



---

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

---

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended January 31, 2006

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-6089



**H&R Block, Inc.**

(Exact name of registrant as specified in its charter)

MISSOURI  
(State or other jurisdiction of  
incorporation or organization)

44-0607856  
(I.R.S. Employer  
Identification No.)

4400 Main Street  
Kansas City, Missouri 64111  
(Address of principal executive offices, including zip code)

(816) 753-6900  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definition of "accelerated filer" and "large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one)

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

The number of shares outstanding of the registrant's Common Stock, without par value, at the close of business on February 28, 2006 was 328,415,828 shares.

---

---



## Table of Contents

	<u>Page</u>	
PART I	Financial Information	
<a href="#">Item 1.</a>	<a href="#">Condensed Consolidated Balance Sheets January 31, 2006 and April 30, 2005 (Restated)</a>	1
	<a href="#">Condensed Consolidated Statements of Income and Comprehensive Income Three and Nine Months Ended January 31, 2006 and 2005 (Restated)</a>	2
	<a href="#">Condensed Consolidated Statements of Cash Flows Nine Months Ended January 31, 2006 and 2005 (Restated)</a>	3
	<a href="#">Notes to Condensed Consolidated Financial Statements</a>	4
<a href="#">Item 2.</a>	<a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	21
<a href="#">Item 3.</a>	<a href="#">Quantitative and Qualitative Disclosures about Market Risk</a>	44
<a href="#">Item 4.</a>	<a href="#">Controls and Procedures</a>	44
PART II	Other Information	
<a href="#">Item 1.</a>	<a href="#">Legal Proceedings</a>	45
<a href="#">Item 2.</a>	<a href="#">Unregistered Sales of Equity Securities</a>	49
<a href="#">Item 6.</a>	<a href="#">Exhibits</a>	49
SIGNATURES		50
	<a href="#">Amendment No. 1 to Amended/Restated Sale &amp; Servicing Agreement</a>	
	<a href="#">Amendment No. 4 to 2nd Amended/Restated Sale &amp; Servicing Agreement</a>	
	<a href="#">Amendment No. 7 to Amended/Restated Note Purchase Agreement</a>	
	<a href="#">Amendment No. 8 to Amended/Restated Indenture Agreement of Settlement Sale and Servicing Agreement</a>	
	<a href="#">Note Purchase Agreement</a>	
	<a href="#">Indenture</a>	
	<a href="#">Certification Pursuant to Section 302 of CEO</a>	
	<a href="#">Certification Pursuant to Section 302 of CFO</a>	
	<a href="#">Certification Pursuant to 18 U.S.C. Section 1350 of CEO</a>	
	<a href="#">Certification Pursuant to 18 U.S.C. Section 1350 of CFO</a>	

---

## CONDENSED CONSOLIDATED BALANCE SHEETS

	(amounts in 000s, except share amounts)	
	January 31, 2006	Restated April 30, 2005
	(Unaudited)	
<b>ASSETS</b>		
Cash and cash equivalents	\$ 1,460,180	\$ 1,100,213
Cash and cash equivalents — restricted	430,713	516,909
Receivables from customers, brokers, dealers and clearing organizations, net	569,430	590,226
Receivables, less allowance for doubtful accounts of \$56,985 and \$38,879	1,810,945	418,788
Prepaid expenses and other current assets	561,484	444,498
Total current assets	4,832,752	3,070,634
Residual interests in securitizations — available-for-sale	175,068	205,936
Beneficial interest in Trusts — trading	279,714	215,367
Mortgage servicing rights	262,369	166,614
Property and equipment, at cost less accumulated depreciation and amortization of \$729,405 and \$658,425	415,844	330,150
Intangible assets, net	235,236	247,092
Goodwill, net	1,104,267	1,015,947
Other assets	367,091	286,316
Total assets	<u>\$ 7,672,341</u>	<u>\$ 5,538,056</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Liabilities:</b>		
Short-term borrowings	\$ 2,595,948	\$ —
Current portion of long-term debt	13,373	25,545
Accounts payable to customers, brokers and dealers	851,827	950,684
Accounts payable, accrued expenses and other current liabilities	782,744	564,749
Accrued salaries, wages and payroll taxes	291,811	318,644
Accrued income taxes	214,559	375,174
Total current liabilities	4,750,262	2,234,796
Long-term debt	916,926	923,073
Other noncurrent liabilities	417,200	430,919
Total liabilities	<u>6,084,388</u>	<u>3,588,788</u>
<b>Stockholders' equity:</b>		
Common stock, no par, stated value \$.01 per share, 800,000,000 shares authorized, 435,890,796 shares issued at January 31, 2006 and April 30, 2005	4,359	4,359
Additional paid-in capital	631,729	598,388
Accumulated other comprehensive income	33,641	68,718
Retained earnings	2,945,887	3,161,682
Less cost of 107,594,856 and 104,649,850 shares of common stock in treasury	(2,027,663)	(1,883,879)
Total stockholders' equity	1,587,953	1,949,268
Total liabilities and stockholders' equity	<u>\$ 7,672,341</u>	<u>\$ 5,538,056</u>

See Notes to Condensed Consolidated Financial Statements

**CONDENSED CONSOLIDATED STATEMENTS OF INCOME AND COMPREHENSIVE INCOME**

 (Unaudited, amounts in 000s,  
except per share amounts)

	Three months ended January 31,		Nine months ended January 31,	
	2006	Restated 2005	2006	Restated 2005
<b>Revenues:</b>				
Service revenues	\$ 812,224	\$ 657,306	\$ 1,511,615	\$ 1,196,126
Other revenues:				
Gains on sales of mortgage assets, net	157,897	198,584	541,595	566,092
Interest income	51,074	50,545	155,337	138,817
Product and other revenues	135,552	129,801	168,236	163,705
	<u>1,156,747</u>	<u>1,036,236</u>	<u>2,376,783</u>	<u>2,064,740</u>
<b>Operating expenses:</b>				
Cost of services	633,927	508,207	1,364,362	1,123,266
Cost of other revenues	144,663	133,343	402,884	307,987
Selling, general and administrative	344,246	248,114	740,047	593,177
	<u>1,122,836</u>	<u>889,664</u>	<u>2,507,293</u>	<u>2,024,430</u>
Operating income (loss)	33,911	146,572	(130,510)	40,310
Interest expense	12,211	13,026	37,031	48,900
Other income, net	3,708	19,732	13,951	23,250
Income (loss) before taxes	25,408	153,278	(153,590)	14,660
Income taxes (benefit)	13,295	59,542	(56,460)	5,680
Net income (loss)	<u>\$ 12,113</u>	<u>\$ 93,736</u>	<u>\$ (97,130)</u>	<u>\$ 8,980</u>
<b>Basic earnings (loss) per share</b>	<u>\$ 0.04</u>	<u>\$ 0.28</u>	<u>\$ (0.30)</u>	<u>\$ 0.03</u>
<b>Basic shares</b>	327,289	329,039	328,017	331,894
<b>Diluted earnings (loss) per share</b>	<u>\$ 0.04</u>	<u>\$ 0.28</u>	<u>\$ (0.30)</u>	<u>\$ 0.03</u>
<b>Diluted shares</b>	331,935	334,875	328,017	337,889
<b>Dividends per share</b>	<u>\$ 0.13</u>	<u>\$ 0.11</u>	<u>\$ 0.36</u>	<u>\$ 0.32</u>
<b>Comprehensive income (loss):</b>				
Net income (loss)	\$ 12,113	\$ 93,736	\$ (97,130)	\$ 8,980
Change in unrealized gain on available-for-sale securities, net	(3,002)	(6,494)	(32,466)	23,060
Change in foreign currency translation adjustments	(7,820)	1,917	(2,611)	9,958
Comprehensive income (loss)	<u>\$ 1,291</u>	<u>\$ 89,159</u>	<u>\$ (132,207)</u>	<u>\$ 41,998</u>

See Notes to Condensed Consolidated Financial Statements

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

	(Unaudited, amounts in 000s)	
Nine months ended January 31,	2006	Restated 2005
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ (97,130)	\$ 8,980
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	138,882	127,631
Accretion of residual interests in securitizations	(93,189)	(96,242)
Impairments of available-for-sale residual interests	29,175	7,162
Additions to trading securities — residual interests in securitizations, net	(228,587)	(115,213)
Proceeds from net interest margin transactions, net	195,159	98,743
Realized gain on sale of available-for-sale residual interests	(28,675)	—
Additions to mortgage servicing rights	(196,245)	(94,569)
Amortization and impairment of mortgage servicing rights	100,490	60,879
Net change in beneficial interest in Trusts	(64,347)	(8,735)
Other, net of acquisitions	(1,445,080)	(1,553,069)
<b>Net cash used in operating activities</b>	<b>(1,689,547)</b>	<b>(1,564,433)</b>
<b>Cash flows from investing activities:</b>		
Cash received from available-for-sale residual interests	74,931	100,344
Cash received from sale of available-for-sale residual interests	30,497	—
Purchases of property and equipment, net	(167,181)	(143,232)
Payments made for business acquisitions, net of cash acquired	(209,816)	(26,348)
Other, net	17,297	15,207
<b>Net cash used in investing activities</b>	<b>(254,272)</b>	<b>(54,029)</b>
<b>Cash flows from financing activities:</b>		
Repayments of commercial paper	(2,632,444)	(2,348,966)
Proceeds from issuance of commercial paper	4,678,392	3,877,848
Proceeds from other short-term borrowings	550,000	—
Repayments of long-term debt	—	(250,000)
Proceeds from issuance of long-term debt, net	—	395,221
Dividends paid	(118,665)	(106,422)
Acquisition of treasury shares	(260,078)	(529,852)
Proceeds from issuance of common stock	105,760	119,892
Other, net	(19,179)	(35,414)
<b>Net cash provided by financing activities</b>	<b>2,303,786</b>	<b>1,122,307</b>
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>359,967</b>	<b>(496,155)</b>
<b>Cash and cash equivalents at beginning of the period</b>	<b>1,100,213</b>	<b>1,072,745</b>
<b>Cash and cash equivalents at end of the period</b>	<b>\$ 1,460,180</b>	<b>\$ 576,590</b>

See Notes to Condensed Consolidated Financial Statements

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

(Unaudited)

**1. Basis of Presentation**

The condensed consolidated balance sheet as of January 31, 2006, the condensed consolidated statements of income and comprehensive income for the three and nine months ended January 31, 2006 and 2005, and the condensed consolidated statements of cash flows for the nine months ended January 31, 2006 and 2005 have been prepared by the Company, without audit. In the opinion of management, all adjustments (which include only normal recurring adjustments) necessary to present fairly the financial position, results of operations and cash flows at January 31, 2006 and for all periods presented have been made.

“H&R Block,” “the Company,” “we,” “our” and “us” are used interchangeably to refer to H&R Block, Inc. or to H&R Block, Inc. and its subsidiaries, as appropriate to the context.

Certain reclassifications have been made to prior year amounts to conform to the current year presentation. These reclassifications had no effect on our results of operations or stockholders’ equity as previously reported. Adjustments related to the restatements of previously issued financial statements are detailed in note 2.

On June 8, 2005, our Board of Directors declared a two-for-one stock split of the Company’s Common Stock in the form of a 100% stock distribution, effective August 22, 2005, to shareholders of record as of the close of business on August 1, 2005. All share and per share amounts in this document have been adjusted to reflect the effect of the stock split.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. These condensed consolidated financial statements should be read in conjunction with the financial statements and notes thereto included in our April 30, 2005 Annual Report to Shareholders on Form 10-K/A.

Operating revenues of the Tax Services and Business Services segments are seasonal in nature with peak revenues occurring in the months of January through April. Therefore, results for interim periods are not indicative of results to be expected for the full year.

**2. Restatements of Previously Issued Financial Statements**

**(A)** On February 22, 2006, management and the Audit Committee of the Board of Directors concluded to restate previously issued consolidated financial statements for the fiscal quarters ended October 31, 2005 and July 31, 2005, the fiscal years ended April 30, 2005 and 2004 and the related fiscal quarters. We arrived at this conclusion during the course of our closing process for the quarter ended January 31, 2006. This restatement pertains primarily to errors in determining the Company’s state effective income tax rate, including errors in identifying changes in state apportionment, expiring state net operating losses and related factors. These errors resulted in an understatement of income tax expense (net of federal income tax benefit) of approximately \$2.0 million and \$0.2 million for the three and nine months ended January 31, 2005, respectively, an overstatement of deferred income tax assets of \$1.2 million as of April 30, 2005 and an understatement of accrued income taxes of approximately \$25.9 million as of April 30, 2005. The effect of the above adjustments on the condensed consolidated financial statements is set forth in “2C” below.

Income tax expense for the three months ended January 31, 2006 includes \$3.4 million related to the correction of errors in state income taxes relating to periods prior to May 1, 2003. These errors were determined to be immaterial to both the current fiscal year and the applicable prior period results.

**(B)** On June 7, 2005, management and the Audit Committee of the Board of Directors determined that restatement of our previously issued consolidated financial statements, including financial statements for the three and nine months ended January 31, 2005, was appropriate as a result of the errors noted below. All amounts listed are pretax, unless otherwise noted.

- An error in calculating the gain on sale of residual interests in fiscal year 2003. This error was corrected by deferring a portion of the gain on sale of residual interests as of the transaction date in fiscal year 2003 and recognizing revenue from the sale as interest income from accretion of residual interests in subsequent periods. Interest income from accretion increased \$3.9 million

[Table of Contents](#)

and \$9.6 million for the three and nine months ended January 31, 2005, respectively. This correction also decreased impairments of residual interests \$0.3 million and \$1.1 million for the three and nine months ended January 31, 2005, respectively, and decreased comprehensive income \$2.6 million and \$6.7 million for the three and nine months ended January 31, 2005, respectively.

- An error in the calculation of an incentive compensation accrual at our Mortgage Services segment as of April 30, 2004. This error resulted in an overstatement of compensation expense for the nine months ended January 31, 2005 of \$12.1 million.
- An error in accounting for leased properties related to rent holidays and mandatory rent escalation in our Tax Services, Mortgage Services and Investment Services segments. Rent expense was understated for the three and nine months ended January 31, 2005 by \$1.2 million and \$1.8 million, respectively.
- An error from the capitalization of certain branch office costs at our Investment Services segment, which should have been expensed as incurred. This error resulted in an understatement of occupancy expenses and an overstatement of depreciation expense and capital expenditures, resulting in a net overstatement of operating expenses of \$0.4 million and \$5.9 million for the three and nine months ended January 31, 2005, respectively.
- Errors related to accounting for acquisitions at our Business Services and Investment Services segments, the largest of which was the acquisition of OLDE in fiscal year 2000. Amortization of customer relationships was understated by \$1.8 million and \$5.5 million for the three and nine months ended January 31, 2005, respectively, and the provision for income taxes was overstated by approximately \$3.7 million and \$11.2 million, respectively, related to this error.

The effect of the above adjustments on the condensed consolidated financial statements is set forth in “2C” below.

(C) Notes 4, 5, 6, 7, 9, 13 and 15 have been restated to reflect the above described adjustments. The following is a summary of the impact of the restatements on our condensed consolidated statement of income and comprehensive income for the three and nine months ended January 31, 2005:

	(in 000s, except per share amounts)				
	Three months ended January 31, 2005				
	As Previously Reported (1)	Adjustments (2)	Subtotal	Adjustments (3)	Restated
Gain on sale of mortgage assets, net	\$ 198,301	\$ 283	\$ 198,584	\$ —	\$ 198,584
Interest income	46,599	3,946	50,545	—	50,545
Total revenues	1,032,007	4,229	1,036,236	—	1,036,236
Total operating expenses	887,030	2,634	889,664	—	889,664
Operating income	144,977	1,595	146,572	—	146,572
Income before taxes	151,683	1,595	153,278	—	153,278
Income taxes	59,991	(2,478)	57,513	2,029	59,542
Net income	91,692	4,073	95,765	(2,029)	93,736
Basic earnings per share	\$ 0.28	\$ 0.01	\$ 0.29	\$ (0.01)	\$ 0.28
Diluted earnings per share	\$ 0.27	\$ 0.02	\$ 0.29	\$ (0.01)	\$ 0.28
Change in unrealized gain on available-for-sale securities, net	\$ (3,881)	\$ (2,613)	\$ (6,494)	\$ —	\$ (6,494)
Comprehensive income	89,728	1,460	91,188	(2,029)	89,159



[Table of Contents](#)

Nine months ended January 31, 2005

	As Previously Reported (1)	Adjustments (2)	Subtotal	Adjustments (3)	Restated
Gain on sale of mortgage assets, net	\$ 564,949	\$ 1,143	\$ 566,092	\$ —	\$ 566,092
Interest income	129,193	9,624	138,817	—	138,817
Total revenues	2,053,973	10,767	2,064,740	—	2,064,740
Total operating expenses	2,035,128	(10,698)	2,024,430	—	2,024,430
Operating income	18,845	21,465	40,310	—	40,310
Income (loss) before taxes	(6,805)	21,465	14,660	—	14,660
Income taxes (benefit)	(2,215)	7,724	5,509	171	5,680
Net income (loss)	(4,590)	13,741	9,151	(171)	8,980
Basic earnings (loss) per share	\$ (0.01)	\$ .04	\$ 0.03	\$ —	\$ 0.03
Diluted earnings (loss) per share	\$ (0.01)	\$ .04	\$ 0.03	\$ —	\$ 0.03
Change in unrealized gain on available-for-sale securities, net	\$ 29,714	\$ (6,654)	\$ 23,060	\$ —	\$ 23,060
Comprehensive income	35,082	7,087	42,169	(171)	41,998

- (1) As reported in our Form 10-Q filed on March 9, 2005 for the nine months ended January 31, 2005. Amounts have been reclassified to conform to current year presentation. See discussion of reclassifications in note 1.
- (2) Adjusted to reflect the restatement described in “2B” above, as derived from the Company’s Form 10-K/A filed on August 5, 2005 for the fiscal year ended April 30, 2005.
- (3) Adjusted to reflect the restatement described in “2A” above.

The following is a summary of the impact of the restatements on our condensed consolidated statement of cash flows for the nine months ended January 31, 2005:

	As Previously Reported (1)	Adjustments (2)	Subtotal	Adjustments (3)	Restated
Net income (loss)	\$ (4,590)	\$ 13,741	\$ 9,151	\$ (171)	\$ 8,980
Depreciation and amortization	122,305	5,326	127,631	—	127,631
Accretion of residual interests in securitizations	(86,618)	(9,624)	(96,242)	—	(96,242)
Impairment of available-for-sale residual interests	8,304	(1,142)	7,162	—	7,162
Other, net of acquisitions	(1,550,688)	(2,552)	(1,553,240)	171	(1,553,069)
Net cash used in operating activities	(1,570,182)	5,749	(1,564,433)	—	(1,564,433)
Purchases of property and equipment, net	(137,483)	(5,749)	(143,232)	—	(143,232)
Net cash used in investing activities	(48,280)	(5,749)	(54,029)	—	(54,029)

- (1) As reported in our Form 10-Q filed on March 9, 2005 for the nine months ended January 31, 2005. Amounts have been reclassified to conform to current year presentation. See discussion of reclassifications in note 1.
- (2) Adjusted to reflect the restatement described in “2B” above, as derived from the Company’s Form 10-K/A filed on August 5, 2005 for the fiscal year ended April 30, 2005.
- (3) Adjusted to reflect the restatement described in “2A” above.

The restatements had no impact on our cash flows from financing activities as previously reported.

**3. Business Combinations**

Effective October 1, 2005, we acquired all outstanding common stock of American Express Tax and Business Services, Inc. for an aggregate purchase price of \$191.7 million, subject to a post-closing adjustment based upon determination of the final September 30, 2005 net asset value. During the three months ended January 31, 2006, we completed the final valuation of intangible assets. Results related to American Express Tax and Business Services, Inc. have been included in our condensed consolidated financial statements since October 1, 2005. Pro forma results of operations have not been presented because the effects of this acquisition were not material to our results. The accompanying balance sheet reflects a preliminary allocation of the purchase price to assets acquired and liabilities assumed as follows:

[Table of Contents](#)

	(in 000s)
Property and equipment	\$ 17,664
Other assets	121,228
Liabilities	(51,701)
Amortizing intangible assets	28,100
Goodwill	76,383
	<u>\$191,674</u>

Goodwill recognized in these transactions is included in the Business Services segment and is not deductible for tax purposes. The preliminary purchase price allocations are subject to change and will be adjusted based upon resolution of several matters including, but not limited to, the following:

- Determination of the post-closing adjustment and final purchase price;
- Determination of final liabilities relating to planned exit activities; and
- Determination of the tax basis of acquired assets and liabilities, and deferred tax balances of the acquired business.

#### 4. Earnings (Loss) Per Share

Basic earnings (loss) per share is computed using the weighted average shares outstanding during each period. The dilutive effect of potential common shares is included in diluted earnings (loss) per share except in those periods with a loss. The computations of basic and diluted earnings (loss) per share are as follows:

	(in 000s, except per share amounts)			
	Three months ended January 31,		Nine months ended January 31,	
	2006	Restated 2005	2006	Restated 2005
Net income (loss)	\$ 12,113	\$ 93,736	\$ (97,130)	\$ 8,980
Basic weighted average common shares	327,289	329,039	328,017	331,894
Potential dilutive shares from stock options and restricted stock	4,644	5,834	—	5,993
Convertible preferred stock	2	2	—	2
Dilutive weighted average common shares	<u>331,935</u>	<u>334,875</u>	<u>328,017</u>	<u>337,889</u>
Earnings (loss) per share:				
Basic	\$ 0.04	\$ 0.28	\$ (0.30)	\$ 0.03
Diluted	0.04	0.28	(0.30)	0.03

Diluted earnings per share excludes the impact of shares of common stock issuable upon the lapse of certain restrictions or the exercise of options to purchase 29.3 million shares of stock for the nine months ended January 31, 2006 as the effect would be antidilutive due to the net loss recorded during the period. Diluted earnings per share for the three months ended January 31, 2006 and the three and nine months ended January 31, 2005 excludes the impact of 7.1 million, 0.7 million and 1.4 million shares, respectively, issuable upon the exercise of stock options, as the effect would be antidilutive due to the options' exercise prices being greater than the average market price of the common shares during the period.

The weighted average shares outstanding for the three and nine months ended January 31, 2006 decreased to 327.3 million and 328.0 million, respectively, from 329.0 million and 331.9 million last year, primarily due to our purchases of treasury shares. The effect of these purchases was partially offset by the issuance of treasury shares related to our stock-based compensation plans.

During each of the nine month periods ended January 31, 2006 and 2005, we issued 6.3 million and 6.5 million shares of common stock, respectively, pursuant to the exercise of stock options, employee stock purchases and awards of restricted shares, in accordance with our stock-based compensation plans.

During the nine months ended January 31, 2006, we acquired 9.2 million shares of our common stock, of which 9.0 million shares were purchased from third parties with the remaining shares swapped or surrendered to us, at an aggregate cost of \$260.1 million. During the nine months ended

## [Table of Contents](#)

January 31, 2005, we acquired 22.6 million shares of our common stock, of which 22.5 million were purchased from third parties, at an aggregate cost of \$529.9 million.

### 5. Receivables

Receivables consist of the following:

	January 31, 2006	January 31, 2005	(in 000s) April 30, 2005
Participation in refund anticipation loans (RALs)	\$ 900,230	\$ 829,325	\$ 57,084
Mortgage loans held for sale	336,213	128,607	79,458
Business Services accounts receivable	312,087	175,140	178,338
Receivables for tax-related fees	115,906	108,331	5,760
Loans to franchisees	60,185	52,712	39,022
Royalties from franchisees	50,575	46,900	668
Software receivables	18,938	26,420	22,578
Other	73,796	87,539	74,759
	<u>1,867,930</u>	<u>1,454,974</u>	<u>457,667</u>
Allowance for doubtful accounts	(34,144)	(21,336)	(34,201)
Lower of cost or market adjustment — mortgage loans	(22,841)	(11,645)	(4,678)
	<u>\$ 1,810,945</u>	<u>\$ 1,421,993</u>	<u>\$ 418,788</u>

### 6. Mortgage Banking Activities

Activity related to available-for-sale residual interests in securitizations consists of the following:

Nine months ended January 31,	2006	(in 000s) Restated 2005
Balance, beginning of period	\$ 205,936	\$ 210,973
Additions from net interest margin (NIM) transactions	39,378	16,470
Cash received	(74,931)	(100,344)
Cash received on sale of residual interests	(30,497)	—
Accretion	87,240	96,242
Impairments of fair value	(29,175)	(7,162)
Other	366	(4)
Changes in unrealized holding gains, net	(23,249)	37,356
Balance, end of period	<u>\$ 175,068</u>	<u>\$ 253,531</u>

We sold \$32.3 billion and \$21.7 billion of mortgage loans in loan sales to warehouse trusts (Trusts) or other buyers during the nine months ended January 31, 2006 and 2005, respectively, with gains totaling \$450.2 million and \$544.4 million, respectively, recorded on these sales.

Net additions to trading residual interests recorded in connection with the securitization of mortgage loans totaled \$228.6 million and \$115.2 million during the nine months ended January 31, 2006 and 2005, respectively. Trading residuals valued at \$234.5 million were securitized in net interest margin (NIM) transactions during the current year, with net cash proceeds of \$195.2 million received in connection with NIM transactions. In the prior year, trading residuals valued at \$115.2 million were securitized with net cash proceeds of \$98.7 million received on the transactions. Total net additions to residual interests from NIM transactions for the nine months ended January 31, 2006 and 2005 were \$39.4 million and \$16.5 million, respectively.

During the nine months ended January 31, 2006, we completed the sale of \$40.5 million of previously securitized residual interests and recorded a gain of \$28.7 million. We received cash proceeds of \$30.5 million and retained a \$10.0 million residual interest in the sale. This sale accelerates cash flows from the residual interests and recognition of unrealized gains included in other comprehensive income.

Although we recorded residual interests classified as trading securities during the nine months ended January 31, 2006 and 2005, at the end of each quarter we had no trading residual interests outstanding. Trading residual interests are the result of the initial securitization of mortgage loans

## Table of Contents

and are subsequently securitized in a NIM transaction. Mark-to-market adjustments on trading residuals are included in gains on sales of mortgage assets on the condensed consolidated income statement. Such adjustments resulted in a net loss of \$1.4 million and a net gain of \$0.6 million for the three and nine months ended January 31, 2006, respectively. Similar adjustments resulted in a net gain of \$0.4 million and \$5.4 million for the three and nine months ended January 31, 2005, respectively. Cash flows from trading residuals of \$12.9 million were received for the nine months ended January 31, 2006 and are included in operating activities in the accompanying condensed consolidated statement of cash flows. Accretion of trading residuals totaled \$3.5 million and \$5.9 million for the three and nine months ended January 31, 2006, respectively, and zero in the prior year periods. There were no trading residuals recorded as of April 30, 2005.

Cash flows from available-for-sale residual interests of \$74.9 million and \$100.3 million were received from the securitization trusts for the nine months ended January 31, 2006 and 2005, respectively. Cash received on available-for-sale residual interests is included in investing activities in the condensed consolidated statements of cash flows.

Aggregate net unrealized gains on residual interests not yet accreted into income totaled \$63.0 million at January 31, 2006 and \$115.4 million at April 30, 2005. These unrealized gains are recorded net of deferred taxes in other comprehensive income, and may be recognized in income in future periods either through accretion or upon further securitization or sale of the related residual interest.

Activity related to mortgage servicing rights (MSRs) consists of the following:

Nine months ended January 31,	(in 000s)	
	2006	2005
Balance, beginning of period	\$ 166,614	\$ 113,821
Additions	196,245	94,569
Amortization	(100,170)	(60,616)
Impairment	(320)	(263)
Balance, end of period	<u>\$ 262,369</u>	<u>\$ 147,511</u>

Additions to MSRs during fiscal year 2006 have increased primarily as a result of higher origination volumes, higher average loan balances and higher interest rates. In addition, during fiscal year 2006 we updated our assumptions used to value MSRs. The assumptions were updated primarily to reflect lower servicing costs, in particular interest paid to bondholders on monthly loan prepayments, and higher discount rates. These changes in assumptions increased the weighted average value of MSRs recorded during the second and third quarters by approximately \$17.0 million (0.14% of loans originated) and \$10.0 million (0.11% of loans originated), respectively, over the prior year. Estimated amortization of MSRs for fiscal years 2006 through 2010 is \$140.5 million, \$123.9 million, \$61.0 million, \$25.3 million and \$11.8 million, respectively.

The key weighted average assumptions we used to estimate the cash flows and values of the residual interests initially recorded during the nine months ended January 31, 2006 and 2005 are as follows:

Nine months ended January 31,	2006	2005
Estimated credit losses	2.85%	2.72%
Discount rate	20.34%	25.00%
Variable returns to third-party beneficial interest holders	LIBOR forward curve at closing	

The key weighted average assumptions we used to estimate the cash flows and values of the residual interests and MSRs at January 31, 2006 and April 30, 2005 are as follows:

	January 31, 2006	April 30, 2005
Estimated credit losses	2.97%	3.03%
Discount rate — residual interests	21.60%	21.01%
Discount rate — MSRs	18.00%	12.80%
Variable returns to third-party beneficial interest holders	LIBOR forward curve at valuation date	

## Table of Contents

We originate both adjustable and fixed rate mortgage loans. A key assumption used to estimate the cash flows and values of the residual interests and MSR is average annualized prepayment speeds. Prepayment speeds include voluntary prepayments, involuntary prepayments and scheduled principal payments. Prepayment rate assumptions are as follows:

	Prior to Initial Rate Reset Date	Months Outstanding After Initial Rate Reset Date Zero - 3	Remaining Life
Adjustable rate mortgage loans:			
With prepayment penalties	31%	72%	41%
Without prepayment penalties	35%	52%	35%
Fixed rate mortgage loans:			
With prepayment penalties	30%	48%	38%

For fixed rate mortgages without prepayment penalties, we use an average prepayment rate of 32% over the life of the loans. Prepayment rate is projected based on actual paydown including voluntary, involuntary and scheduled principal payments.

Expected static pool credit losses are as follows:

	Mortgage Loans Securitized in Fiscal Year					
	Prior to 2002	2002	2003	2004	2005	2006
As of:						
January 31, 2006	4.58%	2.54%	2.08%	2.14%	2.59%	2.91%
October 31, 2005	4.52%	2.49%	2.05%	2.16%	2.93%	2.84%
July 31, 2005	4.53%	2.53%	2.03%	2.20%	2.86%	2.70%
April 30, 2005	4.52%	2.53%	2.08%	2.30%	2.83%	—
April 30, 2004	4.46%	3.58%	4.35%	3.92%	—	—

Static pool credit losses are calculated by summing the actual and projected future credit losses and dividing them by the original balance of each pool of assets.

At January 31, 2006, the sensitivities of the current fair value of the residual interests and MSR to 10% and 20% adverse changes in the above key assumptions are as follows:

	(dollars in 000s)		
	Residential Mortgage Loans		Servicing Assets
	NIM Residuals	Beneficial Interest in Trusts	
Carrying amount/fair value	\$ 175,068	\$ 279,714	\$ 262,369
Weighted average remaining life (in years)	1.9	2.0	1.3
Prepayments (including defaults):			
Adverse 10% — \$impact on fair value	\$ 3,981	\$ (12,497)	\$ (35,910)
Adverse 20% — \$impact on fair value	11,679	(17,632)	(60,158)
Credit losses:			
Adverse 10% — \$impact on fair value	\$ (45,495)	\$ (13,062)	Not applicable
Adverse 20% — \$impact on fair value	(77,590)	(23,942)	Not applicable
Discount rate:			
Adverse 10% — \$impact on fair value	\$ (5,860)	\$ (5,650)	\$ (4,114)
Adverse 20% — \$impact on fair value	(11,333)	(11,130)	(8,112)
Variable interest rates (LIBOR forward curve):			
Adverse 10% — \$impact on fair value	\$ (5,330)	\$ (74,636)	Not applicable
Adverse 20% — \$impact on fair value	(9,410)	(147,357)	Not applicable

These sensitivities are hypothetical and should be used with caution. Changes in fair value based on a 10% variation in assumptions generally cannot be extrapolated because the relationship of the change in assumption to the change in fair value may not be linear. Also in this table, the effect of a variation of a particular assumption on the fair value is calculated without changing any other assumptions. It is likely that changes in one factor may result in changes in another, which might magnify or counteract the sensitivities.

[Table of Contents](#)

Mortgage loans that have been securitized at January 31, 2006 and April 30, 2005, past due sixty days or more and the related credit losses incurred are presented below:

	Total Principal Amount of Loans Outstanding		Principal Amount of Loans 60 Days or More Past Due		Credit Losses (net of recoveries)	
	January 31, 2006	April 30, 2005	January 31, 2006	April 30, 2005	Three months ended	
					January 31, 2006	April 30, 2005
Securitized mortgage loans	\$ 11,492,170	\$ 10,300,805	\$ 1,017,855	\$ 1,128,376	\$ 27,972	\$ 21,641
Mortgage loans in warehouse Trusts	11,209,456	6,742,387	—	—	—	—
<b>Total loans</b>	<b>\$ 22,701,626</b>	<b>\$ 17,043,192</b>	<b>\$ 1,017,855</b>	<b>\$ 1,128,376</b>	<b>\$ 27,972</b>	<b>\$ 21,641</b>

**7. Goodwill and Intangible Assets**

Changes in the carrying amount of goodwill for the nine months ended January 31, 2006 consist of the following:

	April 30, 2005	Additions	Other	January 31, 2006
Tax Services	\$ 360,781	\$ 8,829	\$ 192	\$ 369,802
Mortgage Services	152,467	—	—	152,467
Business Services	328,745	80,929	(1,630)	408,044
Investment Services	173,954	—	—	173,954
<b>Total goodwill</b>	<b>\$ 1,015,947</b>	<b>\$ 89,758</b>	<b>\$ (1,438)</b>	<b>\$ 1,104,267</b>

We test goodwill for impairment annually at the beginning of our fourth quarter, or more frequently if events occur indicating it is more likely than not the fair value of a reporting unit's net assets has been reduced below its carrying value. No such impairment or events indicating impairment were identified within any of our segments during the nine months ended January 31, 2006. Our evaluation of impairment is dependent upon various assumptions, including assumptions regarding projected operating results and cash flows of reporting units. Actual results could differ materially from our projections and those differences could alter our conclusions regarding the fair value of a reporting unit and its goodwill.

Intangible assets consist of the following:

	January 31, 2006			April 30, 2005		
	Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
<b>Tax Services:</b>						
Customer relationships	\$ 26,962	\$ (9,751)	\$ 17,211	\$ 23,717	\$ (7,207)	\$ 16,510
Noncompete agreements	18,961	(16,135)	2,826	17,677	(11,608)	6,069
<b>Business Services:</b>						
Customer relationships	153,227	(77,564)	75,663	130,585	(68,433)	62,152
Noncompete agreements	32,483	(13,431)	19,052	27,796	(11,274)	16,522
Trade name — amortizing	4,050	(1,481)	2,569	1,450	(995)	455
Trade name — non-amortizing	55,637	(4,868)	50,769	55,637	(4,868)	50,769
<b>Investment Services:</b>						
Customer relationships	293,000	(225,854)	67,146	293,000	(198,385)	94,615
<b>Total intangible assets</b>	<b>\$ 584,320</b>	<b>\$ (349,084)</b>	<b>\$ 235,236</b>	<b>\$ 549,862</b>	<b>\$ (302,770)</b>	<b>\$ 247,092</b>

Amortization of intangible assets for the three and nine months ended January 31, 2006 was \$16.7 million and \$47.3 million, respectively. Amortization of intangible assets for the three and nine months ended January 31, 2005 was \$15.5 million and \$45.9 million, respectively. Estimated amortization of intangible assets for fiscal years 2006 through 2010 is \$65.1 million, \$56.3 million, \$38.4 million, \$15.0 million and \$12.8 million, respectively.

## [Table of Contents](#)

The goodwill and intangible assets added in the Business Services segment relate primarily to the acquisition of American Express Tax and Business Services, Inc., as discussed in note 3. The intangible asset valuations were completed during the quarter, however, goodwill is subject to change pending determination of the final purchase price.

### 8. Derivative Instruments

We enter into derivative instruments to reduce risks relating to mortgage loans we originate and sell, and therefore all gains or losses are included in gains on sales of mortgage assets, net in the condensed consolidated income statements. A summary of our derivative instruments as of January 31, 2006 and April 30, 2005, and gains or losses incurred during the three and nine months ended January 31, 2006 and 2005 is as follows:

	Asset (Liability) Balance at		Gain (Loss) for the Three		Gain (Loss) for the Nine	
	January 31,	April 30,	Months Ended January 31,	Months Ended January 31,	Months Ended January 31,	Months Ended January 31,
	2006	2005	2006	2005	2006	2005
Interest rate swaps	\$ 23,422	\$ (1,325)	\$ 6,292	\$ 31,039	\$ 91,578	\$ 28,934
Interest rate caps	—	12,458	—	—	802	—
Rate-lock equivalents	96	801	34	141	(705)	1,841
Prime short sales	(333)	(805)	(1,266)	(424)	221	(1,949)
	<u>\$ 23,185</u>	<u>\$ 11,129</u>	<u>\$ 5,060</u>	<u>\$ 30,756</u>	<u>\$ 91,896</u>	<u>\$ 28,826</u>

We generally use interest rate swaps and forward loan sale commitments to reduce interest rate risk associated with non-prime loans. We generally enter into interest rate swap arrangements related to existing loan applications with rate-lock commitments and for rate-lock commitments we expect to make in the next two to three weeks. Interest rate swaps represent an agreement to exchange interest rate payments, whereby we pay a fixed rate and receive a floating rate. As a result, these contracts increase in value as rates rise and decrease in value as rates fall. The notional amount of interest rate swaps to which we were a party at January 31, 2006 was \$8.8 billion, with a weighted average duration of 1.9 years.

We generally enter into interest rate caps or swaps to mitigate interest rate risk associated with mortgage loans that will be securitized and residual interests that are classified as trading securities because they will be sold in a subsequent NIM transaction. These instruments enhance the marketability of the securitization and NIM transactions. An interest rate cap represents a right to receive cash if interest rates rise above a contractual strike rate, its value therefore increases as interest rates rise. The interest rate used in our interest rate caps is based on LIBOR.

We enter into forward loan commitments to sell our non-prime mortgage loans to manage interest rate risk. The notional value and the contract value of the forward commitments at January 31, 2006 was \$5.3 billion. Most of our forward commitments give us the option to under- or over-deliver by five percent.

In the normal course of business, we enter into commitments with our customers to fund both non-prime and prime mortgage loans for specified periods of time at “locked-in” interest rates. These derivative instruments represent commitments to fund loans (“rate-lock equivalents”). The fair value of non-prime loan commitments is calculated using a binomial option model, although we do not initially record an asset for non-prime commitments to fund loans. The fair value of prime loan commitments is calculated based on the current market pricing of short sales of FNMA, FHLMC and GNMA mortgage-backed securities and the coupon rates of the eligible loans.

We sell short FNMA, FHLMC and GNMA mortgage-backed securities to reduce our risk related to our commitments to fund fixed-rate prime loans. The position on certain or all of the fixed-rate mortgage loans is closed approximately 10-15 days prior to standard Public Securities Association (PSA) settlement dates.

None of our derivative instruments qualify for hedge accounting treatment as of January 31, 2006 or April 30, 2005.

## 9. Stock-Based Compensation

Effective May 1, 2003, we adopted the fair value recognition provisions of Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" (SFAS 123), under the prospective transition method as described in Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure." Had compensation cost for all stock-based compensation plan grants been determined in accordance with the fair value accounting method prescribed under SFAS 123, our net income (loss) and earnings (loss) per share would have been as follows:

	(in 000s, except per share amounts)			
	Three months ended January 31,		Nine months ended January 31,	
	2006	Restated 2005	2006	Restated 2005
Net income (loss) as reported	\$ 12,113	\$ 93,736	\$ (97,130)	\$ 8,980
Add: Stock-based compensation expense included in reported net income (loss), net of related tax effects	9,916	8,918	21,927	17,260
Deduct: Total stock-based compensation expense determined under fair value method for all awards, net of related tax effects	(12,460)	(11,599)	(29,558)	(25,304)
Pro forma net income (loss)	<u>\$ 9,569</u>	<u>\$ 91,055</u>	<u>\$ (104,761)</u>	<u>\$ 936</u>
Basic earnings (loss) per share:				
As reported	\$ 0.04	\$ 0.28	\$ (0.30)	\$ 0.03
Pro forma	0.03	0.28	(0.32)	—
Diluted earnings (loss) per share:				
As reported	\$ 0.04	\$ 0.28	\$ (0.30)	\$ 0.03
Pro forma	0.03	0.27	(0.32)	—

## 10. Supplemental Cash Flow Information

During the nine months ended January 31, 2006, we paid \$224.8 million and \$63.0 million for income taxes and interest, respectively. During the nine months ended January 31, 2005, we paid \$406.6 million and \$53.6 million for income taxes and interest, respectively. See note 3 for discussion of cash payments made, assets acquired and liabilities assumed related to our acquisition of American Express Tax and Business Services, Inc.

The following transactions were treated as non-cash investing activities in the condensed consolidated statement of cash flows:

Nine months ended January 31,	(in 000s)	
	2006	2005
Residual interest mark-to-market	\$ 38,930	\$ 98,713
Additions to residual interests	39,378	16,470

## 11. Commitments and Contingencies

We maintain two unsecured committed lines of credit (CLOCs) for working capital, support of our commercial paper program and general corporate purposes. The two CLOCs are from a consortium of thirty-one banks and expire in August 2010. These lines are subject to various affirmative and negative covenants, including a minimum net worth covenant. These CLOCs were undrawn at January 31, 2006.

We obtained an additional \$900.0 million line of credit for the period of January 3 to February 24, 2006 to back-up peak commercial paper issuance or use as an alternate source of funding for RAL participations. This line is subject to various covenants, substantially similar to the primary CLOCs. The balance outstanding on this facility at January 31, 2006 was \$550.0 million.

As a result of our failure to file this Form 10-Q by the SEC's prescribed due date, we will be unable to issue any debt securities under our shelf registration statement for a period of twelve calendar months after the month of our filing.

We offer guarantees under our Peace of Mind (POM) program to tax clients whereby we will assume the cost of additional taxes attributable to tax return preparation errors for which we are responsible. We defer all revenues and direct costs associated with these guarantees, recognizing



## [Table of Contents](#)

these amounts over the term of the guarantee based upon historic and actual payment of claims. Changes in the deferred revenue liability are as follows:

Nine months ended January 31,	(in 000s)	
	2006	2005
Balance, beginning of period	\$ 130,762	\$ 123,048
Amounts deferred for new guarantees issued	20,533	19,925
Revenue recognized on previous deferrals	(55,932)	(52,295)
Balance, end of period	<u>\$ 95,363</u>	<u>\$ 90,678</u>

We have commitments to fund mortgage loans to customers as long as there is no violation of any condition established in the contract. Commitments generally have fixed expiration dates or other termination clauses. The commitments to fund loans amounted to \$2.9 billion and \$3.9 billion at January 31, 2006 and April 30, 2005, respectively. Of these commitments, \$697.3 million and \$947.5 million are considered binding commitments as of January 31, 2006 and April 30, 2005, respectively. External market forces impact the probability of commitments being exercised, and therefore, total commitments outstanding do not necessarily represent future cash requirements.

We have entered into loan sale agreements with investors in the normal course of business, which include standard representations and warranties customary to the mortgage banking industry. Violations of these representations and warranties may require us to repurchase loans previously sold. A liability has been established related to the potential loss on repurchase of loans previously sold of \$40.9 million and \$41.2 million at January 31, 2006 and April 30, 2005, respectively, based on historical experience. Repurchased loans are normally sold in subsequent sale transactions.

Option One Mortgage Corporation provides a guarantee up to a maximum amount equal to approximately 10% of the aggregate principal balance of mortgage loans held by the Trusts before ultimate disposition of the loans. This guarantee would be called upon in the event adequate proceeds were not available from the sale of the mortgage loans by the Trusts to satisfy their payment obligations. No losses have been sustained on this commitment since its inception. The total principal amount of Trust obligations outstanding as of January 31, 2006 and April 30, 2005 was \$11.2 billion and \$6.7 billion, respectively. The fair value of mortgage loans held by the Trusts as of January 31, 2006 and April 30, 2005 was \$11.4 billion and \$6.8 billion, respectively.

We have various contingent purchase price obligations in connection with prior acquisitions. In many cases, contingent payments to be made in connection with these acquisitions are not subject to a stated limit. We estimate the potential payments (undiscounted) total approximately \$13.8 million and \$5.1 million as of January 31, 2006 and April 30, 2005, respectively. Our estimate is based on current financial conditions. Should actual results differ materially from our assumptions, the potential payments will differ from the above estimate. Such payments, if and when paid, would be recorded as additional cost of the acquired business, generally goodwill.

We have contractual commitments to fund certain franchises requesting draws on Franchise Equity Lines of Credit (FELCs). Our commitment to fund FELCs as of January 31, 2006 and April 30, 2005 totaled \$75.9 million and \$68.9 million, respectively. We have a receivable of \$60.2 million and \$39.0 million, which represents the amounts drawn on the FELCs, as of January 31, 2006 and April 30, 2005, respectively.

We routinely enter into contracts that include embedded indemnifications that have characteristics similar to guarantees, including obligations to protect counterparties from losses arising from the following: (a) tax, legal and other risks related to the purchase or disposition of businesses; (b) penalties and interest assessed by Federal and state taxing authorities in connection with tax returns prepared for clients; (c) indemnification of our directors and officers; and (d) third-party claims relating to various arrangements in the normal course of business. Typically, there is no stated maximum payment related to these indemnifications, and the term of indemnities may vary and in many cases is limited only by the applicable statute of limitations. The likelihood of any claims being asserted against us and the ultimate liability related to any such claims, if any, is difficult to predict. While we cannot provide assurance that such claims will not be successfully asserted, we believe the fair value of these guarantees and indemnifications is not material as of January 31, 2006.

## 12. Litigation Commitments and Contingencies

We have been involved in a number of class actions and putative class action cases since 1990, as well as a state attorney general lawsuit, regarding our RAL programs. These cases are based on a variety of legal theories and allegations. These theories and allegations include, among others, that (i) we improperly did not disclose license fees we received from RAL lending banks for RALs they make to our clients, (ii) we owe and breached a fiduciary duty to our clients and (iii) the RAL program violates laws such as state credit service organization laws and the federal Racketeer Influenced and Corrupt Organizations (RICO) Act. Although we have successfully defended many RAL cases, we have settled others. On December 21, 2005, we entered into a settlement agreement regarding four RAL cases, subject to final court approval. Pursuant to the terms of this settlement agreement, we will contribute a total of up to \$62.5 million in cash for purposes of making payments to the settlement class, paying all attorneys' fees and costs to class counsel and covering service awards to the representative plaintiffs. In addition, we will pay costs for providing notice of the settlement to settlement class members. We recorded a reserve of \$52.2 million related to this settlement in our third quarter. Two RAL class action cases and the state attorney general lawsuit are still pending, with the amounts claimed on a collective basis being very substantial. The ultimate cost of this litigation could be substantial, and in March 2006, we increased our reserves as of January 31, 2006 by an additional \$19.5 million related to one of the other RAL cases. We intend to continue defending the other RAL cases vigorously, although there are no assurances as to their outcome.

We are also a party to claims and lawsuits pertaining to our electronic tax return filing services, our POM guarantee program, and our Express IRA product. These claims and lawsuits include actions by individual plaintiffs, as well as cases in which plaintiffs seek to represent a class of similarly situated customers. In addition we are party to two shareholder derivative actions stemming from our recent financial restatement as well as separate putative class actions alleging violations of certain securities laws. The amounts claimed in these claims and lawsuits are substantial in some instances, and the ultimate liability with respect to such litigation and claims is difficult to predict. We intend to continue defending these cases vigorously, although there are no assurances as to their outcome.

In addition to the aforementioned types of cases, we are parties to claims and lawsuits that we consider to be ordinary, routine disputes incidental to our business (Other Claims and Lawsuits), including claims and lawsuits concerning the preparation of customers' income tax returns, the fees charged customers for various services, investment products, relationships with franchisees, contract disputes, employment matters and civil actions, arbitrations, regulatory inquiries and class actions arising out of our business as a broker-dealer and provider of investment products and as a servicer of mortgage loans. We believe we have meritorious defenses to each of the Other Claims and Lawsuits and are defending them vigorously. Although we cannot provide assurance we will ultimately prevail in each instance, we believe that amounts, if any, required to be paid in the discharge of liabilities or settlements pertaining to Other Claims and Lawsuits will not have a material adverse effect on our consolidated financial statements. Regardless of outcome, claims and litigation can adversely affect us due to defense costs, diversion of management attention and time, and publicity related to such matters.

It is our policy to accrue for amounts related to legal matters if it is probable that a liability has been incurred and the amount of the liability can be reasonably estimated. Many of the various legal proceedings are covered in whole or in part by insurance. Any receivable for insurance recoveries is recorded separately from the corresponding litigation reserve, and only if recovery is determined to be probable. Receivables for insurance recoveries at January 31, 2006 were immaterial.

**13. Segment Information**

Information concerning our operations by reportable operating segment is as follows:

	Three months ended January 31,		Nine months ended January 31,	
	2006	Restated 2005	2006	Restated 2005
(in 000s)				
<b>Revenues:</b>				
Tax Services	\$ 548,494	\$ 531,086	\$ 686,498	\$ 655,639
Mortgage Services	296,493	308,872	943,082	865,177
Business Services	235,840	132,872	529,491	371,021
Investment Services	73,176	62,104	211,177	169,446
Corporate	2,744	1,302	6,535	3,457
	<u>\$ 1,156,747</u>	<u>\$ 1,036,236</u>	<u>\$ 2,376,783</u>	<u>\$ 2,064,740</u>
<b>Pretax income (loss):</b>				
Tax Services	\$ (6,332)	\$ 63,655	\$ (293,702)	\$ (182,923)
Mortgage Services	67,453	115,483	248,160	332,980
Business Services	(1,035)	5,916	(9,943)	(9,021)
Investment Services	(7,668)	(19,775)	(23,126)	(60,882)
Corporate	(27,010)	(12,001)	(74,979)	(65,494)
Income (loss) before taxes	<u>\$ 25,408</u>	<u>\$ 153,278</u>	<u>\$ (153,590)</u>	<u>\$ 14,660</u>

Pretax results from our Tax Services segment for the three and nine months ended January 31, 2006 includes a \$71.7 million provision for legal reserves and related litigation fees, as discussed in note 12.

**14. New Accounting Pronouncements**

In February 2006, Statement of Financial Accounting Standards No. 155, "Accounting for Certain Hybrid Instruments" (SFAS 155), an amendment of FASB Statements No. 133 and 140, was issued. The provisions of this standard allow financial instruments that have embedded derivatives to be accounted for as a whole if the holder elects to account for the whole instrument on a fair value basis, and establishes a requirement to evaluate interests in securitized financial assets to identify interests that are freestanding derivatives or that are hybrid financial instruments that contain an embedded derivative requiring bifurcation. The new standard also amends Statement 140 to eliminate the prohibition on a qualifying special purpose entity from holding a derivative financial instrument that pertains to a beneficial interest other than another derivative financial instrument. The provisions of this standard are effective as of the beginning of our fiscal year 2008. Our residual interests typically have interests in derivative instruments embedded within the securitization trusts. If we elect to account for our residual interests on a fair value basis, changes in fair value will impact earnings in the period in which the change occurs. We are currently evaluating what effect the adoption of SFAS 155 will have on our consolidated financial statements.

In March 2006, Statement of Financial Accounting Standards No. 156, "Accounting for Servicing of Financial Assets — An Amendment of FASB Statement No. 140," (SFAS 156), was issued. The provisions of this standard require mortgage servicing rights to be initially valued at fair value. SFAS 156 also allows servicers to choose to measure their servicing rights at fair value or to continue using the "amortization method" under SFAS 140. The provisions of this standard are effective as of the beginning of our fiscal year 2008. We are currently evaluating what effect the adoption of SFAS 156 will have on our consolidated financial statements.

**Exposure Draft — Amendment of SFAS 140**

In August 2005, the Financial Accounting Standards Board (FASB) issued an exposure draft which amends Statement of Financial Accounting Standards No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities."

This exposure draft seeks to clarify the derecognition requirements for financial assets and the initial measurement of interests related to transferred financial assets that are held by a transferor. Our current off-balance sheet warehouse facilities (the Trusts) in our Mortgage Services segment would be required to be consolidated in our financial statements based on the provisions of the

[Table of Contents](#)

exposure draft. We will continue to monitor the status of the exposure draft and consider what changes, if any, could be made to the structure of the Trusts to continue to derecognize mortgage loans transferred to the Trusts. At January 31, 2006, the Trusts held loans totaling \$11.2 billion, which we would be required to consolidate into our financial statements under the provisions of this exposure draft.

The final standard for this exposure draft is scheduled to be issued in the second quarter of calendar year 2006.

## 15. Condensed Consolidating Financial Statements

Block Financial Corporation (BFC) is an indirect, wholly owned consolidated subsidiary of the Company. BFC is the Issuer and the Company is the Guarantor of the Senior Notes issued on April 13, 2000 and October 26, 2004. These condensed consolidating financial statements have been prepared using the equity method of accounting. Earnings of subsidiaries are, therefore, reflected in the Company's investment in subsidiaries account. The elimination entries eliminate investments in subsidiaries, related stockholder's equity and other intercompany balances and transactions.

### Condensed Consolidating Income Statements

					(in 000s)
Three months ended January 31, 2006	H&R Block, Inc. (Guarantor)	BFC (Issuer)	Other Subsidiaries	Elims	Consolidated H&R Block
Total revenues	\$ —	\$ 492,631	\$ 667,754	\$ (3,638)	\$ 1,156,747
Cost of services	—	136,863	497,035	29	633,927
Cost of other revenues	—	124,037	20,626	—	144,663
Selling, general and administrative	—	127,185	220,728	(3,667)	344,246
Total expenses	—	388,085	738,389	(3,638)	1,122,836
Operating income (loss)	—	104,546	(70,635)	—	33,911
Interest expense	—	11,810	401	—	12,211
Other income, net	25,408	—	3,708	(25,408)	3,708
Income (loss) before taxes	25,408	92,736	(67,328)	(25,408)	25,408
Income taxes (benefit)	13,295	37,505	(24,210)	(13,295)	13,295
Net income (loss)	\$ 12,113	\$ 55,231	\$ (43,118)	\$ (12,113)	\$ 12,113
Three months ended January 31, 2005 (Restated)	H&R Block, Inc. (Guarantor)	BFC (Issuer)	Other Subsidiaries	Elims	Consolidated H&R Block
Total revenues	\$ —	\$ 446,508	\$ 593,396	\$ (3,668)	\$ 1,036,236
Cost of services	—	104,561	403,715	(69)	508,207
Cost of other revenues	—	114,759	18,584	—	133,343
Selling, general and administrative	—	91,939	159,774	(3,599)	248,114
Total expenses	—	311,259	582,073	(3,668)	889,664
Operating income (loss)	—	135,249	11,323	—	146,572
Interest expense	—	12,180	846	—	13,026
Other income, net	153,278	—	19,732	(153,278)	19,732
Income before taxes	153,278	123,069	30,209	(153,278)	153,278
Income taxes	59,542	54,578	4,964	(59,542)	59,542
Net income	\$ 93,736	\$ 68,491	\$ 25,245	\$ (93,736)	\$ 93,736

## Table of Contents

Nine months ended January 31, 2006	H&R Block, Inc. (Guarantor)	BFC (Issuer)	Other Subsidiaries	Elims	Consolidated H&R Block
Total revenues	\$ —	\$ 1,349,096	\$ 1,038,594	\$ (10,907)	\$ 2,376,783
Cost of service revenues	—	362,034	1,002,167	161	1,364,362
Cost of other revenues	—	374,253	28,631	—	402,884
Selling, general and administrative	—	315,333	435,782	(11,068)	740,047
Total expenses	—	1,051,620	1,466,580	(10,907)	2,507,293
Operating income (loss)	—	297,476	(427,986)	—	(130,510)
Interest expense	—	35,431	1,600	—	37,031
Other income, net	(153,590)	—	13,951	153,590	13,951
Income (loss) before taxes	(153,590)	262,045	(415,635)	153,590	(153,590)
Income taxes (benefit)	(56,460)	103,536	(159,996)	56,460	(56,460)
Net income (loss)	\$ (97,130)	\$ 158,509	\$ (255,639)	\$ 97,130	\$ (97,130)

Nine months ended January 31, 2005 (Restated)	H&R Block, Inc. (Guarantor)	BFC (Issuer)	Other Subsidiaries	Elims	Consolidated H&R Block
Total revenues	\$ —	\$ 1,115,976	\$ 959,051	\$ (10,287)	\$ 2,064,740
Cost of services	—	291,531	831,695	40	1,123,266
Cost of other revenues	—	282,504	25,483	—	307,987
Selling, general and administrative	—	235,581	367,923	(10,327)	593,177
Total expenses	—	809,616	1,225,101	(10,287)	2,024,430
Operating income (loss)	—	306,360	(266,050)	—	40,310
Interest expense	—	46,330	2,570	—	48,900
Other income, net	14,660	—	23,250	(14,660)	23,250
Income (loss) before taxes	14,660	260,030	(245,370)	(14,660)	14,660
Income taxes (benefit)	5,680	108,061	(102,381)	(5,680)	5,680
Net income (loss)	\$ 8,980	\$ 151,969	\$ (142,989)	\$ (8,980)	\$ 8,980

### Condensed Consolidating Balance Sheets

	H&R Block, Inc. (Guarantor)	BFC (Issuer)	Other Subsidiaries	Elims	(in 000s) Consolidated H&R Block
January 31, 2006					
Cash & cash equivalents	\$ —	\$ 286,226	\$ 1,173,954	\$ —	\$ 1,460,180
Cash & cash equivalents — restricted	—	424,115	6,598	—	430,713
Receivables from customers, brokers and dealers, net	—	569,430	—	—	569,430
Receivables, net	747	1,316,571	493,627	—	1,810,945
Intangible assets and goodwill, net	—	396,397	943,106	—	1,339,503
Investments in subsidiaries	4,685,740	219	521	(4,685,740)	740
Other assets	—	1,613,833	447,023	(26)	2,060,830
Total assets	\$ 4,686,487	\$ 4,606,791	\$ 3,064,829	\$ (4,685,766)	\$ 7,672,341
Commercial paper	\$ —	\$ 2,575,756	\$ 20,192	\$ —	\$ 2,595,948
Accts. payable to customers, brokers and dealers	—	851,827	—	—	851,827
Long-term debt	—	897,217	19,709	—	916,926
Other liabilities	2	600,609	1,119,076	—	1,719,687
Net intercompany advances	3,098,532	(1,976,900)	(1,121,606)	(26)	—
Stockholders' equity	1,587,953	1,658,282	3,027,458	(4,685,740)	1,587,953
Total liabilities and stockholders' equity	\$ 4,686,487	\$ 4,606,791	\$ 3,064,829	\$ (4,685,766)	\$ 7,672,341

[Table of Contents](#)

April 30, 2005 (Restated)	H&R Block, Inc. (Guarantor)	BFC (Issuer)	Other Subsidiaries	Elims	Consolidated H&R Block
Cash & cash equivalents	\$ —	\$ 162,983	\$ 937,230	\$ —	\$ 1,100,213
Cash & cash equivalents — restricted	—	488,761	28,148	—	516,909
Receivables from customers, brokers and dealers, net	—	590,226	—	—	590,226
Receivables, net	101	199,990	218,697	—	418,788
Intangible assets and goodwill, net	—	421,036	842,003	—	1,263,039
Investments in subsidiaries	4,851,680	210	449	(4,851,680)	659
Other assets	—	1,407,082	241,532	(392)	1,648,222
Total assets	<u>\$ 4,851,781</u>	<u>\$ 3,270,288</u>	<u>\$ 2,268,059</u>	<u>\$ (4,852,072)</u>	<u>\$ 5,538,056</u>
Accts. payable to customers, brokers and dealers	\$ —	\$ 950,684	\$ —	\$ —	\$ 950,684
Long-term debt	—	896,591	26,482	—	923,073
Other liabilities	2	532,562	1,182,459	8	1,715,031
Net intercompany advances	2,902,511	(641,611)	(2,262,818)	1,918	—
Stockholders' equity	1,949,268	1,532,062	3,321,936	(4,853,998)	1,949,268
Total liabilities and stockholders' equity	<u>\$ 4,851,781</u>	<u>\$ 3,270,288</u>	<u>\$ 2,268,059</u>	<u>\$ (4,852,072)</u>	<u>\$ 5,538,056</u>

*Condensed Consolidating Statements of Cash Flows*

Nine months ended January 31, 2006	H&R Block, Inc. (Guarantor)	BFC (Issuer)	Other Subsidiaries	Elims	(in 000s) Consolidated H&R Block
Net cash provided by (used in) operating activities:	<u>\$ 43,228</u>	<u>\$ (1,193,527)</u>	<u>\$ (539,248)</u>	<u>\$ —</u>	<u>\$ (1,689,547)</u>
Cash flows from investing:					
Cash received on residuals	—	74,931	—	—	74,931
Cash received on sale of residuals	—	30,497	—	—	30,497
Purchase property & equipment	—	(31,627)	(135,554)	—	(167,181)
Payments for business acquisitions	—	(3,140)	(206,676)	—	(209,816)
Net intercompany advances	229,755	—	—	(229,755)	—
Other, net	—	—	17,297	—	17,297
Net cash provided by (used in) investing activities	<u>229,755</u>	<u>70,661</u>	<u>(324,933)</u>	<u>(229,755)</u>	<u>(254,272)</u>
Cash flows from financing:					
Repayments of commercial paper	—	(2,610,432)	(22,012)	—	(2,632,444)
Proceeds from commercial paper	—	4,636,188	42,204	—	4,678,392
Proceeds from short-term borrowings	—	550,000	—	—	550,000
Dividends paid	(118,665)	—	—	—	(118,665)
Acquisition of treasury shares	(260,078)	—	—	—	(260,078)
Proceeds from common stock	105,760	—	—	—	105,760
Net intercompany advances	—	(1,335,289)	1,105,534	229,755	—
Other, net	—	5,642	(24,821)	—	(19,179)
Net cash provided by (used in) financing activities	<u>(272,983)</u>	<u>1,246,109</u>	<u>1,100,905</u>	<u>229,755</u>	<u>2,303,786</u>
Net increase in cash	—	123,243	236,724	—	359,967
Cash — beginning of period	—	162,983	937,230	—	1,100,213
Cash — end of period	<u>\$ —</u>	<u>\$ 286,226</u>	<u>\$ 1,173,954</u>	<u>\$ —</u>	<u>\$ 1,460,180</u>

[Table of Contents](#)

Nine months ended January 31, 2005 (Restated)	H&R Block, Inc. (Guarantor)	BFC (Issuer)	Other Subsidiaries	Elims	Consolidated H&R Block
Net cash provided by (used in) operating activities:	\$ 16,683	\$ (840,959)	\$ (740,157)	\$ —	\$ (1,564,433)
Cash flows from investing:					
Cash received on residuals	—	100,344	—	—	100,344
Purchase property & equipment	—	(28,104)	(115,128)	—	(143,232)
Payments for business acquisitions	—	—	(26,348)	—	(26,348)
Net intercompany advances	499,699	—	—	(499,699)	—
Other, net	—	(152)	15,359	—	15,207
Net cash provided by (used in) investing activities	499,699	72,088	(126,117)	(499,699)	(54,029)
Cash flows from financing:					
Repayments of commercial paper	—	(2,348,966)	—	—	(2,348,966)
Proceeds from commercial paper	—	3,857,750	20,098	—	3,877,848
Repayments of long-term debt	—	(250,000)	—	—	(250,000)
Proceeds from long-term debt	—	395,221	—	—	395,221
Dividends paid	(106,422)	—	—	—	(106,422)
Acquisition of treasury shares	(529,852)	—	—	—	(529,852)
Proceeds from common stock	119,892	—	—	—	119,892
Net intercompany advances	—	(880,648)	380,949	499,699	—
Other, net	—	—	(35,414)	—	(35,414)
Net cash provided by (used in) financing activities	(516,382)	773,357	365,633	499,699	1,122,307
Net increase (decrease) in cash	—	4,486	(500,641)	—	(496,155)
Cash — beginning of period	—	133,188	939,557	—	1,072,745
Cash — end of period	\$ —	\$ 137,674	\$ 438,916	\$ —	\$ 576,590

**ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**
**RESULTS OF OPERATIONS**

H&R Block is a diversified company delivering tax services and financial advice, investment and mortgage services, and business and consulting services. For 50 years, we have been developing relationships with millions of tax clients and our strategy is to expand on these relationships. Our Tax Services segment provides income tax return preparation services, electronic filing services and other services and products related to income tax return preparation to the general public in the United States, Canada, Australia and the United Kingdom. We also offer investment services through H&R Block Financial Advisors, Inc. (HRBFA). Our Mortgage Services segment offers a full range of home mortgage services through Option One Mortgage Corporation (OOMC) and H&R Block Mortgage Corporation (HRBMC). RSM McGladrey Business Services, Inc. (RSM), together with its attest-firm affiliations, is the fifth largest national accounting, tax and consulting firm primarily serving mid-sized businesses.

**Our Mission**

To help our clients achieve their financial objectives  
by serving as their tax and financial partner.

Key to achieving our mission is the enhancement of client experiences through consistent delivery of valuable services and advice. Operating through multiple lines of business allows us to better meet the changing financial needs of our clients.

The accompanying Management’s Discussion and Analysis of Financial Condition and Results of Operations reflects the restatements of previously issued financial statements, as discussed in note 2 to our condensed consolidated financial statements. The analysis that follows should be read in conjunction with the tables below and the condensed consolidated income statements found on page 2.

**Consolidated H&R Block, Inc. — Operating Results**

	(in 000s, except per share amounts)			
	Three months ended January 31,		Nine months ended January 31,	
	2006	Restated 2005	2006	Restated 2005
<b>Revenues:</b>				
Tax Services	\$ 548,494	\$ 531,086	\$ 686,498	\$ 655,639
Mortgage Services	296,493	308,872	943,082	865,177
Business Services	235,840	132,872	529,491	371,021
Investment Services	73,176	62,104	211,177	169,446
Corporate	2,744	1,302	6,535	3,457
	<u>\$ 1,156,747</u>	<u>\$ 1,036,236</u>	<u>\$ 2,376,783</u>	<u>\$ 2,064,740</u>
<b>Pretax income (loss):</b>				
Tax Services	\$ (6,332)	\$ 63,655	\$ (293,702)	\$ (182,923)
Mortgage Services	67,453	115,483	248,160	332,980
Business Services	(1,035)	5,916	(9,943)	(9,021)
Investment Services	(7,668)	(19,775)	(23,126)	(60,882)
Corporate	(27,010)	(12,001)	(74,979)	(65,494)
	25,408	153,278	(153,590)	14,660
Income taxes (benefit)	13,295	59,542	(56,460)	5,680
Net income (loss)	<u>\$ 12,113</u>	<u>\$ 93,736</u>	<u>\$ (97,130)</u>	<u>\$ 8,980</u>
<b>Basic and diluted earnings (loss) per share</b>	<u>\$ 0.04</u>	<u>\$ 0.28</u>	<u>\$ (0.30)</u>	<u>\$ 0.03</u>



[Table of Contents](#)

**TAX SERVICES**

This segment primarily consists of our income tax preparation businesses — retail, online and software.

**Tax Services — Operating Statistics (U.S. only)**

	Period January 1 through January 31,	
	2006	2005
<b>Clients served (in 000s):</b>		
Company-owned operations	2,372	2,447
Franchise operations	1,398	1,406
	<u>3,770</u>	<u>3,853</u>
<b>Average fee per client served: (1)</b>		
Company-owned operations	\$ 160.19	\$ 149.94
Franchise operations	137.06	130.82
	<u>\$ 151.61</u>	<u>\$ 142.97</u>
<b>Refund anticipation loans (RALs) (in 000s):</b>		
Company-owned operations	1,149	1,197
Franchise operations	716	714
	<u>1,865</u>	<u>1,911</u>
<b>Offices:</b>		
Company-owned	6,387	5,811
Company-owned shared locations (2)	1,473	1,296
Total company-owned offices	7,860	7,107
Franchise	3,703	3,528
Franchise shared locations (2)	602	526
Total franchise offices	4,305	4,054
	<u>12,165</u>	<u>11,161</u>

(1) Calculated as tax preparation and related fees divided by clients served.

(2) Shared locations include offices located within Wal-Mart, Sears and other third-party businesses.

**Tax Services — Operating Results**

	(in 000s)			
	Three months ended January 31,		Nine months ended January 31,	
	2006	Restated 2005	2006	Restated 2005
<b>Service revenues:</b>				
Tax preparation and related fees	\$ 389,040	\$ 375,346	\$ 452,862	\$ 428,323
Online tax services	7,057	10,739	8,310	12,048
Other services	25,459	23,623	85,437	76,682
	<u>421,556</u>	<u>409,708</u>	<u>546,609</u>	<u>517,053</u>
Royalties	53,706	50,920	60,263	56,271
RAL participation fees	42,616	43,354	42,893	43,520
Software sales	16,914	18,072	19,123	20,779
Other	13,702	9,032	17,610	18,016
Total revenues	<u>548,494</u>	<u>531,086</u>	<u>686,498</u>	<u>655,639</u>
<b>Cost of services:</b>				
Compensation and benefits	193,410	184,282	283,562	258,205
Occupancy	79,516	74,951	201,112	178,078
Depreciation	11,132	14,908	31,629	33,522
Other	51,030	53,385	123,965	122,734
	<u>335,088</u>	<u>327,526</u>	<u>640,268</u>	<u>592,539</u>
Cost of software sales	10,864	13,248	17,601	20,400
Provision for RAL litigation	71,700	—	71,700	—
Selling, general and administrative	137,174	126,657	250,631	225,623
Total expenses	<u>554,826</u>	<u>467,431</u>	<u>980,200</u>	<u>838,562</u>
Pretax income (loss)	<u>\$ (6,332)</u>	<u>\$ 63,655</u>	<u>\$ (293,702)</u>	<u>\$ (182,923)</u>

**Three months ended January 31, 2006 compared to January 31, 2005**

Tax Services' revenues increased \$17.4 million, or 3.3%, for the three months ended January 31, 2006 compared to the prior year.

Tax preparation and related fees increased \$13.7 million, or 3.6%, for the current quarter. This increase is primarily due to an increase of 6.8% in the average fee per U.S. client served, partially offset by a decrease of 3.2% in U.S. clients served in company-owned offices. The decrease in clients served was partially due to a number of technology problems that severely hurt the start of our filing season coupled with increased competition due to competitors' refund lending products.

Online tax service revenue declined \$3.7 million, or 34.3%, primarily due to planned reductions in unit prices.

Royalty revenue increased \$2.8 million, or 5.5%, due to a 4.8% increase in the average fee slightly offset by a 0.4% decline in clients served in franchise offices.

Other revenues increased \$4.7 million primarily due to an increase in supply sales to franchises during the current quarter.

Total expenses increased \$87.4 million, or 18.7%, primarily due to \$71.7 million of legal reserves and related litigation fees recorded in the current period. During the current quarter we entered into a settlement agreement regarding four separate RAL cases covering 22 states. As a result of this settlement agreement, we recorded a pretax charge of \$52.2 million, or \$0.10 per diluted share, for the unreserved cost of the proposed litigation settlement and related fees. In March 2006, we engaged in settlement negotiations with plaintiffs in another RAL case and accordingly increased our reserves as of January 31, 2006 and recorded a pretax charge of \$19.5 million. See additional discussion below and in note 12 to the condensed consolidated financial statements.

Cost of services for the three months ended January 31, 2006 increased \$7.6 million, or 2.3%, from the prior year. Our real estate expansion efforts have contributed to a total increase of \$13.0 million across all cost of services categories. Compensation and benefits increased \$9.1 million, or 5.0%, primarily due to an increase in staff needed for our new offices and the addition of costs related to our small business initiatives in the current year. Occupancy expenses increased \$4.6 million, or 6.1%, primarily as a result of higher rent expenses, due to a 9.6% increase in company-owned offices under lease and a 7.5% increase in the average rent. Depreciation declined \$3.8 million, or 25.3%, primarily due to decreased capital expenditures compared to the prior year and the timing of certain depreciation expenses. Other cost of services declined \$2.4 million, or 4.4%, due to a decline of \$3.4 million in corporate shared services and lower expenses associated with our POM guarantee, partially offset by an increase of \$3.8 million in supplies expenses.

Selling, general and administrative expenses increased \$10.5 million, or 8.3%, primarily due to a \$9.7 million increase in corporate shared services, \$6.6 million of which was related to our marketing efforts. We also incurred higher costs associated with increased supply sales to franchises and additional costs related to our small business initiatives in the current year.

The pretax loss was \$6.3 million for the three months ended January 31, 2006 compared to income of \$63.7 million in the prior year.

Due to the seasonal nature of this segment's business, operating results for the three months ended January 31, 2006 are not comparable to the three months ended October 31, 2005 and are not indicative of the expected results for the entire fiscal year.

**Nine months ended January 31, 2006 compared to January 31, 2005**

Tax Services' revenues increased \$30.9 million, or 4.7%, for the nine months ended January 31, 2006 compared to the prior year.

Tax preparation and related fees increased \$24.5 million, or 5.7%, primarily due to an increase in the average fee per U.S. client served, partially offset by a decrease in U.S. clients served in company-owned offices during the first month of the tax season. Improved performance during the Australian and Canadian tax seasons also contributed \$3.0 million and \$2.6 million, respectively, of additional tax preparation revenues in the current year.

Online tax service revenue declined \$3.7 million, or 31.0%, primarily due to planned reductions in unit prices.

## Table of Contents

Other service revenues increased \$8.8 million primarily as a result of additional revenues associated with POM guarantees and our small business initiatives.

Royalty revenue increased \$4.0 million, or 7.1%, due to an increase in the average fee slightly offset by a slight decline in clients served in franchise offices.

Total expenses increased \$141.6 million, or 16.9%, primarily due to \$71.7 million of legal reserves and related litigation fees recorded in the current period. Cost of services for the nine months ended January 31, 2006 increased \$47.7 million, or 8.1%, from the prior year. Our real estate expansion efforts have contributed to a total increase of \$29.0 million across all cost of services categories.

Compensation and benefits increased \$25.4 million primarily due to an increase in the staff needed for our new offices, payroll taxes and the addition of costs related to our small business initiatives. Occupancy expenses increased \$23.0 million, or 12.9%, primarily as a result of higher rent expenses, due to an 8.9% increase in company-owned offices under lease and an 8.5% increase in the average rent. Utilities and real estate taxes also contributed to the increase.

Selling, general and administrative expenses increased \$25.0 million, or 11.1%, over the prior year primarily due to \$13.1 million in additional costs from corporate shared services, \$7.6 million of which was related to our marketing efforts. We also incurred \$4.1 million in additional legal expenses and \$6.0 million in additional corporate wages.

The pretax loss was \$293.7 million for the nine months ended January 31, 2006 compared to a prior year loss of \$182.9 million.

### **Fiscal 2006 outlook**

Our fiscal year 2006 outlook for the Tax Services segment has not changed materially from the discussion in our April 30, 2005 Form 10-K/A. As part of our real estate expansion, we opened 550 new company-owned offices and 184 new franchise offices in the current tax season, exceeding our goal to open between 500 and 700 company-owned and franchise offices this year.

### **RAL Litigation**

On December 21, 2005, we entered into a settlement agreement regarding litigation pertaining to our RAL programs entitled *Deadra D. Cummins, et al. v. H&R Block, Inc. et al.*; *Mitchell v. H&R Block, Inc. et al.*; *Green v. H&R Block, Inc. et al.*; and *Becker v. H&R Block, Inc.* (the "Settlement Agreement"). The Settlement Agreement is subject to final court approval. Pursuant to the Settlement Agreement's terms, we will contribute a total of up to \$62.5 million in cash for purposes of making payments to the settlement class, paying all attorneys' fees and costs to class counsel, and covering service awards to the representative plaintiffs. In addition, we will pay costs for providing notice of the settlement to settlement class members. We recorded a reserve of \$52.2 million related to this settlement in our third quarter.

We are named as a defendant in two other class-action lawsuits and one state attorney general lawsuit alleging that we engaged in wrongdoing with respect to the RAL program. In March 2006, we engaged in settlement negotiations with the plaintiffs in one of these RAL cases and accordingly increased our reserves as of January 31, 2006 by \$19.5 million. We believe we have strong defenses to the other lawsuits and will vigorously defend our position. Nevertheless, the amounts claimed in these lawsuits are, in some instances, very substantial, and there can be no assurances as to their ultimate outcome, or as to their impact on our financial statements. See additional discussion of RAL Litigation in note 12 to the condensed consolidated financial statements and in Part II, Item 1, "Legal Proceedings."

### **MORTGAGE SERVICES**

This segment is primarily engaged in the origination of non-prime mortgage loans through an independent broker network, the origination of prime and non-prime mortgage loans through a retail office network, the sale and securitization of mortgage loans and residual interests, and the servicing of non-prime loans.

[Table of Contents](#)

**Mortgage Services — Operating Statistics**

	(dollars in 000s)		
Three months ended	January 31, 2006	Restated January 31, 2005	October 31, 2005
<b>Volume of loans originated:</b>			
Wholesale (non-prime)	\$ 7,941,048	\$ 7,378,071	\$ 11,078,960
Retail: Non-prime	667,542	776,797	1,111,924
Prime	343,897	238,867	429,924
	<u>\$ 8,952,487</u>	<u>\$ 8,393,735</u>	<u>\$ 12,620,808</u>
<b>Loan characteristics:</b>			
Weighted average FICO score (1)	621	615	629
Weighted average interest rate for borrowers (1)	8.27%	7.30%	7.48%
Weighted average loan-to-value (1)	80.0%	79.3%	80.6%
<b>Origination margin (% of origination volume): (2)</b>			
Loan sale premium	1.43%	2.42%	0.55%
Residual cash flows from beneficial interest in Trusts	0.81%	0.57%	0.41%
Gain on derivative instruments	0.06%	0.37%	0.48%
Loan sale repurchase reserves	(0.15%)	(0.14%)	(0.16%)
Retained mortgage servicing rights	0.67%	0.43%	0.69%
	2.82%	3.65%	1.97%
Cost of acquisition	(0.27%)	(0.60%)	(0.40%)
Direct origination expenses	(0.69%)	(0.63%)	(0.56%)
Net gain on sale — gross margin (3)	1.86%	2.42%	1.01%
Other revenues	(0.04%)	0.03%	0.02%
Other cost of origination	(1.43%)	(1.47%)	(1.23%)
Net margin	<u>0.39%</u>	<u>0.98%</u>	<u>(0.20%)</u>
Total cost of origination	2.12%	2.10%	1.79%
Total cost of origination and acquisition	2.39%	2.70%	2.19%
<b>Loan delivery:</b>			
Loan sales	\$ 8,924,788	\$ 8,348,537	\$ 12,497,526
Execution price (4)	0.51%	2.82%	1.63%

(1) Represents non-prime production.

(2) See “Reconciliation of Non-GAAP Financial Information” on page 44.

(3) Defined as gain on sale of mortgage loans (including gain or loss on derivatives, mortgage servicing rights and net of direct origination and acquisition expenses) divided by origination volume.

(4) Defined as total premium received divided by total balance of loans delivered to third-party investors or securitization vehicles (excluding mortgage servicing rights and the effect of loan origination expenses).

[Table of Contents](#)

**Mortgage Services — Operating Results**

	(in 000s)		
Three months ended	January 31, 2006	Restated January 31, 2005	October 31, 2005
<b>Components of gains on sales:</b>			
Gain on mortgage loans	\$ 161,399	\$ 172,381	\$ 66,580
Gain (loss) on derivatives	5,060	30,756	60,750
Gain on sales of residual interests	—	—	28,675
Impairment of residual interests	(8,562)	(4,553)	(8,738)
	<u>157,897</u>	<u>198,584</u>	<u>147,267</u>
<b>Interest income:</b>			
Accretion — residual interests	28,849	32,728	33,564
Other interest income	3,464	4,064	4,605
	<u>32,313</u>	<u>36,792</u>	<u>38,169</u>
Loan servicing revenue	106,065	72,928	100,386
Other	218	568	329
<b>Total revenues</b>	<u>296,493</u>	<u>308,872</u>	<u>286,151</u>
Cost of services	83,076	56,766	67,811
<b>Cost of other revenues:</b>			
Compensation and benefits	70,647	64,100	84,151
Occupancy	9,169	9,546	10,531
Other	24,682	18,698	28,737
	<u>104,498</u>	<u>92,344</u>	<u>123,419</u>
Selling, general and administrative	41,466	44,279	48,682
<b>Total expenses</b>	<u>229,040</u>	<u>193,389</u>	<u>239,912</u>
Pretax income	<u>\$ 67,453</u>	<u>\$ 115,483</u>	<u>\$ 46,239</u>

**Three months ended January 31, 2006 compared to January 31, 2005**

Mortgage Services' revenues decreased \$12.4 million, or 4.0%, for the three months ended January 31, 2006 compared to the prior year. Revenues decreased as a result of lower margins on mortgage loans sold and a decline in gains on derivatives, partially offset by higher loan servicing revenue.

