-RS (S.D. Fla.), would be excluded from the proposed settlement class in this action. The proposed FDCPA settlement class in *Morris* is defined, in pertinent part, as all borrowers on residential mortgage loans who paid a Convenience Fee to Ocwen or PHH from March 25, 2019 through and including August 17, 2022, and whose mortgage loans were serviced but not owned by Ocwen or PHH and were 30 days or more delinquent when Ocwen or PHH acquired servicing rights to those loans.

Only after agreeing on the principal terms of the potential settlement did the Parties discuss potential Service Awards to the class representative and attorneys' fees for Class Counsel. The only agreement made regarding those items was that Class Counsel would seek an award of attorneys' fees from the District Court of no more than thirty three percent (33%) of the Settlement Fund plus expenses, to be paid solely out of the Settlement Fund. The PHH Defendants remain free to object to any request for Service Awards and Attorneys' Fees and Expenses if and as they deem fit.

As a result of the mediation and those subsequent fee-related negotiations—and based upon their own respective independent investigations and evaluations of the facts and law relating to all of the matters alleged in the pleadings—the Parties entered into a “Proposed Settlement Term Sheet” on September 9, 2022, subject to approval by upper management and/or the board of PHH. After obtaining such approval, the Parties provided joint notice to the Court that they had agreed in principle on the major terms of a potential settlement, subject to final mutual agreement on all terms of all necessary written settlement agreements and submissions. (Doc. 82). Thereafter, the Parties continued to negotiate the remaining details of the Settlement, which are memorialized in this Agreement.



This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of the PHH Defendants, or any of the Released Persons (as defined in this Agreement), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, in this or any other action.

**2. The PHH Defendants' Denial of Wrongdoing and Liability and Reasons for Settlement**

At all times, the PHH Defendants have denied and continue to deny liability for the claims asserted in the Action and deny that they committed, threatened, attempted or intended to commit any wrongful act or violation of law or duty. The PHH Defendants maintain that Ocwen's and PHH's practices and procedures associated with charging Convenience Fees for loan payments made by telephone via a live operator, by an interactive voice response telephone system ("IVR"), were at all times lawful, consented to in advance by the borrowers after full disclosure of the avoidable nature and amount of the Convenience Fees, and were advantageous to borrowers. The advantages were particularly substantial where payment was tendered near a loan's payment grace period deadline, given that the Convenience Fees were in almost all cases less than the contractual late fees that would have been imposed had the PHH Defendants demanded that borrowers tender payment by the means authorized by their loan documents (through the U.S. mail), and many borrowers could not have submitted payment by such means before the grace deadline.

Among other things, the PHH Defendants contend that their assessment of Convenience Fees could not have violated the TDCA because Convenience Fees were voluntarily paid by fully informed borrowers in return for an entirely optional and separate service: expedited payment processing. The TDCA only prohibits fees "incidental to the obligation." TEX. FIN. CODE § 392.303(a)(2). But, the PHH Defendants contend, separate fees for a separate, optional, and

entirely avoidable service cannot be “incidental to” borrowers’ mortgage debts because they are entirely avoidable. No borrower is required to pay telephonically or online; borrowers can pay without incurring any fee whatsoever by mailing a check or money order, as their loan documents contemplate, or by signing up for automatic scheduled monthly debits to their checking account. For these exact reasons, a substantial number of federal district courts have dismissed actions arising from the assessment of convenience fees for the use of optional telephonic or internet payment methods, including in substantially similar actions against PHH as successor to Ocwen.

The PHH Defendants also contend that their Convenience Fees were permitted by settled state common law contractual principles, because Convenience Fees were paid pursuant to a separate express agreement for the separate consideration of an extra, optional service that Defendants were not required to offer at all. Plus, the PHH Defendants have identified various state and federal statutes and regulations that they contend permit the assessment of Convenience Fees in these circumstances, including the FTC’s 1988 regulatory guidance that Convenience Fees do not violate the FDCPA (the TDCA’s federal analogue) because any required authorization and consent could be expressed in general terms in the loan documents or granted orally in a side agreement entered into at the time of the payment transaction. Finally, nothing in the borrowers’ loan documents prohibits the PHH Defendants from assessing Convenience Fees for the use of optional payment methods not expressly provided for in the borrowers’ promissory notes. To the contrary, the PHH Defendants contend the loan documents state that they are governed by or subject to federal laws and regulations, which permit the assessment of Convenience Fees in return for offering expedited or more convenient payment services.

The PHH Defendants also contend that Plaintiffs cannot show that PHH “collect[ed]” or “attempt[ed] to collect” the convenience fees, a requisite for a TDCA claim. TEX. FIN. CODE §

392.303(a)(2). Texas courts have interpreted the definition of “collect” narrowly, so that PHH’s practice of charging convenience fees for expressly optional extra services agreed to by the borrower each time the borrower chose to use the services would not constitute “collection.” *See CPS Energy v. Pub. Util. Comm’n of Texas*, 537 S.W. 3d 157, 190 (Tex. App. 2017), *rev’d in part on other grounds sub nom. Time Warner Cable Texas LLC v. CPS Energy*, 593 S.W. 3d 291 (Tex. 2019).

Although the Court chose not to dismiss the Operative Complaint based on the foregoing arguments raised in the PHH Defendants’ motion to dismiss, instead reserving ruling on the substance of these defenses for later summary judgment proceedings, the PHH Defendants are confident that they could prevail on these arguments either before this Court in subsequent proceedings or in an appeal to the Fifth Circuit.

Nevertheless, taking into account the uncertainty and risks inherent in any litigation, PHH has concluded that further defense of the Action would be counterproductive, would not be cost-efficient, and would be unduly protracted, costly, burdensome and disruptive to its business operations, as compared to the certainty and finality offered by the terms of Settlement. Therefore, PHH believes that it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. As set forth in Paragraphs 2.3, 6.4, 12.6.3, and 13.3 below, this Agreement shall in no event be construed as or deemed to be evidence of an admission or concession by the PHH Defendants or any of the Released Persons with respect to any claim of any fault or liability or wrongdoing or damage whatsoever in this case or any other.

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Given all of the foregoing, and considering the risks and uncertainties inherent in continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms

and conditions of this Agreement and Settlement are more than fair, reasonable, adequate and in their respective best interests and in the best interests of the class as a whole.

## **II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

### **1 Definitions**

1.1 As used in this Agreement and the attached exhibits (which are integral parts of this Agreement and are incorporated in their entirety by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise:

1.1.1 “Action” means the lawsuit captioned *Melbourne Poff and Barbara Poff v. PHH Mortgage Corporation*, Case No. 4:20-cv-04018, pending in the United States District Court for the Southern District of Texas.

1.1.2 “Agreement” means this Stipulation of Settlement and Release and the exhibits attached hereto or incorporated herein, including any amendments subsequently agreed to by the Parties pursuant to the provisions of Section 12 of this Agreement and any exhibits to such amendments.

1.1.3 “Attorneys’ Fees and Expenses” means such aggregate funds as may be awarded by the Court from the Settlement Fund to compensate Class Counsel (and any other past, present, or future attorneys for Plaintiffs or the Class in this Action) for all of the past, present, and future attorneys’ fees, costs (including court costs), expenses, and disbursements earned or incurred collectively and individually by any and all of them, their investigators, experts, staff, and consultants combined in connection with the Action.

1.1.4 “Class Counsel” means Edwin Lee Lowther, III and Randall Keith Pulliam of Carney Bates & Pulliam, PLLC and James Lawrence Kauffman and Elizabeth Ann Ryan of Bailey & Glasser LLP.

1.1.5 “Class Loans” means residential mortgage loans secured by mortgaged

property located in the State of Texas that qualify a Settlement Class Member for membership in the Settlement Class as defined in Paragraph 1.1.34 below.

1.1.6 “Class Notice” means the legal notice summarizing the terms of this Agreement, in a form substantially similar to that attached as **Exhibit A**, to be provided to the Settlement Class pursuant to the provisions of Section 7 of this Agreement.

1.1.7 “Class Roster Date” means 11:59 p.m. EDT on October 17, 2022, the date as of which the Class Loans encompassed within the Settlement Class was determined and verified through reference to the PHH Defendants’ records.

1.1.8 “Convenience Fee” means fees paid by borrowers to the PHH Defendants for making loan payments by telephone via a live operator, by an interactive voice response telephone system (“IVR”), or via the internet.

1.1.9 “Costs of Administration” means the reasonable and necessary costs incurred by the Settlement Administrator to: (a) provide notice of the Settlement and this Agreement to the Settlement Class, as set forth in Section 7 of this Agreement, with such costs being limited to those associated with establishing and maintaining the Settlement Website and the automated interactive voice response telephone system, responding to Settlement Class Member inquiries, and printing, mailing, and otherwise distributing the Class Notice to the Settlement Class as provided in Section 7; and (b) calculate and distribute the Individual Allocations as set forth in Section 4 of this Agreement. The Costs of Administration include the reasonable fees and expenses incurred by the Settlement Administrator in performing all of the tasks for which the Settlement Administrator is retained. The Costs of Administration will be paid from the Settlement Fund established by the PHH Defendants. The Costs of Administration do not include any Attorneys’ Fees and

Expenses or Service Awards, which—if awarded by the Court—will also be paid from the Settlement Fund.

1.1.10 “Court” means the United States District Court for the Southern District of Texas, the Honorable Charles Eskridge presiding, or any other judge of this Court who shall succeed him as the Judge assigned to this Action.

1.1.11 “Fairness Hearing” means the hearing held by the Court to consider evidence and argument for the purposes of determining, among other things, whether the terms of this Agreement and the Settlement are fair, reasonable and adequate; whether this Agreement should be given final approval through entry by the Court of the Final Order and Judgment; and whether certification of the Settlement Class should be made final. The Fairness Hearing shall be held no earlier than one hundred and thirty-five (135) days after the date of entry of the Preliminary Approval Order.

1.1.12 “Final Order and Judgment” means the order entered by the Court finally approving the Settlement and this Agreement; certifying the Settlement Class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure; and granting judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure, which unless the Parties otherwise agree shall be in substantially the same form as is agreed to by the Parties and submitted to the Court at or before the Fairness Hearing.

1.1.13 “Final Settlement Date” means ten (10) days after the date on which the Final Order and Judgment approving this Agreement becomes final. For purposes of this Agreement, the Final Order and Judgment shall become final: (a) if no appeal is taken from the Final Order and Judgment, on the date on which the time to appeal therefrom has expired pursuant to Federal Rule of Appellate Procedure 4; or (b) if any appeal is taken from the

Final Order and Judgment, on the date on which all appeals therefrom, including petitions for rehearing or re-argument pursuant to Federal Rule of Appellate Procedure 40, petitions for rehearing *en banc* pursuant to Federal Rule of Appellate Procedure 35 and petitions for certiorari pursuant to Rule 13 of the Supreme Court of the United States or any other form of appellate review, have been fully and finally disposed of in a manner that affirms all of the material provisions of the Final Order and Judgment.

1.1.14 “Individual Allocations” means the share of the Settlement Fund that all borrowers on a given Class Loan are jointly entitled to receive following payment from the Settlement Fund of any Costs of Administration, Attorneys’ Fees and Expenses, and Service Awards that may be awarded by the Court, to be calculated and determined in accordance with Section 4 of this Agreement.

1.1.15 “Objection/Exclusion Deadline” means the date by which any written objection to this Agreement must be filed with the Court and any request for exclusion by a Potential Settlement Class Member must be received by the Settlement Administrator, which shall be designated as a date thirty-five (35) days before the originally scheduled date of the Fairness Hearing (if the Fairness Hearing is continued, the deadline runs from the first scheduled Fairness Hearing), or on such other date as may be ordered by the Court.

1.1.16 “Ocwen” means Ocwen Loan Servicing, LLC.

1.1.17 “Operative Complaint” means the Amended Complaint, filed in the United States District Court for the Southern District of Texas on January 11, 2021 (Doc. 60), and attached hereto as **Exhibit B**.

1.1.18 “Parties” or “Party” means Plaintiffs and the PHH Defendants, separately and collectively, as each of those terms is defined in this Agreement.

1.1.19 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.1.20 “PHH” means PHH Mortgage Corporation d/b/a PHH Mortgage Services.

1.1.21 “PHH Defendants” means PHH and Ocwen, separately and collectively, as each of those terms is defined in this Agreement, on its own behalf and as successor by merger to Ocwen, and any of their affiliates, subsidiaries, parents, partners, members, and/or predecessors.

1.1.22 “PHH Defendants’ Counsel” means Robert Ford, Michael R. Pennington, Scott Burnett Smith, and Zachary A. Madonia of the law firm of Bradley Arant Boult Cummings LLP.

1.1.23 “Plaintiffs” mean Melbourne Poff and Barbara Poff, the named plaintiffs in the Action.

1.1.24 “Potential Settlement Class Members” mean Persons who fall within this Agreement’s definition of the Settlement Class.

1.1.25 “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the Settlement as outlined in this Agreement, certifying the Settlement Class for settlement purposes only, designating Class Counsel as counsel for the Settlement Class and Plaintiffs as the representatives of the Settlement Class, and approving the form and content of the Class Notice to be disseminated to the Settlement Class. A proposed version of the Preliminary Approval Order is attached hereto as **Exhibit C**.



1.1.26 “Release” means the release and waiver set forth in Section 3 of this Agreement.

1.1.27 “Released Claims” means each and all of the claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages (whether punitive, statutory, or compensatory and whether liquidated or unliquidated), losses, controversies, costs, expenses and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any regulatory bulletin, guidelines, handbook, opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, that relate to or arise out of any Convenience Fees charged by the PHH Defendants to Settlement Class Members during the period from July 17, 2018 through and including October 17, 2022.

1.1.28 “Released Persons” means (a) PHH, Ocwen, and any and all of their current or former predecessors, successors, assigns, parent corporations, subsidiaries, divisions, related and affiliated companies and entities, associates, vendors, service providers, software licensors and licensees, clients and customers, principals, stockholders, directors, officers, partners, principals, members, employees, attorneys, consultants, independent contractors, representatives, and agents, transferee servicers, and all individuals or entities acting by, through, under, or in concert with any of them; and (b) any trustee of a mortgage securitization trust which includes loans on which Settlement Class Members are borrowers, including, but not limited to, any direct or indirect subsidiary of any of them, and all of the officers, directors, employees, agents, brokers, distributors, representatives, and attorneys

of all such entities.

1.1.29 “Releasing Persons” means individually and collectively (a) Plaintiffs and (b) the Settlement Class and each Settlement Class Member thereof, and in each case in clauses (a) and (b), on behalf of themselves and any of their respective past, present, or future heirs, guardians, assigns, executors, administrators, representatives, agents, attorneys, partners, legatees, predecessors, co-obligors, and/or successors.

1.1.30 “Retained Convenience Fees” means Convenience Fees that were retained by either Ocwen or PHH and neither refunded to the borrower nor paid by Ocwen or PHH to a third party vendor to facilitate the Convenience Fee payment.

1.1.31 “Service Award” means such funds as may be awarded by the Court from the Settlement Fund to Plaintiffs Melbourne and Barbara Poff to compensate them for their efforts in bringing the Action and achieving the benefits of this Agreement on behalf of the Settlement Class.

1.1.32 “Settlement” means the settlement and related terms between the Parties as set forth in this Agreement.

1.1.33 “Settlement Administrator” means KCC, selected by mutual agreement of the Parties to help implement the distribution of the Class Notice, host the Settlement Website and automated interactive voice recognition telephone system, calculate Individual Allocations and distribute Individual Allocations to Settlement Class Members paid by check, and aid in fulfilling the related requirements set forth in this Agreement. The Parties will seek the Court’s approval of KCC as the Settlement Administrator in connection with the preliminary approval of this Agreement and Settlement.

1.1.34 “Settlement Class” means, for purposes of the Settlement and this

Agreement only, all borrowers on residential mortgage loans involving mortgaged property located in the State of Texas who, between July 17, 2018 (the first day of the Class Period) and October 17, 2022 (the last day of the Class Period), paid a Convenience Fee to Ocwen and/or PHH that was not refunded or returned. Excluded from the Settlement Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH, ECF No. 71 at 7 (N.D. Ala. Aug. 1, 2019); (b) all persons who are potential members of the proposed FDCPA settlement class in *Morris, et al. v. PHH Mortgage Corp., et al.*, No. 0:20-cv-60633-RS (S.D. Fla.), whether or not those persons timely and validly exclude themselves from the *Morris* FDCPA settlement class; (c) borrowers who are or were named plaintiffs in any civil action other than this Action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date this Agreement is fully executed; (d) the PHH Defendants' board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them.

1.1.35 "Settlement Class Members" mean Persons who fall within the definition of the Settlement Class, who do not timely and properly exclude themselves from the Settlement Class as provided in this Agreement, and who otherwise are not excluded by specific order of the Court from the Settlement Class.

1.1.36 "Settlement Fund" means the monetary relief with an aggregate value of \$1,300,000.00 that the PHH Defendants have agreed to make available to the Settlement Class as a whole, to be distributed pursuant to the terms of Sections 4 and 10 of this Agreement.

1.1.37 “Settlement Website” means the internet website that the Settlement Administrator will establish and host pursuant to the provisions of Section 7 of this Agreement, following entry of the Preliminary Approval Order.

1.2 Other capitalized terms used in this Agreement but not defined in this Section 1 shall have the meanings ascribed to them elsewhere in this Agreement and the exhibits attached hereto.

1.3 The terms “he or she” and “his or her” include “it” or “its” and vice versa, where applicable.

## **2 Representations, Acknowledgements, and Warranties**

2.1 Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, that: (1) it is in the best interest of Plaintiffs and the Settlement Class to enter into this Agreement to avoid the uncertainties of litigation and assure that the benefits reflected herein, including the value of the Settlement Fund under this Agreement, are obtained for Plaintiffs and the Settlement Class, and (2) the Settlement set forth in this Agreement is fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23 and in the best interests of Plaintiffs and the Settlement Class.

2.2 Based on, among other things, their extensive investigation in the Action, including their extensive legal research and the extensive discovery conducted in the course of litigating this Action and similar actions, including similar actions against the PHH Defendants, as well as the information sharing that occurred before, during, and after the Parties’ mediation, Class Counsel recommend and agree to this Settlement as set forth herein.

2.3 Plaintiffs, both for themselves individually and on behalf of each Settlement Class Member, and the PHH Defendants acknowledge and agree that neither this Agreement nor the

releases given herein, nor any consideration therefore, nor any actions taken to carry out or obtain Court approval of this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. The PHH Defendants expressly deny liability for the causes of action asserted in Plaintiffs' Operative Complaint. Neither this Agreement, nor the fact of the Settlement, nor the settlement proceedings, nor settlement negotiations, nor statements made in court proceedings, nor any related document, shall be used as an admission of any fault, violation, breach of duty, or omission by the PHH Defendants or the Released Persons, or be construed as, offered as, received as, or used as evidence of an admission, concession, presumption, or inference of any fact or of any liability or wrongdoing by the PHH Defendants or the Released Persons in any proceeding, or as a waiver by the PHH Defendants or the Released Persons of any applicable defense, or for any other purposes other than such proceedings as may be necessary to defend, consummate, interpret, or enforce the Settlement contemplated by this Agreement.

2.4 Each counsel or other Person executing this Agreement on behalf of any Party hereto expressly warrants and represents that (a) such Person has the full authority to execute this Agreement on behalf of the Party for whom such Person is executing the Agreement (including on behalf of such Person's client, to the extent the Person signing this Agreement is an attorney); (b) such Person is acting upon that person's own respective independent judgment and upon the advice of its respective counsel, and not in reliance upon any representation, warranty, or covenant, express or implied, of any nature or kind by any other Person other than the representations, warranties and covenants contained and memorialized in this Agreement; and (c) any representation, warranty or covenant, express or implied, of any nature or kind that is not contained

in this Agreement is immaterial to the decision to enter into this Agreement. The undersigned Class Counsel represent and warrant that they are authorized to execute this Agreement on behalf of both Plaintiffs and the Settlement Class.

2.5 Plaintiffs represent and warrant that they: (a) have entered into and executed this Agreement voluntarily and without duress or undue influence, and with and upon the advice of counsel, selected by them; (b) have agreed to serve as representatives of the Settlement Class; (c) are willing, able, and ready to perform all of the duties and obligations of representatives of the Settlement Class; (d) have read the Operative Complaint filed in the Action, or have had the contents of the pleading described to them by Class Counsel; (e) are familiar with the results of the fact-finding and discovery undertaken by Class Counsel; (f) have been kept apprised of the progress of the Action and the settlement negotiations between the Parties, and have either read this Agreement (including the exhibits annexed hereto) or have received a detailed description of it from Class Counsel and they have agreed to its terms; (g) have consulted with Class Counsel about the Action, this Agreement and the duties and obligations imposed on representatives of the Settlement Class; (h) have authorized Class Counsel to execute this Agreement on their behalf; and (i) will remain and serve as the representatives of the Settlement Class until the terms of the Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that they can no longer serve in a representative capacity on behalf of the Settlement Class.

2.6 Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they are personally asserting in this Action and releasing under this Agreement, including all Released Claims. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or

claim arising out of or in any way whatsoever pertaining to the Action or to the Released Claims, and that they are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action, the Released Claims, or in any benefits, proceeds or values under the Action or the Released Claims on their behalf. Plaintiffs further represent and warrant that they will indemnify, defend and hold all other Parties harmless as a result of any assignment of such right, and enter into this Settlement without coercion of any kind.

**3 Dismissal, Release, and Covenant not to Sue**

3.1 Subject to Court approval, Plaintiffs agree, on behalf of themselves and the Settlement Class Members, that this Agreement shall be the full and final disposition of: (i) the Action against the PHH Defendants; and (ii) any and all Released Claims as against any and all Released Persons.

3.2 Upon final approval of the Settlement reflected in this Agreement, and as part of the entry of the Final Order and Judgment, Plaintiffs and Class Counsel shall take all steps necessary to effectuate dismissal of the Action in its entirety with prejudice.

3.3 In consideration for the Settlement benefits described in this Agreement, each of the Plaintiffs, on behalf of themselves and each other Releasing Person, hereby releases, and each of the Settlement Class Members and other Releasing Persons shall be deemed to have released, and by operation of the Final Order and Judgment upon the Final Settlement Date shall have released, all Released Claims against all of the Released Persons, separately and severally. In connection therewith, upon the Final Settlement Date, each of the Releasing Persons: (i) shall be deemed to have, and by operation of the Final Order and Judgment, shall have, fully, finally, and forever waived, released, relinquished, remised, acquitted, and discharged to the fullest extent permitted by law all Released Claims against each and all of the Released Persons; (ii) shall forever

be barred and enjoined from commencing, instituting, prosecuting, or participating in any fashion in any and all claims, causes of action, suits, or any other proceeding in any court of law or equity, arbitration tribunal, or other forum of any kind, directly, representatively, derivatively, or in any other capacity and wherever filed, with respect to any Released Claims against any of the Released Persons; and (iii) shall be deemed to have agreed and covenanted not to sue any of the Released Persons with respect to any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Person related in any way to any Released Claims.

3.4 Without in any way limiting its scope, and, except to the extent otherwise specified in this Agreement, the Released Claims include, by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees, costs or any other fees, costs, and/or disbursements incurred by Class Counsel, or by Plaintiffs or by the Settlement Class Members regarding Released Claims for which any of the Released Persons might otherwise be claimed liable.