The following table summarizes the key drivers of gains on sales of mortgage loans:

Three months ended January 31,	(dollars in 000s)	
	2006	2005
<b>Application process:</b>		
Total number of applications	75,103	84,810
Number of sales associates (1)	3,486	3,523
Closing ratio (2)	61.4%	60.4%
<b>Originations:</b>		
Total number of originations	46,134	51,267
Weighted average interest rate for borrowers (WAC)	8.27%	7.30%
Average loan size	\$ 194	\$ 164
Total originations	\$ 8,952,487	\$ 8,393,735
Direct origination and acquisition expenses, net	\$ 85,974	\$ 102,878
<b>Revenue (loan value):</b>		
Net gain on sale — gross margin (3)	1.86%	2.42%

(1) Includes all direct sales and back office sales support associates.

(2) Percentage of loans funded divided by total applications in the period.

(3) Defined as gain on sale of mortgage loans (including gain or loss on derivatives, mortgage servicing rights and net of direct origination and acquisition expenses) divided by origination volume.

Despite a 6.7% increase in loan origination volume, gains on sales of mortgage loans decreased \$11.0 million, primarily as a result of moderating demand by loan buyers and rapidly rising two-year swap rates. Market interest rates, based on the two-year swap, increased from an average of 3.39% last year to 4.83% in the current quarter. However, our WAC increased only 97 basis points, up to 8.27% from 7.30% in the prior year. Because of poor alignment of our WAC with market rates and increases in our funding costs, our gross margin declined 56 basis points, to 1.86% from 2.42% last year.

## Table of Contents

The value of MSR we recorded in the third quarter increased to 67 basis points from 43 basis points in the prior year, which coupled with an increase in origination volume, resulted in an increase of \$24.3 million in gains on sales of mortgage loans. In the second quarter of fiscal year 2006, we completed an evaluation of the assumptions used to value our MSRs. Based on the changes in our assumptions as a result of this evaluation, the gain on sale for our retained MSRs increased by approximately 14 basis points, primarily as a result of lower servicing costs, in particular interest paid to bondholders on monthly loan prepayments. In addition, the increase in average loan size to \$194,000 from \$164,000 in the current quarter resulted in an approximate 8 basis point increase in the value of retained MSRs.

To mitigate the risk of short-term changes in market interest rates related to our loan originations, we use interest rate swaps and forward loan sale commitments. We generally enter into interest rate swap arrangements related to existing loan applications with rate-lock commitments and for rate-lock commitments we expect to make in the next two to three weeks. During the current quarter, we recorded a net \$5.1 million in gains, compared to \$30.8 million in the prior year, related to our various derivative instruments. See note 8 to the condensed consolidated financial statements.

During the current quarter, our available-for-sale residual interests performed better than expected in our internal valuation models, with lower credit losses than originally modeled, partially offset by higher interest rates. We recorded favorable pretax mark-to-market adjustments, which increased the fair value of our residual interests \$16.8 million during the quarter. These adjustments were recorded, net of write-downs of \$3.7 million and deferred taxes of \$5.0 million, in other comprehensive income and will be accreted into income throughout the remaining life of those residual interests. Offsetting this increase were impairments of \$8.6 million, which were recorded in gains on sales of mortgage assets. Future changes in interest rates or other assumptions, based on market conditions or actual loan pool performance, could cause additional adjustments to the fair value of the residual interests and could cause changes to the accretion of these residual interests in future periods.

The following table summarizes the key drivers of loan servicing revenues:

	(dollars in 000s)	
Three months ended January 31,	2006	2005
<b>Average servicing portfolio:</b>		
With related MSRs	\$ 59,344,676	\$ 41,753,865
Without related MSRs	<u>21,046,638</u>	<u>15,584,677</u>
	<u>\$ 80,391,314</u>	<u>\$ 57,338,542</u>
<b>Ending servicing portfolio:</b>		
With related MSRs	\$ 60,787,507	\$ 43,642,212
Without related MSRs	<u>15,994,170</u>	<u>15,342,627</u>
	<u>\$ 76,781,677</u>	<u>\$ 58,984,839</u>
Number of loans serviced	466,026	387,619
Average delinquency rate	5.58%	5.02%
Weighted average FICO score	621	621
Weighted average interest rate (WAC) of portfolio	7.63%	7.38%
Value of MSRs	\$ 262,369	\$ 147,511

Loan servicing revenues increased \$33.1 million, or 45.4%, compared to the prior year. The increase reflects a higher loan servicing portfolio resulting from our continued origination growth. The average servicing portfolio for the three months ended January 31, 2006 increased \$23.1 billion, or 40.2%, to \$80.4 billion. The annualized rate earned on our entire servicing portfolio was 34 basis points for the current quarter, compared to 37 basis points in the prior year.

Total expenses for the three months ended January 31, 2006, increased \$35.7 million, or 18.4%, over the prior year. Cost of services increased \$26.3 million as a result of a higher average servicing portfolio during the current quarter and increased amortization of MSRs.

Cost of other revenues increased \$12.2 million, primarily due to \$6.5 million in increased compensation and benefits as a result of an increase in the average number of sales associates during the period and origination-based incentives. Other expenses increased \$6.0 million primarily as a

## [Table of Contents](#)

result of \$6.1 million in additional interest expense related to mortgage loans held on our balance sheet.

Selling, general and administrative expenses decreased \$2.8 million due to a reduction in corporate staffing levels.

Pretax income decreased \$48.0 million to \$67.5 million for the three months ended January 31, 2006.

### Three months ended January 31, 2006 compared to October 31, 2005

Mortgage Services' revenues increased \$10.3 million, or 3.6%, for the three months ended January 31, 2006, compared to the second quarter. Revenues increased primarily due to improving margins and higher loan servicing revenue, partially offset by lower gains on derivatives and a gain on sale of residual interests recorded in the second quarter.

The following table summarizes the key drivers of gains on sales of mortgage loans:

Three months ended	January 31, 2006	October 31, 2005
(dollars in 000s)		
<b>Application process:</b>		
Total number of applications	75,103	105,444
Number of sales associates (1)	3,486	3,910
Closing ratio (2)	61.4%	63.8%
<b>Originations:</b>		
Total number of originations	46,134	67,264
Weighted average interest rate for borrowers (WAC)	8.27%	7.48%
Average loan size	\$ 194	\$ 188
Total originations	\$ 8,952,487	\$ 12,620,808
Direct origination and acquisition expenses, net	\$ 85,974	\$ 120,981
<b>Revenue (loan value):</b>		
Net gain on sale — gross margin (3)	1.86%	1.01%

(1) Includes all direct sales and back office sales support associates.

(2) Percentage of loans funded divided by total applications in the period.

(3) Defined as gain on sale of mortgage loans (including gain or loss on derivatives, mortgage servicing rights and net of direct origination and acquisition expenses) divided by origination volume.

Gains on sales of mortgage loans increased \$94.8 million primarily as a result of better pricing in the market coupled with increases in our coupon rates and lower origination expenses. We implemented a series of increases in our coupon rate beginning in September 2005 and continuing into our third quarter, and as a result, our WAC increased 79 basis points, from 7.48% to 8.27%. These rate changes, which were partially offset by lower gains on derivatives, caused our net gain on sale — gross margin to increase 85 basis points. Our loan origination volumes decreased 29.1% from the second quarter.

To mitigate the risk of short-term changes in market interest rates, we use interest rate swaps and forward loan sale commitments. We recorded \$5.1 million in net gains during the third quarter, compared to \$60.8 million in the second quarter, related to our various derivative instruments. See note 8 to the condensed consolidated financial statements.

During the preceding quarter, we recorded a \$28.7 million gain on the sale of available-for-sale residual interests. This gain accelerated cash flows from residual interests, and resulted in realization of previously recorded unrealized gains included in other comprehensive income. We had no similar transaction in the current quarter.

## [Table of Contents](#)

The following table summarizes the key drivers of loan servicing revenues:

	(dollars in 000s)	
Three months ended	January 31, 2006	October 31, 2005
<b>Average servicing portfolio:</b>		
With related MSRs	\$ 59,344,676	\$ 55,150,897
Without related MSRs	21,046,638	22,065,265
	<u>\$ 80,391,314</u>	<u>\$ 77,216,162</u>
<b>Ending servicing portfolio:</b>		
With related MSRs	\$ 60,787,507	\$ 57,760,816
Without related MSRs	15,994,170	24,614,920
	<u>\$ 76,781,677</u>	<u>\$ 82,375,736</u>
Number of loans serviced	466,026	500,935
Average delinquency rate	5.58%	4.37%
Weighted average FICO score	621	622
Weighted average interest rate (WAC) of portfolio	7.63%	7.47%
Value of MSRs	\$ 262,369	\$ 245,928

Loan servicing revenues increased \$5.7 million, or 5.7%, compared to the second quarter. The increase reflects a higher average loan servicing portfolio, which increased \$3.2 billion, or 4.1%. The annualized rate earned on our entire servicing portfolio was 34 basis points for the current quarter, which was flat compared to the second quarter rate.

Total expenses decreased \$10.9 million compared to the second quarter. Cost of services increased \$15.3 million as a result of a higher average servicing portfolio during the current quarter. Cost of other revenues decreased \$18.9 million, primarily due to a \$13.5 million decrease in compensation and benefits as a result of 10.8% decrease in sales associates and lower origination-based incentives. Other expenses decreased \$4.1 million for the current quarter, primarily due to cost savings initiatives, partially offset by \$2.2 million in additional interest expense.

Selling, general and administrative expenses declined \$7.2 million, or 14.8%, due to cost savings initiatives and lower marketing expenses.

Pretax income increased \$21.2 million, or 45.9%, for the three months ended January 31, 2006 compared to the preceding quarter.



[Table of Contents](#)

**Mortgage Services — Operating Statistics**

	(dollars in 000s)	
Nine months ended	January 31, 2006	Restated January 31, 2005
<b>Volume of loans originated:</b>		
Wholesale (non-prime)	\$ 28,557,235	\$ 18,887,536
Retail:Non-prime	2,730,272	2,197,898
Prime	1,173,417	637,801
	<u>\$ 32,460,924</u>	<u>\$ 21,723,235</u>
<b>Loan characteristics:</b>		
Weighted average FICO score (1)	625	611
Weighted average interest rate for borrowers (1)	7.71%	7.32%
Weighted average loan-to-value (1)	80.6%	78.6%
<b>Origination margin (% of origination volume): (2)</b>		
Loan sale premium	1.39%	2.83%
Residual cash flows from beneficial interest in Trusts	0.54%	0.66%
Gain (loss) on derivative instruments	0.28%	0.13%
Loan sale repurchase reserves	(0.15%)	(0.15%)
Retained mortgage servicing rights	0.60%	0.44%
	<u>2.66%</u>	<u>3.91%</u>
Cost of acquisition	(0.39%)	(0.56%)
Direct origination expenses	(0.60%)	(0.71%)
Net gain on sale — gross margin (3)	1.67%	2.64%
Other revenues	(0.01%)	0.04%
Other cost of origination	(1.32%)	(1.57%)
Net margin	<u>0.34%</u>	<u>1.11%</u>
Total cost of origination	1.92%	2.28%
Total cost of origination and acquisition	2.31%	2.84%
<b>Loan delivery:</b>		
Loan sales	\$ 32,265,319	\$ 21,653,373
Execution price (4)	1.68%	3.21%

(1) Represents non-prime production.

(2) See “Reconciliation of Non-GAAP Financial Information” on page 44.

(3) Defined as gain on sale of mortgage loans (including gain or loss on derivatives, mortgage servicing rights and net of direct origination and acquisition expenses) divided by origination volume.

(4) Defined as total premium received divided by total balance of loans delivered to third-party investors or securitization vehicles (excluding mortgage servicing rights and the effect of loan origination expenses).

[Table of Contents](#)

**Mortgage Services — Operating Results**

	(in 000s)	
Nine months ended	January 31, 2006	Restated January 31, 2005
<b>Components of gains on sales:</b>		
Gain on mortgage loans	\$ 450,199	\$ 544,428
Gain (loss) on derivatives	91,896	28,826
Gain on sales of residual interests	28,675	—
Impairment of residual interests	(29,175)	(7,162)
	<u>541,595</u>	<u>566,092</u>
<b>Interest income:</b>		
Accretion — residual interests	93,190	96,242
Other interest income	10,837	7,948
	<u>104,027</u>	<u>104,190</u>
Loan servicing revenue	296,720	193,690
Other	740	1,205
Total revenues	<u>943,082</u>	<u>865,177</u>
Cost of services	215,279	159,558
<b>Cost of other revenues:</b>		
Compensation and benefits	235,081	165,220
Occupancy	32,329	26,468
Other	76,297	58,040
	<u>343,707</u>	<u>249,728</u>
Selling, general and administrative	135,936	122,911
Total expenses	<u>694,922</u>	<u>532,197</u>
Pretax income	<u>\$ 248,160</u>	<u>\$ 332,980</u>

**Nine months ended January 31, 2006 compared to January 31, 2005**

Mortgage Services' revenues increased \$77.9 million, or 9.0%, for the nine months ended January 31, 2006 compared to the prior year. Revenues increased as a result of higher loan servicing revenues, increased gains on derivatives and a gain on sale of residual interests, partially offset by lower margins on mortgage loans sold and impairments of residual interests.

The following table summarizes the key drivers of gains on sales of mortgage loans:

	(dollars in 000s)	
Nine months ended January 31,	2006	2005
<b>Application process:</b>		
Total number of applications	290,476	232,001
Number of sales associates (1)	3,486	3,523
Closing ratio (2)	61.8%	58.9%
<b>Originations:</b>		
Total number of originations	179,439	136,615
Weighted average interest rate for borrowers (WAC)	7.71%	7.32%
Average loan size	\$ 181	\$ 159
Total originations	\$32,460,924	\$21,723,235
Direct origination and acquisition expenses, net	\$ 321,177	\$ 275,217
<b>Revenue (loan value):</b>		
Net gain on sale — gross margin (3)	1.67%	2.64%

(1) Includes all direct sales and back office sales support associates.

(2) Percentage of loans funded divided by total applications in the period.

(3) Defined as gain on sale of mortgage loans (including gain or loss on derivatives, mortgage servicing rights and net of direct origination and acquisition expenses) divided by origination volume.

Gains on sales of mortgage loans decreased \$94.2 million, primarily as a result of rapidly rising two-year swap rates and moderating demand by loan buyers, partially offset by increased origination volume. Market interest rates, based on the two-year swap, increased from an average of 3.10% last year to 4.45% in the current year. However, our WAC increased only 39 basis points, up to 7.71% from 7.32% in the prior year. Because our WAC was not more aligned with market rates, increased

## Table of Contents

funding costs and poor pricing in the market, offset by derivative gains, our gross margin declined 97 basis points, to 1.67% from 2.64% last year. Origination volumes increased 49.4% over the prior year, due to increased productivity of our account executives and support staff, new product introductions, increased applications and a higher closing ratio.

Changes in our MSR assumptions, an increase in the average loan size and an increase in origination volume resulted in an increase of \$101.7 million related to the retained MSR component of gains on sales of mortgage loans.

As a result of rising interest rates and an increase in the notional amounts of interest rate swaps in place as a result of increased origination volumes during the current year, we recorded a net \$91.9 million in gains, compared to \$28.8 million in the prior year, related to our various derivative instruments. See note 8 to the condensed consolidated financial statements.

We recorded a \$0.6 million net favorable mark-to-market adjustment for our trading residuals during the current period, and a gain of \$28.7 million on the sale of residual interests. During the prior year, we recorded \$5.4 million in net favorable mark-to-market adjustments for our trading residuals.

During the nine months ended January 31, 2006, our available-for-sale residual interests performed better than expected in our internal valuation models, with lower credit losses than originally modeled, partially offset by higher interest rates. We recorded favorable pretax mark-to-market adjustments, which increased the fair value of our residual interests \$47.8 million during the period. These adjustments were recorded, net of write-downs of \$8.9 million and deferred taxes of \$14.9 million, in other comprehensive income and will be accreted into income throughout the remaining life of those residual interests. Offsetting this increase were impairments of available-for-sale residual interests totaling \$29.2 million, which were recorded in gains on sales of mortgage assets. Impairments increased \$22.0 million over the prior year due to interest rates increasing greater than originally modeled and a decline in the value of older residuals based on loan performance.

During the current year, Gulf Coast hurricanes caused severe damage to property, including property securing mortgage loans underlying our beneficial and residual interests. As of January 31, 2006, we have exposure to losses related to approximately \$359 million of loans in the affected areas, including \$338 million related to loans underlying securitizations in which we hold a residual interest and \$21 million related to loans that are in the Trusts or have been repurchased from the Trusts. At January 31, 2006, total 31+ days delinquencies in the affected areas were approximately \$106 million, compared to approximately \$50 million that were 31+ days delinquent prior to the hurricanes. We recorded a specific provision for estimated losses arising from hurricane damage totaling \$6.0 million during our second quarter, based on an analysis of delinquent loans within the federally declared disaster areas. Of the total provision, \$3.1 million was recorded as a reserve for losses on loans that we have or may be required to repurchase pursuant to existing standard representations and warranties, and \$2.9 million was recorded as an impairment of our residual interests. There were no significant changes to the reserves during the third quarter. In addition to the residual impairments recorded this quarter, future write-downs of residual interests may be incurred and recorded in other comprehensive income. We are continuing to analyze our exposure to potential losses and the amount of losses ultimately realized may differ from amounts previously recorded.

## [Table of Contents](#)

The following table summarizes the key drivers of loan servicing revenues:

	(dollars in 000s)	
Nine months ended January 31,	2006	2005
<b>Average servicing portfolio:</b>		
With related MSR	\$ 54,784,155	\$ 39,593,946
Without related MSR	21,210,097	12,586,192
	<u>\$ 75,994,252</u>	<u>\$ 52,180,138</u>
<b>Ending servicing portfolio:</b>		
With related MSR	\$ 60,787,507	\$ 43,642,212
Without related MSR	15,994,170	15,342,627
	<u>\$ 76,781,677</u>	<u>\$ 58,984,839</u>
Number of loans serviced	466,026	387,619
Average delinquency rate	4.76%	5.03%
Weighted average FICO score	621	616
Weighted average interest rate (WAC) of portfolio	7.51%	7.50%
Value of MSR	\$ 262,369	\$ 147,511

Loan servicing revenues increased \$103.0 million, or 53.2%, compared to the prior year. The increase reflects a higher loan servicing portfolio. The average servicing portfolio for the nine months ended January 31, 2006 increased \$23.8 billion, or 45.6%, to \$76.0 billion. The annualized rate earned on our entire servicing portfolio was 34 basis points for the current period, compared to 36 basis points in the prior year.

Total expenses for the nine months ended January 31, 2006, increased \$162.7 million, or 30.6%, over the prior year. Cost of services increased \$55.7 million as a result of a higher average servicing portfolio during the current period and increased amortization of MSR. Cost of other revenues increased \$94.0 million, primarily due to \$69.9 million in increased compensation and benefits as a result of an increase in the average number of sales associates during the period and origination-based incentives. Occupancy expenses increased \$5.9 million, or 22.1%, primarily as a result of an increase in branch offices and related equipment and utilities costs. Other expenses increased \$18.3 million primarily as a result of \$13.3 million in additional interest expense related to loans held on our balance sheet, coupled with increases in depreciation and supplies.

Selling, general and administrative expenses increased \$13.0 million primarily due to \$16.0 million in additional retail marketing costs.

Pretax income decreased \$84.8 million to \$248.2 million for the nine months ended January 31, 2006.

### **Fiscal 2006 outlook**

For the fourth quarter of fiscal year 2006, we believe we can achieve funding volumes of approximately \$8 billion to \$9 billion resulting in full year origination growth of approximately 30%. As a result of higher WACs on funded mortgage loans, a stabilizing external rate environment and further cost-saving measures, we believe we will see origination margins of 90 to 100 basis points in the fourth quarter, resulting in an origination margin of 45 to 55 basis points for the full fiscal year. During the fourth quarter, we expect to take actions to reduce staffing levels and close a number of branches, which is estimated to result in a pretax charge of \$10 million to \$12 million. Excluding the charge associated with these actions, we believe that our fourth quarter cost of origination will approximate 175 basis points.

[Table of Contents](#)

**BUSINESS SERVICES**

This segment offers middle-market companies accounting, tax and consulting services, wealth management, retirement resources, payroll and benefits services, corporate finance and financial process outsourcing.

**Business Services — Operating Statistics**

	Three months ended January 31,		Nine months ended January 31,	
	2006	2005	2006	2005
Accounting, tax and consulting:				
Chargeable hours	1,107,398	641,009	2,467,355	1,852,346
Chargeable hours per person	314	332	895	935
Net billed rate per hour	\$ 145	\$ 134	\$ 141	\$ 129
Average margin per person	\$ 25,154	\$ 25,194	\$ 65,567	\$ 64,621

**Business Services — Operating Results**

	Three months ended January 31,		Nine months ended January 31,	
	2006	Restated 2005	2006	Restated 2005
(in 000s)				
Service revenues:				
Accounting, tax and consulting	\$ 187,154	\$ 91,588	\$ 392,772	\$ 259,519
Capital markets	13,567	17,631	44,394	48,309
Payroll, benefits and retirement services	8,796	5,885	25,690	14,384
Other services	16,898	8,805	37,893	22,911
	226,415	123,909	500,749	345,123
Other	9,425	8,963	28,742	25,898
Total revenues	<u>235,840</u>	<u>132,872</u>	<u>529,491</u>	<u>371,021</u>
Cost of services:				
Compensation and benefits	130,490	68,695	297,031	206,684
Occupancy	18,339	6,627	37,514	17,031
Other	20,124	8,129	43,421	31,151
	168,953	83,451	377,966	254,866
Selling, general and administrative	67,922	43,505	161,468	125,176
Total expenses	<u>236,875</u>	<u>126,956</u>	<u>539,434</u>	<u>380,042</u>
Pretax income (loss)	<u>\$ (1,035)</u>	<u>\$ 5,916</u>	<u>\$ (9,943)</u>	<u>\$ (9,021)</u>

**Three months ended January 31, 2006 compared to January 31, 2005**

Business Services' revenues for the three months ended January 31, 2006 increased \$103.0 million, or 77.5%, from the prior year. This increase was primarily due to the acquisition of American Express Tax and Business Services, Inc., which increased accounting, tax and consulting revenues \$95.4 million.

Capital markets revenues declined \$4.1 million due to a 34.2% decline in the number of business valuation projects. Payroll, benefits and retirement services revenues increased \$2.9 million primarily due to acquisitions completed during the third and fourth quarters of fiscal year 2005. Other service revenues increased \$8.1 million as a result of acquisitions completed in the fourth quarter of fiscal year 2005 in our financial process outsourcing business and growth in wealth management services.

Total expenses increased \$109.9 million, or 86.6%, for the three months ended January 31, 2006 compared to the prior year. Cost of services increased \$85.5 million, primarily due to a \$61.8 million increase in compensation and benefits. Compensation and benefits increased \$57.9 million due to the American Express Tax and Business Services, Inc. acquisition. Baseline increases in the number of personnel and the average wage per employee, driven by marketplace competition for professional staff, also contributed to the increase. Occupancy expenses increased \$11.7 million due primarily to acquisitions. Other cost of services increased \$12.0 million primarily due to the American Express Tax and Business Services, Inc. acquisition.

Selling, general and administrative expenses increased \$24.4 million primarily due to acquisitions and additional costs associated with our business development initiatives.

## Table of Contents

The pretax loss for the three months ended January 31, 2006 of \$1.0 million, which includes losses of \$6.0 million from American Express Tax and Business Services, Inc., compared to pretax income of \$5.9 million in the prior year.

Due to the seasonal nature of this segment's business, operating results for the three months ended January 31, 2006 are not comparable to the three months ended October 31, 2005 and are not indicative of the expected results for the entire fiscal year.

### **Nine months ended January 31, 2006 compared to January 31, 2005**

Business Services' revenues for the nine months ended January 31, 2006 increased \$158.5 million, or 42.7%, from the prior year. This increase was primarily due to a \$133.3 million increase in accounting, tax and consulting revenues resulting primarily from the acquisition of American Express Tax and Business Services, Inc., which increased revenues \$115.9 million. We also benefited from a 6.9% increase in the net billed rate per hour, excluding the impact of the acquisition.

Capital markets revenues declined \$3.9 million due to a 19.6% decline in the number of business valuation projects. Payroll, benefits and retirement services revenues increased \$11.3 million, or 78.6%, primarily due to acquisitions completed during the third and fourth quarters of fiscal year 2005. Other service revenues increased \$15.0 million as a result of acquisitions completed in the fourth quarter of fiscal year 2005 in our financial process outsourcing business and growth in wealth management services.

Total expenses increased \$159.4 million, or 41.9%, for the nine months ended January 31, 2006 compared to the prior year. Cost of services increased \$123.1 million, primarily due to a \$90.3 million increase in compensation and benefits. Compensation and benefits increased \$72.0 million due to the American Express Tax and Business Services, Inc. acquisition. Baseline increases in the number of personnel and the average wage per employee, driven by marketplace competition for professional staff and other acquisitions completed in the third and fourth quarters of fiscal year 2005, also contributed to this increase. Occupancy expenses increased \$20.5 million due primarily to acquisitions. Other cost of services increased \$12.3 million primarily due to the American Express Tax and Business Services, Inc. acquisition.

Selling, general and administrative expenses increased \$36.3 million primarily due to acquisitions and additional costs associated with our business development initiatives.

The pretax loss for the nine months ended January 31, 2006 was \$9.9 million, which includes losses of \$9.3 million from American Express Tax and Business Services, Inc., compared to \$9.0 million in the prior year.

### **Fiscal 2006 outlook**

Our fiscal year 2006 outlook for our Business Services segment is consistent with the discussion in our April 30, 2005 Form 10-K/A, except for the previously announced acquisition of American Express Tax and Business Services, Inc. effective October 1, 2005. We expect organic growth for this segment's pretax income of approximately 30%, and expect the acquisition of American Express Tax and Business Services, Inc. will be accretive by two cents per diluted share for fiscal year 2006, after expected integration costs. We expect Business Services' pretax income for fiscal year 2006 to increase nearly 75% over the prior year.

[Table of Contents](#)**INVESTMENT SERVICES**

This segment is primarily engaged in offering advice-based brokerage services and investment planning. Our integration of investment advice and new service offerings are allowing us to shift our emphasis from a transaction-based client relationship to a more advice-based focus.

**Investment Services — Operating Statistics**

Three months ended	January 31, 2006	January 31, 2005	October 31, 2005
Customer trades (1)	255,879	245,612	233,262
Customer daily average trades	4,127	3,899	3,589
Average revenue per trade (2)	\$ 113.83	\$ 120.62	\$ 123.16
Customer accounts: (3)			
Traditional brokerage	426,699	431,902	428,543
Express IRAs	381,859	295,676	378,200
	<u>808,558</u>	<u>727,578</u>	<u>806,743</u>
Ending balance of assets under administration (billions)	\$ 31.4	\$ 28.4	\$ 29.8
Average assets per traditional brokerage account	\$ 72,914	\$ 65,339	\$ 68,837
Average margin balances (millions)	\$ 529	\$ 596	\$ 560
Average customer payable balances (millions)	\$ 769	\$ 989	\$ 794
Number of advisors	956	1,013	995
Included in the numbers above are the following relating to fee-based accounts:			
Customer household accounts	8,806	7,263	8,547
Average revenue per account	\$ 2,551	\$ 2,149	\$ 2,164
Ending balance of assets under administration (millions)	\$ 2,420	\$ 1,911	\$ 2,217
Average assets per active account	\$ 270,217	\$ 248,400	\$ 259,355

(1) Includes only trades on which revenues are earned (“revenue trades”). Revenues are earned on both transactional and annuitized trades.

(2) Calculated as total trade revenues divided by revenue trades.

(3) Includes only accounts with a positive balance.

**Investment Services — Operating Results**

	(in 000s)		
Three months ended	January 31, 2006	Restated January 31, 2005	October 31, 2005
<b>Service revenue:</b>			
Transactional revenue	\$ 23,078	\$ 24,654	\$ 23,332
Annuitized revenue	25,300	18,382	23,062
Production revenue	48,378	43,036	46,394
Other service revenue	8,169	7,000	8,064
	<u>56,547</u>	<u>50,036</u>	<u>54,458</u>
Margin interest revenue	15,947	11,975	14,826
Less: interest expense	(1,789)	(1,090)	(1,363)
Net interest revenue	<u>14,158</u>	<u>10,885</u>	<u>13,463</u>
Other	682	93	734
Total revenues (1)	<u>71,387</u>	<u>61,014</u>	<u>68,655</u>
<b>Cost of services:</b>			
Compensation and benefits	35,901	28,986	32,676
Occupancy	5,283	5,948	5,187
Other	5,626	5,530	5,541
	<u>46,810</u>	<u>40,464</u>	<u>43,404</u>
Selling, general and administrative	32,245	40,325	33,157
Total expenses	<u>79,055</u>	<u>80,789</u>	<u>76,561</u>
Pretax loss	<u>\$ (7,668)</u>	<u>\$ (19,775)</u>	<u>\$ (7,906)</u>

(1) Total revenues, less interest expense.

**Three months ended January 31, 2006 compared to January 31, 2005**

Investment Services' revenues, net of interest expense, for the three months ended January 31, 2006 increased \$10.4 million, or 17.0%.

Production revenue increased \$5.3 million, or 12.4%, over the prior year. Transactional revenue, which is based on sales of individual securities, decreased \$1.6 million, or 6.4%, from the prior year due primarily to a 5.5% decrease in average revenue per transactional trade and a 0.4% decrease in transactional trading volume. Annuitized revenue, which is based on sales of various fee-based products, increased \$6.9 million, or 37.6%, due to increased sales of annuities and insurance, wealth management accounts, mutual funds, and unit investment trusts (UITs). The shift in revenues from transactional to annuitized demonstrates our continued move toward an advice-based focus.

Annualized productivity averaged approximately \$201,000 per advisor during the current quarter compared to \$172,000 in the prior year. Increased productivity was due to higher production levels across all recruiting classes. Minimum production standards put into place during the fourth quarter of fiscal year 2005 resulted in 122 advisors increasing their production to date. These standards also resulted in 141 low-producing advisors leaving the company to date. We expect average advisor productivity to continue increasing throughout the remainder of the fiscal year.

Margin interest revenue increased \$4.0 million, or 33.2%, from the prior year, as a result of higher interest rates earned, partially offset by a decline in average margin balances.

Total expenses decreased \$1.7 million, or 2.1%. Cost of services increased \$6.3 million, or 15.7%, primarily as a result of \$6.9 million of additional compensation and benefits expenses resulting from higher production revenues.

Selling, general and administrative expenses decreased \$8.1 million, or 20.0%, primarily due to a \$3.9 million decline in legal expenses, due in part to a favorable arbitration outcome. Current quarter results also improved due to reduced back-office headcount relating to cost containment efforts and gains on the disposition of certain assets during the quarter. These decreases were partially offset by increased bonus accruals associated with the segment's improved performance.

The pretax loss for Investment Services for the three months ended January 31, 2006 was \$7.7 million compared to the prior year loss of \$19.8 million.



[Table of Contents](#)**Three months ended January 31, 2006 compared to October 31, 2005**

Investment Services' revenues, net of interest expense, for the three months ended January 31, 2006 increased \$2.7 million, or 4.0% compared to the preceding quarter.

Production revenue increased \$2.0 million, or 4.3%, over the preceding quarter, primarily due to increased sales of wealth management accounts, mutual funds, annuities and insurance.

Total expenses increased \$2.5 million, or 3.3%. Compensation and benefits increased \$3.2 million, primarily resulting from higher production revenues. This increase was partially offset by a \$2.5 million decrease in legal expenses, due in part to a favorable arbitration outcome.

The pretax loss for the Investment Services segment was \$7.7 million, compared to a loss of \$7.9 million in the second quarter of fiscal year 2006.

**Investment Services — Operating Statistics**

Nine months ended	January 31, 2006	January 31, 2005
Customer trades (1)	715,519	644,469
Customer daily average trades	3,766	3,410
Average revenue per trade (2)	\$ 120.94	\$ 121.68
Customer accounts: (3)		
Traditional brokerage	426,699	431,902
Express IRAs	381,859	295,676
	<u>808,558</u>	<u>727,578</u>
Ending balance of assets under administration (billions)	\$ 31.4	\$ 28.4
Average assets per traditional brokerage account	\$ 72,914	\$ 65,339
Average margin balances (millions)	\$ 554	\$ 595
Average customer payable balances (millions)	\$ 801	\$ 988
Number of advisors	956	1,013
Included in the numbers above are the following relating to fee-based accounts:		
Customer household accounts	8,806	7,263
Average revenue per account	\$ 2,319	\$ 2,039
Ending balance of assets under administration (millions)	\$ 2,420	\$ 1,911
Average assets per active account	\$ 270,217	\$ 248,400

(1) Includes only trades on which revenues are earned ("revenue trades"). Revenues are earned on both transactional and annuitized trades.

(2) Calculated as total trade revenues divided by revenue trades.

(3) Includes only accounts with a positive balance.

**Investment Services — Operating Results**

Nine months ended	(in 000s)	
	January 31, 2006	Restated January 31, 2005
<b>Service revenue:</b>		
Transactional revenue	\$ 69,245	\$ 64,594
Annuitized revenue	70,633	54,114
Production revenue	139,878	118,708
Other service revenue	24,440	19,789
	<u>164,318</u>	<u>138,497</u>
Margin interest revenue	44,866	30,773
Less: interest expense	(4,406)	(1,930)
Net interest revenue	<u>40,460</u>	<u>28,843</u>
Other	1,993	176
Total revenues (1)	<u>206,771</u>	<u>167,516</u>
<b>Cost of services:</b>		
Compensation and benefits	99,112	84,908
Occupancy	15,635	16,510
Other	16,102	14,885
	<u>130,849</u>	<u>116,303</u>
Selling, general and administrative	99,048	112,095
Total expenses	<u>229,897</u>	<u>228,398</u>
Pretax loss	<u>\$ (23,126)</u>	<u>\$ (60,882)</u>

(1) Total revenues, less interest expense.

**Nine months ended January 31, 2006 compared to January 31, 2005**

Investment Services' revenues, net of interest expense, for the nine months ended January 31, 2006 increased \$39.3 million, or 23.4%, over the prior year.

Production revenue increased \$21.2 million, or 17.8%, over the prior year. Transactional revenue increased \$4.7 million, or 7.2%, from the prior year due primarily to a 6.6% increase in transactional trading volume and a 1.8% increase in average revenue per transactional trade. Annuitized revenue increased \$16.5 million, or 30.5%, due to increased sales of annuities, insurance, mutual funds, wealth management accounts and UITs.

Annualized productivity averaged approximately \$187,000 per advisor during the current year compared to \$158,000 in the prior year. Increased productivity was due to higher production levels across all recruiting classes. Minimum production standards put into place during the fourth quarter of fiscal year 2005 resulted in 122 advisors increasing their production to date. These standards also resulted in 141 low-producing advisors leaving the company to date.

Other service revenue increased \$4.7 million due to increased money market, account and underwriting fees.

Margin interest revenue increased \$14.1 million, or 45.8%, from the prior year, as a result of higher interest rates earned, partially offset by lower average margin balances.

Total expenses increased \$1.5 million, or 0.7%. Cost of services increased \$14.5 million, or 12.5%, primarily as a result of \$14.2 million of additional compensation and benefits. This increase is primarily due to higher production revenues, partially offset by cost containment measures implemented in the fourth quarter of fiscal year 2005.

Selling, general and administrative expenses decreased \$13.0 million, or 11.6%, primarily due to a \$5.6 million decline in legal expenses, due in part to a favorable arbitration outcome. We also experienced a \$4.3 million decline in compensation and benefits from reduced back-office headcount relating to cost containment efforts and \$3.2 million in additional gains on the disposition of certain assets during the year. These decreases were partially offset by increased bonuses associated with the segment's improved performance.

The pretax loss for Investment Services through January 31, 2006 was \$23.1 million compared to the prior year loss of \$60.9 million.

[Table of Contents](#)**Fiscal 2006 outlook**

Our fiscal year 2006 outlook for our Investment Services segment has improved slightly from the discussion in our April 30, 2005 Form 10-K/A. We now anticipate the loss for Investment Services for fiscal year 2006 will be approximately \$30 million to \$37 million less than the loss reported in fiscal year 2005, instead of the \$25 million to \$35 million improvement we previously discussed.

**CORPORATE**

This segment consists primarily of corporate support departments, which provide services to our operating segments. These support departments consist of marketing, information technology, facilities, human resources, executive, legal, finance, government relations and corporate communications. Support department costs are generally allocated to our operating segments. Our captive insurance and franchise financing subsidiaries are also included within this segment, as was our small business initiatives subsidiary in the first half of fiscal year 2005.

**Corporate — Operating Results**

	Three months ended January 31,		Nine months ended January 31,	
	2006	Restated 2005	2006	Restated 2005
Operating revenues	\$ 5,857	\$ 3,425	\$ 15,266	\$ 10,290
Eliminations	(3,113)	(2,123)	(8,731)	(6,833)
Total revenues	<u>2,744</u>	<u>1,302</u>	<u>6,535</u>	<u>3,457</u>
Corporate expenses:				
Interest expense	20,334	20,937	49,566	55,673
Other	12,559	12,317	44,396	35,422
	<u>32,893</u>	<u>33,254</u>	<u>93,962</u>	<u>91,095</u>
Shared services:				
Information technology	30,068	29,023	85,615	81,435
Marketing	52,574	46,030	63,655	57,292
Finance	11,072	9,107	36,138	26,620
Other	38,610	31,584	82,944	78,179
	<u>132,324</u>	<u>115,744</u>	<u>268,352</u>	<u>243,526</u>
Allocation of shared services	(131,952)	(117,297)	(268,370)	(245,096)
Other income, net	3,511	18,398	12,430	20,574
Pretax loss	<u>\$ (27,010)</u>	<u>\$ (12,001)</u>	<u>\$ (74,979)</u>	<u>\$ (65,494)</u>

**Three months ended January 31, 2006 compared to January 31, 2005**

Marketing department expenses increased \$6.5 million, or 14.2%, due primarily to an increase in digital advertising efforts. Finance department expenses increased \$2.0 million, primarily due to additional consulting expenses and increases in compensation expenses. Other support department expenses increased \$7.0 million primarily due to increases in stock-based compensation expenses.

Other income declined \$14.9 million primarily as a result of a \$16.7 million legal recovery we received during the prior year quarter.

The pretax loss was \$27.0 million, compared with last year's third quarter loss of \$12.0 million.

Due to the nature of this segment, the three months ended January 31, 2006 are not comparable to the three months ended October 31, 2005 and are not indicative of the expected results for the entire fiscal year.

Our effective tax rate for the quarter increased to 52.3% compared to 38.8% in the prior year. This increase is due to an additional \$3.4 million in income tax expense in the current quarter related to the correction of errors in state income taxes for periods prior to May 1, 2003. See discussion of restatement in note 2A to the condensed consolidated financial statements.

**Nine months ended January 31, 2006 compared to January 31, 2005**

Corporate expenses increased \$2.9 million primarily due an increase of \$4.6 million in allocated costs from finance shared services and \$1.5 million in additional consulting, accounting and auditing expenses related to the restatement of our previously issued financial statements. These increases were partially offset by a decline of \$6.1 million in interest expense.

Our consolidated interest expense, both operating and non-operating, totaled \$74.3 million for the nine months ended January 31, 2006, an increase of \$9.3 million over the prior year. Of the \$74.3 million in total interest, \$37.0 million related to interest expense on previous acquisitions, with the

## [Table of Contents](#)

remaining \$37.3 million related to our operations recorded directly in our operating segments. Intercompany interest expense, which is also recorded directly in our operating segments, is eliminated within the Corporate segment. These eliminations resulted in the decline of \$6.1 million in interest expense recorded in our Corporate segment for the current period.

Information technology department expenses increased \$4.2 million primarily due to higher compensation and benefits. Marketing department expenses increased \$6.4 million primarily due to an increase in digital advertising. Finance department expenses increased \$9.5 million, primarily due to \$5.1 million of additional consulting expenses and an increase of \$4.5 million in compensation expenses. Other support department expenses increased \$4.8 million primarily due to increases in stock-based compensation and legal department expenses, partially offset by a decrease in supply department expenses.

Other income decreased \$8.1 million primarily as a result of a \$16.7 million legal recovery received during the prior year, partially offset by a \$3.4 million gain recognized on the sale of an investment in the current year.

The pretax loss was \$75.0 million, compared with last year's loss of \$65.5 million.

Our effective tax rate for the nine months ended January 31, 2006 decreased to 36.8% compared to 38.7% in the prior year. This decrease is due to an additional \$3.4 million in income tax expense in the current quarter related to the correction of errors in state income taxes for periods prior to May 1, 2003. See discussion of restatement in note 2A to the condensed consolidated financial statements.

## FINANCIAL CONDITION

These comments should be read in conjunction with the condensed consolidated balance sheets and condensed consolidated statements of cash flows found on pages 1 and 3, respectively.

## CAPITAL RESOURCES & LIQUIDITY BY SEGMENT

Our sources of capital include cash from operations, issuances of common stock and debt. We use capital primarily to fund working capital requirements, pay dividends, repurchase our shares and acquire businesses.

**Cash From Operations.** Cash used in operations totaled \$1.7 billion and \$1.6 billion for the nine months ended January 31, 2006 and 2005, respectively. The increase in cash used in operating activities is primarily due to increases in mortgage loans held for sale and MSR's during the current year and increased losses. These items were partially offset by a decline in income tax payments. Income tax payments totaled \$224.8 million during the current year, a decrease of \$181.8 million from the prior year.

**Issuance of Common Stock.** We issue shares of common stock, in accordance with our stock-based compensation plans, out of treasury shares. Proceeds from the issuance of common stock totaled \$105.8 million and \$119.9 million for the nine months ended January 31, 2006 and 2005, respectively.

**Dividends.** Dividends paid totaled \$118.7 million and \$106.4 million for the nine months ended January 31, 2006 and 2005, respectively. On June 8, 2005, our Board of Directors declared a two-for-one stock split of the Company's Common Stock in the form of a 100% stock distribution, effective August 22, 2005, to shareholders of record as of the close of business on August 1, 2005. All share and per share amounts in this document have been adjusted to reflect the retroactive effect of the stock split.

**Share Repurchases.** On June 9, 2004, our Board of Directors approved an authorization to repurchase 15 million shares. During the nine months ended January 31, 2006, we repurchased 9.0 million shares pursuant to this authorization and a prior authorization at an aggregate price of \$254.2 million or an average price of \$28.18 per share. There are 10.5 million shares remaining under this authorization at January 31, 2006. We plan to continue to purchase shares on the open market in accordance with this authorization, subject to various factors including the price of the stock, the availability of excess cash, our ability to maintain liquidity and financial flexibility, securities law restrictions, targeted capital levels and other investment opportunities available.

**Restricted Cash.** We hold certain cash balances that are restricted as to use. Cash and cash equivalents — restricted totaled \$430.7 million at January 31, 2006 compared to \$516.9 million at April 30, 2005. Investment Services held \$376.0 million of this total segregated in a special reserve account for the exclusive benefit of customers. Restricted cash held by Mortgage Services totaled \$48.1 million and is held primarily for outstanding commitments to fund mortgage loans. Restricted

## [Table of Contents](#)

cash of \$6.6 million at January 31, 2006 held by Business Services is related to funds held to pay payroll taxes on behalf of its customers.

**Segment Cash Flows.** A condensed consolidating statement of cash flows by segment for the nine months ended January 31, 2006 follows. Generally, interest is not charged on intercompany activities between segments.

	Tax Services	Mortgage Services	Business Services	Investment Services	Corporate	(in 000s) Consolidated H&R Block
Cash provided by (used in):						
Operations	\$(1,047,425)	\$(349,287)	\$ 5,279	\$ 14,691	\$ (312,805)	\$(1,689,547)
Investing	(49,221)	72,246	(220,392)	9,143	(66,048)	(254,272)
Financing	(2,051)	—	(21,013)	5,642	2,321,208	2,303,786
Net intercompany	1,315,359	281,885	250,446	(10,544)	(1,837,146)	—

Net intercompany activities are excluded from investing and financing activities within the segment cash flows. We believe that by excluding intercompany activities, the cash flows by segment more clearly depicts the cash generated and used by each segment. Had intercompany activities been included, those segments in a net lending situation would have been included in investing activities, and those in a net borrowing situation would have been included in financing activities.

**Tax Services.** Tax Services has historically been our largest provider of annual operating cash flows. The seasonal nature of Tax Services generally results in a large positive operating cash flow in the fourth quarter. Tax Services used \$1.0 billion in its current nine-month operations to cover off-season costs and working capital requirements. Cash used for seasonal working capital requirements was partially offset by a signing bonus received from HSBC during the second quarter in connection with the execution of a RAL distribution agreement. The signing bonus was recorded as deferred revenue at January 31, 2006. This segment also used \$49.2 million in investing activities, primarily related to capital expenditures and acquisitions.

**Mortgage Services.** This segment primarily generates cash as a result of the sale and securitization of mortgage loans and residual interests, and as its residual interests begin to cash flow. Mortgage Services used \$349.3 million in cash from operating activities primarily due to a \$192.0 million increase in mortgage loans held for sale at January 31, 2006. Additionally, net additions to MSRs totaled \$95.8 million and servicing advances increased \$61.5 million. Cash flows from investing activities consist of \$74.9 million in cash receipts on residual interests and \$30.5 million in cash received for the sale of residual interests, partially offset by \$32.9 million in capital expenditures.

**Warehouse funding.** To finance our prime originations, we utilize an on-balance sheet warehouse facility with capacity up to \$25 million. This annual facility bears interest at one-month LIBOR plus 140 to 200 basis points. As of January 31, 2006 and April 30, 2005, the balance outstanding under this facility was \$0.4 million and \$4.4 million, respectively.

To fund our non-prime originations, we utilize nine off-balance sheet warehouse Trusts. The facilities used by the Trusts had a total committed capacity of \$15.0 billion as of January 31, 2006. Amounts drawn on the facilities by the Trusts totaled \$11.2 billion at January 31, 2006. See additional discussion below in "Off-Balance Sheet Financing Arrangements."

We believe the sources of liquidity available to the Mortgage Services segment are sufficient for its needs.

**Business Services.** Business Services funding requirements are largely related to receivables for completed work and "work in process." We provide funding sufficient to cover their working capital needs. This segment provided \$5.3 million in operating cash flows during the first nine months of the year. Business Services used \$220.4 million in investing activities primarily related to the American Express Tax and Business Services, Inc. acquisition and, to a lesser extent, capital expenditures.

**Investment Services.** Investment Services, through HRBFA, is subject to regulatory requirements intended to ensure the general financial soundness and liquidity of broker-dealers. At January 31, 2006, HRBFA's net capital of \$117.6 million, which was 20.1% of aggregate debit items, exceeded its minimum required net capital of \$11.7 million by \$105.9 million.

## Table of Contents

In the first nine months of fiscal year 2006, Investment Services provided \$14.7 million in cash from its operating activities primarily due to working capital changes, including the timing of cash deposits that are restricted for the benefit of customers.

Liquidity needs relating to client trading and margin-borrowing activities are met primarily through cash balances in client brokerage accounts and working capital. We believe these sources of funds will continue to be the primary sources of liquidity for Investment Services. Stock loans have historically been used as a secondary source of funding and could be used in the future, if warranted.

Pledged securities at January 31, 2006 totaled \$51.9 million, an excess of \$11.7 million over the margin requirement. Pledged securities at the end of fiscal year 2005 totaled \$44.6 million, an excess of \$7.9 million over the margin requirement.

We believe the funding sources for Investment Services are stable. Liquidity risk within this segment is primarily limited to maintaining sufficient capital levels to obtain securities lending liquidity to support margin borrowing by customers.

### **OFF-BALANCE SHEET FINANCING ARRANGEMENTS**

Substantially all non-prime mortgage loans we originate are sold daily to the Trusts. The Trusts purchase the loans from us utilizing nine warehouse facilities that were arranged by us, bear interest at one-month LIBOR plus 45 to 400 basis points and expire on various dates during the year. During the third quarter, the warehouse facilities were increased from \$13.5 billion to \$15.0 billion. An additional uncommitted facility of \$1.5 billion brings total capacity to \$16.5 billion.

There have been no other material changes in our off-balance sheet financing arrangements from those reported at April 30, 2005 in our Annual Report on Form 10-K/A.

### **COMMERCIAL PAPER ISSUANCE AND SHORT-TERM BORROWINGS**

We maintain two unsecured CLOCs for working capital, support of our commercial paper program and general corporate purposes. In August 2005, the first CLOC expired and was replaced with a new \$1.0 billion CLOC, which expires in August 2010. Also in August 2005, the second CLOC was extended, and now expires in August 2010. These CLOCs were undrawn at January 31, 2006.

We obtained an additional \$900.0 million line of credit for the period of January 3 to February 24, 2006 to back-up peak commercial paper issuance or use as an alternate source of funding for RAL participations. This line is subject to various covenants, substantially similar to the primary CLOCs. The balance outstanding on this facility at January 31, 2006 was \$550.0 million.

There have been no other material changes in our commercial paper program from those reported at April 30, 2005 in our Annual Report on Form 10-K/A.

### **CONTRACTUAL OBLIGATIONS AND COMMERCIAL COMMITMENTS**

As a result of our failure to file this Form 10-Q by the SEC's prescribed due date, we will be unable to issue any debt securities under our shelf registration statement for a period of twelve calendar months after the month of our filing.

There have been no other material changes in our contractual obligations and commercial commitments from those reported at April 30, 2005 in our Annual Report on Form 10-K/A.

### **REGULATORY ENVIRONMENT**

There have been no material changes in our regulatory environment from those reported at April 30, 2005 in our Annual Report on Form 10-K/A.

### **FORWARD-LOOKING INFORMATION**

In this report, and from time to time throughout the year, we share our expectations for our future performance. These forward-looking statements are based upon current information, expectations, estimates and projections regarding the Company, the industries and markets in which we operate, and our assumptions and beliefs at that time. These statements speak only as of the date on which they are made, are not guarantees of future performance, and involve certain risks, uncertainties and assumptions, which are difficult to predict. Therefore, actual outcomes and results could materially differ from what is expressed, implied or forecast in these forward-looking statements. Words such as "believe," "will," "plan," "expect," "intend," "estimate," "approximate," and similar expressions may identify such forward-looking statements.

[Table of Contents](#)

There have been no material changes in our risk factors from those reported at April 30, 2005 in our Annual Report on Form 10-K/A.

**RECONCILIATION OF NON-GAAP FINANCIAL INFORMATION**

We report our financial results in accordance with generally accepted accounting principles (GAAP). However, we believe certain non-GAAP performance measures and ratios used in managing the business may provide additional meaningful comparisons between current year results and prior periods, by excluding certain items that do not represent results from our basic operations. Reconciliations to GAAP financial measures are provided below. These non-GAAP financial measures should be viewed in addition to, not as an alternative for, our reported GAAP results.

**Origination Margin**

	Three months ended			(dollars in 000s) Nine months ended	
	January 31, 2006	Restated January 31, 2005	October 31, 2005	January 31, 2006	Restated January 31, 2005
Total expenses	\$ 229,040	\$ 193,389	\$ 239,912	\$ 694,922	\$ 532,197
Add: Expenses netted against gain on sale revenues	85,974	102,878	120,981	321,177	275,217
Less:					
Cost of services	83,076	56,766	67,811	215,279	159,558
Cost of acquisition	24,305	50,084	50,591	127,201	122,194
Allocated support departments	6,549	6,244	6,793	19,173	18,391
Other	11,291	6,900	10,300	29,891	10,900
	<u>\$ 189,793</u>	<u>\$ 176,273</u>	<u>\$ 225,398</u>	<u>\$ 624,555</u>	<u>\$ 496,371</u>
Divided by origination volume	<u>\$ 8,952,487</u>	<u>\$ 8,393,735</u>	<u>\$ 12,620,808</u>	<u>\$ 32,460,924</u>	<u>\$ 21,723,235</u>
Total cost of origination	2.12%	2.10%	1.79%	1.92%	2.28%

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

There have been no material changes in our market risks from those reported at April 30, 2005 in our Annual Report on Form 10-K/A.

**ITEM 4. CONTROLS AND PROCEDURES****EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES**

We have established disclosure controls and procedures (Disclosure Controls) to ensure that information required to be disclosed in the Company's reports filed under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms. Disclosure Controls are also designed to ensure that such information is accumulated and communicated to management, including the CEO and CFO, as appropriate to allow timely decisions regarding required disclosure. Our Disclosure Controls were designed to provide reasonable assurance that the controls and procedures would meet their objectives. Our management, including the Chief Executive Officer and Chief Financial Officer, does not expect that our Disclosure Controls will prevent all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable assurance of achieving the designed control objectives and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusions of two or more people, or by management override of the control. Because of the inherent limitations in a cost-effective, maturing control system, misstatements due to error or fraud may occur and not be detected.

## [Table of Contents](#)

As of the end of the period covered by this Form 10-Q, we evaluated the effectiveness of the design and operation of our Disclosure Controls. The controls evaluation was done under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, and included consideration of the material weakness initially disclosed in our Annual Report on Form 10-K/A for the year ended April 30, 2005. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our Disclosure Controls and procedures were not effective as of the end of the period covered by this Quarterly Report on Form 10-Q because of the material weakness described below.

As disclosed initially in our Annual Report on Form 10-K/A for the year ended April 30, 2005, management identified a material weakness in our accounting for income taxes. Specifically, the Company did not maintain sufficient resources in the corporate tax function to accurately identify, evaluate and report, in a timely manner, non-routine and complex transactions. In addition, the Company had not completed the requisite historical analysis and related reconciliations to ensure tax balances were appropriately stated prior to the completion of the Company's April 30, 2005 internal control activities.

In February 2006, as a result of the ongoing controls and procedural work to remediate the material weakness in the Company's internal controls over accounting for income taxes as of April 30, 2005, management discovered additional income tax errors which required the restatement of prior periods. In preparation for its 10-Q filing, management reviewed this disclosure and believes it accurately describes the nature of the internal control deficiencies that contributed to the material weakness as of April 30, 2005.

### **CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING**

In order to remediate the aforementioned material weakness, management completed the requisite historical analysis including creation of the necessary tax basis balance sheets and current and deferred reconciliations required and related internal control testing to ensure propriety of all tax related financial statement account balances as of the Form 10-K/A filing date. The Company believes it established appropriate controls and procedures and created appropriate tax account analysis and support subsequent to April 30, 2005.

Additionally, in our efforts to remediate the material weakness management has engaged a third-party firm to assist us in performing a comprehensive evaluation of the corporate tax function, including resource requirements. Since August 1, 2005, we have hired a Senior Vice President — Corporate Tax, an Income Tax Accounting Manager, a Corporate Tax Manager and two additional Tax Analysts. In addition to implementing management's action plan addressing items from the comprehensive evaluation, we will continue to monitor the improvements in the controls over accounting for income taxes to ensure remediation of the material weakness.

Other than the changes outlined above, there were no changes that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II — OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

The information below should be read in conjunction with the information included in note 12 to our condensed consolidated financial statements.



## RAL LITIGATION

We reported in current reports on Form 8-K, previous quarterly reports on Form 10-Q, and in our annual report on Form 10-K/A for the year ended April 30, 2005, certain events and information regarding lawsuits throughout the country regarding our refund anticipation loan programs (collectively, "RAL Cases"). The RAL Cases have involved a variety of legal theories asserted by plaintiffs. These theories include allegations that, among other things, disclosures in the RAL applications were inadequate, misleading and untimely; the RAL interest rates were usurious and unconscionable; we did not disclose that we would receive part of the finance charges paid by the customer for such loans; breach of state laws on credit service organizations; breach of contract, unjust enrichment, unfair and deceptive acts or practices; violations of the federal Racketeer Influenced and Corrupt Organizations Act; violations of the federal Fair Debt Collection Practices Act; and breach of fiduciary duty to our customers in connection with the RAL program.

The amounts claimed in the RAL Cases have been very substantial in some instances. We have successfully defended against numerous RAL Cases, although several of the RAL Cases are still pending. Of the RAL Cases that are no longer pending, some were dismissed on our motions for dismissal or summary judgment, and others were dismissed voluntarily by the plaintiffs after denial of class certification. Other cases have been settled, with one settlement resulting in a pretax expense of \$43.5 million in fiscal year 2003 (the "Texas RAL Settlement"). On December 21, 2005, we entered into a settlement agreement, subject to final court approval, regarding four RAL Cases entitled *Deadra D. Cummins, et al. v. H&R Block, Inc. et al.*; *Mitchell v. H&R Block, Inc. et al.*; *Green v. H&R Block, Inc. et al.*; and *Becker v. H&R Block, Inc.* (the "Cummins Settlement Agreement"). Pursuant to the terms of the *Cummins* Settlement Agreement, we will contribute a total of up to \$62.5 million in cash for purposes of making payments to the settlement class, paying all attorneys' fees and costs to class counsel and covering service awards to the representative plaintiffs. In addition, we will pay costs for providing notice of the settlement to settlement class members. We recorded a reserve of \$52.2 million related to this settlement in our third quarter.

We believe we have meritorious defenses to the RAL Cases and we intend to defend the remaining RAL Cases vigorously. There can be no assurances, however, as to the outcome of the pending RAL Cases individually or in the aggregate. Likewise, there can be no assurances regarding the impact of the RAL Cases on our financial statements. We have accrued our best estimate of the probable loss related to the RAL Cases. The following is updated information regarding the pending RAL Cases that are class actions or putative class actions in which developments occurred during or after the three months ended January 31, 2006:

*Lynne A. Carnegie, et al. v. Household International, Inc., H&R Block, Inc., et al.*, (formerly Joel E. Zawikowski, et al. v. Beneficial National Bank, H&R Block, Inc., Block Financial Corporation, et al.) Case No. 98 C 2178, United States District Court for the Northern District of Illinois, Eastern Division, instituted on April 18, 1998. In March 2004, the court either dismissed or decertified all of the plaintiffs' claims other than part of one count alleging violations of the racketeering and conspiracy provisions of the Racketeer Influenced and Corrupt Organizations Act. On January 23, 2006, the court granted our motion for partial summary judgment applying a four-year RICO statute of limitations to the plaintiffs' claims, reducing the class period to primarily the 1995 and 1996 tax seasons and reducing the class size to approximately 1.7 million members. This class action case is scheduled to go to trial on May 15, 2006. We intend to continue defending the case vigorously, but there are no assurances as to its outcome. We have, however, engaged in settlement discussions with counsel for the plaintiffs and, while no definitive agreement has been reached, plan to pursue those negotiations to either conclusion or take the matter to trial. During the quarter ended January 31, 2006, we increased our legal reserves related to this matter by \$19.5 million in connection with these developments.

*Deadra D. Cummins, et al. v. H&R Block, Inc., et al.*, Case No. 03-C-134 in the Circuit Court of Kanawha County, West Virginia, instituted on January 22, 2003. This case is stayed and will be resolved as part of the *Cummins* Settlement Agreement, subject to final approval.

*Joyce Green, et al. v. H&R Block, Inc., Block Financial Corporation, et al.*, Case No. 97195023, in the Circuit Court for Baltimore City, Maryland, instituted on July 14, 1997. This case is stayed and will be resolved as part of the *Cummins* Settlement Agreement, subject to final approval.

## Table of Contents

*Levon and Geral Mitchell, et al. v. H&R Block, Inc. and Ruth Wren*, Case No. CV-95-2067, in the Circuit Court of Mobile County, Alabama, instituted on June 13, 1995. This case is stayed and will be resolved as part of the *Cummins* Settlement Agreement, subject to final approval.

*Lynn Becker v. H&R Block, Inc.*, Case No. CV-2004-03-1680 in the Court of Common Pleas, Summit County, Ohio, Instituted on April 15, 2004. This case is stayed and will be resolved as part of the *Cummins* Settlement Agreement, subject to final approval.

On February 15, 2006, the California attorney general filed a lawsuit in the Superior Court of California, City and County of San Francisco entitled *The People of California v. H&R Block, Inc., H&R Block Services, Inc., H&R Block Enterprises, Inc., H&R Block Tax Services, Inc., Block Financial Corporation, HRB Royalty, Inc. and Does 1 through 50*. The complaint alleges, among other things, untrue, misleading or deceptive statements in marketing RALS and unfair competition with respect to debt collection activities. The complaint seeks equitable relief, civil penalties and restitution. We intend to defend the case vigorously, but there are no assurances as to its outcome.

### **PEACE OF MIND LITIGATION**

*Lorie J. Marshall, et al. v. H&R Block Tax Services, Inc., et al.*, Civil Action 2003L000004, in the Circuit Court of Madison County, Illinois, is a class action case filed on January 18, 2002, that was granted class certification on August 27, 2003. Plaintiffs' claims consist of five counts relating to the Peace of Mind (POM) program under which the applicable tax return preparation subsidiary assumes liability for additional tax assessments attributable to tax return preparation error. The plaintiffs allege that the sale of POM guarantees constitutes (i) statutory fraud by selling insurance without a license, (ii) an unfair trade practice, by omission and by "cramming" (i.e., charging customers for the guarantee even though they did not request it or want it), and (iii) a breach of fiduciary duty. In August 2003, the court certified the plaintiff classes consisting of all persons who from January 1, 1997 to final judgment (i) were charged a separate fee for POM by "H&R Block" or a defendant H&R Block class member; (ii) reside in certain class states and were charged a separate fee for POM by "H&R Block" or a defendant H&R Block class member not licensed to sell insurance; and (iii) had an unsolicited charge for POM posted to their bills by "H&R Block" or a defendant H&R Block class member. Persons who received the POM guarantee through an H&R Block Premium office and persons who reside in Alabama are excluded from the plaintiff class. The court also certified a defendant class consisting of any entity with names that include "H&R Block" or "HRB," or are otherwise affiliated or associated with H&R Block Tax Services, Inc., and that sold or sells the POM product. The trial court subsequently denied the defendants' motion to certify class certification issues for interlocutory appeal. Discovery is proceeding. No trial date has been set.

There is one other putative class action pending against us in Texas that involves the POM guarantee. This case is being tried before the same judge that presided over the Texas RAL Settlement, involves the same plaintiffs' attorneys that are involved in the Marshall litigation in Illinois, and contains similar allegations. No class has been certified in this case.

We believe the claims in the POM action are without merit, and we intend to defend them vigorously. The amounts claimed in the POM actions are substantial, however, and there can be no assurances as to the outcome of these pending actions individually or in the aggregate. Likewise, there can be no assurances regarding the impact of these actions on our consolidated financial statements.

### **OTHER CLAIMS AND LITIGATION**

As reported previously, the NASD brought charges against HRBFA regarding the sale by HRBFA of Enron debentures in 2001. A hearing for this matter is scheduled for May 2, 2006. We intend to defend the NASD charges vigorously, although there can be no assurances regarding the outcome and resolution of the matter.

As part of an industry-wide review, the IRS is investigating tax-planning strategies that certain RSM clients utilized during fiscal years 2000 through 2003. Specifically, the IRS is examining these strategies to determine whether RSM complied with tax shelter registration and listing regulations and whether such strategies were appropriate. If the IRS were to determine that these strategies were inappropriate, clients that utilized the strategies could face penalties and interest for underpayment of taxes. Some of these clients are seeking or may attempt to seek recovery from

## Table of Contents

RSM. While there can be no assurance regarding the outcome of these matters, we do not believe its resolution will have a material adverse effect on our operations or consolidated financial statements.

On March 15, 2006, the New York Attorney General filed a lawsuit in the Supreme Court of the State of New York, County of New York entitled *The People of New York v. H&R Block, Inc. and H&R Block Financial Services, Inc.* The complaint alleges fraudulent business practices, deceptive acts and practices, common law fraud and breach of fiduciary duty with respect to the Express IRA product. The complaint seeks equitable relief, disgorgement of profits, damages and restitution, civil penalties and punitive damages. A number of civil actions were subsequently filed against us concerning the matter. We intend to defend these cases vigorously, but there are no assurances as to their outcome.

On or about March 16, 2006, two shareholder derivative actions were initiated against the Board of Directors and certain company officers. The cases involve claims that the defendants failed to properly manage certain company activities resulting in a restatement of financial results due to state tax miscalculations. These cases are pending in the Circuit Court of Jackson County, Missouri and are styled *Priscilla Fisk v. Mark A. Ernst, Jeffrey E. Nachbor, William L. Trubeck, Melanie K. Coleman, Frank J. Cotroneo, Thomas M. Bloch, Donna R. Ecton, Henry F. Frigon, Roger W. Hale, Len J. Lauer, David Baker Lewis, Tom D. Seip, Louis W. Smith, Ray Wilkins Jr. and Kenneth Baum*. The plaintiff in the second action is Robert Lang. The named defendants in the *Lang* matter are the same as in *Fisk*. We intend to defend these cases vigorously, but there are no assurances as to their outcome.

Subsequent to February 2006, a number of putative class actions alleging violations of certain securities laws were filed. The actions seek unspecified damages and equitable relief. We intend to defend these cases vigorously, but there are no assurances as to its outcome.

We have from time to time been party to claims and lawsuits not discussed herein arising out of our business operations. These claims and lawsuits include actions by state attorneys general, individual plaintiffs, and cases in which plaintiffs seek to represent a class of similarly situated customers. The amounts claimed in these claims and lawsuits are substantial in some instances, and the ultimate liability with respect to such litigation and claims is difficult to predict. Some of these claims and lawsuits pertain to RALs, the electronic filing of customers' income tax returns, the POM guarantee program and our Express IRA program. We believe we have meritorious defenses to each of these claims, and we are defending or intend to defend them vigorously, although there is no assurance as to their outcome.

In addition to the aforementioned types of cases, we are parties to claims and lawsuits that we consider to be ordinary, routine litigation incidental to our business, including claims and lawsuits ("Other Claims") concerning investment products, the preparation of customers' income tax returns, the fees charged customers for various products and services, losses incurred by customers with respect to their investment accounts, relationships with franchisees, denials of mortgage loans, contested mortgage foreclosures, other aspects of the mortgage business, intellectual property disputes, employment matters and contract disputes. We believe we have meritorious defenses to each of the Other Claims, and we are defending them vigorously. While we cannot provide assurance that we will ultimately prevail in each instance, we believe the amount, if any, we are required to pay in the discharge of liabilities or settlements in these Other Claims will not have a material adverse effect on our consolidated financial statements.

[Table of Contents](#)**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES**

A summary of our purchases of H&R Block common stock during the third quarter of fiscal year 2006 is as follows:

				(shares in 000s)
	Total Number of Shares Purchased (1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (2)	Maximum Number of Shares that May Be Purchased Under the Plans or Programs (2)
November 1 — November 30	—	\$ —	—	10,494
December 1 — December 31	2	\$24.97	—	10,494
January 1 — January 31	11	\$25.50	—	10,494

- (1) All shares were purchased in connection with the funding of employee income tax withholding obligations arising upon the exercise of stock options or the lapse of restrictions on restricted shares.
- (2) On June 9, 2004, our Board of Directors approved the repurchase of 15 million shares of H&R Block, Inc. common stock. This authorization has no expiration date.

**ITEM 6. EXHIBITS**

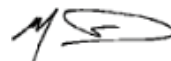
- 10.1 Amendment Number One to the Amended and Restated Sale and Servicing Agreement dated November 11, 2005 among Option One Mortgage Corporation, Option One Loan Warehouse Corporation, Option One Owner Trust 2003-5, and Wells Fargo Bank, N.A.
- 10.2 Amendment Number Four to the Second Amended and Restated Sale and Servicing Agreement dated March 8, 2005 among Option One Mortgage Corporation, Option One Loan Warehouse Corporation, Option One Owner Trust 2001-2, and Wells Fargo Bank, N.A.
- 10.3 Amendment Number Seven to the Amended and Restated Note Purchase Agreement dated November 25, 2003 among Option One Loan Warehouse Corporation, the Option One Owner Trust 2001-2, and Bank of America, N.A.
- 10.4 Amendment Number Eight to the Amended and Restated Indenture dated as of November 25, 2003 between Option One Owner Trust 2001-2 and Wells Fargo Bank, N.A.
- 10.5 Agreement of Settlement dated December 23, 2005 among H&R Block, Inc., H&R Block Services, Inc., H&R Block Tax Services, Inc., Block Financial Corporation, HRB Royalty, Inc., H&R Block Eastern Enterprises, Inc., Deadra D. Cummins, Ivan and LaDonna Bell, Levon Mitchell, Geral Mitchell, Joyce Green, Lynn Becker, Justin Sevey, Maryanne Hoekman and Renea Griffith.\*
- 10.6 Sale and Servicing Agreement dated as of December 30, 2005, among Option One Mortgage Corporation, Option One Loan Warehouse Corporation, Option One Owner Trust 2005-9, and Wells Fargo Bank, N.A.
- 10.7 Note Purchase Agreement dated as of December 30, 2005, among Option One Loan Warehouse Corporation, Option One Owner Trust 2005-9, DB Structured Products, Inc., Gemini Securitization Corp., LLC, Aspen Funding Corp. and Newport Funding Corp.
- 10.8 Indenture dated as of December 30, 2005, between Option One Owner Trust 2005-9 and Wells Fargo Bank, N.A.
- 31.1 Certification by Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification by Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification by Chief Executive Officer furnished pursuant to 18 U.S.C. 1350, as adopted by Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification by Chief Financial Officer furnished pursuant to 18 U.S.C. 1350, as adopted by Section 906 of the Sarbanes-Oxley Act of 2002.

\* Confidential information has been omitted from this exhibit and filed separately with the Commission pursuant to a confidential treatment request under Rule 24b-2.

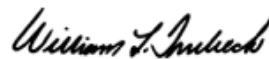
**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**H&R BLOCK, INC.**



Mark A. Ernst  
Chairman of the Board, President  
and Chief Executive Officer  
March 31, 2006



William L. Trubeck  
Executive Vice President and  
Chief Financial Officer  
March 31, 2006



Jeffrey E. Nachbor  
Senior Vice President and  
Corporate Controller  
March 31, 2006

AMENDMENT NUMBER ONE  
to the  
AMENDED AND RESTATED SALE AND SERVICING AGREEMENT,  
dated as of November 12, 2004,  
among  
OPTION ONE OWNER TRUST 2003-5,  
OPTION ONE LOAN WAREHOUSE CORPORATION,  
OPTION ONE MORTGAGE CORPORATION  
and  
WELLS FARGO BANK, N.A.

This AMENDMENT NUMBER ONE (this "Amendment") is made and is effective as of this 11th day of November, 2005, among Option One Owner Trust 2003-5 (the "Issuer"), Option One Loan Warehouse Corporation (the "Depositor"), Option One Mortgage Corporation (the "Loan Originator" and the "Servicer") and Wells Fargo Bank, N.A., (formerly known as Wells Fargo Bank Minnesota, National Association) as Indenture Trustee (the "Indenture Trustee"), to the Amended and Restated Sale and Servicing Agreement, dated as of November 12, 2004 (the "Sale and Servicing Agreement"), among the Issuer, the Depositor, the Loan Originator, the Servicer and the Indenture Trustee.

RECITALS

WHEREAS, the parties hereto desire to amend the Sale and Servicing Agreement subject to the terms and conditions of this Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. Defined Terms. Any terms capitalized but not otherwise defined herein shall have the respective meanings set forth in the Sale and Servicing Agreement.

SECTION 2. Amendments. (A) Section 1.01 of the Sale and Servicing Agreement is hereby amended by adding the following definition:

Interest-Only Loan: A loan which, by its terms, requires the related Borrower to make monthly payments of only accrued interest for the certain period of time following origination. After such interest-only period, the loan terms provide that the Borrower's monthly payment will be recalculated to cover both interest and principal so that such loan will amortize fully on or prior to its final payment date. Each Interest-Only Loan shall be identified as such on the Loan Schedule, and shall have an interest-only period of five years or as otherwise designated in the Loan Schedule.

---

(B) Section 1.01 of the Sale and Servicing Agreement is hereby amended by amending the definition of the term “Revolving Period” in its entirety to read as follows:

Revolving Period: With respect to the Notes, the period commencing on November 11, 2005 and ending on the earlier of (i) 364 days after such date, and (ii) the date on which the Revolving Period is terminated pursuant to Section 2.07.

(C) Section 2.03(b) of the Sale and Servicing Agreement is amended in its entirety to read as follows:

(b) It is the intention of the parties hereto that, other than for federal, state and local income or franchise tax purposes (as to which no treatment is herein contemplated), the transfers and assignments of the Trust Estate on the initial Closing Date, on each Transfer Date and as otherwise contemplated by the Basic Documents and the Assignments shall constitute a sale of the Trust Estate including, without limitation, the Loans and all other property comprising the Trust Estate specified in Section 2.01(a) hereof, from the Depositor to the Issuer and such property shall not be property of the Depositor. The parties hereto shall treat the Notes as indebtedness for federal, state and local income and franchise tax purposes.

(D) Section 3.01(e) of the Sale and Servicing Agreement is amended in its entirety to read as follows:

(e) There are no actions or proceedings against, or investigations of, the Depositor currently pending with regard to which the Depositor has received service of process and no action or proceeding against, or investigation of, the Depositor is, to the knowledge of the Depositor, threatened or otherwise pending before any court, administrative agency or other tribunal that (A) if determined adversely to the Depositor, has a reasonable possibility of prohibiting or preventing its entering into any of the Basic Documents to which it is a party or render the Securities invalid, (B) seek to prevent the issuance of the Securities or the consummation of any of the transactions contemplated by any of the Basic Documents to which it is a party or (C) if determined adversely to the Depositor, would prohibit or materially and adversely affect the performance by the Depositor of its obligations under, or the validity or enforceability of, any of the Basic Documents to which it is a party or the Securities, provided, however, that, insofar as this representation relates to the Loan Originator’s satisfaction of its financial covenants, there is also a reasonable possibility of an adverse determination of such action, proceeding or investigation having such effect;

(E) Section 3.02(e) of the Sale and Servicing Agreement is amended in its entirety to read as follows:

(e) There are no actions or proceedings against, or investigations of, the Loan Originator currently pending with regard to which the Loan Originator has received service of process and no action or proceeding against, or investigation of, the Loan Originator is, to the knowledge of the Loan Originator, threatened or otherwise pending before any court, administrative agency or other tribunal that (A) if determined adversely to the Loan Originator, would prohibit its entering into any Basic Document to which it is a party or render the Securities invalid, (B) seek to prevent the issuance of the Securities or the consummation of any of the transactions contemplated by any Basic Document to which it is a party or (C) if determined adversely to the Loan Originator, would have a reasonable possibility of prohibiting or preventing or materially and adversely affecting the sale of the Loans to the Depositor, the performance by the Loan Originator of its obligations under, or the validity or enforceability of, any Basic Document to which it is a party or the Securities, provided, however, that, insofar as this representation relates to the Loan Originator's satisfaction of its financial covenants, there is also a reasonable possibility of an adverse determination of such action, proceeding or investigation having such effect;

(F) Section 3.03(e) of the Sale and Servicing Agreement is amended in its entirety to read as follows:

(e) There are no actions or proceedings against, or investigations of, the Servicer currently pending with regard to which the Servicer has received service of process and no action or proceeding against, or investigation of, the Servicer is, to the knowledge of the Servicer, threatened or otherwise pending before any court, administrative agency or other tribunal that (A) if determined adversely to the Servicer, would prohibit its entering into any Basic Document to which it is a party, (B) seek to prevent the consummation of any of the transactions contemplated by any Basic Document to which it is a party, (C) if determined adversely to the Servicer, would have a reasonable possibility of prohibiting or materially and adversely affecting the performance by the Servicer of its obligations under, or the validity or enforceability of, any Basic Document to which it is a party or the Securities, provided, however, that, insofar as this representation relates to the Loan Originator's satisfaction of its financial covenants, there is also a reasonable possibility of an adverse determination of such action, proceeding or investigation having such effect, or (D) allege that the Servicer has engaged in practices, with respect to any of the Loans, that are predatory, abusive, deceptive or otherwise wrongful under any applicable statute, regulation or ordinance or that are otherwise actionable and that have a reasonable possibility of adverse determination;



(G) Section 7.02 of the Sale and Servicing Agreement is amended in its entirety to read as follows:

Section 7.02 Financial Covenants.

(a) Each of the Loan Originator and the Servicer shall maintain a minimum Tangible Net Worth of \$425 million as of any day.

(b) Each of the Loan Originator and the Servicer shall maintain a ratio of 1.0 or greater at any time pursuant to the Capital Adequacy Test, attached as Exhibit G hereto.

(c) Neither the Loan Originator nor the Servicer may exceed a maximum non-warehouse leverage ratio (the ratio of (i) the sum of (A) all funded debt (excluding debt from H&R Block, Inc. or any of its Affiliates and all non-recourse debt) less (B) 91% of its mortgage loan inventory held for sale less (C) 90% of servicing advance receivables (determined and valued in accordance with GAAP) to (ii) Tangible Net Worth) of 0.50x at any time.

(d) Each of the Loan Originator and the Servicer shall maintain a minimum liquidity facility (defined as a committed, unsecured, non-amortizing liquidity facility from H&R Block, Inc. not to mature (scheduled or accelerated) prior to the Maturity Date) in an amount no less than \$150 million. Such facility from H&R Block, Inc. cannot contain covenants or termination events more restrictive than the covenants or termination events contained in the Basic Documents.

(e) Each of the Loan Originator and the Servicer shall maintain a minimum "Net Income" (defined and determined in accordance with GAAP) of at least \$1 based on the total of the current quarter combined with the previous three quarters.

(f) Each of the Loan Originator and the Servicer, on a quarterly basis, shall provide the Noteholder Agent with an Officer's Certificate stating that the Loan Originator or the Servicer, as the case may be, is in compliance with the financial covenants set forth in this Section 7.02 and the details of such compliance.

(H) Clause (10) of Section 9.01(a) of the Sale and Servicing Agreement is amended in its entirety to read as follows:

(10) so long as the Servicer or the Loan Originator is an Affiliate of the Issuer, the occurrence of an Event of Default under the Indenture as a result of the action or inaction of the Issuer.

(I) Exhibit E to the Sale and Servicing Agreement is hereby amended by amending (xx) the following representations and warranties:

(xx) Except for Interest-Only Loans, Principal payments on the Loan commenced no more than two months after the proceeds of the Loan were disbursed. The Loan bears interest at the Loan Interest Rate. With respect to each Loan unless otherwise stated on the Loan Schedule, the Promissory Note is payable on the first day of each month in Monthly Payments which, except for Balloon Loans, are sufficient to fully amortize the original principal balance over the original term thereof and to pay interest at the related Loan Interest Rate, and, in the case of each ARM, are changed on each Adjustment Date. The Promissory Note does not permit negative amortization. No Loan is a Convertible Mortgage Loan;

(J) A new Exhibit G is added to the Sale and Servicing Agreement, in the form appended to this Amendment.

SECTION 3. Representations. In order to induce the parties hereto to execute and deliver this Amendment, each of the Issuer and the Depositor hereby jointly and severally represents to the other parties hereto and the Noteholders that as of the date hereof, after giving effect to this Amendment, (a) all of its respective representations and warranties in the Note Purchase Agreement and the other Basic Documents are true and correct, and (b) it is otherwise in full compliance with all of the terms and conditions of the Sale and Servicing Agreement.

SECTION 4. Guaranty. Reference is hereby made to that certain Guaranty, dated as of November 1, 2003 (the "Guaranty"), made by H&R Block, Inc. in favor of Wells Fargo Bank Minnesota, National Association, as indenture trustee. H&R Block, Inc., as guarantor pursuant to the Guaranty, hereby consents to this Amendment and acknowledges and agrees that the Guaranty shall remain in full force and effect and shall apply to all of the Guaranteed Obligations (as defined in the Guaranty), as such term is amended or affected by this Amendment.

SECTION 5. Limited Effect. Except as expressly amended and modified by this Amendment, the Sale and Servicing Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in the Sale and Servicing Agreement or any other instrument or document executed in connection therewith or herewith, or in any certificate, letter or communication issued or made pursuant to, or with respect to, the Sale and Servicing Agreement, any reference in any of such items to the Sale and Servicing Agreement being sufficient to refer to the Sale and Servicing Agreement as amended hereby.

SECTION 6. Fees and Expenses. The Issuer and the Depositor jointly and severally covenant to pay as and when billed by the Initial Noteholder all of the reasonable out-of-pocket costs and expenses incurred in connection with the transactions contemplated hereby and in the other Basic Documents including, without limitation, (i) all reasonable fees, disbursements and expenses of counsel to the Initial Noteholder, (ii) all reasonable fees and expenses of the Indenture Trustee and Owner Trustee and their counsel and (iii) all reasonable fees and expenses of the Custodian and its counsel.

SECTION 7. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS DOCTRINE APPLIED IN SUCH STATE.

SECTION 8. Counterparts. This Amendment may be executed by each of the parties hereto on any number of separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SECTION 9. Limitation on Liability. It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by Wilmington Trust Company, not individually or personally, but solely as Owner Trustee of Option One Owner Trust 2003-5 in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose for binding only the Issuer, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Issuer under this Amendment or any other related documents.



EXHIBIT G

**Capital Adequacy Test**

\*For each field multiply the HRB% by the Balance Sheet Amount for Required Capital

	<u>HRB TEST</u>	<u>Balance Sheet</u>	<u>Required Capital</u>
Unrestricted Cash and Equivalents	0%		
Restricted Cash	0%		
Loans Held for Sale	9%		
Servicing Advances	10%		
Beneficial Interests in trusts	10%		
Subprime Mortgage NIM Residual Interest	60%		
Real Estate Held for Sale	10%		
Furniture and Equipment	0%		
Mortgage Servicing Rights	25%		
Prepaid Expenses and Other Assets	10%		
Accrued interest receivable	10%		
Receivable from H&R Block	0%		
Intangibles and goodwill	100%		
Deferred Tax Assets	10%		
Derivative Assets	10%		
<b>Total Required Capital</b>			

Total Owners Equity on Balance Sheet Date

Less: Receivables from H&R Block / Adjusted Net Worth

Adjusted Net Worth divided by Required Capital = Ratio for Capital Adequacy Test

AMENDMENT NUMBER FOUR  
to the  
SECOND AMENDED AND RESTATED SALE AND SERVICING AGREEMENT,  
Dated as of March 8, 2005,  
among  
OPTION ONE OWNER TRUST 2001-2,  
OPTION ONE LOAN WAREHOUSE CORPORATION,  
OPTION ONE MORTGAGE CORPORATION  
and  
WELLS FARGO BANK N.A.

This AMENDMENT NUMBER FOUR (this "Amendment") is made and is effective as of this 16th day of December, 2005 (the "Effective Date"), among Option One Owner Trust 2001-2 (the "Issuer"), Option One Loan Warehouse Corporation (the "Depositor"), Option One Mortgage Corporation (the "Loan Originator" and the "Servicer") and Wells Fargo Bank N.A., as Indenture Trustee (the "Indenture Trustee"), to the Second Amended and Restated Sale and Servicing Agreement, dated as of March 8, 2005, as amended (the "Sale and Servicing Agreement"), among the Issuer, the Depositor, the Loan Originator, the Servicer and the Indenture Trustee.

RECITALS

WHEREAS, the parties hereto desire to amend the Sale and Servicing Agreement, as more expressly set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. Defined Terms. Any terms capitalized but not otherwise defined herein shall have the respective meanings set forth in the Sale and Servicing Agreement.

SECTION 2. Amendments.

(A) As of the Effective Date, Section 1.01 of the Sale and Servicing Agreement is hereby amended by deleting in its entirety the definition of "Collateral Value" and replacing such definition with the following:

"Collateral Value: (I) With respect to the Advance Note and each Business Day, 100% of the Note Principal Balance of the Advance Note on such day and (II) with respect to each Loan and each Business Day, an amount equal to the positive difference, if any, between (a) the lesser of (1) the Collateral Percentage of the Market Value of such Loan, and (2) 100% of the Principal Balance of such Loan (other than a Scratch & Dent Loan which shall be 75% of the Principal Balance thereof) each as of such Business Day, less (b) the aggregate unreimbursed Servicing Advances attributable to such Loan as of the most recent Determination Date; provided, however, that the Collateral Value shall be zero

with respect to the Advance Note following the occurrence of an Advance Note Event of Default and with respect to each Loan (1) that the Loan Originator is required to repurchase pursuant to Section 2.05 or Section 3.06 hereof or (2) which is a Loan of the type specified in subparagraphs (i)-(xi) hereof and which is in excess of the limits permitted under subparagraphs(i)-(xi) hereof, or (3) which remains pledged to the Indenture Trustee later than 180 days after its related Transfer Date, or (4) which has been released from the possession of the Custodian to the Servicer or any Loan Originator for a period in excess of 20 days or exceed the 50 Loan limit for released Loans set forth in the Custodial Agreement, or (5) that is a Loan which is 60 or more days Delinquent or a Foreclosed Loan, or (6) that is a Mixed Use Loan, or (7) that is a Wet Funded Loan and the related Loan Documents have not been delivered to the Custodian within fifteen (15) calendar days after the date of conveyance of such Loan to the Issuer hereunder, or (8) that is a Scratch and Dent Loan that has not been liquidated within 90 days after the determination of such deficiency, or (9) that has an original Principal Balance greater than \$1,500,000 or (10) that is a Scratch and Dent Loan for which a description of the related deficiency has not been reported to the Initial Noteholder within one Business Day of the related Transfer Date or (11) that has a Fatal Exception; provided, further, that (A)

(i) the aggregate Collateral Value of Loans which are Second Lien Loans may not exceed 12% of the Maximum Note Principal Balance; provided, that the aggregate Collateral Value of Second Lien Loans exclusive of any Second Lien Loans that are Piggy-Backed Loans may not exceed 5% of the Maximum Note Principal Balance;

(ii) the aggregate Collateral Value of Loans that are High LTV Loans may not exceed 10% of the Maximum Note Principal Balance;

(iii) the aggregate Collateral Value of Loans which are 30 to 59 days Delinquent as of the related Determination Date may not exceed 5% of the Maximum Note Principal Balance;

(iv) the aggregate Collateral Value of Loans with an original Principal Balance greater than \$500,000 but less than \$1,000,000 may not exceed 20% of the Maximum Note Principal Balance;

(v) the aggregate Collateral Value of Loans with an original Principal Balance greater than \$1,000,000 may not exceed 5% of the Maximum Note Principal Balance;

(vi) the aggregate Collateral Value of Loans which are classified as "CC" quality Loans may not exceed 5% of the Maximum Note Principal Balance;

(vii) the aggregate Collateral Value of Loans which are classified as "C" or "CC" quality Loans may not exceed 8% of the Maximum Note Principal Balance;

(viii) the aggregate Collateral Value of Loans which are Scratch and Dent Loans may not in the aggregate exceed 5% of the Maximum Note Principal Balance;

(ix) the aggregate Collateral Value of the Loans that are Wet Funded Loans may not exceed 50% of the Maximum Note Principal Balance; provided, for the last five (5) days

of each calendar month and the first eight (8) days of each calendar month, the aggregate Collateral Value of Loans that are Wet Funded Loans may not exceed 60% of the Maximum Note Principal Balance;

(x) the aggregate Collateral Value of Loans that conform to Fannie Mae, Freddie Mac or Ginnie Mae underwriting guidelines may not exceed 20% of the Maximum Note Principal Balance, and the interest rates of such Loans shall be sufficiently hedged to the satisfaction of the Initial Noteholder;

(xi) the aggregate Collateral Value of Loans which are Interest-Only Loans may not in the aggregate exceed 35% of the Maximum Note Principal Balance and

(xii) the aggregate Collateral Value of Advance Receivables shall in no event exceed \$112 million.

(B) each Loan shall be counted in each applicable category in (A) above and may be counted in 2 or more categories in (A) above at the same time; provided that once the Collateral Value of any Loan equals zero, it shall not be counted in any category listed in (A) above.”

(B) As of the Effective Date, Section 1.01 of the Sale and Servicing Agreement is hereby amended by inserting the following at the end of the definition of “Maximum Cumulative Loss Ratio”:

if for any such year the Pool Factor is 25% or greater.

(C) As of the Effective Date, Section 1.01 of the Sale and Servicing Agreement is hereby amended by inserting the following definitions:

“Cumulative Loss Ratio”: With respect to all mortgage loans originated in the same calendar year (each year’s loans being considered as a single pool) and serviced by Option One (whether or not such mortgage loans are sold or contributed to the Depositor), beginning with mortgage loans originated in 1997 (measured on a static pool basis) the cumulative losses on each such pool expressed as a percentage of the original principal balance of each such pool.

“Pool Factor”: With respect to all mortgage loans originated in the same calendar year (each year’s loans being considered a single pool), the current principal balance of such pool divided by the original outstanding principal balance of such pool.

(D) As of the Effective Date, Section 6.01(b) of the Sale and Servicing Agreement is hereby amended by inserting the following after clause (29) as clause (30):

(30) the Cumulative Loss Ratio for the loans originated in each year, beginning with 1997, for which the Pool Factor is, as of the Remittance Date for which the report is given, 25% or more.

SECTION 3. Representations. In order to induce the parties hereto to execute and deliver this Amendment, each of the Issuer, the Depositor and the Loan Originator hereby



jointly and severally represents to the other parties hereto and the Noteholders that as of the date hereof, after giving effect to this Amendment, (a) all of its respective representations and warranties in the Note Purchase Agreement and the other Basic Documents are true and correct, and (b) it is otherwise in full compliance with all of the terms and conditions of the Sale and Servicing Agreement.

SECTION 4. Limited Effect. Except as expressly amended and modified by this Amendment, the Sale and Servicing Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in the Sale and Servicing Agreement or any other instrument or document executed in connection therewith or herewith, or in any certificate, letter or communication issued or made pursuant to, or with respect to, the Sale and Servicing Agreement, any reference in any of such items to the Sale and Servicing Agreement being sufficient to refer to the Sale and Servicing Agreement as amended hereby.

SECTION 5. Fees and Expenses. The Issuer and the Depositor jointly and severally covenant to pay as and when billed by the Initial Noteholder all of the reasonable out-of-pocket costs and expenses incurred in connection with the transactions contemplated hereby and in the other Basic Documents including, without limitation, (i) all reasonable fees, disbursements and expenses of counsel to the Initial Noteholder, (ii) all reasonable fees and expenses of the Indenture Trustee and Owner Trustee and their counsel and (iii) all reasonable fees and expenses of the Custodian and its counsel.

SECTION 6. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS DOCTRINE APPLIED IN SUCH STATE (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

SECTION 7. Counterparts. This Amendment may be executed by each of the parties hereto on any number of separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SECTION 8. Limitation on Liability. It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by Wilmington Trust Company, not individually or personally, but solely as Owner Trustee of Option One Owner Trust 2001-2 in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose for binding only the Issuer, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Issuer under this Amendment or any other related documents.



AMENDMENT NUMBER SEVEN  
to the  
AMENDED AND RESTATED NOTE PURCHASE AGREEMENT,  
dated as of November 25, 2003  
among  
OPTION ONE OWNER TRUST 2001-2,  
OPTION ONE LOAN WAREHOUSE CORPORATION  
and  
BANK OF AMERICA, N.A.

This AMENDMENT NUMBER SEVEN (this "Amendment") is made and is effective as of this 16th day of December, 2005 (the "Effective Date"), among Option One Owner Trust 2001-2 (the "Issuer"), Option One Loan Warehouse Corporation (the "Depositor") and Bank of America, N.A. ("BofA", and in its capacity as Purchaser, the "Purchaser") to the Amended and Restated Note Purchase Agreement, dated as of November 25, 2003, as amended (the "Note Purchase Agreement"), among the Issuer, the Depositor and the Purchaser.

RECITALS

WHEREAS, the Issuer has requested that the Purchaser agree to amend the Note Purchase Agreement to increase the Maximum Note Principal Balance from \$3,500,000,000 to \$4,000,000,000 and the Purchaser has agreed to make such amendments, subject to the terms and conditions of this Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. Defined Terms. Any capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Note Purchase Agreement.

SECTION 2. Amendment. As of the Effective Date, the definition of "Maximum Note Principal Balance" in Section 1.01 is hereby deleted in its entirety and replaced with the following:

"Maximum Note Principal Balance" means, an amount equal to \$4,000,000,000, less any reductions pursuant to Section 2.06 of the Sale and Servicing Agreement.

SECTION 3. Representations. To induce the Purchaser to execute and deliver this Amendment, each of the Issuer and the Depositor hereby represents to the Purchaser that as of the date hereof, after giving effect to this Amendment, (a) all of its respective representations and warranties in the Note Purchase Agreement and the other Basic Documents are true and correct, and (b) it is otherwise in full compliance with all of the terms and conditions of the Note Purchase Agreement.

SECTION 4. Fees and Expenses. The Issuer and the Depositor jointly and severally covenant to pay as and when billed by the Purchaser all of the reasonable out-of-pocket costs and expenses incurred in connection with the transactions contemplated hereby and in the other Basic Documents including, without limitation, (i) all reasonable fees, disbursements and expenses of counsel to the Purchaser, (ii) all reasonable fees and expenses of the Indenture Trustee and Owner Trustee and their counsel and (iii) all reasonable fees and expenses of the Custodian and its counsel.

SECTION 5. Limited Effect. Except as expressly amended and modified by this Amendment, the Note Purchase Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in the Note Purchase Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to, or with respect to, the Note Purchase Agreement, any reference in any of such items to the Note Purchase Agreement being sufficient to refer to the Note Purchase Agreement as amended hereby.

SECTION 6. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS DOCTRINE APPLIED IN SUCH STATE.

SECTION 7. Counterparts. This Amendment may be executed by each of the parties hereto in any number of separate counterparts, each of which when so executed shall be an original and all of which taken together shall constitute one and the same instrument.

SECTION 8. Limitation on Liability. It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by Wilmington Trust Company, not individually or personally, but solely as Owner Trustee of Option One Owner Trust 2001-2 in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose for binding only the Issuer, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Issuer under this Amendment or any other related document.



AMENDMENT NUMBER EIGHT  
to the  
AMENDED AND RESTATED INDENTURE,  
dated as of November 25, 2003,  
between  
OPTION ONE OWNER TRUST 2001-2  
and  
WELLS FARGO BANK, N.A.

This AMENDMENT NUMBER EIGHT (this "Amendment") is made and is effective as of this 16<sup>th</sup> day of December, 2005, between Option One Owner Trust 2001-2 (the "Issuer") and Wells Fargo Bank, N.A., as Indenture Trustee (the "Indenture Trustee"), to the Amended and Restated Indenture, dated as of November 25, 2003 (the "Indenture"), between the Issuer and the Indenture Trustee.

RECITALS

WHEREAS, the parties hereto desire to amend the Indenture subject to the terms and conditions of this Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. Defined Terms. Any terms capitalized but not otherwise defined herein shall have the respective meanings set forth in the Indenture.

SECTION 2. Amendment. Effective as of December 16, 2005 and notwithstanding anything to the contrary in Amendment Number Seven, dated December 17, 2004, to the Indenture, Section 1.01 of the Indenture is hereby amended by deleting in its entirety the definition of "Maturity Date" and replacing it with the following:

"Maturity Date" means, with respect to the Notes, December 15, 2006.

SECTION 3. Representations. In order to induce the parties hereto to execute and deliver this Amendment, the Issuer hereby represents to the Indenture Trustee and the Noteholders that as of the date hereof, after giving effect to this Amendment, (a) all of its respective representations and warranties in the Indenture and the other Basic Documents are true and correct, and (b) it is otherwise in full compliance with all of the terms and conditions of the Indenture and the other Basic Documents.

SECTION 4. Limited Effect. Except as expressly amended and modified by this Amendment, the Indenture shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in the Indenture or any other instrument or document executed in connection therewith or herewith, or in any certificate, letter or

communication issued or made pursuant to, or with respect to, the Indenture, any reference in any of such items to the Indenture being sufficient to refer to the Indenture as amended hereby.

SECTION 5. Fees and Expenses. The Issuer covenants to pay as and when billed by the Initial Noteholder all of the reasonable out-of-pocket costs and expenses incurred in connection with the transactions contemplated hereby and in the other Basic Documents including, without limitation, (i) all reasonable fees, disbursements and expenses of counsel to the Initial Noteholder and (ii) all reasonable fees and expenses of the Indenture Trustee and its counsel.

SECTION 6. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS DOCTRINE APPLIED IN SUCH STATE.

SECTION 7. Counterparts. This Amendment may be executed by each of the parties hereto on any number of separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SECTION 8. Limitation on Liability. It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by Wilmington Trust Company, not individually or personally, but solely as Owner Trustee of Option One Owner Trust 2001-2 in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose for binding only the Issuer, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Issuer under this Amendment or any other related documents.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their duly authorized officers as of the day and year first above written.

OPTION ONE OWNER TRUST 2001-2

By: Wilmington Trust Company, not in its individual capacity but solely as owner trustee

By: /s/ Joann A. Rozell

Name: Joann A. Rozell

Title: Assistant Vice President

WELLS FARGO BANK, N.A., as Indenture Trustee

By: /s/ Darron C. Woodus

Name: Darron C. Woodus

Title: Assistant Vice President

[Signature Page to Amendment Eight to Amended and Restated Indenture]



**AGREEMENT OF SETTLEMENT**

NOTE: CERTAIN MATERIAL HAS BEEN OMITTED FROM THIS AGREEMENT PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT UNDER RULE 24b-2. THE LOCATIONS OF THESE OMISSIONS ARE INDICATED THROUGHOUT THE AGREEMENT BY THE FOLLOWING MARKINGS: [\*\*\*].

This Agreement of Settlement (together with all appendices, exhibits, schedules and attachments hereto, the "Agreement"), dated as of this 23<sup>rd</sup> day of December, 2005, is made by and among; H&R Block, Inc., H&R Block Services, Inc., H&R Block Tax Services, Inc., Block Financial Corp., HRB Royalty, Inc., and H&R Block Eastern Enterprise, Inc., successor to H&R Block Eastern Tax Services, Inc., for themselves and all persons or entities acting on their behalf or at their direction (collectively, the "Settling Defendants"), on the one hand, and Deadra D. Cummins, Ivan and LaDonna Bell, Levon Mitchell, Geral Mitchell, Joyce Green, Lynn Becker, Justin Sevey, Maryanne Hoekman, and Renea Griffith ("Plaintiffs"), on behalf of themselves individually and on behalf of the respective Settlement Classes they seek to represent, as defined in Section II, Paragraph 2, on the other hand (all of the foregoing mentioned in this sentence, the "Parties"). This Agreement is intended by the Settling Parties to fully, finally and forever compromise, resolve, discharge and settle the Released Claims subject to the terms and conditions set forth below.

**I. CLAIMS OF THE PARTIES**

1. The Settling Defendants and/or their Affiliates have been involved, together and separately, in facilitating Refund Anticipation Loans ("RALs") at some point from at least 1992 to the present. A RAL is a patented method by which tax customers, for a fee, can take a loan that is secured by and expected to be repaid from the anticipated proceeds of their tax refunds.
  2. On January 22, 2003, a class action was filed in the Circuit Court of Kanawha
-

County (the "Court") against some of the Settling Defendants captioned *Deadra D. Cummins, et al. v. H & R Block, Inc., et al.* (Civil Action No. 03-C-134) (the "Cummins Action"). A Second Amended Complaint was filed on October 22, 2004. The Second Amended Complaint alleged that the Settling Defendants, among others, violated the West Virginia credit service organization statute, W. Va. § 46A-6C-1 et seq., breached fiduciary duties to the plaintiffs, violated the West Virginia Consumer Credit and Protection Act, breached their contractual obligations to plaintiffs and were unjustly enriched. On December 30, 2004, the Court appointed Ms. Cummins, Ivan Bell and LaDonna Bell as class representatives and Brian Glasser of Bailey & Glasser, LLP, class counsel ("Coordinating Counsel"). The Court certified a class in the Cummins Action that included all West Virginia residents who obtained Refund Anticipation Loans through any "H&R Block" office in West Virginia from January 1, 1994 to December 31, 2004, as to all claims contained in the plaintiffs' Second Amended Complaint. A copy of the class certification order is attached as Exhibit A.

3. On June 13, 1995, a class action was filed in the Circuit Court of Mobile City, Alabama against some of the Settling Defendants captioned as *Mitchell v. H&R Block, Inc. et al.*, Case No. CV-95-2067 (Circuit Court of Mobile City, Ala.) (the "Mitchell Action"). The plaintiffs allege that certain of the Settling Defendants herein breached fiduciary duties to plaintiffs, breached their contractual obligations to plaintiffs and were unjustly enriched by offering RALs. On July 11, 2003, the Court appointed Levon Mitchell and Geral Mitchell as class representatives. The Court appointed Steve Martino, W. Lloyd Copeland of Taylor, Martino & Hedge, PC; Michael B. Hyman of Much, Shelist, Freed, Denenberg, Ament & Rubenstein; and Steven E. Angstreich of Levy, Angstreich, Finney, Baldante, Rubenstein and Coren, P.C., as class counsel in the Mitchell Action. The Court certified two classes in the

Mitchell Action as follows (i) Breach of Fiduciary Duty/Unjust Enrichment Subclass: all individuals who obtained Refund Anticipation Loans from June 13, 1993 through December 31, 1996 through any "H&R Block" office in Alabama for which the Settling Defendants herein received a license fee payment or portion of the finance charge; (ii) Breach of Contract Subclass: all individuals who obtained Refund Anticipation Loans from June 13, 1989 through December 31, 1996 through any "H&R Block" office in Alabama for which the Settling Defendants herein received a license fee payment or portion of the finance charge. A copy of the class certification order is attached as Exhibit B. The Mitchell Action has not been set for trial. A class certification ruling is on appeal.

4. On July 14, 1997, a class action was filed in the Circuit Court of Baltimore City, Maryland against some of the Settling Defendants captioned as *Green v. H&R Block, Inc. et al.*, Case No. 97195023/CC411 (Circuit Court of Baltimore City, Maryland) (the "Green Action"). The plaintiff alleges that certain of the Settling Defendants herein violated the Maryland Consumer Protection Act, engaged in fraudulent concealment and negligent misrepresentations, and breached fiduciary duties and duties of good faith and fair dealing allegedly owed to plaintiff by offering RALs. On May 19, 2000, the Court appointed Joyce A. Green as class representative. The Court appointed Charles J. Piven of Baltimore, Maryland; Steve Martino, W. Lloyd Copeland of Taylor, Martino & Hedge, PC; Michael B. Hyman of Much, Shelist, Freed, Denenberg, Ament & Rubenstein; Steven E. Angstreich of Levy, Angstreich, Finney, Baldante, Rubenstein and Coren, P.C.; and Roger Kirby of Kirby, McInerney & Squire as class counsel in the Green Action. Through the original order, and an order modifying the class definition on July 10, 2002, the Court certified a class of all persons whose income taxes were prepared at any "H&R Block" office or facility in Maryland who obtained a RAL at any time from January 1,

1992 to December 31, 1996, and did not later apply for and receive a RAL through an application that contained a retroactive arbitration clause. A copy of the class certification order, and the order modifying it, are attached, collectively, as Exhibit C. The Green Action has been set for trial in May 2006.

5. On March 19, 2004, a class action was filed in the Court of Common Pleas for Summit County, Ohio against some of the Settling Defendants captioned as *Becker v. H&R Block, Inc.*, Case No. 5:04-cv-01074-CAB (N.D. Ohio) (removed from Summit County (Ohio) Court of Common Pleas) (the "Becker Action"). Plaintiff Lynn Becker alleges that some of the Settling Defendants herein violated the Ohio credit services organization statute and the Ohio Consumer Protection Act. The plaintiff purports to represent a class of Ohio residents who, from March 19, 2000 to present, obtained a RAL through any "H&R Block" office in Ohio. Plaintiff's Motion to Remand, and Defendants' motion to dismiss and Defendants' motion to compel arbitration, are pending and unresolved as of the date of this Agreement.

6. The cases identified in paragraphs 2 through 5 will be referred to in this Agreement collectively as "the Settling Cases." The plaintiffs in the Settling Cases will be referred to collectively as "Plaintiffs."

7. This Settlement Agreement encompasses four distinct Settlement Classes. To simplify settlement administration and obtain economies of scale the parties negotiated uniform elements of settlement which apply to all of the Settlement Classes, as well as class specific elements.

8. The parties have consolidated these uniform and class specific elements within this Settlement Agreement. Plaintiffs will similarly submit consolidated filings upon application for preliminary and final approval.

9. Plaintiffs will jointly move for leave to file a Consolidated and Amended Complaint in the Circuit Court of Kanawha County, West Virginia, with such request for leave to file being expressly conditioned upon the concurrent entry of an order granting preliminary approval of this Agreement (the "Preliminary Approval Order" described below in Section X), which order will provide that in the event that the Circuit Court determines not to grant final approval of this Agreement or of any respective settlement class it contains, such Consolidated and Amended Complaint or affected portion thereof will be stricken (i) concurrently with any order rejecting approval of this Agreement or of any respective settlement class it contains, or (ii) in the event that the Circuit Court grants final approval of this Agreement or of any respective settlement class it contains but such final approval order is subsequently reversed or modified on appeal, concurrently with any order remanding the case to the Circuit Court, in either case without the need for any further order of the Circuit Court. This Agreement will be presented for preliminary review and approval in the Circuit Court simultaneously with the request for leave to file the proposed Consolidated and Amended Complaint. The Settling Defendants consent to the filing of the proposed Consolidated and Amended Complaint subject to all applicable conditions herein, including the striking thereof or any affected portion thereof in the event that the Settlement does not become final with respect to any settlement class for any reason.

10. With respect to Settling Cases pending in other courts, the parties to those respective cases will inform their respective courts of the existence of this Agreement and hereby consent to the respective courts either placing the cases on the inactive docket, staying discovery or otherwise taking whatever action such courts find best serves the efficient administration of justice while this proposed settlement is being reviewed for approval.

11. Over the past several years, Class Counsel have conducted an investigation of the

facts, including reviews of over 300,000 of the Settling Defendants' relevant documents and more than 50 depositions of the Settling Defendants' representatives, and analyzed the relevant legal issues. While Plaintiffs and Class Counsel believe that the claims asserted in their respective complaints have merit, they have also examined the benefits to be obtained under the proposed settlement and have considered the costs, risks and delays associated with the continued prosecution of this time-consuming litigation and the likely appeals of any rulings in favor of either Plaintiffs or the Settling Defendants. Plaintiffs desire to resolve the claims asserted against the Settling Defendants.

12. Plaintiffs and their Class Counsel believe that, in consideration of all the circumstances and after prolonged and serious arms-length settlement negotiations with counsel for the Settling Defendants, the proposed settlement embodied in this Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class.

13. The Settling Defendants have vigorously denied, and continue to deny, all liability with respect to any and all of the facts or claims alleged in the complaints filed in the Cummins, Mitchell, Green and Becker actions, deny that they engaged in any wrongdoing, deny that they acted improperly in any way, and deny any liability to Plaintiffs, any member of the Settlement Class, or any third party. The Settling Defendants nevertheless desire to settle Plaintiffs' claims on the terms and conditions set forth in this Agreement solely for the purpose of avoiding the burden, expense, risk and uncertainty of continuing the proceedings in currently pending actions, and for the purpose of putting to rest all controversies among the Parties. In no event is this Agreement to be construed as, or is to be deemed evidence of, an admission or concession on the part of the Settling Defendants or Released Parties (as defined herein) with respect to: any claim by Plaintiffs and the Settlement Class; any fault, liability, wrongdoing or

damage; the merits of any defenses that the Settling Defendants asserted; or the propriety of class certification of the Settlement Class if the Action were to be litigated rather than settled.

14. Mediation in the *Cummins* action was initially unsuccessful in February 2004. In the Summer of 2005, Class Counsel began to explore the possibility of further mediation. Thereafter, Class Counsel and counsel for the Settling Defendants commenced formal settlement negotiations on August 15, 2005, that took place in face-to-face mediation sessions with Thomas Meites, a mediator suggested to the Parties by United States District Judge Elaine Bucklo, the presiding judge in *Carnegie v. Household International et al.*, 98 C 2178 (N.D. Ill.) (the “*Carnegie Action*”), a separate case not affected by this proposed Agreement, with mediation sessions conducted on August 15, 16, 29 and September 8, 2005. The Parties thereafter conducted extensive arms’-length negotiations in numerous negotiation sessions.

15. The Parties intend that the proposed settlement embodied in this Agreement resolve all the claims and disputes between Plaintiffs, Settlement Class Members, the Settling Defendants, and all Released Parties with respect to the Released Claims.

## II. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, for purposes of this Agreement and all its Appendices or Exhibits, the following terms shall have the meanings as set forth below.

1. “Administration” or “Administration Costs” means the act of, and the costs associated with, administering the settlement, including but not limited to maintaining an e-filing process for claims of class members, processing paper claims forms, responding to class member inquiries, dealing with disputes from class members, distributing checks to class members, preparing and disseminating reports to class counsel about administrative issues, and post-

distribution settlement administration and related activities. Administration Costs do not include Notice Costs.

2. "Administrator" means the third party administrator to be hired by the Parties through competitive bidding to handle all or parts of Notice and Administration.

3. "Affiliates" means (i) all past, present or future persons or entities of any kind controlling, controlled by, or under common ownership with any of the Settling Defendants and their respective predecessors and successors, including without limitation any parent companies, subsidiaries, sister companies, or divisions, and (ii) any and all persons or entities acting on behalf of or at the direction of any of the foregoing, including but not limited to any franchisee of any Settling Defendant.

4. "Class Counsel" means and includes the following:

Steven E. Angstreich, Esq.  
Michael Coren, Esq.  
Carolyn C. Lindheim, Esq.  
Levy Angstreich Finney Baldante  
Rubenstein & Coren, P.C.  
1616 Walnut Street, 5<sup>th</sup> Floor  
Philadelphia, PA 19103  
Fax: 215-545-2642  
Counsel to the Green/Mitchell Class

Daniel Hume, Esq.  
Kirby McInerney & Squire, LLP  
830 Third Avenue, 10<sup>th</sup> Floor  
New York, NY 10022  
Fax: 212-751-2540  
Counsel to the State Law Class

Ronald L. Futterman, Esq.  
Michael I. Behn, Esq.  
William W. Thomas, Esq.  
Futterman & Howard, Chtd.  
122 South Michigan Avenue-Suite 1850  
Chicago, IL 60603  
Fax: 312-427-1850  
Counsel to the State Law Class

Michael B. Hyman, Esq.  
William H. London, Esq.  
Much Shelist Freed Denenberg  
Ament & Rubenstein, P.C.  
191 North Wacker, Suite 1800  
Chicago, IL 60606  
Fax: 312-521-2100  
Counsel to the State Law Class

Brian A. Glasser, Esq.  
H. F. Salsbery, Esq.  
John Barrett, Esq.  
Eric Snyder, Esq.  
Bailey & Glasser, LLP

Steven A. Martino, Esq.  
Frederick T. Kuykendall, III, Esq.  
W. Lloyd Copeland, Esq.  
Taylor, Martino & Kuykendall  
51 St. Joseph Street



227 Capitol Street  
Charleston, West Virginia 25301  
Fax: 304-342-1110  
Counsel to the West Virginia Class  
and Coordinating Counsel

Mobile, AL 36602  
Fax: 251-405-5080  
Counsel to the Green/Mitchell Class

John Roddy, Esq.  
Gary Klein, Esq.  
Elizabeth Ryan, Esq.  
Roddy Klein & Ryan  
727 Atlantic Avenue, 2nd Floor  
Boston, Massachusetts 02111  
Fax: 617-357-5030  
Counsel to the Becker Class

Ronald Frederick, Esq.  
Ronald Frederick & Associates, LLC  
55 Public Square, Suite 1300  
Cleveland, Ohio 44113  
Counsel to the Becker Class  
Fax: 216-781-1749

Charles J. Piven, Esq.  
Law Offices of Charles J. Piven, P.A.  
The World Trade Center — Baltimore  
401 East Pratt Street, Suite 2525  
Baltimore, Maryland 21202  
Fax: 410-685-1300  
Counsel to the Green/Mitchell Class

5. “Coordinating Counsel” means Brian Glasser and Bailey & Glasser, LLP.

6. The “Effective Date” for purposes of the Settlement shall be five (5) business days after the latest of the following dates: (a) the date upon which the time to commence an appeal of the Final Order has expired, if no one has commenced any appeal or writ proceeding challenging the Final Order; or (b) the date the Final Order has been affirmed on appeal or writ review (or the appeal or writ petition has been dismissed), and the time within which to seek further review has expired. Notwithstanding the foregoing, the Settling Defendants may, within their sole discretion, declare an earlier Effective Date, namely, any date after the Final Order is entered.

7. “Excluded Claims” means, collectively, (i) all claims, including claims made pursuant to authorizations to amend the operative complaints, asserted in *Marshall v. H&R Block, Inc.*, No. 02-L-04 (Circuit Court for the Third Judicial Circuit, Madison County, Illinois)

and *Soliz v. H&R Block, Inc.*, Cause No. 03-032-D (District Court for Kleberg County, Texas) arising from or related to the Settling Defendants' "Peace of Mind" product; (ii) all claims, including claims made pursuant to authorizations to amend the operative complaints, asserted in *Marshall v. H&R Block, Inc.*, No. 03-L-576 (Circuit Court for the Third Judicial Circuit, Madison County, Illinois); *McNulty et al. v. H&R Block, Inc.*, No. 2002 CV 4654 (Court of Common Pleas, Lackawanna County, Pennsylvania); and *Soliz v. H&R Block, Inc.*, Cause No. 03-199-D (District Court for Kleberg County, Texas) arising from or related to electronic filing fees; (iii) all claims for RICO violations or breach of contract asserted by members of the class pending and certified for merits trial in *Carnegie v. Household International et al.*, 98 C 2178 (N.D. Ill.) (the "*Carnegie Action*") as of the Effective Date, including such RICO and breach of contract claims of persons who are also members of the classes certified in the *Green Action* and the *Mitchell Action*; (iv) all individual claims of Lynne Carnegie currently pending in *Carnegie v. H&R Block, Inc.*, 96/606129 (Supreme Court of the State of New York, County of New York) as of the Effective Date; (v) all claims pending in *Basile v. H&R Block, Inc.*, Case No. 93043245 (Court of Common Pleas for Philadelphia County) as of the Effective Date; (vi) claims under state law based solely on allegations that a tax preparer failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and (vii) any and all claims to enforce the terms and conditions of this Agreement.

8. "Final Order" means the Final Order of Judgment and Dismissal to be entered if the Circuit Court grants final approval to this settlement as proposed on behalf of one or more of the Settlement Classes, substantially in the form of Exhibit D.

9. "Notice" means the notice to the members of the respective Settlement Classes,

approved by the Court in the Preliminary Approval Order.

10. "Notice Costs" means the entire cost of providing the notice to all such Settlement Class Members, including the *Cummins* Settlement Class, ordered by the Court for mail and publication substantially conforming to the proposed notice plan set forth in Section X, Paragraph 3. Notice Costs further includes all the costs associated with compiling the database of members of the Settlement Classes, preparing the database of members of the Settlement Classes, printing the mailed notice, printing the claims forms, mailing the notice and claims form by means of first class mail, and the cost of developing and maintaining a central website containing materials about the Settlement Agreement. This cost will be borne by the Settling Defendants. The database to be utilized for purposes of the initial mailing of notice will be the database previously updated as of August 2005 by Analytics, Inc.

11. "Preliminary Approval Order" means the order to be entered if the Circuit Court grants preliminary approval of this Agreement and certifies the Settlement Classes for settlement purposes only, substantially in the form attached as Exhibit E.

12. "RAL" is a Refund Anticipation Loan.

13. "Released Claims" includes any claims, Unknown Claims as defined herein, rights, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, liens, contracts, liabilities, agreements, costs, expenses of any nature by the Plaintiffs and Settlement Class Members against the Released Parties arising out of, or in connection with, or in any way related to any RAL transaction. This includes any activity engaged in or any services performed directly or indirectly in connection with any RAL, including but not limited to tax preparation, electronic filing, RAL document preparation or related services, RAL contractual commitments, RAL advertisements or RAL solicitations, money collected in connection with a RAL, RAL

related fees, RAL license fees, RAL participation interest revenue, and the RAL waiver fee, or other policies or procedures relating to any RAL made within the Settlement Class Period, whether for damages, fines, punitive damages, exemplary damages, penalties, restitution, disgorgement, or any declaratory, injunctive or any other equitable relief of any kind, whether based on any federal or state statute, regulation or common law theory (specifically including but not limited to claims for fraudulent misrepresentation or omission, state consumer protection or fraud laws, TILA, RICO, credit service organization statutes, breach of fiduciary duty, agency, loan broker, unjust enrichment and/or breach of contract). Notwithstanding the foregoing, "Released Claims" specifically excludes the "Excluded Claims" described in Section II, paragraph 7.

14. "Released Parties" means, collectively, H&R Block, Inc., H&R Block Services, Inc., H&R Block Tax Services, Inc., Block Financial Corp., HRB Royalty, Inc., H&R Block Eastern Enterprise, Inc., successor to H&R Block Eastern Tax Services, Inc., all direct or indirect franchise or sub-franchise offices operating under the trade name of "H&R Block," and (a) any and all of their respective past and present parent companies, subsidiaries, divisions, affiliates, franchises, predecessors, successors, and assigns; (b) their respective present and former general partners, limited partners, principals, members, directors and their attorneys, officers, employees, stockholders, owners, agents, insurers, reinsurers, attorneys, the representatives, heirs, executors, personal representatives, administrators, trustees, transferees and assigns of any of them; and (c) all persons or entities acting on behalf or at the direction of any of the foregoing. "Released Parties" shall be deemed to include Melanie Lester, Jason Brown, Bobby Hague, Robert Heckert, Cynthia Lantz, Clarence E. Miller, Carla R. Lewis, and Debra Riggleman, who were named defendants in the *Cummins* Action, regardless of whether they are named in the Consolidated

and Amended Complaint.

15. The "Settlement Class" or "Settlement Classes" as the context may require, includes the following classes:

(a) State Law Class: All residents of the several jurisdictions identified in the chart attached as Exhibit F who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears stores) from January 1, 2000 through the date of this Agreement;

(b) West Virginia Class: All West Virginia residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears stores) from January 1, 1994 through the date of this Agreement .

(c) Becker Class: All Ohio residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears stores) from January 1, 2000 through the date of this Agreement.

(d) Mitchell/Green Class: All Maryland residents who applied for and obtained a RAL at any H&R Block office in Maryland from January 1, 1992 through December 31, 1996 and did not thereafter apply for and obtain a RAL subject to an arbitration provision

and all individuals who obtained a RAL from June 13, 1989 through December 31, 1996 through any "H&R Block" office in Alabama for which the Settling Defendants herein received a license fee payment or portion of the finance charge.

(e) Excluded from the Settlement Class are current or former directors or officers of the Settling Defendants and their counsel.

16. "Settlement Class Members" or "Members of the Settlement Classes" as the context may require, means all persons who are included in the class definitions in Paragraph 14, above, and who do not validly and timely elect exclusion from the Settlement Class pursuant to W. Va. R. Civ. P. 23 and under the conditions and procedures as determined by the Court.

17. "Settlement Class Period" means the time periods associated with each Settlement Class.

18. "Unknown Claims" means all claims arising out of facts relating to any matter covered by the Released Claims, which in the future are or may be found to be other than or different from the facts now believed to be true, so that each person or entity so affected shall be deemed to have expressly waived all of the rights and benefits of any provision of the law, either state or federal, providing that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor, including without limitation § 1542 of the California Civil Code, which reads as follows:

Section 1542. General Release: extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

All persons or entities providing releases under this Agreement, including all Settlement Class

Members, upon the Effective Date shall be deemed to have, and by operation of the Final Order shall have, waived any and all provisions, rights or benefits conferred by § 1542 of the California Civil Code or any comparable law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. All persons or entities providing releases under this Agreement may hereafter discover facts other than or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but such person or entity, upon the Effective Date, shall be deemed to have, and by operation of the Final Order in the Action shall have, fully, finally, and forever settled and released any and all such claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

### **III. CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES ONLY**

For settlement purposes only, the Parties agree that, as part of the preliminary approval process, the Court may make preliminary findings and enter an order granting provisional certification of the respective Settlement Classes subject to final findings and certification in the Final Order, and appointing both Plaintiffs and Class Counsel as representatives of the proposed Settlement Classes. For settlement purposes only, the respective Settlement Classes are certified pursuant to Rule 23(b)(3) of the West Virginia Rules of Civil Procedure. *The Settling Defendants do not consent to certification of the respective Settlement Classes, or to the filing of the proposed Consolidated and Amended Complaint, for any purpose other than to effectuate the*

settlement of the actions and claims identified in this Agreement. If one or more of the Settlement Classes contained in this Agreement is not approved by the Court or is terminated pursuant to its terms or for any other reason, or is disapproved in a final order by any court of competent jurisdiction, (a) the order certifying the disapproved Settlement Class and all preliminary and/or final findings or stipulations regarding certification of such disapproved Settlement Class shall be automatically vacated upon notice to the Court of that portion of this Agreement's termination or disapproval and in such instance, the disapproved Settlement Class shall proceed as indicated: (i) the Cummins Action may proceed with the West Virginia merits class previously certified by the Court as of December 30, 2004, and as though the Settlement Class had never been certified and any related findings or stipulations pursuant to this agreement had never been made; or (ii) the Mitchell Action may proceed with the merits class previously certified by the court as of July 11, 2003, including the appeal of class certification, and as though the Settlement Class had never been certified and any related findings or stipulations had never been made; or (iii) the Green Action may proceed with the merits class previously certified by the court as of May 19, 2000, and as though the Settlement Class had never been certified and any related findings or stipulations had never been made; and (b) the Plaintiffs will withdraw their motion for leave to file the proposed Consolidated and Amended Complaint in its present form and, if already filed, portions of the Consolidated and Amended Complaint related to the disapproved Settlement Class will be stricken pursuant to the terms of the order related to its filing; and (c) the Parties reserve all procedural or substantive rights as presently exist, including all affirmative defenses, in all RAL litigation pending as of the date of execution of this Agreement, including but not limited to, the Becker Action and Basile v. H&R Block, No. 9304-3246 (Court of Common Pleas for Philadelphia County, Pennsylvania).



#### **IV. SETTLEMENT CONSIDERATION**

##### **1. ECONOMIC RELIEF.**

(a) The Settling Defendants will contribute up to \$62.5 million in cash, by wire transfer, to be used for purposes of making payments to Settlement Class Members (the "Settlement Fund"), paying for all attorneys' fees and costs to Class Counsel, and covering service awards to representative Plaintiffs. This is substantially an "all-in" payment.

(b) The Settlement Fund will be held in one account, the interest on which account will accrue first to the benefit of the Settlement Fund. The account will be held at a major bank agreed to by the Coordinating Counsel and Counsel for the Settling Defendants and approved by the Court and shall be under the joint control of the Settling Defendants and Coordinating Counsel.

(c) The Settling Defendants will not be required to make any additional payments to or on behalf of the Settlement Class Members for any purpose whatsoever, except for the Notice Costs substantially conforming to the proposed notice plan set forth in Section X, Paragraph 3, which shall be paid separately by the Settling Defendants.

(d) Each Settlement Class Member who submits a timely, proper and undisputed Claim Form as defined in Section XII, Paragraph 1 (a "Valid Claim") will be entitled to a payment from the Settlement Fund for each RAL that he or she obtained by or through the Settling Defendants or their Affiliates for their claim. As provided in Section IV, Paragraph 1(g), the amount paid to individual Settlement Class Members will be calculated on a pro-rata basis (based on each Settlement Class Member's total claim for all RALs previously obtained during the respective Settlement Class Member's Settlement Class Period) from the cash funds remaining in the Settlement Fund after deduction for all items to be paid for from the Settlement

Fund under this Agreement, including Administration Costs, service fees, and attorneys' fees and costs awarded to Class Counsel. Notwithstanding the foregoing, if a Settlement Class Member has previously released his or her claims for any RAL or RALs covered by any prior individual or class settlement with any of the Settling Defendants, such person cannot recover any further cash payment from the Settlement Fund with respect to such settled RAL or RALs under the terms of this Paragraph, but he or she will still be entitled to receive payments under the terms of this Paragraph solely with respect to any other non-settled RALs he or she may have obtained, on the same terms and conditions as applicable to other Settlement Class Members.

(e) In the event that a RAL was issued to joint borrowers and a Valid Claim is submitted with respect to such RAL, such couple or joint interest shall be treated as one Settlement Class Member for all purposes under this Agreement; provided, however, that if the joint borrowers are contesting the entitlement of the other to the settlement consideration, each joint borrower will be entitled to one half of the settlement consideration with respect to such RAL. Settlement Class Members who are joint RAL borrowers waive any and all claims against the Settlement Administrator and the Released Parties with regard to payments made to joint RAL borrowers.

(f) The Settling Defendants will contribute the amount required to the Settlement Fund no later than 31 days after the Court's entry of the Final Order, or the Effective Date, whichever occurs first. No payments will be made to or on behalf of the Settlement Class Members until at least 60 days after the Effective Date. In the event that the settlement does not become final and the Effective Date does not occur for any reason, this amount, together with all accrued interest, shall promptly be returned to the Settling Defendants by either transfer of the ownership of the account or wire transfer.

(g) The Settlement Fund shall be distributed to class members as follows: (i) \$32.5 million of the Settlement Fund shall be paid as attorneys' fees and costs to Class Counsel in the West Virginia Cummins Class, service awards to representative Plaintiffs in the West Virginia Cummins Class, *pro rata* Administration Costs of the Settlement Fund attributable to the West Virginia Class, and further consideration to members of the West Virginia Class not to exceed \$175 per RAL (after attorneys' fees and expenses and Administration Costs attributable to West Virginia) on a *pro rata* basis; and (ii) a total of up to \$30 million of the Settlement Fund shall be paid to members of the other classes in this action as attorneys' fees and costs for their Class Counsel, service awards to representative Plaintiffs in such other classes, *pro rata* Administration Costs of the Settlement Fund attributable to these other classes, and further consideration on a *pro rata* basis to such other class members in the amounts outlined on the chart attached as Exhibit F. A class member's right to a settlement payment pursuant to this Agreement is a conditional right that terminates if a class member to whom the Administrator mailed a settlement payment fails to cash his or her check within six months of its mailing date. In such case the check shall be null and void (the checks shall be stamped or printed with a legend to that effect) and the Administrator and the Parties shall have no further obligation under the terms of this Agreement to make payment to such class member, with such amount reverting to the Settlement Fund effective immediately upon the expiration of such six-month period. The Administrator will provide to Coordinating Counsel and counsel for the Settling Defendants and Coordinating Counsel will file with the Court a final accounting of the Settlement Funds within 30 days after the latest date upon which class members' checks expire.

(h) In the event that there are any residual amounts that remain in the Settlement Fund after the Effective Date and distribution pursuant to the terms of this

Agreement, the remaining amounts in the Settlement Fund shall be distributed to a charity or charities or scientific or educational organizations pursuant to Section 501(c)(3) of the Internal Revenue Code jointly proposed by the Plaintiffs and Settling Defendants and approved by the Court. The Plaintiffs and Settling Defendants propose the West Virginia University College of Law. If that proposal is disapproved and the parties are unable to reach agreement on another proposed charity, then the Court shall designate a charitable organization to which the remaining amounts of the Settlement Fund shall be distributed.

**V. REPRESENTATIONS, WARRANTIES AND CONFIRMATORY DISCOVERY**

1. Settling Defendants represent and warrant that, to the best of their knowledge and based in reliance on data obtained from Analytics Inc. and the RAL lenders, no more than 15,700,000 RALs are attributable to members of the Settlement Class (excluding only the RALs attributable to the West Virginia Class). Should confirmatory discovery or other information prove the stated number of RALs inaccurate, Settling Defendants shall increase the Settlement Fund by a proportional amount equal to the ratio between the total number of RALs and 15,700,000.

2. Settling Defendants further represent and warrant that, to the best of their knowledge and based in reliance on data obtained from Analytics Inc. and the RAL lenders, no more than 1,585,000 RALs are attributable to members of the Becker Class. Should confirmatory discovery or other information prove the stated number of RALs inaccurate, Settling Defendants shall increase the Settlement Fund attributable to the Becker Class by a proportional amount equal to the ratio between the total number of RALs in Ohio and 1,585,000.

3. Settling Defendants further represent and warrant that, to the best of their knowledge and based in reliance on data obtained from Analytics Inc. and the RAL lenders, no

more than 560,000 RALs are attributable to members of the Mitchell/Green Class. Should confirmatory discovery or other information prove the stated number of RALs inaccurate, Settling Defendants shall increase the Settlement Fund attributable to the Mitchell/Green Class by a proportional amount equal to the ratio between the total number of RALs in the *Mitchell* and *Green* cases and 560,000.

4. Prior to the date set for the preliminary approval hearing, the Settling Defendants provided Class Counsel with a summary of the number of Settlement Class members in each jurisdiction covered by this Agreement and the number of RALs within each such jurisdiction obtained within the applicable class period. Prior to mailing any notice, Settling Defendants will provide to Class Counsel an affirmation that the database has been checked against the National Change of Address (NCOA) database.

5. Settling Defendants represent and warrant that (i) all "Peace of Mind" related cases involving a class allegation with which they have been served or of which they are aware as of the date of this Agreement, and (ii) all electronic filing related cases involving a class allegation with which they have been served or of which they are aware as of the date of this Agreement have been excluded from this Agreement, by name, in the definition of Excluded Claims.

6. Settling Defendants represent and warrant that all RAL-related cases involving a class allegation with which they have been served or of which they are aware as of the date of this Agreement are either specifically identified in the Agreement and thereby proposed for settlement or specifically excluded from this Agreement, by name, in the definition of Excluded Claims.

7. Subsequent to preliminary approval of this settlement, Coordinating Counsel may

conduct confirmatory discovery sufficient to assure that (1) the Settling Defendants' representations and warranties that the Settlement Class encompasses a maximum of 15,700,000 RALs are accurate; (2) the Settling Defendants' representations and warranties that the Becker Class encompasses a maximum of 1,585,000 RALs are accurate; (3) the Settling Defendants' representations and warranties that the Mitchell/Green Class encompasses a maximum of 560,000 RALs are accurate and (4) Class Members have been properly identified. Coordinating counsel will accept affidavits as to these subjects, and will conduct depositions only if the affidavits are insufficient and Settling Defendants are unwilling or unable to supplement such affidavits to address deficiencies identified by Coordinating Counsel. If a deposition(s) is conducted, Settling Defendants will produce a knowledgeable person with respect to the three topics described above.

## **VI. BUSINESS PRACTICES**

1. Subject to the terms of this Agreement and all applicable state or federal law, for the period from the date of this Agreement until two years following the date of entry of a Final Order, (the "Time Period") in connection with any RAL transaction, the Settling Defendants and/or their Affiliates shall (a) substantially conform to the business practices set forth in Appendix A to this Agreement, and (b) use RAL applications, agreements and other RAL forms in substantially the form attached as Appendix B (the "RAL Forms"). So long as any of the Settling Defendants and/or their Affiliates do not knowingly and materially fail to conform to such business practices or use such RAL Forms during such Time Period, Plaintiffs and all Settlement Class Members agree to release any Released Claims or other claims or actions for money damages or equitable relief that they may have or be entitled to assert hereafter against such entities under any legal theory concerning such business practices or RAL Forms either

directly, representatively, derivatively, or in any other capacity, in any local, state, or federal court, or in any agency or authority or forum wherever located arising out of or related to any new RAL transaction in such Time Period. However, if at the end of this Time Period the Settling Defendants or their Affiliates (as applicable) have not registered as a Credit Service Organization (a "CSO") in a jurisdiction covered by this Agreement that requires or permits registration as a CSO (or posted a bond in a state that requires or permits a bond) for persons who assist consumers in obtaining an extension of credit under an applicable CSO statute, and have not implemented the requirements of such CSO statute, (i) the release set forth in the immediately preceding sentence by Members of the Settlement Class who reside in such jurisdiction shall be deemed null and void in such jurisdiction, (ii) all Parties will be placed in their *status quo ante* position with respect to any such new RAL transactions in such jurisdiction in such Time Period, (iii) Settlement Class Members in such jurisdiction shall have all the all procedural or substantive rights that they would otherwise have as of the day after the Effective Date of this Agreement (and in addition shall be entitled to tolling of any applicable limitations period for such Time Period), and (iv) the Settling Defendants will likewise have all the procedural or substantive rights and defenses that they would otherwise have as of the day after the Effective Date of this Agreement.

2. Subject to the terms of this Agreement, the Settling Defendants and/or their Affiliates will begin implementation of the business practices set forth in Appendix A immediately following the Effective Date. The Parties acknowledge that the RAL Forms are documents of the RAL lender, and believe that the RAL Forms attached as Appendix B are reasonably acceptable to the RAL lender and that the RAL lender will approve of their use, in which case the Settling Defendants and/or their Affiliates will also begin implementation of the

use of the RAL Forms immediately following the Effective Date. However, if there are changes in the applicable state or federal laws after the Effective Date and within the Time Period that impact the business practices in Appendix A or the RAL Forms, or if the RAL lender within the Time Period gives notice of a refusal to agree to the implementation and use of RAL Forms that substantially conform to the requirements of Paragraph (a) in all material respects, Coordinating Counsel for the Settlement Class and the Settling Defendants agree to use their best efforts to negotiate together in good faith to develop new business practices or, in the case of the RAL Forms, with the RAL lender to develop revised RAL Forms, that in either case conform to the requirements of Paragraph (a) to the extent reasonably practicable. In the event that Coordinating Counsel and the Settling Defendants are not able to reach agreement with the RAL lender on revisions to the RAL Forms despite their best good faith efforts, then (i) Coordinating Counsel and the Settling Defendants will use their best efforts to determine how the revised disclosures that may be required can be conveyed to RAL customers by means other than the RAL Forms used by the RAL lender (to the extent consistent with the Settling Defendants' contractual obligations with the RAL lender), and (ii) the Settling Defendants and their Affiliates shall be released from all requirements to use the specific RAL Forms in Appendix B.

3. Nothing in Paragraph 1 above shall bar a Settlement Class Member who is a RAL customer from asserting a claim to the extent that one or more of the Settling Defendants or their Affiliates fail to perform their contractual obligations under the RAL Forms.

4. Nothing in this Section VI forecloses a Non-Opt Out's right to arbitrate a Released Claim arising prior to the date of this Agreement pursuant to Section VII, Paragraph 2.

5. Nothing in this Section VI shall be construed as a covenant on the part of the Settling Defendants or their Affiliates to register as a CSO in any jurisdiction, but it should be



construed as an agreement on the part of the Settling Defendants to, in good faith, evaluate their obligations under various CSO laws and comply with them to the extent applicable. This Section VI is not an admission that any Settling Defendant or any Affiliate is or was at any time a CSO. This Section VI is instead an inducement, available at the Settling Defendants' option, to register as a CSO. In addition, a decision by any of the Settling Defendants and/or their Affiliates not to register as a CSO in any particular jurisdiction(s) by the end of the Time Period set forth in Paragraph (a) above shall not be or be deemed to be a breach of this Agreement or the violation of any order related to this Agreement and the settlement contemplated herein in any respect.

6. This Section VI is not intended to create a right or obligation on the part of any Settlement Class Member to litigate any issue pursuant to this Section VI in the Circuit Court of Kanawha County, West Virginia, nor is this Section VI intended to have the effect or character of a Consent Decree. After the Time Period ends, the Settling Defendants have no further obligation to consult Coordinating Counsel respecting changes to their business practices or RAL Forms. After the Time Period ends, the release offered by Paragraph (b) will either be effective or not effective in any given jurisdiction, as determined in the normal fashion by any tribunal of competent jurisdiction.

#### **VII. RELEASE BY SETTLEMENT CLASS MEMBERS**

1. In accordance with the provisions of the Final Order, for good and sufficient consideration, the receipt of which is hereby acknowledged, upon the Effective Date Plaintiffs and each Settlement Class Member who receives money from the Settlement Fund shall be deemed to have, and by operation of the Final Order shall have, fully, finally and forever released, relinquished and discharged all Released Claims against the Released Parties.

2. Each Settlement Class Member who does not opt out of this settlement ("Non-Opt

Outs”), but for whatever reason does not receive money from the Settlement Fund, shall be deemed to have and by operation of the Final Order shall have fully, finally and forever released and extinguished his or her right (if any ever existed) to adjudicate a Released Claim in any forum other than by individual arbitration as permitted by and in accordance with the arbitration provision of the 2005 RAL application, a copy of which is attached as Exhibit G. In all other respects, such Non-Opt Outs do not release any Released Claims for a period of one year after the Effective Date, at which time such Non-Opt Outs shall be deemed to have, and by operation of the Final Order shall have, fully, finally and forever released, relinquished and discharged all Released Claims against the Released Parties.

3. In accordance with the provisions of the Final Order, for good and sufficient consideration, the receipt of which is hereby acknowledged, upon the Effective Date each of the Released Parties and all signatories to this Agreement shall be deemed to have, and by operation of the Final Order shall have, fully, finally and forever released, relinquished and discharged Plaintiffs, Class Counsel, and the Settling Defendants and their counsel in this Action from any claims (including Unknown Claims) for abuse of process, libel, malicious prosecution or similar claims arising out of, relating to, or in connection with the institution, prosecution, defense, assertion, or resolution of the Action, including any right under any statute or federal law to seek counsel fees and costs.

#### **VIII. EXCLUSIONS FROM AND OBJECTIONS TO SETTLEMENT**

1. The “Opt-Out Date” will be a date set by the Court and identified in the Notice (defined below).
2. Each Settlement Class Member who wishes to be excluded from the Settlement Class must mail or otherwise deliver to the Administrator an appropriate written request for

exclusion, including his or her name, address, telephone number and Social Security number, that is personally signed by the Settlement Class Member, which request must be postmarked no later than the Opt-Out Date and actually received by the Administrator. No Settlement Class Member, or any person acting on behalf of or in concert or in participation with that Settlement Class Member, may request exclusion of any other Settlement Class Member from the Settlement Class. The original requests for exclusion shall be filed with the Court by the Administrator not later than 30 days after the Opt-Out Date. The filing shall redact the social security number of the person requesting exclusion, except for the last three digits. Copies of requests for exclusion will be provided by the Administrator to Class Counsel and counsel for the Settling Defendants not later than five days after the Opt-Out Date. If this Agreement is approved, any and all persons within the Settlement Class who have not submitted a timely, valid and proper written request for exclusion from the Settlement Class will be bound by the releases and other terms and conditions set forth herein and all proceedings, orders and judgments in the Action, even if those persons have previously initiated or subsequently initiate individual litigation or other proceedings against the Settling Defendants (or any of them) relating to the claims released pursuant to or covered by the terms of this Settlement.

3. Any Settlement Class Member who has not filed a timely, valid and proper written request for exclusion and who wishes to object to the fairness, reasonableness or adequacy of this Agreement or the settlement, or to any award of attorneys' fees and expenses, must serve upon Coordinating Counsel and counsel for the Settling Defendants (by mail, hand or by facsimile transmission) and must be received by the Court, no later than the Opt-Out Date or as the Court may otherwise direct, a statement of his/her objection, as well as the specific reason(s), if any, for each objection, including any legal support the Settlement Class Member

wishes to bring to the Court's attention and a description of any evidence the Settlement Class Member wishes to introduce in support of the objection. Settlement Class Members may so object either on their own or through an attorney hired at their own expense who files an appearance on their behalf.

#### **IX. THE FINAL JUDGMENT AND ORDERS OF DISMISSAL**

1. If, after the Final Approval Hearing, the proposed Settlement is approved by the Court with respect to one or more Settlement Classes, Class Counsel shall promptly file and request entry of a Final Order, substantially in the form of Exhibit D, by the Court:

(a) Finding that the requirements necessary for certification of the Settlement Class for purposes of settlement, have been satisfied, approving both the final certification of the Settlement Class and the Agreement, judging its terms to be fair, reasonable, adequate and in the best interests of the Settlement Class, directing consummation of its terms, and reserving continuing jurisdiction to implement, enforce, administer, effectuate, interpret and monitor compliance with the provisions of the Agreement and the Judgment;

(b) Dismissing the Action and the Released Claims, with prejudice and without costs (except as otherwise provided herein) against Plaintiffs and all Settlement Class Members, and releasing both the Released Claims and all of the claims described in Section I, Paragraphs 2 through 5 against the Released Parties; and

(c) Permanently barring and enjoining Plaintiffs and Settlement Class Members from asserting, commencing, prosecuting or continuing any of the Released Claims or any of the claims described in Section I, Paragraphs 2 through 5 against the Released Parties, except in a manner consistent with all terms and conditions of Section VII, Paragraph 2, to the extent applicable.

2. Within 14 days after the Effective Date, Plaintiffs shall, with appropriate court approvals, dismiss their claims pending in the *Cummins* Action, the *Mitchell* Action, the *Green* Action, and the *Becker* Action.

#### **X. NOTICE AND PRELIMINARY APPROVAL OF SETTLEMENT**

1. Class Counsel will submit preliminary approval papers for the settlement, including a Motion for Preliminary Approval and the proposed Preliminary Approval Order, together with a proposed form or forms of Notice and a Summary Notice substantially in the form of Exhibit H (the “Notice” and “Summary Notice”), the proposed form of the Final Order, and the executed Agreement, within a reasonable time following of execution of this Agreement.

2. Class Counsel will submit to the Court the proposed Preliminary Approval Order which will, among other things, certify the respective Settlement Classes for settlement purposes only, approve Plaintiffs as adequate representatives of the respective Settlement Classes, and ask for a date for a “Final Approval Hearing.” The proposed Preliminary Approval Order also will approve the form of the Notice, will find that the method of notice selected constitutes the best notice to all persons within the definitions of the respective Settlement Classes that is practicable under the circumstances, and will find that the form and method of notice comply fully with all applicable law.

3. The Parties propose the following Notice regime:

(a) The appropriate form of notice, along with a claim form, will be mailed to the last known address of all Settlement Class Members, by first class mail, and any mail returned with a forwarding address will be promptly re-mailed to such address;

(b) The Administrator and each Class Counsel that maintains a website will provide a link on its website to a central site maintained by the Administrator to obtain

downloadable and printable copies of the Settlement Agreement, the Notice and the Claim Form;

(c) Plaintiffs will also provide a short form publication notice of the Agreement (“Summary Notice”) in the form attached as Exhibit H to be published twice in *USA Today*.

4. The Settling Defendants will pay the cost of the proposed mailed notice and publication in Paragraph 3 above. Additional publication notice ordered by the Court, if any, shall be at the expense of the Settlement Class receiving such additional publication notice.

5. The Settling Defendants and Coordinating Counsel shall, by agreement, designate an Administrator. The Settling Defendants and Coordinating Counsel agree that they will cooperate in negotiating the Notice and Administration Costs, toward the end of reducing both costs and preventing the Administrator from incurring any significant Administration Costs before the Effective Date.

6. The Administrator will file with the Court and serve upon Class Counsel and Settling Defendants’ counsel no later than ten (10) days prior to the Final Approval Hearing an affidavit or declaration stating that notice has been completed in accordance with the terms of the Preliminary Approval Order.

7. The Final Approval Hearing will be held at a date and time to be set by the Court after mailing of the notice and the passing of the opt-out date. At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be approved, whether the Settlement should be finally approved as fair, reasonable and adequate, whether any objections to the Settlement should be overruled, and whether a Final Order approving the Settlement and dismissing any of the actions should be entered.

**XI. PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES TO CLASS COUNSEL**

1. Plaintiffs' Coordinating Counsel will submit a fee petition for attorneys' fees, costs and expenses, on behalf of all Class Counsel, with all such fees and costs to be paid from the Settlement Fund. In such Petition, Coordinating Counsel will request that the Court award such attorneys' fees, costs and expenses to Coordinating Counsel to be distributed in his discretion thereafter between and among all Class Counsel. The Settling Defendants agree not to oppose in Court or any other forum such petition by Coordinating Counsel for an award of attorneys' fees and expenses to be paid from the Settlement Fund.

2. Entry of a Final Order is not conditioned upon an award of the attorneys' fees and costs sought by Class Counsel.

3. Coordinating Counsel will apply to the Court for an award of service fees for representative Plaintiffs. All service fees shall be paid out of the aforesaid fees and expenses to be approved by the Court, in settlement of their individual claims in this action and in any other pending action involving allegations regarding refund anticipation loans in any state or federal court against any Settling Defendants or their Affiliates. Representative Plaintiffs will not be entitled to receive any additional payments in connection with this settlement other than their service fee and their *pro rata* payment under the Agreement.

4. The Settling Defendants shall not be liable for any additional fees or expenses of Plaintiffs or any other plaintiff in any of the actions settled by this Agreement or persons within the Settlement Class, or other plaintiffs' counsel in connection with the actions settled by this Agreement. The Settling Defendants will be entitled to oppose any such fee application.

5. Class Counsel agree that they will not seek any additional fees or costs arising out of any case settled by this Agreement other than as provided in this Agreement from any of the Settling Defendants in connection with the settlement of the Settling Cases.

6. Payment of any Class Counsel fees, expenses and/or service fees for class representatives approved by the Court shall be made ten (10) days following the Effective Date.

## **XII. CLAIMS (CLAIMS PROCESS)**

1. The Administrator will mail the appropriate claim form with respect to the relief set forth in Section IV, Paragraph 1 above substantially in the form attached as Exhibit I, to all persons within the Settlement Class together with the Notice. Pursuant to this Agreement, certain monetary benefits are available to Settlement Class Members only upon submission to the Administrator of a Valid Claim. A "Valid Claim" is a Claim Form that: (1) is signed by the Settlement Class Member, or signed by the heirs or estate of a deceased Settlement Class Member; (2) provides all the information required by the Claim Form, including: (i) the Social Security Numbers that they have used at any time; and (ii) their current mailing address; (3) is postmarked by June 30, 2006; (4) is affirmed as true by the claimant who shall also state (i) that he/she is the person who applied for and received a RAL, (ii) the name(s) under which his/her RAL was approved, and (iii) his/her current name to be stated on any settlement check; and (5) is determined by the Administrator to be complete and in accordance with the requirements of this Agreement.

2. Promptly after June 30, 2006, the Administrator will provide Coordinating Counsel and counsel for the Settling Defendants with a list identifying: (1) the number of claim forms submitted; (2) the number of RALs covered; and (3) the number of claim forms that were denied ("Denied Claims").

3. After the Effective Date, Valid Claims will be paid by the Administrator as ordered by the Court.



4. Promptly after receiving a claim form, the Administrator will evaluate the claim and, for Denied Claims, will mail to the Settlement Class Member, with copies to Coordinating Counsel and counsel for Settling Defendants, a notice stating that the claim was denied and the reasons for the denial, and advising the Settlement Class Member how he or she might contest denial or remedy any deficiency in the filing. For issues that are not administrative in nature, the Administrator may advise the Settlement Class Member to contact Class Counsel for the person with any questions about his or her Denied Claim.

5. A Settlement Class Member or Class Counsel may submit to the Administrator a request to reconsider the claim denial within 45 days following the date of such denial. Such request must be accompanied by documentation to support the claim and served on Coordinating Counsel and counsel for the Settling Defendants, and Coordinating Counsel shall promptly refer such claims to appropriate Class Counsel for the person making the claim.

6. Class Counsel for any claimant and counsel for the Settling Defendants will meet promptly after the Effective Date to confer regarding all Denied Claims for which requests for reconsideration have been denied by the Administrator. Class Counsel for the claimant shall have full settlement authority to resolve such Denied Claims. If counsel for the Parties cannot then agree as to the treatment of a submitted Claim Form, the matter will be submitted to the Discovery Commissioner in the *Cummins* Action (“Discovery Commissioner”) for final and binding determination, with costs of resolution to be part of Administration Cost. Claims that are to be submitted to the Discovery Commissioner for resolution will be submitted together in bulk no later than 30 days after attempts at informal resolution of all Denied Claims have been completed. Should in-person hearings be required, the Discovery Commissioner shall hold such hearings in the state in which the respective complaining claimants reside.

7. This Section sets forth the exclusive procedure for determining the validity of claims, and no Settlement Class Member may challenge the denial of any such claim except through this procedure.

### **XIII. TERMINATION OF THE AGREEMENT**

If this Settlement Agreement, as a whole, or any respective Settlement Class it contains is not approved by the Court or does not receive final approval after review by any court of competent jurisdiction for any reason, or is terminated in accordance with its terms for any other reason, the affected Parties will be returned to their status immediately prior to execution of the Agreement as if this Agreement had never been made, and (i) the affected Parties will be relieved from any orders or stipulations made in connection with this Agreement, other than the order related to the filing of the Consolidated and Amended Complaint and providing that it or the affected portions related to the disapproved Settlement Class, as appropriate, shall be stricken, (ii) if and only if the West Virginia Class is disapproved, then the *Cummins* Action will proceed with discovery toward trial on the merits with the merits class previously certified by the Court as of December 30, 2004, as set forth in Section I.2 above; (iii) if and only if the Mitchell/Green Class is disapproved, then the *Mitchell* Action will proceed with discovery toward trial on the merits with the merits class previously certified by the Court as of July 11, 2003, as set forth in Section I.4 above; (iv) if and only if the Mitchell/Green Class is disapproved, then the *Green* Action will proceed toward trial on the merits with the merits class previously certified by the Court as of May 19, 2000, as set forth in Section III above; and (v) if and only if the Becker Class is disapproved, then the *Becker* action will proceed as directed by the court in Ohio in which it is pending. Accordingly, upon any such termination for any reason (i) the Parties will be deemed to have preserved all their substantive or procedural rights or defenses with respect to

the *Cummins* Action, *Mitchell* Action, *Green* Action or *Becker* Action, as appropriate, existing as of the date of this Agreement and (ii) the Parties shall not be deemed to have waived any substantive or procedural rights or defenses of any kind that they may have with respect to any persons within the Settlement Class who were not members of the merits class that was certified in the *Cummins* Action as of December 30, 2004, in the *Mitchell* Action as of July 11, 2003, and in the *Green* Action as of May 19, 2000, as appropriate,; provided, that the terms of this Section XIII shall survive any termination of the settlement or this Agreement and shall remain binding on the Parties and effective in all respects regardless of the reasons for such termination.

#### **XIV. NO ADMISSION OF LIABILITY**

Neither this Agreement nor any drafts hereof nor any documents relating to the Settlement set forth herein constitutes an admission of liability or of any fact by the Plaintiffs or the Settling Defendants. The Parties agree that the foregoing documents:

(a) Will not be offered or received against any of the Released Parties as evidence of or be construed as or deemed to be evidence of, any admission or concession by any of the Released Parties of (i) the truth or relevance of any fact alleged by Plaintiffs, (ii) the existence of any class alleged by Plaintiffs, (iii) the propriety of class certification on the merits if the *Cummins* Action, the *Mitchell* Action, the *Green* Action, or the *Becker* Action were to be litigated rather than settled, or (iv) the validity of any claim or the deficiency of any defense that has been or could have been asserted in the *Cummins* Action, the *Mitchell* Action, the *Green* Action, or the *Becker* Action or in any other litigation;

(b) Will not be offered as or received against any of the Released Parties as evidence of, or construed as or deemed to be evidence of any admission or concession of any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of

the parties to this Agreement, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Released Parties may refer to it to effectuate the liability protection granted them hereunder.

(c) Will not be offered or received as an admission or concession that the consideration to be given to Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial.

#### **XIV. CONTINUING JURISDICTION**

1. The Circuit Court of Kanawha County, West Virginia, will have continuing jurisdiction over the *Cummins* Action for the purpose of implementing the Settlement until the *Cummins* Action and all related matters are fully resolved, and for enforcement of the Settlement, the Agreement and the Final Order thereafter. Any dispute regarding the Parties' obligations pursuant to this Agreement and/or interpretation of the terms of this Agreement or Final Order will first be presented to the Discovery Commissioner for a recommendation as to how the dispute should be resolved, and the Court may consider the Discovery Commissioner's recommendation in ruling on any dispute requiring the Court's action. Notwithstanding the foregoing, the procedure set forth in this Section XII above shall be the exclusive procedure for determining the validity of claims, and no Settlement Class Member may challenge any claim denial except through the procedure set forth in Section XII, Paragraphs 5 and 6.

#### **XV. JOINT PRESS RELEASE**

1. The Parties will agree upon the form of any public statement to the press or governmental agencies concerning the settlement, the Agreement and the proceedings leading to its ultimate approval or disapproval by the Court (whether issued by mail, website posting or

other means of communication). The Parties and their counsel shall be entitled to respond to inquiries by the press or otherwise. but, except as provided in the preceding sentence, shall not (i) initiate any public announcement, including a press release, or other communications with the press regarding the Settlement, (ii) make any public comments that would undermine the joint press release or the Settlement, or (iii) make any disparaging public statements about any other Party or counsel for a Party prior to the Effective Date. Nothing in this Paragraph shall prohibit Class Counsel from providing legal advice to individual Settlement Class Members

#### **XVI. MISCELLANEOUS PROVISIONS**

1. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding between and among the Parties with respect to settlement, and supersedes any and all prior negotiations and agreements or understandings (oral or written) with respect to the subject matter hereof.

2. NEUTRAL INTERPRETATION. This Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations and mediation resulting in the Agreement, all parties have contributed substantially and materially to the preparation of the Agreement.

3. CHOICE OF LAW. This Agreement will be governed by federal law and the internal laws of West Virginia, without regard to its choice of law principles.

4. CHOICE OF FORUM. The forum selected by the Parties for implementation and enforcement of the Settlement shall be West Virginia, in the Circuit Court of Kanawha County.

5. MODIFICATIONS OR AMENDMENTS. This Agreement may not be modified or amended except by a writing signed by all Parties and their respective counsel and the

subsequent approval of the Court.

6. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

7. ADDITIONAL ACTS TO EFFECTUATE THE AGREEMENT. The Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement and to obtain the benefits of the Agreement.

8. COMPETENCY; INDEPENDENT COUNSEL. Each Party to this Agreement represents and warrants that he, she or it is competent to enter into the Agreement and in doing so is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the terms expressly set forth in this Agreement.

9. NO REMOVAL. Settling Defendants hereby waive any right to remove this case to federal court upon the filing of the Consolidated and Amended Complaint to effectuate the terms of this settlement, so long as the terms of the order providing for its filing and, if the Effective Date does not occur, its withdrawal, are complied with and enforced in all respects. They likewise affirmatively state that none of them will consent to the removal of this case to federal court. All Parties agree that the Circuit Court of Kanawha County, West Virginia shall be the exclusive forum for the resolution of this action.

10. NO RELEASE OF THE RAL LENDING BANKS. Nothing in this Agreement shall be construed to operate as a release of the RAL lending banks including but not limited to, Beneficial National Bank, Household Bank f.s.b., Imperial Capital Bank and HSBC.

**XVII. [FILED UNDER SEAL] [\*\*\*]**

IN WITNESS WHEREOF, the undersigned parties hereto have caused this Agreement to be duly executed on the date first written above:

BAILEY & GLASSER, LLP

By: \_\_\_\_\_  
Brian A. Glasser, Esq.  
Counsel to the West Virginia Cummins  
Class and Coordinating Counsel

LEVY ANGSTREICH FINNEY BALDANTE,  
RUBENSTEIN & COREN, P.C.

By: \_\_\_\_\_  
Steven E. Angstreich, Esq.  
Counsel to the Green/Mitchell Class

FUTTERMAN & HOWARD, CHTD.

By: \_\_\_\_\_  
Ronald L. Futterman, Esq.  
Counsel to the State Law Class

RODDY KLEIN & RYAN

By: \_\_\_\_\_  
John Roddy, Esq.  
Counsel to the Becker Class

LAW OFFICES OF CHARLES J. PIVEN, P.A.

By: \_\_\_\_\_  
Charles J. Piven, Esq.  
Counsel to the Green/Mitchell Class

TAYLOR, MARTINO & KUYKENDALL

By: \_\_\_\_\_  
Frederick T. Kuykendall III, Esq.  
Counsel to the Green/Mitchell Class

KIRBY McINERNEY & SQUIRE, LLP

By: \_\_\_\_\_  
Daniel Hume, Esq.  
Counsel to the State Law Class

MUCH SHELIST FREED DENENBERG  
AMENT & RUBENSTEIN, P.C.

By: \_\_\_\_\_  
Michael B. Hyman, Esq.  
Counsel to the State Law Class

RONALD FREDERICK & ASSOCIATES LLC

By: \_\_\_\_\_  
Ronald Frederick, Esq.  
Counsel to the Becker Class

H&R BLOCK, INC., H&R BLOCK  
SERVICES, INC., H&R BLOCK TAX  
SERVICES, INC., BLOCK FINANCIAL  
CORP., HRB ROYALTY, INC., H&R  
BLOCK EASTERN ENTERPRISE, INC.,  
successor H&R BLOCK EASTERN TAX  
SERVICES, INC.

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

Printed Name: Mark A. Ernst

Title: President & CEO





IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DEADRA D. CUMMINS, on her own behalf and  
on behalf of those similarly situated, and  
IVAN and LaDONNA BELL, on their own behalf  
and on behalf of those similarly situated,

(SEAL)

---

*/s/ Cathy S. Gatson Clerk*  
CATHY S. GATSON CLERK  
KANAWHA CTY, CIRCUIT COURT

Plaintiffs,

v.

Civil Action No. 03-C-134

H & R BLOCK, INC., H & R BLOCK  
TAX SERVICES, INC., H & R BLOCK  
EASTERN TAX SERVICES, INC.,  
BLOCK FINANCIAL CORPORATION,  
H&R BLOCK SERVICES, INC.,  
MELANIE LESTER, JASON BROWN,  
BOBBY HAGUE, ROBERT HECKERT,  
CYNTHIA LANTZ, CLARENCE E. MILLER,  
CARLA R. LEWIS, DEBRA RIGGLEMAN  
and JOHN DOE,

Defendants.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION**

Pending before this Court is the Plaintiffs' Motion for Class Certification pursuant to Rule 23 of the *West Virginia Rules of Civil Procedure*. Based on the findings of fact and conclusions of law that follow, the Court determines that this case permits resolution of a myriad claims in a single, efficient class action that poses no unusual problems of manageability. If these claims are to be resolved at all, they will likely be resolved on a class-wide basis. Further, class-wide resolution will not require evaluation of individual factual scenarios for each class member. Instead, because Plaintiffs' claims center on the Defendants' conduct and legal status with respect to the putative class members generally, this case is particularly well-suited for class certification. Accordingly, the Court **GRANTS** the motion and certifies the class as proposed and as indicated by the following findings of fact and conclusions of law.

---

### **PROCEDURAL BACKGROUND**

1. The plaintiffs filed this action as a putative class action in the Circuit Court of Kanawha County on January 23, 2003. The Defendants timely removed the action to the federal district court for the Southern District of West Virginia. On June 6, 2003, Judge Goodwin granted the Plaintiffs' Motion to Remand.
2. The defendants then moved to dismiss and to compel arbitration. Following the hearings on December 11, 2003, and March 18, 2004, this Court denied Defendants' motion to dismiss and compel arbitration by Order of May 13, 2004.
3. The Defendants then petitioned the Supreme Court of Appeals of West Virginia for a writ of prohibition to prevent this Court from enforcing its Order denying their motion to dismiss and compel arbitration. The Supreme Court ordered the plaintiffs to respond to defendants' Petition, which was then denied on September 2, 2004.
4. The Plaintiffs' Motion for Class Certification was filed on October 1, 2003. The defendants responded on May 13, 2004, and plaintiffs filed their reply on October 18, 2004. The Court held a hearing on the motion for class certification on October 21, 2004.
5. Before taking up that motion, the Court heard argument on Plaintiffs' Motion to Amend the Complaint to add two corporate subsidiaries of defendant H & R Block, Inc. The Court granted plaintiffs' motion to add Block Financial Corporation and H & R Block Services, Inc., and ordered that the evidence on Plaintiffs' Motion for Class Certification be held open until a second hearing on this matter could be held on December 22, 2004, to provide these two new

corporate subsidiaries and defendants an opportunity to present evidence or argument in opposition to Plaintiffs' Motion for Class Certification, should they choose to do so. (*Transcript from Hearing Held on Oct. 21, 2004*, at p. 17).

6. Discovery commenced and more than thirty depositions have been taken. Several sets of written discovery have been exchanged.
7. The newly added defendants, Block Financial Corporation and H & R Block Services, Inc. appeared at the December 22, 2004 hearing on class certification through their counsel, Ancil G. Ramey of Steptoe & Johnson.
8. Prior to the December 22, 2004 hearing, Mr. Ramey filed a "*Motion to Compel Arbitration Or In The Alternative, To Dismiss*", which asked this Court to compel arbitration or to dismiss based on three grounds: (1) lack of personal jurisdiction, (2) failure to state a cause of action, and (3) federal preemption. This Court then denied both the motion to compel and the motion to dismiss and ordered the new defendants to file an answer.
9. At the December 22, 2004 hearing, the Court asked Mr. Ramey to present any evidence or argument he had to offer in regard to the class certification issue.
10. Mr. Ramey acknowledged that he had no evidence, but he did present argument. Mr. Ramey argued that because his clients had recently been added to this action, due process dictates that they receive additional time to conduct discovery as it would pertain to the class certification issue. (*Excerpt of Hearing RE: Class Certification*, December 22, 2004, p. 4-5).