3.5 The Releasing Persons may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims. Nevertheless, Plaintiffs and the other Releasing Persons do hereby expressly, fully, finally, and forever settle and release, and each Releasing Person, upon the Final Settlement Date, shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

3.6 With respect to any and all Released Claims against any and all Released Persons, the Parties stipulate and agree that, by operation of the Final Order and Judgment upon the Final



Settlement Date, each Releasing Person shall have expressly waived, and shall be deemed to have waived, and by operation of the Final Order and Judgment shall have expressly waived, the provisions, rights and benefits of Cal. Civ. Code § 1542 or any federal, state or foreign law, rule, regulation or common-law doctrine that is similar, comparable, equivalent or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

3.7 All Settlement Class Members and other Releasing Persons shall be bound by the releases set forth in this Section 3 whether or not they ultimately cash, negotiate or deposit any check mailed for their Individual Allocations.

3.8 Subject to the provisions of this Section 3 and the injunctions contemplated herein and in Section 5, nothing in this Release shall preclude any filing in the Action seeking to have the Court enforce the terms of this Agreement, including participation in any of the processes detailed therein.

**4 The Settlement Fund, Claims Administration Process, and Distribution of Individual Allocations**

4.1 Pursuant to and subject to all other terms of this Agreement, and in consideration for (a) the dismissal of the Action with prejudice, (b) the Release set forth in Section 3 and the approval, entry, and enforcement thereof by the Court, and (c) the other promises and covenants in this Agreement, PHH has agreed to make available to Plaintiffs and the Settlement Class the following monetary relief (and only the following monetary relief), subject to each and all of the terms and conditions specified herein.

4.2 PHH shall make available to the Settlement Class a Settlement Fund of

\$1,300,000.00. The Settlement Fund is a lump sum and is not designated as any specific category of monetary relief potentially available under the TDCA and/or any other federal or state claim Plaintiffs could have brought in this litigation.

4.3 The Settlement Fund shall first be applied to pay Costs of Administration, including notice costs, incurred prior to Final Settlement Date. Funds sufficient to pay the Settlement Administrator for such costs expected to be incurred prior to final approval shall be provided by PHH, from the Settlement Fund, to the Settlement Administrator within 5 business days of Preliminary Approval Order. PHH shall pay directly to the Settlement Administrator all remaining Costs of Administration within 10 business days after the Final Settlement Date.

4.4 The Settlement Fund shall next be applied to pay any Attorneys' Fees and Expenses and any Service Awards that may be approved by the Court, pursuant to the provisions of Section 10 of this Agreement. PHH shall transfer to the Settlement Administrator from the Settlement Fund an amount equal to the total of any Attorneys' Fees and Expenses and/or Service Awards that may be approved by the Court within 10 business days after the Final Settlement Date.

4.5 The PHH Defendants shall also cause the remaining balance of the Settlement Fund, after payment of any such Costs of Administration, Attorneys' Fees and Expenses, and Service Awards, to be transferred to the Settlement Administrator within 10 business days after the Final Settlement Date, to be divided and distributed as Individual Allocations among Plaintiffs and the Settlement Class Members. Each Class Loan remaining within the Settlement Class as of the Final Settlement Date will be entitled to receive an Individual Allocation, calculated based on the proportion of Retained Convenience Fees paid to either Ocwen or PHH on that Class Loan between July 17, 2018 and October 17, 2022, as compared to the total aggregate amount of all Retained Convenience Fees paid during that same time period to either Ocwen or PHH on all Class

Loans of all Settlement Class Members. Payments made on Class Loans with multiple borrowers shall be treated as joint payments for purposes of this calculation, such that each Class Loan will be entitled to only one Individual Allocation of the remaining balance of the Settlement Fund. Co-debtors, joint-borrowers, and multiple obligators on a single Class Loan are not entitled to a separate Individual Allocation on the same Class Loan.

4.6 The Parties shall cause the Settlement Administrator to distribute the Individual Allocations to Settlement Class Members no later than sixty (60) days following the Final Settlement Date. The Parties shall cause the Settlement Administrator to distribute Settlement Class Members' respective Individual Allocations by check, with each such check made payable—unless otherwise mutually agreed to by the Parties for good cause shown—jointly to all borrowers on each such Class Loan, in an amount equal to that Class Loan's respective Individual Allocation, payable in U.S. funds, and mailed to the mailing address of record for that Class Loan as determined from the PHH Defendants' records. Individual Allocation relief shall reduce and be paid out of the Settlement Fund. All checks for Individual Allocation relief shall state on the face of the check that the check will expire and become null and void unless cashed within one hundred and eighty (180) days after the date of issuance of the check, and Settlement Class Members' failure to deposit, negotiate or otherwise cash such checks within that one hundred and eighty (180) day period shall constitute a release by those Settlement Class Members (and all other borrowers on their respective Class Loan) of any and all rights to said monetary relief under the Settlement.

4.7 Individual Allocation relief that remains undeliverable three hundred (300) days after the Final Settlement Date despite the Settlement Administrator's efforts to locate the Settlement Class Members shall be paid to Homes for Our Troops, "a privately funded 501(c)(3)

nonprofit organization that builds and donates specially adapted custom homes nationwide for severely injured post – 9/11 Veterans, to enable them to rebuild their lives.” <https://www.hfotusa.org/mission/> (last visited May 19, 2022). No portion of the Settlement Fund will revert to the PHH Defendants.

4.8 Only Settlement Class Members are entitled to any distribution of Individual Allocations. Potential Settlement Class Members who timely and properly exclude themselves from the Settlement Class as provided in this Agreement or who otherwise are specifically excluded by order of the Court are not entitled to any distribution of Individual Allocations.

4.9 Subject to the terms of the Final Order and Judgment, no certifications by the Parties regarding their compliance with the terms of the Settlement and this Agreement will be required. Any dispute as to the Parties’ compliance with their obligations under the Settlement and this Agreement shall be brought and resolved only in the Action and only by the Court, and applicable appellate courts, and in no other action or proceeding.

## **5 Additional Effects of the Settlement**

5.1 Except as expressly set forth in this Agreement, neither the Settlement, nor the Release, nor any of the relief to be offered pursuant to the Settlement shall: (a) alter or extinguish (or be construed as altering or extinguishing) the terms of the debts, promissory notes, mortgages, security interests and other pre-existing contracts of the Settlement Class Members which are still in effect as of the Final Settlement Date; (b) constitute a novation or release of those debts, promissory notes, mortgages, security interests and other pre-existing contracts; or (c) in any way alter the rights of any party under those debts, promissory notes, mortgages, security interests and other pre-existing contracts which are still in effect as of the Final Settlement Date. Nothing in this Agreement, the Settlement or the Release shall prevent the Released Persons from continuing

to service or collect such debts, promissory notes, mortgages, security interests and other pre-existing contracts consistent with the terms of those agreements.

5.2 The Parties hereby agree and acknowledge that the provisions of this Section 5 together constitute essential and material terms of this Agreement and shall be included, approved and made effective in any Final Order and Judgment entered by the Court.

**6 Preliminary Approval Order**

6.1 Promptly after the execution of this Agreement, but in no event later than five (5) business days after this Agreement is fully executed (unless such time is extended by the written agreement of Class Counsel and the PHH Defendants' Counsel), Class Counsel shall submit this Agreement together with its exhibits to the Court and shall move the Court for entry of the Preliminary Approval Order, substantially in the form of **Exhibit C** hereto.

6.2 The requested Preliminary Approval Order shall include, among other things included in Exhibit C, provision for the following:

6.2.1 Preliminary approval of the Settlement set forth in this Agreement as fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23;

6.2.2 Conditional approval of the Settlement Class as for settlement purposes only;

6.2.3 Appointment of Class Counsel and Plaintiffs as the representatives of the Settlement Class;

6.2.4 Approval of the mailing of the Class Notices, substantially in the form attached as Exhibit A, which shall include, among other things, the information identified in Paragraph 7.2.3 and all its subparagraphs;

6.2.5 Approval of the procedures set forth in the Class Notices for Potential

Settlement Class Members to seek exclusion from the Settlement Class or to object to the Settlement and/or the Fee and Expense Application;

6.2.6 Approval of the appointment of a Settlement Administrator;

6.2.7 Preliminarily enjoining (i) Potential Settlement Class Members from directly or indirectly filing, commencing, participating in, or prosecuting (as class members or otherwise) any lawsuit in any jurisdiction asserting on their own behalf claims that would be Released Claims if this Settlement is finally approved, unless and until they timely exclude themselves from the Settlement Class as specified in the this Order and in the Agreement and its exhibits; and (ii) regardless of whether they opt out, Potential Settlement Class Members from directly or indirectly filing, prosecuting, commencing, or receiving proceeds from (as class members or otherwise) any separate purported class action asserting, on behalf of any Settlement Class Members who have not opted out from this Settlement Class, any claims that would be Released Claims if this Settlement receives final approval and becomes effective; and

6.2.8 The scheduling of the Fairness Hearing.

6.3 The PHH Defendants, without admitting that the Action meets the requisites for certification of a contested litigation class under Federal Rule of Civil Procedure 23 or for class certification for any purpose other than settlement, hereby agree, on each and all of the terms and conditions set forth herein, and solely for purposes of and in consideration of the Settlement set forth herein, not to oppose the certification of the Settlement Class for settlement purposes only, the appointment of Class Counsel as legal counsel for the Settlement Class, or the approval of Plaintiffs as the representatives of the Settlement Class.

6.4 The Court's certification of the Settlement Class for settlement purposes only

(whether in the Preliminary Approval Order or Final Order and Judgment) shall not be deemed to be an adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Settlement and this Agreement, and shall not be considered as law of the case, res judicata, judicial estoppel, promissory estoppel, or collateral estoppel in the Action or in any other proceeding unless and until the Final Settlement Date is reached. Whether or not the Settlement reaches the Final Settlement Date, the Parties' stipulations and agreements as to class certification for settlement purposes only (and any and all statements or submission made by the Parties in connection with seeking the Court's approval of the Settlement and this Agreement) shall not be deemed to be any stipulation or grounds for estoppel or preclusion as to the propriety of class certification, nor any admission of fact or law regarding any request for class certification, in any other action or proceeding, whether or not involving the same or similar claims. In the event the Settlement and this Agreement are not approved, or the Final Settlement Date is not reached, or this Agreement is terminated, canceled, or fails to become effective for any reason whatsoever, the Parties' stipulations and agreements as to certification of the Settlement Class shall be null and void and the Court's certification order in any Preliminary Approval Order or Final Order and Judgment shall be vacated, and thereafter no settlement class or settlement classes will remain certified, and nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any party concerning whether the Action may properly be maintained as a class action under applicable law. In the event the Settlement and this Agreement are not approved, or the Final Settlement Date is not reached, or this Agreement is terminated, canceled, or fails to become effective for any reason whatsoever, nothing in this Settlement or this Agreement shall be admissible in any effort related to the certification of any class in this Court or any other court under any circumstances.



**7 Notice to, and Communications with, the Settlement Class and Federal and State Officials**

**7.1 Notice to Appropriate Federal and State Officials.** Pursuant to the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, within ten (10) days after this Agreement is deemed filed with the Court, PHH will provide notice of this Action and this Agreement to the Attorney General of the United States; the Consumer Finance Protection Bureau; the Federal Trade Commission; and the Attorneys General of the States, Districts, Commonwealths and Territories in which Settlement Class Members are determined to reside based on the borrower mailing addresses for the Class Loans as reflected in PHH's records.

**7.2 Individual Notice to the Settlement Class**

**7.2.1** The Class Notice shall be the legal notice to be provided to the Settlement Class Members and shall otherwise comply with Federal Rule of Civil Procedure 23 and any other applicable statutes, laws, and rules, including, but not limited to, the Due Process Clause of the United States Constitution.

**7.2.2** Subject to the requirements of the Preliminary Approval Order, the Parties shall cause the Settlement Administrator to send, no later than twenty-eight (28) days after entry of the Preliminary Approval Order, the Class Notice by First-Class U.S. Mail, proper postage prepaid, to the Potential Settlement Class Members identified in PHH's records on each Class Loan, addressed to the mailing address of record for that Class Loan as reflected in PHH's records. As a result, one (1) Class Notice will be sent with respect to each Class Loan, addressed jointly to all Potential Settlement Class Members identified as borrowers with respect to that Class Loan in PHH's records. Prior to mailing, the Settlement Administrator shall attempt to update the last known borrower mailing addresses for each Class Loan as reflected in PHH's records through the National Change of Address system



or similar databases.

7.2.3 The Class Notice shall advise the Potential Settlement Class Members of the following:

7.2.3.1 General Terms. The Class Notice shall contain a plain, neutral, objective, and concise summary description of the nature of the Action and the terms of the proposed Settlement, including all relief that will be provided by the PHH Defendants to the Settlement Class in the Settlement, as set forth in this Agreement. This description shall also disclose, among other things, that (a) any relief to Settlement Class Members offered by the Settlement is contingent upon the Court's approval of the Settlement, which will not become effective until the Final Settlement Date; (b) Class Counsel and Plaintiffs have reserved the right to petition the Court for an award of Attorneys' Fees and Expenses from the Settlement Fund, and (c) the Settlement is not made contingent upon any particular amount of Service Award or Attorneys' Fees and Expenses being awarded by the Court.

7.2.3.2 The Settlement Class. The Class Notice shall define the Settlement Class and shall disclose that the Settlement Class has been provisionally certified for purposes of settlement only.

7.2.3.3 Opt-Out Rights. The Class Notice shall inform the Potential Settlement Class Members of their right to seek exclusion from the Settlement Class and the Settlement and provide the deadlines and

procedures for exercising this right.

7.2.3.4 Objection to Settlement. The Class Notice shall inform Potential Settlement Class Members of their right to object to the proposed Settlement and to appear at the Fairness Hearing and provide the deadlines and procedures for exercising these rights.

7.2.3.5 Fairness Hearing. The Class Notice shall disclose the date and time of the Fairness Hearing and explain that the Fairness Hearing may be rescheduled without further notice to the Potential Settlement Class Members.

7.2.3.6 Release. The Class Notice shall summarize or recite the proposed terms of the Release contemplated by this Agreement.

7.2.4 **Further information.** The Class Notice shall disclose where Potential Settlement Class Members may direct written or oral inquiries regarding the Settlement, and also where they may obtain additional information about the Action, including instructions on how Potential Settlement Class Members can access the case docket using PACER or in-person.

7.2.5 **Class Loan Number.** The Class Notice to be addressed to all borrowers of record on each Class Loan shall also include that Class Loan's loan number as described in the PHH Defendants' records, which shall not appear on the exterior of any unopened mailing.

7.2.6 Following issuance of the Preliminary Approval Order, Class Counsel and the PHH Defendants' Counsel may by mutual agreement make any changes in the font, format, or content of the Class Notice or the exhibits thereto any time before the Class

Notice is first mailed to Potential Settlement Class Members, so long as such changes do not materially alter the substance of the Class Notice. Any material substantive changes proposed by Class Counsel and the PHH Defendants' Counsel following issuance of the Preliminary Approval Order must be approved by the Court.

7.2.7 The Parties shall cause the Settlement Administrator to re-mail any Class Notices returned by the United States Postal Service with a forwarding address and shall continue to do so with respect to any such Class Notice that is received seven (7) days or more prior to the Objection/Exclusion Deadline. With respect to Class Notices that are returned by the United States Postal Service without a new or forwarding address, the Parties shall cause the Settlement Administrator to as soon as practicable determine whether a valid address can be located through use of the United States Postal Service's National Change of Address database and/or other reasonable means and without undue cost and delay, and then promptly re-mail Class Notices for whom the Settlement Administrator is reasonably able to locate a valid address in accordance herewith, so long as the valid address is obtained by the Settlement Administrator at least seven (7) days or more prior to the Objection/Exclusion Deadline.

7.2.8 **Settlement Website.** The Parties shall cause the Settlement Administrator to establish the Settlement Website, whose address shall be included and disclosed in the Class Notice, and which will inform Potential Settlement Class Members of the terms of this Agreement, their rights, dates, and deadlines and related information. The Settlement Website shall include, in .pdf format, a copy of the Operative Complaint, this Agreement and its exhibits, any Preliminary Approval Order entered by the Court, and a copy of the Class Notice, along with such other case or contact information as the Court may designate

or the Parties may agree to post there. The Settlement Website will be operational and live by the date of the first mailing of the Class Notice.

7.2.9 The Parties shall cause the Settlement Administrator to establish an automated interactive voice recognition telephone system for the purposes of providing information concerning the nature of the Action, the material terms of the Settlement, and the deadlines and procedures for Potential Settlement Class Members to exercise their opt-out and objection rights. The Class Notice and Settlement Website shall include and disclose the telephone number of this automated interactive voice recognition telephone system.

7.3 The Costs of Administration associated with the Settlement shall be paid from the Settlement Fund.

7.4 Not later than ten (10) days before the date of the Fairness Hearing, the Settlement Administrator, and to the extent necessary the Parties, shall file with the Court a declaration or declarations, based on the personal knowledge of the declarant(s), verifying compliance with these class-wide notice procedures.

7.5 The Parties agree that the PHH Defendants shall have the right to communicate directly with, and respond directly to inquiries from, Potential Settlement Class Members in the ordinary course of the PHH Defendants' business, a right which the PHH Defendants expressly reserve. However, any inquiries about this Agreement or about the Action shall be referred to Class Counsel or to the Settlement Administrator.

**7.6 Media Communications.**

7.6.1 The Parties and their counsel agree to ensure that any comments about or descriptions of this Settlement and Agreement or its value or cost in the media or in any other public forum apart from the Action are accurate. In addition, the Parties and their

counsel agree that until such time as the Final Order and Judgment is entered:

7.6.1.1 Any press releases or public communications regarding the Agreement shall be reviewed and mutually approved and agreed to by Class Counsel and the PHH Defendants' Counsel before dissemination or publication.

7.6.1.2 Class Counsel and the PHH Defendants' Counsel may, after mutual consultation, make only mutually agreeable press communications announcing the Settlement, but shall not otherwise issue any press release or printed or broadcast public communication about this Agreement or the Settlement.

7.6.2 Notwithstanding the foregoing, the PHH Defendants may disclose this Agreement to, and discuss this Agreement with, their parent companies, affiliated companies, customers, and clients, and each of their respective accountants, shareholders, auditors, consultants and investors, as well as with government entities as necessary to comply with applicable law, at any time before or after the Final Order and Judgment.

## **8 Requests for Exclusion**

8.1 Any Potential Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written "request for exclusion" to the Settlement Administrator at the address provided in the Class Notice, mailed sufficiently in advance to be received by the Settlement Administrator no later than the Objection/Exclusion Deadline. A written request for exclusion must: (a) contain a caption or title that identifies it as "Request for Exclusion in *Poff v. PHH* (case number 4:20-cv-04018)"; (b) include the Potential Settlement Class Member's name, mailing and email addresses, and contact telephone number; (c) specify that he or she wants to be

“excluded from the Settlement Class” and identify the Class Loan number(s) for which he or she seeks exclusion from the Settlement; and (d) be personally signed by the Settlement Class Member. The requirements for submitting a timely and valid request for exclusion shall be set forth in the Class Notice.

8.2 Each Potential Settlement Class Member who wishes to be excluded from the Settlement Class must submit his or her own personally signed written request for exclusion. A single written request for exclusion submitted on behalf of more than one Potential Settlement Class Member will be deemed invalid; provided, however, that an exclusion received from one Potential Settlement Class Member will be deemed and treated as a request for exclusion by all co-debtors, joint-debtors and multiple borrowers on the same Class Loan.

8.3 Unless excluded by separate Order entered by the Court for good cause shown prior to the final approval of this Settlement, any Potential Settlement Class Member who fails to strictly comply with the procedures set forth in this Section 8 for the submission of written requests for exclusion will be deemed to have consented to the jurisdiction of the Court, will be deemed to be part of the Settlement Class, and will be bound by all subsequent proceedings, orders, and judgments in the Action, including, but not limited to, the Release, even if he or she has litigation pending or subsequently initiates litigation against the PHH Defendants relating to the Released Claims.

8.4 The Settlement Administrator shall file with the Court, no later than ten (10) days before the Fairness Hearing, a list reflecting all the borrower name(s) and mailing address(es) for all requests for exclusion it has received. The list shall also identify which of those requests for exclusion were received late, and which requests for exclusion failed to comply with the requirements of this Section 8.

8.5 Potential Settlement Class Members who exclude themselves from the Settlement Class as set forth in this Section 8 expressly waive any right to the continued pursuit of any objection to the Settlement as set forth in Section 9, or to otherwise pursue any objection, challenge, appeal, dispute, or collateral attack to this Agreement or the Settlement, including to the Settlement's fairness, reasonableness, and adequacy; to the appointment of Class Counsel and Plaintiffs as the representatives of the Settlement Class; to any Service Award or Attorneys' Fee and Expense awards; and to the approval of the Class Notice, and the procedures for disseminating the Class Notice to the Settlement Class.

## **9 Objections to Settlement**

9.1 Any Settlement Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or the Service Award, or to any other aspect or effect of the proposed Settlement, must file with the Court a written statement of his or her objection no later than the Objection/Exclusion Deadline. To file a written statement of objection, a Settlement Class Member must (a) mail it sufficiently in advance to be received by the Clerk of the Court on or before the Objection/Exclusion Deadline, or (b) file it in person on or before the Objection/Exclusion Deadline at any location of the United States District Court for the Southern District of Texas, except that any objection made by a Settlement Class Member represented by counsel must be filed through the Court's Case Management/Electronic Case Filing (CM/ECF) system.

9.2 A written statement of objection must: (a) contain a caption or title that identifies it as "Objection to Class Settlement in *Poff v. PHH* (case number 4:20-cv-04018)"; (b) include the Settlement Class Members' name, mailing and email addresses, contact telephone number, and

Class Loan number(s) for which an objection is being made; (c) state whether the objection applies only to the Settlement Class Member, to a specific subset of the class, or to the entire class; (d) state with specificity the specific reason(s), if any, for each objection, including all legal support the Settlement Class Member wishes to bring to the Court's attention and all factual evidence the Settlement Class Member wishes to introduce in support of the objection; (e) disclose the name and contact information of any and all attorneys representing, advising, or in any way assisting the Settlement Class Member in connection with the preparation or submission of the objection; and (f) be personally signed by the Settlement Class Member.

9.3 A Settlement Class Member may file and serve a written statement of objection either on his own or through an attorney retained at his own expense; provided, however, that a written statement of objection must be personally signed by the Settlement Class Member, regardless of whether he has hired an attorney to represent him.

9.4 Any Settlement Class Member who properly files and serves a timely written objection, as described in this Section 9, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or Service Awards, or to any other aspect or effect of the proposed Settlement. However, any Settlement Class Member who intends to make an appearance at the Fairness Hearing must include a statement to that effect in his or her objection. If a Settlement Class Member hires his or her own personal attorney to represent him or her in connection with an objection, and if that attorney wishes to appear at the Fairness Hearing, the attorney must: (a) file a notice of appearance with the Clerk of Court in the Action no later than the Objection/Exclusion Deadline and (b) serve and deliver a copy of that notice of appearance to



Class Counsel and the PHH Defendants' Counsel no later than the Objection/Exclusion Deadline.

9.5 Any Settlement Class Member who fails to strictly comply with the provisions and deadlines of this Section 9 shall waive any and all objections to the Settlement, its terms, or the procedures for its approval, shall forfeit any and all rights he or she may have to appear separately and/or to object, and will be deemed to have consented to the jurisdiction of the Court, to be part of the Settlement Class, and to be bound by all subsequent proceedings, orders, and judgments in the Action, including, but not limited to, the Release.