11. Mr. Ramey admitted that he had reviewed the record and was familiar with the case due to his prior representation of the other defendants in their removal petition.
12. When asked what new information the new defendants sought, Mr. Ramey stated that he would ask if the plaintiffs knew about the participation interest and if they did, whether or not they would have entered into the loan transactions. (*Excerpt of Hearing RE: Class Certification, December 22, 2004*, p. 3-4).
13. Additionally, Mr. Ramey stated that the additional time he was seeking was to ask whether the plaintiffs would have participated in the rapid refund RAL program if they had known that the lending banks paid a fee in order to participate in the loan program. (*Excerpt of Hearing RE: Class Certification, December 22, 2004*, p. 5).
14. Mr. Ramey urged the Court to consider the recent Supreme Court of Appeals of West Virginia opinion in *State of West Virginia ex rel. Chemtall Inc. v. Madden*, 2004 WL 2750996 (W.Va.,2004).
15. The Court has reviewed all the pleadings and evidence in support of and in opposition to Plaintiffs' Motion for Class Certification, as well as all the other pleadings in the case, and heard argument of counsel spread on the record at the hearings on class certification of October 21, 2004 and December 22, 2004.
16. Each party submitted proposed findings of facts and conclusions of law in regard to the motion for class certification.

## **FINDINGS OF FACT**

### *The Underlying Claims*

1. This action is against Defendant H & R Block, Inc., its named corporate subsidiaries (hereinafter collectively referred to as "Block") and the individual tax preparers.
2. The plaintiffs' claims against the defendants all relate to the Rapid Refund Program that Block offers to its clients. The Rapid Refund Program utilizes refund anticipation loans (hereinafter "RAL" or "RALs").
3. A RAL is a loan against a taxpayer's expected federal income tax refund.
4. H&R Block offers RALs in West Virginia and throughout the United States.
5. Block negotiated contracts with certain lending banks that finance the RALs. The contracts set forth the RAL application procedure, the RAL terms, the RAL credit criteria, and the RAL prices and other matters.
6. Block then marketed the RAL to a target demographic. Block defines its "RAL client profile" as "decent, hardworking people," who are "unsophisticated" financially, and "live pay check to pay check." Such clients were "very satisfied with the H&R Block experience," but "have little understanding of what they were paying for their RAL." Clients take RALs because they want "to get their money quickly," they "do not have regular bank accounts," can have tax preparation fees withheld, and "have no other choice to get money quickly." Over one-half get the earned income tax credit. Most "do not have credit cards or other credit options."
7. Block tax preparers who presented these documents to the clients were trained by Block to present the RAL product using a formulaic sales script, in which the

loan products were presented in the same order and described using the same terms to every client. Block also provided the tax preparers with computer hardware and software for use with its RAL customers.

8. Block filled out and completed the RAL applications for the clients and directed the clients to the several places where they were to sign the documents. Block then assembled the actual RAL application and presented it to the bank.
9. At the class certification hearing on October 21, 2004, the Court heard testimony from Deborah Mounts, Block's franchise district manager for its franchise offices in West Virginia. Ms. Mounts testified that Block provides national advertising, merchandise, signs, copiers, toner for the copiers, pamphlets, light boxes, furniture, and yellow page ads to its franchises. (Trans. from October 21, 2004 Hearing, p. 31-34.) Block provides capital to its franchisees in the form of a loan secured by the franchise. (*Id.* at 35-36.) Block provides training material and consulting services to its franchises. (*Id.* at 37-38.) In return, Block collects royalties and receives the participation fee from the RALs sold by the franchises. (*Id.* at 43.)
10. Block does not believe it should tell its clients about its participation fee and does not tell its tax-preparers about this fee. (*Id.* at 45.) Thus, any disclosure of that fee came, if at all, from written material distributed to clients which was the same on a year by year basis in all Block's offices in West Virginia. Block believes that the clients who go to its franchises belong to Block, not to the franchise. (*Id.*)
11. The plaintiffs aver that the defendants' actions, in regard to the RAL process, amounts to a breach of a fiduciary duty owed to the plaintiffs. The plaintiffs also

aver that the royalties and participation fees are “kickbacks” which violate West Virginia law governing credit services organizations and deceptive practices.

12. The Second Amended Complaint contains seven counts, which include the following:

- (1) Breach of Fiduciary Duty Arising Out of an Agency Relationship;
- (2) Breach of Fiduciary Duty Arising Out of a Confidential Relationship;
- (3) Breach of Fiduciary Duty Arising out of H&R Block’s Status as a Loan Broker;
- (4) Breach of West Virginia’s Statute Governing Credit Services Organizations;
- (5) Breach of Contract based on implied duty of good faith and fair dealing;
- (6) Unjust Enrichment; and
- (7) Unfair or Deceptive Acts or Practices.

13. The claim for unjust enrichment seeks recovery of the plaintiffs’ money that the defendants received in connection with the RALs, plus reasonable interest.

14. The Plaintiffs propose a class consisting of all West Virginia residents who obtained Refund Anticipation Loans (“RALs”) from January 1, 1994 through the present.<sup>1</sup> At the October 21 hearing, plaintiffs’ counsel proposed the class should be cut off on December 31, 2003 to provide a date certain for class determination. (*Id.* at p. 15),

---

<sup>1</sup> Two subclasses are proposed:

**Sub-class A:** All West Virginia residents who obtained RALs from October 27, 1999 to July 29, 2003.

**Sub-class B:** All West Virginia residents who obtained RALs from January 1, 1994 to October 26, 1999.



15. As is evident from the definition, whether an individual is a member of the class is based on the objective facts of whether a West Virginia resident obtained a RAL and when he or she obtained the RAL.
16. The parties have also submitted uncontradicted evidence that the proposed class contains more than 438,500 transactions.
17. Block either prepared tax returns for all class members or checked their returns before filing.
18. The process was basically the same for every RAL client.
19. Block presented the same or substantially the same RAL applications, and documents to every RAL client, at least on a year-to-year basis. (*Id.* at 57-58.)
20. The contracts between H&R Block and the lending banks created the common framework against which all the RAL applications were considered and all the RALs were processed. Additionally, these contracts apply to all RALs the defendants offered in West Virginia.
21. Each of the named plaintiffs understands that he or she is representing a number of unnamed class members in this case, and understands that he or she owes a duty to treat those absent class members fairly.
22. The named plaintiffs are represented by the law firm of Bailey & Glasser, LLP, whom they move to appoint as lead class counsel. John Barrett of the Barrett Law Firm is proposed as co-counsel.
23. Plaintiffs have moved for certification under Rule 23(b)(3).

### STATEMENT OF THE LAW

1. The claims based on the West Virginia Consumer Credit and Protection Act and the prohibitions against unfair methods of competition and unfair or deceptive acts or practices is based on the definitions of such actions, as they are defined in *West Virginia Code*, section 46A-6-102(f).
2. The prohibited acts include “[t]he act use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, **whether or not any person has in fact been misled, deceived or damaged thereby.**” *W.Va. Code*, §46A-6-102(f)(13) (**emphasis added**).
3. The Court recognizes that a determination of class status should occur as soon as practicable after the filing of the action, and believes that this issue is now ripe for determination.
4. “In general, class actions are a flexible vehicle for correcting wrongs committed by a large-scale enterprise upon individual consumers.” *In re West Virginia Rezulin Litigation*, 214 W. Va. 52, 62, 585 S.E.2d 52, 62 (2003).
5. On a motion for class certification, a court should not inquire into the merits of the parties’ contentions. See Syl. Pts, 6 & 7, *Rezulin*, 214 W.Va. 52. “The dispositive question is not whether the plaintiff has stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 have been met.” *Rezulin*, Syl. Pt. 7.

6. Under Rule 23(a) of the *West Virginia Rules of Civil Procedure*, a class action is appropriate when the party seeking to certify a class has proved that:
- (a) the class is so numerous that joinder of all members is impracticable;
  - (b) there are questions of law or fact common to the class;
  - (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
  - (d) the representative parties will fairly and adequately protect the interests of the class.

*W. Va. Rules of Civil Procedure, Rule 23(a)*

*Numerosity*

7. Rule 23(a)(1) requires that a class be so numerous that joinder of all members is impracticable. *Rezulin*, Syl. pt. 9.

*Commonality*

8. Rule 23(a)(2) requires that there be questions of law or fact common to the members of the proposed class. “[A] common nucleus of operative fact or law is usually enough to satisfy the commonality requirement.” *Rezulin*, Syl. Pt. 11.
9. The threshold of “commonality” is not high, and requires only that the resolution of common questions that affect all or a substantial number of class members. *Rezulin*, Syl. pt. 11.
10. The Court in *Rezulin* quoted from *Newburg on Class Actions, 4th Ed.*, § 3:12 at 314-315 (2002), when it stated the following:

“Individual issues will often be present in a class action, especially in connection with individual defenses against class plaintiffs, rights of individual class members to recover in the event a violation is established, and the type or amount of relief individual class members may be entitled to receive. Nevertheless, it is settled that the common issues need not be dispositive of the litigation. The fact that class members must individually demonstrate their right to recover, or that they may suffer varying degrees of injury, will not bar a class action; nor is a class action precluded by the presence of individual defenses against class plaintiffs.”

*Rezulin*, 214 W. Va. at 68.

### *Typicality*

11. Rule 23(a)(3) requires that the claims of the representative party be “typical” of those of the class. Typicality focuses on the desired characteristics of the class representative.
12. *The Rezulin* Court held that “a representative party’s claim or defense is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of the other class members, and if his or her claims are based on the same legal theory.” *Rezulin*, Syl. Pt. 12.
13. The Court further explained that typicality:  
“only requires that the class representative’s claims be typical of the other class members’ claims not that the claims be identical,... When the claim arises out of the same legal or remedial theory, the presence of factual variations is normally not sufficient to preclude class action treatment....[D]ifferences in the situation of each plaintiff or each class member do not necessarily defeat typicality; the harm suffered by the named plaintiffs may differ in degree from that suffered by other members of the class so long as the harm suffered is of the same type. Furthermore, the fact that a defense may be asserted against the named representative, as well as some other class members, but not the class as a whole, does not destroy the representative’s status.

*Rezulin*, 214 W.Va. at 67-68.

### *Adequacy of Representation*

14. Rule 23(a)(4) requires that the representative parties must fairly and adequately protect the interests of the class.
15. The first part of Rule 23(a)(4) tests the representative party’s attorneys’ ability to vigorously represent the entire class based on available resources to investigate claims and contact class members, and the attorneys’ overall competence and experience. *Id.* at Syl. Pt. 13.

16. The class representatives must “share a strong interest in establishing the liability of the defendants and seek the same types of relief and damages requested for other class members.” *Rezulin*, 214 W. Va. at 69.
17. The second part of Rule 23(a)(4) inquires whether there are “conflicts of interest between named parties and the class they seek to represent.” *W. Va. R. Civ. P. 23(a)(4)*.

*Rule 23(b) Requirements*

18. An action that satisfies all of the Rule 23(a) requirements may be maintained as a class action if the court finds that it also meets one of the three prerequisites of Rule 23(b). *Rezulin*, Syl. Pt. 8.
19. Under Rule 23(b)(3), a class action may be certified to proceed on behalf of a class if the trial court finds “that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members” and finds that a class action “is superior to other available methods for the fair and efficient adjudication of the controversy.” *W. Va. R. Civ. P. 23(b)(3)*.
20. “The predominance criterion in Rule 23(b)(3) is a corollary to the ‘commonality’ requirement found in Rule 23(a)(2). While the commonality requirement simply requires a showing of common questions, the ‘predominance’ requirement requires a showing that the common questions of law or fact outweigh individual questions.” *Rezulin*, 214 W. Va. at 71.
21. “A conclusion on the issue of predominance requires an evaluation of the legal issues and the proof needed to establish them.” *Id.* at 72. The predominance requirement is not a rigid test, but rather contemplates a review of many factors,

the central question being whether “adjudication of the common issues in the particular suit has important and desirable advantages of judicial economy compared to all other issues, or when viewed by themselves.” *Id.* (citations omitted).

22. The *Chemtall* case cited by Mr. Ramey in his argument for additional time to conduct discovery held that West Virginia courts should conduct a thorough analysis of motions to certify, and if a court grants the motion, it should enter a specific, detailed order, with relevant findings of fact and conclusions of law, that indicates the basis for certification and the satisfaction of Rule 23 prerequisites. *State of West Virginia ex rel. Chemtall Inc. v. Madden*, 2004 WL 2750996 (W.Va.,2004).

### **CONCLUSIONS OF LAW**

#### *Due Process Argument*

1. The Court finds that Mr. Ramey did not offer any convincing reason for this Court to grant the new defendants additional time for discovery relating to class certification issues.
2. The Court has reviewed the *Chemtall* opinion and believes that it has conducted a thorough analysis of the issues presented and believes that such an analysis is evident from this detailed Order.
3. Mr. Ramey’s reasons for asking for additional discovery time did not relate to class certification issues, rather they went to the merits of the claims.
4. Supreme Court case law dictates that this Court should not inquire into the merits of the claims when reviewing a motion for class certification.

5. Whether or not the plaintiffs would have engaged in the RAL program if they knew of the alleged kickbacks and hidden fees does not affect the maintainability of this action as a class action. The new defendants have failed to show to this Court how such information relates to any of the Rule 23 factors.
6. The fact that certain class members would have signed the RAL had they known of the fees, and the fact that others would not have signed the RAL with this information does not affect the class certification issue at hand. Although one might question whether this affects typicality, it does not in this instance because it is not pertinent to the underlying claim. The plaintiffs need not aver or prove that they were in fact misled, deceived, or even damaged to prove a prima facie case of unfair and deceptive practices.
7. Therefore, the Court does hereby find that the new defendants, represented by Mr. Ramey, were given sufficient notice and opportunity to be heard on class certification and presented no reasons, related to the certification issue, for which this Court is willing to grant additional time for discovery.

*Class Definition*

8. The Court finds the proposed class is objectively defined as it is easily determined whether a particular individual is a member of the class.

*Numerosity*

9. Given that there are more than 438,500 transactions, although some of these transactions may represent repeat customers, the Court finds and concludes that the proposed class is so numerous that joinder of all of its members would be impracticable and numerosity is satisfied.

*Commonality*

10. The Court finds that there is no factual basis to distinguish the claims of proposed class members at Block-owned offices from those at franchise offices.<sup>2</sup>
11. In fact, there are numerous questions of law and fact common to class members. Some of those common issues of law and fact include the following:
  - a. Whether Block was required to comply with West Virginia's law governing credit services organizations when it arranges refund anticipation loans;
  - b. Whether the class members are buyers within the meaning of the credit services organizations statute;
  - c. Whether Block negotiates contracts with lenders, funnels its RAL customers to the lenders, and then receives payment for that referral;
  - d. Whether Block secretly concealed profits made on brokering RAL's;
  - e. Whether Block was the taxpayers' agent or broker;
  - f. Whether Block had a confidential relationship with the taxpayer that would create a fiduciary duty; and if so, did Block breach that duty; and
  - g. Whether Block breached the contract to obtain RAL's or was unjustly enriched at the expense of class members.
12. Because the class members' claims directly relate to the RAL that was offered each year, and based on the questions of law and fact for each of those years, this Court finds that resolution of common questions that affect all or a

---

<sup>2</sup> Ms. Mounts also testified at the October 21, 2004 hearing that Block's Williamson, West Virginia franchise uses a different computer software platform for obtaining RALs. (Hearing Trans. at 67-68.) This testimony contradicts that given by Block's corporate representative on franchises. (Ex. C, Pis.' Reply to Defs.' Mem. of Law in Supp. of Mot. for Part I Summ. J.) Nevertheless, should the evidence ultimately show that the Williamson Block franchise RALS are materially different from those in the rest of Block's West Virginia offices, those RALS can be excluded from the class.



substantial number of class members can be achieved through the maintenance of a class action.

13. For these reasons, the Court finds and concludes that commonality is satisfied.

*Typicality*

14. As described above, the offer and application process for the RAL constitute a common practice and course of conduct that establish typicality. Those events did not differ for the representative plaintiffs in any respect relevant to typicality. Plaintiffs' claims focus squarely on Block's conduct and do not depend on customer-specific representations.
15. Additionally, the representative plaintiffs' claims are based on the same legal theory as those of the class generally. Plaintiffs claim that as a tax preparer, loan broker, and agent, Block had a duty to its clients. They further claim that Block breached that duty by failing to disclose its self-dealing according to plaintiffs and brokering a loan while hiding the participating fee.
16. Block complains that Deadra Cummins and Ivan and LaDonna Bell are not typical of the class because each had individual reasons to get a RAL and individual reactions and experiences when they got the RAL. Contrary to Block's contention, however, Cummins and the Bells are "typical" of RAL borrowers in the ordinary, everyday sense of the word "typical." These representative plaintiffs are just the type of people Block targets for its RAL-product.
17. Ordinary typicality, however, is not tested under *Rezulín*. The test is legal typicality, whether Cummins' and the Bells' claims are "typical" of the class claims, in fact and law. This Court finds that the claims of the proposed class

representatives are typical of those claims of the several class members as they share essentially the same facts and require the same legal analysis as it relates to the individual counts included in the Second Amended Complaint.

18. The claim for unjust enrichment seeks recovery of monies paid by each plaintiff. The facts relevant to recovery for each member of the class are virtually identical.
19. Because unjust enrichment is predicated in equity, the Court finds that all members of the class can be adequately protected through the maintenance of a class action.
20. The defendants claim that individual issues of trust and reliance abound in regard to the plaintiffs' claims based on an alleged fiduciary duty. However, whether or not the defendants were agents, loan brokers, or credit services organizations does not vary from client to client. The relationship, if any, was formed from the RAL application process.
21. Additionally, if the defendants were agents, loan brokers, or credit services organizations, the duty each defendant owed to each class member does not vary or depend on the class member; it can be determined from the RAL documents and the alleged systematic actions of the defendants when offering and providing RALs through their Rapid Refund Program.
22. The unfair and deceptive practices claim will depend on a determination as to whether the services offered by Block were "goods" and whether Block's conduct constitutes a consumer transaction that occurred in the course of trade or commerce. Whether or not the plaintiffs can recover will depend on whether the

defendants' actions amount to "methods of" competition and unfair or deceptive acts or practices" as defined by *West Virginia Code*, section § 46A-6-102.

23. The acts and practices that will be pertinent to this determination are based on the defendants' actions in offering and providing RALs. To the extent that the defendants used the same techniques, procedures, and RAL applications, there is no variance between class members and no individual issues that would defeat commonality.
24. The breach of contract claim, based on an implied duty of good faith, will be reviewed according to the contract, if one is found, and whether or not the defendants acted in good faith and fair dealing in its disclosures and actions. The plaintiffs' averments were sufficient to avoid a dismissal for failure to state a claim, but this claim, and all others, may be removed from class certification or otherwise dismissed if further evidence dictates such a decision.
25. The Court has considered and rejected Block's claim that Ms. Cummins cannot maintain her claims because in February 2003 she obtained another RAL from Jackson Hewitt. As Plaintiffs' counsel pointed out at argument, Ms. Cummins obtained this RAL from a Block competitor, and not from Block. This case pertains to Block's conduct and Block's disclosures. It has nothing to do with some other company's conduct and disclosures.
26. Block also has argued that the named plaintiffs "lack standing" to challenge the RAL process in 1994 and 2003 when none of them actually obtained RALS through Block in those years. This is not a standing question. Plaintiffs have standing because they suffered injury in fact, fairly traceable to the defendants,

and for which the Court can provide a remedy. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Instead, this argument attempts to attack typicality. As noted above, however, the named plaintiffs' claims need only be typical, but not identical, to those of the class. See *Rezulin* at 67-68.

27. Based on the foregoing, the claims of the named Plaintiffs are typical of the claims of the proposed class and, accordingly, the Court finds and concludes Plaintiffs satisfy the typicality requirement.

#### *Adequacy of Representation*

##### *Class Representatives*

28. No party has demonstrated any conflicts of interest between the named plaintiffs or proposed class counsel and the proposed class.
29. The Court finds each named plaintiff has a common sense and sufficient understanding of his or her duties as a class representative and the legal and factual basis for his or her claim.
30. The class representatives "share a strong interest in establishing the liability of the defendants and seek the same types of relief and damages requested for other class members." *Rezulin*, 214 W. Va. at 68. All plaintiffs seek disgorgement of funds wrongfully withheld, as well as statutory penalties. While amounts of individual damages may vary, the formulas and methodology for recovery are the same.

##### *Class Counsel*

31. Several individual attorneys making appearances on behalf of the plaintiffs have been counsel to certified classes in the past. The pleadings and argument on

behalf of the plaintiffs have been thoughtful, competent and professional. From their performance thus far in this case, the Court finds that Plaintiffs attorneys are competent and experienced not only in general matters of civil litigation, but also specifically in the area of class action and multi-plaintiff litigation.

32. While the defendants made allegations of unethical conduct against proposed class counsel, such conduct, even if committed, does not provide reason for this Court to find that a conflict exists between the class and the class representatives or between the class and proposed counsel for the class.
33. The Court further finds that Plaintiffs' attorneys possess the available resources to investigate the claims and prosecute this litigation.
34. The Court finds and concludes that the named plaintiffs and proposed class counsel together and individually will fairly and adequately protect the interests of the class.
35. Based on the *Rezulin* decision, the Court finds that Plaintiff has satisfied all the Rule 23(a) requirements of numerosity, commonality, typicality and adequacy.

*Rule 23(b)(3) Requirements*

36. Defendants have not identified any individual issues that would negate a finding that the common issues predominate.
37. Both parties claim that common issues, fundamental to plaintiffs' theories of the case, can be adjudicated on cross-motions for summary judgment. Both parties have, in fact, already moved for summary judgment and briefed the issues whether Block is a loan broker, a credit services organization, or acts as the agent of its RAL clients. Both parties have also moved for summary judgment on

and briefed the issues of whether Block has a fiduciary duty to its **RAL clients**; and whether Block's acts were unfair or deceptive.

38. On both parties' own account, therefore, the fundamental legal issues of this action predominate in the Rule 23 sense that they may be determined by the Court for all class members because both parties agree, there are no questions of material fact and they may be decided as a matter of law.
39. The Court finds and concludes that because common issues predominate, certifying this case as a class action would provide desirable advantages of judicial economy, when compared with any court's individual determination of these fundamental questions for even a small number of the plaintiffs represented here.
40. Finally, and for some of the same reasons set forth above, the plaintiffs have satisfied the Rule 23(b)(3) requirement "that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.' This requirement focuses upon a comparison of available alternatives." *Rezulin*, 214 W. Va. at 75.
41. "[F]orcing numerous plaintiffs to litigate the alleged misconduct of the defendants in hundreds or thousands of repeated individual trials, especially where a plaintiff's individual damages may be relatively small, runs counter to the very purpose of a class action.... [T]o determine the superiority of a class action in a particular case[,] other factors must also be considered, as must the purposes of Rule 23, including: conserving time, effort and expense; providing a forum for small claimants; and deterring illegal activities." *Id.*, at 75-76.

42. Plaintiffs have pursued and Block has defended this case vigorously. Both sides have done substantial discovery and depositions have occurred in no less than four states. Plaintiffs aver that they have spent more than \$535,000 in time and expense so far. By contrast, the most any individual class member could recover, even assuming all of West Virginia's statutory penalties apply, would be about \$3,700 per transaction.
  43. As Judge Posner recently observed, "[A] class action has to be unwieldy indeed before it can be pronounced an inferior alternative — no matter how massive the fraud or other wrongdoing that will go unpunished if class treatment is denied —to to no litigation at all." *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7<sup>th</sup> Cir. 2004).
  44. The Court finds and concludes that a class action is the superior, if not the only realistic way to resolve this dispute. The cost of pursuing an individual claim such as this would be so far outweighed by the cost that the only real alternative to a class action would be no action at all.
  45. For the reasons set forth above and the record herein, the Court **GRANTS** Plaintiff's motion for class certification as follows:
    - (a) The class proposed by plaintiffs is **CERTIFIED**, consisting of all West Virginia residents who obtained Refund Anticipation Loans ("RALs") from January 1,1994 through the present, as to all claims contained in the plaintiff's Second Amended Complaint.
    - (b) Deadra D. Cummins and Ivan and Ladonna Bell will be class representatives; and
-

(c) Bailey & Glasser, LLP, will be lead counsel.

(d) This class certification is conditional. If further discovery **uncovers** evidence that negates the maintainability of this class action, **the Court** may decertify, alter, or amend this order.

Accordingly, the case may proceed as a class action pursuant to Rule 23(a) and Rule 23(b)(3).

Within ten days of the date of entry of this Order, plaintiffs shall provide the Court and all counsel a proposed notice and opt-out form for approval.

Within ten days from the date that plaintiffs provide counsel with the proposed notice, defense counsel shall submit to the Court and plaintiffs' counsel a written response to the proposed notice and opt-out form.

The Court notes and preserves the objections of all parties.

The Clerk is **DIRECTED** to send a certified copy of this Order to all counsel of record.

**ENTERED this 30<sup>th</sup> day of December, 2004.**

/s/ Louis H. Bloom  
\_\_\_\_\_  
Honorable Louis H. Bloom

12/30/04  
BS/MV/AR



IN THE CIRCUIT COURT OF KAWAWHA COUNTY

WEST VIRGINIA

DEADRA D. CUMMINS, et als,  
Plaintiffs

vs.

Civil Action No. 03-C-134

H & R BLOCK, INC., et als,  
Defendants

BEFORE: Hon. Louis H. Bloom

Excerpt of Hearing  
RE: Class Certification  
December 22, 2004

Connie L. Cooke  
Official Reporter

---

BE IT REMEMBERED, that the following is an excerpt from a hearing in the matter of DEADRA D. CUMMINS, et als, Plaintiffs versus H & R BLOCK, INC., et als, Defendants, upon Civil Action No. 03-C-134, as stated in the caption hereto, the following transpired:

THE COURT: What further would you inquire? Specifically, what questions would you like to ask? What discovery that you already have — I'm not going to allow you to duplicate anything that is in the record —

MR. RAMEY: Absolutely, and I don't want to do that, your Honor.

First of all, one of the problems with the Complaint is it only mentions my clients, and it refers collectively to —

THE COURT: My question to you, sir, was what specific discovery would you want to undertake?

MR. RAMEY: I would want to undertake — I would want an explanation of the specific causes of action they are alleging against my clients, the specific facts upon which those —

THE COURT: This is a notice of pleading in West Virginia. I would like to know specifically

---

what questions you would ask, and who would you ask them?

MR. RAMEY: I would ask what acts or omissions were committed by my clients specifically upon which, for example, in class certification, class certification is based.

I would ask for the production of any documents in the possession of the plaintiffs that were in furtherance of these issues of class certification.

One of my clients is Block Financial Corporation —

THE COURT: Then I would hear your arguments based on the record as developed by the plaintiff at this point. If you have arguments that your folks aren't involved in this, now is the time to do it.

MR. RAMEY: Okay. The other questions I would ask is apparently the plaintiffs' claim against Block Financial Corporation is that Block Financial Corporation had a participation interest in some of the loans that were made. I have not been given an opportunity, nor have the plaintiffs been asked, for example, Did you know about a participation interest?

---

Had you known of a participation interest, would it have caused you not to enter into these loan transactions?

No one has asked those questions because my clients weren't in the case, and I believe that I deserve, as a matter of due process and the Rules of Civil Procedure, to ask these plaintiffs specific questions regarding that particular claim.

For example, your Honor, McDonald's, you go to McDonald's, they pay franchise fees. I would ask these plaintiffs, Well, you claim that you would not have entered into these transactions if you knew that Block Financial Corporation had a participation interest in these loan transactions, but when you go to McDonald's, were you aware that the local McDonald's pays a franchise fee? Are you telling me that you would not buy a Big Mac because you now know, or you wouldn't have bought a Big Mac back then had you known that the local franchise pays franchise fees?

No one asked these plaintiffs any of these questions, because my clients were involved in the case.

My other client is Block Services.

---

And apparently all they've done is, banks that want to participate in the loan program pay a licensing fee. This has nothing to do with the plaintiffs in this case.

I would ask the plaintiffs the same question: If you were aware that the banks — that you thought, if that's what your testimony is, were extending you the loan paid a fee in order to participate in that loan program, would it have made any difference to you? Do you feel you were damaged by that?

No one asked those questions. And before a class is certified against my clients, all I'm asking for is an opportunity to ask those questions, seek that information, develop the record so that I can come into this Court and in a meaningful manner argue to the Court based upon the evidence why you should not certify questions as to my two clients, who have only recently been brought into the case. And essentially, your Honor, my argument is no more than that.

\*\*\*\*\*

---

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit :

I, Connie L. Cooke, Official Reporter for the Circuit Court of Kanawha County, do hereby certify that the foregoing is a true and correct excerpt from the hearing in the above captioned matter, as reported by me and transcribed into the English language.

Given under my hand this 22nd day of December, 2004.

/s/ Connie L. Cooke  
Official Reporter

---



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

LEVON MITCHELL and GERAL MITCHELL,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,  
vs.

CASE NO. CV-95-2067

H&R BLOCK, INC., RUTH R. WREN, jointly  
and individually,  
Defendants.

**ORDER GRANTING CLASS CERTIFICATION**

This matter is before the Court on the Plaintiffs' Motion for Class Certification. Plaintiffs seek certification of claims for breach of fiduciary duty, unjust enrichment, and breach of contract. All of these claims arise out of Defendant H&R Block, Inc.'s ("Block") Refund Anticipation Loan program. The Court finds, after a probing, rigorous analysis and examination of the pleadings, Plaintiffs' Motion for Class Certification, the evidence submitted by Plaintiffs, all other evidence of record, the briefs of the parties, the oral argument of counsel, and the applicable law, that Plaintiffs have established their entitlement to class certification under Ala.R.Civ.P. 23 and Ala. Code 1975 § 6-5-641(e). Specifically, the Court finds that the Plaintiffs, as the parties with the burden of proof on class certification, have satisfied the requisites of Ala.R.Civ.P. 23(a) and 23(b)(3) for certification of a class. The Court understands that a class action is not maintainable by virtue of its designation as such in the pleadings. Therefore, the Court has probed extensively beyond the pleadings and has devoted much consideration to the evidence

---



adduced in determining that each requirement of Rule 23(a) and Rule 23(b)(3) has been satisfied.

The Class shall consist of the following:

**BREACH OF FIDUCIARY DUTY/UNJUST ENRICHMENT SUBCLASS**

All natural persons who (1) engaged H&R Block, Inc., or its franchisees, to obtain a Refund Anticipation Loan ("RAL") In the State of Alabama, (2) who obtained a RAL for which H&R Block, Inc., received directly or indirectly from a third-party lender either a "licensing fee" payment and/or a portion of the finance charges paid by the customer pursuant to the loan, (3) at any time during the period from June 13, 1993, through December 31,1996, and (4) whose RAL application contained the following or substantially similar provisions: (a) the person authorizes H&R Block, or H&R Block and Its affiliates, to disclose to a lending Institution the person's income tax returns, all information contained in such returns, and all information supplied to H&R Block, for the purpose of enabling the lending institution to determine whether or not to make an RAL; and (b) provides that H&R Block may not use or disclose such information for any purpose other than as stated in the RAL application.

Excluded from the Class are H&R Block, Inc., any parent, subsidiary, or affiliate of H&R Block, Inc.; the officers, directors, agents, servants, or employees of any of the same; and the members of the immediate families of any such person. Likewise excluded from the Class are any members of the Judicial Branch of the State of Alabama, and the members of the Immediate families of any such person.

**BREACH OF CONTRACT SUBCLASS**

All natural persons who (1) engaged H&R Block, Inc., or Its franchisees, to obtain a Refund Anticipation Loan ("RAL") In the State of Alabama, (2) who obtained a RAL for which H&R Block, Inc., received directly or indirectly from a third-party lender either a "licensing fee" payment and/or a portion of the finance charges paid by the customer pursuant to the loan, (3) at any time during the period from June 13, 1989, through December 31,1996, and (4) whose RAL application contained the following or substantially similar provisions: (a) the person

authorizes H&R Block, or H&R Block and its affiliates, to disclose to a lending institution the person's income tax returns, all information contained in such returns, and all information supplied to H&R Block, for the purpose of enabling the lending institution to determine whether or not to make an RAL; and (b) provides that H&R Block may not use or disclose such information for any purpose other than as stated in the RAL application.

Excluded from the Class are H&R Block, Inc., any parent, subsidiary, or affiliate of H&R Block, Inc.; the officers, directors, agents, servants, or employees of any of the same; and the members of the immediate families of any such person. Likewise excluded from the Class are any members of the Judicial Branch of the State of Alabama, and the members of the immediate families of any such person.

This certification is based upon the following factual and legal findings:

#### **I. FACTUAL BACKGROUND**

Block offers tax preparation services to the general public. In addition to its tax preparation services, Block offers its customers a service called "Rapid Refund." The Rapid Refund program functions in the following manner: for a fee, Block will electronically file a customer's tax return with the Internal Revenue Service ("IRS"). Electronic filing enables the taxpayer to obtain a refund, if one is owed, in an expedited manner.

Block also offers a service known as "Refund Anticipation Loans" ("RALs"). Block's customers must participate in the Rapid Refund program to be eligible for a RAL. RALs are obtained in the following manner: Block enters into arrangements with banking institutions (the "lender banks"), whereby they will extend loans to Block customers. The loans are secured by the customers' anticipated tax refunds. With a RAL, Block's customers can receive the loan proceeds within a few days, faster than a refund obtained through electronic filing can be received. The RALs are paid off later by the actual refund.

from the IRS. The lender banks charge a fee for the RAL, which is disclosed to the customer. This fee is deducted from the amount of the RAL.

Block prepares its customers' RAL applications and transmits them, the information contained in its customers' tax returns, and other information furnished by its customers, to the lender banks. Block solicits the lender banks' acceptance of the RAL applications, receives the proceeds of the RALs, and delivers the proceeds to its customers. The RAL applications give Block authority to disclose its customers' tax returns, and all information supplied to Block by its customers, to the lender banks. The RAL applications also expressly restrict Block from using this information for any purpose other than enabling the lender banks to determine whether or not to make a RAL, or as permitted by Treasury Regulation § 301.7216. The RAL applications do not permit Block to use this information for its own financial gain. Neither does Treasury Regulation 301.7216.<sup>1</sup>

Plaintiffs allege that under Block's arrangement with the lender banks, Block received a "license fee," characterized as a "kickback" by Plaintiffs, from the lender banks for each RAL.<sup>2</sup> Plaintiffs further contend that although the RAL fee charged by the lender banks was disclosed to Block's customers, the license fee paid to Block was not disclosed.<sup>3</sup>

---

<sup>1</sup> This Treasury Regulation is presently codified at 26 C.F.R. § 301.7216-1, -2 and -3. It was in effect during the Class Periods in a materially identical form.

<sup>2</sup> It is undisputed that Block received a license fee from RALs made through its company-owned offices for at least a portion of the Class Periods. Block contends that it did not receive license fees from RALs made to customers of its franchised offices, and that it did not receive license fees before 1992. The Court will address these contentions under its discussion of typicality, *infra*.

<sup>3</sup> Block contends that the license fee was disclosed to the named Plaintiffs, and to everyone else who received a RAL through Mellon Bank in 1994. The Court will address this contention in its discussion of typicality, *infra*. It is established that the license fee was

The license fee payment to Block constitutes a portion of the RAL fee charged by the lender banks. The amount of the license fee charged by the lender banks varied from year to year during the Class Periods, but was uniform for any given year.

Block also entered into “pooling agreements” or “participation agreements” with the lender banks. By the terms of these agreements, Block would buy 49.999999% of the RALs issued by the lender banks at a discount and realize a profit when the taxpayer’s tax refund paid off the loan.<sup>4</sup> It is undisputed between the parties that, if Block received any money from the RALs during the class periods because of the pooling agreements, it did not disclose this fact to its customers.<sup>5</sup>

Named Plaintiffs Levon Mitchell and Geral Mitchell participated in Block’s Rapid Refund program and obtained RALs. Levon Mitchell and Geral Mitchell obtained the RAL upon which their class claims are based in 1995 (for tax year 1994). Their RAL was obtained through Armstrong Business Services, Inc., a Block-franchised office.

## II. LEGAL ANALYSIS

---

not disclosed to Block’s customers during the remainder of the Class Periods. Block acknowledges that there were no written disclosures in the RAL transactions other than, Block contends, in 1994. Block makes the purely speculative assertion that class members may have learned about the license fee “from their tax preparer or from press releases or other publicly disseminated documents.” (Block’s Post-Hearing Brief, p. 11). This is based upon *one* affidavit of a Block customer, which is vague and ambiguous. (Def. Exh. 56, 5). The Court will not credit such guesswork and conjecture.

<sup>4</sup> Block contends that it received no income from pooling agreements attributable to RALs made in Alabama during the Class Periods. The Court will address this contention under its discussion of typicality, *infra*.

<sup>5</sup> Although not argued by Block, the Court notes that the alleged disclosure in 1994, discussed subsequently, could encompass the pooling agreements.

Plaintiffs seek class certification pursuant to Ala. R. Civ. Proc. 23(b)(3). As such, Plaintiffs must meet the criteria for Rule 23(a), as well as the elements set forth in Rule 23(b)(3). Rule 23(a) permits certification where:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

If the criteria of Rule 23(a) are satisfied, an action is maintainable as a Rule 23(b)(3) class action if:

the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

“The question of class certification is a procedural one distinct from the merits of the action.” *Mitchell v. H&R Block, Inc.*, 783 So. 2d 812, 816 (Ala. 2000). As the Alabama Supreme Court held in *Allstate Ins. Co. v. Ware*, 824 So. 2d 739, 744 (Ala. 2002):

[T]he propriety of class certification does not depend on whether the putative class members will be able to prove the claims on the merits. In other words, a court deciding the issue of the propriety of class certification does not base the decision on the factual merits of the alleged class claims.

Bearing in mind the Alabama Supreme Court’s directive not to prejudge the merits of the proposed class claims at the certification stage, the Court will now address the requisites for class certification.

**A. Numerosity.**

The requirement of Rule 23(a)(1) “relates to the difficulty or inconvenience in joining class members.” *Ex parte Government Employees Insurance Co.*, 729 So. 2d 299, 303 (Ala. 1999). “Practicality of joinder is the primary issue in assessing whether the numerosity requirement of Rule 23(a)(1) is satisfied.” *Winn v. Dixieland Food Stores, Inc.*, 125 F.R.D. 696,699 (M.D. Ala. 1989). An approximation of the potential number of class members will suffice in determining numerosity. *Ex parte Government Employees Insurance Co.*, 729 So. 2d at 303.

There is no dispute over the existence of this element. Block has admitted in its briefs that the Class consists of tens of thousands of members. Block’s answers to Plaintiffs’ First Set of Interrogatories represented that In excess of 32,000 persons obtained RALs in 1993 and 1994 alone. Edward Feinstein, Block’s 30(b)(6) corporate representative, testified that between 40% and 95% of all Block clients who electronically file their returns utilize the RAL program.

The Court therefore finds that the Plaintiffs have proven that numerosity is present in this case.

**B. Commonality.**

“The commonality requirement has been liberally construed, and It is aimed at determining whether there is a need for combined treatment and a benefit to be derived therefrom.” *Ex parte Government Employees Insurance Co.*, 729 So. 2d at 304 (citation omitted). “[T]here need be only a single issue common to all members of the class.” *Alba Conte & Herbert Newberg*, 1 *Newberg on Class Actions*, § 3:10, pp. 273-78 (4<sup>th</sup> ed. 2002).

"A common nucleus of operative facts is usually enough to satisfy the commonality requirement of Rule 23(a)(2)." *Cheminova America Corp. v. Corker*, 779 So. 2d 1175,1180 (Ala. 2000).

When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected.

1 *Newberg on Class Actions*, § 3:10 at 273-78. That is precisely what has occurred here: Block, through its RAL program, has engaged in a course of conduct that affected all members of the Class, a course of conduct which Plaintiffs allege has given rise to causes of action. There is a "common nucleus of operative facts" with respect to all Class members. Plaintiffs have identified the following issues of law and fact which the Court finds to be common to all members of the Class:

- a. Whether Block acted as the agent of the Plaintiffs in transmitting the RAL applications to the lender banks.
- b. Whether Block acted as the agent of the Plaintiffs in disclosing to the lender banks information supplied by Plaintiffs to Block, including Plaintiffs' tax returns and the information contained therein.
- c. Whether Block used the information supplied to it by Plaintiffs and disclosed by Block to the lender banks for the purpose of its own financial gain.
- d. Whether Block received license fees because of an agency relationship with the Plaintiffs.
- e. Whether Block received profits from its participation in the pooling agreements with the lender banks.
- f. Whether Block owed a fiduciary duty to Plaintiffs to disclose to them that it would receive as a license fee from the lender banks part of the finance charge for the RALs that Plaintiffs

paid to the lender banks, and whether Block owed a fiduciary duty not to receive such an undisclosed license fee.

- g. Whether Block owed a fiduciary duty to the Plaintiffs to reveal its relationships with the lender banks, to disclose that it was receiving profits from its use of the information supplied to it by Plaintiffs and disclosed by Block to the lender banks, and not to receive undisclosed profits from the lender banks.
- h. Whether Block contracted with Plaintiffs not to use for its own financial gain the Information supplied by Plaintiffs to Block and disclosed by Block to the lender banks, and if so, whether Block breached that contract.
- i. Whether Block has been unjustly enriched because it received or holds money which In equity and good conscience belongs to Plaintiffs, or because Plaintiffs conferred benefits upon Block as a result of detriment suffered by Plaintiffs.

The Court finds that Plaintiffs have proven the existence of the commonality requirement.

**C. Typicality.**

The claims of the class representatives must be typical of the claims of the class.

“A representative’s claim is typical [if it] arises from the same event or practice or course of conduct that gives rise to the claims of other class members and ... [is] based on the same legal theory.” *Cheminova America Corp. v. Corker*, 779 So. 2d at 1180-81 (alternations in original). The typicality requirement tests whether “the claims of the named plaintiffs have the same essential characteristics as the class at large.” *Id.* at 1180 (internal quotation marks omitted). “Where, as here, ‘the party seeking certification alleges that the same unlawful conduct was directed at the class representatives and the class itself, the typicality requirement is usually met irrespective of the varying fact patterns which underlie individual claims.’ *Id.* (quoting *Appleyard v. Wallace*, 754 F.2d 955,958 (11 th Cir. 1985)).



"[T]ypicality of claims seeks to assure that the interests of the representative are aligned with the common questions affecting the class." 1 *Newberg on Class Actions*, § 3:13 at 319.

The Court will now apply these legal principles to the claims which Plaintiffs seek to have certified for class treatment.

**1. The Breach of Fiduciary Duty Claim.**

Plaintiffs' breach of fiduciary duty claim is based upon the following provision contained in Plaintiffs' 1995 (tax year 1994) RAL application:

On the date I sign this application, I hereby authorize and request H&R Block and its affiliates to disclose to Beneficial National Bank and its agents ("BNB") my federal income tax return for tax year 1994, any and all other information contained in such tax return, all information supplied to H&R Block, including IRS direct deposit information, in connection with the preparation of such tax return, and all other information contained in this form and any information contained in any of my prior RAL applications which was disclosed to H&R Block. I authorize and consent to the disclosure of all the foregoing information for the purpose of enabling BNB to determine whether or not to make a Refund Anticipation Loan ("RAL") to me in response to my application for such loan which is a part of this form.... H&R Block may not use or disclose such tax return information or such other information for any purpose (not otherwise permitted under Treas. Reg. Sec. 301.7216-2) other than as stated herein, except that BNB or its affiliates may use such information to conduct system testing of the RAL program to update such system and keep it operational.

The Class Definitions reflect this provision of the Plaintiffs' RAL application. Therefore, if an Alabama resident who obtained a RAL during the Class Periods did not use a RAL application with the above or substantially similar language, that person is not a member of the Class. The RAL applications introduced into evidence indicate that in

Alabama for calendar years 1989 through 1996, only one lending institution, for only one year, did not use this RAL provision or a materially identical provision.

Plaintiffs' breach of fiduciary duty claim is based upon agency. The test for determining whether an agency relationship exists is whether the alleged principal reserved a right of control over the manner of the alleged agent's performance. *Thrash v. Credit Acceptance Corp.*, 821 So. 2d 968, 972 (Ala. 2001). An agent engaged for a specific purpose is a special agent for that limited purpose only. *City Stores Company v. Williams*, 252 So. 2d 45, 51 (Ala. 1971). Plaintiffs allege that the above-quoted language of the RAL application made Block the special agent of its customers, for the limited purpose of transmitting their tax return information (and other information acquired by Block from them) to the lending institution.

The RAL application authorizes Block to disclose its customers' tax and other information to the lending institution. This disclosure is for a specific purpose: "for the purpose of enabling [the lending institution] to determine whether or not to make a Refund Anticipation Loan." The RAL application further provides: "H&R Block may not use or disclose such tax return information or such other information for any purpose (not otherwise permitted under Treas. Reg. Sec. 301.7216-2) other than as stated herein...." Neither the RAL application nor the referenced treasury regulation permit Block to use its customers' information for its own financial gain.

Block acts on behalf of its customer in transmitting the customer's information to the lending institution. The disclosure of information is made for the specific purpose of enabling the lending institution to decide whether to extend a RAL to the customer. The

RAL application specifically prohibits Block from using or disclosing the information for any other purpose.

Plaintiffs allege that this restriction upon Block's use of the customer's tax and other information, contained in the RAL application which is signed by the customer, gives the customer the right of control over the manner in which Block uses the information. As such, Plaintiffs allege, the test for an agency relationship is satisfied. Specifically, Plaintiffs allege that this restriction makes Block the special agent of its customer for the limited purpose of transmitting the customer's information to the lending institution.

It is well established that an agent owes a fiduciary duty to his principal within the line and scope of the agency. *Miller v. Jackson Hospital and Clinic*, 776 So. 2d 122,123 (Ala. 2000). The fiduciary obligation includes disclosure of all material facts within the subject matter of the agency, *id.*, and prohibits an agent from profiting from the subject matter of the agency without the principal's consent. *Gardner v. Cumis Ins. Society, Inc.*, 582 So. 2d 1094,1096 (Ala. 1991). Plaintiffs allege that Block breached its fiduciary duty to the class members when it used or disclosed their tax information, a matter within the scope of Block's special agency, to the lending institutions for Block's own profit, to obtain license fees and an ownership interest in the RALs, and when Block failed to disclose these profits and its true relationship with the lending institutions to the class members.

In the prior appeal of this case, the Alabama Supreme Court reversed the denial of class certification by this Court's predecessor judge, on the ground that the Court improperly considered the merits of Plaintiffs' breach of fiduciary duty claim "by adjudicating, during the class certification hearing, the issue whether the loan documents and the restrictions contained in those documents created an agency relationship." *Mitchell*

v. *H&R Block, Inc.*, 783 So. 2d 812, 815 (Ala. 2000). The Alabama Supreme Court further held:

[T]he contractual-agency issue requires the trial court to do nothing more than look to see if a uniform document existed and whether it was used uniformly by H&R Block.

*Id.* at 816. Plaintiffs' breach of fiduciary duty claim is based entirely upon what the Alabama Supreme Court termed "the contractual-agency issue." In this regard, and pursuant to the Alabama Supreme Court's instruction, this Court finds that a uniform document existed and that it was used uniformly by H&R Block. As noted, with the exception of the RAL application used by one lending institution for one year during the calendar years 1989 through 1996, the RAL applications used by H&R Block and its franchisee offices in the State of Alabama contained the provision quoted above, or a provision which was identical in all material respects. Thus, the Named Plaintiffs' breach of fiduciary duty claim is typical of the Class members' breach of fiduciary duty claim.

Consistent with the Alabama Supreme Court's admonition not to adjudicate the merits of a claim in determining the propriety of class certification, the Court specifically does not reach the issue of whether this provision in the RAL applications created a special-agency relationship between Block and his customers, which would correspondingly give rise to a fiduciary duty on Block's part within the line and scope of that agency. The Court does find, however, that the existence of a special-agency relationship and corresponding fiduciary duty can be determined based solely upon the uniform provision used by Block in its RAL applications on a class-wide basis. Either the language of this provision creates a special-agency relationship, or it does not. In this regard, it is important to note the manner in which the Plaintiffs have framed their claim. Plaintiffs do

not rely on anything outside the RAL application as having created an agency relationship and fiduciary duty. Plaintiffs' claim is based solely upon the language of the RAL application itself.

## **2. The Unjust Enrichment Claim.**

A claim for unjust enrichment lies where the defendant holds money which in equity and good conscience belongs to the plaintiff, *Dickinson v. Cosmos Broadcasting Co.*, 782 So. 2d 260, 266 (Ala. 2000), or where the plaintiff, to his detriment, has conferred a benefit upon the defendant. *Opelika Production Credit Ass'n., Inc. v. Lamb*, 361 So. 2d 95, 99 (Ala, 1978). Plaintiffs' unjust enrichment claim is entirely derivative of their breach of fiduciary duty claim. This is abundantly clear from the allegations of Plaintiffs' Complaint as last amended. Stated differently, the unjust enrichment claim will rise or fall based upon the same proof as Plaintiffs' breach of fiduciary duty claim. Thus, it can be determined based upon the same provision uniformly used by Block in its RAL applications on a classwide basis.

As such, Plaintiffs' unjust enrichment claim is typical of the Class Members' unjust enrichment claims. In making this determination, the Court does not consider the merits of the unjust enrichment claim.

## **3. The Breach of Contract Claim.**

Plaintiffs' breach of contract claim is also based entirely upon the same uniform language contained in the RAL applications as the breach of fiduciary duty claim. Plaintiffs' claim is based upon an allegation of a unilateral contract.

[A] unilateral contract results from an exchange of a promise for an act; a bilateral contract results from an exchange of promises. [Citations omitted]. Thus, in a unilateral contract,

there is no bargaining process or exchange of promises by parties as in a bilateral contract. [Citation omitted]. [O]nly one party makes an offer (or promise) which invites performance by another, and performance constitutes both acceptance of that offer and consideration. [Citation omitted]. Because a unilateral contract is one in which no promisor receives promise as consideration for his promise, only one party is bound.

*SouthTrust Bank v. Williams*, 775 So. 2d 184,188 (Ala. 2000) (alterations in original; internal quotation marks deleted). Plaintiffs allege that Block promised (or offered) in the above-quoted provision of the RAL application to transmit its customers' tax (and other) information to a lending institution, for the purpose of enabling a lender to determine whether to extend a RAL, and further promised not to use the customer's tax information for any other purpose. Plaintiffs allege that this promise (or offer) invited performance by the customer: execution of the RAL application authorizing the release of the customer's tax information to the lending institution. Plaintiffs further allege that such a performance by the customer constituted both acceptance of Block's offer and consideration. Plaintiffs contend that Block breached the alleged unilateral contract when it used its customers' tax information to generate profit for itself, as discussed above — a purpose allegedly prohibited by the unilateral contract.

The Court finds that because the Plaintiffs allege the existence of a contract which is unilateral, as opposed to bilateral (a promise for a promise), the merits of this claim can be resolved solely by reference to the uniform provision quoted above in the RAL applications uniformly used by Block. As noted above, the Alabama Supreme Court has held that there is no bargaining process between the parties to a unilateral contract. As such, under the Plaintiffs' breach of unilateral contract theory, the Court will not need to

examine the state of mind of the individual Class members. Therefore, the named Plaintiffs' breach of contract claims are typical of the breach of contract claims of the Class members.

The Court does not address the merits of the Plaintiffs' breach of contract claim at this stage of the proceedings.

#### **4. Block's Challenges to Typicality.**

Block challenges Plaintiffs' proof of the typicality requirement in several respects. Initially, the Court notes that Block has advanced several arguments which are not directed to any specific class certification factor, but rather, are in actuality merits arguments. The Court will discuss these arguments now.

Block contended at oral argument that it did not receive license fees from its franchisee offices, as opposed to Block-owned offices. If true, this would significantly reduce the size of the Class, since the vast majority of Block's offices in Alabama are franchisee-owned. However, whether Block received license fees from its franchisee offices is a merits issue, not a certification issue, and hence is not germane at this stage of the proceedings. Whether Plaintiffs can actually prove their claims against Block, one element of which is whether Block received license fees for its RALs during the Class Periods, is not an issue during class certification. Pursuant to Ala. Code 1975 § 6-5-641 (c), all discovery directed to the merits of Plaintiffs' claims has been stayed. Thus, whether Block received license fees from its franchisee offices has not been fully developed, and is not ripe for adjudication in any event. Moreover, the Court notes that the deposition of

Harry W. Buckley (Plaintiffs' Supplemental Notice of Filing, Exh. 9, p. 135) indicates that Block did receive license fees from its franchisee-owned offices.<sup>6</sup>

Similarly, whether Block received any license fees before 1992 is a merits issue, and has not been fully developed because merits discovery has been stayed.

Block also contends that it, as opposed to its franchisees, did not participate in pooling agreements in Alabama during the Class Period. Whether or not Block profited directly from the pooling agreements is a merits question. Moreover, even if only Block's franchisees directly participated in pooling agreements, that does not necessarily mean that Block did not ultimately profit from those pooling agreements, which could constitute a breach of the fiduciary duty alleged by Plaintiffs. Again, this is a merits question, which has not been fully developed.

Block also contends that the breach of contract claim is defective because Plaintiffs' Complaint supposedly shows that Plaintiffs have not been damaged in this respect. This contention is based upon the following: with respect to their breach of contract claim, Plaintiffs allege that had Block not received license fees from lending institutions, Plaintiffs would have paid a correspondingly lower finance charge to the lending institutions for their RALs. (Plaintiffs' Fourth Amended Complaint, ¶ 37).<sup>7</sup> Plaintiffs stipulate that the lending institutions did not charge any excessive or unlawful interest rates, finance charges or loan

---

<sup>6</sup> Defendants' Motion to Exclude Plaintiffs' Supplemental Exhibit 9 is denied for the reasons set out in Plaintiffs' Response thereto.

<sup>7</sup> In Block's original brief opposing certification, it alleges, in footnote 11, that the license fee did not affect the cost of the finance charge to the RAL customer. There is no evidence to support this conclusory assertion. Moreover, whether the inclusion of the license fee increased the total finance charge to the customer is a merits question.



fees, and further allege that the interest rates, finance charges, and loan fees charged by the lending institutions “are not an element of plaintiffs’ causes of actions set out herein.” (Plaintiffs’ Fourth Amended Complaint, ¶ 11). Thus, says Block, if the finance charges are not an element of the breach of contract claim, Plaintiffs have no damages. Block has misread Plaintiffs’ Complaint. Plaintiffs allege that license fee paid to Block constitutes a portion of the finance charge paid by Plaintiffs to the lending institutions. Simply because the lending institutions’ finance charges were not excessive does not mean that they would not have been less had there been no license fee included as a component. Plaintiffs correctly allege that the finance charges charged by the lending institutions are not an element of their claim. This is because Plaintiffs do not attack the total amount of the finance charge actually charged by the lending institutions; rather, Plaintiffs seek to recover the license fee component of the finance charge from Block, for alleged breach of contract.<sup>8</sup>

Proceeding to Block’s direct attacks upon the typicality requirement, Block contends that the named Plaintiffs are not members of the Class they seek to represent. Block bases this contention upon the following: the Fourth Amended Class Action Complaint alleges that the class members obtained a loan from banks, for which they paid a finance charge, and alleges that Block should not have received part of the bank’s finance charge as a “kickback,” while the Mitchells believe that they received their refund payment directly from Block, and believe that they paid Block a charge for this service.

First, Block’s argument is factually incorrect. Mrs. Mitchell testified in her deposition that although she misunderstood the nature of the RAL transaction when it occurred, at the

---

<sup>8</sup> Block’s Motion to Dismiss the contract claim is denied without prejudice. Block can reassert this motion during the merits phase of this case, if it chooses to do so.

time of her deposition she understood that she had received a loan from a bank, and further testified that she was complaining about a secret “kickback” to Block. Although Mr. Mitchell displayed confusion in his deposition, both he and Mrs. Mitchell have since filed affidavits in which they testify that they have now learned (after their depositions)<sup>9</sup> that they received a loan from a bank, that Block received a secret “kickback” and otherwise profited from the transaction, and that they are asserting claims on behalf of the Class for this alleged self-profiteering.

Second, Block’s argument is immaterial. What Plaintiffs and the Class members “thought” is not a fact of consequence to the Plaintiffs’ claims as they have been framed and as they are based on the uniform Block RAL documents. “How the parties characterize the relationship is of no consequence; it is the facts of the relationship that control.” *Thrash v. Credit Acceptance Corp.*, 821 So. 2d at 972 (discussing agency). Moreover, “[i]f relations exist which will constitute an agency, it will be an agency whether the parties understood the exact nature of the relation or not.” *Storey v. Corkren*, 156 So. 2d 484,487 (Ala. 1963). If a limited-purpose agency relationship existed between Block and its customers, Block’s reaping of a profit from the subject matter of its agency was illegal as a matter of law. *Miller v. Jackson Hospital and Clinic*, 776 So. 2d at 124 (“acts of an agent which tend to violate [his] fiduciary obligation are prima facie voidable, and are considered, in law, as ‘frauds upon confidence bestowed’”); *Gardner v. Cumis Insurance Society, Inc.*, 582 So. 2d at 1096 (“[An] agent may not [t]raffic with the subject-matter of his

---

<sup>9</sup>The Court has considered the Plaintiffs’ affidavits because the affidavits explain any inconsistency between the testimony contained therein and the Plaintiffs’ depositions: the Plaintiffs were apprised of certain facts after their depositions had taken place.

agency, without the consent of his principal, so as to reap the profit for himself.”) (alterations in original & citation omitted); *Sevigny v. New South Federal Savings & Loan Assoc.*, 586 So. 2d 884,887 (Ala. 1991) (“An agent is not permitted to occupy a position that would allow her to profit as a result of that agency relationship.”). Thus, the mental operations of the Plaintiffs and the class members, as to what they may have thought the RAL transactions were about, are irrelevant. If there was an agency relationship based upon the uniform Block RAL documents, and Block profited from the subject matter of its agency, those profits were illegally obtained. Similarly, if the unambiguous language of the RAL application created a unilateral contract whereby Block promised not to use its customers’ information for its own financial gain, it is immaterial what the Mitchells (or the Class members) may have subjectively thought about the nature of the transaction.<sup>10</sup>

Block also contends that the named Plaintiffs fail the typicality test because of a disclosure contained on the back of one of their RAL checks. On the back of the named Plaintiffs’ 1994 (tax year 1993) RAL check is the statement that the customer’s electronic filer (Block) “may” receive a portion of the bank’s finance charge.<sup>11</sup> Thus, says Block, the

---

<sup>10</sup> The law of contracts is based upon the objective, not subjective, intent of the parties, as derived from the contract itself, where the language is unambiguous. *Murray v. Alfab, Inc.*, 601 So. 2d 878, 886 (Ala. 1992). “‘Agreement consists of mutual expressions; it does not consist of harmonious intentions or states of mind.... [One] may be ‘bound’ by a contract in ways that he did not intend, foresee, or understand. The juristic effect (the resulting legal relations) of a man’s expressions in word or act may be very different from what he supposed it would be.” *Lilley v. Gonzales*, 417 So. 2d 161,163 (Ala. 1982) (quoting A. Corbin, *Corbin on Contracts*, § 9).

<sup>11</sup> The claims for which the Named Plaintiffs seek class certification are based upon their 1995 (tax year 1994) RAL transaction.

named Plaintiffs cannot represent the class members on their claim that the license fee was not disclosed.<sup>12</sup>

This contention is erroneous because the purported disclosure on the back of the check came too late. Block's duty as set out in the RAL applications was to transmit its customers' information to the lender banks. If Block owed a fiduciary duty because of a special agency, Block's obligation was to disclose its profits before the customer signed the RAL application, or at least before Block accepted its appointment as a special agent by transmitting the customer's information to the lender bank. Because of Block's pre-existing agreement with the lender banks for the receipt of license fees, its after-the-fact disclosure of its profits, after it had completed its business on behalf of its alleged principal, and allegedly used the customer's tax information for its own profit, was meaningless.<sup>13</sup> For identical reasons, Plaintiffs' breach of contract claim is unaffected by the tardy disclosure.

Moreover, the purported disclosure was ineffective for another reason. The disclosure recites that the customer's electronic filer (Block) "may" receive a portion of the lender bank's finance charge. However, in actuality it was a certainty that the electronic

---

<sup>12</sup> Block also contends that this disclosure effectively moots the class members' claims for 1994 (tax year 1993), because all the RAL checks for that year (according to Block) contained this disclosure. This contention is incorrect for the same reasons that Block's typicality argument is without merit, as discussed herein.

<sup>13</sup> Block contends that the RAL transaction is not complete until the customer endorses the RAL check, because until that moment, the customer is free to cancel the transaction. (Block's Post-Hearing Brief, p. 11 n. 6). This is true insofar as the lending institution is concerned. However, if a fiduciary duty existed, Block's obligation was to disclose the license fee to its customer before Block used the customer's tax information for its own profit — which use occurred when Block transmitted the customer's tax information to the lender bank, because of Block's preexisting license fee agreement with the lender banks.

filer would receive a portion of the bank's finance charge in the form of a license fee, because of the preexisting license fee arrangements with the lender banks. "To warn that the untoward may occur when the event is contingent is prudent; to caution that it is only possible for the unfavorable events to happen when they have already occurred is deceit." *Huddleston v. Herman & MacLean*, 640 F.2d 534, 544 (5th Cir. 1981), *reversed on other grounds*, *Herman & MacLean v. Huddleston*, 459 U.S. 375 (1983). Thus, the purported disclosure was ineffective for this reason as well.<sup>14</sup>

For the foregoing reasons, the Court finds that the Plaintiffs have proven that their claims are typical of the claims of the class members.

**D. Adequacy.**

The Class Representatives must fairly and adequately protect the interests of the class. The purpose of this requirement "is to protect the legal rights of absent class members." *Kirkpatrick v. J. C. Bradford & Co.*, 827 F. 2d 718, 726 (11th Cir. 1987). In Alabama, the adequacy requirement has two elements. "The adequacy-of-representation inquiry involves questions as to whether the plaintiffs counsel are qualified, experienced, and generally able to conduct the proposed litigation, and as to whether the plaintiffs have interests antagonistic to those of the rest of the class." *Ex parte Government Employees Ins. Co.*, 729 So. 2d at 309; *accord*, *Cheminova*, 779 So. 2d at 1181.

---

<sup>14</sup> Block argued in its original brief opposing class certification that this purported disclosure put Plaintiffs and the Class members on notice for subsequent years that Block "may" receive part of the finance charge for the RAL. This argument has been abandoned because it was not raised at the certification hearing or in Block's Post-Hearing Brief. In any event, the false disclosure which treated a certainty as a contingency was ineffective to place Plaintiffs and the Class members on notice that Block would receive a license fee in subsequent years. Finally, a disclosure in one year does not carry over to a subsequent year when the RAL documents were silent.

Here, the named Plaintiffs have no interests antagonistic to those of the class they seek to represent. There are no internal conflicts of interest; the interests of the named Plaintiffs are coextensive with those of the class members. Proposed counsel for the Class have substantial experience pursuing complex litigation generally, and consumer class litigation in particular. The adequacy requirement is satisfied.

Block has also contended in its original brief that the Mitchells are inadequate class representatives because they supposedly do not understand the nature of their claims or the nature of the class action mechanism, and because they are unable to fund the costs of notice to the class. Block did not raise these issues at the certification hearing or in its Post-Hearing Brief. Therefore, the Court deems these contentions to have been abandoned. Moreover, the Court notes that the Plaintiffs' affidavits on file recite that since their depositions, they have been made aware of the nature of their claims and the nature of their fiduciary responsibilities to the class, and that they have made arrangements with their attorneys to provide for class notice.

The Court finds that the Plaintiffs have proven that they will fairly and adequately protect the interests of the class.

The Court now turns to the requirements of Ala.R.Civ.P. 23(b)(3).

**E. Predominance.**

Questions of law or fact common to the members of the class must predominate over any questions affecting only individual members. The predominance test requires "[T]he existence of a group which is more bound together by a mutual interest in the settlement of common questions than it is divided by the individual members' interest in matters peculiar to them." *Ex parte AmSouth Bancorporation*, 717 So. 2d 357,363 (Ala.

1998). “In deciding whether common questions of fact or law predominate, a court must examine each plaintiff’s cause of action and consider what value the resolution of the class-wide issue will have in each class member’s underlying cause of action.” *Reynolds Metals Co. v. Hill*, 825 So. 2d 100, 104 (Ala. 2002) (citation omitted). Stated differently, “To predominate, common issues must constitute a significant part of individual class members’ cases.” *Cheminova*, 779 So. 2d at 1181.

In the case *sub judice*, the Class members’ claims are all dependent upon standardized RAL documents uniformly used by Block in a classwide manner. As such, resolution of the classwide issues based upon these uniform documents will be dispositive of each class member’s cause of action.

Block contends that predominance is defeated as to each of the Plaintiffs’ claims because, Block says, the pertinent language of the RAL application is ambiguous, and therefore, presents individual questions of document interpretation. The Court disagrees. “An ambiguity exists where a term is reasonably subject to more than one interpretation.” *Ex parte Awtrey Realty Co., Inc.*, 827 So. 2d 104,107 (Ala. 2001). “The mere fact that adverse parties contend for different constructions does not in itself force the conclusion that the disputed language is ambiguous.” *Id.* Objectively viewed, the pertinent language of the RAL application is, obviously, not reasonably subject to more than one interpretation: “H&R Block may not use or disclose such tax return information or such other information for any purpose (not otherwise permitted under Treas. Reg. Sec. 301.7216-2) other than as stated herein...” The Court discerns no ambiguity here. This straightforward language means what it says.

Block further contends that the predominance requirement is not met because the agency issue would require a determination of whether each individual class member reserved a right of control over Block's actions. Block is incorrect. As discussed, the agency issue can be determined based solely upon the uniform language contained in the RAL applications. An examination of each class member's state of mind is unnecessary and irrelevant. As Block admits in its Post-Hearing Brief, "Whether relations exist which will constitute an agency in this case depends on the relations of the parties as they exist *under their agreements*." (Block's Post-Hearing Brief, p. 10) (quotation marks deleted and emphasis added). The agreements in this case are uniform written documents.

Block further contends that predominance is destroyed with respect to the breach of fiduciary duty claim because Block, as an alleged agent, must have failed to disclose a *material* fact. Block has produced affidavits from some of its customers stating that the existence of the license fee was of no consequence to them. Thus, Block reasons, predominance is destroyed because there must be an individualized determination of whether each class member thought the undisclosed license fee was important or not. This contention fails because, as discussed, an agent's failure to disclose profit reaped from the subject matter of the agency is illegal — and therefore material — as a matter of law. Thus, the various class members' personal beliefs about the propriety of the license fee are irrelevant.

Block further contends that the predominance requirement is not met because the Class includes persons who obtained RALs from Block franchisees (as the Mitchells did), as well as persons who obtained RALs from Block-owned offices. Block points out that the franchisees are independent entities, and that Block cannot be liable for their actions unless



they acted as Block's agents. Block argues that a determination of agency would require numerous mini-trials on whether each of the approximately 190 Block franchisees in Alabama was acting as Block's agent at any given time. Therefore, says Block, either predominance is completely destroyed, or at the least, the class must be limited to persons who obtained their RALs from Block-owned offices.

The Court disagrees. The Court finds that whether Block franchisees were acting as Block's agents can be determined from the RAL documents, based upon the well-established concept of implied agency.

While the creation of an agency relationship, so far as the principal and agent are concerned, arises from their consent and usually as the result of a contract, it is not essential that any actual contract exist or that compensation be expected by the agent or agreed to by the parties. While the relationship, in its full sense, arises out of a contractual or gratuitous agreement between the parties,... the agency and the assent of the parties thereto may be either express or implied...

An express agency is an actual agency created as a result of the oral or written agreement of the parties, and an implied agency is also an actual agency, the existence of which as a fact is proved by deductions or inferences from the other facts and circumstances of the particular case, including the words and conduct of the parties.

*Fisher v. Comer Plantation, Inc.*, 772 So. 2d 455, 465 (Ala. 2000) (quoting 3 Am.Jur.2d Agency § 18 (1986)).

In the case *sub judice*, whether the various franchisees were acting as Block's agents for the purpose of the RAL transactions can be determined solely from the RAL applications themselves. The following observations apply to all RAL applications for calendar years 1989 through 1996, with the sole exception of the 1994 (tax year 1993) Mellon Bank RAL application: The RAL applications are all replete with references to "H&R

Block” and “H&R Block, Inc.” For several years, the RAL applications state that the customer’s signature must be witnessed by “H&R Block.” As discussed, the RAL applications all provide that “H&R Block” can only use the customer’s information for specified purposes, not including for its own financial gain. Significantly, all the RAL applications also authorize “H&R Block” to disclose the customer’s tax information to the lender banks. Just as significantly, the RAL applications over this period of years all authorize “H&R Block” to transmit the customer’s loan request to the lender bank.

This is evidence of a longstanding pattern of conduct from which agency or the absence thereof should be determinable on a classwide basis pursuant to the implied agency principle, with respect to all Block franchisees, solely from the language of the RAL documents.

At the certification hearing, Block challenged predominance by raising the issue of arbitration. However, Block’s counsel specifically conceded that arbitration “is not a big issue” at this juncture. That is an accurate characterization of the arbitration issue.

The arbitration issue arises because beginning in calendar year 1997 (tax year 1996), all Block customers signed retroactive arbitration agreements.<sup>15</sup> Thus, Block can raise arbitration as an issue with respect to any Class members who, after the Class Periods, did further business with Block. First, this is a merits issue. Second, if Block prevails on an arbitration defense, it will be a simple matter to identify those Class members who did business with Block after the expiration of the Class Period and signed retroactive arbitration agreements. Block possesses the names, dates of birth, and social security

---

<sup>15</sup> The Class Periods end with the calendar year 1996 (tax year 1995), before Block began using arbitration agreements.

numbers of all of its customers for any given year; this information is contained on the RAL applications. A computer can eliminate from the Class all Class members who did subsequent business with Block (and thereby signed an arbitration agreement) in very short order. The Court notes that Block has not raised arbitration in any manner other than with respect to the predominance requirement.

The Court finds that Plaintiffs have proven that questions of law or fact common to the members of the Class predominate over any questions affecting only individual members.

**F. Superiority.**

There are four factors pertinent to this criterion.

The interest of Class members in individually controlling the prosecution of separate actions against Block is nonexistent because most or all of the Class members have damage claims that are uneconomical to pursue individually. “[O]ne of the primary functions of the class suit is to provide a device for vindicating claims which, taken individually, are too small to justify legal action but which are of significant size if taken as a group.” *Brady v. LAC, Inc.*, 72 F.R.D. 22,28 (S.D.N.Y. 1976).

It is clearly desirable to concentrate the litigation of these claims in one forum, as opposed to litigating the thousands of statewide Class members’ claims on an individual, repetitive basis.

Management of the action should not pose any difficulty. As discussed, this action is based upon written documents, and uniform provisions contained therein, which were used in a uniform manner. Block is in possession of the social security numbers and addresses of its customers, and has detailed information concerning past class members,

so that identification and notification of class members and distribution of benefits to them should pose no difficulty. Calculation of damages on a classwide basis will pose no manageability problems. Plaintiffs have proffered expert testimony that damages can readily be calculated on a classwide basis. With respect to the license fee, the only variable is that the amount of the license fee varied from year to year, and the amount of the license fee in a given year is known. Information in Block's possession will reflect which Alabamians purchased RALs in a given year. With respect to the pooling agreements, Plaintiffs' expert has testified that he can determine the amount of profit realized by Block from each Alabama RAL customer based upon an examination of books and records. Plaintiffs' expert opines that all damages determinations can be made through simple arithmetical calculations based upon generally accepted accounting principles.

The final superiority factor is the pendency of other litigation. Neither the Court nor the parties are aware of any individual litigation concerning this controversy already commenced by members of the class. A national class action involving Block's RAL program has been commenced in the United States District Court for the Northern District of Illinois. A settlement was reached and approved, and objectors appealed. On appeal, the United States Court of Appeals for the Seventh Circuit remanded the case for a redetermination of the settlement's fairness and adequacy before a different district judge. *Reynolds v. Beneficial National Bank*, 288 F.3d 277 (7<sup>th</sup> Cir. 2002). On remand, the federal district court rejected the settlement, and disqualified the attorneys representing the settlement class, on the ground that they were inadequate representatives. *Reynolds v. Beneficial National Bank*, 2003 WL 1877416 (N.D. Ill.). Among other things, the district court found that formal discovery undertaken by settlement class counsel was

“nonexistent.” *Id.* at \*5, \*7. Thus, the national class action appears to be back at square one. With the national class action in this posture, the Court finds that this Alabama-only class action is a superior vehicle for the fair and efficient adjudication of the controversy in Alabama.

Therefore, the Court finds that the Plaintiffs have proven that the instant class action is superior to other available methods for the fair and efficient adjudication of the controversy.

### **III. CONCLUSION**

Based upon the foregoing, the Court finds, after a rigorous analysis, that the Plaintiffs have carried their burden of proving the requisites for maintaining this action as a class action as set out in Ala.R.Civ.P. 23(a) and 23(b)(3). Accordingly, the Court certifies Plaintiffs’ claims for breach of fiduciary duty, unjust enrichment and breach of contract as a class action pursuant to Ala.R.Civ.P. 23(a) and 23(b)(3). The Court adopts the Class and Class Periods set out hereinabove in the Class Definition.

The Court notes that class certification is inherently conditional, and that as the case proceeds, this certification order can be vacated, modified, or further subclasses carved out, as may be appropriate,

The Court appoints as Lead Class Counsel, Steven A. Martino, W. Lloyd Copeland, and Taylor, Martino & Hedge, P.C.. The Court appoints as Class Counsel, Michael B. Hyman, Much, Shelist, Freed, Denenberg, Ament & Rubenstein, P.C., Steven E. Angstreich, Levy, Angstreich, Finney, Baldante, Rubenstein & Coren, P.C.

The Court is aware that Block has the right to appeal this Order within 42 days pursuant to Ala. Code 1975 § 6-5-642. If Block does not appeal, Lead Class Counsel are

directed to propose a Class Notice Plan within 15 days from the expiration of the 42 day appeal period. If Block does appeal, and this Order is affirmed, Lead Class Counsel are directed to propose a Class Notice Plan within 15 days after the issuance of the Alabama Supreme Court's certificate of judgment.

DONE this 11 day of July , 2003.

/s/ HERMAN Y. THOMAS

HERMAN Y. THOMAS  
Circuit Judge









JOYCE A. GREEN

Plaintiff

v.

H & R BLOCK, INC., ETAL

Defendants

\*

\*

\*

\*

\*

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO. 97195023/CC411

\*\*\*\*\*

MEMORANDUM OPINION AND ORDER

This action was initiated by Plaintiff Joyce A. Green individually, and on behalf of all persons whose income tax forms were prepared at any H & R Block office or facility located in the State of Maryland who had participated in H & R Block's Rapid Refund Program by obtaining a Refund Anticipation Loan ("RAL") during the time period January 1,1992 to the present. The Plaintiff has sued H & R Block, Inc., H & R Block Eastern Tax Services, Inc., H & R Block Tax Services, Inc., and Block Financial Corporation (hereinafter referred to collectively as "Block"), alleging deceptive and unfair practices, breach of fiduciary duty, and fraudulent concealment in connection with the Refund Anticipation Loan ("RAL") program.

The Plaintiff in her Complaint and various pleadings has detailed the process that a person goes through to receive an RAL. After a taxpayer has his income tax form prepared by H & R Block, he may elect to apply to a lender participating with Block to receive the refund amount, or a portion of the refund, if it exceeds a certain amount, in the form of a loan. The taxpayer must pay another charge for the loan, in addition to the tax preparation fee and the electronic filing fee, which are also deducted from the loan, and ultimately paid from the taxpayer's actual refund. Along with these is a finance charge which the Plaintiff alleges may reach \$125. The loan proceeds are generally made available to the taxpayer approximately two



to five days after the return is filed in the form of a check from Block which the taxpayer can pick up at the Block office. The IRS is directed to electronically deposit the actual refund directly with the lender bank at which time the bank deposits the proceeds into an account opened in the taxpayer's name and uses that account to repay the loan. The Plaintiff alleges that she is one of thousands of Maryland consumers that have used this RAL procedure.

Plaintiff alleges that the lender bank pays Block certain fees, or "kickbacks" for every RAL that Block solicits or procures. Plaintiff alleges these fees are unauthorized and constitute a conflict of interest, and violate Block's fiduciary duty to its taxpayer clients. Plaintiff also alleges that Block advertises the RAL, along with its companion program, Rapid Refund, in such a manner that makes customers believe they are receiving a refund, not a loan. Plaintiff has in its pleadings noted various advertisements of the Rapid Refund Program which, in sum, always asks the question, "Why wait for your tax refund, when you can get your money fast?" Plaintiff asserts that the persons targeted by Block for these RALs are generally lower income, financially unsophisticated persons who could not seek independent accountants, or lawyers, to help understand what the RAL program really was designed to do. They therefore, expect to get their money within two days and do believe that it is a refund as opposed to a loan against their refund. It is exasperated by the fact that the Rapid Refund Program is advertised with the RAL program, and never is the RAL program advertised alone. The Plaintiff also points out that Block receives another fee, or kickback, if the RAL customer cashes the check at a Sears store. According to the Amended Complaint, once a taxpayer comes into an H & R Block office, Block employees are instructed to discuss RALs with any customer who qualifies, regardless of whether the customer expresses any interest in the loan, or the so called "two day refund." The

written forms also do not delineate the fees, or the true cost of the RAL, leaving the customers to learn their actual interest rate when they receive their check. The complaint also notes that the terms of the RAL agreement are not negotiable and that they are set by the lending bank with Block's input.

The Plaintiff alleges she participated in the H & R Block Rapid Refund Program in tax years 1991 through 1994, receiving RAL's in 1992 through 1995. She alleges she has been damaged by participating in the Rapid Refund Program, and paying the exorbitant fees; that she has been victimized by her agents/fiduciaries' undisclosed earning and by the violation of Block's fiduciary duty owed to her as their customer.

The Plaintiff alleges she is not the lone victim of these unfair and deceptive tactics of Block and therefore, has filed a Motion for Class Certification pursuant to Rule 2-231(a) and (b) (1)(b)(3) of the Maryland Rules of Procedure. The Plaintiff seeks to represent a class defined as "all persons whose income tax forms were prepared at any H & R Block office, or facility located in the State of Maryland, who have participated in H & R Block's Rapid Refund Program by obtaining a Refund Anticipation Loan ("RAL") at any time during the period from January 1, 1992 to the present." Various pleadings have been filed in this case, and Motions to Dismiss the Amended Complaint were heard on May 15, 2000 and were denied by this Court in a separate Opinion and Order filed simultaneously with this Opinion and Order. Therefore, the named Defendants remain as H & R Block, Inc., H & R Block Eastern Tax Services, Inc., H & R Block Tax Services, Inc., and Block Financial Corporation. All Defendants have filed responses in opposition to the Motion for Class Certification; and a hearing on the motion was held before this Court on May 15, 2000. Since the Maryland Rules are very specific about the factors to be

considered in granting class certification, the Court will address the requirements under those Rules by the factors enumerated in the Rule in that order.

A. Rule 2-231(a)

Rule 2-231(a) provides as follows; One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

**1. Numerosity**

As the Court in Albertini v. Pete, Marwick, Main & Co., Case No. 90087031/CL111170 (Cir. Ct. Balto. City, Md., July 10,1992), correctly stated there is very little appellate authority from the Maryland Courts providing guidance as to the criteria for certification. However, in looking at the Federal Courts and other jurisdictions, the proper test under this prong is whether the class is sufficiently numerous as to make joinder of all members impracticable. Albertini also noted that a class of as few as twenty-five or thirty members raises the presumption that joinder would be impracticable.

In the instant case, Plaintiff is requesting a certification of a class which could amount, by the Defendant's own records provided at prior hearings, to thousands of Maryland residents. In Defendant's Answer to the Plaintiffs Complaint, it noted that Block is the largest tax preparation in the United States, responsible for preparing between ten and twelve percent of all tax returns filed with the Internal Revenue Service. In the Defendant's Memorandum in Opposition to the Motion for Class Certification, Defendant skipped the first prong of "numerosity" altogether, merely stating in a footnote that they stipulate that the proposed class presently meets the

numerosity requirement, and then proceeding to discuss nationwide settlements involving RALs in which Block has entered into in other parts of the country. With that in mind, the Court finds no reason to further discuss this first prong and finds that the Plaintiff has met its burden on numerosity.

## **2. Commonality**

The second prong of Rule 2-231 (a) mandates that there be questions of law or fact common to the class. This requirement is noted for its ability to be easily satisfied.

There is a strain of cases in favor of the proposition that where a proposed class action stems from a comprehensive scheme or standardized "sales presentation" that involves uniform, publicly distributed documents, or repetitive, uniform oral representations, or omitted material facts, class certification has been found proper and warranted. Sewell v. Sprint PCS, L. P., Case No. 9718802/CC3879 (Cir. Ct. Balt. City, Md., June 29, 1998).; Grainger v. State Securities Life Ins. Co., 547 F.2d 303 (5th Cir. 1977).; Vasquez y. Superior Court, 2 Cal. 3d 800 (1971).; Pruitt v. Rockefeller Center Properties Inc., 574 N.Y.S. 2d 672 (1991).

The Judiciary recognizes the importance of class action treatment of fraud and negligent misrepresentation claims in the context of protecting the consumer's rights. In Vasquez, the Court noted that "[p]rotection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society," (4 Cal. 3d at 808.) and that "[i]ndividual actions by each of the defrauded consumers is often impracticable because the amount of individual recovery would be insufficient to justify bringing a separate action (for each of them); thus an unscrupulous seller retains the benefits of its wrongful conduct." (Id.)

In this particular case, Plaintiffs argue that during the class period, Defendants took part

in a concerted scheme to defraud citizens of our state by releasing false and misleading information which omitted and misrepresented material facts. The Plaintiff alleges, inter alia, in her Complaint that common questions of law and fact exist as to the following questions:

- (1) whether the Defendants fraudulently concealed the true nature of the Rapid Refund Program and the fees associated with RALs;
- (2) whether the Block Defendants owed to Plaintiff and the Class the fiduciary duties of one standing in a confidential relationship to another;
- (3) whether the Block Defendants owed to Plaintiff and the Class the fiduciary duties owed by an agent to its principal;
- (4) whether the Block Defendants received kickbacks from RAL lending institutions in violation of their fiduciary duties to Plaintiff and the Class;
- (5) whether the acts and practices of the Defendants were done willfully, maliciously, fraudulently and/or with actual malice; and
- (6) whether the Plaintiff and the Class have been damaged, injured or have suffered irreparable harm and, if so, the extent of such damages or injuries and/or the nature of the equitable and/or injunctive relief and statutory damages to which each member of the Class is entitled.

The Court finds that these central issues satisfy the commonality requirement as there are questions of law and fact common to the proposed class.

### **3. Typicality**

The third prong of Rule 2-231 (a) requires the representative Plaintiff to present claims that are typical of the proposed class. The class representative must show that his/her claims “arise from the same event or practice or course of conduct that gives rise to the claims of the other class members, and that the claims are based upon the same legal theory.” Twyman v.

Rockville Housing Authority, 99 F.R.D. 314, 321 (D. Md. 1983). However, it is to be understood that the typicality requirement does not mandate that the claims of the named representative be “identical to” those of the other class members. This requirement is met even though varying fact patterns support the claims or defenses of individual class members or there is a disparity in the damages claimed by the named parties and the other members of the class. National Constructors Ass’n v. National Electrical Contractors Ass’n, 498 F. Supp 510, 545 (D. Md. 1980) mod., 678 F. 2d 492 (4th Cir. 1982), cert. dismissed, 463 U.S. 1234 (1983). Typicality can also be achieved by demonstrating that the Plaintiff can “show that the issues of law or fact he or she share in common with the class occupy the same degree of centrality to his or her claims as to those of unnamed members.” See Weiss v. New York Hospital, 745 F. 2d 786, 809 n. 36 (3rd Cir. 1984), cert. denied 470 U.S. 1060 (1985) citing Donaldson v. Pillsbury, 554 F. 2d 825 (8th Cir.), cert. denied, 434 U.S. 856 (1977).

In the present case, the Plaintiff alleges that she and other members of the class were subjected to a pattern and practice of the Defendants’ misrepresenting the nature of the Rapid Refund Program to consumers and that Defendants took advantage of the Plaintiff and members of the proposed class by charging exorbitant interest rates on what was a fully secured, short term, loan for the purpose of generating substantial undisclosed fees and profit. Plaintiff also alleges that Block acted as an agent and the Court of Appeals has made the finding that Plaintiff has alleged sufficient facts supporting the existence of an agency relationship. Green v. H&R Block, et al., 355 Md. 488, 735 A.2d 1039 (1999) at 527. Thus, assuming an agency relationship, Defendant Block owes a fiduciary duty to the Plaintiff and the proposed class.

The Defendants argue that the Plaintiff’s claims lack the necessary typicality to warrant



her being accepted as a viable class representative. The Defendants cite the fact that the Plaintiff did not read her applications before signing them, she did not cash a RAL check at Sears, she requested a RAL in at least one year, and other such fine points (Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Class Certification pp.27-28). In making such an argument about the minute specificities of Plaintiff's conduct as related to the conduct of the proposed class, the Defendants essentially ignore the fact that the claims are not required to be identical. The central issue of the class certification motion is one that deals with omitted information by a fiduciary (agent) saddled with the obligation of revealing all pertinent information to its principal. In this situation the Court cannot now ask the proposed class if they take issue with the fact that information was knowingly omitted from their purview. The proper question is," Was information intentionally omitted from the knowledge of the Plaintiff and is this typical of the proposed class as a whole?"

Class members usually are given the opportunity to opt out of the class by a particular date, should they choose, if they take no offense to the actions of the Defendants or simply do not want to be a part of the class. Rule 2-231 (e). The Court's focus is on the actions taken by the Defendants at the time the harm occurred, not whether or not the proposed class takes objection to such actions. The Court finds that the typicality requirement has been met.

#### **4. Adequacy of Representation**

The fourth factor to be considered under Maryland Rule 2-231 (a), is whether the representative party will fairly and adequately protect the interests of the class.

Case law notes that there are two components to be considered within this prong 1) the interests of the Plaintiff must coincide with the other members of the class; and 2) it must appear

that the Plaintiff and selected counsel will vigorously prosecute the action. Disabled in Action of Baltimore v. Bridwell, 593 F.Supp. 1241, 1245 (D.Md. 1984).

The first component, as borne out by the discussion on "Typicality," is clearly met. This Plaintiff's interests are in sync with other members of the class she seeks to represent in the action. There are no antagonistic interests. The Defendant's claims that she is not an adequate representative because she is not one of those customers who cashed her check at Sears or signed an RAL containing an arbitration clause does not equate to her having antagonistic interests, merely different and perhaps less damages as a result of any injury.

As to the second component of this prong, it is uncontradicted through pleadings and argument that the plaintiff in this case reviewed the Complaint, discussed it with her attorneys, has had other discussions with her attorneys, and appeared for deposition. Her testimony at deposition demonstrates that she understands the nature of the Complaint, and the reasons she is suing H & R Block, Inc., etal. In addition, while it is contested whether or not it meets Maryland's law, the Plaintiff was able on deposition to give details of her fee arrangement with her attorneys. In addition, the Plaintiff presented a letter from counsel explaining the nature of her fee arrangement with them for the purposes of this case. The defendants point out that the copy presented to them and the Court is unsigned by either the counsel, or the plaintiff, and that a thorough discussion of what expenses are paid by the counsel, or what might be expected to be paid by the plaintiff, and any percentage arrangements, as sometimes you might find in contingency cases, is missing. Plaintiff, however, argues that in class action suits, it is not necessary to have such details in writing. Plaintiff's deposition at pages 45 – 46 clearly indicates that her understanding of the fee agreement matches the letter when she states: "The agreement

is that whatever the judge sees fit would be their payment, if there was any; if there wasn't, then there wouldn't be any fee." Ms. Green also conveyed she is under no obligation to pay expenses whether she wins or loses. Also uncontradicted is that the plaintiff at deposition stated that she was representing all Rapid Refund customers in the United States as opposed to all RAL recipients in the State of Maryland as she pled in her Amended Complaint.

The Court finds that while the letter is scant, it does lay out the bare minimum requirements for a fee arrangement; and that coupled with the testimony from the plaintiff indicating her knowledge of the fee arrangement is sufficient to determine that she has, in fact, hired counsel, and knows the fee arrangement. In addition, the plaintiff does appear to be a knowledgeable client, understanding the gravamen of the case before her, and has followed through with filings, pleadings, court appearances, and a deposition. The Court finds the misstatement in her deposition with respect to how many persons she is seeking to represent in the class to be of little consequence in the overall view of her knowledge of the case. The Plaintiff, in fact, has taken her Complaint all the way to the Court of Appeals of Maryland after it was dismissed below and won a reversal and remand; and has remained as the moving party as the case goes forward once again in this Court. Her actions certainly suggest she is a knowledgeable, willing proponent of the cause, and will be an adequate representative for the class.

With respect to the counsel she has retained, records reflect that they are well-known attorneys in this field, and have filed numerous suits of this nature. The resumes of counsel, both local and outside, reveal superior qualifications by noting vast experience in this type of litigation, prior certifications won, including the one in the Albertini case before this Court.

There is no question that they are knowledgeable and capable of pursuing this lawsuit, and have thus far actively pursued Ms. Green's cause. There is no reason to doubt that they would not continue to provide more than adequate representation for the class.

In sum, the Court believes that the plaintiff has met her burden and will be an adequate representative for the class.

#### B. Requirements Under Maryland Rule 2-231 (b)

The Plaintiff, as an additional prerequisite to class certification, under Maryland Rule 2-231, must establish one of several factors under 231 (b) (3). The Plaintiff in this case has chosen to rely upon the predominant and superiority clauses of that Rule.

##### 1. Predominance

"In determining whether the predominance standard is met, courts focus on the issue of liability, and if the liability issue is common to the class, common questions are held to predominate over individual ones." Albertini v. Peat, Marwick, Main & Co. Case No. 9008703/CL111170, (Cir. Ct. Balt. City, Md., July 10, 1992); In Re Kirschner Medical Corp. Securities Litigation. 139 F.R.D. 74, 80, (D. Md. 1991). It is clear that several questions exist which align themselves perfectly with the issue of liability: whether or not Defendants' acts activities and omissions amounted to violations of Maryland's Consumer Protection Act (the Consumer Protection Act), fraudulent concealment and breaches of Defendants' fiduciary duties and obligations; whether or not Plaintiff and the Class members were damaged by the violation of the Consumer Protection Act; whether or not Defendants must disgorge the secret profit they realized in breach of their duties; and whether or not declaratory relief is mandated are central questions. However, the overall issue of this motion is whether the Defendants, while wearing

the hat of fiduciary (agent), intentionally omitted facts that the proposed class (principal) had a right to be privy to. The Court of Appeals also narrowed the issue down to this particular point:

[r]ather Green's central allegation relates to H&R Block's failure to disclose the 'true nature' of its RAL program, in particular, the various ways it stands to benefit from the customer's agreement with the lending bank. The Court finds that the issue of liability is common to the class. Green, at 526.

Defendants argue that the fraudulent omissions and negligent misrepresentations require proof of individual reliance and thus, certification under (b) (3) is inappropriate because individual issues of reliance will predominate over any common question of law and fact.

The court stated in Kirschner, "[i]n the event that individual issues of reliance pose difficulties as to case management at a later stage, there are mechanisms available to effectively litigate the reliance questions, without destroying the efficiency of class proceedings on other issues." Kirschner at 83. Also, as stated in Albertini, there are several other avenues available to resolve reliance issues without sacrificing class certification (mini-hearings and questionnaires to name a few).

Furthermore, there is case law, as Plaintiff argues (in Plaintiffs Reply Brief in Support of Her Motion for Class Certification), that supports the idea that common misrepresentations obviates the need to gather individual testimony as to each element of a fraud or misrepresentation claim, especially where written misrepresentations or omissions are involved. Cope v. Metropolitan Life Insurance Company, 82 Ohio St. 3d 426, at 430, (1998) citing Shields v. Lefta, Inc., 888 F. Supp. 891, 893 (N.D. 111. 1995). This would seem to include individual issues of reliance. Therefore, the Court finds that common issues predominate over any questions affecting only individual members.

## 2. Superiority.

The second prong of plaintiff's reliability under Maryland Rule 231(b)(3) requires that a class action be superior to other methods for the fair and efficient adjudication of the case.

The plaintiff first notes that the defendant should be estopped from objecting to the class action because it has entertained a class action in the State of Illinois in Zawickowski, et al v. Beneficial National Bank, et al, No. 98 (2178, N.Dist, 111., E.Dist). Defendant distinguishes that action as a settlement only class which is allowed under Amchem Products, Inc. v. Windsor, 521 U.S. 591, 117 S Ct. 2231 (1997), and denotes different factors are considered for a settlement class certification, rather than a class certification for trial. The Courts have noted that the requirements for certification settlement purposes are less stringent "to encourage sweeping settlements of complex litigation," Bowling v. Pfizer, 143 F.R.D. 141, 158 (S.D. Ohio 1992). The Court agrees with Defendant and, therefore, will not find that they have waived their right of objection to the class on this basis.

As plaintiff notes, obviously, the cost of trying this claim in separate cases would be extremely expensive to the individual customers who felt they were wronged. Evidence presented shows that the loss to each alleged injured party would be nominal, such as five to fifteen dollars per RAL. Faced with those types of damages, it is unlikely that one person would undertake the expense involved in this complex litigation. And in fact, case law notes that when the amount of money each person loses is small, then that is when class actions are most appropriate. Sewell v. Sprint PCS, L.P., supra.

In addition, class actions have the least burdensome effect on the judicial system, as they facilitate judicial economy and efficiency, as well as consistent judgments. A class action is

preferable, in that it would provide a speedier and more comprehensive determination of the allegations at issue. It would also prevent inconsistent verdicts being entered against the defendants, and would spare the defendants, and the Court, repetitive piecemeal litigation.

While the defendant raises claims of mini trials being necessary to resolve issues of causation and reliance, the common questions of law and fact noted above would indicate that those issues would really go more towards damages, as opposed to the merit of the lawsuit. It is alleged that the failure to disclose the fee arrangement between H & R Block, Inc., and its lenders, the fact that the monies the clients received were actually loans, and not their refunds, and that Block received incentive, or "kickbacks" from the lending institutions, and from Sears where a lot of the checks were cashed, would be the same for all the members of the class. The specific details of each of their visits to the H & R Block for tax preparations, or their specific disclosure forms, would not be relevant. The defendant relies heavily on the issue that the Court must know whether each class member would have obtained a RAL had they known that Block were receiving a percentage of the fee, or receiving a kickback, or receiving any part of the proceeds from the cashing of the check. They also allege that the Court cannot assume that every member of the class was lured by the same Block ad; however, evidence shows that the ads were all similar, especially with regards to the key information that would make a person want to apply for the Rapid Refund RAL.

In sum, the Court finds that the members of the class are clearly identifiable and have similar claims, and that the benefits of judicial economy, consistent judgments, as well as the saving of trial costs for punitive class members, clearly make class action a superior remedy then individual lawsuits.

C. CONCLUSION

For the reasons stated above, the Court finds that Plaintiff has satisfied the requirements of Rule 2-231 (a) and (b)(3), and will certify the class defined by Plaintiff. Pursuant to Rule 2-231(c), this determination may be altered or amended at anytime before a decision on the merits upon further review of the Court. Additionally, the Court shall invite from the parties a proposed order for the form of notice to be given members of the class.







IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DEADRA D. CUMMINS,  
IVAN and LADONNA BELL,  
LEVON and GERAL MITCHELL,  
JOYCE A. GREEN,  
LYNN BECKER,  
RENEA GRIFFITH  
MARYANNE HOEKMAN and  
JUSTIN SEVEY,  
on their own behalf and on  
behalf of those similarly situated,

Plaintiffs,

v.

Civil Action No. 03-C-134

H & R BLOCK, INC., H & R BLOCK  
TAX SERVICES, INC., H & R BLOCK  
EASTERN ENTERPRISE, successor to  
H & R BLOCK EASTERN TAX SERVICES, INC.,  
BLOCK FINANCIAL CORPORATION,  
HRB ROYALTY, INC., and  
H & R BLOCK SERVICES, INC.,

Defendants.

[PROPOSED] FINAL ORDER OF JUDGMENT AND DISMISSAL

WHEREAS, the parties to this action, Plaintiffs Deadra Cummins, and Ivan and LaDonna Bell, and Defendants H&R Block, Inc., et al., along with the parties in three related and now consolidated actions, *Mitchell v. H&R Block, Inc. et al.*, Case No. CV-95-2067 (Circuit Court of Mobile City, Ala.) (the "Mitchell Action"), *Green v. H&R Block, Inc. et al.*, Case No. 97195023/CC411 (Circuit Court of Baltimore City, Maryland) (the "Green Action"), and *Becker v. H&R Block, Inc.*, Case No. 5:04-cv-

---

01074-CAB (N.D. Ohio) (removed from Summit County (Ohio) Court of Common Pleas) (the "Becker Action") (hereinafter collectively these consolidated cases will be referred to as the Action) have agreed, subject to Court approval, to settle this Action upon the terms and conditions set forth in the Agreement of Settlement and the Exhibits annexed thereto (the "Settlement Agreement"), which has been filed with the Court as an attachment to the Motion for Final Approval (the "Motion"); and

WHEREAS, the Plaintiffs having made application, pursuant to West Virginia Rule of Civil Procedure 23, for an order finally approving the Agreement, which sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and

WHEREAS, the Court preliminarily approved the Settlement Agreement by a Preliminary Approval Order dated \_\_\_\_\_, 2005, and Notice was given to all members of the Settlement Class pursuant to the terms of the Preliminary Approval Order; and

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Settlement Agreement; and

WHEREAS, the Court has read and considered the papers filed in support of the Motion, including the Settlement Agreement and the exhibits thereto, memoranda and arguments submitted on behalf of the Settlement Class and the Settling Defendants, and supporting declarations. The Court has also

considered any written comments filed with the Clerk of the Court by absent class members. The Court held a hearing on \_\_\_\_\_, at which time the parties and all other interested persons were heard in support of and in opposition to the proposed settlement; and

WHEREAS, based on the papers filed with the Court and the presentations made to the Court by the parties and by other interested persons at the hearing, it appears to the Court that the settlement set forth in the Settlement Agreement is fair, adequate, and reasonable. Accordingly,

IT IS HEREBY ORDERED THAT:

1. For purposes of this settlement only, the Court has jurisdiction over the subject matter of the Action and personal jurisdiction over the parties and the members of the Settlement Classes described below.

2. Pursuant to Rule 23(b)(3) of the West Virginia Rules of Civil Procedure, the Court confirms its prior certification of the following Settlement Classes for purposes of settlement only:

(a) State Law Class: All residents of the several jurisdictions identified in the chart attached as Exhibit A who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, or any H&R Block offices such as in Sears stores) from January 1, 2000 through December 23, 2005, and did not timely request exclusion from this class;

(b) West Virginia Class: All West Virginia residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, or any H&R Block offices such as in Sears stores) from January 1, 1994 through December 23, 2005, who did not previously request exclusion from the *Cummins* class or timely request exclusion from this class, other than those persons who previously requested exclusion from the *Cummins* class, subsequently obtained a RAL through any Settling Defendant or Affiliate in 2005, and did not timely request exclusion from this class with respect to such 2005 RAL.

(c) Becker Class: All Ohio residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any HRB Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears stores) from January 1, 2000 through December 23, 2005, and did not timely request exclusion from this class.

(d) Mitchell/Green Class: All Maryland residents who applied for and obtained a RAL at any H&R Block office in Maryland from January 1, 1992 through December 31, 1996 and did not thereafter apply for and obtain a RAL subject to an arbitration provision, and all individuals who obtained a RAL from June 13, 1989 through December 31, 1996 through any "H&R Block" office in Alabama for which

the Settling Defendants herein received a license fee payment or portion of the finance charge, and who did not previously request exclusion from their respective classes that were previously certified or timely request exclusion from this class.

3. The Court confirms the appointments of the class representatives and class counsel with respect to each Settlement Class, as follows:

(a) State Law Class: Justin Sevey, Maryanne Hoekman and Renea Griffith are appointed class representatives; and Daniel Hume, Esq., of Kirby McInerney & Squire, LLP, Ronald L. Futterman, Esq., Michael I. Behn, Esq., and William W. Thomas, Esq., of Futterman & Howard, Chtd, Michael B. Hyman, Esq., and William H. London, Esq., of Much Shelist Freed Denenberg Ament & Rubenstein, P.C., and Scott S. Segal, Esq. of The Segal Law Firm are appointed as class counsel to the State Law Class.

(b) West Virginia Class: Deadra Cummins, Ivan Bell and LaDonna Bell are appointed class representative and Brian A. Glasser, Esq., H. F. Salsbery, Esq., John Barrett, Esq., and Eric Snyder, Esq., of Bailey & Glasser, LLP are appointed class counsel to the West Virginia Class. Brian Glasser is also appointed Coordinating Counsel.

(c) Becker Class: Lynn Becker is appointed class representative and John Roddy, Esq., Gary Klein, Esq., and Elizabeth Ryan, Esq., of Roddy Klein & Ryan, Ronald Frederick, Esq. of Ronald Frederick & Associates, LLC, and Bruce L. Freeman, Esq., Freeman & Chiartas, are appointed class counsel to the Becker Class.

(d) Mitchell/Green Class: Levon and GERAL Mitchell and Joyce A. Green are appointed class representatives Steven A. Martino, Esq., Frederick T. Kuykendall III, Esq., and W. Lloyd Copeland, Esq. of Taylor, Martino & Kuykendall, Steven E. Angstreich, Esq., Michael Coren, Esq., Carolyn C. Lindheim, Esq., of Levy, Angstreich, Finney, Baldante, Rubenstein and Coren, P.C., Charles J. Piven, Esq., of Law Offices of Charles J. Piven, PA, and Marvin W. Masters, Esq., of The Masters Law Firm Lc, are appointed class counsel to the Mitchell/Green Class.

4. With respect to each of the respective Settlement Classes, this Court confirms its previous preliminary findings in the Preliminary Approval Order that, for settlement purposes only, (a) the Settlement Class as defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class; (c) the claims of the respective class representatives (the "Class Representatives"), identified in paragraph 3 above, are typical of the claims of their respective class; (d) the Class Representatives will fairly and adequately protect the interests of the Settlement Class; (e) the questions of law or fact common to the members of the Settlement Class predominate over the questions affecting only individual members, and (f) certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy. In the event the Settlement Agreement terminates pursuant to its terms or the certification of any Settlement Class does not become final for any reason, the conditional certification of such Settlement Class pursuant to this Order shall be vacated automatically and shall be null and void, and any such Settlement



Class shall revert to its status immediately prior to the execution of the Settlement Agreement.

5. The Court finds that the Notice was given to members of the Settlement Class in accordance with the Preliminary Approval Order and such Notice by first-class mail and publication adequately informed members of the Settlement Classes of all material elements of the proposed settlement, constituted valid, due, and sufficient notice to all members of the Settlement Classes, constituted the best notice practicable under the circumstances, and fully satisfied all requirements of Rule 23(c) of the West Virginia Rules of Civil Procedure and applicable law.

6. The persons who made timely and valid requests for exclusion are excluded from the Settlement Classes and are not bound by this Order of Final Judgment and Dismissal. The identities of such persons are set forth in Exhibit B attached hereto.

7. The Settlement Agreement was arrived at as a result of arms'-length negotiations conducted in good faith by counsel for the Parties, with the assistance of an experienced mediator, and is supported by the Representatives of the Settlement Classes.

8. The Action presents issues as to liability and damages as to which there are substantial grounds for differences of opinion.

9. The Court finally approves the settlement of the Action in accordance with the terms of the Settlement Agreement and finds that the

settlement is fair, reasonable, and adequate in all respects in light of the complexity, expense and duration of litigation and the risks involved in establishing liability, damages and in maintaining the class action through trial and appeal.

10. Payment of cash as provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The Court finds that the consideration to be paid to Settlement Class Members is well within the range of reasonableness considering the facts and circumstances of the RAL transactions at issue, the numerous types of claims and affirmative defenses asserted in the Action and other RAL litigation over many years, and the potential risks and likelihood of success of alternatively pursuing trial on the merits.

11. The Court orders the parties to the Settlement Agreement to perform their obligations thereunder pursuant to the terms of the Settlement Agreement.

12. The Court dismisses this Action, and the Released Claims, with prejudice and without costs (except as otherwise provided herein and in the Settlement Agreement) against Plaintiffs and all Settlement Class Members, and adjudges that the Released Claims and all of the claims described in the Settlement Agreement, Section I, Paragraphs 2 through 5 are released against the Released Parties.

13. The Court adjudges that the Class Representatives and all

Settlement Class Members who receive money from the Settlement Fund under the Settlement Agreement shall be deemed to have, fully, finally and forever released, relinquished and discharged all Released Claims against the Released Parties, as defined by the Settlement Agreement. The Court further adjudges that each Settlement Class Member who did not timely and validly request exclusion from this settlement (the "Non-Opt Outs"), but for whatever reason did not submit a claim to receive money from the Settlement Fund, shall be deemed to have fully, finally and forever released and extinguished his or her right (if any ever existed) to adjudicate a Released Claim in any forum other than by individual arbitration as permitted by and in accordance with the arbitration provision of the 2005 RAL application, a copy of which is attached as Exhibit C to the Motion. In all other respects, such Non-Opt Outs do not release any Released Claims for a period of one year after the Effective Date, as defined in the Settlement Agreement, Section II, Paragraph 6, at which time such Non-Opt Outs shall be deemed to have, fully, finally and forever released, relinquished and discharged all Released Claims against the Released Parties.

14. The Court further adjudges that upon the Effective Date, each of the Released Parties and all signatories to the Settlement Agreement shall be deemed to have fully, finally and forever released, relinquished and discharged Plaintiffs, Class Counsel, and the Settling Defendants and their counsel in this Action from any claims (including Unknown Claims) for abuse of process, libel, malicious prosecution or similar claims arising out of, relating to, or in connection with the

institution, prosecution, defense, assertion, or resolution of the Action, including any right under any statute or federal law to seek counsel fees and costs.

15. Plaintiffs and Settlement Class Members are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims or any of the claims described in the Settlement Agreement, Section I, Paragraphs 2 through 5 against the Released Parties, except in a manner consistent with paragraph 13, supra, to the extent applicable.

16. It is in the best interests of the Parties and the Settlement Class Members and consistent with principles of judicial economy that any dispute between any Settlement Class member (including any dispute as to whether any person is a Settlement Class Member) and any Released Party which in any way relates to the applicability or scope of the Settlement Agreement or this Final Order of Judgment and Dismissal should be presented exclusively to this Court for resolution by this Court. Therefore, without affecting the finality of this Final Order of Judgment and Dismissal in any way, the Court retains jurisdiction over: (a) implementation and enforcement of the Settlement Agreement until the final judgment contemplated hereby has become effective and each and every act agreed to be performed by the parties hereto shall have been performed pursuant to the Settlement Agreement; (b) any other action necessary to conclude this settlement and to administer, effectuate, interpret and monitor compliance with the provisions of the Settlement Agreement.

17. The Court approves of Class Counsel attorneys' fees, costs and

expenses for the *Cummins* class in the amount of \_\_\_\_\_, and for the State Law class, the *Becker* class, and the *Mitchell/Green* class in the total amount of \_\_\_\_\_. These amounts shall be paid from the Settlement Fund to Coordinating Counsel in accordance with the terms of the Settlement Agreement. Coordinating Counsel will then distribute the money among class counsel in his discretion.

18. The Court approves the service fee payment of \$\_\_\_\_\_ for Class Representative Deadra Cummins. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

19. The Court approves the service fee payment of \$\_\_\_\_\_ for Class Representatives Ivan and LaDonna Bell. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

20. The Court approves the service fee payment of \$\_\_\_\_\_ for Class Representative Joyce Green. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

21. The Court approves the service fee payment of \$\_\_\_\_\_ for Class Representatives Levon and GERAL Mitchell. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

22. The Court approves the service fee payment of \$\_\_\_\_\_ for Class Representative Lynn Becker. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

23. The Court approves the service fee payment of \$\_\_\_\_\_ for Class

Representative Renea Griffith. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

24. The Court approves the service fee payment of \$\_\_\_\_\_ for Class Representative Maryanne Hoekman. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

25. The Court approves the service fee payment of \$\_\_\_\_\_ for Class Representative Justin Sevey. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

26. Neither this Final Order of Judgment and Dismissal nor the Settlement Agreement is an admission or concession by any of the Settling Defendants or their Affiliates of any fault, omission, liability, or wrongdoing. This Final Order of Judgment and Dismissal shall not constitute a finding of either fact or law as to the merits or the validity or invalidity of any claims in this Action or a determination of any wrongdoing by the Settling Defendants, or a finding as to any obligation of the Settling Defendants or their Affiliates to take any actions agreed to be done or avoided as necessary in order to bring them into compliance with law. The final approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of the Settling Defendants or the Settlement Class members.

27. All objections to the Settlement Agreement are overruled and denied in all respects. The Court finds that no just reason exists for delay in entering this

Final Order of Judgment and Dismissal. Accordingly, the Clerk is hereby directed forthwith to enter this Final Order of Judgment and Dismissal.

DATED: \_\_\_\_\_, 2006

\_\_\_\_\_  
Hon. Louis Bloom





**Exhibit A**  
**Settling Jurisdictions**

1. Arkansas
  2. Arizona
  3. California
  4. District of Columbia
  5. Florida
  6. Illinois
  7. Indiana
  8. Massachusetts
  9. Maryland
  10. Maine
  11. Michigan
  12. Minnesota
  13. Missouri
  14. Nebraska
  15. New Hampshire
  16. Nevada
  17. Oregon
  18. Pennsylvania
  19. Tennessee
  20. Utah
  21. Virginia
  22. Washington
  23. Wisconsin.
-



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DEADRA D. CUMMINS,  
IVAN and LADONNA BELL,  
LEVON and GERAL MITCHELL,  
JOYCE A. GREEN,  
LYNN BECKER,  
RENEA GRIFFITH  
MARYANNE HOEKMAN and  
JUSTIN SEVEY,  
on their own behalf and on  
behalf of those similarly situated,

Plaintiffs,

v.

Civil Action No. 03-C-134

H & R BLOCK, INC., H & R BLOCK  
TAX SERVICES, INC., H & R BLOCK  
EASTERN ENTERPRISE, successor to  
H & R BLOCK EASTERN TAX SERVICES, INC.,  
BLOCK FINANCIAL CORPORATION,  
HRB ROYALTY, INC., and  
H & R BLOCK SERVICES, INC.,

Defendants.

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION  
SETTLEMENT AND PROVIDING FOR NOTICE  
("PRELIMINARY APPROVAL ORDER")

WHEREAS, the Court has been advised that the parties to this action, Plaintiffs Deadra D. Cummins, and Ivan and LaDonna Bell, and Defendants H&R Block, Inc., et al., along with the parties in three related actions, *Mitchell v. H&R Block, Inc. et al.*, Case No. CV-95-2067 (Circuit Court of Mobile City, Ala.) (the "Mitchell Action"), *Green v. H&R Block, Inc. et al.*, Case No. 97195023/CC411

---

(Circuit Court of Baltimore City, Maryland) (the "Green Action"), and *Becker v. H&R Block, Inc.*, Case No. 5:04-cv-01074-CAB (N.D. Ohio) (removed from Summit County (Ohio) Court of Common Pleas) (the "Becker Action") (hereinafter collectively referred to as the Settling Actions) have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle these actions upon the terms and conditions set forth in the Agreement of Settlement ("Agreement"), which has been filed with the Court as an attachment to the Motion for Preliminary Approval;

WHEREAS, the Plaintiffs having made application, pursuant to West Virginia Rule of Civil Procedure 23, for an order preliminarily approving the settlement of the Action in accordance with the Agreement of Settlement and the Exhibits annexed thereto, which set forth the terms and conditions for a proposed settlement of this action and the Settling Cases and for dismissal of the this action and the Settling Cases with prejudice upon the terms and conditions set forth therein; and

WHEREAS, the Plaintiffs have moved for leave to file a Consolidated and Amended Complaint, consolidating this action and the Settling Actions for purposes of settlement, and the plaintiffs have lodged with the Court a Consolidated and Amended Complaint; and

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Agreement; and

WHEREAS, the Court having read and considered the Agreement, and

based upon the Agreement and all of the files, records, and proceedings herein, and it appearing to the Court that upon preliminary examination the Agreement and settlement appears fair, reasonable and adequate, and that a hearing should and will be held after notice to the proposed Settlement Classes to confirm that the Agreement and settlement are fair, reasonable, and adequate, and to determine whether a Final Order of Judgment and Dismissal should be entered in this action based upon the Agreement;

IT IS HEREBY ORDERED THAT:

1. For purposes of settlement only, the Court has jurisdiction over the subject matter of the Settling Actions and personal jurisdiction over the parties and the members of the proposed Settlement Classes described below.

2. For purposes of settlement only, the Court allows the motion to consolidate this action and the Settling Actions (hereinafter collectively referred to as the "Action"), and accepts the Consolidated and Amended Complaint as filed. In the event that one or more of the Settlement Classes as provided in the Agreement is not approved by the Court, such Consolidated and Amended Complaint will be stricken and this order vacated automatically, as far as they relate to any such disapproved Settlement Class, (i) concurrently with any order rejecting approval of this Agreement or disapproving any such Settlement Class or, (ii) in the event that the Court grants final approval of one or more Settlement Classes as provided in the Agreement but such final approval order is subsequently reversed or modified on appeal, concurrently with any order remanding the Action to this Court, in either

case without the need for any further order of this Court, and in either such instance any Settlement Class that is not approved by the Court or for which certification is reversed or modified on appeal will revert to its status immediately prior to the execution of the Agreement.

3. The Agreement and the settlement contained therein are preliminarily approved as fair, reasonable, and adequate.

4. Pursuant to Rule 23(b)(3) of the West Virginia Rules of Civil Procedure, the Court certifies the following Settlement Classes for purposes of settlement only:

(a) State Law Class: All residents of the several jurisdictions identified in the chart attached hereto as Exhibit 1 who applied for and obtained a Refund Anticipation Loan (a "RAL") through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate (as defined in the Agreement), as defined herein, or any H&R Block offices such as in Sears stores) from January 1, 2000 through December 23, 2005;

(b) West Virginia Class: All West Virginia residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any HRB Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears

stores) from January 1, 1994 through December 23, 2005 who have not previously requested exclusion from the *Cummins* class; provided, however, that persons who opted-out of the certified *Cummins* litigation class and who obtained a RAL through any Settling Defendant or Affiliate in 2005, will receive another opt-out opportunity for their 2005 RALs only.

(c) Becker Class: All Ohio residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears stores) from January 1, 2000 through December 23, 2005.

(d) Mitchell/Green Class: All Maryland residents who applied for and obtained a RAL at any H&R Block office in Maryland from January 1, 1992 through December 31, 1996 and did not thereafter apply for and obtain a RAL subject to an arbitration provision, and all Alabama residents who obtained a RAL from June 13, 1989 through December 31, 1996 through any "H&R Block" office in Alabama for which the Settling Defendants herein received a license fee payment or portion of the finance charge, and who did not previously request exclusion from their respective class.

5. The Court makes the following appointments with respect to each Settlement Class, for purposes of settlement only:

(a) State Law Class: Justin Sevey, Maryanne Hoekman and Renea

Griffith are appointed class representatives; and Daniel Hume, Esq., of Kirby McInerney & Squire, LLP, Ronald L. Futterman, Esq., Michael I. Behn, Esq., and William W. Thomas, Esq., of Futterman & Howard, Chtd, and Michael B. Hyman, Esq., William H. London, Esq., of Much Shelist Freed Denenberg Ament & Rubenstein, P.C., and Scott S. Segal, Esq. of The Segal Law Firm are appointed as class counsel to the State Law Class.

(b) West Virginia Class: Deadra Cummins, Ivan Bell and LaDonna Bell are appointed class representative and Brian A. Glasser, Esq., H. F. Salsbery, Esq., John Barrett, Esq., and Eric Snyder, Esq., of Bailey & Glasser, LLP are appointed class counsel to the West Virginia Class. Brian Glasser is also appointed Coordinating Class Counsel.

(c) Becker Class: Lynn Becker is appointed class representative and John Roddy, Esq., Gary Klein, Esq., and Elizabeth Ryan, Esq., of Roddy Klein & Ryan, Ronald Frederick, Esq. of Ronald Frederick & Associates, LLC, and Bruce L. Freeman, Esq. of Freeman & Chiartas are appointed class counsel to the Becker Class.

(d) Mitchell/Green Class: Levon and GERAL Mitchell and Joyce A. Green are appointed class representatives and Steven A. Martino, Esq., Frederick T. Kuykendall III, Esq., and W. Lloyd Copeland, Esq. of Taylor, Martino & Kuykendall, Steven E. Angstreich, Esq., Michael Coren, Esq., Carolyn C. Lindheim, Esq., of Levy, Angstreich, Finney, Baldante, Rubenstein and Coren, P.C., Charles J. Piven, Esq. of Law Offices of Charles A. Piven, P.A., and Marvin W. Masters of The



Masters Law Firm, L.C., are appointed class counsel to the Mitchell/Green class.

6. With respect to each of the respective Settlement Classes, this Court preliminarily finds for settlement purposes only that: (a) the Settlement Class as defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class; (c) the claims of the respective class representatives (the "Class Representatives"), identified in paragraph 3, are typical of the claims of their respective class; (d) the Class Representatives will fairly and adequately protect the interests of their respective class; (e) the questions of law or fact common to the members of the Settlement Class predominate over the questions affecting only individual members, and (e) certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy. In the event the Agreement terminates pursuant to its terms for any reason, the conditional certification of the Settlement Classes pursuant to this Order shall be vacated automatically and shall be null and void, and this action shall revert to its status immediately prior to the execution of the Agreement.

7. The Court approves as to form the mail Notices attached hereto as Exhibit 2, and the Summary Notice attached hereto as Exhibit 3. The mailing of the Notice and the publication of the Summary Notice made as directed in this Order meet the requirements of Rule 23(c), and constitute the best notice practicable under the circumstances and sufficient notice to all members of the Settlement Classes, and the forms and methods of notice comply fully with all applicable law.

8. The Administrator shall, no later than March 15, 2006, cause to be mailed by first class mail to the last known address of all Settlement Class Members, an appropriate Notice, along with a claim form. Any mail returned with a forwarding address will be promptly re-mailed to such address. The form of such Notices must be substantially in the form attached hereto as Exhibit 2, as applicable. In addition, the Administrator shall, no later than March 15, 2006, cause a Summary Notice be published twice in *USA Today*, two weeks apart. The form of such Summary Notice must be substantially in the form attached hereto as Exhibit 3. The Administrator is directed to file with the Court, and serve upon Coordinating Class Counsel and counsel for the Settling Defendants, prior to the Final Hearing, a declaration of such mailings and publication.

9. The Settling Defendants shall pay the Notice Costs, as provided by the Agreement, Section II, Paragraph 10, and Section X, Paragraphs 3 and 4.

10. The Court will order additional publication notice in Alabama and Maryland at the expense of the Mitchell/Green Class. Counsel for the Mitchell/Green Class is instructed to file with this Court a plan for additional publication notice in Alabama and Maryland within 30 days.

11. A hearing (the "Final Hearing") shall be held on \_\_\_\_\_, at \_\_\_\_\_ a.m. to determine whether the proposed settlement of this Action is fair, reasonable, and adequate and should be approved. The parties' respective briefs and supporting papers in support of the proposed settlement shall be filed on or before \_\_\_\_\_, 2006. The Final Hearing described in this paragraph may be

postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. After the Final Hearing, the Court may enter a Final Order of Judgment and Dismissal in accordance with the Agreement that will adjudicate the rights of all class members.

12. Any member of a Settlement Class who is not excluded from that Settlement Class and who objects to the approval of the proposed settlement may appear at the Final Hearing in person or through counsel to show cause why the proposed settlement should not be approved as fair, reasonable, and adequate.

13. Objections to the proposed settlement shall be heard, and any papers or briefs submitted in support of objections shall be considered by the Court only if, on or before May 1, 2006, said objectors file with the Clerk of the Court, a statement of his/her objection, as well as the specific reason(s), if any, for each objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of the objection. Objectors must serve copies thereof, together with proof of service, on or before that date upon both Coordinating Counsel and counsel for the Settling Defendants (by mail, hand or by facsimile transmission):

Coordinating Counsel:

Brian Glasser  
Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, West Virginia 25301  
Fax: (304)342-1110

Settling Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP

One IBM Plaza  
Chicago, IL 60611-7603  
Fax (312) 840-7749

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337  
Fax (304) 343-3133

The objections must state the name and number of this action. No Settlement Class member shall be entitled to be heard and no objection shall be considered unless these requirements are satisfied.

14. Any Settlement Class member who does not make his objection to the settlement in the manner provided herein shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

15. Any member of a Settlement Class who desires to be excluded from that Settlement Class must mail or otherwise deliver to the Administrator, as stated in the Notice and Summary Notice, an appropriate written request for exclusion, including his or her name, address, telephone number and Social Security number, that is personally signed by the Settlement Class Member, which request must be postmarked no later than May 1, 2006 (the Opt-Out Date), and actually received by the Administrator. No Settlement Class Member, or any person acting on behalf of or in concert or in participation with that Settlement Class Member, may request exclusion of any other Settlement Class Member from a Settlement Class. The original requests for exclusion shall be filed with the Clerk of the Court by the

Administrator not later than 30 days after the Opt-Out Date. The filing shall redact the social security number of the person requesting exclusion, except for the last three digits. Copies of requests for exclusion will be provided by the Administrator to Class Counsel and counsel for the Settling Defendants not later than five days after the Opt-Out Date. If this Agreement is approved, any and all persons within a Settlement Class who have not submitted a timely, valid and proper written request for exclusion from that Settlement Class will be bound by the releases and other terms and conditions set forth therein and all proceedings, orders and judgments in the Action, even if those persons have previously initiated or subsequently initiate individual litigation or other proceedings against the Settling Defendants (or any of them) relating to the claims released pursuant to or covered by the terms of the Agreement. The names and addresses of all excluded individuals shall be attached as an exhibit to the Final Order of Judgment and Dismissal.

16. Any Settlement Class Member may enter an appearance in this action, at his or her own expense, individually or through counsel of his or her own choice. All Settlement Class Members who do not enter an appearance will be deemed to have been represented by Class Counsel.

17. All discovery and other pretrial proceedings in this action are stayed and suspended until further order of this Court except such actions as may be necessary to implement the Agreement and this Order.

18. In the event that one or more of the Settlement Classes as provided in the Agreement is not approved by the Court, or for any reason the parties fail to

obtain a Final Order of Judgment and Dismissal for one or more of the Settlement Classes as contemplated in the Agreement, or the Agreement is terminated pursuant to its terms, then the Agreement and all orders entered in connection with any such disapproved Settlement Class hereafter shall become null and void and of no further force and effect as far as they relate to any such disapproved Settlement Class, and shall not be used or referred to for any purposes whatsoever. In such event, the Agreement and all negotiations and proceedings as far as they relate to any such disapproved Settlement Class shall be withdrawn without prejudice as to the rights of any and all parties thereto, who shall be restored to their respective positions as of the date of the execution of the Agreement.

19. In sum, the dates for performance are as follows:

Class Notice Mailed by:	March 15, 2006
Publication Notice Complete on:	March 15, 2006
Claim Forms Postmarked by:	June 30, 2006
Requests for Exclusion Postmarked by:	May 1, 2006
Filing and Service of Objections by:	May 1, 2006
Final Approval Submissions:	
Final Approval Hearing:	

DATED: \_\_\_\_\_, 2005

Hon. Louis Bloom



**Exhibit 1**  
**Settling Jurisdictions**

1. Arkansas
  2. Arizona
  3. California
  4. District of Columbia
  5. Florida
  6. Illinois
  7. Indiana
  8. Massachusetts
  9. Maryland
  10. Maine
  11. Michigan
  12. Minnesota
  13. Missouri
  14. Nebraska
  15. New Hampshire
  16. Nevada
  17. Oregon
  18. Pennsylvania
  19. Tennessee
  20. Utah
  21. Virginia
  22. Washington
  23. Wisconsin.
-





**If You Got A Refund Anticipation Loan Through An H&R Block Office Between January 1, 1994 and December 23, 2005. You Could Get A Payment From A Class Action Settlement**

**A Court Has Authorized This Notice. Please Read It, It Describes Important Rights You Have And Requires That You Make A Choice About How to Proceed.**

**Important Dates**

[ILLEGIBLE]

**ANSWERS TO FREQUENTLY-ASKED QUESTIONS**

1. Why Did I Get This Notice?
2. What Is This Lawsuit About?
3. Why Is This A Class Action?
4. Why Is There A Settlement?
5. How Do I Know If I Am Part Of The Settlement?
6. What Does The Settlement Provide?
7. How Much Will My Payments Be?
8. How Can I Get A Payment?
9. When Would I Get My Payment?
10. Am I Giving Anything Up To Get A Payment Or Stay In The Class?
11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")?
12. What Do I Do If I Want To Exclude Myself?
13. When And Where Will The Court Decide Whether To Approve The Settlement?
14. Do I Have To Come To The Hearing?
15. What If I Do Nothing?
16. What If I Want To Object To The Settlement?
17. What Is the Difference Between Excluding Myself And Objecting?
18. Who Are The Lawyers For The Class?
19. How Will Class Counsel's Fees And Expenses Be Paid?
20. Does The Class Representative Get Additional Compensation?
21. What If The Court Does Not Approve The Settlement?
22. Where Do I Get Additional Information?

### **1. Why Did I Get This Notice?**

You got at least one Refund Anticipation Loan (“RAL”) through an H&R Block office between January 1, 1994 and December 23, 2005. You received this notice to inform you about settlement of a class action lawsuit that may affect your rights. This notice provides information about all of your options, so that you can evaluate those options before the Court decides whether to approve the settlement. Those options include making a claim for money from the settlement (see Questions 7-9), excluding yourself from the settlement (Questions 11 & 12) or raising concerns about the fairness of the settlement (Question 16). This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the Circuit Court of Kanawha County, West Virginia (“the Court”).

### **2. What Is This Lawsuit About?**

This case combines several lawsuits that were filed against H&R Block, Inc. and various related corporations. For simplicity, the H&R Block defendants are referred to throughout the rest of this notice as simply “Block.” The cases were filed against Block in different parts of the country at different times, but all essentially make the same claim — that Block violated particular state laws in the way it made RALs available. The lawyers in these cases have filed with the Court an Amended and Consolidated Class Action Complaint (called the “Consolidated Action” from here on), which brings together all of the claims made in these cases. One of the principal claims the Consolidated Action makes is that Block violated the Credit Services Organization Acts of the affected jurisdictions, or violated similar laws.

Block denies that it violated any laws, did anything wrong, or that anyone was harmed by its conduct. Block nevertheless has agreed to settle the Consolidated Action solely to avoid the burden, expense, risk and uncertainty of continuing the various lawsuits.

Block and the plaintiffs in the Consolidated Actions have reached agreement on a Settlement of the claims in the Consolidated Action including claims that had been pending previously in Ohio, Maryland, and Alabama. The Settlement, if approved, would resolve all litigation involving RALs which Block sold in West Virginia between January 1, 1994 and December 23, 2005. Other cases are also being settled at the same time, in the same settlement agreement, covering legal rights of individuals in a number of other jurisdictions.

---

### **3. Why Is This A Class Action?**

In a class action, one or more people called Class Representatives (in this case Deadra D. Cummins, Ivan Bell and LaDonna Bell), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Circuit Court Judge Louis Bloom is in charge of this class action.

### **4. Why Is There A Settlement?**

The Court did not decide in favor of Block or any of the Plaintiffs in the various lawsuits. The Plaintiffs in those lawsuits think they could have won if they went to trial. Block thinks the Plaintiffs would have lost. In fact, in most cases, Block thinks that the Plaintiffs would not have even been able to continue their cases in court, because Block's RAL contract required them to try their claims before an arbitrator. But there was no trial and no arbitration. Instead, both sides agreed to a settlement. This avoids the cost of a trial, and the people affected have an opportunity to be paid. The Class Representatives and the attorneys think the settlement is best for all Class Members.

### **5. How Do I Know If I Am Part Of The Settlement?**

You received this notice because records identified you as a *Cummins* class member. That means that you fit the description of the class which the Court certified for this settlement. The Court decided that everyone who fits this description is a Class Member:

All West Virginia residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, or any H&R Block offices such as in Sears stores) from January 1, 1994 through December 23, 2005, who did not previously request exclusion from the *Cummins* class, other than those persons who previously requested exclusion from the *Cummins* class, subsequently obtained a RAL through any Settling Defendant or Affiliate in 2005.

There are three other classes that are part of the overall Settlement. The following classes are composed of people who live in one of the following jurisdictions and got a RAL through an H&R Block office during the specified years:

- a.) The Becker Class (Ohio residents) — January 1, 2000 to December 23, 2005;
  - b.) The *Mitchell/Green* Class (residents of Maryland and Alabama) — Maryland — January 1, 1992 to May 19, 2000, excluding those people who obtained RALS
-

after 1996 whose RAL application contains an arbitration clause; Alabama — June 13, 1989 through December 31, 1996;

c.) The *State Law Class* (residents of 22 states and the District of Columbia) — January 1, 2000 through December 23, 2005: Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington or Wisconsin.

#### **6. What Does The Settlement Provide?**

Block has agreed to provide additional information to customers who obtain RALs and to pay a total of \$62.5 million, plus costs of notice estimated at \$4 million, to settle this case. The total Block will pay is called the “common fund.”

You are a member of the *Cummins* class. *Cummins* class members are entitled to \$32.5 million of the \$62.5 million, before deductions for the pro rata portion of administration costs, attorney’s fees and expenses relating to the *Cummins* Class, and service fees paid to the class representatives, Deadra D. Cummins, Ivan Bell and LaDonna Bell. The *State Law* class will divide more than \$22.5 million; the *Becker* class will divide more than \$5.8 million; and the *Mitchell/Green* (Maryland and Alabama) class will divide over \$1.6 million; all before the same deductions are made for administration costs, attorney’s fees and expenses, and service fees applicable to each class.

Members of the different classes who submit claims will receive different amounts because each of these cases is at a different stage of proceedings, holds different risks and different chances of success. Each class settlement was negotiated based upon these differences. The four classes are represented independently.

#### **7. How Much Will My Payments Be?**

In order to receive any payment, you must return a claim form (see Question 8 and the attached claim form). Every Class Member who returns a valid claim form will receive at least some distribution from the common fund. Your share of the fund will depend on the number of valid claim forms that *Cummins* Class Members send in and how many RALs you had. If every class member submitted a claim, your share of the common fund would be a minimum of \$60.90 for each RAL you obtained during the class period. However, only a percentage of class members will actually submit claim forms. For example, if one of every two class members return claim forms, your share of the fund would be \$121.80 for each RAL you obtained (\$60.90 times two). Please remember that this is only an example; the amount you receive from the settlement could be greater or smaller. Your share will be reduced by whatever percentage of the common fund is taken up with administration costs, attorney’s fees, expenses, and service payments. It is unlikely that such costs will exceed 35%, but they

---

could be higher or lower. The maximum amount any class member can receive is \$175 for each RAL obtained during the class period.

### **8. How Can I Get A Payment?**

To qualify for payment, you must send in a complete and valid claim form. **A claim form is attached to this Notice.** You may also get a claim form from the Settlement Administrator's website [[www.INSERTWEBADDRESS.com]]. Read the instructions carefully, fill out the form, include all the information the form asks for, sign it, and mail it so that it is postmarked no later than **June 30, 2006**. You may also email the claim form to the Settlement Administrator at [claims@INSERTWEBADDRESS.com]. If you email the claim form, you must do so no later than midnight on **June 30, 2006**.

### **9. When Would I Get My Payment?**

The Court will hold a hearing at **time/date/month/2006 at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. The settlement administrator will keep the settlement website at [www.INSERTWEBADDRESS.com] updated so that everyone who is in the class may keep informed of the progress of the settlement. Please be patient. Note: It is unlikely that you will receive your payment until six months or more after the date you send in a claim form.

### **10. Am I Giving Up Anything To Get A Payment Or Stay In The Class?**

Unless you exclude yourself, also called "opting out" (see Question 12), you will be considered a member of the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Block about the legal issues in this case. Giving up your claims is called a "release." Unless you exclude yourself from the settlement, you will release your claims whether or not you submit a claim form and receive payment.

However, certain claims are not released even if you stay in the class. All claims made in other currently existing class actions that relate to the RAL or other products and services offered by Block are not released. Claims under state law based solely on allegations that a tax preparer failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and claims to enforce the terms and conditions of the Settlement Agreement, are similarly not released.

Class members who do not exclude themselves, but do not make a claim for money from this settlement may choose to arbitrate their individual claims

---

against Block for another year after the settlement is finalized. Although Class Counsel recommend this settlement, they take no position on your likelihood of succeeding on an individual basis in an arbitration case. You should obtain independent legal help if you need more information about the economic value of the arbitration alternative to excluding yourself or making a claim for money under the settlement.

The settlement requires Block to follow certain business practices with future RALs, and provides Block with an incentive to register as a Credit Service Organization ("CSO") in the jurisdictions covered by the settlement. Block has two years to decide whether to register and come into compliance with the various CSO statutes.

**Important:** If you decide to go back to Block to obtain a RAL during the two-year period Block has to register as a CSO in the various jurisdictions, and Block does register and comply with your jurisdiction's CSO statute in that two-year period, then *you will not be able to sue Block for any new RAL violation that you claim happened during the two-year period*. But, if Block does not register as a CSO and comply with the CSO statute in your jurisdiction, you will be able to sue based on any new RAL violation that you claimed happened during that period. In addition, any deadline on when you can sue Block (called the "statute of limitations") will be suspended for the two-year period.

#### **11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")?**

Yes, you may "opt out" and exclude yourself from the Settlement Class. If you opt out, you will not receive any payment from the common fund, you will not release any claims you may have against Block, and you will not be bound by anything that happens in the Consolidated Action. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Block at your own risk and expense.

#### **12. What Do I Do If I Want To Exclude Myself?**

In order to opt out and exclude yourself from the Settlement Class, you must mail a "Request for Exclusion" to the Settlement Administrator at **address**. Your Request for Exclusion must be in writing and must be postmarked no later than May 1, 2006. To be effective, a Request for Exclusion must contain: (a) the name of this case (*Cummins, v. H & R Block, Inc.*); (b) your name, address, social security number and telephone number; (c) a statement that you want to opt out of the lawsuit; and (d) your signature. If the Request for Exclusion is not postmarked by the deadline, you will be included automatically in the Settlement Class and you may be eligible to receive Settlement payments as summarized above. Even if you do not file a claim, you will be legally bound by the proposed Settlement, including provisions releasing Block.

---

### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing on **time/date/ at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing can be continued at any time by the Court without any further notice to you.

### **14. Do I Have To Come To The Hearing?**

No. You are not required to attend the hearing. But you are welcome to come at your own expense. If you wish to speak, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cummins v. H&R Block*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 16. You cannot speak at the hearing if you excluded yourself, because once you exclude yourself, the settlement does not affect your rights.

### **15. What If I Do Nothing?**

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Block about the legal issues in this case. You would, however, be able to arbitrate your claims against Block for another year, as described in Question 10.

### **16. What If I Want To Object To The Settlement?**

If you're a Class Member who has not requested exclusion, you can object to the settlement if you don't like it. If you wish to object, you must write a letter stating your objections, the specific reasons for each objection (including any legal support you want to bring to the Court's attention) and a description of any evidence you wish to introduce in support of your objections. You must include your name, address, telephone number and your signature. Also include the name and number of this action (*Cummins v. H&R Block, Inc.*, Civil Action No. 03-C-134). Your letter must be received in these four different places no later than **May 1, 2006**:

(i) Coordinating Counsel:

Brian A. Giasser, Esq.

---



Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, WV 25301

(ii) Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337-3710

(iii) The Court:

Clerk of Court  
Kanawha County Circuit Court  
111 Court Street  
Charleston, WV 25301

#### **17. What Is The Difference Between Excluding Myself And Objecting?**

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you don't like something about the settlement and you don't want the Court to approve it. You can object only if you stay in the Class.

#### **18. Who Are The Lawyers For The *Cummins* Class?**

The Court has appointed the following law firm to represent you and other *Cummins* Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

Brian A. Glasser  
H. F. Salsbery  
John W. Barrett  
Eric B. Snyder  
Bailey & Glasser LLP  
227 Capitol Street  
Charleston, WV 25301

#### **19. How Will Class Counsel's Fees And Expenses Be Paid?**

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in an amount not more than one-third of the portion of the common fund attributable to the *Cummins* Class. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating

---

the settlement. The Court will determine the amount of any fees and expenses awarded to Class Counsel.

**20. Does The Class Representative Get Additional Compensation?**

Subject to Court approval, the named plaintiffs in the five cases which make up the Consolidated Action will seek "service awards" for their active participation in this litigation. Any such "service award" will be paid from the portions of the common fund attributable to the cases those plaintiffs brought. The *Cummins* class representatives will seek a service award in an amount to be determined by the Court.

**21. What If The Court Does Not Approve The Settlement?**

If the Court does not approve the proposed Settlement as being fair, adequate and reasonable, the Settlement Agreement will be null and void, and all parties will be returned to their respective pre-Settlement status in the various lawsuits that the proposed Settlement hopes to resolve.

**22. Where Do I Get Additional Information?**

This notice summarizes the proposed settlement. You can find answers to common questions about the settlement, plus other helpful information at the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]. You can also get a copy of the Settlement Agreement from the website, or by writing to the Settlement Administrator at #####. If you cannot get the information you need from this notice or from the Settlement Administrator, you may contact *Cummins* Class Counsel.

**Please Do Not Contact The Court Or Block For Information.**

BY ORDER OF THE COURT

The Honorable Louis Bloom  
Circuit Judge  
Kanawha County, West Virginia

Dated: \_\_\_\_\_, 2005

---

**If You Got A Refund Anticipation Loan Through An H&R Block Office Between January 1, 2000 And December 23, 2005, You Could Get A Payment From A Class Action Settlement**

**A Court Has Authorized This Notice. Please Read It, It Describes Important Rights You Have And Requires That You Make A Choice About How to Proceed.**

**Important Dates**

[ILLEGIBLE]

**ANSWERS TO FREQUENTLY-ASKED QUESTIONS**

1. Why Did I Get This Notice?
2. What Is This Lawsuit About?
3. Why Is This A Class Action?
4. Why Is There A Settlement?
5. How Do I Know If I Am Part Of The Settlement?
6. What Does The Settlement Provide?
7. How Much Will My Payments Be?
8. How Can I Get A Payment?
9. When Would I Get My Payment?
10. Am I Giving Anything Up To Get A Payment Or Stay In The Class?
11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")?
12. What Do I Do If I Want To Exclude Myself?
13. When And Where Will The Court Decide Whether To Approve The Settlement?
14. Do I Have To Come To The Hearing?
15. What If I Do Nothing?
16. What If I Want To Object To The Settlement?
17. What Is the Difference Between Excluding Myself And Objecting?
18. Who Are The Lawyers For The Class?
19. How Will Class Counsel's Fees And Expenses Be Paid?
20. Does The Class Representative Get Additional Compensation?
21. What If The Court Does Not Approve The Settlement?
22. Where Do I Get Additional Information?

### **1. Why Did I Get This Notice?**

You got at least one Refund Anticipation Loan (“RAL”) through an H&R Block office between January 1, 2000 and December 23, 2005. You received this notice to inform you about settlement of a class action lawsuit that may affect your rights. This notice provides information about all of your options, so that you can evaluate those options before the Court decides whether to approve the settlement. Those options include making a claim for money from the settlement (see Questions 7-9), excluding yourself from the settlement (Questions 11 & 12) or raising concerns about the fairness of the settlement (Question 16). This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the Circuit Court of Kanawha County, West Virginia (“the Court”).

### **2. What Is This Lawsuit About?**

This case combines several lawsuits that were filed against H&R Block, Inc. and various related corporations. For simplicity, the H&R Block defendants are referred to throughout the rest of this notice as simply “Block.” The cases were filed against Block in different parts of the country at different times, but all essentially make the same claim — that Block violated particular state laws in the way it made RALs available. The lawyers in these cases have filed with the Court an Amended and Consolidated Class Action Complaint (called the “Consolidated Action” from here on), which brings together all of the claims made in these cases. One of the principal claims the Consolidated Action makes is that Block violated the Credit Services Organization Acts of the affected jurisdictions, or violated similar laws.

Block denies that it violated any laws, did anything wrong, or that anyone was harmed by its conduct. Block nevertheless has agreed to settle the Consolidated Action solely to avoid the burden, expense, risk and uncertainty of continuing the various lawsuits.

Block and the plaintiffs in the Consolidated Actions have reached agreement on a Settlement of the claims in the Consolidated Action including claims that had been pending previously in Ohio, Maryland, and Alabama. The Settlement, if approved, would resolve all litigation involving RALs which Block sold in Ohio between January 1, 2000 and December 23, 2005. Other cases are also being settled at the same time, in the same settlement agreement, covering legal rights of individuals in a number of other jurisdictions.

---

### **3. Why Is This A Class Action?**

In a class action, one or more people called Class Representatives (in this case Lynn Becker), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Circuit Court Judge Louis Bloom is in charge of this class action.

### **4. Why Is There A Settlement?**

The Court did not decide in favor of Block or any of the Plaintiffs in the various lawsuits. The Plaintiffs in those lawsuits think they could have won if they went to trial. Block thinks the Plaintiffs would have lost. In fact, in most cases, Block thinks that the Plaintiffs would not have even been able to continue their cases in court, because Block's RAL contract required them to try their claims before an arbitrator. But there was no trial and no arbitration. Instead, both sides agreed to a settlement. This avoids the cost of a trial, and the people affected have an opportunity to be paid. The Class Representative and the attorneys think the settlement is best for all Class Members.

### **5. How Do I Know If I Am Part Of The Settlement?**

You received this notice because records identified you as a *Becker* class member. That means that you fit the description of the class which the Court certified for this settlement. The Court decided that everyone who fits this description is a Class Member:

All Ohio residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears stores) from January 1, 2000 through December 23, 2005.

There are three other classes that are part of the overall Settlement. The following classes are composed of people who live in one of the following jurisdictions and got a RAL through an H&R Block office during the specified years:

a.) The *Cummins* Class (West Virginia residents) — January 1, 1994 to December 23, 2005;

b.) The *Mitchell/Green* Class (residents of Maryland and Alabama) — Maryland — January 1, 1992 to May 19, 2000, excluding those people who obtained RALs after 1996 whose RAL application contains an arbitration clause; Alabama — June 13, 1989 through December 31, 1996;

---

c.) The *State Law Class* (residents of 22 states and the District of Columbia) — January 1, 2000 through December 23, 2005: Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington or Wisconsin.

#### **6. What Does The Settlement Provide?**

Block has agreed to provide additional information to customers who obtain RALs and to pay a total of \$62.5 million, plus costs of notice estimated at \$4 million, to settle this case. The total Block will pay is called the “common fund.”

You are a member of the *Becker* class. *Becker* class members are entitled to more than \$5.8 million of the \$62.5 million, before deductions for the pro rata portion of administration costs, attorney’s fees and expenses relating to the *Becker* Class, and service fees paid to the class representative, Lynn Becker. The *Cummins* class members will divide \$32.5 million; the *State Law* class will divide more than \$22.5 million; and the *Mitchell/Green* (Maryland and Alabama) class will divide more than \$1.6 million; all before the same deductions are made for administration costs, attorney’s fees and expenses, and service fees applicable to each class.

Members of the different classes who submit claims will receive different amounts because each of these cases is at a different stage of proceedings, holds different risks and different chances of success. Each class settlement was negotiated based upon these differences. The four classes are represented independently.

#### **7. How Much Will My Payments Be?**

In order to receive any payment, you must return a claim form (see Question 8 and the attached claim form). Every Class Member who returns a valid claim form will receive at least some distribution from the common fund. Your share of the fund will depend on the number of valid claim forms that *Becker* Class Members send in and how many RALs you had. If every class member submitted a claim, your share of the common fund would be a minimum of \$3.66 for each RAL you obtained during the class period. However, only a percentage of class members will actually submit claim forms. For example, if only one of every four class members return claim forms, your share of the fund would be \$14.64 for each RAL you obtained (\$3.66 times four). Your share will be reduced by whatever percentage of the common fund is taken up with administration costs, attorney’s fees, expenses, and service payments. It is unlikely that such costs will exceed 30%, but they could be higher or lower. Please remember that this is only an example; the amount you receive from the settlement could be greater or smaller.

---

### **8. How Can I Get A Payment?**

To qualify for payment, you must send in a complete and valid claim form. **A claim form is attached to this Notice.** You may also get a claim form from the Settlement Administrator's website [[www.INSERTWEBADDRESS.com]]. Read the instructions carefully, fill out the form, include all the information the form asks for, sign it, and mail it so that it is postmarked no later than **June 30, 2006**. You may also email the claim form to the Settlement Administrator at [claims@ INSERTWEBADDRESS.com]. If you email the claim form, you must do so no later than midnight on **June 30, 2006**.

### **9. When Would I Get My Payment?**

The Court will hold a hearing at **time/date/month/2006 at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. The settlement administrator will keep the settlement website at [www.INSERTWEBADDRESS.com] updated so that everyone who is in the class may keep informed of the progress of the settlement. Please be patient. Note: It is unlikely that you will receive your payment until six months or more after the date you send in a claim form.

### **10. Am I Giving Up Anything To Get A Payment Or Stay In The Class?**

Unless you exclude yourself, also called "opting out" (see Question 12), you will be considered a member of the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Block about the legal issues in this case. Giving up your claims is called a "release." Unless you exclude yourself from the settlement, you will release your claims whether or not you submit a claim form and receive payment.

However, certain claims are not released even if you stay in the class. All claims made in other currently existing class actions that relate to the RAL or other products and services offered by Block are not released. Claims under state law based solely on allegations that a tax preparer failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and claims to enforce the terms and conditions of the Settlement Agreement, are similarly not released.

Class members who do not exclude themselves, but do not make a claim for money from this settlement may choose to arbitrate their individual claims against Block for another year after the settlement is finalized. Although Class Counsel recommend this settlement, they take no position on your likelihood of succeeding on an individual basis in an arbitration case. You should obtain

---

independent legal help if you need more information about the economic value of the arbitration alternative to excluding yourself or making a claim for money under the settlement.

The settlement requires Block to follow certain business practices with future RALs, and provides Block with an incentive to register as a Credit Service Organization ("CSO") in the jurisdictions covered by the settlement. Block has two years to decide whether to register and come into compliance with the various CSO statutes.

**Important:** *If you decide to go back to Block to obtain a RAL during the two-year period Block has to register as a CSO in the various jurisdictions, and Block does register and comply with your jurisdiction's CSO statute in that two-year period, then you will not be able to sue Block for any new RAL violation that you claim happened during the two-year period. But, if Block does not register as a CSO and comply with the CSO statute in your jurisdiction, you will be able to sue based on any new RAL violation that you claimed happened during that period. In addition, any deadline on when you can sue Block (called the "statute of limitations") will be suspended for the two-year period.*

#### **11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")?**

Yes, you may "opt out" and exclude yourself from the Settlement Class. If you opt out, you will not receive any payment from the common fund, you will not release any claims you may have against Block, and you will not be bound by anything that happens in the Consolidated Action. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Block at your own risk and expense.

#### **12. What Do I Do If I Want To Exclude Myself?**

In order to opt out and exclude yourself from the Settlement Class, you must mail a "Request for Exclusion" to the Settlement Administrator at **address**. Your Request for Exclusion must be in writing and must be postmarked no later than May 1, 2006. To be effective, a Request for Exclusion must contain: (a) the name of this case (*Cummins. v. H & R Block, Inc.*); (b) your name, address, social security number and telephone number; (c) a statement that you want to opt out of the lawsuit; and (d) your signature. If the Request for Exclusion is not postmarked by the deadline, you will be included automatically in the Settlement Class and you may be eligible to receive Settlement payments as summarized above. Even if you do not file a claim, you will be legally bound by the proposed Settlement, including provisions releasing Block.

---



### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing on **time/date/ at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing can be continued at any time by the Court without any further notice to you.

### **14. Do I Have To Come To The Hearing?**

No. You are not required to attend the hearing. But you are welcome to come at your own expense. If you wish to speak, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cummins v. H&R Block*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 16. You cannot speak at the hearing if you excluded yourself, because once you exclude yourself, the settlement does not affect your rights.

### **15. What If I Do Nothing?**

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Block about the legal issues in this case. You would, however, be able to arbitrate your claims against Block for another year, as described in Question 10.

### **16. What If I Want To Object To The Settlement?**

If you're a Class Member who has not requested exclusion, you can object to the settlement if you don't like it. If you wish to object, you must write a letter stating your objections, the specific reasons for each objection (including any legal support you want to bring to the Court's attention) and a description of any evidence you wish to introduce in support of your objections. You must include your name, address, telephone number and your signature. Also include the name and number of this action (*Cummins v. H & R Block, Inc.*, Civil Action No. 03-C-134). Your letter must be received in these four different places no later than **May 1, 2006**:

(i) Coordinating Counsel:

Brian A. Glasser, Esq.

---

Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, WV 25301

(ii) Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337-3710

(iii) The Court:

Clerk of Court  
Kanawha County Circuit Court  
111 Court Street  
Charleston, WV 25301

#### **17. What Is The Difference Between Excluding Myself And Objecting?**

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you don't like something about the settlement and you don't want the Court to approve it. You can object only if you stay in the Class.

#### **18. Who Are The Lawyers For The *Becker* Class?**

The Court has appointed the following law firms to represent you and other *Becker* Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

Ronald Frederick  
Ronald Frederick & Assoc., LLC  
55 Public Square, Suite 1300  
Cleveland, Ohio 44113

John Roddy  
Gary Klein  
Elizabeth Ryan  
Roddy, Klein & Ryan  
727 Atlantic Avenue  
Boston, MA 02111

#### **19. How Will Class Counsel's Fees And Expenses Be Paid?**

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in an amount not more than 25% of the portion of the common fund attributable to the *Becker* Class. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the

---

settlement. The Court will determine the amount of any fees and expenses awarded to Class Counsel.

**20. Does The Class Representative Get Additional Compensation?**

Subject to Court approval, the named plaintiffs in the five cases which make up the Consolidated Action will seek "service awards" for their active participation in this litigation. Any such "service award" will be paid from the portions of the common fund attributable to the cases those plaintiffs brought. Lynn Becker will seek a "service award" of \$5,000. The Court will determine whether Ms. Becker receives a "service award" and the amount of that award.

**21. What If The Court Does Not Approve The Settlement?**

If the Court does not approve the proposed Settlement as being fair, adequate and reasonable, the Settlement Agreement will be null and void, and all parties will be returned to their respective pre-Settlement status in the various lawsuits that the proposed Settlement hopes to resolve.

**22. Where Do I Get Additional Information?**

This notice summarizes the proposed settlement. You can find answers to common questions about the settlement, plus other helpful information at the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]. You can also get a copy of the Settlement Agreement from the website, or by writing to the Settlement Administrator at #####. If you cannot get the information you need from this notice or from the Settlement Administrator, you may contact *Becker* Class Counsel.

**Please Do Not Contact The Court Or Block For Information.**

BY ORDER OF THE COURT

The Honorable Louis Bloom  
Circuit Judge  
Kanawha County, West Virginia

Dated: \_\_\_\_\_, 2005

---

**If You Got A Refund Anticipation Loan Through An H&R Block Office In Maryland Between January 1, 1992 And December 31, 1996, Or In Alabama from June 13, 1989 through December 31, 1996. You Could Get A Payment From A Class Action Settlement**

**A Court Has Authorized This Notice. Please Read It, It Describes Important Rights You Have And Requires That You Make A Choice About How to Proceed.**

**Important Dates**

[ILLEGIBLE]

**ANSWERS TO FREQUENTLY-ASKED QUESTIONS**

1. Why Did I Get This Notice?
2. What Is This Lawsuit About?
3. Why Is This A Class Action?
4. Why Is There A Settlement?
5. How Do I Know If I Am Part Of The Settlement?
6. What Does The Settlement Provide?
7. How Much Will My Payments Be?
8. How Can I Get A Payment?
9. When Would I Get My Payment?
10. Am I Giving Anything Up To Get A Payment Or Stay In The Class?
11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")?
12. What Do I Do If I Want To Exclude Myself?
13. When And Where Will The Court Decide Whether To Approve The Settlement?
14. Do I Have To Come To The Hearing?
15. What If I Do Nothing?
16. What If I Want To Object To The Settlement?
17. What Is the Difference Between Excluding Myself And Objecting?
18. Who Are The Lawyers For The Class?
19. How Will Class Counsel's Fees And Expenses Be Paid?
20. Does The Class Representative Get Additional Compensation?
21. What If The Court Does Not Approve The Settlement?
22. Where Do I Get Additional Information?

### **1. Why Did I Get This Notice?**

You got at least one Refund Anticipation Loan (“RAL”) through an H&R Block office in Maryland between January 1, 1992 and December 31, 1996, or through an H&R Block office in Alabama between June 13, 1989 and December 31, 1996. You received this notice to inform you about settlement of a class action lawsuit that may affect your rights. This notice provides information about all of your options, so that you can evaluate those options before the Court decides whether to approve the settlement. Those options include making a claim for money from the settlement (see Questions 7-9), excluding yourself from the settlement (Questions 11 & 12) or raising concerns about the fairness of the settlement (Question 16). This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the Circuit Court of Kanawha County, West Virginia (“the Court”).

### **2. What Is This Lawsuit About?**

This case combines several lawsuits that were filed against H&R Block, Inc. and various related corporations. For simplicity, the H&R Block defendants are referred to throughout the rest of this notice as simply “Block.” The cases were filed against Block in different parts of the country at different times, but all essentially make the same claim — that Block violated particular state laws in the way it made RALs available. The lawyers in these cases have filed with the Court an Amended and Consolidated Class Action Complaint (called the “Consolidated Action” from here on), which brings together all of the claims made in these cases. One of the principal claims the Consolidated Action makes is that Block violated the Credit Services Organization Acts of the affected jurisdictions, or violated similar laws.

Block denies that it violated any laws, did anything wrong, or that anyone was harmed by its conduct. Block nevertheless has agreed to settle the Consolidated Action solely to avoid the burden, expense, risk and uncertainty of continuing the various lawsuits.

Block and the plaintiffs in the Consolidated Actions have reached agreement on a Settlement of the claims in the Consolidated Action including claims that had been pending previously in Ohio, Maryland, and Alabama. The Settlement, if approved, would resolve all litigation involving RALs which Block sold in Alabama between June 13, 1989 and December 31, 1996, and in Maryland between January 1, 1992 and December 31, 1996. Other cases are also being settled at

---

the same time, in the same settlement agreement, covering legal rights of individuals in a number of other jurisdictions.

### **3. Why Is This A Class Action?**

In a class action, one or more people called Class Representatives (in this case Levon Mitchell and GERAL Mitchell of Alabama, and Joyce A. Green of Maryland) sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Circuit Court Judge Louis Bloom is in charge of this class action.

### **4. Why Is There A Settlement?**

The Court did not decide in favor of Block or any of the Plaintiffs in the various lawsuits. The Plaintiffs in those lawsuits think they could have won if they went to trial. Block thinks the Plaintiffs would have lost. In fact, in most cases, Block thinks that the Plaintiffs would not have even been able to continue their cases in court, because Block's RAL contract required them to try their claims before an arbitrator. But there was no trial and no arbitration. Instead, both sides agreed to a settlement. This avoids the cost of a trial, and the people affected have an opportunity to be paid. The Class Representatives and the attorneys think the settlement is best for all Class Members.

### **5. How Do I Know If I Am Part Of The Settlement?**

You received this notice because records identified you as a *Mitchell/Green* class member. That means that you fit the description of the class which the Court certified for this settlement. The Court decided that everyone who fits this description is a Class Member:

All Maryland residents who applied for and obtained a RAL at any H&R Block office in Maryland from January 1, 1992 through December 31, 1996 and did not thereafter apply for and obtain a RAL subject to an arbitration provision, and all individuals who obtained a RAL from June 13, 1989 through December 31, 1996 through any "H&R Block" office in Alabama for which the Settling Defendants herein received a license fee payment or portion of the finance charge, and who did not previously request exclusion from their respective classes that were previously certified or timely request exclusion from this class.

There are three other classes that are part of the overall Settlement. The following classes are composed of people who live in one of the following jurisdictions and got a RAL through an H&R Block office during the specified years:

a.) The *Cummins* Class (West Virginia residents) — January 1, 1994 to December 23, 2005;

---

b.) The *Becker* Class (residents of Ohio) — January 1, 2000 to December 23, 2005

c.) The State Law Class (residents of 22 states and the District of Columbia) — January 1, 2000 through December 23, 2005: Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington or Wisconsin.

#### **6. What Does The Settlement Provide?**

Block has agreed to provide additional information to customers who obtain RALs and to pay a total of \$62.5 million, plus costs of notice estimated at \$4 million, to settle this case. The total Block will pay is called the “common fund.”

You are a member of the *Mitchell/Green* class. *Mitchell/Green* class members are entitled to over \$1.6 million of the \$62.5 million, before deductions for the pro rata portion of administration costs, attorney’s fees and expenses relating to the *Mitchell/Green* class, and service fees paid to the class representatives, Joyce A. Green, Levon Mitchell and Geral Mitchell. The *Cummins* class members will divide \$32.5 million; the State Law class will divide more than \$22.5 million; and the *Becker* class will divide more than \$5.8 million; all before the same deductions are made for administration costs, attorney’s fees and expenses, and service fees applicable to each class.

Members of the different classes who submit claims will receive different amounts because each of these cases is at a different stage of proceedings, holds different risks and different chances of success. Each class settlement was negotiated based upon these differences. The four classes are represented independently.

#### **7. How Much Will My Payments Be?**

In order to receive any payment, you must return a claim form (see Question 8 and the attached claim form). Every Class Member who returns a valid claim form will receive at least some distribution from the common fund. Your share of the fund will depend on the number of valid claim forms that *Mitchell/Green* Class Members send in and how many RALs you had. If every class member submitted a claim, your share of the common fund would be a minimum of \$3.66 for each RAL you obtained during the class period. However, only a percentage of class members will actually submit claim forms. For example, if only one of every four class members return claim forms, your share of the fund would be \$14.64 for each RAL you obtained (\$3.66 times four). Your share will be reduced by whatever percentage of the common fund is taken up with administration costs, attorney’s fees, expenses, and service payments. It is unlikely that such costs will exceed 30%, but they could be higher or lower. Please remember that

---

this is only an example; the amount you receive from the settlement could be greater or smaller.

### **8. How Can I Get A Payment?**

To qualify for payment, you must send in a complete and valid claim form. **A claim form is attached to this Notice.** You may also get a claim form **from the** Settlement Administrator's website [[www.INSERTWEBADDRESS.com]]. Read the instructions carefully, fill out the form, include all the information **the form asks** for, sign it, and mail it so that it is postmarked no later than **June 30, 2006**. You may also email the claim form to the Settlement Administrator at [claims@INSERTWEBADDRESS.com]. If you email the claim form, you must do so no later than midnight on **June 30, 2006**.

### **9. When Would I Get My Payment?**

The Court will hold a hearing at **time/date/month/2006** at the **Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. The settlement administrator will keep the settlement website at [www.INSERTWEBADDRESS.com] updated so that everyone who is in the class may keep informed of the progress of the settlement. Please be patient. Note: It is unlikely that you will receive your payment until six months or more after the date you send in a claim form.

### **10. Am I Giving Up Anything To Get A Payment Or Stay In The Class?**

Unless you exclude yourself, also called "opting out" (see Question 12), you will be considered a member of the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Block about the legal issues in this case. Giving up your claims is called a "release." Unless you exclude yourself from the settlement, you will release your claims whether or not you submit a claim form and receive payment.

However, certain claims are not released even if you stay in the class. All claims made in other currently existing class actions that relate to the RAL or other products and services offered by Block are not released. Claims under state law based solely on allegations that a tax preparer failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and claims to enforce the terms and conditions of the Settlement Agreement, are similarly not released.

Class members who do not exclude themselves, but do not make a claim for money from this settlement may choose to arbitrate their individual claims

---



against Block for another year after the settlement is finalized. Although Class Counsel recommend this settlement, they take no position on your likelihood of succeeding on an individual basis in an arbitration case. You should obtain independent legal help if you need more information about the economic value of the arbitration alternative to excluding yourself or making a claim for money under the settlement.

The settlement requires Block to follow certain business practices with future RALs.

### **11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")?**

Yes, you may "opt out" and exclude yourself from the Settlement Class. If you opt out, you will not receive any payment from the common fund, you will not release any claims you may have against Block, and you will not be bound by anything that happens in the Consolidated Action. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Block at your own risk and expense.