9.6 Any Settlement Class Member who objects to the Settlement but does not file an exclusion request shall, unless he or she is subsequently excluded by Order of the Court, remain a Settlement Class Member and therefore be entitled to all of the benefits, obligations and terms of the Settlement if this Agreement and the terms contained therein are approved and the Final Settlement Date is reached.

9.7 Only Settlement Class Members may object to the Settlement as set forth in this Section 9. Potential Settlement Class Members who are excluded from the Settlement Class, whether by submitting a timely and valid request for exclusion as set forth in Section 8 or by order of the Court, have no standing to object to the Settlement.

## **10 Attorneys' Fees and Expenses and Service Awards**

10.1 Class Counsel may petition the Court for an award of attorneys' fees not to exceed thirty-three percent (33%) of the Settlement Fund plus actual litigation expenses, both payable from the Settlement Fund. Class Counsel shall file its motion for an Attorneys' Fees and Expenses award no later than fourteen (14) days before the Objection/Exclusion Deadline. As soon as is practicable after filing, Class Counsel shall cause the Settlement Administrator to post on the Settlement Website all papers filed and served in support of Class Counsel's motion for an award

of Attorneys' Fees and Expenses. The PHH Defendants reserve the right to oppose any petition by Class Counsel for Attorneys' Fees and Expenses that the PHH Defendants deem to be unreasonable in nature or amount or otherwise objectionable.

10.2 All attorneys' fees for, and any reimbursement of litigation expenses incurred by, Class Counsel shall be paid solely out of the Settlement Fund. Other than making available the Settlement Fund pursuant to the requirements of Section 4, the PHH Defendants and the Released Persons shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees or expenses to Class Counsel, which Class Counsel and Plaintiffs shall accept and seek to have paid only from the Settlement Fund.

10.3 Class Counsel is solely responsible for distributing any Attorneys' Fees and Expenses to and among all attorneys that may claim entitlement to attorneys' fees or costs in the Action. It is a condition of this Settlement that the PHH Defendants and the Released Persons shall not be liable to anyone else for any attorneys' fees or costs, or any claim by any other counsel or Settlement Class Member for additional attorneys' fees, incentive or service awards, costs or expenses, relating in any way to the Action, the Settlement, its administration and implementation, any appeals of orders or judgments relating to the Settlement, any objections or challenges to the Settlement, and/or any proceedings on behalf of Settlement Class Members who do not exclude themselves from the Settlement Class based on any of the claims or allegations forming the basis of the Action or any other claims that are defined as Released Claims in this Settlement. If any other or additional attorneys' fees, costs, incentive or service awards, or expenses to be paid by the PHH Defendants separate from the Settlement Fund are awarded to anyone, including but not limited to any parties other than Plaintiffs and Class Counsel, the PHH Defendants at their sole option may declare this Agreement void as set forth in Section 12.

10.4 Plaintiffs and Class Counsel may also petition the Court for Service Awards to the Plaintiffs to be paid from the Settlement Fund, in an amount not exceeding \$10,000 cumulatively. The purpose of the Service Awards is to compensate Plaintiffs for their efforts and risks in bringing and prosecuting the Action on behalf of the Settlement Class Members and achieving the benefits of this Agreement on behalf of the Settlement Class. The PHH Defendants reserve the right to oppose any petition by Plaintiffs and Class Counsel for Service Awards that the PHH Defendants deem to be unreasonable in nature or amount or otherwise objectionable.

10.5 Within ten (10) business days of the Final Settlement Date, the Settlement Administrator shall pay Class Counsel from the Settlement Fund any Attorneys' Fees and Expenses and Service Awards that may be awarded by the Court. Class Counsel shall be solely responsible for supplying the Settlement Administrator with all information required by the Settlement Administrator in order to pay such awards from the Settlement Fund, and to comply with the Settlement Administrator's state and local reporting obligations. Class Counsel will also be solely responsible for distributing such Service Awards to the Plaintiffs, in accordance with the terms and provisions of any Order entered by the Court approving such awards.

10.6 In the event the Final Order and Judgment is not entered, or this Agreement and the Settlement do not reach the Final Settlement Date, the PHH Defendants will not be liable for, and shall be under no obligation to pay, any of the Attorneys' Fees and Expenses and Service Awards set forth herein and described in this Agreement.

10.7 The effectiveness of this Agreement and Settlement will not be conditioned upon or delayed by the Court's failure to approve in whole or in part any petition by Plaintiffs and Class Counsel for Attorneys' Fees and Expenses and Service Awards. The denial, downward modification, or failure to grant any petition by Plaintiffs and Class Counsel for Attorneys' Fees

and Expenses and Service Awards shall not constitute grounds for modification or termination of this Agreement or the Settlement proposed herein.

**11 Final Order and Judgment**

11.1 If the Preliminary Approval Order is entered by the Court, after the dissemination of the Class Notice and not later than ten (10) days before the Fairness Hearing, Class Counsel shall move the Court to enter a Final Order and Judgment. The Final Order and Judgment shall, among other things:

11.1.1 Find that the Court has personal jurisdiction over the Parties and all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all attached exhibits;

11.1.2 Approve the Agreement and the proposed Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; make final the certification of the Settlement Class; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding upon, and have res judicata and collateral estoppel effect in all pending and future lawsuits or other proceedings maintained by or on behalf of, Plaintiffs and the Settlement Class Members;

11.1.3 Find that the Class Notice implemented pursuant to the Agreement (a) constituted the best practicable notice under the circumstances; (b) constituted notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object or exclude themselves from the Agreement and proposed Settlement; and to appear at the Fairness Hearing; (c) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice; and

(d) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

11.1.4 Find that Plaintiffs and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

11.1.5 Incorporate the Release set forth in Section 3 of this Agreement, make the Release effective as of the Final Settlement Date, and forever discharge the Released Persons as set forth in this Agreement;

11.1.6 Permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

11.1.7 Authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Agreement and its implementing documents (including all exhibits to this Agreement) if such changes are not materially inconsistent with the Court's Final Order and Judgment or do not materially limit, or materially and adversely affect, the rights or obligations of the Settlement Class Members under this Agreement;

11.1.8 Order that the Court retains continuing and exclusive jurisdiction over all matters relating to the Settlement or the consummation of the Settlement; the validation of the Settlement; the construction and enforcement of the Settlement and any orders entered pursuant thereto; and all other matters pertaining to the Settlement or its implementation and enforcement;

11.1.9 Direct that judgment of dismissal on the merits and with prejudice of the Action (including all individual claims and class action claims presented thereby) shall be

final and entered forthwith, without fees or costs to any Person or Party except as provided in this Agreement; and

11.1.10 Without affecting the finality of the Final Order and Judgment for purposes of appeal, retain jurisdiction as to the administration, consummation, enforcement and interpretation of this Agreement and the Final Order and Judgment, and for any other necessary purpose.

**12 Modification, Disapproval, Cancellation, or Termination of this Agreement**

12.1 Before entry of the Final Order and Judgment, the terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Order and Judgment, the Parties may by mutual written agreement effect such amendments, modifications or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval of the Court if such changes are not materially inconsistent with the Court's Final Order and Judgment and do not materially limit, or materially and adversely affect, the rights or obligations of Settlement Class Members under this Agreement.

12.2 This Agreement shall terminate at the sole option and discretion of either Party if: (a) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Agreement that the terminating Party in his, her, or its sole judgment and discretion determine(s) is material, including, without limitation, the terms of relief, the findings or conclusions of the Court, the provisions relating to notice (including the proposed plan for the dissemination of notice to the Settlement Class as set forth in Section 7 of this Agreement), the definition of the Settlement Class and the terms and conditions for its certification, and/or the terms of the Release; or (b) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any

portion of the Final Order and Judgment, or any of the Court's findings of fact or conclusions of law, that the terminating Party in his or its sole judgment and discretion determine(s) is material. However, under no circumstances shall the Court's failure to approve, in whole or in part, any petition by Plaintiffs and Class Counsel for Service Awards and Attorneys' Fees and Expenses as set forth in Section 10 of this Agreement provide Plaintiffs or Class Counsel with a basis for terminating this Agreement.

12.3 The PHH Defendants may also in their sole and absolute judgment and discretion elect to terminate this Agreement if: (a) any attorneys' fees and costs, expert fees, costs, expenses, or Service Awards are awarded other than from the Settlement Fund; or (b) requests for exclusion are submitted by Potential Settlement Class Members on 1,000 or more Class Loans.

12.4 Any terminating Party must exercise its option to withdraw from and terminate this Agreement, as provided in this Section 12, by a signed writing served on the other Party no later than thirty-five (35) days after receiving notice of the event prompting the termination unless there is a motion or petition seeking reconsideration, alteration or appeal review of the event, in which case no later than thirty-five (35) days after the final conclusion of any such motion or petition seeking reconsideration, alteration, or appellate review thereof, whichever is later.

12.5 If any of the foregoing termination events occurs, no Party is required for any reason or under any circumstance to exercise that option.

12.6 If the Final Settlement Date does not occur or this Agreement is terminated pursuant to the provisions of this Section 12, then:

12.6.1 This Agreement shall be null and void and shall have no force or effect, through principles of estoppel, res judicata, or otherwise, and no Party to this Agreement shall be bound by any of its terms, except for the terms of this Paragraph 12.6 and its sub-

parts;

12.6.2 This Agreement, all of its provisions, and all negotiations, statements, documents, orders and proceedings relating to it shall be inadmissible in evidence for any purpose, and shall be without prejudice to the rights of the PHH Defendants, Plaintiffs and the Settlement Class, all of whom shall be restored to their respective positions in the Action as of the date existing immediately before the signing of this Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that neither Party's substantive or procedural rights is prejudiced by the attempted Settlement;

12.6.3 Neither this Agreement, nor the Settlement contained in this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement:

12.6.3.1 Is, may be deemed, or shall be used, offered or received against the Released Persons, or each or any of them, as an admission, concession, or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the Settlement amount or of Class Counsel's reasonable attorneys fees' and expenses, or of any alleged wrongdoing, liability, negligence or fault of the Released Persons, or any of them;

12.6.3.2 Is, may be deemed, or shall be used, offered, or received against Plaintiffs, the Settlement Class or each of any of them as an admission, concession, or evidence of any fault, misrepresentation,



or omission with respect to any statement or written document approved or made by the Released Persons, or any of them; and

12.6.3.3 Is, may be deemed, or shall be used, offered, or received against the Released Persons, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Persons, or of the certifiability of any class, in any bankruptcy, civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal. However, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate or enforce the provisions of this Agreement. If this Agreement is approved by the Court and the Final Settlement Date is reached, any of the Parties or any of the Released Persons may file this Agreement and/or the Final Order and Judgment in any action that may be brought against such Person or Persons in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith estimate, judgment bar or preclusion, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.6.4 Any Settlement-related order(s) or judgments entered in this Action after the date of execution of this Agreement shall be deemed vacated, nunc pro tunc, and shall

be without force or effect, and the Parties and the Settlement Class Members shall be returned to the status quo ante with respect to the Action as if they had never entered into this Agreement, and any of the Parties may move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement;

12.6.5 The Parties agree that this Agreement shall not be used to support the certification of any litigation class and the Parties stipulate that certification of the Settlement Class will be deemed to have been conditional and made only for purposes of this particular Agreement and for purposes of settlement only and will therefore be immediately vacated and voided for all other purposes. For the avoidance of doubt, the PHH Defendants and the PHH Defendants' Counsel will not be deemed to have consented to (and will not be estopped to oppose) the certification of any class for purposes of litigation and will retain all rights to object to or oppose any motion for certification of a class for purposes of litigation, including certification of the Settlement Class provided for in this Agreement as a litigation class or any other class(es);

12.6.6 The Released Persons expressly do not waive any, but instead affirmatively reserve all, of their defenses, arguments and motions as to all claims that have been or might later be asserted in the Action including, without limitation, the argument that the Action may not be litigated as a class action; and

12.6.7 Plaintiffs and all other Settlement Class Members expressly reserve and do not waive any motions as to, and arguments in support of, all claims that have been or might later be asserted in the Action including, without limitation, any argument concerning class certification, liability and/or available remedies.

### **13 General Matters and Reservations**

13.1 The obligation of the Parties to implement and conclude the proposed Settlement is and shall be contingent upon each of the following:

13.1.1 Entry by the Court of the Preliminary Approval Order, followed thereafter by the Fairness Hearing and subsequent entry by the Court of the Final Order and Judgment approving the Settlement, from which the time to appeal has expired or which has remained unmodified after the exhaustion and final disposition of any appeal(s) or petition(s) for appellate review; and

13.1.2 Any other conditions stated in this Agreement.

13.2 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties, Class Counsel, and the PHH Defendants' Counsel agree to cooperate with one another in (a) seeking Court approval of the Preliminary Approval Order, the Agreement, and the Final Order and Judgment and in the event of any appeal(s), to use their reasonable best efforts to effect prompt consummation of this Agreement and the proposed Settlement; (b) promptly agreeing upon and executing all such other documents as may be reasonably required to obtain final approval of the Agreement; and (c) resolving any disputes that may arise in the implementation of the terms of this Agreement.

13.3 The PHH Defendants' execution of this Agreement shall not be construed to release—and the PHH Defendants expressly do not intend to release—any claim they may have or make against any insurer, reinsurer, indemnitor, client, loan investor, prior loan servicers, consultant, or vendor (including, but not limited to, Speedpay Inc., ACI Worldwide, Inc., or

Western Union) for any judgment, payment, liability, cost or expense incurred in connection with this Agreement, including, without limitation, for attorneys' fees and costs.

13.4 This Agreement, complete with its exhibits, sets forth the sole and entire agreement and understanding of the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument made in accordance with the provisions of this Agreement and executed by or on behalf of all Parties or their respective successors in interest. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Agreement exist among or between them regarding the subject matter of this Agreement and that in deciding to enter into this Agreement, they each have relied solely upon their own judgment and knowledge. This Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Agreement.

13.5 Any inconsistency between this Agreement and the attached exhibits will be resolved in favor of this Agreement.

13.6 To the extent not governed by federal law, this Agreement, any amendments thereto, and any claim, cause of action or dispute arising out of or relating to this Agreement shall be governed by, interpreted under, and enforced in accordance with the laws of the State of Texas without regard to any conflict-of-law principles that may otherwise provide for the application of the law of another jurisdiction.

13.7 Any disagreement and/or action seeking directly or indirectly to challenge, modify, construe, obtain relief from, extend, limit, or enforce this Agreement shall be commenced and maintained only in this Court and in this Action. Without in any way compromising the finality of the Final Order and Judgment, the Court shall retain exclusive and continuing jurisdiction over all

matters related in any way to the Settlement and the Agreement, including but not limited to the implementation of the Settlement and the interpretation, administration, supervision, enforcement and modification of this Agreement and the relief it provides to Plaintiffs and the Settlement Class Members.

13.8 Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays, and Legal Holidays) express delivery service as follows:

13.8.1 If to the PHH Defendants, then to Michael R. Pennington, Bradley Arant Boult Cummings LLP, 1819 Fifth Avenue North, Birmingham, Alabama 35203 (Telephone: (205) 521-8000; Email: mpennington@bradley.com).

13.8.2 If to Plaintiffs, or the Settlement Class, or Class Counsel, then to Randall Keith Pulliam, Carney Bates & Pulliam, PLLC, 519 W. 7th Street, Little Rock, Arkansas 72201 (Telephone: (501) 312-8500; Email: rpulliam@cbplaw.com).

13.9 Subject to the terms of the Final Order and Judgment, no certifications by the Parties regarding their compliance with the terms of the Settlement and this Agreement will be required. Any dispute as to the Parties' compliance with their obligations under the Settlement and this Agreement shall be brought and resolved only in the Action and only by the Court, and applicable appellate courts, and in no other action or proceeding.

13.10 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Legal Holiday (as defined in Rule 6(a)(6) of the

Federal Rules of Civil Procedure), or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days.

13.11 The time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

13.12 Neither the Settlement Class, Plaintiffs, Class Counsel, the PHH Defendants nor the PHH Defendants' Counsel shall be deemed to be the drafter of this Agreement or of any particular provision, nor shall any of them argue that any particular provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon of construction. All Parties agree that this Agreement was drafted by counsel for the Parties during and through extensive arm's length negotiations with the aid of a neutral mediator. No parol or other evidence may be offered to explain, construe, contradict, or clarify this Agreement's terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

13.13 The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions, or any documents created for the purposes of mediation, negotiation, or confirmatory due diligence

or informal discovery, whether or not exchanged with opposing counsel, in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to effectuate or enforce this Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence of an admission or concession of any proposition of fact or law or of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Persons, Plaintiffs or the Settlement Class or as a waiver by the Released Persons, Plaintiffs or the Settlement Class of any applicable privileges or immunities (including, without limitation, the attorney-client privilege or work product immunity), claims or defenses.

13.14 Plaintiffs expressly affirm that the allegations contained in the Operative Complaint were made in good faith and have a basis in fact, but that they consider it desirable for the Action to be settled and dismissed because of the risks associated with continued litigation and the substantial benefits that the Settlement will provide to the Settlement Class Members.

13.15 The waiver by one of the Parties of any breach of this Agreement by another of the Parties shall not be deemed a waiver of any other prior or subsequent breaches of this Agreement.

13.16 If one Party to this Agreement considers the other Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

13.17 No opinion concerning the tax consequences, if any, of this Agreement and Settlement as to individual Settlement Class Members or anyone else is being given or will be

given by the PHH Defendants, the PHH Defendants' Counsel, Plaintiffs or Class Counsel; nor is any representation or warranty in this regard made by virtue of this Agreement or Settlement. The Class Notice will direct Settlement Class Members to consult their own tax advisor(s) regarding the tax consequences of the Settlement and this Agreement, and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member. Nothing in this Agreement or in the Class Notice is to be construed as tax advice of any kind.

13.18 Headings contained in this Agreement are used for the purpose of convenience only and are not intended to alter or vary the construction and meaning of this Agreement.

13.19 The recitals of this Agreement are incorporated by this reference and are part of this Agreement.

13.20 This Agreement shall be equally binding upon and inure to the benefit of Plaintiffs and the Settlement Class Members, their representatives, heirs, successors and assigns, as upon and to the benefit of the PHH Defendants.

13.21 Nothing herein shall be deemed a waiver of any prior release individually executed between the PHH Defendants and any Settlement Class Member.

13.22 This Agreement may be signed with a facsimile or PDF format signature and in counterparts, each of which shall constitute a duplicate original.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGES FOLLOW.]**






Agreed to on the date(s) indicated below.

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
MELBOURNE POFF, individually and on behalf of  
the Settlement Class

Dated: 10/28, 2022

By:   
Barbara Poff (Oct 28, 2022 14:10 CDT)  
BARBARA POFF, individually and on behalf of  
the Settlement Class

Dated: \_\_\_\_\_, 2022

PHH MORTGAGE CORPORATION

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

Its: \_\_\_\_\_

APPROVED AS TO FORM BY COUNSEL:

Dated: \_\_\_\_\_, 2022

CARNEY BATES & PULLIAM, PLLC  
Attorneys for Plaintiffs Melbourne Poff and Barbara Poff  
and the Settlement Class

By: \_\_\_\_\_  
Randall Keith Pulliam

Dated: \_\_\_\_\_, 2022

BRADLEY ARANT BOULT CUMMINGS LLP  
Attorneys for Defendant PHH Mortgage Corporation

By: \_\_\_\_\_  
Michael R. Pennington

Agreed to on the date(s) indicated below.

Dated: 10/28, 2022

By:   
Melbourne L. Poff, Jr (Oct 28, 2022 14:14 CDT)  
MELBOURNE POFF, individually and on behalf of  
the Settlement Class

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
BARBARA POFF, individually and on behalf of  
the Settlement Class

Dated: \_\_\_\_\_, 2022

PHH MORTGAGE CORPORATION

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

Its: \_\_\_\_\_

APPROVED AS TO FORM BY COUNSEL:

Dated: 10/28, 2022

CARNEY BATES & PULLIAM, PLLC  
Attorneys for Plaintiffs Melbourne Poff and Barbara Poff  
and the Settlement Class

By:   
Randall Keith Pulliam

Dated: \_\_\_\_\_, 2022

BRADLEY ARANT BOULT CUMMINGS LLP  
Attorneys for Defendant PHH Mortgage Corporation

By: \_\_\_\_\_  
Michael R. Pennington

Agreed to on the date(s) indicated below.

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
MELBOURNE POFF, individually and on behalf of  
the Settlement Class

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
BARBARA POFF, individually and on behalf of  
the Settlement Class

Dated: October 31, 2022

PHH MORTGAGE CORPORATION

By: /s/ Jason A. Risk

Its: Vice President & Assistant General Counsel  
Ocwen Financial Corporation

APPROVED AS TO FORM BY COUNSEL:

Dated: \_\_\_\_\_, 2022

CARNEY BATES & PULLIAM, PLLC  
Attorneys for Plaintiffs Melbourne Poff and Barbara Poff  
and the Settlement Class

By: \_\_\_\_\_  
Randall Keith Pulliam

Dated: October 31, 2022

BRADLEY ARANT BOULT CUMMINGS LLP  
Attorneys for Defendant PHH Mortgage Corporation

By: /s/ Michael R. Pennington  
Michael R. Pennington

# EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

**A class action settlement may affect your rights if you paid Ocwen or PHH a fee to make a mortgage loan payment by telephone, through an interactive voice response telephone system, or through the internet on or after July 17, 2018**

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

A settlement of \$1,300,000 has been reached in a class action lawsuit alleging that Ocwen Loan Servicing, LLC (“Ocwen”) and PHH Mortgage Corporation (“PHH,” and with Ocwen, “Defendants” or the “PHH Defendants”) violated the Texas Debt Collection Act (“TDCA”) as to borrowers with mortgaged property in the State of Texas when they charged borrowers fees for making loan payments by telephone through a live operator, by telephone through an interactive voice response telephone system (“IVR”), or by the internet. These types of fees are known as “Convenience Fees.” For much of the period at issue in this lawsuit, Ocwen and PHH used the “Speedpay™” service to facilitate these kinds of payments, so the Convenience Fees charged by Ocwen and PHH were often referred to as “Speedpay” fees. Ocwen and PHH deny that they did anything wrong, and the Court has not decided who is right. Ocwen, PHH, and the Plaintiffs, Melbourne Poff and Barbara Poff (together with PHH and Ocwen, the “Parties”), agreed to enter into this Settlement to avoid the uncertainties, delays, and expenses of ongoing litigation, while providing class members with definite benefits now. **The purpose of this notice is to inform you of the class action and the proposed Settlement so that you may decide whether to participate, opt out, or object.**

**QUICK SUMMARY OF SETTLEMENT**

**WHO’S INCLUDED?** Ocwen’s and PHH’s records indicate that you may be a member of the “Settlement Class” at issue in this case, or in other words, you may be a “Settlement Class Member.” The “Settlement Class” includes the following:

**The Settlement Class:**

All borrowers on residential mortgage loans involving mortgaged property located in the State of Texas who, between July 17, 2018 (the first day of the Class Period) and October 17, 2022 (the last day of the Class Period), paid a Convenience Fee to Ocwen and/or PHH that was not refunded or returned. Excluded from the Settlement Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH, ECF No. 71 at 7 (N.D. Ala. Aug. 1, 2019); (b) all persons who are potential members of the proposed FDCPA settlement class in *Morris, et al. v. PHH Mortgage Corp., et al.*, No. 0:20-cv-60633-RS (S.D. Fla.), whether or not those persons timely and validly exclude themselves from the *Morris* FDCPA settlement class; (c) borrowers who are or were named plaintiffs in any civil action other than this Action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before October 31, 2022; (d) the PHH Defendants’ board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them.

## WHAT ARE THE SETTLEMENT TERMS?

### What the Settlement Class Members are getting:

**Monetary Relief.** Defendants have agreed to create a settlement fund with a value of \$1,300,000 (the “Settlement Fund”), which will be distributed to Settlement Class Members (after first deducting any fees, expenses or service awards that the Court awards Plaintiffs and the attorneys representing the Settlement Class (“Class Counsel”)). The Settlement Fund will be distributed on a loan-by-loan basis.

Class Members will be entitled to an allocation from the Settlement Fund. The allocation for each Class Loan will be calculated based on the proportion of retained Convenience Fees paid to the Defendants on a class loan between July 17, 2018 and October 17, 2022, as compared to the total aggregate amount of all retained Convenience Fees paid during that same time period to the Defendants on all class loans of all Settlement Class Members.

**What the Settlement Class Members are giving up:** In return for the relief that Defendants are providing, Settlement Class Members are deemed to have agreed to the following:

- **The Class will release any claims that they may have against Ocwen or PHH or their associated persons and entities relating in any way to their payment of Convenience Fees to Ocwen or PHH on Class Loans during the period from July 17, 2018 through and including October 17, 2022. “Class Loans” means residential mortgage loans secured by mortgaged property in the State of Texas that qualify a Class Member for membership in the Class as defined above.**

**This is only a simplified summary of the claims being released as part of the Settlement. See Section 10 for a more complete explanation of the claims being released.**

**HOW CAN I GET PAYMENT?** You do not need to take any action to share in the relief offered by the Settlement. If you have moved since July 17, 2018, you may notify the Settlement Administrator of your new mailing address by writing to: [REDACTED].

### WHAT ARE MY OTHER OPTIONS?

**You can exclude yourself:** If you do not want to be bound by the Settlement, you must exclude yourself by **MONTH DAY, 20\_\_**. Part 11 below explains what you need to do to exclude yourself. If you do not exclude yourself, and the Settlement is given final approval by the Court, you will remain a member of the Settlement Class, you will receive your individual allocation of the applicable Settlement Fund, and you will be bound by the Settlement, including the release of claims against Ocwen and PHH.

**You can object:** You alternatively may object to the Settlement by **MONTH DAY, 20\_\_**. Part 16 below explains what you need to do to object to the settlement. The Court will hold a hearing on **MONTH DAY, 20\_\_** beginning at **0:00 a.m.** to consider whether to finally approve the Settlement, as well as any request for attorneys’ fees by class counsel (the “Fairness Hearing”). If you object, Part 20 explains how you may ask the Court to speak at the Fairness Hearing. Persons who exclude themselves from the Settlement Class will not be bound by the settlement and cannot file an objection and cannot speak at the Fairness Hearing.

The rest of this Notice provides you with a more detailed summary of the Settlement, and also more fully describes your legal rights and options. For even more information, please visit [www.\[REDACTED\]](http://www.[REDACTED]) (the “Settlement Website”), at which you may download a complete copy of the “Stipulation of Settlement

and Release” (together with all attached exhibits, the “Agreement”). *Please read all of this Notice carefully and in its entirety because your legal rights may be affected whether you act or don’t act.*

## BASIC INFORMATION

### 1. Why did I get this Notice?

If this Notice was addressed to you, then according to Defendants’ records you may be a member of the above-referenced Settlement Class because you paid a fee to make one or more mortgage loan payments to Ocwen or PHH by telephone, through an IVR, or through the internet during the Class Period. Ocwen and PHH were not required by your loan documents to offer these optional payment methods, but nevertheless offered these extra payment methods in exchange for a Convenience Fee.

You have received this Notice because you have a right to know about a proposed Settlement of *Poff v. PHH Mortgage Corporation*, case number 4:20-cv-04018, pending in the United States District Court for the Southern District of Texas (the “Action”). This Notice describes the lawsuit, the Settlement, your legal rights, what relief is being offered to you, how that relief will be distributed and other important information. This Notice only summarizes the Settlement, the full terms of which are available for review at [www.fdic.gov](http://www.fdic.gov). If there is any conflict between this Notice and the Settlement (as set forth in the Agreement), the Settlement governs. You should review the Agreement before deciding what to do. Please share this Notice with any co-borrower(s) on your loan(s).

### 2. What is this lawsuit about?

Plaintiffs allege that Ocwen and PHH violated the TDCA by charging Convenience Fees to borrowers for making loan payments by telephone, through IVR, or through the internet. Although Ocwen and PHH were not required to offer these payment methods, and although use of these extra payment methods was always purely optional, Plaintiffs contend that such fees were still unlawful because they were not expressly authorized by the Settlement Class Members’ underlying loan documents. Defendants deny that they did anything wrong because all customers who were charged a Convenience Fee (a) were informed in advance that the payment methods for which such fees were charged were entirely optional and the borrower’s decision to use of them would result in a disclosed charge amount, and (b) were required to expressly consent to the Convenience Fee before it was charged. Defendants contend among other things that under both the plain language of the TDCA and regulatory guidance issued by the Federal Trade Commission, separate fees for a separate, optional, entirely avoidable, and agreed-upon service do not violate the TDCA. Defendants also contend that Convenience Fees are permitted by state law, including the law of contract.

The TDCA (TEX. FIN. CODE § 392.403) provides that prevailing plaintiffs may recover any actual damages sustained as a result of a defendant’s violation of the TDCA, if any, along with the costs of the action and reasonable attorneys’ fees as determined by the court.

This Settlement is a compromise of these and other potential claims described in the Settlement, as explained in Part 10 below. Meanwhile, this Notice is only a partial summary of the details of this Action and the Settlement. Part 22 of this Notice explains how you may obtain more information about the claims in this Action and Defendants’ response to those claims. You can also visit [www.fdic.gov](http://www.fdic.gov) to review Plaintiffs’ operative complaint, the Parties’ proposed Settlement, and other documents related to this Action.

### 3. Why is this lawsuit a class action?



In a class action, one or more people, called class representatives (here Plaintiffs Melbourne Poff and Barbara Poff), sue on behalf of all other people who have similar claims. Together, all of these people are called a class, and the persons in it are called class members. In a class action, one court resolves the claims of all class members, except for those who ask in writing to be excluded from the class. The Honorable Charles Eskridge of the United States District Court for the Southern District of Texas is in charge of all aspects of this case, and has already given preliminary approval to the Settlement. Nevertheless, because the Settlement will determine the rights of the Settlement Class, the Parties must send Settlement Class Members notice of the settlement and give them an opportunity to opt out or object before the Court decides whether to grant final approval of the Settlement.

The Court has conditionally certified the Settlement Class for settlement purposes only. If the Settlement is not given final approval, or otherwise fails to become final, or is terminated by the Parties for any of the reasons set forth in Section 12 of the Agreement, the Settlement will become void, the Settlement Class will no longer remain certified, and the Action will proceed as if there had been no Settlement and no certification of the Settlement Class.

#### 4. Why is there a Settlement?

The Court has not decided whether Plaintiffs or Defendants would win this case. Instead, both sides agreed to the Settlement before any judgment was entered in the case. That way, the Parties avoid the uncertainties and expenses of ongoing litigation, and the delays of a trial and possible appeals, while providing Settlement Class Members with definite benefits now rather than the uncertain benefits potentially available from fully contested litigation years from now (if at all). Plaintiffs and Class Counsel believe the Settlement is in the best interests of the Settlement Class because it offers significant relief now, while at the same time allowing anyone who wishes to pursue their own individual claims against Defendants to exclude themselves from the Settlement Class.

### WHO IS IN THE SETTLEMENT

#### 5. How do I know if I am part of the Settlement?

The Court decided that everyone who fits the following description is a member of the Settlement Class:

##### **The Settlement Class:**

All borrowers on residential mortgage loans involving mortgaged property located in the State of Texas who, between July 17, 2018 (the first day of the Class Period) and October 17, 2022 (the last day of the Class Period), paid a Convenience Fee to Ocwen and/or PHH that was not refunded or returned. Excluded from the Settlement Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH, ECF No. 71 at 7 (N.D. Ala. Aug. 1, 2019); (b) all persons who are potential members of the proposed FDCPA settlement class in *Morris, et al. v. PHH Mortgage Corp., et al.*, No. 0:20-cv-60633-RS (S.D. Fla.), whether or not those persons timely and validly exclude themselves from the *Morris* FDCPA settlement class; (c) borrowers who are or were named plaintiffs in any civil action other than this Action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before October 31, 2022; (d) the PHH Defendants' board members and executive level officers; and (e) the federal district and magistrate

judges assigned to this Action, along with persons within the third degree of relationship to them.

As noted in Part 1, if this Notice was addressed to you, then according to Defendants' records, you are a member of the Settlement Class unless you timely and properly exclude yourself as described in Part 11 of this Notice.

## WHAT YOU CAN GET UNDER THE SETTLEMENT

### 6. What relief does the Settlement provide?

Defendants have agreed to create a Settlement Fund. If the Settlement obtains final approval, the Settlement Fund will be used first to pay any Court-awarded fees and expenses to Class Counsel and service awards to Plaintiffs. Following the payment of any such fees, expenses, and service awards, the remaining balance of the Settlement Fund will be divided and distributed among Plaintiffs and the rest of the Settlement Class Members.

The Settlement Fund shall be \$1,300,000. The distributions of the Settlement Fund to Settlement Class Members are called "Individual Allocations." Individual Allocations to Settlement Class Members will be calculated as follows:

Each Class Loan will receive an Individual Allocation from the Settlement Fund, calculated based on the proportion of retained Convenience Fees paid to either Ocwen or PHH on that Class Loan between July 17, 2018 and October 17, 2022, as compared to the total aggregate amount of all retained Convenience Fees paid during that same time period to either Ocwen or PHH on all Class Loans of all Settlement Class Members. Payments made on Class Loans with multiple borrowers shall be treated as joint payments for purposes of this calculation, such that each Class Loan will be entitled to only one Individual Allocation of the remaining balance of the Settlement Fund. Co-debtors, joint-borrowers, and multiple obligators on a single Class Loan are not entitled to a separate Individual Allocation on the same Class Loan.

The actual amount that each Settlement Class Member will receive as an Individual Allocation will ultimately depend on a variety of factors, including the number and total amount of Convenience Fees paid on each Class Loan and whether and in what amounts the Court will approve any attorneys' fees and expenses to Class Counsel and service awards to Plaintiffs.

### 7. How can I get such relief?

If you are a member of the Settlement Class, then as long as you do not exclude yourself from the Settlement Class, you will automatically receive an Individual Allocation, and you do not need to take any further action in order to receive that Individual Action. If your mailing address has changed since July 17, 2018, however, you may wish to notify the Settlement Administrator of your current mailing address by contacting the Settlement Administrator at 1-[REDACTED] or [REDACTED]. This will help ensure that your Individual Allocation is mailed to the correct address.

### 8. When would I get such relief and how will it be distributed to me?

As described in Part 18, the Court will hold a Fairness Hearing on MONTH DAY, YEAR to decide whether to grant final approval to the Settlement. The Court must finally approve the Settlement before any relief will be distributed, and it will only do so after finding that the Settlement is fair, reasonable and adequate. In addition, any final approval order the Court may enter may be subject to appeal. If there are any such

appeals, resolving them takes time—sometimes more than a year. Finally, it is possible that this Settlement may be terminated for other reasons, such as those set forth in Section 12 of the Settlement (available for review at [www.\[\]](http://www.[])). Please be patient.

The “Final Settlement Date,” as defined in the Settlement, is ten days after the order finally approving the Settlement becomes non-appealable and any appeals have been resolved in favor of the Settlement. Individual Allocations are expected to be distributed within 60 days of the Final Settlement Date. The Settlement Website will be updated from time to time to reflect the progress of the Settlement.

Individual Allocations will be paid by a check mailed to you, made payable jointly to all borrowers of record on your Class Loan, and addressed to the mailing address of record on your Class Loan.

NOTE: All checks will expire and become void 180 days after they are issued and will be considered unclaimed funds. Unclaimed funds will be considered a waiver by you and any co-borrowers on your Class Loan of the right to receive Individual Allocation relief. Individual Allocation relief that remains unclaimed or undeliverable 300 days after the Final Settlement Date despite reasonable efforts to locate you will be donated and paid to Homes for Our Troops, “a privately funded 501(c)(3) nonprofit organization that builds and donates specially adapted custom homes nationwide for severely injured post – 9/11 Veterans, to enable them to rebuild their lives.”

#### **9. Will the Settlement have any tax consequences on me?**

Neither the Court nor the Parties (including their counsel) can advise you about what, if any, tax consequences might arise for you from the Settlement. You are encouraged to consult with your own tax advisor to determine whether any potential tax consequences could arise from your receipt of an Individual Allocation.

#### **10. Am I giving anything up by remaining in the Settlement Class?**

Unless you exclude yourself, you will remain in the Settlement Class, and that means that if the Settlement is given final approval and reaches the Final Settlement Date then you:

Release, and by operation of the Final Order and Judgment upon the Final Settlement Date shall have released, all Released Claims against all of the Released Persons, separately and severally. In connection therewith, upon the Final Settlement Date, you (i) shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever waived, released, relinquished, remised, acquitted, and discharged to the fullest extent permitted by law all Released Claims against each and all of the Released Persons; (ii) shall forever be barred and enjoined from commencing, instituting, prosecuting, or participating in any fashion in any and all claims, causes of action, suits, or any other proceeding in any court of law or equity, arbitration tribunal, or other forum of any kind, directly, representatively, derivatively, or in any other capacity and wherever filed, with respect to any Released Claims against any of the Released Persons; and (iii) shall be deemed to have agreed and covenanted not to sue any of the Released Persons with respect to any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Person related in any way to any Released Claims.

This Release will include claims that Settlement Class Members do not know or suspect to exist in their favor at the time final approval may be granted to the Settlement, if those claims arise from, are based on, or relate to the Released Claims. If the Settlement is given final approval and reaches the Final Settlement Date, all Settlement Class Members will be deemed to have knowingly and voluntarily waived,

relinquished and released the protections of any laws that would limit this release, including, without limitation, Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The phrase “Released Claims” means and refers to:

each and all of the claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages (whether punitive, statutory, or compensatory and whether liquidated or unliquidated), losses, controversies, costs, expenses and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any regulatory bulletin, guidelines, handbook, opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, that relate to or arise out of any Convenience Fees charged by the PHH Defendants to Settlement Class Members during the period from July 17, 2018 through and including October 17, 2022.

The phrase “Released Persons” means and refers to:

(a) PHH, Ocwen, and any and all of their current or former predecessors, successors, assigns, parent corporations, subsidiaries, divisions, related and affiliated companies and entities, associates, vendors, service providers, software licensors and licensees, clients and customers, principals, stockholders, directors, officers, partners, principals, members, employees, attorneys, consultants, independent contractors, representatives, and agents, transferee servicers, and all individuals or entities acting by, through, under, or in concert with any of them; and (b) any trustee of a mortgage securitization trust which includes loans on which Settlement Class Members are borrowers, including, but not limited to, any direct or indirect subsidiary of any of them, and all of the officers, directors, employees, agents, brokers, distributors, representatives, and attorneys of all such entities.

The full terms of the Settlement’s release are set forth in Section 3 of the Agreement, which is available for review at [www.■■■■](http://www.■■■■).

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **11. How do I exclude myself from the Settlement Class?**

If you don’t want to be part of the Settlement, or if you want to keep the right to sue or continue suing Ocwen or PHH on your own about the Released Claims, then you must take steps to exclude yourself from the Settlement Class. This is called excluding yourself, or “opting out.” If you exclude yourself from the Settlement Class, you will not be bound by the Settlement and will not receive any relief offered by the Settlement, but you will be free to file and then pursue your own individual lawsuit regarding the Released Claims if you wish to do so. However, the Court has ruled that neither the Settlement, nor this Notice, nor the Court’s preliminary approval order may be used as evidence in such individual lawsuits. You should be aware that if you do exclude yourself and you plan to file your own action against Defendants, the statute of limitations applicable to your claim may prevent you from separately suing Defendants unless you act promptly.

To exclude yourself, you must mail a letter sufficiently in advance to be received by the “Settlement Administrator,” [REDACTED], no later than **MONTH DAY, YEAR**, saying that you want to be excluded from the Settlement Class. Your letter must be addressed to Poff v. PHH, c/o [REDACTED], [REDACTED], and must: (a) contain a caption or title that identifies it as “Request for Exclusion in *Poff v. PHH* (case number 4:20-cv-04018);” (b) include your name, mailing and e-mail addresses, and contact telephone number; (c) specify that you want to be excluded from the Settlement Class and identify the Class Loan number(s) for which you seek exclusion from the Settlement; and (d) be *personally* signed by you. For your convenience, your Class Loan number or numbers are included on the back of this Notice.

NOTE: If your request for exclusion is late or incomplete, it will not be valid and you will remain part of the Settlement Class, you will still be bound by the Settlement and all other orders and judgments in the Action, and you will not be able to participate in any other lawsuits against Defendants and the Released Persons based on the Released Claims. If you submit a request for exclusion, it will be deemed as a request for exclusion by you and any other co-borrowers, joint-borrowers and multiple borrowers on the Class Loan(s) identified in the exclusion request.

#### 12. If I don’t exclude myself, can I sue Ocwen or PHH later for the same thing?

No. If you do not exclude yourself from the Settlement Class and the Settlement is given final approval and reaches the Final Settlement Date, you will give up the right to sue Defendants and the Released Persons for the Released Claims.

#### 13. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will not be eligible to receive any of the individual benefits that the Settlement offers.

### THE LAWYERS REPRESENTING YOU

#### 14. Do I have a lawyer in this case?

Yes. The Court has appointed Edwin Lee Lowther, III and Randall Keith Pulliam of the law firm Carney Bates & Pulliam, PLLC, and James L. Kauffman and Elizabeth A. Ryan of the law firm Bailey & Glasser LLP to represent you and the other Settlement Class Members in this Action and for purposes of this Settlement, and for no other purpose. These attorneys are called “Class Counsel,” and they can be reached by writing them at Carney Bates & Pulliam, PLLC, 519 W. 7<sup>th</sup> Street, Little Rock, Arkansas 72201 or Bailey & Glasser LLP, 1055 Thomas Jefferson Street, NW, Suite 540, Washington, D.C. 20007. You will not be separately charged for the services of Class Counsel for issues related to this Action.

You have the right to retain your own separate lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will be solely responsible for all of his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer, but if you want to appear at the Fairness Hearing you must comply with the procedures set forth in Part 20 of this Notice below.

#### 15. How will Class Counsel Be Paid?

Class Counsel have prosecuted this case on a contingent-fee basis and, so far, have not yet been paid anything for their services. If the Settlement is approved, Class Counsel will ask the Court for an award of attorneys’ fees and expenses, to be paid from the Settlement Fund in an amount not to exceed 33% of the Settlement Fund. For their endeavor on behalf of the Settlement Class, and in addition to the relief



otherwise due them as members of the Settlement Class, Lead Plaintiffs Melbourne and Barbara Poff shall *conditionally* apply for *contingent* service awards to be paid from the Settlement Fund in the amount of \$5,000 each for a total sum of \$10,000. Class Counsel will file with the Court their request for attorneys' fees and expenses and service awards on or before **MONTH DAY, YEAR**, which will then be posted on [www.\[REDACTED\]](http://www.[REDACTED]).

Defendants reserve the right to oppose any request for attorneys' fees and expenses and service awards that Defendants deem to be unreasonable in nature or amount or otherwise objectionable. The Settlement is not conditioned on the Court approving any specific amount of attorneys' fees and expenses or service awards. The Court will ultimately decide whether any attorneys' fees and expenses should be awarded to Class Counsel or any service awards awarded to Plaintiffs, and in what amounts.

### OBJECTING TO THE SETTLEMENT

#### 16. How do I tell the Court that I don't like the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't agree with any part of it. You can provide reasons why you think the Court should deny approval of the Settlement by filing an objection. However, you can't ask the Court to order a larger or different type of settlement as the Court can only approve or deny the Settlement presented by the Parties. If the Court denies approval, no settlement relief will be available to the Settlement Class Members and the lawsuit will continue. If you file a written objection, the Court will consider your views.

To object, you must file a written statement of objection with the Court. Your written objection must: (a) include a caption or title that identifies it as "Objection to Class Settlement in *Poff v. PHH* (case number 4:20-cv-04018);" (b) include your name, mailing and email addresses, contact telephone number, and your Class Loan number(s); (c) state whether the objection applies only to you, to a specific subset of the class, or to the entire class; (d) state with specificity the specific reason(s), if any, for each of your objections, including all legal support you wish to bring to the Court's attention and all factual evidence you wish to introduce in support of your objection; (e) disclose the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of your objection, and (f) be *personally* signed by you. For your convenience, your Class Loan number or numbers are included on the back of this Notice.

You may file your written statement of objection in person at, or you may mail it to, the Clerk of the Court, United States District Court for the Southern District of Texas, P.O. Box 61010, Houston, TX 77208. However, if you are represented by your own attorney, your attorney must file your objection through the Court's Case Management/Electronic Case Filing (CM/ECF) system. To be considered timely and valid, all statements of objection must be filed with the Court by, or mailed sufficiently in advance to be received by the Court by, **MONTH DAY, 20**. Any Settlement Class Member who does not comply with the above deadline and requirements shall be deemed to have waived all objections to and shall be forever barred from challenging the Settlement.

#### 17. What's the difference between objecting and excluding myself?

Objecting simply means telling the Court that you don't agree with something about the Settlement, but that you are still willing to be bound by it if the Settlement is finally approved despite your objection. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class at all. If you exclude yourself, you will not be subject to the

Settlement and therefore cannot object to the Settlement or appear at the Fairness Hearing because the case will no longer affect you.

### THE COURT'S FAIRNESS HEARING

#### 18. When and where will the Court decide whether to approve the Settlement?

A Fairness Hearing has been set for **MONTH DAY, 20\_\_**, beginning at **XX:XX** a.m., before the Honorable Charles Eskridge at the United States District Court for the Southern District of Texas, Bob Casey United States Courthouse, 515 Rusk Avenue, Houston, TX 77002. At the hearing, the Court will consider whether to: (1) grant final certification to the Settlement Class for settlement purposes; (2) approve the Settlement as fair, reasonable, and adequate; and (3) award any attorneys' fees and expenses to Class Counsel and service awards to Plaintiffs. The Court will also consider any and all objections to the Settlement and any other issues relating to the Settlement. After the hearing, the Court will decide whether to approve the Settlement. It is not possible to predict how long the Court's decision will take.

NOTE: The Court has reserved the right to change the date and/or time of the Fairness Hearing, or to continue it, without further notice. If you plan to attend the Fairness Hearing, you should confirm the date and time shortly before travelling to attend the hearing by checking [www.\[T\]\[I\]](http://www.[T][I]) or the Court's Public Access to Court Electronic Records (PACER) system at <https://www.alnd.uscourts.gov/CMECF/default.htm>.

#### 19. Do I have to come to the Fairness Hearing?

No. Class Counsel will represent the Settlement Class at the Fairness Hearing. But you are welcome to come at your own expense. Even if you send an objection, you are not required to come to the Fairness Hearing to talk about it. As long as your objection was timely filed and meets the other requirements described in Part 16, the Court will consider it. You may also hire and pay your own lawyer to attend the Fairness Hearing at your expense, but you are not required to do so.