### **12. What Do I Do If I Want To Exclude Myself?**

In order to opt out and exclude yourself from the Settlement Class, you must mail a "Request for Exclusion" to the Settlement Administrator at **address**. Your Request for Exclusion must be in writing and must be postmarked no later than May 1, 2006. To be effective, a Request for Exclusion must contain: (a) the name of this case (*Cummins. v. H &R Block, Inc.*); (b) your name, address, social security number and telephone number; (c) a statement that you want to opt out of the lawsuit; and (d) your signature. If the Request for Exclusion is not postmarked by the deadline, you will be included automatically in the Settlement Class and you may be eligible to receive Settlement payments as summarized above. Even if you do not file a claim, you will be legally bound by the proposed Settlement, including provisions releasing Block.

### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing on **time/date/ at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing can be continued at any time by the Court without any further notice to you.

---

#### **14. Do I Have To Come To The Hearing?**

No, You are not required to attend the hearing. But you are welcome to come at your own expense. If you wish to speak, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cummins v. H&R Block*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 16. You cannot speak at the hearing if you excluded yourself, because once you exclude yourself, the settlement does not affect your rights.

#### **15. What If I Do Nothing?**

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Block about the legal issues in this case. You would, however, be able to arbitrate your claims against Block for another year, as described in Question 10.

#### **16. What If I Want To Object To The Settlement?**

If you're a Class Member who has not requested exclusion, you can object to the settlement if you don't like it. If you wish to object, you must write a letter stating your objections, the specific reasons for each objection (including any legal support you want to bring to the Court's attention) and a description of any evidence you wish to introduce in support of your objections. You must include your name, address, telephone number and your signature. Also include the name and number of this action (*Cummins v. H&R Block, Inc.*, Civil Action No. 03-C-134). Your letter must be received in these four different places no later than **May 1, 2006**:

(i) Coordinating Counsel:

Brian A. Glasser, Esq.  
Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, WV 25301

---

(ii) Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337-3710

(iii) The Court:

Clerk of Court  
Kanawha County Circuit Court  
111 Court Street  
Charleston, WV 25301

### **17. What Is The Difference Between Excluding Myself And Objecting?**

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you don't like something about the settlement and you don't want the Court to approve it. You can object only if you stay in the Class.

### **18. Who Are The Lawyers For The *Mitchell/Green* Class?**

The Court has appointed the following law firms to represent you and other *Mitchell/Green* Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

Steven E. Angstreich, Esq.  
Michael Coren, Esq.  
Carolyn C. Lindheim, Esq.  
Levy Angstreich Finney Baldante  
Rubenstein & Coren, P.C.  
1616 Walnut Street, 5<sup>th</sup> Floor  
Philadelphia, PA 19103

Steven A. Martino, Esq.  
Frederick T. Kuykendall, III, Esq.  
W. Lloyd Copeland, Esq.  
Taylor, Martino & Kuykendall  
51 St. Joseph Street  
Mobile, AL 36602

Charles J. Piven, Esq.  
Law Offices of Charles J. Piven, P.A.  
The World Trade Center — Baltimore  
401 East Pratt Street, Suite 2525  
Baltimore, Maryland 21202

---

**19. How Will Class Counsel's Fees And Expenses Be Paid?**

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in an amount not more than 25% of the portion of the common fund attributable to the *Mitchell/Green* Class. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court will determine the amount of any fees and expenses awarded to Class Counsel.

**20. Does The Class Representative Get Additional Compensation?**

Subject to Court approval, the named plaintiffs in the five cases which make up the Consolidated Action will seek "service awards" for their active participation in this litigation. Any such "service award" will be paid from the portions of the common fund attributable to the cases those plaintiffs brought. Joyce A. Green, Levon Mitchell and Geral Mitchell will seek a "service award" of \$5,000. The Court will determine whether they receive a "service award" and the amount of that award.

**21. What If The Court Does Not Approve The Settlement?**

If the Court does not approve the proposed Settlement as being fair, adequate and reasonable, the Settlement Agreement will be null and void, and all parties will be returned to their respective pre-Settlement status in the various lawsuits that the proposed Settlement hopes to resolve.

**22. Where Do I Get Additional Information?**

This notice summarizes the proposed settlement. You can find answers to common questions about the settlement, plus other helpful information at the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]. You can also get a copy of the Settlement Agreement from the website, or by writing to the Settlement Administrator at #####. If you cannot get the information you need from this notice or from the Settlement Administrator, you may contact *Mitchell/Green* Class Counsel.

**Please Do Not Contact The Court Or Block For Information.**

BY ORDER OF THE COURT

The Honorable Louis Bloom  
Circuit Judge  
Kanawha County, West Virginia

Dated: \_\_\_\_\_, 2005

---

**If You Got A Refund Anticipation Loan Through An H&R Block Office Between January 1, 2000 and December 23, 2005. You Could Get A Payment From A Class Action Settlement**

**A Court Has Authorized This Notice. Please Read It, It Describes Important Rights You Have And Requires That You Make A Choice About How to Proceed.**

**Important Dates**

[ILLEGIBLE]

**ANSWERS TO FREQUENTLY-ASKED QUESTIONS**

1. Why Did I Get This Notice?
2. What Is This Lawsuit About?
3. Why Is This A Class Action?
4. Why Is There A Settlement?
5. How Do I Know If I Am Part Of The Settlement?
6. What Does The Settlement Provide?
7. How Much Will My Payments Be?
8. How Can I Get A Payment?
9. When Would I Get My Payment?
10. Am I Giving Anything Up To Get A Payment Or Stay In The Class?
11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")?
12. What Do I Do If I Want To Exclude Myself?
13. When And Where Will The Court Decide Whether To Approve The Settlement?
14. Do I Have To Come To The Hearing?
15. What If I Do Nothing?
16. What If I Want To Object To The Settlement?
17. What Is the Difference Between Excluding Myself And Objecting?
18. Who Are The Lawyers For The Class?
19. How Will Class Counsel's Fees And Expenses Be Paid?
20. Does The Class Representative Get Additional Compensation?
21. What If The Court Does Not Approve The Settlement?
22. Where Do I Get Additional Information?

### **1. Why Did I Get This Notice?**

You got at least one Refund Anticipation Loan (“RAL”) through an H&R Block office between January 1, 2000 and December 23, 2005. You received this notice to inform you about settlement of a class action lawsuit that may affect your rights. This notice provides information about all of your options, so that you can evaluate those options before the Court decides whether to approve the settlement. Those options include making a claim for money from the settlement (see Questions 7-9), excluding yourself from the settlement (Questions 11 & 12) or raising concerns about the fairness of the settlement (Question 16). This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the Circuit Court of Kanawha County, West Virginia (“the Court”).

### **2. What Is This Lawsuit About?**

This case combines several lawsuits that were filed against H&R Block, Inc. and various related corporations. For simplicity, the H&R Block defendants are referred to throughout the rest of this notice as simply “Block.” The cases were filed against Block in different parts of the country at different times, but all essentially make the same claim — that Block violated particular state laws in the way it made RALs available. The lawyers in these cases have filed with the Court an Amended and Consolidated Class Action Complaint (called the “Consolidated Action” from here on), which brings together all of the claims made in these cases. One of the principal claims the Consolidated Action makes is that Block violated the Credit Services Organization Acts of the affected jurisdictions, or violated similar laws.

Block denies that it violated any laws, did anything wrong, or that anyone was harmed by its conduct. Block nevertheless has agreed to settle the Consolidated Action solely to avoid the burden, expense, risk and uncertainty of continuing the various lawsuits.

Block and the plaintiffs in the Consolidated Actions have reached agreement on a Settlement of the claims in the Consolidated Action including claims that had been pending previously in Ohio, Maryland, and Alabama. The Settlement, if approved, would resolve all litigation involving RALs which Block sold in Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington and Wisconsin between January 1, 2000 and December 23, 2005.

---

Other cases are also being settled at the same time, in the same settlement agreement, covering legal rights of individuals in a number of other jurisdictions.

### **3. Why Is This A Class Action?**

In a class action, one or more people called Class Representatives (in this case Renea Griffith, Maryanne Hoekman and Justin Sevey), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Circuit Court Judge Louis Bloom is in charge of this class action.

### **4. Why Is There A Settlement?**

The Court did not decide in favor of Block or any of the Plaintiffs in the various lawsuits. The Plaintiffs in those lawsuits think they could have won if they went to trial. Block thinks the Plaintiffs would have lost. In fact, in most cases, Block thinks that the Plaintiffs would not have even been able to continue their cases in court, because Block's RAL contract required them to try their claims before an arbitrator. But there was no trial and no arbitration. Instead, both sides agreed to a settlement. This avoids the cost of a trial, and the people affected have an opportunity to be paid. The Class Representatives and the attorneys think the settlement is best for all Class Members.

### **5. How Do I Know If I Am Part Of The Settlement?**

You received this notice because records identified you as a State Law class member. That means that you fit the description of the class which the Court certified for this settlement. The Court decided that everyone who fits this description is a Class Member:

All residents of Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington and Wisconsin who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, or any H&R Block offices such as in Sears stores) from January 1, 2000 through December 23, 2005.

There are three other classes that are part of the overall Settlement. The following classes are composed of people who live in one of the following jurisdictions and got a RAL through an H&R Block office during the specified years:

a.) The *Cummins* Class (West Virginia residents) — January 1, 1994 to December 23, 2005;

---

- b.) The *Mitchell/Green* Class (residents of Maryland and Alabama) — Maryland — January 1, 1992 to May 19, 2000, excluding those people who obtained RALs after 1996 whose RAL application contains an arbitration clause; Alabama — June 13, 1989 through December 31, 1996;
- c.) The *Becker* Class (residents of Ohio) — January 1, 2000 through December 23, 2005.

#### **6. What Does The Settlement Provide?**

Block has agreed to provide additional information to customers who obtain RALs and to pay a total of \$62.5 million, plus costs of notice estimated at \$4 million, to settle this case. The total Block will pay is called the “common fund.”

You are a member of the State Law Class. State Law class members are entitled to over \$22.5 million of the \$62.5 million, before deductions for the pro rata portion of administration costs, attorney’s fees and expenses relating to the State Law class, and service fees paid to the class representatives, Renea Griffith, Maryanne Hoekman and Justin Sevey. The *Cummins* class members will divide \$32.5 million; the Becker class will divide over \$5.8 million; and the *Mitchell/Green* (Maryland and Alabama) class will divide more than \$1.6 million; all before the same deductions are made for administration costs, attorney’s fees and expenses, and service fees applicable to each class.

Members of the different classes who submit claims will receive different amounts because each of these cases is at a different stage of proceedings, holds different risks and different chances of success. Each class settlement was negotiated based upon these differences. The four classes are represented independently.

#### **7. How Much Will My Payments Be?**

In order to receive any payment, you must return a claim form (see Question 8 and the attached claim form). Every Class Member who returns a valid claim form will receive at least some distribution from the common fund. Your share of the fund will depend on the number of valid claim forms that State Law Class Members send in and how many RALs you had. If every class member submitted a claim, your share of the common fund would be a minimum of \$1.67 for each RAL you obtained during the class period. However, only a percentage of class members will actually submit claim forms. For example, if only one of every four class members return claim forms, your share of the fund would be \$6.68 for each RAL you obtained (\$1.67 times four). Your share will be reduced by whatever percentage of the common fund is taken up with administration costs, attorney’s fees, expenses, and service payments. It is unlikely that such costs will exceed 30%, but they could be higher or lower. Please remember that this is only an example; the amount you receive from the settlement could be greater or smaller.

---



### **8. How Can I Get A Payment?**

To qualify for payment, you must send in a complete and valid claim form. **A claim form is attached to this Notice.** You may also get a claim form from the Settlement Administrator's website [[www.INSERTWEBADDRESS.com]]. Read the instructions carefully, fill out the form, include all the information the form asks for, sign it, and mail it so that it is postmarked no later than **June 30, 2006**. You may also email the claim form to the Settlement Administrator at [claims@INSERTWEBADDRESS.com]. If you email the claim form, you must do so no later than midnight on **June 30, 2006**.

### **9. When Would I Get My Payment?**

The Court will hold a hearing at **time/date/month/2006 at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. The settlement administrator will keep the settlement website at [www.INSERTWEBADDRESS.com] updated so that everyone who is in the class may keep informed of the progress of the settlement. Please be patient.

Note: It is unlikely that you will receive your payment until six months or more after the date you send in a claim form.

### **10. Am I Giving Up Anything To Get A Payment Or Stay In The Class?**

Unless you exclude yourself, also called "opting out" (see Question 12), you will be considered a member of the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Block about the legal issues in this case. Giving up your claims is called a "release." Unless you exclude yourself from the settlement, you will release your claims whether or not you submit a claim form and receive payment.

However, certain claims are not released even if you stay in the class. All claims made in other currently existing class actions that relate to the RAL or other products and services offered by Block are not released. Claims under state law based solely on allegations that a tax preparer failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and claims to enforce the terms and conditions of the Settlement Agreement, are similarly not released.

Class members who do not exclude themselves, but do not make a claim for money from this settlement may choose to arbitrate their individual claims against Block for another year after the settlement is finalized. Although Class Counsel recommend this settlement, they take no position on your likelihood of succeeding on an individual basis in an arbitration case. You should obtain

---

independent legal help if you need more information about the economic value of the arbitration alternative to excluding yourself or making a claim for money under the settlement.

The settlement requires Block to follow certain business practices with future RALs, and provides Block with an incentive to register as a Credit Service Organization (“CSO”) in the jurisdictions covered by the settlement. Block has two years to decide whether to register and come into compliance with the various CSO statutes.

**Important:** *If you decide to go back to Block to obtain a RAL during the two-year period Block has to register as a CSO in the various jurisdictions, and Block does register and comply with your jurisdiction’s CSO statute in that two-year period, then you will not be able to sue Block for any new RAL violation that you claim happened during the two-year period. But, if Block does not register as a CSO and comply with the CSO statute in your jurisdiction, you will be able to sue based on any new RAL violation that you claimed happened during that period. In addition, any deadline on when you can sue Block (called the “statute of limitations”) will be suspended for the two-year period.*

#### **11. Can I Exclude Myself From The Settlement (Sometimes Called “Opting Out”)?**

Yes, you may “opt out” and exclude yourself from the Settlement Class. If you opt out, you will not receive any payment from the common fund, you will not release any claims you may have against Block, and you will not be bound by anything that happens in the Consolidated Action. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Block at your own risk and expense.

#### **12. What Do I Do If I Want To Exclude Myself?**

In order to opt out and exclude yourself from the Settlement Class, you must mail a “Request for Exclusion” to the Settlement Administrator at **address**. Your Request for Exclusion must be in writing and must be postmarked no later than May 1, 2006. To be effective, a Request for Exclusion must contain: (a) the name of this case (*Cummins. v. H & R Block, Inc.*); (b) your name, address, social security number and telephone number; (c) a statement that you want to opt out of the lawsuit; and (d) your signature. If the Request for Exclusion is not postmarked by the deadline, you will be included automatically in the Settlement Class and you may be eligible to receive Settlement payments as summarized above. Even if you do not file a claim, you will be legally bound by the proposed Settlement, including provisions releasing Block.

---

### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing on **time/date/ at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing can be continued at any time by the Court without any further notice to you.

### **14. Do I Have To Come To The Hearing?**

No. You are not required to attend the hearing. But you are welcome to come at your own expense. If you wish to speak, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cummins v. H&R Block*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 16. You cannot speak at the hearing if you excluded yourself, because once you exclude yourself, the settlement does not affect your rights.

### **15. What If I Do Nothing?**

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Block about the legal issues in this case. You would, however, be able to arbitrate your claims against Block for another year, as described in Question 10.

### **16. What If I Want To Object To The Settlement?**

If you're a Class Member who has not requested exclusion, you can object to the settlement if you don't like it. If you wish to object, you must write a letter stating your objections, the specific reasons for each objection (including any legal support you want to bring to the Court's attention) and a description of any evidence you wish to introduce in support of your objections. You must include your name, address, telephone number and your signature. Also include the name and number of this action (*Cummins v. H & R Block, Inc.*, Civil Action No. 03-C-134). Your letter must be received in these four different places no later than **May 1, 2006**:

(i) Coordinating Counsel:

Brian A. Glasser, Esq.

---

Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, WV 25301

(ii) Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337-3710

(iii) The Court:

Clerk of Court  
Kanawha County Circuit Court  
111 Court Street  
Charleston, WV 25301

### **17. What Is The Difference Between Excluding Myself And Objecting?**

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you don't like something about the settlement and you don't want the Court to approve it. You can object only if you stay in the Class.

### **18. Who Are The Lawyers For The State Law Class?**

The Court has appointed the following law firms to represent you and other State Law Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

Daniel Hume, Esq.  
Kirby McInerney & Squire, LLP  
830 Third Avenue, 10<sup>th</sup> Floor  
New York, NY 10022

Ronald L. Futterman, Esq.  
Michael I. Behn, Esq.  
William W. Thomas, Esq.  
Futterman & Howard, Chtd.  
122 S. Michigan Ave. Suite 1850  
Chicago, IL 60603

Michael B. Hyman, Esq.  
William H. London, Esq.  
Much Shelist Freed Denenberg  
Ament & Rubenstein, P.C.  
191 North Wacker, Suite 1800  
Chicago, IL 60606

---

**19. How Will Class Counsel's Fees And Expenses Be Paid?**

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in an amount not more than 25% of the portion of the common fund attributable to the State Law Class. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court will determine the amount of any fees and expenses awarded to Class Counsel.

**20. Does The Class Representative Get Additional Compensation?**

Subject to Court approval, the named plaintiffs in the five cases which make up the Consolidated Action will seek "service awards" for their active participation in this litigation. Any such "service award" will be paid from the portions of the common fund attributable to the cases those plaintiffs brought. Renea Griffith, Maryanne Hoekman and Justin Sevey will seek a "service award" of \$5,000. The Court will determine whether they receive "service awards" and the amount of their award.

**21. What If The Court Does Not Approve The Settlement?**

If the Court does not approve the proposed Settlement as being fair, adequate and reasonable, the Settlement Agreement will be null and void, and all parties will be returned to their respective pre-Settlement status in the various lawsuits that the proposed Settlement hopes to resolve.

**22. Where Do I Get Additional Information?**

This notice summarizes the proposed settlement. You can find answers to common questions about the settlement, plus other helpful information at the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]. You can also get a copy of the Settlement Agreement from the website, or by writing to the Settlement Administrator at #####. If you cannot get the information you need from this notice or from the Settlement Administrator, you may contact State Law Class Counsel.

**Please Do Not Contact The Court Or Block For Information.**

BY ORDER OF THE COURT

The Honorable Louis Bloom  
Circuit Judge  
Kanawha County, West Virginia

Dated: \_\_\_\_\_, 2005

---



SUMMARY NOTICE OF PENDENCY AND PROPOSED  
SETTLEMENT OF CLASS ACTION AND HEARING

**If You Got A Refund Anticipation Loan From H&R Block  
This Notice Concerns Settlement Of A Lawsuit Which May Affect You**

This Notice is given pursuant to Rule 23 of the West Virginia Rules of Civil Procedure and the December \_\_\_\_, 2005 Order of the Circuit Court of Kanawha County, West Virginia ("Court") in a case called *Cummins v. H&R Block, Inc.*, Civil Action No. 03-C-134. A settlement has been proposed in a class action lawsuit about the way that H&R Block offered refund anticipation loans ("RALs"). If you qualify, you may send in a claim form to get money, you can exclude yourself from the settlement, or you can object to it. The Circuit Court Of Kanawha County, West Virginia ("the Court") authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the settlement.

**What Is The Lawsuit About?**

The lawsuit claimed that H&R Block violated certain state laws in the way it offered RALs. H&R Block denies that it did anything wrong. The Court did not decide which side was right. But both sides agreed to the settlement to resolve the case and get benefits to RAL customers. The two sides disagree on how much money could have been won if the RAL customers who brought the suit had won at a trial.

**Who Is Included In The Settlement?**

You are a Class Member if you got a RAL through an H&R Block office between 2000 and 2005 and live in one of the following jurisdictions:

Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington or Wisconsin.

You are also a Class Member if you live in one of the following states and got a RAL through an H&R Block office during the specified years:

West Virginia — 1994 through 2005

Maryland — 1992 through 1996

Alabama — June 13, 1989 through 1996

Ohio — 2000 through 2005

**How Do I Ask For A Payment?**

You can get a detailed notice about the settlement and your rights to claim money under it at [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)] or by calling toll free 1-800-000-0000. This detailed notice and claim form package contains everything you need. The quickest way to get the notice and claim form package is to visit the Settlement Administrator's website:

[[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]

To qualify for a payment, you must send in a claim form. **Claim forms must be postmarked by June 30, 2006.**

**What Are Your Other Options?**

**If you decide to remain a member of the settlement class but do not submit a claim form, you will not receive any money from the settlement** but you will still be entitled to pursue an individual claim against Block in an arbitration forum for a period of one year. If you don't want to be legally bound by the settlement, you must exclude yourself by May 1, 2006, or you won't be able to sue, or continue to sue, H&R Block about the legal claims in this case in any forum. If you exclude yourself, you can't get money from this settlement. If you stay in the settlement, you may object to it by May 1, 2006. The detailed notice explains how to exclude yourself or object. The Court will hold a hearing in this case on **day/date/2006**, to consider whether to approve the settlement and a request by the eight law firms representing the different Class Members for an award of attorneys' fees and costs for investigating the facts, litigating the case, and negotiating the settlement. You may ask to appear at the hearing, but you don't have to. For more information, call the Settlement Administrator toll free at 1-800-000-0000, visit the website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)], or write to the Settlement Administrator at **address**.

**Please do not contact the Court or Block for information.**

---





**Exhibit F**

**A. Ohio Class is comprised of approximately 1,577,473 RALS and the settlement is no less than \$5,800,000.**

**B. Alabama/Maryland\* Class is comprised of approximately 441,284 RALs as follows for no less than \$1.616.000.**

**1. Maryland — 189,686**

**2. Alabama — 251,598**

**C. State Law Class is comprised of approximately 13,493,522 RALs as follows for up to \$22,584,000 where each RAL is equally weighted.**

**1. Arkansas — 336,382**

**2. Arizona — 456,772**

**3. California — 2,267,362**

**4. District of Columbia — 42,854**

**5. Florida — 1,507,174**

**6. Illinois — 1,098,554**

**7. Indiana — 910,136**

**8. Massachusetts — 368,334**

**9. Maryland — 256,781**

**10. Maine — 135,277**

**11. Michigan — 1,095,482**

**12. Minnesota — 233,535**

**13. Missouri — 643,164**

**14. Nebraska — 159,615**

**15. New Hampshire — 130,004**

**16. Nevada — 192,080**

**17. Oregon — 171,786**

**18. Pennsylvania — 990,962**

**19. Tennessee — 997,321**

**20. Utah — 120,315**

**21. Virginia — 670,956**

**22. Washington — 334,123**

**23. Wisconsin — 334,553**

---

**\* Based on best available data**

---





APPLICATION FOR A REFUND ANTICIPATION LOAN AND A REFUND ACCOUNT

Applicant's Name

Applicant's Social Security/Taxpayer Identification #

Joint Applicant's Name

Joint Applicant's Social Security/Taxpayer Identification #

I am applying for a Refund Anticipation Loan ("RAL") from HSBC Bank USA, National Association ("HSBC") in the maximum amount for which HSBC will approve me. In this application ("Application"), "ERO" means each of H&R Block, Inc. and each of its affiliates and subsidiaries (and franchisees thereof); "Transmitter" means my electronic tax return transmitter, which may be the same as my ERO; and "IRS" means the Internal Revenue Service.

1. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY, AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT, WHAT THIS MEANS FOR ME: WHEN I OPEN AN ACCOUNT, YOU WILL ASK FOR MY NAME, ADDRESS, DATE OF BIRTH, AND OTHER INFORMATION THAT WILL ALLOW YOU TO IDENTIFY ME. I MAY ALSO BE ASKED TO PRODUCE MY DRIVER'S LICENSE OR OTHER IDENTIFYING DOCUMENTS.

2. Collections. In consideration of the ease and convenience of the following method of paying any delinquent debt I owe or the other applicant owes to HSBC Taxpayer Financial Services Inc. ("HSBC TFS"), my ERO or Transmitter for prior years, or Bank One, River City Bank, First Security Bank, Republic Bank, Santa Barbara Bank & Trust or First Bank of Delaware (the "Other RAL Lenders"), and provided that such debt has not been discharged in bankruptcy, I authorize and direct the repayment of such debt, calculated as of the date of my Application, by means of (a) having such debt deducted from the proceeds of my RAL, or (b) having my request for new loan proceeds denied or the amount for which I have applied reduced and having such debt repaid to those entities by offset or otherwise from my tax refund directly transmitted into my Refund Account with HSBC. If I owe delinquent debt to more than one of the entities listed above, I authorize and direct HSBC to pay such debts in the following order: HSBC TFS, Other RAL Lenders, and ERO. I also authorize and instruct HSBC, HSBC TFS, and the Other RAL Lenders to disclose to each other information about their respective credit experiences concerning my present and prior RALs, Refund Anticipation Checks ("RACs") or similar financial services, and my prior tax returns.

PLEASE NOTE: If I have delinquent debt, I understand that HSBC or its servicer may be acting as a debt collector to collect a debt and that any information obtained will be used for that purpose.

By signing below, I am indicating that I fully understand that I am applying for a loan and that I have read, understand and agree to the terms set forth in this Application above and on the following pages, including but not limited to: (a) Section 2 in which I agree that HSBC may use amounts received from my tax refund to pay certain delinquent debts; and (b) Section 11 in which I agree, upon my or HSBC's election, to arbitrate any Claims that I may have. I also acknowledge that I have 30 days from today's date to reject the Arbitration Provision by following the procedure described in Section 11. If I receive a RAL, I promise to pay the amount set forth in the "Total of Payments" section on my Loan Agreement and Disclosure Statement or subsequent replacement TILA Disclosure Statement, if any, on demand or when the anticipated refund from the IRS is electronically deposited into my refund account, whichever comes first, and I agree to repay the RAL whether or not my tax refund is paid in whole or in part to HSBC.

(Applicant — Primary Taxpayer Signature)

Date

(Joint Applicant — Spouse Signature, If Joint Return)

Date

Witness

HSBC Toll-Free Customer Service Number 1-800-524-0628 or visit us on the web at hsbctfshrb.com for more information.

HSBC COPY

3. Applicable Law. This Application and all the other documents executed in connection with this Application or my RAL (collectively, "Documents") shall be governed by and construed, interpreted, and enforced in accordance with federal law and, to the extent state law applies, the law of the State of Delaware (without reference to conflict of laws principles).

4. Important Information About RALs. I understand that: (a) I can file my federal income tax return electronically without obtaining a RAL; (b) the IRS will send me a refund check or electronically deposit my refund to my existing bank account; (c) the IRS normally sends a refund check by mail within 3 weeks after an electronic filing; (d) the IRS normally makes an electronic deposit in an average of about 12 days after an electronic filing; (e) HSBC tries to make proceeds of an instant RAL available on the day of application and a Classic RAL available on the first business day after application; (f) HSBC cannot guarantee when any proceeds of a RAL or an IRS refund will be available to me; and (g) a RAL may cost substantially more than other sources of credit, and I may want to consider using other sources of credit.

5. Deposit Authorization. (a) After I sign my Application, my ERO and/or my Transmitter will electronically transmit my tax return to the IRS and my Application to HSBC, I understand that I will sign or authorize an IRS Transmittal Form 8453 or IRS e-file signature authorization ("Deposit Authorization") as part of my Application and electronic tax filing, and that the Deposit Authorization and this Application provide an irrevocable agreement to have my tax refund disbursed to HSBC, and irrevocably transfers to HSBC all of my rights, title, and interest in the proceeds of my tax refund for purposes of the RAL I have requested and other purposes authorized by this Application. (b) If my Application is denied or cancelled, and HSBC receives my tax refund, HSBC will forward to me promptly any proceeds of my refund after deducting amounts permitted by this Agreement. (c) If for any reason, any part of the anticipated tax refund is disallowed or offset by the IRS, or if I should receive a refund check in the mail, I will advise HSBC immediately and promptly pay HSBC any amounts owing with respect to my Application or a RAL, and pay my ERO and/or my Transmitter any fees owed to them involving my tax return.

6. Refund Account. (a) I request that a Refund Account be opened at HSBC upon receipt of my tax refund for the purposes of ensuring the repayment of my RAL and other amounts described in the Documents. The Annual Percentage Yield and interest rate on the Refund Account will be 0%. This means I will not receive any interest on funds in the Refund Account. I understand that I cannot make withdrawals from the Refund Account and that the funds in the Refund Account will be disbursed only as expressly provided in the Documents. (b) HSBC may deduct any amounts I owe HSBC, my ERO, my Transmitter or their affiliates from my tax refund, any funds received in the Refund Account, and any proceeds of a RAL. My engagement with the ERO for services in connection with my 2004 income tax return will end, and I am required to pay all fees to the ERO for services rendered by the ERO, when I pick up my check for a RAL (or when HSBC electronically transfers my proceeds to me or to another entity at my direction). If a check or an electronic transfer of proceeds is not made available to me because I do not receive a tax refund, then I am required to pay all fees to the ERO for services rendered by the ERO on demand, HSBC also may withdraw amounts deposited into the Refund Account from my tax refund to pay any check I receive for a RAL that I endorse and present for payment or to disburse money to me in accordance with my Application. (c) I will not receive a periodic statement for the Refund Account, but I will receive notice if funds in the Refund Account are not sufficient to repay my RAL or are used for any purpose other than repayment of my RAL or disbursement to me. HSBC may, immediately after disbursement of all funds in the Refund Account, close the account without further notice to or authorization from me.

7. Refund Account Fee. I will pay HSBC a fee of \$24.95 for the administration of the Refund Account and any disbursements to me from that account ("Refund Account Fee"), I irrevocably commit to pay the Refund Account Fee after the Deposit Authorization is filed with the IRS regardless of whether (a) I apply for a RAL or (b) my Application is approved or denied. The Refund Account Fee is not imposed directly or indirectly as an incident to or condition of any extension of credit. I can avoid the Refund Account Fee if I direct that my tax refund not be deposited to HSBC before filing my Deposit Authorization with the IRS.

8. No Fiduciary/Agency Duty. I understand that for various fees received, my ERO is acting only at my tax preparer (if applicable), my electronic filer and the deliverer of checks for RALs with respect to this RAL transaction. I understand that an affiliate of my ERO may purchase an interest in my RAL issued by HSBC. I further understand that my ERO is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction and has no other duties to me beyond the preparation of my tax return (if applicable), the transmission of my tax return information to HSBC, the electronic filing of my tax return with the IRS, and the delivery of checks for RALs. I acknowledge that I have independently evaluated and decided to apply for a RAL, and that I am not relying on any recommendation from my ERO. I also understand that HSBC is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction.

---

9. Disclosure Information. (a) "Information" means my 2004 federal and state income tax returns, any information obtained in connection with my tax return (including information relating to a possible offset of my tax refund or the possibility that my tax return is incorrect), and any information relating to my Application or a RAL, RAC, or similar financial service I have received or requested from HSBC. (b) "Authorized Parties" means HSBC, HSBC TFS, my ERO, my Transmitter, and their respective affiliates and agents, and includes the Fraud Service Bureau operated for HSBC. (c) The Authorized Parties may share Information to process my Application, to determine whether to provide a RAL, to provide RALs to me, to collect delinquent RALs, RACs, or ERO fees, to prevent fraud, and to otherwise administer or promote the program for RALs and RACs. (d) The Authorized Parties may disclose information to the IRS, state tax agencies and other financial institutions that provide RALs, RACs, or other financial services. (e) The Authorized Parties may call, or input my Information on any website of, the IRS or state tax agencies, in connection with my Application to, among other things, determine the status of my tax return. The IRS and state tax agencies may disclose information about me and my tax returns to the Authorized Parties. (f) My ERO may not use or disclose Information for any purpose, except as permitted under Treas. Reg. Sec. 301.7216-2 or as provided in this Application. (g) I consent to HSBC sharing information as provided in the Privacy Statement.

10. Service Fees. (a) Reissued Check Fee: I agree to pay \$10 each time that a check is reissued at my request for any reason. If I request that such a check be sent by overnight mail, I agree to pay the charges for sending it by overnight mail. (b) Document Fees If I ask HSBC to provide me with a copy of my Application, loan agreement, billing statement or other document HSBC may charge me \$10 per document.

11. Arbitration Provision. Any claim, dispute or controversy between me and HSBC (as specifically defined below for purposes of this Arbitration Provision), whether in contract or tort (intentional or otherwise), whether pre-existing, present or future, and including constitutional, statutory, common law, regulatory, and equitable claims in any way relating to (a) any of these or any other Documents or any RAL or RAC that I have previously requested or received from HSBC, (b) advertisements, promotions, or oral or written statements related to this or any other Application for a RAL or any RAL or RAC that I have previously requested or received from HSBC, (c) the relationship of HSBC and me relating to any of these or any other Documents or any RAL or RAC that I have previously requested or received from HSBC; and (d) except as provided below, the validity, enforceability or scope of this Arbitration Provision or any part thereof, including but not limited to, the issue whether any particular claim, dispute or controversy must be submitted to arbitration (collectively the "Claim"), shall be resolved, upon the election of either me or HSBC, by binding arbitration pursuant to this Arbitration Provision and the applicable rules of the American Arbitration Association ("AAA") or the National Arbitration Forum ("NAF") in effect at the time the Claim is filed. I shall have the right to select one of these arbitration administrators (the "Administrator"). The arbitrator must be a lawyer with more than ten (10) years of experience or a retired or former judge. In the event of a conflict between this Arbitration Provision and the rules of the Administrator, this Arbitration Provision shall govern. In the event of a conflict between this Arbitration Provision and the balance of this Application or any other Documents, this Arbitration Provision shall govern. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any organization that has in place a formal or informal policy that is inconsistent with and purports to override the terms of this Arbitration Provision, including the Class Action Waiver Provision defined below.

HSBC hereby agrees not to invoke its right to arbitrate an individual Claim I may bring in small claims court or an equivalent court, if any, so long as the Claim is pending only in that court. No class actions or private attorney general actions in court or in arbitration or joinder or consolidation of claims in court or in arbitration with other persons, are permitted without the consent of HSBC and me. The validity and effect of the preceding sentence (herein referred to as the "Class Action Waiver Provision") shall be determined exclusively by a court and not by the Administrator or any arbitrator. Neither the Administrator nor any arbitrator shall have the power or authority to waive, modify or fail to enforce the Class Action Waiver Provision, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable.

Any arbitration hearing that I attend will take place in a location that is reasonably convenient for me. On any Claim I file, I will pay the first \$50.00 of the filing fee. At my request, HSBC will pay the remainder of the filing fee and any administrative or hearing fees charged by the Administrator, up to \$1,500.00 on any Claim asserted by me in the arbitration. If I should be required to pay any additional fees to the Administrator, HSBC will consider a request by me to pay all or part of the additional fees; however, HSBC shall not be obligated to pay any additional fees unless the arbitrator grants me an award. If the arbitrator grants an award in my favor, HSBC will reimburse me for any additional fees paid or owed by me to the Administrator up to the amount of the fees that would have been charged if the original Claim had been for the amount of the actual award in my favor. If the arbitrator issues an award in HSBC's favor, I will not be required to reimburse HSBC for any fees HSBC has previously paid to the Administrator or for which HSBC is responsible.

This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 (the "FAA"). The arbitrator shall apply substantive law consistent with the FAA, and not by any state law concerning arbitration. The arbitrator shall follow and apply applicable substantive law to the

**HSBC COPY**

---

extent consistent with the FAA, statutes of limitation and claims of privilege and shall be authorized to award all remedies permitted by applicable substantive law, including, without limitation, compensatory, statutory and punitive damages, declaratory, injunctive and other equitable relief and attorneys' fees and costs. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the Administrator's rules. Upon request of either party, the arbitrator shall prepare a short reasoned written opinion supporting the arbitration award. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator's award will be final and binding except for: (a) any appeal right under the FAA; and (b) any appeal of Claims involving more than \$100,000. For such Claims, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider de novo (i.e., in its entirety) any aspect or all aspects of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs (i.e., the amounts owed to the Administrator and the arbitrators), regardless of its outcome. However, HSBC will consider in good faith any reasonable request for HSBC to bear up to the full costs of the appeal. Nothing in this Arbitration Provision shall be construed to prevent HSBC's use of offset or other contractual rights involving payment of my income tax refund or other amount on deposit with HSBC to pay off any RAL, RAC, or similar financial service, or ERO or other foes, now or thereafter owed by me to HSBC or any Other RAL Lender or ERO or third party pursuant to the Documents or similar prior documents.

I ACKNOWLEDGE THAT I HAVE A RIGHT TO LITIGATE CLAIMS IN COURT BEFORE A JUDGE OR JURY, BUT I PREFER TO RESOLVE ANY SUCH CLAIMS THROUGH ARBITRATION AND HEREBY KNOWINGLY AND VOLUNTARILY WAIVE MY RIGHTS TO LITIGATE SUCH CLAIMS IN COURT BEFORE A JUDGE OR JURY, UPON ELECTION OF ARBITRATION BY HSBC OR BY ME. I ACKNOWLEDGE THAT I WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS OR AS A PRIVATE ATTORNEY GENERAL PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. I UNDERSTAND THAT, IF I AM A MEMBER OF THE PUTATIVE CLASS IN CUMMINS, ET AL. V. H&R BLOCK, INC., ET AL., CASE NO. 03-C-134 IN THE CIRCUIT COURT OF KANAWHA COURT, WV. THIS ARBITRATION CLAUSE MAY NOT ACT AS A WAIVER OF THE RIGHTS AND CLAIMS I MAY HAVE IN THAT ACTION.

This Arbitration Provision shall supersede all prior Arbitration Provisions contained in any previous RAL or RAC application or related agreement and shall survive repayment of any RAL or RAC and termination of my accounts: provided, however, that if I reject this Arbitration Provision as set below, any prior Arbitration Provisions shall remain in full force and effect. If any portion of this Arbitration Provision is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Provision. However, if a determination is made that the Class Action Waiver Provision is unenforceable, this Arbitration Provision (other than this sentence) and any prior Arbitration Provision shall be null and void.

To reject this Arbitration Provision, I must send HSBC, c/o HSBC Taxpayer Financial Services Inc., Account Research, P.O. Box 18097, Jacksonville, FL 32229, a signed writing ("Rejection Notice") that is received within thirty (30) days after the date I sign this Application. The Rejection Notice must identify the transaction involved and must include my name, address, and social security number and must be signed by all persons signing this Application as Applicant(s). I may send the Rejection Notice in any manner I see fit as long as it is received at the specified address within the specified time. No other methods can be used to reject the Arbitration Agreement. If the Rejection Notice is sent on my behalf by a third party, such third party must include evidence of his or her authority to submit the Rejection Notice on my behalf.

As used in this Arbitration Provision, the term "HSBC" shall mean HSBC Bank USA, National Association, HSBC TFS, Household Bank, f.s.b., Beneficial National Bank, and H&R Block, Inc., and each of their parents, wholly or majority-owned subsidiaries, affiliates, or predecessors, successors, assigns and the franchisees of any of them, and each of their officers, directors, agents, and employees.

Contacting the Administrator: If I have a question about the arbitration Administrator mentioned in this Arbitration Provision or if I would like to obtain a copy of its arbitration rules, I can contact the Administrator as follows: American Arbitration Association, 335 Madison Avenue, New York, NY 10017, [www.adr.org](http://www.adr.org); National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405, [www.arb-forum.com](http://www.arb-forum.com).

12. Survival. The provisions of this Application shall survive the execution of the Loan Agreement and Disclosure Statement and the disbursement of funds.

13. Miscellaneous. (a) References to "I" or "me" or "my" in the Documents shall refer individually to each applicant for a RAL and to both applicants, and the obligations of such individuals under the Documents will be joint and several. The filing of an injured spouse form shall not relieve either applicant of any such obligations under the Documents. (b) If any provision of the Documents or part thereof is deemed invalid, such invalidity will not affect any other provision of the Documents or part thereof. (c) HSBC may obtain a consumer report on me, and other information from third parties, in connection with

---

evaluating my Application, or collecting or reviewing my RAL or accounts. (d) HSBC may assign all or a portion of any rights or obligations relating to a RAL to a third party, including HSBC TFS, my ERO, an affiliate of my ERO, a franchiser of my ERO, or an affiliate of HSBC, without notice to me or my consent. (e) Supervisory personnel of HSBC or its agents may listen to and record my telephone calls. (f) I agree that you may send any notices and billing statements to the address of the primary applicant and not to the address of the joint applicant if such address is different. (g) I agree HSBC may transfer, sell, participate or assign all or a portion of my RAL, and its rights, duties and obligations relating to my RAL, to third parties, including HSBC TFS, its affiliates, successors and assigns without notice to me or my consent.

14. **State Notices. California residents:** Married persons may apply for a separate account. **Iowa Residents:** NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with the law. **New York residents:** Consumer reports may be requested in connection with this account or any updates, renewals, or extensions thereof. Upon my request, HSBC will inform me of the names and addresses of any consumer reporting agencies which have provided HSBC with such reports. **Ohio residents:** The Ohio law against discrimination requires that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights commission administers compliance with these laws. **Pennsylvania residents:** If this loan becomes in default, HSBC or its assignee intends to collect default charges. **Utah residents:** Any prepaid finance charge not exceeding 5% of the original amount of the loan shall be fully earned on the date the loan is extended, and shall be nonrefundable in the event the loan is repaid prior to the date it is due. Any additional prepaid finance charge is earned proportionally over the term of the loan, and, in the event of such prepayment, the unearned portion of such charge, calculated on a pro rata basis according to the remaining term of the loan, shall be refunded. **Wisconsin residents:** No provision of a marital property agreement, a unilateral statement under Wisconsin Stats. s. 766.59 or a court decree under Wisconsin Stats. s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred. All obligations described herein are being incurred in the interest of my marriage or family. **A married Wisconsin resident applicant must mail the name and address of his or her spouse, as well as the applicant's name and social security number, to HSBC c/o HSBC Taxpayer Services, 200 Somerset Corporate Blvd., Bridgewater, NJ 08807, within two days.**

15. **Certification.** I certify that the following information is true with respect to the RAL I am requesting: (1) I do not owe any tax due and/or any tax liens from prior tax years, nor have I previously filed a 2004 federal income tax return. (2) I do not have any delinquent child support, alimony payments, student loans, V.A. loans or other federally sponsored loans. (3) Presently, I do not have a petition (whether voluntary or involuntary) filed nor do I anticipate filing a petition under federal bankruptcy laws. (4) I have not had a RAL with any lender from a prior year that has been discharged in bankruptcy. (5) I have not paid any estimated tax and/or did not have any amount of my 2003 refund applied to my 2004 tax return. (6) I am not presently making regular payments to the IRS for prior year unpaid taxes. (7) I do not have a Power of Attorney presently in effect or on file with the Internal Revenue Service ("IRS") to direct my federal income tax refund to any third party. (8) I am not filing a 2004 federal Income tax return using a substitute W-2, Form 4852, or any other form of substitute wage and tax documentation, unless the source of the Form 4852 is a Military Leave and Earnings Statement. (9) I am not filing a Form 8862 (Earned Income Credit Eligibility) with my 2004 federal income tax return. (10) I am not currently incarcerated in a state or federal prison nor do I have 2004 income earned while an inmate at a penal institution and claiming the Earned Income Credit. (11) The 2004 income I have reported is not solely from Schedule C or C-EZ (Profit or Loss from Business). (12) If Schedule C is present and EIC claimed, and return is self-prepared or other prepared, I am a statutory employee and the W-2 indicates statutory employee in Box 15. (13) I am not filing Form 8379 (Injured Spouse Claim & Allocation) with my 2004 federal income tax return. (14) I am not filing Form 1310 (Statement of Person Claiming Refund Due Deceased Taxpayer) with the 2004 federal income tax return or filing a federal income tax return Form 1040 on behalf of deceased taxpayer. (15) I do not have an amount paid with request for an extension to file on Line 68, Field 1190 of Form 1040. (16) Everything that I have stated in this Application is correct.

HSBC COPY

---

**HSBC TAXPAYER FINANCIAL SERVICES DIVISION OF HSBC BANK USA, NATIONAL ASSOCIATION**  
**Privacy Statement**

**Applicability**

This Privacy Statement only applies to customers' accounts with the HSBC Taxpayer Financial Services division of HSBC Bank USA, National Association ("HSBC"). All other HSBC accounts are governed by the HSBC Bank USA National Association Personal Banking Policy.

**Introduction — Our Commitment to You**

HSBC is proud to be part of a financial services organization that has been providing superior products and services to its customers for many years. We greatly appreciate the trust that you and millions of customers have placed in us, and we will protect that trust by continuing to respect the privacy of all our applicants and customers even if our formal customer relationship ends.

**How We Handle Information we Obtain**

It is important for you to know that in order to ensure that our customers get the very best service and the highest quality products, HSBC collects demographic information (like your name and address) and credit information (like information related to your accounts with us and others). This information comes either directly from you, for instance, from your application and transactions on your account; or, it may come from an outside source such as your credit bureau report. In addition, if you visit our Internet web site, we may collect certain information about your Internet usage.

Because some of the information we gather is not publicly available, we take great care to ensure that this information is kept safe from unauthorized access, and we would never share the information in violation of any regulation or law. Because we respect your privacy and we value your trust, the only employees or companies who can access your private personal information are those who use it to service your account or provide services to you or to us. HSBC diligently maintains physical, electronic and procedural safeguards that comply with applicable federal standards to guard your private personal information and to assist us in preventing unauthorized access to that information.

**How We Share Information with Companies Affiliated with Us**

From time to time, for general business purposes such as fraud control, or when we think it may benefit you, we do share certain information with our affiliated companies, except as prohibited by applicable law. These affiliated companies all provide financial services, such as banking, consumer finance, insurance, mortgage, and brokerage services. Some examples include companies doing business under the names Household, Beneficial, or HSBC. We may also share certain information with non-financial service providers that become affiliated with us in the future (such as travel, auto, or shopping clubs), except as prohibited by applicable law. The information we share might come from your application, for instance your name, address, telephone number, social security number, and e-mail address. Also, the information we share could include your transactions with us or our affiliated companies (such as your account balance, payment history, and parties to the transaction), your Internet usage, or your credit card usage. Except for Vermont residents, the information we share could also include your assets, income, or credit reports.

**How We Share Information under a Joint Marketing Agreement**

We may also provide information to non-affiliated financial companies (such as a tax preparer, mortgage banker or insurance service provider) with whom we have a joint marketing agreement. The sharing of information with these types of companies is permitted by law. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

**How We Share Information with Other Third Parties**

Except for California or Vermont residents, we also may share information with non-affiliated companies that are able to extend special offers we feel might be of value to you. These companies may be financial services providers (such as mortgage bankers or insurance agents) or they may be non-financial companies (such as retailers, tax preparers, or marketing companies). These offers are typically for products and services that you might not otherwise hear about. The information we may provide them comes from the sources described above and might include your name, address and phone number. You may tell us not to share information with non-affiliated companies in this way by completing the form below. For California and Vermont residents, applicable law requires us to obtain your permission in order to share information about you in this way, and we have chosen not to share your information in this way.

---



We may also provide information to non-affiliated companies that perform operational, collection, or fraud control services related to your account. The sharing of information with these types of companies is permitted by law. Such a company might include a financial company (such as an insurance service provider) or a non-financial company (such as a data processor or internet service provider) with whom we have an agreement. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

Finally, we provide information about you to non-affiliated companies such as credit reporting agencies and companies which provide services related to your account. This information sharing is also permitted by law.

We reserve the right to change our privacy practices at any time in accordance with applicable law. Notice of such changes will be provided if required by applicable law.

**How to Opt-Out (non-affiliated companies) (Applicable to residents of all states except California and Vermont)**

If you do not want us to share your private information with non-affiliated companies (unless we are permitted or required by law to do so), please let us know by simply calling 1-800-365-2641. **If you have previously informed us of your preference, you do not need to do so again.** We will be happy to comply with your "opt-out" request, which will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account. Opt-out requests will not apply to information sharing that is permitted by law. Please allow sufficient time for us to process your request,

**How to Opt-Out (affiliated companies) (Applicable to residents of all states except Vermont)**

If you do not want us to share your credit information (such as your credit bureau information) with companies that are affiliated with us, please let us know by simply calling 1-800-365-2641. **If you have previously informed us of your preference, you do not need to do so again.** This request will not apply to information about your transactions or experience with HSBC (such as account information, account usage, or payment history), except as required by law, and will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account.

---

Atención clientes hispanoparlantes: Esta Declaración Sobre la Privacidad proporciona información sobre cómo manejamos información personal no publica acerca de nuestros clientes, las circunstancias bajo las cuales podemos compartir tal información con otras personas, y cómo usted puede pedir que no compartamos esa información con terceros que no sean afiliados nuestros. Si quisiera que le proporcionemos una traducción al español de la Declaración Sobre la Privacidad en su totalidad, sírvase comunicarse con nosotros llamándonos gratis al 1-800-365-2641.

HSBC COPY

---



SUMMARY NOTICE OF PENDENCY AND PROPOSED  
SETTLEMENT OF CLASS ACTION AND HEARING

**If You Got A Refund Anticipation Loan From H&R Block  
This Notice Concerns Settlement Of A Lawsuit Which May Affect You**

This Notice is given pursuant to Rule 23 of the West Virginia Rules of Civil Procedure and the December \_\_\_\_\_, 2005 Order of the Circuit Court of Kanawha County, West Virginia ("Court") in a case called *Cummins v. H&R Block, Inc.*, Civil Action No. 03-C-134. A settlement has been proposed in a class action lawsuit about the way that H&R Block offered refund anticipation loans ("RALs"). If you qualify, you may send in a claim form to get money, you can exclude yourself from the settlement, or you can object to it. The Circuit Court Of Kanawha County, West Virginia ("the Court") authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the settlement.

**What Is The Lawsuit About?**

The lawsuit claimed that H&R Block violated certain state laws in the way it offered RALs. H&R Block denies that it did anything wrong. The Court did not decide which side was right. But both sides agreed to the settlement to resolve the case and get benefits to RAL customers. The two sides disagree on how much money could have been won if the RAL customers who brought the suit had won at a trial.

**Who Is Included In The Settlement?**

You are a Class Member if you got a RAL through an H&R Block office between 2000 and 2005 and live in one of the following jurisdictions:

Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington or Wisconsin.

You are also a Class Member if you live in one of the following states and got a RAL through an H&R Block office during the specified years:

West Virginia — 1994 through 2005  
Maryland — 1992 through 1996  
Alabama — June 13, 1989 through 1996  
Ohio — 2000 through 2005

**How Do I Ask For A Payment?**

You can get a detailed notice about the settlement and your rights to claim money under it at [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)] or by calling toll free 1-800-000-0000. This detailed notice and claim form package contains everything you need. The quickest way to get the notice and claim form package is to visit the Settlement Administrator's website:

[[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]

To qualify for a payment, you must send in a claim form. **Claim forms must be postmarked by June 30, 2006.**

**What Are Your Other Options?**

**If you decide to remain a member of the settlement class but do not submit a claim form, you will not receive any money from the settlement** but you will still be entitled to pursue an individual claim against Block in an arbitration forum for a period of one year. If you don't want to be legally bound by the settlement, you must exclude yourself by May 1, 2006, or you won't be able to sue, or continue to sue, H&R Block about the legal claims in this case in any forum. If you exclude yourself, you can't get money from this settlement. If you stay in the settlement, you may object to it by May 1, 2006. The detailed notice explains how to exclude yourself or object. The Court will hold a hearing in this case on **day/date/2006**, to consider whether to approve the settlement and a request by the eight law firms representing the different Class Members for an award of attorneys' fees and costs for investigating the facts, litigating the case, and negotiating the settlement. You may ask to appear at the hearing, but you don't have to. For more information, call the Settlement Administrator toll free at 1-800-000-0000, visit the website

[[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)], or write to the Settlement Administrator at **address**.

**Please do not contact the Court or Block for information.**

---

**If You Got A Refund Anticipation Loan Through An H&R Block Office Between  
January 1, 1994 and December 23, 2005. You Could Get A Payment From A  
Class Action Settlement**

**A Court Has Authorized This Notice. Please Read It, It Describes Important Rights You Have And Requires That You Make A Choice  
About How to Proceed.**

**Important Dates**

To receive a payment from the settlement your Claim Form (attached) must be postmarked no later than June 30, 2006 (See Question 8).

If you prefer to exclude yourself from the settlement ("opt out"), your request must be postmarked no later than May 1, 2006 (See Question 12).

Any notice of appearance or objections must be received by May 1, 2006 (See Question 16).

Date of Fairness Hearing: day/month/2006 (See Question 13).

**ANSWERS TO FREQUENTLY-ASKED QUESTIONS**

- |   |   |
|---|---|
| 1. Why Did I Get This Notice?   | 12. What Do I Do If I Want To Exclude Myself?                               |
| 2. What Is This Lawsuit About?  | 13. When And Where Will The Court Decide Whether To Approve The Settlement? |
| 3. Why Is This A Class Action?  | 14. Do I Have To Come To The Hearing?                                       |
| 4. Why Is There A Settlement?   | 15. What If I Do Nothing?   |
| 5. How Do I Know If I Am Part Of The Settlement?                              | 16. What If I Want To Object To The Settlement?                             |
| 6. What Does The Settlement Provide?  | 17. What Is the Difference Between Excluding Myself And Objecting?          |
| 7. How Much Will My Payments Be?  | 18. Who Are The Lawyers For The Class?                                      |
| 8. How Can I Get A Payment?   | 19. How Will Class Counsel's Fees And Expenses Be Paid?                     |
| 9. When Would I Get My Payment?   | 20. Does The Class Representative Get Additional Compensation?              |
| 10. Am I Giving Anything Up To Get A Payment Or Stay In The Class?            | 21. What If The Court Does Not Approve The Settlement?                      |
| 11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")? | 22. Where Do I Get Additional Information?                                  |

### **1. Why Did I Get This Notice?**

You got at least one Refund Anticipation Loan ("RAL") through an H&R Block office between January 1, 1994 and December 23, 2005. You received this notice to inform you about settlement of a class action lawsuit that may affect your rights. This notice provides information about all of your options, so that you can evaluate those options before the Court decides whether to approve the settlement. Those options include making a claim for money from the settlement (see Questions 7-9), excluding yourself from the settlement (Questions 11 & 12) or raising concerns about the fairness of the settlement (Question 16). This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the Circuit Court of Kanawha County, West Virginia ("the Court").

### **2. What Is This Lawsuit About?**

This case combines several lawsuits that were filed against H&R Block, Inc. and various related corporations. For simplicity, the H&R Block defendants are referred to throughout the rest of this notice as simply "Block." The cases were filed against Block in different parts of the country at different times, but all essentially make the same claim — that Block violated particular state laws in the way it made RALs available. The lawyers in these cases have filed with the Court an Amended and Consolidated Class Action Complaint (called the "Consolidated Action" from here on), which brings together all of the claims made in these cases. One of the principal claims the Consolidated Action makes is that Block violated the Credit Services Organization Acts of the affected jurisdictions, or violated similar laws.

Block denies that it violated any laws, did anything wrong, or that anyone was harmed by its conduct. Block nevertheless has agreed to settle the Consolidated Action solely to avoid the burden, expense, risk and uncertainty of continuing the various lawsuits.

Block and the plaintiffs in the Consolidated Actions have reached agreement on a Settlement of the claims in the Consolidated Action including claims that had been pending previously in Ohio, Maryland, and Alabama. The Settlement, if approved, would resolve all litigation involving RALs which Block sold in West Virginia between January 1, 1994 and December 23, 2005. Other cases are also being settled at the same time, in the same settlement agreement, covering legal rights of individuals in a number of other jurisdictions.

---

### 3. Why Is This A Class Action?

In a class action, one or more people called Class Representatives (in this case Deadra D. Cummins, Ivan Bell and LaDonna Bell), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Circuit Court Judge Louis Bloom is in charge of this class action.

### 4. Why Is There A Settlement?

The Court did not decide in favor of Block or any of the Plaintiffs in the various lawsuits. The Plaintiffs in those lawsuits think they could have won if they went to trial. Block thinks the Plaintiffs would have lost. In fact, in most cases, Block thinks that the Plaintiffs would not have even been able to continue their cases in court, because Block's RAL contract required them to try their claims before an arbitrator. But there was no trial and no arbitration. Instead, both sides agreed to a settlement. This avoids the cost of a trial, and the people affected have an opportunity to be paid. The Class Representatives and the attorneys think the settlement is best for all Class Members.

### 5. How Do I Know If I Am Part Of The Settlement?

You received this notice because records identified you as a *Cummins* class member. That means that you fit the description of the class which the Court certified for this settlement. The Court decided that everyone who fits this description is a Class Member:

All West Virginia residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, or any H&R Block offices such as in Sears stores) from January 1, 1994 through December 23, 2005, who did not previously request exclusion from the *Cummins* class, other than those persons who previously requested exclusion from the *Cummins* class, subsequently obtained a RAL through any Settling Defendant or Affiliate in 2005.

There are three other classes that are part of the overall Settlement. The following classes are composed of people who live in one of the following jurisdictions and got a RAL through an H&R Block office during the specified years:

a.) The *Becker* Class (Ohio residents) — January 1, 2000 to December 23, 2005;

b.) The *Mitchell/Green* Class (residents of Maryland and Alabama) — Maryland — January 1, 1992 to May 19, 2000, excluding those people who obtained RALs

---

after 1996 whose RAL application contains an arbitration clause; Alabama - June 13, 1989 through December 31, 1996;

c.) The *State Law Class* (residents of 22 states and the District of Columbia) - January 1, 2000 through December 23, 2005: Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington or Wisconsin.

#### **6. What Does The Settlement Provide?**

Block has agreed to provide additional information to customers who obtain RALs and to pay a total of \$62.5 million, plus costs of notice estimated at \$4 million, to settle this case. The total Block will pay is called the "common fund."

You are a member of the *Cummins* class. *Cummins* class members are entitled to \$32.5 million of the \$62.5 million, before deductions for the pro rata portion of administration costs, attorney's fees and expenses relating to the *Cummins* Class, and service fees paid to the class representatives, Debra D. Cummins, Ivan Bell and LaDonna Bell. The *State Law* class will divide more than \$22.5 million; the *Becker* class will divide more than \$5.8 million; and the *Mitchell/Green* (Maryland and Alabama) class will divide over \$1.6 million; all before the same deductions are made for administration costs, attorney's fees and expenses, and service fees applicable to each class.

Members of the different classes who submit claims will receive different amounts because each of these cases is at a different stage of proceedings, holds different risks and different chances of success. Each class settlement was negotiated based upon these differences. The four classes are represented independently.

#### **7. How Much Will My Payments Be?**

In order to receive any payment, you must return a claim form (see Question 8 and the attached claim form). Every Class Member who returns a valid claim form will receive at least some distribution from the common fund. Your share of the fund will depend on the number of valid claim forms that *Cummins* Class Members send in and how many RALs you had. If every class member submitted a claim, your share of the common fund would be a minimum of \$60.90 for each RAL you obtained during the class period. However, only a percentage of class members will actually submit claim forms. For example, if one of every two class members return claim forms, your share of the fund would be \$121.80 for each RAL you obtained (\$60.90 times two). Please remember that this is only an example; the amount you receive from the settlement could be greater or smaller. Your share will be reduced by whatever percentage of the common fund is taken up with administration costs, attorney's fees, expenses, and service payments. It is unlikely that such costs will exceed 35%, but they

---

could be higher or lower. The maximum amount any class member can receive is \$175 for each RAL obtained during the class period.

### **8. How Can I Get A Payment?**

To qualify for payment, you must send in a complete and valid claim form. **A claim form is attached to this Notice.** You may also get a claim form from the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]]. Read the instructions carefully, fill out the form, include all the information the form asks for, sign it, and mail it so that it is postmarked no later than **June 30, 2006**. You may also email the claim form to the Settlement Administrator at [[claims@INSERTWEBADDRESS.com](mailto:claims@INSERTWEBADDRESS.com)]. If you email the claim form, you must do so no later than midnight on **June 30, 2006**.

### **9. When Would I Get My Payment?**

The Court will hold a hearing at **time/date/month/2006** at the **Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. The settlement administrator will keep the settlement website at [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)] updated so that everyone who is in the class may keep informed of the progress of the settlement. Please be patient. Note: It is unlikely that you will receive your payment until six months or more after the date you send in a claim form.

### **10. Am I Giving Up Anything To Get A Payment Or Stay In The Class?**

Unless you exclude yourself, also called "opting out" (see Question 12), you will be considered a member of the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Block about the legal issues in this case. Giving up your claims is called a "release." Unless you exclude yourself from the settlement, you will release your claims whether or not you submit a claim form and receive payment.

However, certain claims are not released even if you stay in the class. All claims made in other currently existing class actions that relate to the RAL or other products and services offered by Block are not released. Claims under state law based solely on allegations that a tax preparer failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and claims to enforce the terms and conditions of the Settlement Agreement, are similarly not released.

Class members who do not exclude themselves, but do not make a claim for money from this settlement may choose to arbitrate their individual claims

---



against Block for another year after the settlement is finalized. Although Class Counsel recommend this settlement, they take no position on your likelihood of succeeding on an individual basis in an arbitration case. You should obtain independent legal help if you need more information about the economic value of the arbitration alternative to excluding yourself or making a claim for money under the settlement.

The settlement requires Block to follow certain business practices with future RALs, and provides Block with an incentive to register as a Credit Service Organization (“CSO”) in the jurisdictions covered by the settlement. Block has two years to decide whether to register and come into compliance with the various CSO statutes.

**Important:** *If you decide to go back to Block to obtain a RAL during the two-year period Block has to register as a CSO in the various jurisdictions, and Block does register and comply with your jurisdiction’s CSO statute in that two-year period, then you will not be able to sue Block for any new RAL violation that you claim happened during the two-year period. But, if Block does not register as a CSO and comply with the CSO statute in your jurisdiction, you will be able to sue based on any new RAL violation that you claimed happened during that period. In addition, any deadline on when you can sue Block (called the “statute of limitations”) will be suspended for the two-year period.*

#### **11. Can I Exclude Myself From The Settlement (Sometimes Called “Opting Out”)?**

Yes, you may “opt out” and exclude yourself from the Settlement Class. If you opt out, you will not receive any payment from the common fund, you will not release any claims you may have against Block, and you will not be bound by anything that happens in the Consolidated Action. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Block at your own risk and expense.

#### **12. What Do I Do If I Want To Exclude Myself?**

In order to opt out and exclude yourself from the Settlement Class, you must mail a “Request for Exclusion” to the Settlement Administrator at **address**. Your Request for Exclusion must be in writing and must be postmarked no later than May 1, 2006. To be effective, a Request for Exclusion must contain: (a) the name of this case (*Cummins, v. H&R Block, Inc.*); (b) your name, address, social security number and telephone number; (c) a statement that you want to opt out of the lawsuit; and (d) your signature. If the Request for Exclusion is not postmarked by the deadline, you will be included automatically in the Settlement Class and you may be eligible to receive Settlement payments as summarized above. Even if you do not file a claim, you will be legally bound by the proposed Settlement, including provisions releasing Block.

---

### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing on **time/date/at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing can be continued at any time by the Court without any further notice to you.

### **14. Do I Have To Come To The Hearing?**

No. You are not required to attend the hearing. But you are welcome to come at your own expense. If you wish to speak, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cummins v. H&R Block*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 16. You cannot speak at the hearing if you excluded yourself, because once you exclude yourself, the settlement does not affect your rights.

### **15. What If I Do Nothing?**

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Block about the legal issues in this case. You would, however, be able to arbitrate your claims against Block for another year, as described in Question 10.

### **16. What If I Want To Object To The Settlement?**

If you're a Class Member who has not requested exclusion, you can object to the settlement if you don't like it. If you wish to object, you must write a letter stating your objections, the specific reasons for each objection (including any legal support you want to bring to the Court's attention) and a description of any evidence you wish to introduce in support of your objections. You must include your name, address, telephone number and your signature. Also include the name and number of this action (*Cummins v. H &R Block, Inc.*, Civil Action No. 03-C-134). Your letter must be received in these four different places no later than **May 1, 2006**:

(i) Coordinating Counsel:

Brian A. Glasser, Esq.

---

Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, WV 25301

(ii) Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337-3710

(iii) The Court:

Clerk of Court  
Kanawha County Circuit Court  
111 Court Street  
Charleston, WV 25301

### **17. What Is The Difference Between Excluding Myself And Objecting?**

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you don't like something about the settlement and you don't want the Court to approve it. You can object only if you stay in the Class.

### **18. Who Are The Lawyers For The *Cummins* Class?**

The Court has appointed the following law firm to represent you and other *Cummins* Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

Brian A. Glasser  
H.F. Salsbery  
John W. Barrett  
Eric B. Snyder  
Bailey & Glasser LLP  
227 Capitol Street  
Charleston, WV 25301

### **19. How Will Class Counsel's Fees And Expenses Be Paid?**

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in an amount not more than one-third of the portion of the common fund attributable to the *Cummins* Class. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating

---

the settlement. The Court will determine the amount of any fees and expenses awarded to Class Counsel.

#### **20. Does The Class Representative Get Additional Compensation?**

Subject to Court approval, the named plaintiffs in the five cases which make up the Consolidated Action will seek "service awards" for their active participation in this litigation. Any such "service award" will be paid from the portions of the common fund attributable to the cases those plaintiffs brought. The *Cummins* class representatives will seek a service award in an amount to be determined by the Court.

#### **21. What If The Court Does Not Approve The Settlement?**

If the Court does not approve the proposed Settlement as being fair, adequate and reasonable, the Settlement Agreement will be null and void, and all parties will be returned to their respective pre-Settlement status in the various lawsuits that the proposed Settlement hopes to resolve.

#### **22. Where Do I Get Additional Information?**

This notice summarizes the proposed settlement. You can find answers to common questions about the settlement, plus other helpful information at the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]. You can also get a copy of the Settlement Agreement from the website, or by writing to the Settlement Administrator at #####. If you cannot get the information you need from this notice or from the Settlement Administrator, you may contact *Cummins* Class Counsel.

**Please Do Not Contact The Court Or Block For information.**

BY ORDER OF THE COURT

The Honorable Louis Bloom  
Circuit Judge  
Kanawha County, West Virginia

Dated: \_\_\_\_\_, 2005

---

**If You Got A Refund Anticipation Loan Through An H&R Block Office Between January 1,  
2000 And December 23, 2005, You Could Get A Payment From A  
Class Action Settlement**

**A Court Has Authorized This Notice. Please Read It, It Describes Important Rights You Have And Requires That You Make A Choice  
About How to Proceed.**

**Important Dates**

To receive a payment from the settlement your Claim Form (attached) must be postmarked no later than June 30, 2006 (See Question 8).

If you prefer to exclude yourself from the settlement ("opt out"), your request must be postmarked no later than May 1, 2006 (See Question 12).

Any notice of appearance or objections must be received by May 1, 2006 (See Question 16).

Date of Fairness Hearing: day/month/2006 (See Question 13).

**ANSWERS TO FREQUENTLY-ASKED QUESTIONS**

- |  |  |
|--|--|
| 1. Why Did I Get This Notice?                                      | 12. What Do I Do If I Want To Exclude Myself?                                  |
| 2. What Is This Lawsuit About?                                     | 13. When And Where Will The Court Decide Whether To Approve<br>The Settlement? |
| 3. Why Is This A Class Action?                                     | 14. Do I Have To Come To The Hearing?  |
| 4. Why Is There A Settlement?                                      | 15. What If I Do Nothing?  |
| 5. How Do I Know If I Am Part Of The Settlement?                   | 16. What If I Want To Object To The Settlement?                                |
| 6. What Does The Settlement Provide?                               | 17. What Is the Difference Between Excluding Myself And<br>Objecting?          |
| 7. How Much Will My Payments Be?                                   | 18. Who Are The Lawyers For The Class?   |
| 8. How Can I Get A Payment?  | 19. How Will Class Counsel's Fees And Expenses Be Paid?                        |
| 9. When Would I Get My Payment?                                    | 20. Does The Class Representative Get Additional Compensation?                 |
| 10. Am I Giving Anything Up To Get A Payment Or Stay In The Class? | 21. What If The Court Does Not Approve The Settlement?                         |

11. Can I Exclude Myself From The Settlement (Sometimes Called “Opting Out”)?

22. Where Do I Get Additional Information?

### **1. Why Did I Get This Notice?**

You got at least one Refund Anticipation Loan (“RAL”) through an H&R Block office between January 1, 2000 and December 23, 2005. You received this notice to inform you about settlement of a class action lawsuit that may affect your rights. This notice provides information about all of your options, so that you can evaluate those options before the Court decides whether to approve the settlement. Those options include making a claim for money from the settlement (see Questions 7-9), excluding yourself from the settlement (Questions 11 & 12) or raising concerns about the fairness of the settlement (Question 16). This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the Circuit Court of Kanawha County, West Virginia (“the Court”).

### **2. What Is This Lawsuit About?**

This case combines several lawsuits that were filed against H&R Block, Inc. and various related corporations. For simplicity, the H&R Block defendants are referred to throughout the rest of this notice as simply “Block.” The cases were filed against Block in different parts of the country at different times, but all essentially make the same claim – that Block violated particular state laws in the way it made RALs available. The lawyers in these cases have filed with the Court an Amended and Consolidated Class Action Complaint (called the “Consolidated Action” from here on), which brings together all of the claims made in these cases. One of the principal claims the Consolidated Action makes is that Block violated the Credit Services Organization Acts of the affected jurisdictions, or violated similar laws.

Block denies that it violated any laws, did anything wrong, or that anyone was harmed by its conduct. Block nevertheless has agreed to settle the Consolidated Action solely to avoid the burden, expense, risk and uncertainty of continuing the various lawsuits.

Block and the plaintiffs in the Consolidated Actions have reached agreement on a Settlement of the claims in the Consolidated Action including claims that had been pending previously in Ohio, Maryland, and Alabama. The Settlement, if approved, would resolve all litigation involving RALs which Block sold in Ohio between January 1, 2000 and December 23, 2005. Other cases are also being settled at the same time, in the same settlement agreement, covering legal rights of individuals in a number of other jurisdictions.

---

### **3. Why Is This A Class Action?**

In a class action, one or more people called Class Representatives (in this case Lynn Becker), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Circuit Court Judge Louis Bloom is in charge of this class action.

### **4. Why Is There A Settlement?**

The Court did not decide in favor of Block or any of the Plaintiffs in the various lawsuits. The Plaintiffs in those lawsuits think they could have won if they went to trial. Block thinks the Plaintiffs would have lost. In fact, in most cases, Block thinks that the Plaintiffs would not have even been able to continue their cases in court, because Block's RAL contract required them to try their claims before an arbitrator. But there was no trial and no arbitration. Instead, both sides agreed to a settlement. This avoids the cost of a trial, and the people affected have an opportunity to be paid. The Class Representative and the attorneys think the settlement is best for all Class Members.

### **5. How Do I Know If I Am Part Of The Settlement?**

You received this notice because records identified you as a *Becker* class member. That means that you fit the description of the class which the Court certified for this settlement. The Court decided that everyone who fits this description is a Class Member:

All Ohio residents who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears stores) from January 1, 2000 through December 23, 2005.

There are three other classes that are part of the overall Settlement. The following classes are composed of people who live in one of the following jurisdictions and got a RAL through an H&R Block office during the specified years:

a.) The *Cummins* Class (West Virginia residents) — January 1, 1994 to December 23, 2005;

b.) The *Mitchell/Green* Class (residents of Maryland and Alabama) — Maryland — January 1, 1992 to May 19, 2000, excluding those people who obtained RALs after 1996 whose RAL application contains an arbitration clause; Alabama — June 13, 1989 through December 31, 1996;

---

c.) The *State Law Class* (residents of 22 states and the District of Columbia) — January 1, 2000 through December 23, 2005: Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington or Wisconsin.

## **6. What Does The Settlement Provide?**

Block has agreed to provide additional information to customers who obtain RALs and to pay a total of \$62.5 million, plus costs of notice estimated at \$4 million, to settle this case. The total Block will pay is called the “common fund.”

You are a member of the *Becker* class. *Becker* class members are entitled to more than \$5.8 million of the \$62.5 million, before deductions for the pro rata portion of administration costs, attorney’s fees and expenses relating to the *Becker* Class, and service fees paid to the class representative, Lynn Becker. The *Cummins* class members will divide \$32.5 million; the *State Law* class will divide more than \$22.5 million; and the *Mitchell/Green* (Maryland and Alabama) class will divide more than \$1.6 million; all before the same deductions are made for administration costs, attorney’s fees and expenses, and service fees applicable to each class.

Members of the different classes who submit claims will receive different amounts because each of these cases is at a different stage of proceedings, holds different risks and different chances of success. Each class settlement was negotiated based upon these differences. The four classes are represented independently.

## **7. How Much Will My Payments Be?**

In order to receive any payment, you must return a claim form (see Question 8 and the attached claim form). Every Class Member who returns a valid claim form will receive at least some distribution from the common fund. Your share of the fund will depend on the number of valid claim forms that *Becker* Class Members send in and how many RALs you had. If every class member submitted a claim, your share of the common fund would be a minimum of \$3.66 for each RAL you obtained during the class period. However, only a percentage of class members will actually submit claim forms. For example, if only one of every four class members return claim forms, your share of the fund would be \$14.64 for each RAL you obtained (\$3.66 times four). Your share will be reduced by whatever percentage of the common fund is taken up with administration costs, attorney’s fees, expenses, and service payments. It is unlikely that such costs will exceed 30%, but they could be higher or lower. Please remember that this is only an example; the amount you receive from the settlement could be greater or smaller.

---



### **8. How Can I Get A Payment?**

To qualify for payment, you must send in a complete and valid claim form. **A claim form is attached to this Notice.** You may also get a claim form from the Settlement Administrator's website [[www.INSERTWEBADDRESS.com]]. Read the instructions carefully, fill out the form, include all the information the form asks for, sign it, and mail it so that it is postmarked no later than **June 30, 2006**. You may also email the claim form to the Settlement Administrator at [claims@ INSERTWEBADDRESS.com]. If you email the claim form, you must do so no later than midnight on **June 30, 2006**.

### **9. When Would I Get My Payment?**

The Court will hold a hearing at **time/date/month/2006 at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. The settlement administrator will keep the settlement website at [www.INSERTWEBADDRESS.com] updated so that everyone who is in the class may keep informed of the progress of the settlement. Please be patient. Note: It is unlikely that you will receive your payment until six months or more after the date you send in a claim form.

### **10. Am I Giving Up Anything To Get A Payment Or Stay In The Class?**

Unless you exclude yourself, also called "opting out" (see Question 12), you will be considered a member of the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Block about the legal issues in this case. Giving up your claims is called a "release." Unless you exclude yourself from the settlement, you will release your claims whether or not you submit a claim form and receive payment.

However, certain claims are not released even if you stay in the class. All claims made in other currently existing class actions that relate to the RAL or other products and services offered by Block are not released. Claims under state law based solely on allegations that a tax preparer failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and claims to enforce the terms and conditions of the Settlement Agreement, are similarly not released.

Class members who do not exclude themselves, but do not make a claim for money from this settlement may choose to arbitrate their individual claims against Block for another year after the settlement is finalized. Although Class Counsel recommend this settlement, they take no position on your likelihood of succeeding on an individual basis in an arbitration case. You should obtain

---

independent legal help if you need more information about the economic value of the arbitration alternative to excluding yourself or making a claim for money under the settlement.

The settlement requires Block to follow certain business practices with future RALs, and provides Block with an incentive to register as a Credit Service Organization (“CSO”) in the jurisdictions covered by the settlement. Block has two years to decide whether to register and come into compliance with the various CSO statutes.

**Important:** *If you decide to go back to Block to obtain a RAL during the two-year period Block has to register as a CSO in the various jurisdictions, and Block does register and comply with your jurisdiction’s CSO statute in that two-year period, then you will not be able to sue Block for any new RAL violation that you claim happened during the two-year period. But, if Block does not register as a CSO and comply with the CSO statute in your jurisdiction, you will be able to sue based on any new RAL violation that you claimed happened during that period. In addition, any deadline on when you can sue Block (called the “statute of limitations”) will be suspended for the two-year period.*

#### **11. Can I Exclude Myself From The Settlement (Sometimes Called “Opting Out”)?**

Yes, you may “opt out” and exclude yourself from the Settlement Class. If you opt out, you will not receive any payment from the common fund, you will not release any claims you may have against Block, and you will not be bound by anything that happens in the Consolidated Action. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Block at your own risk and expense.

#### **12. What Do I Do If I Want To Exclude Myself?**

In order to opt out and exclude yourself from the Settlement Class, you must mail a “Request for Exclusion” to the Settlement Administrator at **address**. Your Request for Exclusion must be in writing and must be postmarked no later than May 1, 2006. To be effective, a Request for Exclusion must contain: (a) the name of this case (*Cummins, v. H & R Block, Inc.*); (b) your name, address, social security number and telephone number; (c) a statement that you want to opt out of the lawsuit; and (d) your signature. If the Request for Exclusion is not postmarked by the deadline, you will be included automatically in the Settlement Class and you may be eligible to receive Settlement payments as summarized above. Even if you do not file a claim, you will be legally bound by the proposed Settlement, including provisions releasing Block.

---

### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing on **time/date/ at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know now long these decisions will take. The hearing can be continued at any time by the Court without any further notice to you.

### **14. Do I Have To Come To The Hearing?**

No. You are not required to attend the hearing. But you are welcome to come at your own expense. If you wish to speak, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cummins v. H&R Block*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 16. You cannot speak at the hearing if you excluded yourself, because once you exclude yourself, the settlement does not affect your rights.

### **15. What If I Do Nothing?**

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Block about the legal issues in this case. You would, however, be able to arbitrate your claims against Block for another year, as described in Question 10.

### **16. What If I Want To Object To The Settlement?**

If you're a Class Member who has not requested exclusion, you can object to the settlement if you don't like it. If you wish to object, you must write a letter stating your objections, the specific reasons for each objection (including any legal support you want to bring to the Court's attention) and a description of any evidence you wish to introduce in support of your objections. You must include your name, address, telephone number and your signature. Also include the name and number of this action (*Cummins v. H & R Block, Inc.*, Civil Action No. 03-C-134). Your letter must be received in these four different places no later than **May 1, 2006**:

(i) Coordinating Counsel:

Brian A. Glasser, Esq.

---

Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, WV 25301

(ii) Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337-3710

(iii) The Court:

Clerk of Court  
Kanawha County Circuit Court  
111 Court Street  
Charleston, WV 25301

#### **17. What Is The Difference Between Excluding Myself And Objecting?**

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you don't like something about the settlement and you don't want the Court to approve it. You can object only if you stay in the Class.

#### **18. Who Are The Lawyers For The *Becker* Class?**

The Court has appointed the following law firms to represent you and other *Becker* Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

Ronald Frederick  
Ronald Frederick & Assoc., LLC  
55 Public Square, Suite 1300  
Cleveland, Ohio 44113

John Roddy  
Gary Klein  
Elizabeth Ryan  
Roddy, Klein & Ryan  
727 Atlantic Avenue  
Boston, MA 02111

#### **19. How Will Class Counsel's Fees And Expenses Be Paid?**

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in an amount not more than 25% of the portion of the common fund attributable to the *Becker* Class. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the

---

settlement. The Court will determine the amount of any fees and **expenses** awarded to Class Counsel.

**20. Does The Class Representative Get Additional Compensation?**

Subject to Court approval, the named plaintiffs in the five cases which make up the Consolidated Action will seek "service awards" for their active participation in this litigation. Any such "service award" will be paid from the portions of the common fund attributable to the cases those plaintiffs brought. Lynn Becker will seek a "service award" of \$5,000. The Court will determine whether Ms. Becker receives a "service award" and the amount of that award.

**21. What If The Court Does Not Approve The Settlement?**

If the Court does not approve the proposed Settlement as being fair, adequate and reasonable, the Settlement Agreement will be null and void, and all parties will be returned to their respective pre-Settlement status in the various lawsuits that the proposed Settlement hopes to resolve.

**22. Where Do I Get Additional Information?**

This notice summarizes the proposed settlement. You can find answers to common questions about the settlement, plus other helpful information at the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]. You can also get a copy of the Settlement Agreement from the website, or by writing to the Settlement Administrator at #####. If you cannot get the information you need from this notice or from the Settlement Administrator, you may contact *Becker* Class Counsel.

**Please Do Not Contact The Court Or Block For Information.**

BY ORDER OF THE COURT

The Honorable Louis Bloom  
Circuit Judge  
Kanawha County, West Virginia

Dated: \_\_\_\_\_, 2005

---

**If You Got A Refund Anticipation Loan Through An H&R Block Office In Maryland Between January 1, 1992 And December 31, 1996, Or In Alabama from June 13, 1989 through December 31, 1996. You Could Get A Payment From A Class Action Settlement**

**A Court Has Authorized This Notice. Please Read It, It Describes Important Rights You Have And Requires That You Make A Choice About How to Proceed.**

**Important Dates**

To receive a payment from the settlement your Claim Form (attached) must be postmarked no later than June 30, 2006 (See Question 8).

If you prefer to exclude yourself from the settlement ("opt out"), your request must be postmarked no later than May 1, 2006 (See Question 12).

Any notice of appearance or objections must be received by May 1, 2006 (See Question 16).

Date of Fairness Hearing: day/month/2006 (See Question 13).

**ANSWERS TO FREQUENTLY-ASKED QUESTIONS**

- |   |   |
|---|---|
| 1. Why Did I Get This Notice?   | 12. What Do I Do If I Want To Exclude Myself?                               |
| 2. What Is This Lawsuit About?  | 13. When And Where Will The Court Decide Whether To Approve The Settlement? |
| 3. Why Is This A Class Action?  | 14. Do I Have To Come To The Hearing?                                       |
| 4. Why Is There A Settlement?   | 15. What If I Do Nothing?   |
| 5. How Do I Know If I Am Part Of The Settlement?                              | 16. What If I Want To Object To The Settlement?                             |
| 6. What Does The Settlement Provide?  | 17. What Is the Difference Between Excluding Myself And Objecting?          |
| 7. How Much Will My Payments Be?  | 18. Who Are The Lawyers For The Class?                                      |
| 8. How Can I Get A Payment?   | 19. How Will Class Counsel's Fees And Expenses Be Paid?                     |
| 9. When Would I Get My Payment?   | 20. Does The Class Representative Get Additional Compensation?              |
| 10. Am I Giving Anything Up To Get A Payment Or Stay In The Class?            | 21. What If The Court Does Not Approve The Settlement?                      |
| 11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")? | 22. Where Do I Get Additional Information?                                  |

### **1. Why Did I Get This Notice?**

You got at least one Refund Anticipation Loan (“RAL”) through an H&R Block office in Maryland between January 1, 1992 and December 31, 1996, or through an H&R Block office in Alabama between June 13, 1989 and December 31, 1996. You received this notice to inform you about settlement of a class action lawsuit that may affect your rights. This notice provides information about all of your options, so that you can evaluate those options before the Court decides whether to approve the settlement. Those options include making a claim for money from the settlement (see Questions 7-9), excluding yourself from the settlement (Questions 11 & 12) or raising concerns about the fairness of the settlement (Question 16). This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the Circuit Court of Kanawha County, West Virginia (“the Court”).

### **2. What Is This Lawsuit About?**

This case combines several lawsuits that were filed against H&R Block, Inc. and various related corporations. For simplicity, the H&R Block defendants are referred to throughout the rest of this notice as simply “Block.” The cases were filed against Block in different parts of the country at different times, but all essentially make the same claim — that Block violated particular state laws in the way it made RALs available. The lawyers in these cases have filed with the Court an Amended and Consolidated Class Action Complaint (called the “Consolidated Action” from here on), which brings together all of the claims made in these cases. One of the principal claims the Consolidated Action makes is that Block violated the Credit Services Organization Acts of the affected jurisdictions, or violated similar laws.

Block denies that it violated any laws, did anything wrong, or that anyone was harmed by its conduct. Block nevertheless has agreed to settle the Consolidated Action solely to avoid the burden, expense, risk and uncertainty of continuing the various lawsuits.

Block and the plaintiffs in the Consolidated Actions have reached agreement on a Settlement of the claims in the Consolidated Action including claims that had been pending previously in Ohio, Maryland, and Alabama. The Settlement, if approved, would resolve all litigation involving RALs which Block sold in Alabama between June 13, 1989 and December 31, 1996, and in Maryland between January 1, 1992 and December 31, 1996. Other cases are also being settled at

---

the same time, in the same settlement agreement, covering legal rights of individuals in a number of other jurisdictions.

### **3. Why Is This A Class Action?**

In a class action, one or more people called Class Representatives (in this case Levon Mitchell and GERAL Mitchell of Alabama, and Joyce A. Green of Maryland) sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Circuit Court Judge Louis Bloom is in charge of this class action.

### **4. Why Is There A Settlement?**

The Court did not decide in favor of Block or any of the Plaintiffs in the various lawsuits. The Plaintiffs in those lawsuits think they could have won if they went to trial. Block thinks the Plaintiffs would have lost. In fact, in most cases, Block thinks that the Plaintiffs would not have even been able to continue their cases in court, because Block's RAL contract required them to try their claims before an arbitrator. But there was no trial and no arbitration. Instead, both sides agreed to a settlement. This avoids the cost of a trial, and the people affected have an opportunity to be paid. The Class Representatives and the attorneys think the settlement is best for all Class Members.

### **5. How Do I Know If I Am Part Of The Settlement?**

You received this notice because records identified you as a *Mitchell/Green* class member. That means that you fit the description of the class which the Court certified for this settlement. The Court decided that everyone who fits this description is a Class Member:

All Maryland residents who applied for and obtained a RAL at any H&R Block office in Maryland from January 1, 1992 through December 31, 1996 and did not thereafter apply for and obtain a RAL subject to an arbitration provision, and all individuals who obtained a RAL from June 13, 1989 through December 31, 1996 through any "H&R Block" office in Alabama for which the Settling Defendants herein received a license fee payment or portion of the finance charge, and who did not previously request exclusion from their respective classes that were previously certified or timely request exclusion from this class.

There are three other classes that are part of the overall Settlement. The following classes are composed of people who live in one of the following jurisdictions and got a RAL through an H&R Block office during the specified years:

a.) The *Cummins* Class (West Virginia residents) — January 1, 1994 to December 23, 2005;

---



b.) The *Becker* Class (residents of Ohio) — January 1, 2000 to December 23, 2005

c.) The State Law Class (residents of 22 states and the District of Columbia) —January 1, 2000 through December 23, 2005: Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington or Wisconsin.

#### **6. What Does The Settlement Provide?**

Block has agreed to provide additional information to customers who obtain RALs and to pay a total of \$62.5 million, plus costs of notice estimated at \$4 million, to settle this case. The total Block will pay is called the “common fund.”

You are a member of the *Mitchell/Green* class. *Mitchell/Green* class members are entitled to over \$1.6 million of the \$62.5 million, before deductions for the pro rata portion of administration costs, attorney’s fees and expenses relating to the *Mitchell/Green* class, and service fees paid to the class representatives, Joyce A. Green, Levon Mitchell and Geral Mitchell. The *Cummins* class members will divide \$32.5 million; the State Law class will divide more than \$22.5 million; and the *Becker* class will divide more than \$5.8 million; all before the same deductions are made for administration costs, attorney’s fees and expenses, and service fees applicable to each class.

Members of the different classes who submit claims will receive different amounts because each of these cases is at a different stage of proceedings, holds different risks and different chances of success. Each class settlement was negotiated based upon these differences. The four classes are represented independently.

#### **7. How Much Will My Payments Be?**

In order to receive any payment, you must return a claim form (see Question 8 and the attached claim form). Every Class Member who returns a valid claim form will receive at least some distribution from the common fund. Your share of the fund will depend on the number of valid claim forms that *Mitchell/Green* Class Members send in and how many RALs you had. If every class member submitted a claim, your share of the common fund would be a minimum of \$3.66 for each RAL you obtained during the class period. However, only a percentage of class members will actually submit claim forms. For example, if only one of every four class members return claim forms, your share of the fund would be \$14.64 for each RAL you obtained (\$3.66 times four). Your share will be reduced by whatever percentage of the common fund is taken up with administration costs, attorney’s fees, expenses, and service payments. It is unlikely that such costs will exceed 30%, but they could be higher or lower. Please remember that

---

this is only an example; the amount you receive from the settlement could be greater or smaller.

### **8. How Can I Get A Payment?**

To qualify for payment, you must send in a complete and valid claim form. **A claim form is attached to this Notice.** You may also get a claim form from the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]]. Read the instructions carefully, fill out the form, include all the information the form asks for, sign it, and mail it so that it is postmarked no later than **June 30, 2006**. You may also email the claim form to the Settlement Administrator at [[claims@INSERTWEBADDRESS.com](mailto:claims@INSERTWEBADDRESS.com)]. If you email the claim form, you must do so no later than midnight on **June 30, 2006**.

### **9. When Would I Get My Payment?**

The Court will hold a hearing at **time/date/month/2006 at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. The settlement administrator will keep the settlement website at [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)] updated so that everyone who is in the class may keep informed of the progress of the settlement. Please be patient. Note: It is unlikely that you will receive your payment until six months or more after the date you send in a claim form.

### **10. Am I Giving Up Anything To Get A Payment Or Stay In The Class?**

Unless you exclude yourself, also called "opting out" (see Question 12), you will be considered a member of the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Block about the legal issues in this case. Giving up your claims is called a "release." Unless you exclude yourself from the settlement, you will release your claims whether or not you submit a claim form and receive payment.

However, certain claims are not released even if you stay in the class. All claims made in other currently existing class actions that relate to the RAL or other products and services offered by Block are not released. Claims under state law based solely on allegations that a tax prepare failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and claims to enforce the terms and conditions of the Settlement Agreement, are similarly not released.

Class members who do not exclude themselves, but do not make a claim for money from this settlement may choose to arbitrate their individual claims

---

against Block for another year after the settlement is finalized. Although Class Counsel recommend this settlement, they take no position on your likelihood of succeeding on an individual basis in an arbitration case. You should obtain independent legal help if you need more information about the economic value of the arbitration alternative to excluding yourself or making a claim for money under the settlement.

The settlement requires Block to follow certain business practices with future RALs.

### **11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")?**

Yes, you may "opt out" and exclude yourself from the Settlement Class. If you opt out, you will not receive any payment from the common fund, you will not release any claims you may have against Block, and you will not be bound by anything that happens in the Consolidated Action. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Block at your own risk and expense.

### **12. What Do I Do If I Want To Exclude Myself?**

In order to opt out and exclude yourself from the Settlement Class, you must mail a "Request for Exclusion" to the Settlement Administrator at **address**. Your Request for Exclusion must be in writing and must be postmarked no later than May 1, 2006. To be effective, a Request for Exclusion must contain: (a) the name of this case (*Cummins. v. H & R Block, Inc.*); (b) your name, address, social security number and telephone number; (c) a statement that you want to opt out of the lawsuit; and (d) your signature. If the Request for Exclusion is not postmarked by the deadline, you will be included automatically in the Settlement Class and you may be eligible to receive Settlement payments as summarized above. Even if you do not file a claim, you will be legally bound by the proposed Settlement, including provisions releasing Block.

### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing on **time/date/ at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing can be continued at any time by the Court without any further notice to you.

---

#### **14. Do I Have To Come To The Hearing?**

No. You are not required to attend the hearing. But you are welcome to come at your own expense. If you wish to speak, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cummins v. H&R Block*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 16. You cannot speak at the hearing if you excluded yourself, because once you exclude yourself, the settlement does not affect your rights.

#### **15. What If I Do Nothing?**

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Block about the legal issues in this case. You would, however, be able to arbitrate your claims against Block for another year, as described in Question 10.

#### **16. What If I Want To Object To The Settlement?**

If you're a Class Member who has not requested exclusion, you can object to the settlement if you don't like it. If you wish to object, you must write a letter stating your objections, the specific reasons for each objection (including any legal support you want to bring to the Court's attention) and a description of any evidence you wish to introduce in support of your objections. You must include your name, address, telephone number and your signature. Also include the name and number of this action (*Cummins v. H & R Block, Inc.*, Civil Action No. 03-C-134). Your letter must be received in these four different places no later than **May 1, 2006**:

(i) Coordinating Counsel:

Brian A. Glasser, Esq.  
Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, WV 25301

---

(ii) Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337-3710

(iii) The Court:

Clerk of Court  
Kanawha County Circuit Court  
111 Court Street  
Charleston, WV 25301

### **17. What Is The Difference Between Excluding Myself And Objecting?**

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you don't like something about the settlement and you don't want the Court to approve it. You can object only if you stay in the Class.

### **18. Who Are The Lawyers For The *Mitchell/Green Class*?**

The Court has appointed the following law firms to represent you and other *Mitchell/Green Class* Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

Steven E. Angstreich, Esq.  
Michael Coren, Esq.  
Carolyn C. Lindheim, Esq.  
Levy Angstreich Finney Baldante  
Rubenstein & Coren, P.C.  
1616 Walnut Street, 5<sup>th</sup>Floor  
Philadelphia, PA 19103

Steven A. Martino, Esq.  
Frederick T. Kuykendall, III, Esq.  
W. Lloyd Copeland, Esq.  
Taylor, Martino & Kuykendall  
51 St. Joseph Street  
Mobile, AL 36602

Charles J. Piven, Esq.  
Law Office of Charles J. Piven, P.A.  
The World Trade Center— Baltimore  
401 East Pratt Street, Suite 2525  
Baltimore, Maryland 21202

---

**19. How Will Class Counsel's Fees And Expenses Be Paid?**

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in an amount not more than 25% of the portion of the common fund attributable to the *Mitchell/Green* Class. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court will determine the amount of any fees and expenses awarded to Class Counsel.

**20. Does The Class Representative Get Additional Compensation?**

Subject to Court approval, the named plaintiffs in the five cases which make up the Consolidated Action will seek "service awards" for their active participation in this litigation. Any such "service award" will be paid from the portions of the common fund attributable to the cases those plaintiffs brought. Joyce A. Green, Levon Mitchell and GERAL Mitchell will seek a "service award" of \$5,000. The Court will determine whether they receive a "service award" and the amount of that award.

**21. What If The Court Does Not Approve The Settlement?**

If the Court does not approve the proposed Settlement as being fair, adequate and reasonable, the Settlement Agreement will be null and void, and all parties will be returned to their respective pre-Settlement status in the various lawsuits that the proposed Settlement hopes to resolve.

**22. Where Do I Get Additional Information?**

This notice summarizes the proposed settlement. You can find answers to common questions about the settlement, plus other helpful information at the Settlement Administrator's website [[www.INSERTWEBADDRESS.com](http://www.INSERTWEBADDRESS.com)]. You can also get a copy of the Settlement Agreement from the website, or by writing to the Settlement Administrator at #####. If you cannot get the information you need from this notice or from the Settlement Administrator, you may contact *Mitchell/Green* Class Counsel.

**Please Do Not Contact The Court Or Block For Information.**

BY ORDER OF THE COURT

The Honorable Louis Bloom  
Circuit Judge  
Kanawha County, West Virginia

Dated: \_\_\_\_\_, 2005

---

**If You Got A Refund Anticipation Loan Through An H&R Block Office Between  
January 1, 2000 and December 23, 2005. You Could Get A Payment From A  
Class Action Settlement**

**A Court Has Authorized This Notice. Please Read It, It Describes Important Rights  
You Have And Requires That You Make A Choice About How to Proceed.**

**Important Dates**

To receive a payment from the settlement your Claim Form (attached) must be postmarked no later than June 30, 2006 (See Question 8).

If you prefer to exclude yourself from the settlement ("opt out"), your request must be postmarked no later than May 1, 2006 (See Question 12).

Any notice of appearance or objections must be received by May 1, 2006 (See Question 16).

Date of Fairness Hearing: day/month/2006 (See Question 13).

**ANSWERS TO FREQUENTLY-ASKED QUESTIONS**

- |   |   |
|---|---|
| 1. Why Did I Get This Notice?   | 12. What Do I Do If I Want To Exclude Myself?                               |
| 2. What Is This Lawsuit About?  | 13. When And Where Will The Court Decide Whether To Approve The Settlement? |
| 3. Why Is This A Class Action?  | 14. Do I Have To Come To The Hearing?                                       |
| 4. Why Is There A Settlement?   | 15. What If I Do Nothing?   |
| 5. How Do I Know If I Am Part Of The Settlement?                              | 16. What If I Want To Object To The Settlement?                             |
| 6. What Does The Settlement Provide?  | 17. What Is the Difference Between Excluding Myself And Objecting?          |
| 7. How Much Will My Payments Be?  | 18. Who Are The Lawyers For The Class?                                      |
| 8. How Can I Get A Payment?   | 19. How Will Class Counsel's Fees And Expenses Be Paid?                     |
| 9. When Would I Get My Payment?   | 20. Does The Class Representative Get Additional Compensation?              |
| 10. Am I Giving Anything Up To Get A Payment Or Stay In The Class?            | 21. What If The Court Does Not Approve The Settlement?                      |
| 11. Can I Exclude Myself From The Settlement (Sometimes Called "Opting Out")? | 22. Where Do I Get Additional Information?                                  |

### **1. Why Did I Get This Notice?**

You got at least one Refund Anticipation Loan (“RAL”) through an H&R Block office between January 1, 2000 and December 23, 2005. You received this notice to inform you about settlement of a class action lawsuit that may affect your rights. This notice provides information about all of your options, so that you can evaluate those options before the Court decides whether to approve the settlement. Those options include making a claim for money from the settlement (see Questions 7-9), excluding yourself from the settlement (Questions 11 & 12) or raising concerns about the fairness of the settlement (Question 16). This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the Circuit Court of Kanawha County, West Virginia (“the Court”).

### **2. What Is This Lawsuit About?**

This case combines several lawsuits that were filed against H&R Block, Inc. and various related corporations. For simplicity, the H & R Block defendants are referred to throughout the rest of this notice as simply “Block.” The cases were filed against Block in different parts of the country at different times, but all essentially make the same claim — that Block violated particular state laws in the way it made RALs available. The lawyers in these cases have filed with the Court an Amended and Consolidated Class Action Complaint (called the “Consolidated Action” from here on), which brings together all of the claims made in these cases. One of the principal claims the Consolidated Action makes is that Block violated the Credit Services Organization Acts of the affected jurisdictions, or violated similar laws.

Block denies that it violated any laws, did anything wrong, or that anyone was harmed by its conduct. Block nevertheless has agreed to settle the Consolidated Action solely to avoid the burden, expense, risk and uncertainty of continuing the various lawsuits.

Block and the plaintiffs in the Consolidated Actions have reached agreement on a Settlement of the claims in the Consolidated Action including claims that had been pending previously in Ohio, Maryland, and Alabama. The Settlement, if approved, would resolve all litigation involving RALs which Block sold in Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington and Wisconsin between January 1, 2000 and December 23, 2005.

---



Other cases are also being settled at the same time, in the same settlement agreement, covering legal rights of individuals in a number of other jurisdictions.

### **3. Why Is This A Class Action?**

In a class action, one or more people called Class Representatives (in this case Renea Griffith, Maryanne Hoekman and Justin Sevey), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Circuit Court Judge Louis Bloom is in charge of this class action.

### **4. Why Is There A Settlement?**

The Court did not decide in favor of Block or any of the Plaintiffs in the various lawsuits. The Plaintiffs in those lawsuits think they could have won if they went to trial. Block thinks the Plaintiffs would have lost. In fact, in most cases, Block thinks that the Plaintiffs would not have even been able to continue their cases in court, because Block's RAL contract required them to try their claims before an arbitrator. But there was no trial and no arbitration. Instead, both sides agreed to a settlement. This avoids the cost of a trial, and the people affected have an opportunity to be paid. The Class Representatives and the attorneys think the settlement is best for all Class Members.

### **5. How Do I Know If I Am Part Of The Settlement?**

You received this notice because records identified you as a State Law class member. That means that you fit the description of the class which the Court certified for this settlement. The Court decided that everyone who fits this description is a Class Member:

All residents of Arkansas, Arizona, California, District of Columbia, Florida, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington and Wisconsin who applied for and obtained a RAL through any medium, by any name, advertised, marketed, offered or made by or through any lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices of any Settling Defendant or Affiliate, or any H&R Block offices such as in Sears stores) from January 1, 2000 through December 23, 2005.

There are three other classes that are part of the overall Settlement. The following classes are composed of people who live in one of the following jurisdictions and got a RAL through an H&R Block office during the specified years:

a.) The *Cummins* Class (West Virginia residents) — January 1, 1994 to December 23, 2005;

---

- b.) The *Mitchell/Green* Class (residents of Maryland and Alabama) — Maryland — January 1, 1992 to May 19, 2000, excluding those people who obtained RALs after 1996 whose RAL application contains an arbitration clause; Alabama — June 13, 1989 through December 31, 1996;
- c.) The *Becker* Class (residents of Ohio) — January 1, 2000 through December 23, 2005.

#### **6. What Does The Settlement Provide?**

Block has agreed to provide additional information to customers who obtain RALs and to pay a total of \$62.5 million, plus costs of notice estimated at \$4 million, to settle this case. The total Block will pay is called the “common fund.”

You are a member of the State Law Class. State Law class members are entitled to over \$22.5 million of the \$62.5 million, before deductions for the pro rata portion of administration costs, attorney’s fees and expenses relating to the State Law class, and service fees paid to the class representatives, Renea Griffith, Maryanne Hoekman and Justin Sevey. The *Cummins* class members will divide \$32.5 million; the *Becker* class will divide over \$5.8 million; and the *Mitchell/Green* (Maryland and Alabama) class will divide more than \$1.6 million; all before the same deductions are made for administration costs, attorney’s fees and expenses, and service fees applicable to each class.

Members of the different classes who submit claims will receive different amounts because each of these cases is at a different stage of proceedings, holds different risks and different chances of success. Each class settlement was negotiated based upon these differences. The four classes are represented independently.

#### **7. How Much Will My Payments Be?**

In order to receive any payment, you must return a claim form (see Question 8 and the attached claim form). Every Class Member who returns a valid claim form will receive at least some distribution from the common fund. Your share of the fund will depend on the number of valid claim forms that State Law Class Members send in and how many RALs you had. If every class member submitted a claim, your share of the common fund would be a minimum of \$1.67 for each RAL you obtained during the class period. However, only a percentage of class members will actually submit claim forms. For example, if only one of every four class members return claim forms, your share of the fund would be \$6.68 for each RAL you obtained (\$1.67 times four). Your share will be reduced by whatever percentage of the common fund is taken up with administration costs, attorney’s fees, expenses, and service payments. It is unlikely that such costs will exceed 30%, but they could be higher or lower. Please remember that this is only an example; the amount you receive from the settlement could be greater or smaller.

---

### **8. How Can I Get A Payment?**

To qualify for payment, you must send in a complete and valid claim form. **A claim form is attached to this Notice.** You may also get a claim form from the Settlement Administrator's website [[www.INSERTWEBADDRESS.com]]. Read the instructions carefully, fill out the form, include all the information the form asks for, sign it, and mail it so that it is postmarked no later than **June 30, 2006**. You may also email the claim form to the Settlement Administrator at [claims@INSERTWEBADDRESS.com]. If you email the claim form, you must do so no later than midnight on **June 30, 2006**.

### **9. When Would I Get My Payment?**

The Court will hold a hearing at **time/date/month/2006 at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**, to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. The settlement administrator will keep the settlement website at [www.INSERTWEBADDRESS.com] updated so that everyone who is in the class may keep informed of the progress of the settlement. Please be patient. Note: It is unlikely that you will receive your payment until six months or more after the date you send in a claim form.

### **10. Am I Giving Up Anything To Get A Payment Or Stay In The Class?**

Unless you exclude yourself, also called "opting out" (see Question 12), you will be considered a member of the class, which means that you can't sue, continue to sue, or be part of any other lawsuit against Block about the legal issues in this case. Giving up your claims is called a "release." Unless you exclude yourself from the settlement, you will release your claims whether or not you submit a claim form and receive payment.

However, certain claims are not released even if you stay in the class. All claims made in other currently existing class actions that relate to the RAL or other products and services offered by Block are not released. Claims under state law based solely on allegations that a tax preparer failed (A) to properly prepare a tax return or (B) to maintain the confidentiality of taxpayer information resulting in injury based on "stolen identity" or similar misuse of taxpayer information or theft of a RAL check; and claims to enforce the terms and conditions of the Settlement Agreement, are similarly not released.

Class members who do not exclude themselves, but do not make a claim for money from this settlement may choose to arbitrate their individual claims against Block for another year after the settlement is finalized. Although Class Counsel recommend this settlement, they take no position on your likelihood of succeeding on an individual basis in an arbitration case. You should obtain

---

independent legal help if you need more information about the economic value of the arbitration alternative to excluding yourself or making a claim for money under the settlement.

The settlement requires Block to follow certain business practices with future RALs, and provides Block with an incentive to register as a Credit Service Organization (“CSO”) in the jurisdictions covered by the settlement. Block has two years to decide whether to register and come into compliance with the various CSO statutes.

**Important:** *If you decide to go back to Block to obtain a RAL during the two-year period Block has to register as a CSO in the various jurisdictions, and Block does register and comply with your jurisdiction’s CSO statute in that two-year period, then you will not be able to sue Block for any new RAL violation that you claim happened during the two-year period. But, if Block does not register as a CSO and comply with the CSO statute in your jurisdiction, you will be able to sue based on any new RAL violation that you claimed happened during that period. In addition, any deadline on when you can sue Block (called the “statute of limitations”) will be suspended for the two-year period.*

#### **11. Can I Exclude Myself From The Settlement (Sometimes Called “Opting Out”)?**

Yes, you may “opt out” and exclude yourself from the Settlement Class. If you opt out, you will not receive any payment from the common fund, you will not release any claims you may have against Block, and you will not be bound by anything that happens in the Consolidated Action. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Block at your own risk and expense.

#### **12. What Do I Do If I Want To Exclude Myself?**

In order to opt out and exclude yourself from the Settlement Class, you must mail a “Request for Exclusion” to the Settlement Administrator at **address**. Your Request for Exclusion must be in writing and must be postmarked no later than May 1, 2006. To be effective, a Request for Exclusion must contain: (a) the name of this case (*Cummins, v. H & R Block, Inc.*); (b) your name, address, social security number and telephone number; (c) a statement that you want to opt out of the lawsuit; and (d) your signature. If the Request for Exclusion is not postmarked by the deadline, you will be included automatically in the Settlement Class and you may be eligible to receive Settlement payments as summarized above. Even if you do not file a claim, you will be legally bound by the proposed Settlement, including provisions releasing Block.

---

### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing on **time/date/ at the Kanawha County Judicial Annex, 111 Court Street, Charleston, West Virginia 25301**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing can be continued at any time by the Court without any further notice to you.

### **14. Do I Have To Come To The Hearing?**

No. You are not required to attend the hearing. But you are welcome to come at your own expense. If you wish to speak, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cummins v. H&R Block*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses in Question 16. You cannot speak at the hearing if you excluded yourself, because once you exclude yourself, the settlement does not affect your rights.

### **15. What If I Do Nothing?**

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Block about the legal issues in this case. You would, however, be able to arbitrate your claims against Block for another year, as described in Question 10.

### **16. What If I Want To Object To The Settlement?**

If you're a Class Member who has not requested exclusion, you can object to the settlement if you don't like it. If you wish to object, you must write a letter stating your objections, the specific reasons for each objection (including any legal support you want to bring to the Court's attention) and a description of any evidence you wish to introduce in support of your objections. You must include your name, address, telephone number and your signature. Also include the name and number of this action (*Cummins v. H & R Block, Inc.*, Civil Action No. 03-C-134). Your letter must be received in these four different places no later than **May 1, 2006**:

(i) Coordinating Counsel:

Brian A. Giasser, Esq.

---

Bailey & Glasser, LLP  
227 Capitol Street  
Charleston, WV 25301

(ii) Defendants' Counsel:

Matthew M. Neumeier  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Charles R. Bailey  
Bailey & Wyant PLLC  
P.O. Box 3710  
Charleston, WV 25337-3710

(iii) The Court:

Clerk of Court  
Kanawha County Circuit Court  
111 Court Street  
Charleston, WV 25301

### **17. What Is The Difference Between Excluding Myself And Objecting?**

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Objecting is telling the Court that you don't like something about the settlement and you don't want the Court to approve it. You can object only if you stay in the Class.

### **18. Who Are The Lawyers For The State Law Class?**

The Court has appointed the following law firms to represent you and other State Law Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

Daniel Hume, Esq.  
Kirby McInerney & Squire, LLP  
830 Third Avenue, 10<sup>th</sup> Floor  
New York, NY 10022

Michael B. Hyman, Esq.  
William H. London, Esq.  
Much Shelist Freed Denenberg  
Ament & Rubenstein, P.C.  
191 North Wacker, Suite 1800  
Chicago, IL 60606

Ronald L. Futterman, Esq.  
Michael I. Behn, Esq.  
William W. Thomas, Esq.  
Futterman & Howard, Chtd.  
122 S. Michigan Ave. Suite 1850  
Chicago, IL 60603

---

**19. How Will Class Counsel's Fees And Expenses Be Paid?**

Class Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in an amount not more than 25% of the portion of the common fund attributable to the State Law Class. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court will determine the amount of any fees and expenses awarded to Class Counsel.

**20. Does The Class Representative Get Additional Compensation?**

Subject to Court approval, the named plaintiffs in the five cases which make up the Consolidated Action will seek "service awards" for their active participation in this litigation. Any such "service award" will be paid from the portions of the common fund attributable to the cases those plaintiffs brought. Renea Griffith, Maryanne Hoekman and Justin Sevey will seek a "service award" of \$5,000. The Court will determine whether they receive "service awards" and the amount of their award.

**21. What If The Court Does Not Approve The Settlement?**

If the Court does not approve the proposed Settlement as being fair, adequate and reasonable, the Settlement Agreement will be null and void, and all parties will be returned to their respective pre-Settlement status in the various lawsuits that the proposed Settlement hopes to resolve.

**22. Where Do I Get Additional Information?**

This notice summarizes the proposed settlement. You can find answers to common questions about the settlement, plus other helpful information at the Settlement Administrator's website [www.INSERTWEBADDRESS.com]. You can also get a copy of the Settlement Agreement from the website, or by writing to the Settlement Administrator at #####. If you cannot get the information you need from this notice or from the Settlement Administrator, you may contact State Law Class Counsel.

**Please Do Not Contact The Court Or Block For Information.**

BY ORDER OF THE COURT

The Honorable Louis Bloom  
Circuit Judge  
Kanawha County, West Virginia

Dated: \_\_\_\_\_, 2005

---





**H & R Block Refund Anticipation Loan Settlement Claim Form**

**If the Settlement is approved by the Court you may be entitled to receive cash if you fill out this form and mail it to:**

Settlement Administrator  
"H&R Block RAL Settlement"  
PO Box 99999  
Chicago, IL 88888

**This Claim Form must be postmarked by June 30, 2006.** ONLY ONE CLAIM FORM IS ALLOWED PER SETTLEMENT CLASS MEMBER, NO MATTER HOW MANY REFUND ANTICIPATION LOANS ("RALs") YOU OBTAINED OR WHERE YOU OBTAINED THEM. YOU CAN RECEIVE PAYMENT FOR EACH RAL YOU OBTAINED BY RETURNING ONE FORM. MARRIED SETTLEMENT CLASS MEMBERS WHO FILED JOINT TAX RETURNS SHOULD RETURN ONLY ONE FORM BETWEEN THEM.

**Name:** Joe Smith

**Current Mailing Address:** 123 Main St, Chicago, IL 88888

**Directions:**

**If the pre-printed information above is NOT CORRECT, please correct the information:**

Current Name for Settlement Check: \_\_\_\_\_

Current Mailing Address: \_\_\_\_\_

**Please also provide the following information (please print in ink or type):**

Your Social Security Number: \_\_\_\_\_

Your Previous Social Security Number(s) (if applicable): \_\_\_\_\_

If you obtained any of your RALs under a different name, please state that name:

\_\_\_\_\_  
If you obtained your RAL(s) jointly with another person or persons, please provide the name of each such person (Joint Borrower):

\_\_\_\_\_

---

Please Provide the Social security Number(s) of any Joint Borrowers (if applicable)

---

Your phone number (optional): (\_\_\_\_\_)\_\_\_\_\_- \_\_\_\_\_

I affirm that this form contain any correct mailing address and social security number.

Claimant's Signature

Date: \_\_\_\_\_

**MAILING INSTRUCTIONS**

If you wish to receive payment from the settlement fund, you want mail this completed form no later than **June 30, 2006** to:

Settlement Administrator  
[address]  
[city, state]

This form must be postmarked no later than **June 30, 2006**.

---



**PROPOSED H&R BLOCK COMMITMENTS  
PERTAINING TO REFUND ANTICIPATION LOANS**

**A. H&R Block Associate Training**

Objective: Ensure that all Tax Professionals, Tax Professional Assistants, Client Service Coordinators, Office Support Coordinators, Office Managers, Office Supervisors, Client Care Specialists, Phone Specialists, District Managers, Assistant District Managers, Administrative Assistants who support any of these positions, and any similar or successor positions ("client contact associates") who work in H&R Block tax offices or administrative locations such as call centers that provide support to H&R Block tax offices are trained to deliver refund anticipation loans to their clients in a manner that accurately and non-coercively presents all of the client's tax filing options and all of the client's disposition options for the client's refund or balance due ("settlement options") and enables the client to make an informed choice from among the available alternatives. This objective will be implemented through a commitment to the following business standards and practices:

- 1) H&R Block will produce training curriculum, updated at least annually, that provides tax office associates and other client contact associates who work in H&R Block tax offices or administrative locations with in-depth knowledge of all tax filing and settlement options. This training, which will be mandatory for all H&R Block tax professionals and other client contact associates, will counsel associates not to pre-judge clients' interest or propensity to choose any particular option, and will emphasize that clients should be fully informed of all options in order to make the most personally appropriate choice.
- 2) The training module for the refund anticipation loan product will cover all product features in depth, including these elements at minimum:
  - i) A RAL is a short-term loan based upon the client's anticipated tax refund, and it must be repaid whether or not the IRS actually delivers the refund for the expected dollar amount.
  - ii) A RAL is provided by a third party lender, (institution name). H&R Block is not the creditor, or a credit service provider, or a loan broker in this transaction.
  - iii) Part of the fee charged by the lender (to be described based on then-current pricing structure) will be owed whether or not the RAL is approved.
  - iv) The annual percentage rate (APR) for a RAL is higher when compared to many other forms of credit.
  - v) H&R Block may purchase a financial interest in the RALs it originates.
  - vi) If the client owes debt for prior years' refund anticipation loans to any RAL provider, or owes H&R Block tax preparation or other fees, those debts may be deducted from the amount of the client's RAL or, in the event a RAL is denied, from the client's refund amount.
  - vii) Pursuant to the Refund Anticipation Loan Application signed by the tax client, disputes that arise from the client's RAL decision (other than an individual claim the client brings in small claims court) will be settled by arbitration if elected by either party and no class actions can be brought in the arbitration forum.
  - viii) H&R Block may use client information to market other products in accordance with IRS regulations.

**Proposed H&R Block Commitments**

- 3) The training module for refund anticipation loans will cover product delivery requirements in depth, including these elements at minimum:
  - i) Tools used to inform clients about refund anticipation loans and other options at client intake and during tax interview,
  - ii) Procedures for proper completion and retention of refund anticipation loan paperwork including the application, loan agreement, and Truth-In-Lending- Act disclosure?
  - iii) Necessity of verifying and documenting client identification, as required by the USA Patriot Act.
  - iv) RAL check distribution process, including methods for confirming identity when clients pick up checks.
- 4) Every tax office associate and other client contact associate who works in an H&R Block tax office or administrative location will be required to sign a statement affirming that he/she has received training on refund anticipation loan products, and agreeing to represent, explain and/or deliver the products as defined in sections (2) and (3) above.

**B. Product Delivery**

Objective: Ensure that the presentation and delivery of refund anticipation loans to clients in H&R Block tax offices is straightforward and non-coercive, and provides clients with the information they need to make an informed choice from among the available alternatives. This objective will be implemented through a commitment to the following business standards and practices:

- 1) Every H&R Block client will be provided with a written description of all available filing and settlement options. The lowest-cost alternatives (e-filing or mailing the return, receiving a refund by direct deposit or IRS check, or paying the balance due from personal funds) will be presented first. The higher-cost alternatives, including refund anticipation checks and refund anticipation loans, will be presented last, and will be clearly described as third party bank offerings available for an additional fee.
  - 2) Every H&R Block client, during the tax preparation process when the amount of the client's refund or balance due is known, will be presented with a side-by-side comparison of all applicable filing and settlement options in a screen shot in substantially the same form as Exhibit 1 hereto. For refund clients, this comparison will show the fees and timeline for refund delivery associated with each option, and the options will be arrayed from lowest client cost to greatest client cost.
  - 3) Every H&R Block client who elects a refund anticipation loan will be provided with additional disclosures before this product election is finalized and the return is e-filed. These disclosures will be available for review in Spanish as well as English upon request, and will inform the client:
    - i) A RAL is a short-term loan based upon the client's anticipated tax refund, and it must be repaid whether or not the IRS actually delivers the refund for the expected dollar amount.
    - ii) A RAL is provided by a third party lender, (institution name). H&R Block is not the creditor, or a credit service provider, or a loan broker in this transaction.
-

**Proposed H&R Block Commitments**

- iii) Part of the fee charged by the lender (to be described based on then-current pricing structure) will be owed whether or not the RAL is approved.
  - iv) A RAL may be canceled within 48 hours of application. However, the IRS will nevertheless direct the client's refund to the lending bank per instructions it received when the return was e-filed. This lender may charge the client a partial fee to cover the costs of handling the client's refund, which will typically be delivered in 8-15 days.
  - v) The annual percentage rate (APR) for a RAL is higher when compared to many other forms of credit.
  - vi) H&R Block may purchase a financial interest in the RALs it originates.
  - vii) If the client owes debt for prior years' refund anticipation loans to any RAL provider, or owes H&R Block tax preparation or other fees, those debts may be deducted from the amount of the client's RAL or, in the event a RAL is denied, from the client's refund amount.
  - viii) Pursuant to the Refund Anticipation Loan Application signed by the tax client, disputes that arise from the client's RAL decision (other than an individual claim the client brings in small claims court) will be settled by arbitration if elected by either party and no class actions can be brought in the arbitration forum.
  - ix) H&R Block may use client information to market other products in accordance with IRS regulations.
- 4) A product reference card will be produced annually that summarizes the refund anticipation loan product attributes and disclosures. This will be made available at every tax workstation to help tax associates discuss refund anticipation loans with their clients.
- 5) H&R Block tax office associates will inform clients who elect refund anticipation loans that there are lower-cost ways to obtain a refund that do not involve the bank fees associated with RALs. This information, delivered to the client in a written and/or electronic format as part of a personalized advice report, will suggest that opening a bank account would allow the un-banked client to take advantage of the IRS direct deposit option that typically yields the client's refund in 8-15 days. Messaging to clients who are known to have bank accounts will also emphasize the IRS direct deposit option.

**C. Advertising & Marketing**

Objective: Ensure that all H&R Block advertising and marketing materials are clear, accurate and consistent in their presentation of refund anticipation loan products. This objective will be implemented through a commitment to the following business standards and practices:

- 1) Any reference to a refund anticipation loan product in H&R Block advertising and marketing materials will describe the product as a "refund anticipation loan" rather than any contraction or alternate construction such as "loan", "refund loan", "tax loan", "your money", "your tax refund", "rapid refund" or "refund advance".
  - 2) Any reference to H&R Block's "Instant Money" product will use "Instant Money refund anticipation loan" rather than any contraction or alternate construction such as "Instant
-

## Proposed H&R Block Commitments

- Money loan”, “Instant Money refund loan”, “Instant Money tax loan”, or “Instant Money refund advance”.
- 3) Advertising and marketing materials using the acronym “RAL” will define that acronym in its first occurrence by use of the phrase “refund anticipation loan (RAL)”.
  - 4) H&R Block advertising and marketing materials will refer to the proceeds of a refund anticipation loan as a “loan check”, “refund anticipation loan check”, “RAL check” or similar wording. H&R Block advertising and marketing materials will not use references like “refund”, “rapid refund”, “refund check”, “refund amount”, “your money”, “your tax refund” or “your money fast” when describing the proceeds of a refund anticipation loan.
  - 5) H&R Block advertising and marketing for standard refund anticipation loans Will include clear and conspicuous disclosure, as that phrase is contemporaneously defined by the Federal Trade Commission, that informs the audience:
    - i) A refund account fee and an additional fee, disclosed as a finance charge, are charged by (institution name), the lender,
    - ii) RAL amount or refund amount (in the event a RAL is denied) may be reduced by debts, if any, owed for prior year refund anticipation loans or other fees owed to H&R Block, such as tax preparation fees,
    - iii) Clients who e-file their returns and specify direct deposit to their own bank accounts will typically receive their refunds in 8-15 days.
  - 6) H&R Block advertising and marketing for same-day (“Instant Money”) refund anticipation loans will include clear and conspicuous disclosure, as that phrase is contemporaneously defined by the Federal Trade Commission, that informs the audience:
    - i) A refund account fee and an additional fee, disclosed as a finance charge, are charged by (institution name), the lender.
    - ii) Availability is based on credit qualification. Clients not qualifying for a full same-day RAL may receive a partial same-day RAL and/or a RAL available as soon as one day later.
    - iii) RAL amount or refund amount (in the event a RAL is denied) may be reduced by debts, if any, owed for prior year refund anticipation loans or other fees owed to H&R Block, such as tax preparation fees.
    - iv) Clients who e-file their returns and specify direct deposit to their own bank accounts will typically receive their refunds in 8-15 days.

## D. Compliance & Performance Assessment

**Objective:** Ensure that H&R Block standards pertaining to the marketing and delivery of refund anticipation loans are met. This objective will be implemented through a commitment to the following business standards and practices:

- 1) The Compliance and Legal departments will have authority to approve, modify, or veto any element of H&R Block refund anticipation loan training, product delivery systems and processes, and marketing & advertising that does not conform to the standards specified in Sections A, B and C of this document.
-

**Proposed H&R Block Commitments**

- 2) H&R Block will designate one or more members of its Tax Compliance unit to oversee all training, delivery systems, and marketing & advertising pertaining to refund anticipation loans.
  - 3) H&R Block will utilize “mystery shopping” at a representative sample of tax offices each tax season to assess compliance with company standards for in office refund anticipation loan product delivery.
  - 4) H&R Block will require each District Manager to review compliance with refund anticipation loan disclosure, documentation, and product delivery standards throughout each tax season by use of a checklist to be completed during office visits. Results of these visits would be forwarded to the Compliance Department for review.
-



# Filing Option Screen

**Filing Options Screen 2 of 4 - Federal**

F10  AF  N/A  Show Filing Restrictions  
 Next Screen, Go to First Screen, Next Step, Go to Tax Prep

**Federal Settlement Options & Estimates (e)**  
 Federal Refund.....  
 Peace of Mind Fee.....  
 Tax Prep & Other Fees.....

**-- IRS DIRECT OPTIONS \* --**  
**1. EFile\*\***  
 3-4 weeks  
 8-15 days

**2. Mail-in\*\***  
 6-8 weeks  
 5-7 weeks

**-- BANKING OPTIONS FEES WITHHELD --**  
**3. RAC\*\***  
 8-15 days  
 8-15 days

**4. RAL-Loan\*\***  
 1-2 days  
 1-2 days

**5. IRAL-Loan**  
 Same Day  
 N/A

**Bank Fees:**  
 Refund Account Fee  
 Loan Finance Charge (e)  
 Estimated APR (LOAN)  
 H&R Block Fees:  
 Tax Prep & Other (e)  
 Sales Tax (e)  
 Total Fees (e)

**\*\* Timeline is based on days from IRS acceptance**  
 None  
 None  
 None  
 None  
 None  
 None  
 None

**Amnt Due Today\* (e)**  
**Amnt You Receive (e)**

\* All tax prep and other fees must be paid at the time of filing.  
 \*\*Funds availability may be delayed 1-3 business days or more due to your bank.  
 Which option would you prefer?..... (1-5)  
 You will choose how to receive your funds (DD or check) on the next screen.

Additional bank product requirements:  
 1) IRS EFile Direct, 2) IRS Mail, 3) Refund Anticipation Check, 4) Refund Anticipation Loan, 5) Instant RAL

Exhibit 1



APPLICATION FOR A REFUND ANTICIPATION LOAN AND TO OPEN A DEPOSIT ACCOUNT

Applicant's Name

Applicant's Social Security/Taxpayer Identification #

Joint Applicant's Name

Joint Applicant's Social Security/Taxpayer Identification #

I am applying for a Refund Anticipation Loan ("RAL") from HSBC Bank USA, National Association ("HSBC") in the maximum amount for which HSBC will approve me. In this application ("Application"), "H&R Block" means each of H&R Block, Inc. and each of its affiliates and subsidiaries (and franchisees thereof); "Transmitter" means my electronic tax return transmitter, which may be the same H&R Block; and "IRS" means the Internal Revenue Service.

1. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY, AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT. WHAT THIS MEANS FOR ME: WHEN I OPEN AN ACCOUNT, YOU WILL ASK FOR MY NAME, ADDRESS, DATE OF BIRTH, AND OTHER INFORMATION THAT WILL ALLOW YOU TO IDENTIFY ME. I MAY ALSO BE ASKED TO PRODUCE MY DRIVER'S LICENSE OR OTHER IDENTIFYING DOCUMENTS.

2. Collections. In consideration of the ease and convenience of the following method of paying any delinquent debt I owe or the other applicant owes to HSBC Taxpayer Financial Services INC. ("HSBC TFS"), H&R Block or Transmitter for prior years, or Bank One, River City Bank, First Security Bank, Republic Bank, Santa Barbara Bank & Trust or First Bank of Delaware (the "Other RAL Lenders"), and provided that such debt has not been discharged in bankruptcy, I authorize and direct the repayment of such debt, calculated as of the date of my Application, by means of (a) having such debt deducted from the proceeds of my RAL, or (b) having my request for new loan proceeds denied or the amount for which I have applied reduced and having such debt repaid to those entities by offset or otherwise from my tax refund directly transmitted into my Refund Account with HSBC. If I owe delinquent debt to more than one of the entities listed above, I authorize and direct HSBC to pay such debts in the following order: HSBC TFS, Other RAL Lenders, and ERO. I also authorize and instruct HSBC, HSBC TFS, and the Other RAL Lenders to disclose to each other information about their respective credit experiences concerning my present and prior RALs, Refund Anticipation Checks ("RACs") or similar financial services, and my prior tax returns.

PLEASE NOTE: If I have delinquent debt, I understand that HSBC or its servicer may be acting as a debt collector to collect a debt and that any Information obtained will be used for that purpose.

3. Applicable Law. This Application and all the other documents executed in connection with this Application or my RAL (collectively, "Documents") shall be governed by and construed, interpreted, and enforced in accordance with federal law and, to the extent state law applies, the law of the State of Delaware (without reference to conflict of laws principles).

4. Important Information About RALs. I understand that (a) I can file my federal income tax return electronically without obtaining a RAL; (b) the IRS will send me a refund check or electronically deposit my refund to my existing bank account; (c) the IRS normally makes an electronic deposit in an average of about 12 days after an electronic filing; (d) HSBC tries to make proceeds of an Instant RAL available on the day of application and a Classic RAL available on the first business day after application; (e) HSBC cannot guarantee when any proceeds of a RAL or an IRS refund will be available to me; and (f) a RAL may cost substantially more than other sources of credit, and I may want to consider using other sources of credit.

5. Deposit Authorization. (a) After I sign my Application, H&R Block and/or my Transmitter will electronically transmit my tax return to the IRS and my Application to HSBC. I understand that I will sign or authorize an IRS Transmittal Form 8453 or IRS e-file signature authorization ("Deposit Authorization") as part of my Application and electronic tax filing, and that the Deposit Authorization and this Application provide an irrevocable agreement to have my tax refund disbursed to HSBC, and irrevocably transfers to HSBC all of my rights, title, and interest in the proceeds of my tax refund for purposes of the RAL I have requested and other purposes authorized by this Application. (b) If my Application is denied or cancelled, and HSBC receives my tax refund, HSBC will forward to me promptly any proceeds of my refund after deducting amounts permitted by this Agreement. (c) If for any reason, any part of the anticipated tax refund is disallowed or offset by the IRS, or if I should receive a refund check in the mail, I will advise HSBC immediately and promptly pay HSBC any amounts owing with respect to my Application or a RAL, and pay H&R Block and/or my Transmitter any fees owed to them involving my tax return.

6. Refund Account. (a) I request that a deposit account ("Refund Account") be opened at HSBC upon receipt of my tax refund for the purposes of ensuring the repayment of my RAL and other amounts described in the Documents. The Annual Percentage Yield and interest rate on the Refund Account will be 0%. This means I will not receive any interest on funds in the Refund Account. I understand that I cannot make withdrawals from the Refund Account and that the funds in the Refund Account will be disbursed only as expressly provided in the Documents. (b) HSBC may deduct any amounts I owe HSBC, H&R Block, my Transmitter or their affiliates from my tax refund, any funds received in the Refund Account, and any proceeds of a RAL. My engagement with H&R Block for services in connection with my 2004 income tax return will end, and I am required to pay all fees to H&R Block for services rendered by H&R Block, when I pick up my check for a RAL (or when HSBC electronically transfers my proceeds to me or to another entity at my direction). If a check or an electronic transfer of proceeds is not made available to me because I do not receive a tax refund, then I am required to pay all fees to H&R Block for services rendered by H&R Block on demand. HSBC also may withdraw amounts deposited into the Refund Account from my tax refund to pay any check I receive for a RAL that I endorse and present for payment or to disburse money to me in accordance with my Application. (c) I will not receive a periodic statement for the Refund Account, but I will receive notice if funds in the Refund Account are not sufficient to repay my RAL or are used for any purpose other than repayment of my RAL or disbursement to me. HSBC may, immediately after disbursement of all funds in the Refund Account, close the account without further notice to or authorization from me.

7. Refund Account Fee. I will pay HSBC a fee of \$24.95 for the administration of the Refund Account and any disbursements to me from that account ("Refund Account Fee"). I irrevocably commit to pay the Refund Account Fee after the Deposit Authorization is filed with the IRS regardless of whether (a) I apply for a RAL or (b) my Application is approved or denied. The Refund Account Fee is not imposed directly or indirectly as an incident to or condition of any extension of credit. I can avoid the Refund Account Fee if I direct that my tax refund not be deposited to HSBC before filing my Deposit Authorization with the IRS.

8. No Fiduciary/Agency Duty. I understand that for various fees received, H&R Block is acting only as my tax preparer (if applicable), my electronic filer and the deliverer of checks for RALs with respect to this RAL transaction. I understand that an affiliate of my ERO has the right to purchase an interest in my RAL issued by HSBC. I further understand that H&R Block is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction and has no other duties to me beyond the preparation of my tax return (if applicable), the transmission of my tax return information to HSBC, the electronic filing of my tax return with the IRS, and the delivery of checks for RALs. I acknowledge that I have independently evaluated and decided to apply for a RAL, and that I am not relying on any recommendation from H&R Block. I also understand that HSBC is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction.

9. Disclosure Information. (a) "Information" means my 2004 federal and state income tax returns, any information obtained in connection with my tax return (including information relating to a possible offset of my tax refund or the possibility that my tax return is incorrect), and any information relating to my Application or a RAL, RAC, or similar financial service I have received or requested from HSBC. (b) "Authorized Parties" means HSBC, HSBC TFS, H&R Block, my Transmitter, and their respective affiliates and agents, and includes the Fraud

Service Bureau operated for HSBC. (c) The Authorized Parties may share Information to process my Application, to determine whether to provide a RAL, to provide RALs to me, to collect delinquent RALs, RACs, or fees payable to H&R Block, to prevent fraud, and to otherwise administer or promote the program for RALs and RACs. (d) The Authorized Parties may disclose Information to the IRS, state tax agencies and other financial institutions that provide RALs, RACs, or other financial services. (e) the Authorized Parties may call, or input my Information on any website of, the IRS or state tax agencies, in connection with my Application to, among other things, determine the status of my tax return. The IRS and state tax agencies may disclose information about me and my tax returns to the Authorized Parties. (f) H&R Block may not use or disclose Information for any purpose, except as permitted under Treas. Reg. Sec.301.7216-2 or as provided in this Application. (g) I consent to HSBC sharing information as provided in the Privacy Policy.

10. Service Fees. (a) Reissued Check Fee: I agree to pay \$10 each time that a check is reissued at my request for any reason. If I request that such a check be sent by overnight mail, I agree to pay the charges for sending it by overnight mail. (b) Document Fee: If I ask HSBC to provide me with a copy of my Application, loan agreement, billing statement or other document HSBC may charge me \$10 per document.

11. Arbitration Provision. Any claim, dispute or controversy between me and HSBC (as specifically defined below for purposes of this Arbitration Provision), whether in contract or tort (intentional or otherwise), whether pre-existing, present or future, and including constitutional, statutory, common law, regulatory, and equitable claims in any way relating to (a) any of these or any other Documents or any RAL or RAC that I have previously requested or received from HSBC, (b) advertisements, promotions, or oral or written statements related to this or any other Application for a RAL or any RAL or RAC that I have previously requested or received from HSBC, (c) the relationship of HSBC and me relating to any of these or any other Documents or any RAL or RAC that I have previously requested or received from HSBC; and (d) except as provided below, the validity, enforceability or scope of this Arbitration Provision or any part thereof, including but not limited to, the issue whether any particular claim, dispute or controversy must be submitted to arbitration (collectively the "Claim"), shall be resolved, upon the election of either me or HSBC, by binding arbitration pursuant to this Arbitration Provision and the applicable rules of the American Arbitration Association ("AAA") or the National Arbitration Forum ("NAF") in effect at the time the Claim is filed. I shall have the right to select one of these arbitration administrators (the "Administrator"). The arbitrator must be a lawyer with more than ten (10) years of experience or a retired or former judge. In the event of a conflict between this Arbitration Provision and the rules of the Administrator, this Arbitration Provision shall govern. In the event of a conflict between this Arbitration Provision and the balance of this Application or any other Documents, this Arbitration Provision shall govern. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any organization that has in place a formal or informal policy that is inconsistent with and purports to override the terms of this Arbitration Provision, including the Class Action Waiver Provision defined below.

HSBC hereby agrees not to invoke its right to arbitrate an individual Claim I may bring in small claims court or an equivalent court, if any, so long as the Claim is pending only in that court. No class actions or private attorney general actions in court or in arbitration or joinder or consolidation of claims in court or in arbitration with other persons, are permitted without the consent of HSBC and me. The validity and effect of the preceding sentence (herein referred to as the "Class Action Waiver Provision") shall be determined exclusively by a court and not by the Administrator or any arbitrator. Neither the Administrator nor any arbitrator shall have the power or authority to waive, modify or fail to enforce the Class Action Waiver Provision, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable.

Any arbitration hearing that I attend will take place in a location that is reasonably convenient for me. On any Claim I file, I will pay the first \$50.00 of the filing fee. At my request, HSBC will pay the remainder of the filing fee and any administrative or hearing fees charged by the Administrator, up to \$1,500.00 on any Claim asserted by me in the arbitration. If I should be required to pay any additional fees to the Administrator, HSBC will consider a request by me to pay all or part of the additional fees; however, HSBC shall not be obligated to pay any additional fees unless the arbitrator grants me an award. If the arbitrator grants an award in my favor, HSBC will reimburse me for any additional fees paid or owed by me to the Administrator up to the amount of the fees that would have been charged if the original Claim had been for the amount of the actual award in my favor. If the arbitrator issues an award in HSBC's favor, I will not be required to reimburse HSBC for any fees HSBC has previously paid to the Administrator or for which HSBC is responsible.

This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 (the "FAA"). The arbitrator shall apply substantive law consistent with the FAA, and not by any state law concerning arbitration. The arbitrator shall follow and apply applicable substantive law to the extent consistent with the FAA, statutes of limitation and claims of privilege and shall be authorized to award all remedies permitted by applicable substantive law, including, without limitation, compensatory, statutory and punitive damages, declaratory, injunctive and other equitable relief and attorneys' fees and costs. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the Administrator's rules. Upon request of either party, the arbitrator shall prepare a short reasoned written opinion supporting the arbitration award. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator's award will be final and binding except for: (a) any appeal right under the FAA; and (b) any appeal of Claims involving more than \$100,000. For such Claims, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider de novo (i.e., in its entirety) any aspect or all aspects of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs (i.e., the amounts owed to the Administrator and the arbitrators), regardless of its outcome. However, HSBC will consider in good faith any reasonable request for HSBC to bear up to the full costs of the appeal. Nothing in this Arbitration Provision shall be construed to prevent HSBC's use of offset or other contractual rights involving payment of my income tax refund or other amount on deposit with HSBC to pay off any RAL, RAC, or similar financial service, or H&R Block or other fees, now or thereafter owed by me to HSBC or any Other RAL Lender or H&R Block or third party pursuant to the Documents or similar prior documents.

I ACKNOWLEDGE THAT I HAVE A RIGHT TO LITIGATE CLAIMS IN COURT BEFORE A JUDGE OR JURY, BUT I PREFER TO RESOLVE ANY SUCH CLAIMS THROUGH ARBITRATION AND HEREBY KNOWINGLY AND VOLUNTARILY WAIVE MY RIGHTS TO LITIGATE SUCH CLAIMS IN COURT BEFORE A JUDGE OR JURY, UPON ELECTION OF ARBITRATION BY HSBC OR BY ME. I ACKNOWLEDGE THAT I WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS OR AS A PRIVATE ATTORNEY GENERAL PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. I UNDERSTAND THAT, IF I AM A MEMBER OF THE PUTATIVE CLASS IN CUMMINS, ET AL. V. H&R BLOCK, INC, ET AL., CASE NO. 03-C-134 IN THE CIRCUIT COURT OF KANAWHA COURT, WV, THIS ARBITRATION CLAUSE MAY NOT ACT AS A WAIVER OF THE RIGHTS AND CLAIMS I MAY HAVE IN THAT ACTION.

This Arbitration Provision shall supersede all prior Arbitration Provisions contained in any previous RAL or RAC application or related agreement and shall survive repayment of any RAL or RAC and termination of my account; provided, however, that if I reject this Arbitration Provision as set below, any prior Arbitration Provisions shall remain in full force and effect. If any portion of this Arbitration Provision is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Provision. However, if a determination is made that the Class Action Waiver Provision is unenforceable, this Arbitration Provision (other than this sentence) and any prior Arbitration Provision shall be null and void.

To reject this Arbitration Provision, I must send HSBC, c/o HSBC Taxpayer Financial Services Inc., Account Research, P.O. Box 18097, Jacksonville, FL 32229, a signed writing ("Rejection Notice") that is received within thirty (30) days after the date I sign this Application. The Rejection Notice must identify the transaction involved and must include my name, address, and social security number and must be signed by all persons signing this Application as Applicant(s). I may send the Rejection Notice in any manner I see fit as long as it is received at the specified address within the specified time. No other methods can be used to reject the Arbitration Agreement. If the Rejection Notice is sent on my behalf by a third party, such third party must include evidence of his or her authority to submit the Rejection Notice on my behalf.

As used in this Arbitration Provision, the term "HSBC" shall mean HSBC Bank USA, National Association, HSBC TFS, Household Bank, f.s.b., Beneficial National Bank, and H&R Block, Inc., and each of their parents, wholly or majority-owned subsidiaries, affiliates, or predecessors, successors, assigns and the franchisees of any of them, and each of their officers, directors, agents, and employees.

Contacting the Administrator: If I have a question about the arbitration Administrator mentioned in this Arbitration Provision or if I would like to obtain a copy of its arbitration rules, I can contact the Administrator as follows: American Arbitration Association, 335 Madison Avenue, New York, NY 10017, [www.adr.org](http://www.adr.org); National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405, [www.arb-forum.com](http://www.arb-forum.com).

12. Survival. The provisions of this Application shall survive the execution of the Loan Agreement and Disclosure Statement and the disbursement of funds.

13. Miscellaneous. (a) References to "I" or "me" or "my" in the Documents shall refer individually to each applicant for a RAL and to both applicants, and the obligations of such individuals under the Documents will be joint and several. The filing of an injured spouse form shall not relieve either applicant of any such obligations under the Documents. (b) If any provision of the Documents or part thereof is deemed invalid, such invalidity will not affect any other provision of the Documents or part thereof. (c) HSBC may obtain a consumer report on me, and other information from third parties, in connection with evaluating my Application, or collecting or reviewing my RAL or accounts. (d) HSBC may assign all or a portion of any rights or obligations relating to a RAL to a third party, including HSBC TFS, H&R BlockO, an affiliate of H&R Block, a franchiser of H&R Block, or an affiliate of HSBC, without notice to me or my consent. (e) Supervisory personnel of HSBC or its agents may listen to and record my telephone calls. (f) I agree that you may send any notices and billing statements to the address of the primary applicant and not to the address of the joint applicant if such address is different. (g) I agree HSBC may transfer, sell, participate or assign all or a portion of my RAL, and its rights, duties and obligations relating to my RAL, to third parties, including HSBC TFS, its affiliates, successors and assigns without notice to me or my consent.

14. State Notices. California residents: Married persons may apply for a separate account. Iowa Residents: NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with the law. New York residents: Consumer reports may be requested in connection with this account or any updates, renewals, or extensions thereof. Upon my request, HSBC will inform me of the names and addresses of any consumer reporting agencies which have provided HSBC with such reports. Ohio residents: The Ohio law against discrimination requires that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights commission administers compliance with these laws. Pennsylvania residents: If this loan becomes in default, HSBC or its assignee intends to collect default charges. Utah residents: Any prepaid finance charge not exceeding 5% of the original amount of the loan shall be fully earned on the date the loan is extended, and shall be nonrefundable in the event the loan is repaid prior to the date it is due. Any additional prepaid finance charge is earned proportionally over the term of the loan, and, in the event of such prepayment, the unearned portion of such charge, calculated on a pro rata basis according to the remaining term of the loan, shall be refunded. Wisconsin residents: No provision of a marital property agreement, a unilateral statement under Wisconsin Stats. s. 766.59 or a court decree under Wisconsin Stats. s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred. All obligations described herein are being incurred in the interest of my marriage or family. A married Wisconsin resident applicant must mail the name and address of his or her spouse, as well as the applicant's name and social security number, to HSBC c/o HSBC Taxpayer Services, 200 Somerset Corporate Blvd., Bridgewater, NJ 08807, within two days.

15. Certification. I certify that the following information is true with respect to the RAL I am requesting; (1) I do not owe any tax due and/or any tax lines from prior tax years, nor have I previously filed a 2004 federal income tax return. (2) I do not have any delinquent child support, alimony payments, student loans, V.A. loans or other federally sponsored loans. (3) Presently, I do not have a petition (whether voluntary or involuntary) filed nor do I anticipate filing a petition under federal bankruptcy laws. (4) I have not had a RAL with any lender from a prior year that has been discharged in bankruptcy. (5) I have not paid any estimated tax and/or did not have any amount of my 2003 refund applied to my 2004 tax return. (6) I am not presently making regular payments to the IRS for prior year unpaid taxes. (7) I do not have a Power of Attorney presently in effect or on file with the Internal Revenue Service ("IRS") to direct my federal income tax refund to any third party. (8) I am not filing a 2004 federal income tax return using a substitute W-2, Form 4852, or any other form of substitute wage and tax documentation, unless the

source of the Form 4852 is a Military Leave and Earnings Statement. (9) I am not filing a Form 8862 (Earned Income Credit Eligibility) with my 2004 federal income tax return. (10) I am not currently incarcerated in a state or federal prison nor do I have 2004 income earned while an inmate at a penal institution and claiming the Earned Income Credit. (11) The 2004 income I have reported is not solely from Schedule C or C-EZ(Profit or Loss from Business). (12) If Schedule C is present and EIC claimed, and return is self-prepared or other prepared, I am a statutory employee and the W-2 indicates statutory employee in Box 15. (13) I am not filing Form 8379 (Injured Spouse Claim & Allocation) with my 2004 federal income tax return. (14) I am not filing Form 1310 (Statement of Person Claiming Refund Due Deceased Taxpayer) with the 2004 federal income tax return or filing a federal income tax return Form 1040 on behalf of deceased taxpayer. (15) I do not have an amount paid with request for an extension to file on Line 68, Field 1190 of Form 1040. (16) Everything that I have stated in this Application is correct.



**HSBC TAXPAYER FINANCIAL SERVICES DIVISION OF HSBC BANK USA, NATIONAL  
ASSOCIATION  
Privacy Statement**

**Applicability**

This Privacy Statement only applies to customers' accounts with the HSBC Taxpayer Financial Services division of HSBC Bank USA, National Association ("HSBC"). All other HSBC accounts are governed by the HSBC Bank USA National Association Personal Banking Policy.

**Introduction-Our Commitment to You**

HSBC is proud to be part of a financial services organization that has been providing superior products and services to its customers for many years. We greatly appreciate the trust that you and millions of customers have placed in us, and we will protect that trust by continuing to respect the privacy of all our applicants and customers even if our formal customer relationship ends.

**How We Handle Information we Obtain**

It is important for you to know that in order to ensure that our customers get the very best service and the highest quality products, HSBC collects demographic information (like your name and address) and credit information (like information related to your accounts with us and others). This information comes either directly from you, for instance, from your application and transactions on your account; or, it may come from an outside source such as your credit bureau report. In addition, if you visit our Internet web site, we may collect certain information about your Internet usage.

Because some of the information we gather is not publicly available, we take great care to ensure that this information is kept safe from unauthorized access, and we would never share the information in violation of any regulation or law. Because we respect your privacy and we value your trust, the only employees or companies who can access your private personal information are those who use it to service your account or provide services to you or to us. HSBC diligently maintains physical, electronic and procedural safeguards that comply with applicable federal standards to guard your private personal information and to assist us in preventing unauthorized access to that information.

**How We Share Information with Companies Affiliated with Us**

From time to time, for general business purposes such as fraud control, or when we think it may benefit you, we do share certain information with our affiliated companies, except as prohibited by applicable law. These affiliated companies all provide financial services, such as banking, consumer finance, insurance, mortgage, and brokerage services. Some examples include companies doing business under the names Household, Beneficial, or HSBC. We may also share certain information with non-financial service providers that become affiliated with us in the future (such as travel, auto, or shopping clubs), except as prohibited by applicable law. The information we share might come from your application, for instance your name, address, telephone number, social security number, and e-mail address. Also, the information we share could include your transactions with us or our affiliated companies (such as your account balance, payment history, and parties to the transaction), your Internet usage, or your credit card usage. Except for Vermont residents, the information we share could also include your assets, income, or credit reports.

**How We Share Information under a Joint Marketing Agreement**

We may also provide information non-affiliated financial companies (such as a tax preparer, mortgage banker or insurance service provider) with whom we have a joint marketing agreement. The sharing of information with these types of companies is permitted by law. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

**How We Share Information with Other Third Parties**

Except for California or Vermont residents, we also may share information with non-affiliated companies that are able to extend special offers we feel might be of value to you. These companies may be financial services providers (such as mortgage bankers or insurance agents) or they may be non-financial companies (such as retailers, tax preparers, or marketing companies). These offers are typically for products and services that you might not otherwise hear about. The information we may provide them comes from the sources described above and might

include your name, address and phone number. You may tell us not to share information with non-affiliated companies in this way by completing the form below. For California and Vermont residents, applicable law requires us to obtain your permission in order to share information about you in this way, and we have chosen not to share your information in this way.

We may also provide information to non-affiliated companies that perform operational, collection, or fraud control services related to your account. The sharing of information with these types of companies is permitted by law. Such a company might include a financial company (such as an insurance service provider) or a non-financial company (such as a data processor or internet service provider) with whom we have an agreement. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

Finally, we provide information about you to non-affiliated companies such as credit reporting agencies and companies which provide services related to your account. This information sharing is also permitted by law.

We reserve the right to change our privacy practices at any time in accordance with applicable law. Notice of such changes will be provided if required by applicable law.

**How to Opt-Out (non-affiliated companies) (Applicable to residents of all states except California and Vermont)**

If you do not want us to share your private information with non-affiliated companies (unless we are permitted or required by law to do so), please let us know by simply calling 1-800-365-2641. If you have previously informed us of your preference, you do not need to do so again. We will be happy to comply with your “opt-out” request, which will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account. Opt-out requests will not apply to information sharing that is permitted by law. Please allow sufficient time for us to process your request.

**How to Opt-Out (affiliated companies) (Applicable to residents of all states except Vermont)**

If you do not want us to share your credit information (such as your credit bureau information) with companies that are affiliated with us, please let us know by simply calling 1-800-365-2641. If you have previously informed us of your preference, you do not need to do so again. This request will not apply to information about your transactions or experience with HSBC (such as account information, account usage, or payment history), except as required by law, and will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account.

---

Atención clientes his panoparlantes: Esta Declaración Sobre la Privacidad proporciona información sobre cómo manejamos información personal no publica acerca de nuestros clientes, las circunstancias bajo las cuales podemos compartir tal información con otras personas, y cómo usted puede pedir que no compartamos esa información con terceros que no sean afiliados nuestros. Si quisiera que le proporcionemos una traducción al español de la Declaración Sobre la Privacidad en su totalidad, sirvase comunicarse con nosotros llamándonos gratis al 1-800-365-2641.



[The following line and language will be inserted at the end of the HRB RAL Application.]

---

By signing below, I am indicating that I fully understand that I am applying for a loan and that I have read, understand and agree to the terms set forth in this Application above and on the following pages, including but not limited to: (a) Section 2 in which I agree that HSBC may use amounts received from my tax refund to pay certain delinquent debts; and (b) Section 1 in which I agree, upon my or HSBC's election, to arbitrate any Claims that I may have. I also acknowledge that I have 30 days from today's date to reject the Arbitration Provision by following the procedure described in Section 11. If I receive a RAL, I promise to pay the amount set forth in the "Total of Payments" section on my Loan Agreement and Disclosure Statement or subsequent replacement TILA Disclosure Statement, if any, on demand or when the anticipated refund from the IRS is electronically deposited into my refund account, whichever comes first, and I agree to repay the RAL whether or not my tax refund is paid in whole or in part to HSBC.

\_\_\_\_\_  
(Applicant — Primary Taxpayer Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Joint Applicant — Spouse Signature, If Joint Return)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

HSBC Taxpayer Financial Services Toll-Free Customer Service Number 1-800-524-0628 or visit us on the web at [hsbctfshrb.com](http://hsbctfshrb.com) for more information.

---

LOAN AGREEMENT AND DISCLOSURE STATEMENT

In this Loan Agreement and Disclosure Statement ("Agreement"), "RAL" means a Refund Anticipation Loan, "HSBC" means HSBC Bank USA, National Association, "I", "me" and "my" means each person who has applied to HSBC for a RAL. "H&R Block" means each of H&R Block, Inc., and each of its affiliates and subsidiaries (and franchisees thereof).

The following Truth in Lending Act ("TILA") disclosures are based on a RAL in the amount specified in item 10 of the Itemization of Amount Financed. I will receive a replacement TILA Disclosure Statement if I am approved for a RAL in a different amount. In addition, I may receive a duplicate copy of this TILA Disclosure Statement if I am approved for a RAL in the amount on which this disclosure is based, and the RAL is disbursed to me by check.

Truth in Lending Act Disclosure Statement

1. Amount Financed (the amount of credit provided to me or on my behalf)	\$ _____ (e)
2. FINANCE CHARGE (the dollar amount the credit will cost me)	\$ _____ (e)
3. Total of Payments (the amount I will have paid after I have made all payments as scheduled)	\$ _____ (e)
4. ANNUAL PERCENTAGE RATE (the cost of my credit as a yearly rate)	_____ % (e)

\_\_\_\_\_   
 "e" = estimate

If line is left blank, amount is "0"

Creditor: My creditor is HSBC Bank USA, National Association.

Demand Feature: My loan will be repayable on demand or when the anticipated tax refund is electronically deposited in my Refund Account, whichever is earlier.

Payment Schedule: HSBC estimates that the Total of Payments set forth above will be due in a single payment approximately 12 days from the date of this Agreement.

Security Interest: I am providing HSBC with a security interest in my tax refund payment by the IRS, and, except for Virginia residents, in all funds deposited in the Refund Account and that Refund Account.

Late Charge: A late charge equal to 1.5% of the unpaid Total of Payments may be imposed on the date 35 days after payment of my loan is demanded, and on the same date of each succeeding month (or if there is no such date, the last date of the month).

Prepayment: If I pay off early, I will not be entitled to a refund of part or all of the Finance Charge.

Contract Reference: Refer to the Application and the accompanying Loan Agreement for additional information about nonpayment, default, any right to accelerate the maturity of the obligation, and any prepayment rebates or penalties.

Required Deposit: The Annual Percentage Rate does not take into account my required deposit.

---

Itemization of Amount Financed

1. Amount paid directly to me	\$ _____(e)
2. Amount paid for my Refund Account Fee to HSBC	\$ _____
3. Amount paid for Tax Prep to H&R Block	\$ _____
4. Amount paid for prior year items owed to H&R Block	\$ _____
5. Amount paid for System Administration Fee to H&R Block	\$ _____
6. Amount paid for Peace of Mind to H&R Block	\$ _____
7. Amount paid for E Filing to H&R Block	\$ _____
8. Amount Financed (Items 1+2+3+4+5+6+7)	\$ _____(e)
9. Prepaid <b>FINANCE CHARGE</b> (RAL Fee to HSBC)	\$ _____(e)
10. Total RAL (Items 8+9)	\$ _____(e)

“(e)” = estimate

If line is left blank, amount is “0”

Loan Agreement

1. Obligation on RAL.

(a) I am obligated, on the date I sign this Agreement, to accept a RAL if HSBC approves my Application, unless HSBC approves me for a smaller RAL than the amount set forth in the Total of Payments section in the TILA Disclosure Statement above. If I am approved for a smaller RAL, I will be provided with a replacement TILA Disclosure Statement and I will be obligated to accept the smaller RAL if I accept the RAL proceeds check. My loan will begin, and HSBC will earn the finance charge, when I am approved for the RAL and the proceeds check or stored value card is made available or a transfer is initiated to my bank account.

(b) I may cancel my RAL transaction, or my obligation to accept a RAL, for up to 48 hours after I become obligated to accept the RAL. To do so, I must return to HSBC or the office where I received my RAL proceeds check any check I have received (or cash in the amount of the RAL proceeds check if I have cashed the check or received a transfer to my bank account), and comply with other requirements set by HSBC. I understand that, if I use my right to cancel, my finance charge will be refunded to me, HSBC will provide me with any tax refund only after HSBC receives the refund from the IRS, and I must still pay a Refund Account Fee.

2. Security Interest. If I receive a RAL, I grant HSBC a security interest in the property described in the TILA Disclosure Statement as collateral for my obligations to repay the RAL and perform my other obligations under the Application and this Agreement.

3. Deductions. My Prepaid Finance Charge, Refund Account Fee, fees for the completion and system administration of my income tax return by H&R Block, and prior year debt owed to H&R Block shall be deducted from the proceeds of my RAL.

4. Other Charges. (a) I agree to pay a returned check charge of \$19 if any check or similar instrument I give HSBC is not honored. (b) I agree to pay a late charge as described in the TILA Disclosure Statement if I do not repay my loan when due. (c) In the event that I pay my account by telephone, I agree to pay up to a \$10 fee for each such

payment. HSBC reserves the right to change such fee from time to time. I may call Customer Service for a current fee schedule. (d) I also agree to pay any attorney's fees and collection agency costs incurred by HSBC or its affiliates to collect any delinquent RAL as permitted by law,

5. Instant RAL. If I receive an Instant RAL, and if the electronic filing of my return is rejected by the Internal Revenue Service ("IRS"), I authorize H&R Block to insert my Refund Account number at HSBC, together with HSBC's routing transit number, on my signed paper returns, and mail them to the IRS.

6. Application of Payments. Each payment I make on the RAL will be applied in any order determined by HSBC.

BY SIGNING BELOW, I AGREE TO THE TERMS OF THIS LOAN AGREEMENT, AND TO THE APPLICATION, WHICH INCLUDES AN ARBITRATION CLAUSE WHICH MAY SUBSTANTIALLY LIMIT MY RIGHTS IN THE EVENT OF A DISPUTE. I ALSO ACKNOWLEDGE RECEIVING A COMPLETED COPY OF THIS LOAN AGREEMENT AND DISCLOSURE STATEMENT.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.  
NOTICE TO CUSTOMER

- (a) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- (b) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- (c) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

Date: \_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
Signature of Applicant Signature of Joint Applicant

INFORMATION, IDENTIFICATION AND INSTRUCTIONS IN CONNECTION WITH APPLICATION FOR  
A REFUND ANTICIPATION LOAN AND TO OPEN A DEPOSIT ACCOUNT

System Protected by US. Patent Nos. 4,890,228,5,193,057, and 5,963,921

1. INFORMATION

Applicant's Name

\_\_\_\_\_(\_\_\_\_\_)  
First M.I. Last Maiden

Home Address

Mailing Address

Social Security/Taxpayer Identification # \_\_\_ - \_\_\_ - \_\_\_

Date of Birth \_\_\_\_/\_\_\_\_/\_\_\_\_

Home Phone # (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (Required)

Work Phone #(\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (Required, if employed)

Residence:  Own  Rent  Other

Checking Account:  Yes  No

Savings Account:  Yes  No

Joint Applicant-Spouse(if joint return)

\_\_\_\_\_(\_\_\_\_\_)  
First M.I. Last Maiden

Home Address

Mailing Address

Social Security/Taxpayer Identification # \_\_\_ - \_\_\_ - \_\_\_

Date of Birth \_\_\_\_/\_\_\_\_/\_\_\_\_

Home Phone # (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (Required,if different)

Work Phone #(\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (Required, if employed)

Residence:  Own  Rent  Other

Checking Account:  Yes  No

Savings Account:  Yes  No

2. IDENTIFICATION

The following unexpired identification ("ID") has been provided:

For Applicant's photo ID:

Type of ID \_\_\_\_\_  
ID Number, if any \_\_\_\_\_  
Place of Issuance \_\_\_\_\_  
Date of Issuance, if any \_\_\_\_\_  
Expiration Date, if any \_\_\_\_\_  
Additional Information \_\_\_\_\_

For Applicant's second ID, if required:

Type of ID \_\_\_\_\_  
Number, if any \_\_\_\_\_  
Place of Issuance \_\_\_\_\_  
Date of Issuance, If any \_\_\_\_\_  
Expiration Date, if any \_\_\_\_\_  
Additional Information \_\_\_\_\_

For Joint Applicant's photo ID:

Type of ID \_\_\_\_\_  
ID Number, if any \_\_\_\_\_  
Place of Issuance : \_\_\_\_\_  
Date of Issuance, if any \_\_\_\_\_  
Expiration Date, if any \_\_\_\_\_  
Additional Information \_\_\_\_\_

For Joint Applicant's second ID, if required:

Type of ID \_\_\_\_\_  
ID Number, if any \_\_\_\_\_  
Place of Issuance \_\_\_\_\_  
Date of Issuance, if any \_\_\_\_\_  
Expiration Date, if any \_\_\_\_\_  
Additional Information \_\_\_\_\_

3. PAYMENT INSTRUCTIONS

- A. If I receive an Instant Refund Anticipation Loan ("RAL"), I would like to receive the proceeds of my Instant RAL by check.
  - B. If I receive a Classic RAL, I would like to receive the proceeds of my Classic RAL by check, unless the boxes below are completed, in which case I choose to receive my funds via direct deposit into my bank  savings account  checking account. My bank account number into which I authorize HSBC Bank USA, National
-



Association ("HSBC") to direct my funds is

o o o o o o o o o o o o o o o o o o.

The routing transit number (RTN) of the bank where my account resides, which is required for my loan funds to be accurately deposited into my bank account listed above, is o o o o o o o o o o.

- C. If my refund is greater than the amount of my RAL, I would like to receive the proceeds of my excess refund by check, unless the boxes below are completed, in which case I choose to receive my proceeds by direct deposit into my  savings account  checking account  IRA account  HRBFA(H&R Block Financial Advisors) account. My account number into which I authorize HSBC to direct my funds is o o o o o o o o o o o o o o o o o o.

The routing transit number (RTN) of the financial institution where my account resides, which is required for my funds to be accurately deposited into my account listed above, is o o o o o o o o o o.

- D. Notwithstanding any request above to receive proceeds by direct deposit, if I am approved for a RAL in an amount smaller than the amount specified in item 10 of the Itemization of Amount Financed in the Loan Agreement and Disclosure Statement provided herewith, the RAL and any excess refund will be disbursed by check.

By signing below I am indicating that I fully understand that I am applying for a loan and that I confirm that the information set forth herein is true and correct.

\_\_\_\_\_  
(Applicant — Primary Taxpayer Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Joint Applicant — Spouse Signature, If Joint Return)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

Toll-Free Customer Service Number 1-800-524-0628

APPLICATION FOR A REFUND ANTICIPATION LOAN, REFUND ANTICIPATION CHECK, OR REFUND PROCESSING  
TRANSFER AND TO OPEN A DEPOSIT ACCOUNT

**System Protected by U.S. Patent Nos. 4,890,228,5,193,057, and 5,963,921**

This Application is submitted to HSBC Bank USA, National Association ("HSBC") for a Refund Anticipation Check ("RAC"), Refund Processing Transfer ("RPT"), or Refund Anticipation Loan ("RAL"), and a Refund Account In (his Application, "Bank Product" means a RAC, RPT, or RAL; "ERO" means my electronic tax return originator; "Transmitter" means my electronic tax return transmitter, which may be the same as my ERO; and "IRS" means the Internal Revenue Service.