#### 20. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing, but only *if* you timely file an objection in full compliance with the instructions set forth in Part 16, and *if* you also state in that objection that you would like to speak at the Fairness Hearing. However, any separate attorney you hire may appear only if he or she files through the Court's Case Management/Electronic Case Filing (CM/ECF) system a separate "Notice of Intention to Appear in *Poff v. PHH* (case number 4:20-cv-04018)." That notice must be filed with the Court no later than **MONTH DAY, 2022**. You cannot speak at the Fairness Hearing if you have excluded yourself from the Settlement Class.

### IF YOU DO NOTHING

#### 21. What if I do nothing?

If you met the definition of the Settlement Class and you do nothing, and the Settlement is approved and reaches the Final Settlement Date, you will remain a Settlement Class Member and you will automatically receive an Individual Allocation. You will also be bound by the Settlement's release and other terms, and therefore you will not be able to file your own lawsuit, continue with your own lawsuit, or be part of any other lawsuit against Ocwen, PHH, and the Released Persons concerning any of the Released Claims.

### GETTING MORE INFORMATION

**22. Where can I get additional information?**

This notice summarizes the Settlement. For the precise terms and conditions of the Settlement, please see the full Stipulation of Settlement and Release available at [www.flsd.uscourts.gov](http://www.flsd.uscourts.gov), by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://www.flsd.uscourts.gov/CMECF>, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of Texas, Bob Casey United States Courthouse, 515 Rusk Avenue, Houston, TX 77002, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT, THE COURT CLERK'S OFFICE,  
OR OCWEN TO INQUIRE ABOUT THIS SETTLEMENT.**



# EXHIBIT B

1. Borrowers across the country struggle enough to make their regular mortgage payments without getting charged extra, illegal fees when they try to pay by phone or online (“Pay-to-Pay fees”). PHH routinely and

systematically violates the TDCA and federal regulations regarding mortgages insured by the Federal Housing Administration (“FHA”) by assessing fees to borrowers that are either not permitted by law or are expressly prohibited by their mortgage agreements. Here, PHH charges borrowers between \$10.00–19.50 for making their mortgage payments online or over the phone. On information and belief, only a small fraction of the fee is paid to a third-party payment processor, and PHH collects the remainder as profit.

2. PHH is one of the largest originators and servicers of mortgages in the United States. PHH abuses its position as a mortgage servicer by charging Pay-to-Pay fees, despite those fees not being expressly authorized in the terms of standard mortgage agreements or otherwise legally chargeable, in violation of the TDCA.

3. Moreover, as a servicer of FHA-insured loans, PHH is bound by the rules and regulations of the Secretary of Housing and Urban Development (“HUD”). Under FHA servicing rules, a mortgage servicer may not charge a borrower any fee not authorized by the FHA. The FHA has not authorized Pay-to-Pay fees.

4. Each time Plaintiffs made a mortgage payment online or over the phone, PHH collected fees of approximately \$7.50–\$19.50.

5. On behalf of themselves and all others similarly situated, Plaintiffs seek injunctive, declaratory, and compensatory relief against PHH

for its violations of the Texas Debt Collection Act and federal regulations.

### **PARTIES**

6. Plaintiff Ursula N. Williams is a citizen of the State of Texas.

7. Plaintiffs Melbourne and Barbara Poff are citizens of the State of Texas.

8. Defendant PHH Mortgage Corporation is incorporated in and has its principal place of business in the State of New Jersey and is thus a citizen of the State of New Jersey.

### **JURISDICTION AND VENUE**

9. PHH conducts business across the country from its principal place of business in New Jersey.

10. Venue is proper in this District because Plaintiffs are located here and a substantial part of the acts or omissions giving rise to Plaintiffs' causes of action occurred here.

11. Plaintiffs seek to represent two Classes of borrowers with mortgages serviced by PHH that include all borrowers with properties in the State of Texas and all individuals in the United States with FHA-insured loans. Each of these Classes includes members who are citizens of states other than New Jersey. Therefore, minimal diversity exists between the parties in this action.

12. The amount in controversy, exclusive of costs and interest, exceeds \$5,000,000.00. PHH is one of the largest mortgage lenders and servicers in the United States and, more specifically, one of the largest originators and servicers of FHA-insured mortgages. The Classes in this lawsuit are believed to consist of hundreds of thousands of members. To date, Plaintiffs have incurred no less than \$15.00 in improper Pay-to-Pay fees, and PHH collects fees in a range of \$7.50 to \$19.50. Thus, the amount-in-controversy in this action, exclusive of costs and interest, exceeds the amount-in-controversy requirement of 28 U.S.C. § 1332(d).

### **COMMON FACTUAL ALLEGATIONS**

#### **The Texas Debt Collection Act**

13. The Texas Debt Collection Act (“TDCA”) prohibits a debt collector from “us[ing] unfair or unconscionable means” in the collection of a consumer debt. Tex. Fin. Code § 392.303(a).

14. PHH is a *debt collector* under the TDCA because it is “a person who directly or indirectly engages in debt collection ....” *Id.* at § 392.001(6).

15. PHH engages in *debt collection*, which the TDCA defines as “an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.” *Id.* at § 392.001(5).

16. A *consumer debt* under the TDCA is “an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.” *Id.* at § 392.001(2).

17. As “an individual who has a consumer debt,” each Plaintiff is a *consumer* under the TDCA. *Id.* at § 392.001(1).

18. The Pay-to-Pay fees PHH collects are not authorized by HUD regulations or by Plaintiffs’ deed of trust—or, indeed, any standard deed of trust or mortgage.

19. By collecting those fees, PHH employed the unfair and unconscionable practice of “collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer[.]” *Id.* at § 392.303(a)(2).

### **FHA SERVICING RULES**

20. The Federal Housing Administration, an agency within the United States Department of Housing and Urban Development, “provides mortgage insurance on loans made by FHA-approved lenders throughout the United States and its territories.”<sup>1</sup> The FHA “is one of the largest insurers of

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<sup>1</sup>HUD.gov – The Federal Housing Administration, [https://www.hud.gov/program\\_offices/housing/fhahistory](https://www.hud.gov/program_offices/housing/fhahistory) (last visited on November 27, 2019).

mortgages in the world, insuring more than 46 million mortgages since its inception in 1934.”<sup>2</sup>

21. The FHA provides incentives to private lenders to make loans to would-be homebuyers whose creditworthiness and inability to contribute a significant down payment make it difficult for them to obtain a home loan on reasonable terms.

22. To achieve that goal, “FHA mortgage insurance provides lenders with protection against losses if a property owner defaults on their mortgage. The lenders bear less risk because FHA will pay a claim to the lender for the unpaid principal balance of a defaulted mortgage.”<sup>3</sup>

23. The FHA restricts who can make and service FHA loans. “Only FHA-approved Mortgagees may service FHA-insured Mortgages,” and those “Mortgagees may service Mortgages they hold or that are held by other FHA-approved Mortgagees.” Ex. 2 at 3, § III.A.1.

24. PHH is, and has been during the class period, an FHA-approved Mortgagee.

25. As an FHA-approved Mortgagee, PHH must annually “acknowledge that the Mortgagee is now, and was at all times throughout the Certification Period, subject to all applicable HUD regulations, *Handbooks*,

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

Guidebooks, Mortgagee Letters, Title I Letters, policies and requirements, as well as Fair Housing regulations and laws including but not limited to 24 CFR § 5.105, Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) and Title VI of the Civil Rights Act of 1964.”<sup>4</sup>

26. HUD’s servicing requirements restrict the fees and charges an FHA-approved Mortgagee may collect from the typically lower-income FHA borrower. Handbook 4000.1: *FHA Single-Family Housing Policy Handbook*, <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsgh.pdf> (last accessed by counsel on June 12, 2020) (the “FHA Handbook”).

27. In the FHA Handbook, HUD makes clear “[t]he Mortgagee must fully comply with all of the following standards and procedures when servicing a Mortgage insured by the Federal Housing Administration[.]” *Id.*, at 3, § III.A.

28. These mandatory restrictions include limits on the types and amounts of fees and charges an FHA-approved Mortgagee may collect from a borrower.

29. FHA-insured mortgages contain uniform covenants.

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<sup>4</sup> See, FHA Lender Annual Certifications: Supervised and Nonsupervised Mortgagees, Changes Implemented 8/1/2016, [https://www.hud.gov/sites/documents/SFH\\_COMP\\_SUPERNONSUPER.PDF](https://www.hud.gov/sites/documents/SFH_COMP_SUPERNONSUPER.PDF) (last visited on June 12, 2020) (emphasis added).



30. In one such uniform covenant, the parties to the mortgage agree that “Lender may collect fees and charges **authorized** by the Secretary [of Housing and Urban Development].” Ex. 1 at ¶ 8; Ex. 2 at ¶ 8 (emphasis added).

31. This provision incorporates by reference HUD’s limits on allowable fees.

32. In a section entitled “Servicing Fees and Charges,” the FHA Handbook establishes what fees and charges are authorized by HUD. Ex. 3 at 5, § III.A.1.f.

33. Specifically, the FHA Handbook defines “Allowable Fees and Charges a[s] those costs associated with the servicing of the Mortgage that are permitted to be charged to the Borrower,” and defines “Prohibited Fees and Charges a[s] those costs associated with the servicing of the Mortgage that may not be charged to the Borrower.” *Id.*, at § III.A.1.f.i.

34. HUD permits FHA-approved Mortgagees to “collect certain reasonable and customary fees and charges from the Borrower after the Mortgage is insured and as **authorized** by HUD below.” *Id.*, at § III.A.1.f.ii.(A) (emphasis added).

35. A fee or charge is authorized if it meets three specific criteria: the fee or charge “must be” (a) “reasonable and customary for the local jurisdiction”; (2) “based on actual cost of the work performed or actual out-of-pocket expenses and not a percentage of either the face amount or the unpaid

principal balance of the Mortgage”; **and** (c) “within the maximum amount allowed by HUD.” *Id.* at pp. 5–6, § III.A.1.f.ii.(A) (emphasis added).

36. Appendix 3.0 of the FHA Handbook contains an exhaustive list of the servicing fees and charges authorized by HUD and the maximum amounts that may be charged for such fees.<sup>5</sup>

37. Pay-to-Pay fees are not on that list.

38. In the absence of HUD authorization, FHA-approved Mortgagees are prohibited from charging for alleged costs associated with servicing an FHA-insured mortgage.

39. Instead, if the FHA-approved Mortgagee wants authorization to collect additional fees and charges, it “may request approval . . . for any fee, charge, or unusual service not specifically mentioned in this *SF Handbook*.” *Id.* at 6, § III.A.1.f.ii.(B).

40. If the fee or charge is approved, “[t]he Homeownership Center (HOC) will determine the maximum amount of any fee based on what is reasonable and customary in the area.” *Id.*

41. Because Pay-to-Pay fees do not appear on the list of servicing fees and charges and have not been assigned a “maximum amount allowed” based

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<sup>5</sup> In the PDF version of the FHA Handbook, the term “maximum amount allowed by HUD” contains a hyperlink that, when clicked, brings the reader to Appendix 3.0.

on what HUD deems “reasonable and customary in the area,” FHA-approved Mortgagees are prohibited from collecting them from the FHA borrower.

42. Moreover, even were an FHA-approved Mortgagee to receive authorization to charge a Pay-to-Pay fee, the charge to the borrower must still be “based on actual cost of the work performed or actual out-of-pocket expenses”—in short, the servicer cannot collect such fees to create a profit center. *Id.*, at 6, § III.A.1.f.ii.(A).

43. Based upon information and belief, the Pay-to-Pay fees that PHH collects from borrowers exceed its out-of-pocket costs by several hundred percent, and thus violate mandatory HUD servicing rules.

### **PLAINTIFFS’ ALLEGATIONS**

44. Plaintiff Ursula N. Williams executed a standard form FHA deed of trust to purchase her home in Bryan, Texas. Ex. 1. Plaintiffs Melbourne and Barbara Poff executed a standard form FHA deed of trust to purchase their home in Point Blank, Texas. Ex. 2.

45. PHH Mortgage Corporation was the original lender on Plaintiff Williams’ FHA deed of trust.

46. PHH negotiated with the FHA for an assignment of servicing rights and took an assignment of rights on the loan of Plaintiffs Melbourne and Barbara Poff.

47. Under the FHA deed of trust, PHH is an assignee of the mortgage who is bound by all covenants therein.

48. Plaintiffs' form FHA-insured deeds of trust, entitled "Fees," states, "Lender may collect fees and charges **authorized** by the Secretary [of Housing and Urban Development]." Ex. 1, ¶ 8; Ex. 2, ¶ 8 (emphasis added).

49. Furthermore, Plaintiffs' form FHA-insured deeds of trust provide further that "This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located." Ex. 1, ¶ 14; Ex. 2, ¶ 14.

50. As alleged above, the TDCA and FHA rules prohibit charging Pay-to-Pay fees.

51. And even if a servicer had authorization to collect such a fee, FHA rules prohibit FHA-approved mortgage lenders and servicers from passing on to borrowers more than the out-of-pocket costs for providing the service.

52. On information and belief, which can be confirmed through review of Defendants' documents, PHH reaps substantial profits from imposing illegal Pay-to-Pay fees. It is believed the cost of the Pay-to-Pay transactions is approximately \$0.40 to PHH, while it up-charges Plaintiffs and others \$7.00 to \$19.50 per transaction.

53. PHH Mortgage Corporation has collected at least one Pay-to-Pay fee of at least \$7.50 from Plaintiffs.

54. Ocwen Loan Servicing, LLC, has collected at least one Pay-to-Pay fee of approximately \$15.00 from Plaintiffs Melbourne and Barbara Poff.

55. Those fees violate the TDCA and FHA rules.

### **CLASS ALLEGATIONS**

56. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy, and predominance requirements of Rule 23(a).

57. Plaintiffs seek certification of the following classes (collectively, the “Classes”):

#### **The Texas Debt Collection Practices Act Class (the “TDCA Class”)**

All persons in the United States (1) with property located in the State of Texas, (2) secured by a loan that is or was serviced by PHH, (3) who were charged one or more Pay-to-Pay fee, and (4) whose Security Instrument did not expressly authorize the collection of a Pay-to-Pay fee.

#### **The FHA Pay-to-Pay Subclass (the “FHA Pay-to-Pay Subclass”):**

All persons in the United States (1) with property located in the State of Texas (2) secured by an FHA-insured mortgage (3) that is or was serviced by PHH (4) who were charged one or more Pay-to-Pay fee, and (5) whose mortgages contained language the same as or substantially similar to the uniform covenants in the Security Instrument.

58. Plaintiffs reserve the right to modify or amend the proposed class definitions before the Court determines whether certification is appropriate.

59. Excluded from the Classes are Defendant, and Defendant's parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant has a controlling interest, all mortgagors who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members, and members of the staffs of the judges to whom this case should be assigned.

60. The members of the Classes are so numerous that joinder is impractical. While the exact number of members of the Classes cannot be determined without discovery, Plaintiffs believe that the Classes consist of thousands of members, the identity of whom, upon information and belief, can be readily determined upon review of records maintained by Defendant.

61. Plaintiffs' claims are typical of the claims of other members of the Classes, in that they arise out of the same acts of PHH, namely collecting fees from borrowers that are not authorized by Texas or federal law. Plaintiffs have suffered the harms alleged and have no interests antagonistic to the interests of any other member of the Classes.

62. There are numerous questions of law and fact common to the Classes and those common questions predominate over any questions affecting only individual members of the Classes.

63. The predominating common questions of law and fact include:

- a. Whether, and in what amount, PHH may collect a Pay-to-Pay fee from borrowers with FHA-insured deeds of trust and mortgages (collectively, “Security Instruments”);
- b. Whether collecting such fees violates HUD rules and regulations;
- c. Whether collecting such fees is authorized by the Plaintiffs’ Security Instrument;
- d. Whether collecting Pay-to-Pay fees violates the Texas Debt Collection Act;
- e. Whether Pay-to-Pay fees are “legally chargeable” to consumers with FHA-insured mortgages;
- f. What is the proper method or methods by which to measure damages caused by PHH’s violations of the TDCA; and
- g. Whether PHH should be enjoined from further collections, or attempted collections, of Pay-to-Pay fees from members of the Classes.

64. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers and against financial institutions. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the members of the Classes.

65. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each of the

Class Member's claims are small relative to the complexity of the litigation, and due to the financial resources of PHH, no member of the Classes could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Classes will continue to suffer losses and PHH's misconduct will proceed without remedy.

66. Even if members of the Classes could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

67. Alternatively, certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because it is clear that declaratory and injunctive relief is appropriate respecting the Classes as a whole.

## **CLAIMS FOR RELIEF**

### **COUNT I: Violation of the Texas Debt Collection Act** **(On behalf of the TDCA Class)**

68. Plaintiffs incorporate paragraphs 1 through 67.



69. Plaintiffs' deeds of trust secure the notes they took out to purchase their residences in the State of Texas. Each Plaintiff, therefore, is a "consumer" under the TDCA who took out a "consumer debt."

70. PHH, in its own right and as successor by merger to Ocwen Loan Servicing, LLC, is a "debt collector" under the TDCA.

71. In the process of "debt collection," PHH collected from Plaintiffs Pay-to-Pay fees that were incidental to their debt obligation and which were not expressly authorized by the agreement creating the obligation.

72. As such, PHH employed unfair and unconscionable means in the collection of a consumer debt, in violation of the TDCA.

73. On behalf of the TDCA Class, Plaintiffs seek an injunction restraining PHH from charging Pay-to-Pay fees as well as actual damages.

**COUNT II: Declaratory Relief**  
**(On behalf of the FHA Pay-to-Pay Subclass)**

74. Plaintiffs incorporate paragraphs 1 through 73.

75. Plaintiffs and members of the FHA Pay-to-Pay Subclass have FHA-insured security instruments that are or were serviced by PHH.

76. Pursuant to 28 U.S.C. § 2201, Plaintiffs seek a declaration on behalf of members of the FHA Pay-to-Pay Subclass that HUD regulations prohibit the collection of Pay-to-Pay fees and therefore such fees are not "legally chargeable" to members of the FHA Pay-to-Pay Subclass.

77. Pursuant to 28 U.S.C. § 2202, upon a determination that Pay-to-Pay fees are not “legally chargeable,” Plaintiffs seek supplemental relief on behalf of the FHA Pay-to-Pay Subclass in the form of an injunction requiring PHH to comply with the TDCA, and for all other injunctive relief to which they may prove themselves entitled.

78. Pursuant to 28 U.S.C. § 2202, upon a determination that Pay-to-Pay fees are not “legally chargeable,” Plaintiffs seek supplemental relief on behalf of the FHA Pay-to-Pay Subclass in the form of disgorgement of all monies received by PHH in the form of Pay-to-Pay fees collected from members of the FHA Pay-to-Pay Subclass.

79. Pursuant to 28 U.S.C. § 2202, upon a determination that Pay-to-Pay fees are not “legally chargeable,” Plaintiffs seek their costs.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, respectfully request that this Court:

1. Determine that this action may be maintained as a class action under Fed. R. Civ. P. 23, that Plaintiffs are proper class representatives, and that their counsel are appointed Class Counsel;
2. Award compensatory damages and restitution in the amount of all Pay-to-Pay fees collected from the TDCA Class and the FHA Pay-to-Pay

Subclass, and interest on those fees, improperly collected from members of those Classes;

3. Award actual damages in an amount according to proof;

4. Award injunctive relief requiring Defendant to cease collection of all Pay-to-Pay fees that have been charged to, but not yet paid by, Plaintiffs and members of the Classes;

5. Award injunctive relief to enjoin Defendant's wrongful acts and further violations of Plaintiffs' and the Classes' rights, including but not limited to requiring Defendant to implement procedures to ensure it ceases charging the improper fees identified in this Amended Complaint;

6. Award pre-judgment interest at the maximum rate permitted by applicable law;

7. Enter a declaratory judgment that Defendant, through its wrongful actions, has kept and continues to keep for itself, benefits that are due and owed to Plaintiffs and members of the Classes;

8. Award reasonable attorneys' fees and costs pursuant to applicable law; and

9. Award such other relief as the Court deems just and proper.

### **JURY DEMAND**

Plaintiffs and members of the Classes hereby request a trial by jury.

Dated: January 11, 2021

/s/ Randall K. Pulliam

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### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic File (NEF) on January 11, 2021.

/s/ Randall K. Pulliam  
RANDALL K. PULLIAM



Bill & Return to:  
University Title Company  
P.O. Drawer DT  
College Station, Texas 77841

Doc Bk Vol Pg  
01051859 DR 9484 278

GF# 094135/HRM

Return To:

PHH Mortgage Corporation  
9700 Bissonnet Street, Suite  
#1500, HOUSTON, TX 77036

Prepared By:  
Theresa Holmes, 1 Mortgage Way,  
Mount Laurel, NJ 08054

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State of Texas

## DEED OF TRUST

FHA Case No.  
493-9472766-703

MIN 100020071150146285

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THIS DEED OF TRUST ("Security Instrument") is made on January 25, 2010  
The Grantor is Ursula N Little, AN UNMARRIED WOMAN

11029754

("Borrower"). The trustee is Robert Frappier, Trustee

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel (888) 679-MERS. PHH Mortgage Corporation

Wolters Kluwer Financial Services

FHA Texas Deed of Trust with MERS - 4/96

VMP®-4N(TX) (0704)

Amended 2/98

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("Lender") is organized and existing under the laws of New Jersey, and has an address of 1 Mortgage Way Mount Laurel, NJ 08054

Borrower owes Lender the principal sum of Two Hundred Thirty-Seven Thousand Seventy-Seven Dollars and Zero Cents Dollars (U.S. \$237,077.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on February 1st, 2040

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in BRAZOS County, Texas:

See legal description attached

Parcel ID Number:

which has the address of 3281 STAMPEDE DRIVE [Street]  
BRYAN [City], Texas 77808 [Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

**1. Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.



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**2. Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

**3. Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

**4. Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.



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**5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

**6. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

**7. Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**8. Fees.** Lender may collect fees and charges authorized by the Secretary.

**9. Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or



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(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

**(b) Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

**(c) No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

**(d) Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

**(e) Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

**10. Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

**11. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.



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**13. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

**14. Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**15. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**16. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**17. Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

**18. Foreclosure Procedure.** If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting and recording the notice at least 21 days prior to sale as provided by applicable law. Lender shall mail a copy of the notice of sale to Borrower in the manner prescribed by applicable law. Sale shall be made at public venue between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Property is sold pursuant to this paragraph 18, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

**19. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

**20. Substitute Trustee.** Lender, at its option and with or without cause, may from time to time remove Trustee and appoint, by power of attorney or otherwise, a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

**21. Subrogation.** Any of the proceeds of the Note used to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

**22. Partial Invalidity.** In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

**23. Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Growing Equity Rider	<input type="checkbox"/> Other [specify]
<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Graduated Payment Rider	



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**24. Purchase Money; Vendor's Lien; Renewal and Extension.** [Complete as appropriate]

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____	<u>Ursula N. Little</u>	(Seal)
	Ursula N Little	-Borrower

_____	_____	(Seal)
		-Borrower

_____	_____	(Seal)
		-Borrower

_____	_____	(Seal)
		-Borrower

_____	_____	(Seal)
		-Borrower

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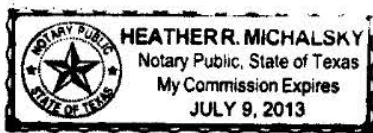
**STATE OF TEXAS**  
County of **BRAZOS**

Before me  
**Ursula N Little**

on this day personally appeared

known to me (or proved to me on the oath of  
or through ) to be the person whose name is  
subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes  
and consideration therein expressed.

Given under my hand and seal of office this ~~25th~~ <sup>HKm.</sup> 26<sup>th</sup> day of January, 2010



*Heather R. Michalsky*  
\_\_\_\_\_  
Notary Public

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Loan #: 7115014628

## PLANNED UNIT DEVELOPMENT RIDER

FHA Case No. 493-9472766-703
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THIS PLANNED UNIT DEVELOPMENT RIDER is made this 25th day of January, 2010, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to PHH Mortgage Corporation

("Lender") of the same date and covering the Property described in the Security Instrument and located at: 3281 STAMPEDE DRIVE BRYAN, TX 77808

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as

NORTH COUNTRY ESTATES

[Name of Planned Unit Development]

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the

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VMP589U (0806)  
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Initials: UW

Original



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yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.
- C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

<u>Ursula N. Little</u>	(Seal)	_____	(Seal)
Ursula N Little	-Borrower		-Borrower

_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower

_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower

_____	(Seal)	_____	(Seal)
	-Borrower		-Borrower

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Exhibit "A"

4. Legal description of land:

Lot Four (4), Block One (1), North Country Estates Phase Four, Brazos County, according to plat thereof recorded in Volume 5197, Page 80 of the Official Records of Brazos County, Texas.

Filed for Record in:  
BRAZOS COUNTY

On: Feb 01, 2010 at 01:50P

As a  
NO LABEL RECORDING

Document Number: 01051859

Amount: 64.00

Receipt Number - 383005

By:  
Cathy Barcelona

STATE OF TEXAS COUNTY OF BRAZOS  
I hereby certify that this instrument was  
filed on the date and time stamped hereon by me  
and was duly recorded in the volume and page  
of the Official Public records of:

BRAZOS COUNTY

as stamped hereon by me.

Feb 01, 2010

HONORABLE KAREN MCQUEEN, COUNTY CLERK  
BRAZOS COUNTY



07- 7633

31299

After recording please return to:  
WORLDWIDE MORTGAGE COMPANY

[Company Name]

[Name of Natural Person]  
15400 KNOLL TRAIL 401

[Street Address]  
DALLAS, TX 75248

[City, State Zip Code]

[Space Above This Line For Recording Data]

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

## TEXAS DEED OF TRUST

FHA Case No.  
493-8402230-703

MIN: 100374007071100128

THIS DEED OF TRUST ("Security Instrument") is made on August 23, 2007. The grantor is MELBOURNE L. POFF JR and BARBARA JEAN POFF, husband and wife as community property

whose address is 13502 WEIMAN RD #12, HOUSTON, TX 77041

("Borrower").

The trustee is NANCY J. SCHRIEDEL

whose address  
("Trustee").

680 N. CARROLL AVE. STE. 100, SOUTHLAKE, TX 76092

The lender is WORLDWIDE MORTGAGE COMPANY

organized and existing under the laws of Texas, and whose address is 5057 KELLER SPRINGS RD 300, ADDISON, TX 75001 ("Lender").

The beneficiary under this Security Instrument is Mortgage Electronic Registration Systems, Inc. ("MERS"). MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. Borrower owes Lender the principal sum of

Loan No: 10501370

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Lester Brown  
United Title of Texas  
8600 Freeport Pkwy  
Suite 400  
Irving, TX 75063



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one hundred ninety three thousand four hundred seventy two and NO/100th Dollars (U.S. \$ 193,472.00 ). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on September 1, 2037 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably warrants grants and conveys to Trustee, in trust, with power of sale, the following described property located in

SAN JACINTO

County, Texas:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

which has the address of 221 KEY LARGO LOOP

POINTBLANK, Texas 77364 ("Property Address");  
[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

**2. Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under Paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by

Loan No: 10501370

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the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

**3. Application of Payments.** All payments under Paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

**4. Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order of Paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in Paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

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**5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear expected. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

**6. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in Paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in Paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

**7. Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**8. Fees.** Lender may collect fees and charges authorized by the Secretary.

**9. Grounds for Acceleration of Debt.**

Loan No: 10501370

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**(a) Default.** Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

**(b) Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St Germain Depository Institutions Act of 1982, 12 U.S.C. § 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all the sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

**(c) No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

**(d) Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

**(e) Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

**10. Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

**11. Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security

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Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the term of this Security Instrument or the Note without that Borrower's consent.

**13. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this Paragraph.

**14. Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**15. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**16. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**17. Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 17.

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Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

**18. Foreclosure Procedure.** If Lender requires immediate payment in full under Paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 18 including, but not limited to, reasonable attorneys' fees and costs of title evidence. For the purposes of this Paragraph 18, the term "Lender" includes any holder of the Note who is entitled to receive payments under the Note.

If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting and filing the notice at least 21 days prior to sale as provided by applicable law. Lender shall mail a copy of the notice to Borrower in the manner prescribed by applicable law. Sale shall be made at public vendue. The sale must begin at the time stated in the notice of sale or not later than three hours after that time and between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty from Borrower. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Property is sold pursuant to this Paragraph 18, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ possession or other court proceeding.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. § 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

**19. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall provide a release of this Security Instrument to Borrower or Borrower's designated agent in accordance with applicable law. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

**20. Substitute Trustee; Trustee Liability.** All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights, remedies, powers and duties conferred upon Trustee herein and by applicable law.

Trustee shall not be liable if acting upon any notice, request, consent, demand, statement or other document believed by Trustee to be correct. Trustee shall not be liable for any act or omission unless such act or omission is willful.

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**21. Subrogation.** Any of the proceeds of the Note used to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

**22. Partial Invalidity.** In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

**23. Purchase Money; Owelty of Partition; Renewal and Extension of Liens Against Homestead Property; Acknowledgment of Cash Advanced Against Non-Homestead Property. [Check box as applicable.]**

☐ **Purchase Money.**

The funds advanced to Borrower under the Note were used to pay all or part of the purchase price of the Property. The Note also is primarily secured by the vendor's lien retained in the deed of even date with this Security Instrument conveying the Property to Borrower, which vendor's lien has been assigned to Lender, this Security Instrument being additional security for such vendor's lien.

☐ **Owelty of Partition.**

The Note represents funds advanced by Lender at the special instance and request of Borrower for the purpose of acquiring the entire fee simple title to the Property and the existence of an owelty of partition imposed against the entirety of the Property by a court order or by a written agreement of the parties to the partition to secure the payment of the Note is expressly acknowledged, confessed and granted.

☒ **Renewal and Extension of Liens Against Homestead Property.**

The Note is in renewal and extension, but not in extinguishment, of the indebtedness described on the attached Renewal and Extension Exhibit which is incorporated by reference. Lender is expressly subrogated to all rights, liens and remedies securing the original holder of a note evidencing Borrower's indebtedness and the original liens securing the indebtedness are renewed and extended to the date of maturity of the Note in renewal and extension of the indebtedness.

☐ **Acknowledgment of Cash Advanced Against Non-Homestead Property.**

The Note represents funds advanced to Borrower on this day at Borrower's request and Borrower acknowledges receipt of such funds. Borrower states that Borrower does not now and does not intend ever to reside on, use in any manner, or claim the Property secured by this Security Instrument as a business or residential homestead. Borrower disclaims all homestead rights, interests and exemptions related to the Property.

**24. Loan Not a Home Equity Loan. The Loan evidenced by the Note is not an extension of credit as defined by Section 50(a)(6) or Section 50(a)(7), Article XVI, of the Texas Constitution. If the Property is used as Borrower's residence, then Borrower agrees that Borrower will receive no cash from the Loan evidenced by the Note and that any advances not necessary to purchase the Property, extinguish an owelty lien, complete construction, or renew and extend a prior lien against the Property, will be used to reduce the balance evidenced by the Note or such Loan will be modified to evidence the correct Loan balance, at Lender's option. Borrower agrees to execute any documentation necessary to comply with this Paragraph 24.**

**25. Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es).]

☐ Condominium Rider

☐ Graduated Payment Rider

☒ Other [specify]

☐ Planned Unit Development Rider

☐ Growing Equity Rider

Renewal and Extension Exhibit,  
Manufactured Housing Unit Rider  
to Security Instrument

Loan No: 10501370

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Donna C. Isaacs

Printed Name: [Please Complete]

Printed Name: [Please Complete]

Melbourne L. Poff Jr  
MELBOURNE L. POFF JR

(Seal)  
-Borrower  
[Printed Name]

Barbara Jean Poff  
BARBARA JEAN POFF

(Seal)  
-Borrower  
[Printed Name]

\_\_\_\_\_  
(Seal)  
-Borrower  
[Printed Name]

\_\_\_\_\_  
(Seal)  
-Borrower  
[Printed Name]

\_\_\_\_\_[Acknowledgment on Following Page]\_\_\_\_\_

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ACKNOWLEDGMENT

State of Texas

County of

*Harris*  
~~SAN JACINTO~~

§  
§  
§

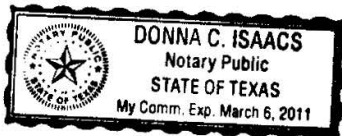
Before me, *The undersigned*, a Notary Public, on this day personally appeared MELBOURNE L. POFF JR and BARBARA JEAN POFF

of \_\_\_\_\_ known to me (or proved to me on the oath or through *Tx. Drivers License* [description of identity card or other document]) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this *27th* day of *August*, A.D., *2009*.

*Donna C. Isaacs*  
\_\_\_\_\_  
Signature of Officer [Printed Name]  
*Donna C. Isaacs*  
\_\_\_\_\_  
Title of Officer

(Seal)



My Commission Expires:

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**31309**

Loan No: 10501370

POFF

**EXHIBIT "A" - LEGAL DESCRIPTION - PAGE 1 of 1**  
LOT 83 OF WOODLAND SHORES OF HOLIDAY VILLAGES OF LIVINGSTON SUBDIVISION,  
SECTION A OF SAN JACINTO COUNTY, TEXAS, AS SHOWN BY THE MAP OR PLAT  
RECORDED IN VOLUME 303, PAGE 782, OFFICIAL PUBLIC RECORDS OF SAN JACINTO  
COUNTY, TEXAS.

**RENEWAL AND EXTENSION EXHIBIT 31310**  
**TO BE ATTACHED TO THE DEED OF TRUST**

MIN: 100374007071100128

This Renewal and Extension Exhibit is incorporated into and shall amend and supplement the Security Instrument of even date herewith. The Note is in renewal and extension, but not in extinguishment, of the indebtedness, whether one or more, described as follows:

Residential Construction Note and Residential Construction Contract in the amount of \$ 118,733.00 executed by MELBOURNE L. POFF JR and BARBARA JEAN POFF payable to the order of FALCONVIEW HOMES securing the property described thereon, and is or will be filed of record in the Real Property Records of SAN JACINTO County, Texas.

Lender is expressly subrogated to all rights, liens, equities and remedies securing the original holder(s) of the above debt(s) and the original lien(s) securing the same are renewed and extended to the date of maturity of the Note secured by the Security Instrument in renewal and extension of the indebtedness. Borrower acknowledges that the lien(s) securing the prior debt(s) is valid, that the lien(s) subsists against the Property, and that by this instrument it is renewed and extended in full force until the Note is paid, even though the original lien(s) is released and not assigned to Lender.

This renewal and extension is not a refinance of a debt any portion of which is an extension of credit as defined by Section 50(a)(6) or Section 50(a)(7), Article XVI, of the Texas Constitution.

In addition to the refinance of principal and any interest, if Lender is advancing all or a portion of the costs necessary to refinance debt on the Property, Borrower acknowledges that these costs are reasonable and necessary costs to refinance such debt. Borrower has received no funds from this Loan, but only the benefit of those sums advanced for the payment of 1) principal and any interest on loans being refinanced, 2) any reasonable and necessary closing costs, and 3) any refund to Borrower of closing costs escrowed in connection with the Loan advanced by Borrower. If any portion of the Loan secures a debt for work or material used in constructing improvements on the Property, Borrower understands that funds not used in such construction, if any, must first be used to reduce the unpaid principal of the Loan or, at Lender's option, the Note must be modified to evidence the actual funds advanced.

Loan No: 10501370

Renewal and Extension Exhibit (Texas)

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FHA/VA CASE NO:493-8402230-703  
MIN: 100374007071100128

(Attach to Security Instrument)

**MANUFACTURED HOUSING UNIT RIDER TO THE  
MORTGAGE / DEED OF TRUST / SECURITY INSTRUMENT**  
(Manufactured Housing Unit to Become Affixed)

THIS RIDER is made this 23rd day of August, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage/Deed of Trust/Security Instrument (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to WORLDWIDE MORTGAGE COMPANY

(the "Note Holder")  
of the same date (the "Note") and covering the land described in the Security Instrument as:

LOT 83 OF WOODLAND SHORES OF HOLIDAY VILLAGES OF LIVINGSTON SUBDIVISION,  
SECTION A OF SAN JACINTO COUNTY, TEXAS, AS SHOWN BY THE MAP OR PLAT RECORDED  
IN VOLUME 303, PAGE 782, OFFICIAL PUBLIC RECORDS OF SAN JACINTO COUNTY,  
TEXAS.

[Legal Description]

which currently has the address of:

221 KEY LARGO LOOP, POINTBLANK, TX 77364

[Property Address]

together with the Manufactured Housing Unit described as follows which shall be a part of the real property:

Make: TXAD  
Model: GALAXY 593  
Year: 2007  
Serial Number(s): OC010818759A/B  
Width & Length: 28 x 54

**LAND AND HOME MATTERS.** Owner acknowledges that the land and manufactured home covered by this Security Instrument are to be treated as real property for all purposes under Texas law and that the parties have elected to not be governed by Chapter 347 of the Texas Finance Code.

**MODIFICATIONS.** In addition to the covenants and agreements made in the Security Instrument, Borrower(s) further covenant and agree as follows, for themselves, their heirs and assigns to the Note Holder:

Loan No: 10501370

Manufactured Housing Unit Rider to the Mortgage/Deed of Trust/Security Instrument  
(Manufactured Housing Unit to Become Affixed) (Texas)

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**A. Property:**

Property shall encompass the Manufactured Housing Unit described above that is or that will become affixed to the land legally described herein.

**B. Additional Covenants of Borrower(s):**

- (a) Borrower(s) covenant and agree that Borrower(s) will comply with all State and local laws and regulations regarding the affixation of the Manufactured Housing Unit to the land described herein including, but not limited to, surrendering the Certificate of Title (if required) and obtaining the requisite governmental approval and accompanying documentation necessary to classify the Manufactured Housing Unit as real property under State and local law.
- (b) That the Manufactured Housing Unit described above shall be, at all times, and for all purposes, permanently affixed to and part of the land legally described herein and shall not be removed from said land.
- (c) Borrower(s) covenant that affixing the Manufactured Housing Unit to the land legally described herein does not violate any zoning laws or other local requirements applicable to manufactured homes.
- (d) In the event state or local law does not provide for a surrender of title, Borrower grants Lender a security interest in the Manufactured Housing Unit and shall execute such documents as Lender may request to evidence Lender's security interest therein.

BY SIGNING THIS, Borrower(s) agree to all of the above.

 (Seal)  
MELBOURNE L. POFF JR. -Borrower

 (Seal)  
BARBARA JEAN POFF -Borrower

(Seal)  
\_\_\_\_\_  
-Borrower

(Seal)  
\_\_\_\_\_  
-Borrower

Loan No: 10501370

Manufactured Housing Unit Rider to the Mortgage/Deed of Trust/Security Instrument  
(Manufactured Housing Unit to Become Affixed) (Texas)  
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FHA Case No. 493-8402230-703

**FHA PLANNED UNIT DEVELOPMENT RIDER**

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 23rd day of August, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note to WORLDWIDE MORTGAGE COMPANY

("Lender") of the same date and covering the Property described in the Security Instrument and located at:

221 KEY LARGO LOOP, POINTBLANK, TX 77364

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as

HOLIDAY VILLAGES OF LIVINGSTON

[Name of Planned Unit Development]

**PUD COVENANTS:** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage" and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.
- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.
- C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

[Signatures on Following Page]

Loan No: 10501370

MIN: 100374007071100128

FHA Planned Unit Development Rider (Multistate)

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

 (Seal)  
MELBOURNE L. POFF JR -Borrower

 (Seal)  
BARBARA JEAN POFF -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

[Space Below This Line For Acknowledgment]

STATE OF TEXAS  
COUNTY OF SAN JACINTO  
I, Angella Steele, hereby certify that this instrument was FILED in  
number sequence on the date and time stamped herein by me, and was  
duly RECORDED in the OFFICIAL PUBLIC RECORDS of San  
Jacinto County, Texas, as stamped herein by me on

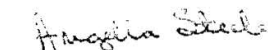


OCT 11 2007

ANGELLA STEELE  
COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

FILED FOR  
RECORD

2007 OCT 11 AM 8 40

  
COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Loan No: 10501370

FHA Planned Unit Development Rider (Multistate)

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**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

---

**Special Attention of:**

All FHA Approved Mortgagees  
All Direct Endorsement Underwriters  
All Eligible Submission Sources  
for Condominium Project Approvals  
All FHA Roster Appraisers  
All FHA Approved 203(k) Consultants  
All HUD Approved Housing Counselors  
All HUD Approved Nonprofit Organizations  
All Governmental Entity Participants  
All Real Estate Brokers  
All Closing Agents

---

**Transmittal:** Handbook 4000.1

**Issued:** August 14, 2019

**Effective Date:** October 15, 2019

**1. This Transmits:**

Handbook 4000.1, FHA Single Family Housing Policy Handbook, Condominium Project Approval content.

---

Brian D. Montgomery  
Assistant Secretary for Housing – Federal Housing Commissioner



**III. SERVICING AND LOSS MITIGATION****A. Title II Insured Housing Programs Forward Mortgages****1. Servicing of FHA-Insured Mortgages**

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**III. SERVICING AND LOSS MITIGATION****A. TITLE II INSURED HOUSING PROGRAMS FORWARD MORTGAGES**

This section provides the standards and procedures applicable to the servicing of all Single Family (one to four units) Mortgages insured under Title II of the National Housing Act, except for Home Equity Conversion Mortgages (HECM). The Mortgagee must fully comply with all of the following standards and procedures when servicing a Mortgage insured by the Federal Housing Administration (FHA).

**1. Servicing of FHA-Insured Mortgages**

Only FHA-approved Mortgagees may service FHA-insured Mortgages. Mortgagees may service Mortgages they hold or that are held by other FHA-approved Mortgagees.

**a. Servicing in Compliance with Law****i. Definition**

The Mortgage Holder is the Entity who holds title to the FHA-insured Mortgage and has the right to enforce the mortgage agreement.

The Mortgage Servicer is the Entity responsible for performing servicing actions on FHA-insured Mortgages on its behalf or on behalf of or at the direction of another FHA-approved Mortgagee.

**ii. Standard**

Holders must ensure all FHA-insured Mortgages are serviced by a Servicer in accordance with FHA requirements and all applicable laws.

Servicers must service all FHA-insured Mortgages in accordance with FHA requirements and all applicable laws.

**(A) Laws Applicable to Mortgage Servicing Generally**

Mortgagees must comply with all laws, rules, and requirements applicable to mortgage servicing, including full compliance with the applicable requirements under the purview of the Consumer Financial Protection Bureau (CFPB), including the Real Estate Settlement Procedure Act (RESPA) and the Truth in Lending Act (TILA).

FHA requirements that are more stringent or restrictive than those provided for in applicable law are set forth in this *SF Handbook* and the Mortgagee must comply with these requirements.

**III. SERVICING AND LOSS MITIGATION****A. Title II Insured Housing Programs Forward Mortgages****1. Servicing of FHA-Insured Mortgages**

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**(B) Contract Terms**

Where mortgage contract terms are more stringent or restrictive than those provided for in applicable law, the Mortgagee must comply with the mortgage contract terms.

**(C) Nondiscrimination Policy**

Mortgagees must comply with all antidiscrimination laws, rules, and requirements applicable to servicing performing FHA-insured Mortgages and FHA-insured Mortgages in Default, including full compliance with the applicable requirements of:

- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act);
- the Fair Credit Reporting Act, Public Law 91-508; and
- the Equal Credit Opportunity Act (ECOA), Public Law 94-239 and 12 CFR Part 202.

The Mortgagee must make all determinations with respect to the adequacy of the Borrower's income in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, actual or perceived sexual orientation, gender identity, source of income of the Borrower, or location of the Property.

**b. Responsibility for Servicing Actions**

Holders are responsible for all servicing actions, including the acts of its Servicers.

Servicers are responsible for their actions in servicing FHA-insured Mortgages, including actions taken on behalf or at the direction of the Holder.

The costs associated with subservicing may not be imposed on the Borrower or passed along to HUD in a claim for mortgage insurance benefits.

**i. Responsibility during Transfers of Servicing Rights****(A) Definitions**

The Transferor Servicing Mortgagee is the Mortgagee that transfers servicing responsibilities.

The Transferee Servicing Mortgagee is the Mortgagee to which the servicing responsibilities have been transferred.

The Transfer Date is the date on which the Borrower's Mortgage Payment is first due to the Transferee Servicing Mortgagee.



**III. SERVICING AND LOSS MITIGATION****A. Title II Insured Housing Programs Forward Mortgages****1. Servicing of FHA-Insured Mortgages**

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**(c) Installment Due Date Falls on a Non-Business Day**

When the Installment Due Date falls on a non-business day, the Mortgagee must consider a Borrower's Notice of Intent to Prepay or the receipt of the prepayment amount for a Mortgage closed before January 21, 2015 timely if received on the next business day.

**(3) Payoff Disclosure Requirements**

When notified of the Borrower's intent to prepay, the Mortgagee must send the [Payoff Disclosure](#) and copy of the payoff statement directly to the Borrower, even if the Mortgagee is dealing with an Authorized Third Party.

The Mortgagee will forfeit any interest collected after the date of prepayment if these disclosure requirements are not met.

**(D) Trustee's Fee for Satisfaction**

If specifically provided for in the security instrument, the Mortgagee may charge the Borrower the amount of the trustee's fee, plus any reasonable and customary fee for payment, or for the execution of a satisfaction, release or trustee's deed when the debt is paid in full.

**(E) Recording Fees for Satisfaction**

The Mortgagee may charge the Borrower a reasonable and customary fee for recording satisfactions in states where recordation is not the responsibility of the Mortgagee.

**f. Servicing Fees and Charges****i. Definition**

Allowable Fees and Charges are those costs associated with the servicing of the Mortgage that are permitted to be charged to the Borrower.

Prohibited Fees and Charges are those costs associated with the servicing of the Mortgage that may not be charged to the Borrower.

**ii. Standard****(A) Reasonable and Customary Fees and Charges**

The Mortgagee may collect certain reasonable and customary fees and charges from the Borrower after the Mortgage is insured and as authorized by HUD below. All fees must be:

- reasonable and customary for the local jurisdiction;

**III. SERVICING AND LOSS MITIGATION****A. Title II Insured Housing Programs Forward Mortgages****1. Servicing of FHA-Insured Mortgages**

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- based on actual cost of the work performed or actual out-of-pocket expenses and not a percentage of either the face amount or the unpaid principal balance of the Mortgage; and
- within the [maximum amount allowed by HUD](#).

**(B) Requests for Approval for Other Fees or Charges**

The Mortgagee may request approval from the National Servicing Center (NSC) for any fee, charge, or unusual service not specifically mentioned in this *SF Handbook*. The Homeownership Center (HOC) will determine the maximum amount of any fee based on what is reasonable and customary in the area.

**(C) Prohibited Fees and Charges**

The Mortgagee must not charge the Borrower for the following services:

- costs of telephone calls, telegrams, personal visits with the Borrower, certified mail, or other activities that are normally considered a part of a prudent Mortgagee's servicing activity;
- Mortgagee's use of an independent contractor such as a tax service to furnish tax data and information necessary to pay property taxes or make the payments on behalf of the Mortgagee;
- preparing and providing evidence of Payoff, Reconveyance, or termination of the Mortgage;
- providing information essential to the Payoff;
- recording the Payoff of the Mortgage in states where recordation is the responsibility of the Mortgagee; or
- fees for services performed by attorneys or trustees who are salaried members of the Mortgagee's staff.

**iii. Required Documentation**

The Mortgagee must include in the servicing file:

- documentation of the amount of any fees and charges paid or payable by the Borrower; and
- documentation supporting the actual cost of any work performed or out-of-pocket expenses.

**g. Escrow****i. Definition**

An Escrow Account is a set of funds collected by the Mortgagee for payment of taxes, insurance, and other items required by the mortgage Note.

**Appendix 3.0 – Post-Endorsement Fees and Charges by HOC (Applies to Servicing Only)****APPENDIX 3.0 – POST-ENDORSEMENT FEES AND CHARGES BY HOC (APPLIES TO SERVICING ONLY)****Philadelphia HOC**

<b>Type of Service</b>	<b>CT</b>	<b>DE</b>	<b>DC</b>	<b>ME</b>	<b>MD</b>	<b>MA</b>	<b>MI</b>	<b>NH</b>	<b>NJ</b>	<b>NY</b>
Substitution of Hazard Insurance Policy	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Returned Check*	\$25	\$15	\$15	\$25	\$15	\$25	\$20	\$25	\$20	\$20
Modification of performing Mortgage	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
Modification of the mortgaged Property	\$100	\$110	\$110	\$100	\$110	\$100	\$150	\$100	\$100	\$100
Incorporating a Borrower's name change into the Servicer's loan system	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Re-analyzing escrow accounts and providing new coupon books	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Copy of Mortgage Note	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Closing Disclosure**	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Amortization Schedule**	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15
Replacement Coupon Books	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Verification of Mortgage	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20
Copy of Year-End Statement	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Transmittal of Payoff Statement via Facsimile	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Additional Payoff Statements***	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10

\* Unless prohibited by the Borrower's bank, the Mortgagee must present the check for payment twice before it can be deemed "uncollectible" when returned unpaid.

\*\*other than the statement or schedule provided at closing

\*\*\* after two payoff statements have been provided free of charge for the calendar year

Handbook 4000.1

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Effective Date: 03/14/2016 | Last Revised: 08/14/2019

\*Refer to the [online version](#) of SF Handbook 4000.1 for specific sections' effective dates



**Appendix 3.0 – Post-Endorsement Fees and Charges by HOC (Applies to Servicing Only)**

<b>Type of Service</b>	<b>OH</b>	<b>PA</b>	<b>RI</b>	<b>VT</b>	<b>VA</b>	<b>WV</b>
Substitution of Hazard Insurance Policy	\$10	\$10	\$10	\$10	\$10	\$10
Returned Check*	\$20	\$15	\$25	\$25	\$15	\$15
Modification of performing Mortgage	\$50	\$50	\$50	\$50	\$50	\$50
Modification of the mortgaged Property	\$100	\$110	\$100	\$100	\$110	\$110
Incorporating a Borrower's name change into the Servicer's loan system	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Re-analyzing escrow accounts and providing new coupon books	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Copy of Mortgage Note	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Closing Disclosure**	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Amortization Schedule**	\$15	\$15	\$15	\$15	\$15	\$15
Replacement Coupon Books	\$5	\$5	\$5	\$5	\$5	\$5
Verification of Mortgage	\$20	\$20	\$20	\$20	\$20	\$20
Copy of Year-End Statement	\$5	\$5	\$5	\$5	\$5	\$5
Transmittal of Payoff Statement via Facsimile	\$5	\$5	\$5	\$5	\$5	\$5
Additional Payoff Statements***	\$10	\$10	\$10	\$10	\$10	\$10

\* Unless prohibited by the Borrower's bank, the Mortgagee must present the check for payment twice before it can be deemed "uncollectible" when returned unpaid.

\*\*other than the statement or schedule provided at closing

\*\*\* after two payoff statements have been provided free of charge for the calendar year

**Appendix 3.0 – Post-Endorsement Fees and Charges by HOC (Applies to Servicing Only)****Atlanta HOC**

<b>Type of Service</b>	<b>AL</b>	<b>FL</b>	<b>GA</b>	<b>KY</b>	<b>IL</b>	<b>IN</b>	<b>MS</b>	<b>NC</b>	<b>PR</b>	<b>SC</b>
Substitution of Hazard Insurance Policy	\$10	\$15	\$10	\$10	\$10	\$10	\$7.50	\$7.50	\$10	\$15
Returned Check*	\$10	\$20	\$15	\$15	\$20	\$25	\$15	\$15	\$10	\$20
Modification of performing Mortgage	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
Modification of the mortgaged Property	\$100	\$100	\$125	\$100	\$100	\$100	\$100	\$150	\$100	\$100
Incorporating a Borrower's name change into the Servicer's loan system	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Re-analyzing escrow accounts and providing new coupon books	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Copy of Mortgage Note	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Closing Disclosure**	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Amortization Schedule**	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15
Replacement Coupon Books	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Verification of Mortgage	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20
Copy of Year-End Statement	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Transmittal of Payoff Statement via Facsimile	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Additional Payoff Statements***	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10

\* Unless prohibited by the Borrower's bank, the Mortgagee must present the check for payment twice before it can be deemed "uncollectible" when returned unpaid.

\*\*other than the statement or schedule provided at closing

\*\*\* after two payoff statements have been provided free of charge for the calendar year

**Appendix 3.0 – Post-Endorsement Fees and Charges by HOC (Applies to Servicing Only)**

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<b>Type of Service</b>	<b>TN</b>	<b>VI</b>
Substitution of Hazard Insurance Policy	\$7.50	\$10
Returned Check*	\$20	\$10
Modification of performing Mortgage	\$50	\$50
Modification of the mortgaged Property	\$150	\$100
Incorporating a Borrower's name change into the Servicer's loan system	No Charge	No Charge
Re-analyzing escrow accounts and providing new coupon books	No Charge	No Charge
Copy of Mortgage Note	\$10	\$10
Copy of Closing Disclosure**	\$10	\$10
Copy of Amortization Schedule**	\$15	\$15
Replacement Coupon Books	\$5	\$5
Verification of Mortgage	\$20	\$20
Copy of Year-End Statement	\$5	\$5
Transmittal of Payoff Statement via Facsimile	\$5	\$5
Additional Payoff Statements***	\$10	\$10

\* Unless prohibited by the Borrower's bank, the Mortgagee must present the check for payment twice before it can be deemed "uncollectible" when returned unpaid.

\*\*other than the statement or schedule provided at closing

\*\*\* after two payoff statements have been provided free of charge for the calendar year

**Appendix 3.0 – Post-Endorsement Fees and Charges by HOC (Applies to Servicing Only)****Denver HOC**

<b>Type of Service</b>	<b>AR</b>	<b>CO</b>	<b>IA</b>	<b>KS</b>	<b>LA</b>	<b>MO</b>	<b>MN</b>	<b>MT</b>	<b>NE</b>	<b>NM</b>
Substitution of Hazard Insurance Policy	\$10	\$10.50	\$10	\$10	\$10	\$10	\$10	\$10.50	\$10	\$10
Returned Check*	\$25	\$15	\$15	\$15	\$25	\$15	\$20	\$15	\$15	\$15
Modification of performing Mortgage	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
Modification of the mortgaged Property	\$110	\$100	\$100	\$100	\$110	\$100	\$100	\$100	\$100	\$110
Incorporating a Borrower's name change into the Servicer's loan system	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Re-analyzing escrow accounts and providing new coupon books	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Copy of Mortgage Note	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Closing Disclosure**	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Amortization Schedule**	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15
Replacement Coupon Books	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Verification of Mortgage	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20
Copy of Year-End Statement	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Transmittal of Payoff Statement via Facsimile	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Additional Payoff Statements***	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10

\* Unless prohibited by the Borrower's bank, the Mortgagee must present the check for payment twice before it can be deemed "uncollectible" when returned unpaid.

\*\*other than the statement or schedule provided at closing

\*\*\* after two payoff statements have been provided free of charge for the calendar year



**Appendix 3.0 – Post-Endorsement Fees and Charges by HOC (Applies to Servicing Only)**

<b>Type of Service</b>	<b>ND</b>	<b>OK</b>	<b>SD</b>	<b>TX</b>	<b>WI</b>	<b>WY</b>	<b>UT</b>
Substitution of Hazard Insurance Policy	\$10.50	\$10	\$10.50	\$10	\$10	\$10.50	\$10.50
Returned Check*	\$15	\$25	\$15	\$25	\$20	\$15	\$15
Modification of performing Mortgage	\$50	\$50	\$50	\$50	\$50	\$50	\$50
Modification of the mortgaged Property	\$100	\$110	\$100	\$110	\$100	\$100	\$100
Incorporating a Borrower's name change into the Servicer's loan system	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Re-analyzing escrow accounts and providing new coupon books	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Copy of Mortgage Note	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Closing Disclosure**	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Amortization Schedule**	\$15	\$15	\$15	\$15	\$15	\$15	\$15
Replacement Coupon Books	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Verification of Mortgage	\$20	\$20	\$20	\$20	\$20	\$20	\$20
Copy of Year-End Statement	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Transmittal of Payoff Statement via Facsimile	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Additional Payoff Statements***	\$10	\$10	\$10	\$10	\$10	\$10	\$10

\* Unless prohibited by the Borrower's bank, the Mortgagee must present the check for payment twice before it can be deemed "uncollectible" when returned unpaid.

\*\*other than the statement or schedule provided at closing

\*\*\* after two payoff statements have been provided free of charge for the calendar year

**Appendix 3.0 – Post-Endorsement Fees and Charges by HOC (Applies to Servicing Only)****Santa Ana HOC**

<b>Type of Service</b>	<b>AK</b>	<b>AZ</b>	<b>CA</b>	<b>HI</b>	<b>ID</b>	<b>NV</b>	<b>OR</b>	<b>WA</b>	<b>Pacific Islands</b>
Substitution of Hazard Insurance Policy	\$15	\$10	\$10	\$10	\$15	\$10	\$15	\$15	\$10
Returned Check*	\$15	\$15	\$15	\$15	\$20	\$15	\$15	\$15	\$15
Modification of performing Mortgage	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
Modification of the mortgaged Property	\$125	\$100	\$100	\$100	\$125	\$100	\$125	\$125	\$100
Incorporating a Borrower's name change into the Servicer's loan system	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Re-analyzing escrow accounts and providing new coupon books	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Copy of Mortgage Note	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Closing Disclosure**	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
Copy of Amortization Schedule**	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15	\$15
Replacement Coupon Books	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Verification of Mortgage	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20
Copy of Year-End Statement	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Transmittal of Payoff Statement via Facsimile	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5	\$5
Additional Payoff Statements***	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10

\* Unless prohibited by the Borrower's bank, the Mortgagee must present the check for payment twice before it can be deemed "uncollectible" when returned unpaid.

\*\*other than the statement or schedule provided at closing

\*\*\* after two payoff statements have been provided free of charge for the calendar year

# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

<b>MELBOURNE POFF and BARBARA POFF,</b>	)	
	)	
	)	
<b>Plaintiffs,</b>	)	<b>CIVIL ACTION NO.</b>
	)	
<b>v.</b>	)	<b>4:20-cv-04018</b>
	)	
<b>PHH MORTGAGE CORPORATION,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT, CONDITIONALLY CERTIFYING A CLASS FOR  
SETTLEMENT PURPOSES, DIRECTING THE ISSUANCE OF CLASS NOTICE, AND  
SCHEDULING A FINAL APPROVAL HEARING**

The Parties and their respective counsel have entered into a Stipulation of Settlement and Release (the “Agreement”), which, with its incorporated exhibits, sets forth the terms of the Parties’ agreement, to settle and dismiss this litigation on a class-action basis (the “Settlement”) subject to the Court’s approval. On November 4, 2022, Plaintiffs Melbourne Poff and Barbara Poff jointly filed a motion for preliminary approval of the Settlement (D.E. \_\_\_\_).

Contemporaneously, Defendant PHH Mortgage Corporation (“PHH”), individually and as successor by merger to named Defendant Ocwen Loan Servicing, LLC (“Ocwen,” and, together with PHH, “Defendants”), filed a Notice of Compliance regarding the notice requirements of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, with respect to the Settlement (D.E. \_\_\_\_). The Court has reviewed Plaintiffs’ motion for preliminary approval, Defendants’

separate notice motion regarding CAFA compliance (D.E. \_\_\_), the Settlement,<sup>1</sup> and the pleadings filed to date in this matter to determine whether the proposed Settlement Class should be preliminarily approved. Having fully considered the Parties' motions, and the arguments offered by counsel, **IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:**

1. Plaintiffs' motion for preliminary approval of the Settlement is **GRANTED**.
2. **Partial Stay of this Action.** All non-settlement-related proceedings in the Action are hereby stayed and suspended until further order of the Court.
3. **Jurisdiction.** The Court finds that it has subject matter jurisdiction over this Action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1332(d)(2)(A), including jurisdiction to approve and enforce the Settlement and all orders and decrees that have been entered or which may be entered pursuant thereto. The Court also finds that it has personal jurisdiction over the Parties and, for purposes of consideration of the proposed Settlement, over each of the members of the Settlement Class defined below (*see Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985)), and that venue is proper in this District pursuant to 28 U.S.C. § 1391.
4. **Conditional Class Certification for Settlement Purposes Only.** The Court is presented with a proposed settlement prior to a decision on class certification, and must therefore determine whether the proposed Settlement Class satisfies the requirements for class certification under Federal Rule of Civil Procedure 23, albeit for purposes of settlement. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620-21 (1997). The proposed Settlement Class includes the following:

All borrowers on residential mortgage loans involving mortgaged property located in the State of Texas who, between July 17, 2018 (the first day of the Class Period) and October 17, 2022, paid a Convenience Fee to Ocwen and/or PHH that was not refunded or returned. Excluded

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<sup>1</sup> The definitions in Section II.1 of the Agreement are hereby incorporated as though fully set forth in this Order, and capitalized terms shall have the meanings attributed to them in the Agreement.

from the Settlement Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC*, et al., No. 2:15-cv-01831-MHH, ECF No. 71 at 7 (N.D. Ala. Aug. 1, 2019); (b) all persons who are potential members of the proposed FDCPA settlement class in *Morris, et al. v. PHH Mortgage Corp., et al.*, No. 0:20-cv-60633-RS (S.D. Fla.), whether or not those persons timely and validly exclude themselves from the Morris FDCPA settlement class; (c) borrowers who are or were named plaintiffs in any civil action other than this Action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before October 31, 2022; (d) the PHH Defendants' board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them.

In deciding whether to certify a settlement class, a court must conduct a “rigorous analysis of [the] Rule 23 prerequisites.” *In re Heartland Payment Systems, Inc. Consumer Data Sec. Breach Litig.*, 851 F. Supp.2d 1040, 1051 (S.D. Tex. 2012), citing *Madison v. Chalmette Ref., L.L.C.*, 637 F.3d 551, 554 (5th Cir. 2011). However, “the fact that a settlement has been reached is, of course, relevant.” *Id.*, citing *Smith v. Sprint Commc’ns. Co.*, 387 F.3d 612, 614 (7th Cir. 2004). “A court need not determine under Rule 23(b)(3)(D) whether the proposed settlement class action would be manageable for trial.” *Id.* The Court must also be satisfied that the proposed class “is adequately defined and clearly ascertainable.” *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 133 (E.D. La. 2013). The Court conditionally finds and concludes, for settlement purposes only, that:

a. The Settlement Class is ascertainable. The proposed definition of the Settlement Class is based on objective criteria, all of which are determinable from PHH’s business records. *See* Declaration of Kevin Campbell (ECF No. 85-1) (“Campbell Decl.”) at ¶¶ 4-5. Individual, subjective inquiries to identify who may be a member of the Settlement Class are unnecessary. *See Blackmon v. Zachary Holdings, Inc.*, 2022 WL 3142364, at \*1 (W.D. Tex. Aug. 5, 2022) (proposed class was ascertainable where membership in class was based on “objective criteria” and class could be determined from records kept by the defendant).



b. The Settlement Class also easily satisfies the numerosity requirement of Rule 23(a)(1). *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (explaining that though the number of members of a class is not determinative, a class of over 100 members is “within the range that generally satisfies the numerosity requirement”) (citing *Boykin v. Georgia-Pacific Corp.*, 706 F.2d 1384, 1386 (5th Cir. 1983) (finding that numerosity requirement would not be met by a class with 20 members but was met by a class with 317 members)). The Settlement Class is comprised of 66,622 primary, joint and/or co-borrowers on 47,793 home mortgage loans. Campbell Decl. at ¶ 5.

c. The commonality requirement of Rule 23(a)(2) is also satisfied for purposes of settlement. To satisfy Rule 23(a)(2), there must be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality is met when the claims of all class members “depend upon a common contention,” with “even a single common question” sufficing. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 359 (2011) (citation omitted); *Lightbourn v. County of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997) (commonality of claims is satisfied “when there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.”). Every key issue in the Action stems from the same alleged course of conduct: Defendants charging Settlement Class Members Convenience Fees to make their mortgage payments by telephone via live operator, by IVR, or via the internet. There are issues raised in this Action that are common to each Settlement Class Member, including, among other things: (a) whether charging a fully-disclosed and agreed-to Convenience Fee for a separate payment service that a servicer is never required to offer and a borrower is not required to use violates the Texas Debt Collection Act (“TDCA”); (b) whether Defendants’ Convenience Fees are permitted by law when charged for use of a payment method not referenced in the loan documents; and (c) whether

Settlement Class Members are entitled to refunds or damages under the TDCA as a result of Defendants' alleged conduct. As a result, for purposes of settlement only, Rule 23(a)'s commonality requirement is satisfied. *Seeligson v. Devon Energy Production Co., L.P.*, 761 Fed. Appx. 329, 337 (5th Cir. 2019) (holding class satisfied Rule 23's commonality requirement because class was uniformly charged a higher processing fee than plaintiffs alleged was legal); *accord Walton v. Franklin Collection Agency, Inc.*, 190 F.R.D. 404, 408 (N.D. Miss. 2000) (commonality satisfied in FDCPA class action where class members were subjected to a common course of conduct by the defendant).

d. The Settlement Class also satisfies the typicality requirement of Rule 23(a)(3). The test of typicality is "whether the class representative's claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality." *Dockery v. Fischer*, 253 F. Supp.3d 832, 850 (S.D. Miss. 2015) (quoting *James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir. 2001), abrogated on other grounds by *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832 (5th Cir. 2012)). The typicality requirement may be satisfied despite variations in the claims as long as the claims "arise from a single course of conduct [by the defendant] and a single set of legal theories." *Dockery*, 253 F. Supp.3d at 850 (quoting *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp.2d at 1055). Here, Plaintiffs allege that they are situated identically with respect to every other Settlement Class Member. Plaintiffs have alleged that they suffered the same injuries as every other Settlement Class Member by being charged Convenience Fees when paying their mortgage payments by telephone, IVR, or the internet, even though such fees were allegedly not authorized by their loan documents and allegedly not otherwise permitted by law. For purposes of class settlement, this is sufficient to satisfy Rule 23(a)'s typicality

requirement. *Lewis v. Cain*, 324 F.R.D. 159, 169 (M.D. La. 2018) (typicality is satisfied where the claims “arise from a similar course of conduct and share the same legal theory”) (citation omitted); *accord Hunt v. Check Recovery Sys., Inc.*, 241 F.R.D. 505, 501-11 (N.D. Cal. 2007) (concluding FDCPA class satisfied Rule 23’s typicality requirement because common claim was that defendant had attempted to collect improper fees and charges from class members); *O’Dell v. Nat’l Recovery Agency*, 291 F. Supp. 3d 687, 698-99 (E.D. Pa. 2018) (certifying FDCPA class after finding that the claims of the named plaintiff and putative class members were typical, in that the common allegation was that defendant had improperly re-aged the accounts of the class).

e. Plaintiffs are adequate representatives of the Settlement Class under Rule 23(a)(4). All have standing, are members of the Settlement Class they seek to represent, and the Court is aware of no antagonistic interests that exist between Plaintiffs and the Settlement Class Members. The Court is also satisfied that Class Counsel have the qualifications and experience necessary to undertake this litigation and serve as counsel for the Settlement Class. *See, e.g., Caldwell, et al. v. Freedom Mortgage Co.*, No. 3:19-cv-02193-N (N.D. Tex.) (appointed Plaintiffs’ counsel in a convenience fee class action and secured a \$2,250,000 settlement); *Phillips, et al. v. Caliber Home Loans, Inc.*, No. 19-cv-02711-WMW-LIB (D. Minn.) (appointed Plaintiffs’ counsel as class counsel in convenience fee class action); *Williams v. State Farm Mutual Automobile Insurance Company*, 4:11-cv-00749-KGB (E.D. Ark.) (appointed Plaintiffs’ counsel as class counsel in a settlement of \$21.7 million with 7,635 individuals receiving 100% recovery plus six percent prejudgment interest).

f. In addition to meeting all four of Rule 23(a)’s prerequisites for certification, a proposed class of claims seeking monetary relief also must satisfy Rule 23(b)(3)’s additional requirements—predominance and superiority. As detailed below, both the predominance and

superiority requirements of Rule 23(b)(3) are satisfied.

i. While Rule 23(a)(2) asks whether there are issues common to the class, Rule 23(b)(3) asks whether those common issues predominate over “issues that are subject only to individualized proof.” *Abernathy v. Bausch & Lomb Inc.*, 97 F.R.D. 470, 473 (N.D. Tex. 1983) (citing *Nichols v. Mobile Bd. of Realtors, Inc.*, 675 F.2d 671, 676 (5th Cir. 1982)). Rule 23(b)(3)’s predominance requirement tests “whether [the] proposed class[] [is] sufficiently cohesive to warrant adjudication by representation.” *Cruson v. Jackson National Life Ins. Co.*, 954 F.3d 240, 253 (5th Cir. 2020) (citing *Amchem Prods., Inc.*, 521 U.S. at 623–24. Whether common issues predominate depends on “the elements of the underlying cause of action.” *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011). Here, as detailed above, the elements of the Settlement Class Members’ claims present common factual and legal questions, including but not limited to (a) whether charging a fully-disclosed and agreed-to Convenience Fee for a separate payment service that a servicer is never required to offer and a borrower is not required to use violates the TDCA; (b) whether Defendants’ Convenience Fees are permitted by law when charged for use of a payment method not referenced in the loan documents; and (c) whether Settlement Class Members are entitled to damages under the TDCA as a result of Defendants’ alleged conduct. For the purposes of Settlement, the Court finds that these common issues of law and fact predominate over any individualized issues. *See, e.g., Hallmark v. Cohen & Slamowitz, LLP*, 293 F.R.D. 410, 418-19 (W.D.N.Y. 2013) (common issues surrounding claim that defendant violated FDCPA by attempting to collect an improper charge predominated over any individual issues in case); *Bernal v. NRA Grp., LLC*, 318 F.R.D. 64, 75-76 (N.D. Ill. 2016) (predominance satisfied in FDCPA class action alleging that defendant attempted to collect from class members an improper percentage-based collection fee).

ii. Rule 23(b)(3) also asks whether the class action device is “superior to other available methods for fairly and efficiently adjudicating the controversy.” For purposes of an opt-out class settlement, the Court concludes that the class action device is superior to other methods of resolving the issues in this Action given the ability of Settlement Class Members to opt out, the large number of claims, and the relatively small amount of damages available to each individual class member. *See Earl v. Boeing Co.*, 339 F.R.D. 391, 445 (E.D. Tex. 2021) (finding superiority for a large class and explaining that “[i]n cases involving small claims, there will either be a class action or there will be no litigation”) (citation omitted). And because Plaintiffs seek class certification for settlement purposes, the Court need not inquire into whether this Action, if tried, would present intractable management problems. *Amchem Prods., Inc.*, 521 U.S. at 620; *Carriuolo*, 823 F.3d at 988; *In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 242 (2d Cir. 2012) (“[M]anageability concerns do not stand in the way of certifying a settlement class.”).

5. Accordingly, for purposes of considering, approving, and effectuating the Settlement and to fairly and adequately protect the interests of all concerned with regard to all claims set forth in the Operative Complaint, the Court conditionally certifies the Settlement Class for settlement purposes only.

6. **Appointment of Class Representatives and Class Counsel.** The Court hereby appoints Plaintiffs Melbourne Poff and Barbara Poff as the representatives of the conditionally certified Settlement Class. The Court further designates and appoints Lee Lowther and Randall Keith Pulliam of Carney Bates & Pulliam, PLLC, and James Lawrence Kauffman and Elizabeth Ann Ryan of Bailey & Glasser LLP, who the Court finds are experienced and adequate counsel, as the legal counsel for the Settlement Class (“Class Counsel”). Class Counsel are authorized to

represent Plaintiffs and the Settlement Class Members, to enter into and seek approval of the Settlement on behalf of the Settlement Class, and to bind Plaintiffs, all other Settlement Class Members, and themselves to the duties and obligations contained in the Settlement, subject to the final approval of the Settlement by the Court.

7. **Preliminary Settlement Approval.** The Court finds, subject to the Fairness Hearing, that the Settlement is sufficiently fair, reasonable, and adequate that it falls within the range of possible approval, and it is in the best interests of the Settlement Class that they be given the opportunity to be heard regarding the Settlement and the opportunity to exclude themselves from the proposed Settlement Class. *See* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.632 (2004).

Further, the Settlement meets the standards for preliminary approval set forth in the amended Rule 23(e). *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 28 (E.D.N.Y. 2019). The amended Rule 23(e)(2) requires courts to consider whether:

- (a) the class representatives and class counsel have adequately represented the class;
- (b) the proposal was negotiated at arm's length;
- (c) the relief provided for the class is adequate, taking into account:
  - i. the costs, risks, and delay of trial and appeal;
  - ii. the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, if required;
  - iii. the terms of any proposed award of attorney's fees, including timing of payment; and
  - iv. any agreement required to be identified under Rule 23(e)(3); and
- (d) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330



F.R.D. at 29. Providing notice to the Settlement Class Members is justified by the Parties' showing that the Court likely will be able to approve the proposed Settlement under Rule 23(e)(2).

The Court further finds that the Settlement substantially fulfills the purposes and objectives of the Action, and offers beneficial relief to the Settlement Class that falls within the range of potential recovery in successful litigation of the TDCA claims asserted in this Action. Although PHH does not admit any fault or liability in the Settlement, PHH agreed to provide \$1,300,000 in relief to be distributed according to the Agreement. The Parties propose that such relief be used first to satisfy any Costs of Administration, and Attorney's Fees and Expenses and Service Awards that the Court may ultimately award, with the remainder then distributed as Individual Allocations to Plaintiffs and those Settlement Class Members who do not timely exclude themselves from the Settlement Class.

Under the Settlement, PHH will make available a Settlement Fund, from which Individual Allocations will be distributed to borrowers in direct cash payments via check.

Each Class Loan will receive an Individual Allocation from the Settlement Fund, calculated based on the proportion of Retained Convenience Fees paid to either Ocwen or PHH on that Class Loan between July 17, 2018 and October 17, 2022, as compared to the total aggregate amount of all Retained Convenience Fees paid during that same time period to either Ocwen or PHH on all Class Loans of all Settlement Class Members. Payments made on Class Loans with multiple borrowers shall be treated as joint payments for purposes of this calculation, such that each Class Loan will be entitled to only one Individual Allocation of the remaining balance of the Settlement Fund. Co-debtors, joint-borrowers, and multiple obligators on a single Class Loan are not entitled to a separate Individual Allocation on the same Class Loan.

The Court finds that this is an effective method of distributing relief to the Settlement Class, and treats Settlement Class Members equitably relative to each other. At this stage, the Court also finds such relief to be within the range of reasonableness,<sup>2</sup> especially given the risks of success on the merits of Plaintiffs' claims. Indeed, similar claims have been dismissed elsewhere.<sup>3</sup> Because it is far from certain that the Settlement Class would prevail at trial or secure class certification in a contested litigation setting, both sides have ample reason to compromise on these terms. At the same time, the Settlement offers meaningful relief now, and the Release contemplated by the

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<sup>2</sup> To warrant preliminary approval, a proposed class settlement should offer a recovery that "falls within th[e] range of reasonableness," which need not be "the most favorable possible result of litigation." *Lazy Oil Co. v. Wotco Corp.*, 95 F. Supp. 2d 290, 338 (W.D. Pa. 1997), *aff'd*, 166 F3d 581 (3d Cir. 1999). Here, the relief offered by the Settlement is roughly 20% of the Settlement Class's potential recovery, and sufficient to warrant preliminary approval of the Settlement given that since 1995, class action settlements typically "have recovered between 5.5% and 6.2% of the class member's estimated losses." *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001); *see also Parsons v. Brighthouse Networks, LLC*, No. 2:09-cv-267, 2015 WL 13629647, at \*3 (N.D. Ala. Feb. 5, 2015) (noting that a class settlement recovery of between 13% to 20% is "frequently found ... to be fair and adequate"); *In re Newbridge Networks Sec. Litig.*, No. 94-cv-1678, 1998 WL 765724, at \*2 (D.D.C. 1998) ("[A]n agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness."); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1350 (S.D. Fla. 2011) (9% class recovery "is still within the range of reasonableness").

<sup>3</sup> *See Bardak v. Ocwen Loan Servicing, LLC*, No. 8:19-cv-1111, ECF No. 72 (M.D. Fla. August 12, 2020) (dismissing convenience fee claims with prejudice); *Kelly v. Ocwen Loan Servicing, LLC*, No. 3:20-cv-50-J-32JRK, 2020 WL 4428470 (M.D. Fla. July 31, 2020); *Lang v. Ocwen Loan Servicing, LLC*, No. 3:20-CV-81-J-20MCR, ECF No. 21 (M.D. Fla. July 17, 2020); *Turner v. PHH Mortg. Corp.*, No. 8:20-CV-137-T-30SPF, 2020 WL 2517927 (M.D. Fla. Feb. 24, 2020); *Torliatt v. Ocwen Loan Servicing, LLC*, 2020 WL 1904596 (N.D. Cal. April 17, 2020) (dismissing nationwide breach of contract and FDCPA claim); *Caldwell v. Freedom Mortgage Corporation*, Case No. 2020 WL 4747497 (N.D. Tex. August 17, 2020) (dismissing breach of contract claims, even on mortgages with deeds of trust insured by the Federal Housing Administration); *Mariscal v. Flagstar Bank FSB*, 2020 WL 4804983 (C.D. Cal. August 4, 2020) (dismissing breach of contract and violations of California's Rosenthal Fair Debt Collection Practices Act and Unfair Competition Law); *Amye Elbert v. Roundpoint Mortgage Servicing Corporation*, 2020 WL 4818605 (N.D. Cal. August 20, 2020) (dismissing California Rosenthal Act and UCL, as well as striking the class allegations).

Settlement is a limited one, releasing only those claims that relate to or arise in whole or in part from the Convenience Fees charged by Defendants to Settlement Class Members during the applicable class period for making loan payments by telephone via live operator, by IVR, by the internet, or by other payment methods not authorized by their loan documents.

These factors all strongly favor the Settlement's preliminary approval. The Court also finds that the Settlement (a) is the result of serious, informed, non-collusive, arm's length negotiations involving experienced counsel informed and familiar with the legal and factual issues of the Action and reached through protracted mediation sessions with the assistance of an independent mediator; (b) is sufficient to warrant notice of the Settlement and the Fairness Hearing to the Settlement Class Members; (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23, and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; (d) offers a full and fair remediation to the Settlement Class Members; and (e) is not a finding or admission of liability of Defendants. The Court further finds that Plaintiffs and Class Counsel have adequately represented the Settlement Class. Accordingly, the Court grants preliminary approval of the Settlement under Federal Rule of Civil Procedure 23(e), subject to further consideration at the Fairness Hearing after notice to the Settlement Class Members.

8. **No Additional Agreements Required to Be Identified:** The Court has confirmed that there are no agreements required to be identified under Rule 23(e)(3).

9. **Fairness Hearing.** A Fairness Hearing shall be held before this Court on \_\_\_\_\_, 20\_\_\_\_, beginning at \_\_\_\_:\_\_\_\_ a.m./p.m., in Courtroom \_\_\_\_ of the \_\_\_\_\_, to determine, among other things, as set forth in Section 11 of the Agreement, whether (a) the Court has personal jurisdiction over the Parties and all Settlement Class members and subject matter jurisdiction to

approve the Settlement; (b) the Settlement is fair, reasonable, and adequate such that the Settlement should be granted final approval by the Court; (c) the certification of the Settlement Class should be made final for settlement purposes pursuant to Federal Rule of Civil Procedure 23; (d) the Class Notice implemented pursuant to the Agreement (i) constituted the best practicable notice under the circumstances; (ii) constituted notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object or exclude themselves from the Agreement and proposed Settlement; and to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court; (e) Class Counsel and Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Agreement; (f) to incorporate the Settlement's Release provisions in Section 3 of the Agreement, make the Release effective as of the Final Settlement Date, and forever discharge the Released Persons as set forth in the Agreement; (g) Attorneys' Fees and Expenses should be awarded by the Court to Class Counsel, and in what amount, pursuant to Federal Rule of Civil Procedure 23(h); (h) whether Service Awards should be approved by the Court to Plaintiffs, and in what amounts; and (i) whether a Final Order and Judgment should be entered, and this Action thereby dismissed with prejudice, pursuant to the terms of the Agreement. The Court may adjourn or reschedule the Fairness Hearing without further notice to the Settlement Class Members.

10. **Further Submissions by the Parties.** Any application by Class Counsel for Attorneys' Fees and Expenses and for Service Awards to the Plaintiffs shall be filed with the Court no later than fourteen (14) days before the Objection/Exclusion Deadline. The Settlement

Administrator shall promptly post any such application to the Settlement Website after its filing with the Court. All other submissions of the Parties in support of the proposed Settlement, or in response to any objections submitted by Settlement Class Members, shall be filed no later than ten (10) days before the Fairness Hearing. The Settlement Administrator is directed to file a list reflecting all requests for exclusion it has received from Settlement Class Members with the Court no later than ten (10) days before the Fairness Hearing.

11. **Administration.** The Court authorizes and directs the Parties to establish the means necessary to administer the proposed Settlement, and implement the class notification process in accordance with the terms of the Settlement. The Parties are hereby authorized to retain Class-Settlement.com to serve as the Settlement Administrator to aid in implementing the terms of the Settlement.

12. **Notice to Federal and State Regulators.** The Court has reviewed the Defendants' notice of compliance with the requirements of CAFA, as codified at 28 U.S.C. § 1715, and the attached exhibits. The Court finds and concludes that the form and contents of, and information provided by, the notices given by Defendants to federal and state regulatory officials, as well as the identity of the officials to whom those notices were sent, to be reasonable, proper, and in full compliance with the requirements of 28 U.S.C. § 1715. As such, the Court finds that Defendants need not provide any further or supplemental notices under CAFA, unless otherwise ordered or agreed in response to a request by a recipient of the CAFA notice.

13. **Notice to the Settlement Class.** The Court approves, as to both form and content, the Class Notice attached to the Settlement, as well as the proposed plan and methodology for distributing that notice to the Settlement Class Members as set forth in Section 7 of the Settlement. Accordingly,

a. The Court orders the Settlement Administrator, within twenty-eight (28) days following entry of this Preliminary Approval Order and subject to the requirements of this Preliminary Approval Order and the Settlement, to cause the Class Notice to be mailed, by First-Class U.S. Mail, proper postage prepaid, to the Settlement Class Members identified as borrowers in Defendants' records on each Class Loan, addressed to the mailing address of record for that Class Loan as reflected in Defendants' records. The Court further orders the Settlement Administrator to: (i) prior to mailing, attempt to update the last known mailing addresses for each Class Loan as reflected in Defendants' records through the National Change of Address system or similar databases; (ii) promptly re-mail any Class Notices that are returned by the United States Postal Service with a forwarding address and continue to do so with respect to any such returned mail that is received seven (7) days or more prior to the Objection/Exclusion Deadline; and (iii) determine, as soon as practicable, whether a valid address can be located through use of the United States Postal Service's National Change of Address database and/or other reasonable means and without undue cost or delay, for those Class Notices that are returned without a new or forwarding address, and promptly re-mail copies of the Class Notice to any Settlement Class Members for whom the Settlement Administrator is reasonably able to locate valid addresses in accordance herewith, so long as the valid addresses are obtained seven (7) days or more prior to the Objection/Exclusion Deadline.

b. Following the entry of this Preliminary Approval Order and prior to the mailing of notice to the Settlement Class Members, the Parties are permitted by mutual agreement to make changes in the font, format, and content of the Class Notice provided that the changes do not materially alter the substance of that notice. Any material substantive changes to those notices must be approved by the Court.



c. The Parties shall cause the Settlement Administrator to establish an internet website to inform Settlement Class Members of the terms of the Agreement, their rights, dates and deadlines, and related information. The Settlement Website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Court, and should be operational and live by the date of the mailing of the Class Notice. At this time, the Court orders that the Settlement Website include the following: (i) the Operative Complaint; (ii) the Agreement, and its exhibits; (iii) a copy of this Preliminary Approval Order; (iv) the Class Notice; and (v) a disclosure, on the Settlement Website's "home page," of the deadlines for Settlement Class Members to seek exclusion from the Settlement Class, to seek exclusion from or to object to the Settlement, as well as the date, time and location of the Fairness Hearing.

d. No later than ten (10) days before the date of the Fairness Hearing, the Settlement Administrator, and to the extent applicable, the Parties, shall file with the Court a declaration or declarations, verifying compliance with the aforementioned class-wide notice procedures.

14. **Findings Concerning the Notice Program.** The Court finds and concludes that the form, content, and method of giving notice to the Settlement Class as described in this Preliminary Approval Order: (a) will constitute the best practicable notice under the circumstances; (b) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, the terms of the proposed Settlement, and of their rights under and with respect to the proposed Settlement (including, without limitation, their right to object to or seek exclusion from, the proposed Settlement); (c) is reasonable and constitutes due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) satisfies all applicable requirements of law, including, but not limited to,

28 U.S.C. § 1715, Federal Rule of Civil Procedure 23(c), and the United States Constitution (including the Due Process Clause). The Court further finds that the Class Notice is written in simple terminology, and is readily understandable.

15. **Cost Obligations for the Notice Program.** All Costs of Administration, including those associated with providing notice to the Settlement Class as well as in administering the terms of the Settlement, shall be paid from the Settlement Fund as set forth in the Agreement. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Plaintiffs, nor Class Counsel, nor the Settlement Class Members shall have any obligation to Defendants for such costs and expenses.

16. **Communications with Settlement Class Members.** The Court authorizes Defendants to communicate with Settlement Class Members, potential Settlement Class Members, and to otherwise engage in any other communications within the normal course of Defendants' business. However, Defendants are ordered to refer any inquiries by Settlement Class Members or potential Settlement Class Members about the Settlement to the Settlement Administrator or Class Counsel.

17. **Preliminary Injunction.** To protect the Court's jurisdiction and ability to determine whether the Settlement should be finally approved, pending such decision all Potential Settlement Class Members are hereby preliminarily enjoined (i) from directly or indirectly filing, commencing, participating in, or prosecuting (as class members or otherwise) any lawsuit in any jurisdiction asserting on their own behalf claims that would be Released Claims if this Settlement is finally approved, unless and until they timely exclude themselves from the Settlement Class as specified in the this Order and in the Agreement and its exhibits; and (ii) regardless of whether they opt out, Potential Settlement Class Members are further

preliminarily enjoined from directly or indirectly filing, prosecuting, commencing, or receiving proceeds from (as class members or otherwise) any separate purported class action asserting, on behalf of any Settlement Class Members who have not opted out from the Settlement Class, any claims that would be Released Claims if this Settlement receives final approval and becomes effective.

18. **Exclusion (“Opting Out”) from the Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit a written request for exclusion to the Settlement Administrator, mailed sufficiently in advance to be received by the Settlement Administrator by the Objection/Exclusion Deadline. A request for exclusion must comply with the requirements set forth in Section 8 of the Agreement and must: (a) contain a caption or title that identifies it as “Request for Exclusion in *Poff v. PHH* (case number 4:20-cv-04018)”; (b) include the Potential Settlement Class Member’s name, mailing and email addresses, and contact telephone number; (c) specify that he or she wants to be “excluded from the Settlement Class” and identify the Class Loan number(s) for which he or she seeks exclusion from the Settlement; and (d) be personally signed by the Settlement Class Member. A request for exclusion may not request the exclusion of more than one member of the Settlement Class; provided, however, that an exclusion request received from one Settlement Class Member will be deemed and construed as an exclusion request by all co-debtors, joint-debtors, and multiple borrowers on the same Class Loan. The loan number for each Class Loan shall be included in the Class Notice sent to the Settlement Class Members identified as borrowers with respect to that Class Loan.

19. Any Settlement Class Member who timely requests exclusion consistent with these procedures shall not: (a) be bound by a final judgment approving the Settlement; (b) be entitled to any relief under the Settlement; (c) gain any rights by virtue of the Settlement; or (d) be entitled to

object to any aspect of the Settlement.

20. Settlement Class Members who do not exclude themselves from the Settlement Class in full compliance with the requirements and deadlines of this Preliminary Approval Order shall be deemed to have forever consented to the exercise of personal jurisdiction by this Court and shall have waived their right to be excluded from the Settlement Class and from the Settlement, and shall thereafter be bound by all subsequent proceedings, orders, and judgments in this Action, including but not limited to the Release contained in the Settlement, regardless of whether they have requested exclusion from the Settlement Class (but failed to strictly comply with the procedures set forth herein) and even if they have litigation pending or subsequently initiate litigation against Defendants relating to the claims and transactions released in the Action.

21. **Objections and Appearances.** Any Settlement Class Member (or counsel hired at any Settlement Class Member's own expense) who does not properly and timely exclude himself or herself from the Settlement Class, and who complies with the requirements of this paragraph and the procedures specified in the Class Notice, may object to any aspect or effect of the proposed Settlement.

a. Any Settlement Class Member who has not filed a timely and proper written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, or to the certification of the Settlement Class, or to the award of Attorneys' Fees and Expenses, or to the Service Award, or to any other aspect or effect of the Settlement, or to the Court's jurisdiction, must file a written statement of objection with the Court no later than the Objection/Exclusion Deadline.

b. An objection must be in writing, and must: (a) contain a caption or title that identifies it as "Objection to Class Settlement in *Poff v. PHH* (case number 4:20-cv-04018)"; (b)

include the Settlement Class Members' name, mailing and email addresses, contact telephone number, and Class Loan number(s) for which an objection is being made; (c) state whether the objection applies only to you, to a specific subset of the class, or to the entire class; (d) state with specificity the specific reason(s), if any, for each objection, including all legal support the Settlement Class Member wishes to bring to the Court's attention and all factual evidence the Settlement Class Member wishes to introduce in support of the objection; (e) disclose the name and contact information of any and all attorneys representing, advising, or in any way assisting the Settlement Class Member in connection with the preparation or submission of the objection; (f) state if the objecting Settlement Class Member intends to appear and argue at the Fairness Hearing; and (f) be personally signed by the objecting Settlement Class Member.

c. To file a written statement of objection, an objector must mail it to the Clerk of the Court sufficiently in advance that it is received by the Clerk of the Court on or before the Objection/Exclusion Deadline, or the objector may file it in person on or before the Objection/Exclusion Deadline at any location of the United States District Court for the Southern District of Texas, except that any objection made by a Settlement Class Member represented by his or her own counsel must be filed through the Court's Case Management/Electronic Case Filing (CM/ECF) system.

d. Any Settlement Class Member who fails to comply strictly with the provisions in this Preliminary Approval Order for the submission of written statements of objection shall waive any and all objections to the Settlement, its terms, or the procedurals for its approval and shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and will be deemed to have consented to the exercise of personal jurisdiction by the Court, consented to the Settlement, consented to be part of the Settlement Class, and consented to be

bound by all the terms of the Settlement, this Preliminary Approval Order, and by all proceedings, orders, and judgments that have been entered or may be entered in the Action, including, but not limited to, the Release described in the Settlement. However, any Settlement Class Member who submits a timely and valid written statement of objection shall, unless he or she is subsequently excluded from the Settlement Class by order of the Court, remain a Settlement Class Member and be entitled to all of the benefits, obligations, and terms of the Settlement in the event the Settlement is given final approval and the Final Settlement Date is reached.

22. **Termination of Settlement.** This Preliminary Approval Order, including the conditional class certification contained in this Preliminary Approval Order, shall become null and void and shall be without prejudice to the rights of the Parties or Settlement Class Members, all of whom shall be restored to their respective positions existing immediately before this Court entered this Preliminary Approval Order, if the Settlement: (a) is not finally approved by the Court, (b) does not become final pursuant to the terms of the Settlement; (c) is terminated in accordance with the Settlement; or (d) does not become effective for any other reason.

23. **Use of this Preliminary Approval Order.** In the event the Settlement does not reach the Final Settlement Date or is terminated in accordance with the terms of the Settlement, then: (a) the Settlement and the Agreement, and the Court's Orders, including this Preliminary Approval Order, relating to the Settlement shall be vacated and shall be null and void, shall have no further force or effect with respect to with respect to any Party in this Action, and shall not be used or referred to in any other proceeding by any person for any purpose whatsoever; (b) the conditional certification of the Settlement Class pursuant to this Preliminary Approval Order shall be vacated automatically, without prejudice to any Party or Settlement Class Member to any legal argument that any of them might have asserted but for the Settlement, and this Action will revert



to the status that existed before the Settlement's execution date; (c) this Action shall proceed pursuant to further orders of this Court; and (d) nothing contained in the Settlement, or in the Parties' settlement discussions, negotiations, or submissions (including any declaration or brief filed in support of the preliminary or final approval of the Settlement), or in this Preliminary Approval Order or in any other rulings regarding class certification for settlement purposes, shall be construed or used as an admission, concession, or declaration by or against any Party of any fault, wrongdoing, breach or liability in this Action or in any other lawsuit or proceeding, or be admissible into evidence for any purpose in the Action or any other proceeding by any person for any purpose whatsoever. This paragraph shall survive termination of the Settlement and shall remain applicable to the Parties and the Settlement Class Members whether or not they submit a written request for exclusion.

24. **Continuing Jurisdiction.** This Court shall maintain continuing exclusive jurisdiction over these settlement proceedings to consider all further applications arising out of or connected with the Settlement or this Preliminary Approval Order, and to assure the effectuation of the Settlement for the benefit of the Settlement Class.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_, 20\_\_.

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**CHARLES ESKRIDGE**  
**United States District Judge**