**Customer Commitment**

**Understanding Your Options and Responsibilities as a RAL Customer**

*the servicer of your loan, HSBC Taxpayer Financial Services Inc. works closely with your tax preparer and the bank to provide refund anticipation loans (RALs). As part our commitment to the highest standards in responsible lending, we would like to provide with the following explanation of your options and responsibilities.*

If you are owed a federal tax refund, you have a right to choose how you will receive money. Please understand there are several options available to you at varying costs, [ILLEGIBLE] of which are free. (2) A refund anticipation loan (RAL) is one of these options, but it is not your federal tax refund and it is not free. A RAL is a loan that you must pay even if the Internal Revenue Service (IRS) does not issue your tax refund. (3) As a customer, you deserve to have the information you need to make an informed [ILLEGIBLE] so please take time to read and understand the terms and fees associated with a RAL. (4) You have a responsibility to ask questions regarding your RAL and we have [ILLEGIBLE] responsibility to make certain you have clear answers. Please call our toll-free customer hotline at 1-800-5240628. (5) You have a responsibility to communicate outstanding debts or liens you owe to the government. Be honest with yourself and the bank about your ability to repay the loan. (6) You are guaranteed the right to change our mind about obtaining a RAL within 48 hours after signing the loan agreement. For further details on canceling your obligation, please consult your loan agreement. (7) e are committed to providing you with additional financial education tools and resources. We encourage you to access important budgeting, savings and debt management formation toll-free through the National Foundation for Credit Counseling at 1-800-388-2227 (English), or 1-800- (82-9832 (español), or by visiting ourCreditCounts.com (English) or SuCreditoCuenta.com™ (español). (8) If you have further questions about the RAL product, or feel that any of the above commitments [ILLEGIBLE] responsibilities have not been met, please call our toll-free customer hotline at 1-800-524-0628.

As an example, the information below is provided to help make sure you know your options

Filing Option/Delivery Option			Relative Cost*	Timing of Check or Direct Deposit**
Paper Return Mailed to IRS	Refund Check	\$	Cost of tax preparation	8 to 8 weeks
Paper Return Mailed to IRS	Direct Deposit	\$	Cost of tax preparation	5 weeks
[ILLEGIBLE] - filed return	Direct Deposit	\$\$	Cost of tax preparation & e-filing, if any	8 to 14 days
[ILLEGIBLE] -filed return	RAC or RPT	\$\$\$	Same as e-filed above plus cost of RAC/RPT	8 to 14 days
[ILLEGIBLE] - filed return	RAL	\$\$\$\$	Same as e-Filed above plus cost of RAL	1 to 2 days

Since costs may vary between facilitators, the relative costs are shown as \$ for least expensive to \$\$\$\$ for most expensive. Options available may vary by facilitator.

\* While actual times may vary, these are approximate times and may help you in making your choice. (Times are based on www.irs.gov information and provider experience.)

**1. INFORMATION**

Applicant's Name			Joint Applicant - Spouse(if joint return)			
_____			_____ (_____)			
First	M.I.	Last	First	M.I.	Last	Maiden
_____			_____			
Home Address			Home Address			
_____			_____			
Mailing Address (if different from above)			Mailing Address (if different from above)			
Social Security/Taxpayer Identification # ___ - ___ - ___			Social Security/Taxpayer Identification # ___ - ___ - ___			
Date of Birth ____/____/____			Date of Birth ____/____/____			

2. IDENTIFICATION My identification information will be entered and retained electronically.
3. REQUEST FOR A RAL, FEDERAL RAC, or FEDERAL RPT (ONLY ONE BOX MAY BE MARKED IN THIS SECTION 3)
  - o I apply for a Refund Anticipation Loan secured by my federal income tax refund ("RAL") in the maximum amount for which HSBC will approve me.
  - o I apply for a Refund Anticipation Check based on my federal income tax refund ("Federal RAC") in the maximum amount for which HSBC will approve me.
  - o I apply for a Refund Processing Transfer based on my federal income tax refund ("Federal RPT") in the maximum amount for which HSBC will approve me.
4. REQUEST FOR A STATE RAC (MAY ONLY BE REQUESTED IF A REQUEST IS ALSO MADE IN SECTION 3)
  - o I apply for a Refund Anticipation Check for each state from which I receive a state income tax refund (each a "State RAC") in the maximum amount for which HSBC will approve me.
5. PAYMENT INSTRUCTIONS
  - A. If I receive an Instant RAL or Federal RAC, I would like to receive the proceeds of my Instant RAL or Federal RAC by check, unless I notify my ERO that I choose to receive such proceeds through a stored value card, where available.
  - B. If I receive a Federal RPT, State RAC, or Classic RAL, or if my refund is in excess of any product I obtain, I would like to receive the proceeds of my Federal RPT, State RAC, Classic RAL, or excess refund amount by check, unless I notify my ERO that I choose to receive such proceeds through a stored value card, where I available, or through direct deposit into the bank account with the account number and routing transit number I have provided in connection with the processing of this Application.
  - C. Notwithstanding any request to receive proceeds by direct deposit or by stored value card, if I am approved for a RAL in an amount smaller than the amount specified in item 12 of the Itemization of Amount Financed in the Loan Agreement and Disclosure Statement provided herewith, the RAL and any excess refund will be disbursed by check.
  - D. If I choose to receive proceeds by a stored value card, I agree to the terms set forth in the stored value card agreement provided to me, which is incorporated herein by reference. Certain fees shall apply.
6. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY, AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT. WHAT THIS MEANS FOR ME: WHEN I OPEN AN ACCOUNT, YOU WILL ASK FOR MY NAME, ADDRESS, DATE OF BIRTH, AND OTHER INFORMATION THAT WILL ALLOW YOU TO IDENTIFY ME. YOU MAY ALSO ASK TO SEE MY DRIVER'S LICENSE OR OTHER IDENTIFYING DOCUMENTS.
7. Applicable Law. This Application and all other documents executed in connection with this Application for my Bank Product (collectively, "Documents"), shall be governed by and construed, interpreted, and enforced in accordance with federal law and, to the extent state law applies, the law of the State of Delaware (without reference to conflict of laws principles).
8. Important Information About Bank Products. I understand that: (a) I can file my federal income tax return electronically without obtaining a Bank Product; (b) the IRS will send me a refund check or electronically deposit my refund to my existing bank account; (c) the IRS normally makes an electronic deposit in an average of about 12 days after an electronic filing; (d) I will not receive the proceeds of a RAC or RPT until HSBC receives my tax refund from the IRS; (e) HSBC tries to make proceeds of an Instant RAL available on the day of application and a Classic RAL available on the first business day after application; (f) HSBC cannot guarantee when any proceeds of

a Bank Product or an IRS or state tax refund will be available to me; and (g) a RAL may cost substantially more than other sources of credit, and I may want to consider using other sources of credit.

9. **Deposit Authorization.** (a) After I sign my Application, my ERO and/or my Transmitter will electronically transmit my tax return to the IRS and my Application to HSBC. I understand that I will sign or authorize an IRS Transmittal Form 8453, IRS e-file signature authorization, and/or appropriate state deposit authorization form ("Deposit Authorization") as part of my Application and electronic tax filing, and that the Deposit Authorization and this Application provide an irrevocable agreement to have my tax refund disbursed to HSBC, and irrevocably transfers to HSBC all of my rights, title, and interest in the proceeds of my tax refund, for purposes of the Bank Product I have requested and other purposes authorized by this Application. (b) If my Deposit Authorization results in a state tax refund being received in my Refund Account, I agree that such refund may be disbursed to HSBC to pay any RAL I have obtained before being otherwise disbursed. (c) If My Application is denied or cancelled, and HSBC receives my tax refund, HSBC will forward to me promptly any proceeds of my refund after deducting amounts permitted by this Agreement. (d) If I apply for a RAL, and if for any reason, any part of the anticipated tax refund is disallowed or offset by the IRS, or if I should receive a refund check in the mail, I will advise HSBC immediately and promptly pay HSBC any amounts owing with respect to my Application or RAL, and pay my ERO any fees owed to them involving my tax return. If I apply for RAC or RPT, and in the event a RAC or RPT, is not issued, I still owe and agree to pay any fees owed to the ERO and refund account fees, and if a RAC or RPT is issued, you will look only to amounts received into the refund account, up to the amount of the RAC or RPT, as the consideration for the RAC or RPT.
10. **Refund Account.** (a) I request that a deposit account ("Refund Account") be opened at HSBC upon receipt of my tax refund for the purposes of ensuring the repayment of my Bank Product and other amounts described in the Documents. The Annual Percentage Yield and interest rate on the Refund Account will be 0%. This means I will not receive any interest on funds in the Refund Account. I understand I cannot make withdrawals from the Refund Account and that the funds in the Refund Account will be disbursed only as expressly provided in the Documents. (b) HSBC may deduct any amounts I owe HSBC, my ERO, my Transmitter or their affiliates from my tax refund, any funds received in the Refund Account, and any proceeds of a Bank Product. My engagement with the ERO for services in connection with my 2004 income tax return will end, and I am required to pay all fees to the ERO for services rendered by the ERO, when my Bank Product check is made available to me (or when HSBC electronically transfers my proceeds to me or to another entity at my direction). If a check or an electronic transfer of proceeds is not made available to me because I do not receive a tax refund, then I am required to pay all fees to the ERO for services rendered by the ERO on demand. HSBC also may withdraw amounts deposited into the Refund Account from my tax refund to pay any check I receive for a Bank Product that I endorse and present for payment or to disburse money to me in accordance with my Application. (c) I will not receive a periodic statement for the Refund Account, but I will receive notice if funds in the Refund Account are not sufficient to repay my Bank Product or are used for any purpose other than repayment of my Bank Product or disbursement to me. HSBC may, immediately after disbursement of all funds in the Refund Account, close the account without further notice to or authorization from me.
11. **Refund Account Fee.** I will pay HSBC a fee of \$27.95 if I apply for a Federal RAC or a RAL and receive my proceeds by check or through a stored value card, where available, or \$14.95 if I apply for a Federal RPT or a RAL and receive my proceeds by direct deposit, for the administration of the Refund Account and any disbursements to me from that account ("Refund Account Fee"). I irrevocably commit to pay the Refund Account Fee after the Deposit Authorization is filed with the IRS and regardless of whether (a) I apply for a Bank Product or (b) my Application is approved or denied. The Refund Account Fee is not imposed directly or indirectly as an incident to or condition of any extension of credit. I can avoid the Refund Account Fee if I direct that my tax refund not be deposited to HSBC before filing my Deposit Authorization with the IRS.
12. **Collections.** In consideration of the ease and convenience of the following method of paying any delinquent debt I owe or the other applicant owes to HSBC, HSBC Taxpayer Financial Services Inc. ("HSBC TFS"), my ERO or Transmitter for prior years, or Bank One, River City Bank, First Security Bank, Republic Bank or Santa Barbara Bank & Trust (the "Other RAL Lenders"), and provided that such debt has not been discharged in bankruptcy, I authorize and direct the repayment of such debt, calculated as of the date of my Application, by means of (a) having such debt deducted from the proceeds of my Bank Product, or (b) having my Application denied or the amount for which I have applied reduced and having such debt repaid to those entities by offset or otherwise from my tax refund directly transmitted into my Refund Account at HSBC. If I owe delinquent debt to more than one of the entities listed above, I authorize and direct HSBC to pay such debts in the following order, HSBC, HSBC TFS, Other RAL Lenders, and ERO. I also authorize and instruct HSBC and the Other RAL Lenders to disclose to each other information about their respective credit

**experiences concerning my present and prior Bank Products or similar financial services, and my prior tax returns.**

**PLEASE NOTE: If I have delinquent debt, I understand that HSBC or HSBC TFS may be acting as a debt collector hereunder to collect a debt and that any information obtained will be used for that purpose.**

13. **No Fiduciary/Agency Duty.** I understand that for various fees received, my ERO is acting only as my tax preparer (if applicable), my electronic filer, the deliverer of checks for Bank Products, or as the purchaser of an interest in certain Bank Products issued by HSBC (if applicable) with respect to this Bank Product transaction. I further understand that my ERO is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction and has no other duties to me beyond the preparation of my tax return (if applicable), the transmission of my tax return information to HSBC, the electronic filing of my tax return with the IRS, and the delivery of checks for Bank Products. I acknowledge that I have independently evaluated and decided to apply for a Bank Product, and that I am not relying on any recommendation from my ERO. I also understand that HSBC I not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction.
14. **Disclosure of Information.** (a) "Information" means my 2004 federal and state income tax returns, any information obtained in connection with my tax return (including information relating to a possible offset of my tax refund or the possibility that my tax return is incorrect), and any information relating to my Application or a Bank Product or similar financial service I have received or requested from HSBC. (b) "Authorized Parties" means HSBC, HSBC TFS, my ERO, my Transmitter, and their respective affiliates and agents, and includes the Fraud Service Bureau operated for HSBC. (c) The Authorized Parties may share Information to process my Application, to determine whether to provide a Bank Product, to provide Bank Products to me, to collect delinquent Bank Products or ERO fees, to prevent fraud, and to otherwise administer or promote the program for Bank Products. (d) The Authorized Persons may disclose Information to the IRS, state tax agencies and other financial institutions that provide Bank Products or other financial services. (e) The Authorized Parties may call, or input my information on any website of, the IRS or state tax agencies in connection with my Application to, among other things, determine the status of my tax return. The IRS and state tax agencies may disclose information about me and my tax returns to the Authorized Parties. (f) My ERO may not use or disclose Information for any purpose, except as permitted under Treas. Reg. Sec. 301.7216-2 or as provided in these Terms. (g) I consent to HSBC sharing information as provided in the Privacy Statement.
15. **Service Fees.** (a) Reissued Check Fee: I agree to pay \$10 each time that a check is reissued at my request for any reason. If I request that such a check be sent by overnight mail, I agree to pay the charges for sending it by overnight mail. (b) Document Fee: If I ask for a copy of my Application, loan agreement, billing statement or other document, I may be charged me \$10 per document.
16. **Arbitration Provision.** Any claim, dispute or controversy between me and HSBC (as specifically defined below for purposes of this Arbitration Provision), whether in contract or tort (intentional or otherwise), whether pre-existing, present or future, and including constitutional, statutory, common law, regulatory, and equitable claims in any way relating to (a) any of these or any other Documents or any RAC, RPT, or RAL that I have previously requested or received from HSBC, (b) advertisements, promotions, or oral or written statements related to this or any other Application for a RAL or RAC, RPT, or RAL that I have previously requested or received from HSBC, (c) the relationship of HSBC and me relating to any of these or any other Documents or any RAC, RPT, or RAL that I have previously requested or received from HSBC; and (d) except as provided below, the validity, enforceability or scope of this Arbitration Provision or any part thereof, including, but not limited to, the issue of whether any particular claim, dispute or controversy must be submitted to arbitration (collectively the "Claim"), shall be resolved, upon the election of either me or HSBC, by binding arbitration pursuant to this Arbitration Provision and the applicable rules of either the JAMS or the National Arbitration Forum ("NAF") in effect at the time the Claim is filed. I shall have the right to select one of these arbitration administrators (the "Administrator"). The arbitrator must be a lawyer with more than ten (10) years of experience or a retired or former judge. In the event of a conflict between this Arbitration Provision and the rules of the Administrator, this Arbitration Provision shall govern. In the event of a conflict between this Arbitration Provision and the balance of this Application or any other Documents, this Arbitration Provision shall govern.

HSBC hereby agrees not to invoke its right to arbitrate an individual Claim I may bring in small claims court or an equivalent court, if any, so long as the Claim is pending only in that court. No class actions or private attorney

general actions in court or in arbitration or joinder or consolidation of claims in court or in arbitration with other persons, are permitted without the consent of the parties hereto. The validity and effect of the preceding sentence (hereinafter referred to as the "class action waiver provision") shall be determined exclusively by a court and not by an arbitrator. Any arbitration hearing that I attend will take place in a location that is reasonably convenient for me. On any Claim I file, I will pay the first \$50.00 of the filing fee. At my request, HSBC will pay the remainder of the filing fee and any administrative or hearing fees charged by the Administrator, up to \$1,500.00 on any Claim asserted by me in the arbitration. If I should be required to pay any additional fees to the Administrator, HSBC will consider a request by me to pay all or part of the additional fees; however, HSBC shall not be obligated to pay any additional fees unless the arbitrator grants me an award. If the arbitrator grants an award in my favor, HSBC will reimburse me for any additional fees paid or owed by me to the Administrator up to the amount of the fees that would have been charged if the original Claim had been for the amount of the actual award in my favor. If the arbitrator issues an award in HSBC's favor, I will not be required to reimburse HSBC for any fees HSBC has previously paid to the Administrator or for which HSBC is responsible.

This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 (the "FAA"), and not by any state law concerning arbitration. The arbitrator shall follow and apply applicable substantive law to the extent consistent with the FAA, statutes of limitation and claims of privilege and shall be authorized to award all remedies permitted by applicable substantive law, including, without limitation, compensatory, statutory and punitive damages, declaratory, injunctive and other equitable relief and attorneys' fees and costs. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and the Administrator's rules. Upon request of either party, the arbitrator shall prepare a short reasoned written opinion supporting the arbitration award. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator's award will be final and binding except for: (a) any appeal right under the FAA; and (b) Claims involving more than \$100,000. For such Claims, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider de novo (i.e., in its entirety) any aspect or all aspects of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs (i.e., the amounts owed to the Administrator and the arbitrators), regardless of its outcome. However, HSBC will consider in good faith any reasonable request for HSBC to bear up to the full costs of the appeal. Nothing in this Arbitration Provision shall be construed to prevent HSBC's use of offset or other contractual rights involving payment of my income tax refund or other amount on deposit with HSBC to pay off any Bank Product or similar financial service, or ERO or other fees, now or thereafter owed by me to HSBC or any Other RAL Lender or ERO or third party pursuant to the Documents or similar prior documents.

I ACKNOWLEDGE THAT I HAVE A RIGHT TO LITIGATE CLAIMS IN COURT BEFORE A JUDGE OR JURY, BUT I PREFER TO RESOLVE ANY SUCH CLAIMS THROUGH ARBITRATION AND HEREBY KNOWINGLY AND VOLUNTARILY WAIVE MY RIGHTS TO LITIGATE SUCH CLAIMS IN COURT BEFORE A JUDGE OR JURY, UPON ELECTION OF ARBITRATION BY HSBC OR BY ME. I ACKNOWLEDGE THAT I WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS OR AS A PRIVATE ATTORNEY GENERAL PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION.

This Arbitration Provision shall supersede any prior Arbitration Provision contained in any previous Bank Product application or related agreement and shall survive repayment of any Bank Product and termination of my account; provided, however, that if I reject this Arbitration Provision as set forth below, all prior Arbitration Provisions shall remain in full force and effect. If any portion of this Arbitration Provision is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Provision.

To reject this Arbitration Provision, I must send HSBC, c/o HSBC Taxpayer Financial Services Inc., Account Research, P.O. Box 18097, Jacksonville, FL 32229, a signed writing ("Rejection Notice") that is received within thirty (30) days after the date I sign this Application. The Rejection Notice must identify the transaction involved and must include my name, address, and social security number and must be signed by all persons signing this Application as Applicant(s). I may send the Rejection Notice in any manner I see fit as long as it is received at the specified address within the specified time. No other methods can be used to reject the Arbitration Provision. If the Rejection Notice is sent on my behalf by a third party, such third party must include evidence of his or her authority to submit the Rejection Notice on my behalf.

As used in this Arbitration Provision, the term "HSBC" shall mean HSBC Bank USA, National Association, the Custodian, HSBC TFS, Household Bank, f.s.b., and Beneficial National Bank, and each of their parents, wholly or

majority-owned subsidiaries, affiliates, predecessors, and successors, and each of their officers, directors, and employees.

Contacting Arbitration Administrators: If I have a question about the arbitration administrators mentioned in this Arbitration Provision or if I would like to obtain a copy of their arbitration rules, I can contact them as follows: JAMS, 45 Broadway, 28<sup>th</sup> Floor, New York, NY 10017, [www.jamsadr.com](http://www.jamsadr.com); National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405, [www.arb-forum.com](http://www.arb-forum.com).

17. Advance RAL. If I have an outstanding Advance RAL, I instruct HSBC to pay off the Advance RAL by deducting the amount I owe from my tax refund.
18. Survival. The provisions of the Application and Terms shall survive the execution of the Loan Agreement and Disclosure Statement and the disbursement of funds.
19. Miscellaneous. (a) References to "I" or "me" or "my" in the Documents shall refer individually to each applicant for a Bank Product and to both applicants, and the obligations of such individuals under the Documents will be joint and several. (b) If any provision of the Documents or part thereof is deemed invalid, such invalidity will not affect any other provision of the Documents or part thereof. (c) HSBC may obtain a consumer report on me, and other information from third parties, in connection with evaluating my Application, or collecting or reviewing my Bank Product or accounts. (d) HSBC may assign all or a portion of any rights or obligations relating to a Bank Product to a third party, including HSBC TFS, my ERO, an affiliate of my ERO, a franchiser of my ERO, or an affiliate of HSBC, without notice to me or my consent. (e) Supervisory personnel of HSBC or its agents may listen to and record my telephone calls.
20. State Notices. **California residents:** Married persons may apply for a separate account. **Iowa Residents:** NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with the law. **New York residents:** Consumer reports may be requested in connection with this account or any updates, renewals, or extensions thereof. Upon my request, HSBC will inform me of the names and addresses of any consumer reporting agencies which have provided HSBC with such reports. **Ohio residents:** The Ohio law against discrimination requires that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights commission administers compliance with these laws. **Pennsylvania residents:** If this loan becomes in default, HSBC or its assignee intends to collect default charges. **Utah residents:** Any prepaid finance charge not exceeding 5% of the original amount of the loan shall be fully earned on the date the loan is extended, and shall be nonrefundable in the event the loan is repaid prior to the date it is due. Any additional prepaid finance charge is earned proportionally over the term of the loan, and, in the event of such prepayment, the unearned portion of such charge, calculated on a pro rata basis according to the remaining term of the loan, shall be refunded. **Wisconsin residents:** No provision of a marital property agreement, a unilateral statement under Wisconsin Stats. s. 766.59 or a court decree under Wisconsin Stats. s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred. All obligations described herein are being incurred in the interest of my marriage or family. **A married Wisconsin resident applicant must mail the name and address of his or her spouse, as well as the applicant's name and social security number to HSBC c/o HSBC Taxpayer Financial Services, 200 Somerset Corporate Blvd., Bridgewater, NJ 08807, within two days.** For state qualification purposes, HSBC may also be known under its dba, Imperial Thrift and Loan Association.

21. Certification.

If I am requesting a RAL, I certify that the following information is true with respect to the RAL I am requesting; (1) I do not owe any tax due and/or any tax liens from prior tax years, nor have I previously filed a 2004 federal income tax return. (2) I do not have any delinquent child support, alimony payments, student loans, V.A. loans or other federally sponsored loans. (3) Presently, I do not have a petition (whether voluntary or involuntary) filed nor do I anticipate filing a petition under federal bankruptcy laws. (4) I have not had a RAL with any lender, from a prior year that has been discharged in bankruptcy. (5) I have not paid any estimated tax and/or did not have any amount of my 2003 refund applied to my 2004 tax return. (6) I am not presently making regular payments to the IRS for prior year unpaid taxes. (7) I do not have a Power of Attorney presently in effect or on file with the Internal Revenue Service ("IRS") to direct my federal income tax refund to any third party. (8) I am not filing a 2004 federal income tax return using a substitute W-2, Form 4852, or any other form of substitute wage and tax documentation,

unless the source of the Form 4852 is a Military Leave and Earnings Statement. (9) I am not filing a Form 8862 (Earned Income Credit Eligibility) with my 2004 federal income tax return. (10) I am not currently incarcerated in a state or federal prison nor do I have 2004 income earned while an inmate at a penal institution and claiming the Earned Income Credit. (11) The 2004 income I have reported is not solely from Schedule C or C-EZ (Profit or Loss from Business). (12) If Schedule C is present, EIC claimed, and return is self-prepared or other prepared, I am a statutory employee and the W-2 indicates statutory employee in Box 15. (13) I am not filing Form 8379 (Injured Spouse Claim & Allocation) with my 2004 federal income tax return. (14) I am not filing Form 1310 (Statement of Person Claiming Refund Due Deceased Taxpayer) with the 2004 federal income tax return or filing a federal income tax return Form 1040 on behalf of deceased taxpayer. (15) I do not have an amount paid with request for an extension to file on Line 68, Field 1190 of Form 1040. (16) Everything that I have stated in this Application is correct.

If I am requesting a RAC or RPT, I certify that the following is true: (1) Presently, I do not have a petition (whether voluntary or involuntary) filed nor do I anticipate filing a petition under federal bankruptcy laws. (2) I have not had a RAL with HSBC, or any other RAL lender, from a prior year that has been discharged in bankruptcy. (3) Everything that I have stated in this Application is correct.



**HSBC TAXPAYER FINANCIAL SERVICES DIVISION OF HSBC BANK USA, NATIONAL  
ASSOCIATION  
Privacy Statement**

**Applicability**

This Privacy Statement only applies to customers' accounts with the HSBC Taxpayer Financial Services division of HSBC Bank USA, National Association ("HSBC"). All other HSBC accounts are governed by the HSBC Bank, USA National Association Personal Banking Policy.

**Introduction — Our Commitment to You**

HSBC is proud to be part of a financial services organization that has been providing superior products and services to its customers for many years. We greatly appreciate the trust that you and millions of customers have placed in us, and we will protect that trust by continuing to respect the privacy of all our applicants and customers even if our formal customer relationship ends.

**How We Handle Information we Obtain**

It is important for you to know that in order to ensure that our customers get the very best service and the highest quality products, HSBC collects demographic information (like your name and address) and credit information (like information related to your accounts with us and others). This information comes either directly from you, for instance, from your application and, transactions on your account; or, it may come from an outside source such as your credit bureau report. In addition, if you visit our Internet web site, we may collect certain information about your Internet usage.

Because some of the information we gather is not publicly available, we take great care to ensure that this information is kept safe from unauthorized access, and we would never share the information in violation of any regulation or law. Because we respect your privacy and we value your trust, the only employees or companies who can access your private personal information are those who use it to service your account or provide services to you or to us. HSBC diligently maintains physical, electronic and procedural safeguards that comply with applicable federal standards to guard your private personal information and to assist us in preventing unauthorized access to that information.

**How We Share Information with Companies Affiliated with Us**

From time to time, for general business purposes such as fraud control, or when we think it may benefit you, we do share certain information with our affiliated companies, except as prohibited by applicable law. These affiliated companies all provide financial services, such as banking, consumer finance, insurance, mortgage, and brokerage services. Some examples include companies doing business under the names Household, Beneficial, or HSBC. We may also share certain information with non-financial service providers that become affiliated with us in the future (such as travel, auto, or shopping clubs), except as prohibited by applicable law. The information we share might come from your application, for instance your name, address, telephone number, social security number, and e-mail address. Also, the information we share could include your transactions with us or our affiliated companies (such as your account balance, payment history, and parties to the transaction), your Internet usage, or your credit card usage. Except for Vermont residents, the information we share could also include your assets, income, or credit reports.

**How We Share Information under a Joint Marketing Agreement**

We may also provide information to non-affiliated financial companies (such as a tax preparer, mortgage banker or insurance service provider) with whom we have a joint marketing agreement. The sharing of information with these types of companies is permitted by law. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

**How We Share Information with Other Third Parties**

Except for California or Vermont residents, we also may share information with non-affiliated companies that are able to extend special offers we feel might be of value to you. These companies may be financial services providers (such as mortgage bankers or insurance agents) or they may be non-financial companies (such as retailers, tax preparers, or marketing companies). These offers are typically for products and services that you might not otherwise bear about. The information we may provide them comes from the sources described above and might include your name, address and phone number. You may tell us not to share information with non-affiliated companies in this way by completing the form below. For California and Vermont residents, applicable law requires

us to obtain your permission in order to share information about you in this way, and we have chosen not to share your information in this way.

We may also provide information to non-affiliated companies that perform operational, collection, or fraud control services related to your account. The sharing of information with these types of companies is permitted by law. Such a company might include a financial company (such as an insurance service provider) or a non-financial company (such as a data processor or internet service provider) with whom we have an agreement. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

Finally, we provide information about you to non-affiliated companies such as credit reporting agencies and companies which provide services related to your account. This information sharing is also permitted by law.

We reserve the right to change our privacy practices at any time in accordance with applicable law. Notice of such changes will be provided if required by applicable law.

**How to Opt-Out (non-affiliated companies) (Applicable to residents of all states except California and Vermont)**

If you do not want us to share your private information with non-affiliated companies (unless we are permitted or required by law to do so), please let us know by simply calling 1-800-365-2641. If you have previously informed us of your preference, you do not need to do so again. We will be happy to comply with your "opt-out" request, which will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account. Opt-out requests will not apply to information sharing that is permitted by law. Please allow sufficient time for us to process your request.

**How to Opt-Out (affiliated companies) (Applicable to residents of all states except Vermont)**

If you do not want us to share your credit information (such as your credit bureau information) with companies that are affiliated with us, please let us know by simply calling 1-800-365-2641. If you have previously informed us of your preference, you do not need to do so again. This request will not apply to information about your transactions or experience with HSBC (such as account information, account usage, or payment history), except as required by law, and will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account.

---

Atencòin clientes hispanoparlantes: Esta Declaraciòn Sobre la Privacidad proporciona informaciòn sobre còmo manejamos informaciòn personal no publica acerca de nuestors clientes, las circunstancias bajo las cuales podemos compartir tal informaciòn con otras personas, y còmo usted puede pedir que no compartamos esa informaciòn con terceros que no sean afiliados nuestros. Si quisiers que le proporcionemos una traducciònal español de la Declaraciòn Sobre la Privacidad en su totalidad, sirvase comunicarse con nosotros llamàndonos gratis al 1-800-365-

**[Insert this line and language at the end of the application.]**

---

By signing below I am indicating that I have read, understand and agree to the terms set forth in this Application, including: (a) Section 12 in which I agree that HSBC may use amounts received from my tax refund to pay delinquent debts I owe HSBC or others; and (b) Section 16 in which I agreed, upon my or HSBC's election, to arbitrate any Claims that I may have. I also acknowledge that I have 30 days from today's date to reject the Arbitration Provision by following the procedure described in Section 16. If I receive a RAL, I promise to pay the amount set forth in the "Total of Payments" section on my Loan Agreement and Disclosure Statement or subsequent replacement TILA Disclosure Statement, if any, on the earlier of (a) on demand, (b) when the anticipated refund from the IRS is electronically deposited into my deposit account with HSBC, or (c) 24 days after my loan is approved if I receive my proceeds on a stored value card and if my anticipated tax refund has not been received in full by that date, and I agree to repay the RAL whether or not my tax refund is paid in whole or in part to HSBC.

\_\_\_\_\_  
(Applicant — Primary Taxpayer Signature)

\_\_\_\_\_  
(Joint Applicant — Spouse Signature, If Joint Return)

I certify that I have received my cashier's check(s) \_\_\_\_\_ from HSBC on \_\_\_\_\_.  
(Check #) (Date)

\_\_\_\_\_  
(Client's Signature)

I certify that I have received my cashier's check(s) \_\_\_\_\_ from HSBC on \_\_\_\_\_.  
(Check #) (Date)

\_\_\_\_\_  
(Client's Signature)

HSBC Taxpayer Financial Services Toll-Free Customer Service Number 1-800-524-0628 or visit us on the web at [hsbctfs.com](http://hsbctfs.com) for more information.

---

**LOAN AGREEMENT AND DISCLOSURE STATEMENT**

In this Loan Agreement and Disclosure Statement ("Agreement"), "RAL" means a Refund Anticipation Loan, "HSBC" means HSBC Bank USA, National Association, "I", "me" and "my" means each person who has applied to HSBC for a RAL. "ERO" means my electronic return originator. "HSBC TFS" means HSBC Taxpayer Financial Services Inc.

Truth in Lending Act ("TILA") Disclosure Statement

---

**THE FOLLOWING DISCLOSURE BOX IS APPLICABLE ONLY IF MY TOTAL RAL IS IN THE AMOUNT SPECIFIED IN ITEM 3 AND I RECEIVE NO FURTHER ADVANCE.**

1. Amount Financed (the amount of credit provided to me or on my behalf)	\$ _____(e)
2. FINANCE CHARGE (the dollar amount the credit will cost me)	\$ _____(e)
3. Total of Payments (the amount I will have paid after I have made all payments as scheduled)	\$ _____(e)
4. ANNUAL PERCENTAGE RATE (the cost of my credit as a yearly rate)	_____%(e)

“e”= estimate

If line is left blank, amount if “0”

**THE FOLLOWING DISCLOSURE BOX IS APPLICABLE IF MY TOTAL RAL EQUALS THE LESSER OF A) MY FEDERAL TAX REFUND OR B) \$7000. HOWEVER, IF IT IS SUBSEQUENTLY DETERMINED THAT I AM APPROVED FOR A TOTAL RAL IN AN AMOUNT DIFFERENT THAN THE AMOUNT SPECIFIED IN ITEM 3 BELOW, I WILL RECEIVE A REPLACEMENT SET OF TRUTH IN LENDING DISCLOSURES.**

1. Amount Financed (the amount of credit provided to me or on my behalf)	\$ _____(e)
2. FINANCE CHARGE (the dollar amount the credit will cost me)	\$ _____(e)
3. Total of Payments (the amount I will have paid after I have made all payments as scheduled)	\$ _____(e)
4. ANNUAL PERCENTAGE RATE (the cost of my credit as a yearly rate)	_____%(e)

“e”= estimate

If line is left blank, amount is “0”

Creditor: My creditor is HSBC Bank USA, National Association.

Demand Feature: My loan will be repayable on the earlier of (a) on demand, (b) when the anticipated tax refund is electronically deposited in my Refund Account with HSBC, or (c) 24 days after my loan is approved if I receive my proceeds on a stored value card and if my anticipated tax refund has not been received in full by that date.

Payment Schedule: HSBC estimates that the total loan amount will be due in a single payment approximately 12 days from the date of this Agreement.

Security Interest: I am providing HSBC with a security interest in my tax refund payment by the IRS and/or any state taxing authority, in all funds deposited in the Refund Account, and, except for Virginia residents, in that Refund Account.

Late Charge: A late charge equal to 1.5% of the unpaid Total of Payments may be imposed on the date 35 days after payment of my loan is demanded, and on the same date of each succeeding month (or if there is no such date, the last date of the month).

Prepayment: If I pay off early, I will not be entitled to a refund of part or all of the Finance Charge.

Contract Reference: Refer to the Application and the Loan Agreement for additional information about nonpayment, default, any right to accelerate the maturity of the obligation, and any prepayment rebates or penalties.

Required Deposit: The Annual Percentage Rate does not take into account my required deposit.

**THE FOLLOWING ITEMIZATION OF AMOUNT FINANCED IS APPLICABLE ONLY IF MY TOTAL RAL IS IN THE AMOUNT SPECIFIED IN ITEM 14 AND I RECEIVE NO FURTHER ADVANCE.**

Itemization of Amount Financed

1. Amount paid directly to me	\$ _____(e)
2. Amount paid for my Refund Account Fee to HSBC	\$ _____
3. Amount paid for Tax Prep to [ERO Name]	\$ _____
4. Amount paid for Debt owed to [ ERO Name ]	\$ _____
5. Amount paid to [Transmitter Name]	\$ _____
6. Amount paid to [Service Bureau Name]	\$ _____
7. Amount paid for Doc Prep to [ERO]	\$ _____
8. Amount paid for E-filing to [ERO Name]	\$ _____
9. Amount paid for _____ to [Name]	\$ _____
10. Amount paid for _____ to HSBC	\$ _____
11. Amount paid previously to me for an Instant RAL	\$ _____
12. Amount Financed (Items 1+2+3+4+5+6+7+8+9+10+11)	\$ _____(e)
13. Total Prepaid <b>FINANCE CHARGE</b> (RAL Fee to HSBC)	\$ _____(e)
14. Total RAL (Items 12+13)	\$ _____

\_\_\_\_\_  
“(e)”=estimate

If line is left blank, amount is “0”

**THE FOLLOWING ITEMIZATION OF AMOUNT FINANCED IS APPLICABLE IF I RECEIVE A SUBSEQUENT ADVANCE. HOWEVER, IF IT IS SUBSEQUENTLY DETERMINED THAT I AM APPROVED FOR A RAL IN AN AMOUNT DIFFERENT THAN THE AMOUNT SPECIFIED IN ITEM 14 BELOW, I WILL RECEIVE A REPLACEMENT ITEMIZATION OF AMOUNT FINANCED WITH MY CHECK.**

Itemization of Amount Financed

1. Amount paid directly to me	\$ _____(e)
2. Amount paid for my Refund Account Fee to HSBC	\$ _____
3. Amount paid for Tax Prep to [ERO Name]	\$ _____
4. Amount paid for Debt owed to [ERO Name]	\$ _____
5. Amount paid to [Transmitter Name]	\$ _____
6. Amount paid to [Service Bureau Name]	\$ _____
7. Amount paid for Doc Prep to [ERO]	\$ _____
8. Amount paid for E-filing to [ERO Name]	\$ _____
9. Amount paid for to [Name]	\$ _____
10. Amount paid for _____ to HSBC	\$ _____
11. Amount paid previously to me for an Instant RAL	\$ _____
12. Amount Financed (Items 1+2+3+4+5+6+7+8+9+10+11)	\$ _____(e)
13. Total Prepaid FINANCE CHARGE (RAL Fee to HSBC)	\$ _____(e)
14. Total RAL (Items 12+13)	\$ _____

\_\_\_\_\_  
“(e)”=estimate

If line is left blank, amount is “0”

Loan Agreement

1. Obligation on RAL.

(a) I am obligated, on the date I sign this Agreement, to accept a RAL if HSBC approves my Application, unless HSBC approves me for a smaller RAL than the amount set forth in the Total of Payments section in the TILA Disclosure Statement above. If I am approved for a smaller RAL, I will be provided with a replacement TILA Disclosure Statement and I will be obligated to accept the smaller RAL if I accept the RAL proceeds check. My loan will begin, and HSBC will earn the finance charge, when I am approved for the RAL and the proceeds check is made available or a transfer is initiated to my bank account.

(b) I may cancel my RAL transaction, or my obligation to accept a RAL, for up to 48 hours after I become obligated to accept the RAL. To do so, I must return to HSBC or the office where I received my RAL proceeds check any check I have received (or cash in the amount of the RAL proceeds check if I have cashed the check or received a transfer to my bank account), and comply with other requirements set by HSBC. I understand that, if I use my right to cancel, my finance charge will be refunded to me, HSBC will provide me with any tax refund only after HSBC receives the refund from the IRS, and I must still pay a Refund Account Fee.

2. Security Interest. If I receive a RAL, I grant HSBC a security interest in the property described in the TILA Disclosure Statement as collateral for my obligations to repay the RAL and perform my other obligations under the Application and this Agreement.

3. Deductions. My Prepaid Finance Charge, transmitter fees, Refund Account Fee, fees for the completion and electronic filing of my income tax return by my ERO, and fee for document preparation shall be deducted from the proceeds of my RAL.

4. Other Charges. (a) I agree to pay a returned check charge of \$19 if any check or similar instrument I give HSBC is not honored, (b) I agree to pay a late charge as described in the TILA Disclosure Statement if I do not repay my loan when due. (c) In the event that I pay my account by telephone, I agree to pay up to a \$10 fee for each such payment HSBC reserves the right to change such fee from time to time. I may call Customer Service for a current fee schedule. (d) I also agree to pay any attorney's fees and collection agency costs incurred by HSBC or its affiliates to collect any delinquent RAL as permitted by law.

5. Instant RAL. If I receive an Instant RAL, and if the electronic filing of my return is rejected by the Internal Revenue Service ("IRS"), I authorize my ERO to insert my Refund Account number at HSBC, together with HSBC's routing transit number, on my signed paper returns and mail them to the IRS.

6. Application of Payments. Each payment I make on the RAL will be applied in any order determined by HSBC.

BY SIGNING BELOW, I AGREE TO THE TERMS OF THIS LOAN AGREEMENT, AND TO THE APPLICATION, WHICH INCLUDES AN ARBITRATION CLAUSE WHICH MAY SUBSTANTIALLY LIMIT MY RIGHTS IN THE EVENT OF A DISPUTE. I ALSO ACKNOWLEDGE RECEIVING A COMPLETED COPY OF THIS LOAN AGREEMENT AND DISCLOSURE STATEMENT.

**CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.**

**NOTICE TO CUSTOMER**

**(a) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.**

**(b) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.**

**(c) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant (Seal)

\_\_\_\_\_  
Signature of Joint Applicant (Seal)



APPLICATION FOR  
AN ELECTRONIC REFUND ADVANCE LOAN AND TO OPEN A DEPOSIT ACCOUNT

System Protected by U.S. Patent Nos. 4,890,228,5,193,057, and 5,963,921

This Application is submitted to HSBC Bank USA, National Association ("HSBC") for an Electronic Refund Advance Loan ("ERA") and a Refund Account. As used herein, "BFC" means Block Financial Corporation and its parents, subsidiaries and affiliates; "HSBC TFS" means HSBC Taxpayer Financial Services Inc.; "IRS" means the Internal Revenue Service; and "RAL" means a refund anticipation loan.

**1. INFORMATION**

I understand and confirm that the name, home address, mailing address, social security/taxpayer identification number, and date of birth which I entered into the personal information and address sections of the online tax preparation product are true and correct and are incorporated in this Application by this reference as the name, home address, mailing address, social security/taxpayer identification number, and date of birth of each applicant.

**2. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY, AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT. WHAT THIS MEANS FOR ME: WHEN I OPEN AN ACCOUNT, YOU WILL ASK FOR MY NAME, ADDRESS, DATE OF BIRTH, AND OTHER INFORMATION THAT WILL ALLOW YOU TO IDENTIFY ME. YOU MAY ALSO SEEK TO VERIFY MY IDENTITY THROUGH NON-DOCUMENTARY METHODS.**

**3. Payment Instructions**

- A. If I receive an ERA, I understand I am to receive my ERA proceeds via direct deposit into the bank account that I will designate on the Direct Deposit screen of this online tax preparation product application during the Electronic Filing process, and I authorize HSBC to direct deposit my funds to that designated account.
- B. If my refund is greater than my ERA, I understand I am to receive my excess funds via direct deposit into the bank account that I previously designated on the Direct Deposit screen of this online tax preparation product application and I authorize HSBC to direct deposit my funds to that designated account.

**4. HSBC ERA DISCLOSURE STATEMENT:**

The FINANCE CHARGE for my ERA is set forth on my Truth in Lending Disclosure. I know that even if my ERA is denied, I am responsible for my electronic filing, as applicable. I am also responsible for the repayment of my ERA whether or not my tax refund is paid to my account with HSBC in whole or in part. I understand that my income tax return can be filed electronically without obtaining an ERA and, subject to IRS processing, the usual time within which I can expect to receive a refund check if I file electronically and without an ERA is within approximately three weeks from the date I file my return. The IRS normally makes an electronic deposit to an average of about 12 days after an electronic filing. Alternatively, if I elect to obtain and am approved for an ERA, the loan proceeds usually will be made available to me within approximately 1-2 days of my loan application.

The usual duration of an ERA is approximately 11 days from the date of approval of the ERA. The following are examples of the estimated ANNUAL PERCENTAGE RATE ("APR") and ERA FINANCE CHARGES on ERAs of varying amounts based on 11-day maturity periods. Because the APR on an ERA may be high in certain cases relative to other sources of credit, I understand that it may cost less to use such sources; e.g., credit cards, equity lines, etc., instead of an ERA.

Example Loan Amount	\$ 500	\$ 750	\$ 1,000	\$ 1,500	\$ 2,000	\$ 3,000	\$ 4,000	\$ 5,000
ERA Finance Charge *	\$ 18	\$ 28	\$ 28	\$ 58	\$ 58	\$ 88	\$ 98	\$ 98
Estimated Annual Percentage Rate	124% <sup>e</sup>	129% <sup>e</sup>	96% <sup>e</sup>	133% <sup>e</sup>	99% <sup>e</sup>	100% <sup>e</sup>	8.3% <sup>e</sup>	66% <sup>e</sup>

\* I understand I will be given disclosures which will show the actual finance charge and other charges applicable to my ERA transaction. "e" = estimate

5. Applicable Law. This Application and all the other documents executed in connection with this Application or my ERA (collectively, "Documents"), shall be governed by and construed, interpreted, and enforced in accordance with federal law and, to the extent state law applies, the law of the state of Delaware (without reference to conflict of laws principles).
6. Important Information About ERAs. I understand that: (a) I can file my federal income tax return electronically without obtaining an ERA; (b) the IRS will send me a refund check or electronically deposit my refund to my existing bank account; (c) the IRS normally makes an electronic deposit in an average of about 12 days after an electronic filing; (d) HSBC tries to initiate the direct deposit of proceeds of an ERA on the first business day after application; (e) HSBC cannot guarantee when any proceeds of an ERA will be available to me; and (f) a ERA may cost substantially more than another type of loan I might obtain.
7. Deposit Authorization. (a) After I submit my Application, BFC will electronically transmit my tax return to the IRS and my Application to HSBC. I understand that I will authorize or agree to an IRS Transmittal Form 8453 or IRS e-file signature authorization ("Deposit Authorization") as part of my Application and electronic tax filing, and that the Deposit Authorization and this Application provide an irrevocable agreement to have my tax refund disbursed to HSBC, and irrevocably transfers to HSBC all my rights, title, and interest in the proceeds of my tax refund for purposes of the ERA I have requested and other purposes authorized by this Application. (b) If my Application is denied or cancelled, and HSBC receives my tax refund, HSBC will forward to me promptly any proceeds of my refund after deducting amounts permitted by this Agreement. (c) If for any reason, any part of the anticipated tax refund is disallowed or offset by the IRS, or if I should receive a refund check in the mail, I will advise HSBC immediately and promptly pay HSBC any amounts owing with respect to my Application or an ERA, and pay BFC any fees owed to them involving my tax return.
8. Refund Account. (a) I request that a deposit account be opened ("Refund Account") at HSBC upon receipt of my tax refund for the purposes of ensuring the repayment of my ERA and other amounts described in the Documents. The Annual Percentage Yield and interest rate on the Refund Account will be 0%. This means I will not receive any interest on funds in the Refund Account. I understand that I cannot make withdrawals from the Refund Account and that the funds in the Refund Account will be disbursed only as expressly provided in the Documents. (b) HSBC may deduct any amounts I owe HSBC or BFC from my tax refund, any funds received in the Refund Account, and any proceeds of an ERA. I am required to pay all fees to BFC for services rendered by BFC when HSBC electronically transfers my proceeds to me. If an electronic transfer of proceeds is not made available to me because I do not receive a tax refund, then I am required to pay all fees to BFC for services rendered by BFC on demand. HSBC also may withdraw amounts deposited into the Refund Account from my tax refund to disburse money to me in accordance with my Application, (c) I will not receive a periodic statement for the Refund Account, but I will receive notice if funds in the Refund Account are not sufficient to repay my ERA or are used for any purpose other than repayment of my ERA or disbursement to me. HSBC may, immediately after disbursement of all funds in the Refund Account, close the account without further notice to or authorization from me.
9. Refund Account Fee. I will pay HSBC a fee of \$11.95 for the administration of the Refund Account and any disbursements to me from that account ("Refund Account Fee"). I am obligated to pay the Refund Account Fee after the Deposit Authorization is filed with the IRS and is imposed regardless of whether (a) I apply for an ERA or (b) my Application is approved or denied. The Refund Account Fee is not imposed directly or indirectly as an incident to or condition of any extension of credit. I can avoid the Refund Account Fee if I direct that my tax refund not be deposited to HSBC before filing my Deposit Authorization with the IRS.
10. Collections. In consideration of the ease and convenience of the following method of paying any delinquent debt I owe or the other applicant owes to HSBC, HSBC TFS, my electronic return originator ("ERO") for prior year, BFC, or Bank One, River City Bank, First Security Bank, Republic Bank or Santa Barbara Bank & Trust (the "Other ERA or RAL Lenders"), and provided that such debt has not been discharged in bankruptcy, I authorize and direct the repayment of such debt, calculated as of the date of my Application, by means of (a) having such debt deducted from the proceeds of my ERA, or (b) having my request for an ERA denied or the amount for which I have applied reduced and having such debt repaid to those entities by offset or otherwise from my tax refund directly transmitted into my Refund Account at HSBC. If I owe delinquent debt to more than one of the entities listed above, I authorize and direct HSBC to pay such debts in the following order: HSBC, HSBC TFS, Other ERA or RAL Lenders, ERO, and BFC, I also authorize and instruct HSBC and the Other ERA or RAL Lenders to disclose to each other Information about their respective credit experiences concerning my present and prior ERAs, refund anticipation loans ("RALs"), or similar financial services, and my prior tax returns.

PLEASE NOTE: If I have delinquent debt, I understand that HSBC or HSBC TFS may be acting as a debt collector hereunder to collect a debt and that any information obtained will be used for that purpose.

11. No Fiduciary/Agency Duty. I understand that BFC is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction and has no other duties to me beyond the transmission of my tax return information to HSBC, and the electronic filing of my tax return with the IRS and/or state taxing authority. I understand that BFC or an affiliate of BFC has the right to purchase an interest in my ERA issued by HSBC. I further understand that BFC or an affiliate of BFC may receive payments from HSBC or its affiliates in connection with ERAs. I also understand that HSBC is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction.
12. Disclosure Information. (a) "Information" means my federal and state income tax returns for the tax year 2004, any information obtained in connection with my tax return (including information relating to a possible offset of my tax refund or the possibility that my tax return is incorrect), and any information relating to my Application for an BRA or similar financial service I have received or requested from HSBC. (b) "Authorized Parties" means HSBC, HSBC TFS, BFC, my Transmitter, and their respective affiliates and agents, and includes the Fraud Service Bureau) operated for HSBC. (c) The Authorized Parties may share Information to process my Application, to provide ERAs to me, to collect delinquent ERAs or BFC fees, to prevent fraud, and to otherwise administer or promote the program for ERAs. (d) The Authorized Parties may disclose Information to the IRS, state tax agencies and other financial institutions that provide ERAs or other financial services. (e) The Authorized Parties may call, or input my Information on any website of, the IRS or state tax agencies in connection with my Application to, among other things, determine the status of my tax return. The IRS and state tax agencies may disclose information about me and my tax returns to the Authorized Parties, (f) BFC may not use or disclose Information for any purpose, except as permitted under Treas. Reg. Sec. 301.7216-2 or as provided herein. (g) I consent to HSBC sharing information as provided in the Privacy Policy set forth in Section 18. (g) HSBC will be my creditor.
13. Service Fees. (a) Reissued Check Fee: I agree to pay \$10 each time that a check is reissued at my request for my reason. If I request that such a check be sent by overnight mail, I agree to pay the charges for sending it by overnight mail. (b) Document Fee: If I ask for a copy of my Application, loan agreement, billing statement or other document, I may be charged \$ 10 per document.
14. Arbitration Provision. Any claim, dispute or controversy between me and HSBC (at specifically defined below for purposes of this Arbitration Provision), whether in contract or tort (intentional or otherwise), whether pre-existing, present or future, and including constitutional, statutory, common law, regulatory, and equitable claims in any way relating to (a) any of these or any other Documents or any ERA that I have previously requested or received from HSBC, (b) advertisements, promotions, or oral or written statements related to this or any other Application for a RAL or any ERA that I have previously requested or received from HSBC, (c) the relationship of HSBC and me relating to any of these or any other Documents or any ERA that I have previously requested or received from HSBC; and (d) except as provided below, the validity, enforceability or scope of this Arbitration Provision or any part thereof, including, but not limited to, the issue whether any particular claim, dispute or controversy must be submitted to arbitration (collectively the "Claim"), shall be resolved, upon the election of either me or HSBC, by binding arbitration pursuant to this Arbitration Provision and the applicable rules of the American Arbitration Association ("AAA") or the National Arbitration Forum ("NAF") in effect at the time the Claim is filed. I shall have the right to select one of these arbitration administrators (the "Administrator"). The arbitrator must be a lawyer with more than ten (10) years of experience or a retired or former judge. In the event of a conflict between this Arbitration Provision and the rules of the Administrator, this Arbitration Provision shall govern. In the event of a conflict between this Arbitration Provision and the balance of this Application or any other Documents, this Arbitration Provision shall govern. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any organization that has in place a formal or informal policy that is inconsistent with and purports to override the terms of this Arbitration Provision, including the Class Action Waiver Provision defined below.

HSBC hereby agrees not to invoke its right to arbitrate an individual Claim I may bring in small claims court or an equivalent court, if any, so long as the Claim is pending only in that court. No class actions or private attorney general actions in court or in arbitration or joinder or consolidation of claims in court or in arbitration with other persons, are permitted without the consent of HSBC and me. The validity and effect of the preceding sentence (herein referred to as the "Class Action Waiver Provision") shall be determined exclusively by a court and not by the Administrator or any arbitrator. Neither the Administrator nor any arbitrator shall have the power or authority to

waive, modify or fail to enforce the Class Action Waiver Provision, and any attempt to do so, whether by role, policy, arbitration decision or otherwise, shall be invalid and unenforceable.

Any arbitration hearing that I attend will take place in a location that is reasonably convenient for me: On any Claim I file, I will pay the first \$50.00 of the filing fee. At my request, HSBC will pay the remainder of the filing fee and any administrative or hearing fees charged by the Administrator, up to \$1,500.00 on any Claim asserted by me in the arbitration. If I should be required to pay any additional fees to the Administrator, HSBC will consider a request by me to pay all or part of the additional fees; however, HSBC shall not be obligated to pay any additional fees unless the arbitrator grants me an award. If the arbitrator grants an award in my favor, HSBC will reimburse me for any additional fees paid or owed by me to the Administrator up to the amount of the fees that would have been charged if the original Claim had been for the amount of the actual award in my favor. If the arbitrator issues an award in HSBC's favor, I will not be required to reimburse HSBC for any fees HSBC has previously paid to the Administrator or for which HSBC is responsible.

This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 (the "FAA"), and not by any state law concerning arbitration. The arbitrator shall follow and apply applicable substantive law to the extent consistent with the FAA, statutes of limitation and claims of privilege and shall be authorized to award all remedies permitted by applicable substantive law, including, without limitation, compensatory, statutory and punitive damages, declaratory, injunctive and other equitable relief and attorneys' fees and costs. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the Administrator's rules. Upon request of either party, the arbitrator shall prepare a short reasoned written opinion supporting the arbitration award. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator's award will be final and binding except for: (a) any appeal right under the FAA; and (b) any appeal of Claims involving more than \$100,000. For such Claims, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider de novo (i.e., in its entirety) any aspect or all aspects of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs (i.e., the amounts owed to the Administrator and the arbitrators), regardless of its outcome. However, HSBC will consider in good faith any reasonable request for HSBC to bear up to the full costs of the appeal. Nothing in this Arbitration Provision shall be construed to prevent HSBC's use of offset or other contractual rights involving payment of my income tax refund or other amount on deposit with HSBC to pay off any ERA, RAL, or similar financial service, or BFC or other fees, now or thereafter owed by me to HSBC or any Other ERA or RAL Lender or BFC or third party pursuant to the Documents or similar prior documents.

I ACKNOWLEDGE THAT I HAVE A RIGHT TO LITIGATE CLAIMS IN COURT BEFORE A JUDGE OR JURY, BUT I PREFER TO RESOLVE ANY SUCH CLAIMS THROUGH ARBITRATION AND HEREBY KNOWINGLY AND VOLUNTARILY WAIVE MY RIGHTS TO LITIGATE SUCH CLAIMS IN COURT BEFORE A JUDGE OR JURY, UPON ELECTION OF ARBITRATION BY HSBC OR BY ME. I ACKNOWLEDGE THAT I WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OR CLAIMANTS OR AS A PRIVATE ATTORNEY GENERAL PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. I UNDERSTAND THAT, IF I AM A MEMBER OF THE PUTATIVE CLASS IN CUMMINS, ET AL. V. H&R BLOCK, ET AL., CASE NO. 03-C-134 IN THE CIRCUIT COURT OF KANAWHA COUNTY, WV, THIS ARBITRATION CLAUSE MAY NOT ACT AS A WAIVER OF THE RIGHTS AND CLAIMS I MAY HAVE IN THAT ACTION.

This Arbitration Provision shall supersede any prior Arbitration Provisions contained in any previous ERA application or related agreement and shall survive repayment of any ERA and termination of my account; provided, however, that if I reject this Arbitration Provision as set forth below, all prior Arbitration Provisions shall remain in full force and effect. If any portion of this Arbitration Provision is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Provision. However, if a determination is made that the Class Action Waiver Provision is unenforceable, this Arbitration Provision (other than this sentence) and any prior Arbitration Provision shall be null and void.

To reject this Arbitration Provision, I must send HSBC, c/o HSBC Taxpayer Financial Services, Account Research, P.O. Box 18097, Jacksonville, FL 32229, a signed writing ("Rejection Notice") that is received within thirty (30) days after the date I submit this Application. The Rejection Notice must identify the transaction involved and must include my name, address, and social security number and must be signed by all persons signing this Application as Applicant(s). I may send the Rejection Notice in any manner I see fit as long as it is received at the specified address within the specified time. No other methods can be used to reject the Arbitration Agreement. If the

Rejection Notice is sent on my behalf by a third party, such third party must include evidence of his or her authority to submit the Rejection Notice on my behalf.

As used in this Arbitration Provision, the term "HSBC" shall mean HSBC Bank USA, N. A., HSBC TFS, and H&R Block, Inc., and each of their parents, wholly or majority-owned subsidiaries, affiliates, or predecessors, successors, assigns and the franchisees of any of them, and each of their officers, directors, agents, and employees.

Contacting the Administrator: If I have a question about the arbitration Administrator mentioned in this Arbitration Provision or if I would like to obtain a copy of its arbitration rules, I can contact the Administrator as follows: American Arbitration Association, 335 Madison Avenue, New York, NY 10017, [www.adr.org](http://www.adr.org); National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405.  
[www.arb-forum.com](http://www.arb-forum.com).

15. Survival. The provisions of the Application shall survive the execution of any Loan Agreement and Disclosure Statement and the disbursement of funds.
16. Miscellaneous. (a) References to "I" or "me" or "my" in the Documents shall refer to the individual submitting an income tax return through this online tax preparation product or, in the case of a joint income tax return, to each individual and to both individuals, and the obligations of such individuals under the Documents will be joint and several, and each shall be considered an applicant. In the case of joint applicants, the individual agreeing to the Documents and the consent to electronic disclosures represents that he or she also has the authority to agree to the Documents and consent on behalf of the other applicant. (b) If any provision of the Documents or part thereof is deemed invalid, such invalidity will not affect any other provision of the Documents or part thereof. (c) HSBC may obtain a consumer report on me, and other information from third parties, in connection with evaluating my Application, or collecting or reviewing my ERA or accounts. (d) Supervisory personnel of HSBC may listen to and record my telephone calls. (e) I agree that you may send any notices and billing statements to the address of the primary applicant and not to the address of the joint applicant if such address is different. (f) HSBC may transfer, sell, participate or assign all or a portion of its rights, duties and obligations to third parties, including HSBC TFS, BFC, or their affiliates, successors and assignees, without notice to me or my consent.
17. State Notices. **California residents:** Married persons may apply for a separate account. **Iowa Residents:** NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 30 You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with the law. **New York residents:** Consumer reports may be requested in connection with this account or any updates, renewals, or extensions thereof. Upon my request, HSBC will inform me of the names and addresses of any consumer reporting agencies which have provided HSBC with such reports. Ohio residents: The Ohio law against discrimination requires that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights commission administers compliance with these laws. **Pennsylvania residents:** If this loan becomes in default, HSBC or its assignee intends to collect default charges. **Utah residents:** Any prepaid finance charge not exceeding 5% of the original amount of the loan shall be fully earned on the date the loan is extended, and shall be nonrefundable in the event the loan is repaid prior to the date it is due. Any additional prepaid finance charge is earned proportionally over the term of the loan, and, in the event of such prepayment, the unearned portion of such charge, calculated on a pro rata basis according to the remaining term of the loan, shall be refunded. **Wisconsin residents:** No provision of a marital property agreement, a unilateral statement under Wisconsin Stats. s. 766.59 or a court decree under Wisconsin Stats. s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred. All obligations described herein are being incurred in the interest of my marriage or family. A married Wisconsin resident applicant must mail the name and address of his or her spouse, as well as the applicant's name and social security number, to HSBC c/o HSBC Taxpayer Financial Services, 200 Somerset Corporate Blvd., Bridgewater, NJ 08807, within two days.
18. Certification.

I certify that the following information is true with respect to the ERA I am requesting: (1) I do not owe any tax due and/or any tax liens from prior tax years, nor have I previously filed a 2004 federal income tax return. (2) I do not have any delinquent child support, alimony payments, student loans, V.A. loans or other federally sponsored loans. (3) Presently, I do not have a petition (whether voluntary or involuntary) filed nor do I anticipate filing a petition under federal bankruptcy laws. (4) I have not had a Refund Anticipation Loan ("RAL") or ERA with any lender, from a prior year that has been discharged in bankruptcy. (5) I have not paid any estimated tax and/or did not have any amount of my 2003 refund applied to my 2004 tax return. (6) I am not presently making regular payments to the

IRS for prior year unpaid taxes. (7) I do not have a Power of Attorney presently in effect or on file with the Internal Revenue Service ("IRS") to direct my federal income tax refund to any third party. (8) I am not filing a 2004 federal income tax return using a substitute W-2, Form 4852, or any other form of substitute wage and tax documentation, unless the source of the Form 4852 is a Military Leave and Earnings Statement. (9) I am not filing a Form 8862 (Earned Income Credit Eligibility) with my 2004 federal income tax return. (10) I am not currently incarcerated in a state or federal prison or have 2004 income earned while an inmate at a penal institution and claiming the Earned Income Credit. (11) No portion of the 2004 income I have reported is from Schedule C or C-BZ (Profit or Loss from Business). (12) If Schedule C is present, EIC claimed, and return is self prepared or other, I am a statutory employee and the W-2 indicates statutory employee in Box 15. (13) I am not filing Form 8379 (Injured Spouse Claim & Allocation) with my 2004 federal income tax return. (14) I am not filing Form 1310 (Statement of Person Claiming Refund Due Deceased Taxpayer) with the 2004 Federal Income Tax Return or filing a Federal Income Tax Return Form 1040 on behalf of deceased taxpayer (15) I do not have an amount paid with request for an extension to file on Line 68, Field 1190 of Form 1040. (16) I do not have Other Taxes on Schedule A of Form 1040. (17) Everything that I have stated in this Application is correct.

By clicking I AGREE, I am indicating that I fully understand that I am applying for a loan and that I have read, understand and agree to this Application, including: (a) Section 10 in which I agree that HSBC may use amounts received from my tax refund to pay delinquent debts I owe HSBC or others; and (b) Section 14 in which I agree, upon my or HSBC's election, to arbitrate any Claims that I may have. I also acknowledge that I have 30 days from today's date to reject the Arbitration Provision by following the procedure described in Section 14. If I receive an ERA, I promise to pay the amount set forth in the "Total of Payments" section on my Loan Agreement and Disclosure Statement or subsequent replacement TILA Disclosure Statement, if any, on demand or when the anticipated refund from the IRS is electronically deposited into my Refund Account, whichever comes first, and I agree to repay the ERA whether or not my tax refund is paid in whole or in part to HSBC.

I AGREE

Toll-Free Customer Service Number 1-800-524-0628

**HSBC TAXPAYER FINANCIAL SERVICES DIVISION OF HSBC BANK USA, NATIONAL  
ASSOCIATION  
Privacy Statement**

**Applicability**

This Privacy Statement only applies to customers' accounts with the HSBC Taxpayer Financial Services division of HSBC Bank USA, National Association ("HSBC"). All other HSBC accounts are governed by the HSBC Bank USA National Association Personal Banking Policy.

**Introduction — Our Commitment to You**

HSBC is proud to be part of a financial services organization that has been providing superior products and services to its customers for many years. We greatly appreciate the trust that you and millions of customers have placed in us, and we will protect that trust by continuing to respect the privacy of all our applicants and customers even if our formal customer relationship ends.

**How We Handle Information we Obtain**

It is important for you to know that in order to ensure that our customers get the very best service and highest quality products, HSBC collects demographic information (like your name and address) and credit information (like information related to your accounts with us and others). This information comes either directly from you, for instance, from your application and transactions on your account; or, it may come from an outside source such as your credit bureau report. In addition, if you visit our Internet web site, we may collect certain information about your Internet usage.

Because some of the information we gather is not publicly available, we take great care to ensure that this information is kept safe from unauthorized access, and we would never share the information in violation of any regulation or law. Because we respect your privacy and we value your trust, the only employees or companies who can access your private personal information are those who use it to service your account or provide services to you or to us. HSBC diligently maintains physical, electronic and procedural safeguards that comply with applicable federal standards to guard your private personal information and to assist us in preventing unauthorized access to that information.

**How We Share Information with Companies Affiliated with Us**

From time to time, for general business purposes such as fraud control, or when we think it may benefit you, we do share certain information with our affiliated companies, except as prohibited by applicable law. These affiliated companies all provide financial services, such as banking, consumer finance, insurance, mortgage, and brokerage services. Some examples include companies doing business under the names Household, Beneficial, or HSBC. We may also share certain information with non-financial service providers that become affiliated with us in the future (such as travel, auto, or shopping clubs), except as prohibited by applicable law. The information we share might come from your application, for instance your name, address, telephone number, social security number, and e-mail address. Also, the information we share could include your transactions with us or our affiliated companies (such as your account balance, payment history, and parties to the transaction), your Internet usage, or your credit card usage. Except for Vermont residents, the information we share could also include your assets, income, or credit reports.

**How We Share Information under a Joint Marketing Agreement**

We may also provide information to non-affiliated financial companies (such as a tax preparer, mortgage banker or insurance service provider) with whom we have a joint marketing agreement. The sharing of information with these types of companies is permitted by law. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

**How We Share Information with Other Third Parties**

Except for California or Vermont residents, we also may share information with non-affiliated companies that are able to extend special offers we feel might be of value to you. These companies may be financial services providers (such as mortgage bankers or insurance agents) or they may be non-financial companies (such as retailers, tax preparers, or marketing companies). These offers are typically for products and services that you might not otherwise hear about. The information we may provide them comes from the sources described above and might include your name, address and phone number. You may tell us not to share information with non-affiliated companies in this way by completing the form below. For California and Vermont residents, applicable law requires us to obtain your permission in order to share information about you in this way, and we have chosen not to share your information in this way.

We may also provide information to non-affiliated companies that perform operational, collection, or fraud control services related to your account. The sharing of information with these types of companies is permitted by law. Such a company might include a financial company (such as an insurance service provider) or a non-financial company (such as a data processor or internet service provider) with whom we have an agreement. The information we may share also comes from the sources described above and might include your name, address, phone number; and account experience with us.

Finally, we provide information about you to non-affiliated companies such as credit reporting agencies and companies which provide services related to your account. This information sharing is also permitted by law.

We reserve the right to change our privacy practices at any time in accordance with applicable law. Notice of such changes will be provided if required by applicable law.

**How to Opt-Out (non-affiliated companies) (Applicable to residents of all states except California and Vermont)**

If you do not want us to share your private information with non-affiliated companies (unless we are permitted or required by law to do so), please let us know by simply calling 1-800-365-2641. **If you have previously informed us of your preference, you do not need to do so again.** We will be happy to comply with your "opt-out" request, which will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account. Opt-out requests will not apply to information sharing that is permitted by law. Please allow sufficient time for us to process your request.

**How to Opt-Out (affiliated companies) (Applicable to residents of all states except Vermont)**

If you do not want us to share your credit information (such as your credit bureau information) with companies that are affiliated with us, please let us know by simply calling 1-800-365-2641. **If you have previously informed us of your preference, you do not need to do so again.** This request will not apply to information about your transactions or experience with HSBC (such as account information, account usage, or payment history), except as required by law, and will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account.

---

Atención clientes hispanoparlantes: Esta Declaración Sobre la Privacidad proporciona información sobre cómo manejamos información personal no publica acerca de nuestros clientes, las circunstancias bajo las cuales podemos compartir tal información con otras personas, y cómo usted puede pedir que no compartamos esa información con terceros que no sean afiliados nuestros. Si quisiera que le proporcionemos una traducción al español de la Declaración Sobre la Privacidad en su totalidad, sírvase comunicarse con nosotros llamándonos gratis al 1-800-365- 2641.



LOAN AGREEMENT AND DISCLOSURE STATEMENT

In this Loan Agreement and Disclosure Statement ("Agreement"), "ERA" means on Electronic Refund) Advance Loan, "HSBC" means HSBC Bank USA, National Association, and "I", "me" and "my" means each person who has applied to HSBC for an ERA. "H&R Block" means each of H&R Block, Inc., and each of its affiliates and subsidiaries (and franchisees thereof).

Truth in Lending Act Disclosure Statement

1. Amount Financed (the amount of credit provided to me or on my behalf)	\$ _____
2. FINANCE CHARGE (the dollar amount the credit will cost me)	\$ _____
3. Total of Payments (the amount I will have paid after I have made all payments as scheduled)	\$ _____
4. ANNUAL PERCENTAGE RATE (the cost of my credit as a yearly rate)	_____%(e)

\_\_\_\_\_   
 "e" = estimate

If line is left blank, amount is "0"

Creditor: My creditor is HSBC Bank USA, National Association,

Demand Feature: My loan will be repayable on demand or when the anticipated tax refund is electronically deposited in my Refund Account with HSBC, whichever is earlier.

Payment Schedule: HSBC estimates that the total loan amount will be due in a single payment approximately 12 days from the date of this Agreement

Security Interest: I am providing HSBC with a security interest in my tax refund payment by the IRS, and, except for Virginia residents, in all funds deposited in the Refund Account and that Refund Account.

Late Charge: A late charge equal to 1.5% of the unpaid Total of Payments may be imposed on the date 35 days after payment of my loan is demanded, and on the same date of each succeeding month (or if there is no such date, the last date of the month).

Prepayment: If I pay off early, I will not be entitled to a refund of part or all of the Finance Charge.

Contract Reference: Refer to the Application and the Loan Agreement for additional information about nonpayment, default, any right to accelerate the maturity of the obligation, and any prepayment rebates or penalties.

Required Deposit: The Annual Percentage Rate does not take into account my required deposit.

---

Itemization of Amount Financed

1. Amount paid directly to me	\$ _____
2. Amount paid for my Refund Account Fee to HSBC	\$ _____
3. Amount Financed (Items 1+ 2)	\$ _____(e)
4. Prepaid FINANCE CHARGE (ERA Fee to HSBC)	\$ _____(e)
5 Total ERA Amount (Items 3+4)	\$ _____(e)

“(e)” = estimate

If line is left blank, amount is “0”

Loan Agreement

**1. Obligation on ERA.**

(a) I am obligated, on the date I agree to this Agreement, to accept an ERA if HSBC approves my application. My loan will begin, and HSBC will earn the finance charge, when I am approved for the ERA and a transfer is initiated to my bank account.

(b) I may cancel my ERA transaction, or my obligation to accept an ERA, for up to 48 hours after I become obligated to accept the ERA. To do so, I must return to HSBC cash in the amount of the ERA proceeds and comply with other requirements set by HSBC. I must call the customer service number (1-800-524-0628) for further instructions on how to return the ERA proceeds to HSBC. I understand that, if I use my right to cancel, my finance charge will be refunded to me, HSBC will provide me with any tax refund only after HSBC receives the refund from the IRS, and I must still pay a Refund Account Fee.

2. Security Interest. If I receive a ERA, I grant HSBC a security interest in the property I described in the TILA Disclosure Statement as collateral for my obligations to repay the ERA and perform my other obligations under the Application and this Agreement.

3. Deductions. My Prepaid Finance Charge and Refund Account Fee shall be deducted from the proceeds of my ERA.

4. Other Charges. (a) I agree to pay a returned check charge of \$19 if any check or similar instrument I give HSBC is not honored. (b) I agree to pay a late charge as described in the TILA Disclosure Statement if I do not repay my loan when due. (c) In the event that I pay my account by telephone, I agree to pay up to a \$10 fee for each such payment. HSBC reserves the right to change this fee from time to time. I may call Customer Service for a current fee schedule. (d) I also agree to pay any attorney’s fees and collection agency costs incurred by HSBC or its affiliates to collect any delinquent ERA as permitted by law.

5. Application of Payments. Each payment I make on the ERA will be applied in any order determined by HSBC.

BY CLICKING I AGREE BELOW, I AGREE TO THE TERMS OF THIS LOAN AGREEMENT. I ALSO ACKNOWLEDGE RECEIVING A COMPLETED COPY OF THIS LOAN AGREEMENT AND DISCLOSURE STATEMENT.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.  
NOTICE TO CUSTOMER

- (a) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- (b) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- (c) HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

I AGREE

References to "you" and "your" herein shall refer to the individual submitting an income tax return through this software or, in the case of a joint return, to each individual and to both individuals submitting the return.

By consenting below to receive information electronically, you will receive the following information and disclosures electronically: Application for an Electronic Refund Advance and Loan Agreement and Disclosure Statement.

To access and/or retain these disclosures, you will need a desktop or laptop personal computer and the following:

**Windows**

486 or faster PC  
Windows 95, 98, 2000, ME, NT 4.0, or XP  
16 MB RAM  
30 MB disk space  
640x480, 256 color monitor or better  
Windows compatible printer

**Macintosh**

68030 or better (Power PC recommended)  
MAC OS 7.5.3 or higher  
5 MB free RAM  
20 MB disk space  
640x480, 256 color monitor or better  
Macintosh compatible printer

Does the computer you are using now satisfy these requirements?

Yes       No

By clicking the "Yes" button below, you (i) agree to receive the above-referenced documents electronically and confirm that you will download or print the disclosures for your records, (ii) acknowledge that you can access information that is provided electronically in this program, and (iii) acknowledge that you are providing your consent to receive electronic communications pursuant to the Electronic Signatures in Global and National Commerce Act and intend that this statute apply to the fullest extent possible.

Yes       No

You may withdraw your consent to receiving records electronically by clicking the appropriate "No" button above, but if you do so, you may not proceed with this transaction.

You understand that the information you have elected to receive is confidential in nature. We are not responsible for unauthorized access by third parties to information and/or communications provided electronically nor for any damages, including direct, indirect, special, incidental or consequential damages, caused by unauthorized access. If you have any questions about these disclosures, you may contact us by telephone at 1-800-524-0628.

You have the option to receive any information provided electronically in paper form. To receive specific information in paper form, please contact us at 1-800-524-0628. Please specify the information you wish to be provided in paper form. Your request will only apply to those specific items of information designated by you.

---

APPLICATION FOR  
AN ELECTRONIC REFUND ADVANCE LOAN AND OPEN A DEPOSIT ACCOUNT

**System Protected by U.S. Patent Nos. 4,890,228,5,193,057, and 5,963,921**

This Application is submitted to HSBC Bank USA, National Association ("HSBC") for an Electronic Refund Advance Loan ("ERA") and a Refund Account. As used herein, "BFC" means Block Financial Corporation and its parents, subsidiaries and affiliates; "HSBC TFS" means HSBC Taxpayer Financial Services Inc.; "IRS" means the Internal Revenue Service; and "RAL" means a refund anticipation loan.

1. INFORMATION.

I understand and confirm that the name, home address, mailing address, social security/taxpayer identification number, and date of birth which I entered into the personal information and address sections of the professional tax service product are true and correct and are incorporated in this Application by this reference as the name, home address, mailing address, social security/taxpayer identification number, and date of birth of each applicant.

2. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY, AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT. WHAT THIS MEANS FOR ME: WHEN I OPEN AN ACCOUNT, YOU WILL ASK FOR MY NAME, ADDRESS, DATE OF BIRTH, AND OTHER INFORMATION THAT WILL ALLOW YOU TO IDENTIFY ME. YOU MAY ALSO SEEK TO VERIFY MY IDENTITY THROUGH NON-DOCUMENTARY METHODS.

3. Payment Instructions.

- A. If I receive an ERA, I understand I am to receive my ERA proceeds via direct deposit into the bank account that I will designate on the direct deposit screen of this professional tax service product application during the Electronic Filing process, and I authorize HSBC to direct deposit my funds to that designated account.
- B. If my refund is greater than my ERA I understand I am to receive my excess proceeds via direct deposit into the bank account that I previously designated on the direct deposit screen and/or the express products screen of this professional tax service product application during the electronic filing process, and I authorize HSBC to direct deposit my funds to those designated accounts.

4. HSBC ERA DISCLOSURE STATEMENT:

The FINANCE CHARGE for my ERA is set forth on my Truth in Lending Disclosure. I know that even if my ERA is denied, I am responsible for my electronic filing, as applicable. I am also responsible for the repayment of my ERA whether or not my tax refund is paid to my account with HSBC in whole or in part. I understand that my income tax return can be filed electronically without obtaining an ERA and, subject to IRS processing, the usual time within which I can expect to receive a refund check if I file electronically and without an ERA is within approximately three weeks from the date I file my return. The IRS normally makes an electronic deposit in an average of about 12 days after an electronic filing. Alternatively, if I elect to obtain and am approved for an ERA, the loan proceeds usually will be made available to me within approximately 1-2 days of my loan application.

The usual duration of an ERA is approximately 11 days from the date of approval of the ERA. The following are examples of the estimated ANNUAL PERCENTAGE RATE ("APR") and ERA FINANCE CHARGES on ERAs of varying amounts based on 11-day maturity periods. Because the APR on an ERA may be high in certain cases relative to other sources of credit, I understand that it may cost less to use such sources; e.g., credit cards, equity lines, etc., instead of an ERA.

Example Loan Amount	\$500	\$750	\$1,000	\$1,500	\$2,000	\$3,000	\$4,000	\$5,000
ERA Finance Charge*	\$ 5	\$ 15	\$ 15	\$ 45	\$ 45	\$ 75	\$ 85	\$ 85
Estimated Annual Percentage Rate	34%e	68%e	51%e	103%e	76%e	85%e	72%e	57%e

\* "I understand I will be given disclosures which will show the actual finance charge and other charges applicable to my ERA transaction. "e"= estimate

5. Applicable Law. This Application and all the other documents executed in connection with this Application or my ERA (collectively, "Documents"), shall be governed by and construed, interpreted, and enforced in accordance with

federal law and, to the extent state law applies, the law of the state of Delaware (without reference to conflict of laws principles).

6. **Important Information About ERAs.** I understand that (a) I can file my federal income tax return electronically without obtaining an ERA; (b) the IRS will send me a refund check or electronically deposit my refund to my existing bank account; (c) the IRS normally makes an electronic deposit in an average of about 12 days after an electronic filing; (d) HSBC tries to initiate the direct deposit of proceeds of an ERA on the first business day after application; (e) HSBC cannot guarantee when any proceeds of an ERA will be available to me; and (f) a ERA may cost substantially more than another type of loan I might obtain.
7. **Deposit Authorization.** (a) After I submit my Application, BFC will electronically transmit my tax return to the IRS and my Application to HSBC. I understand that I will authorize or agree to an IRS Transmittal Form 8453 or IRS e- file signature authorization ("Deposit Authorization") as part of my Application and electronic tax filing, and that the Deposit Authorization and this Application provide an irrevocable agreement to have my tax refund disbursed to HSBC, and irrevocably transfers to HSBC all my rights, title, and interest in the proceeds of my tax refund for purposes of the ERA I have requested and other purposes authorized by this Application. (b) If my Application is denied or cancelled, and HSBC receives my tax refund, HSBC will forward to me promptly any proceeds of my refund after deducting amounts permitted by this Agreement. (c) If for any reason, any part of the anticipated tax refund is disallowed or offset by the IRS, or if I should receive a refund check in the mail, I will advise HSBC immediately and promptly pay HSBC any amounts owing with respect to my Application or an ERA, and pay BFC any fees owed to them involving my tax return.
8. **Refund Account.** (a) I request that a deposit account be opened ("Refund Account") at HSBC upon receipt of my tax refund for the purposes of ensuring the repayment of my ERA and other amounts described in the Documents. The Annual Percentage Yield and interest rate on the Refund Account will be 0%. This means I will not receive any interest on funds in the Refund Account. I understand that I cannot make withdrawals from the Refund Account and that the funds in the Refund Account will be disbursed only as expressly provided in the Documents. (b) HSBC may deduct any amounts I owe HSBC or BFC from my tax refund, any funds received in the Refund Account, and any proceeds of an ERA. I am required to pay all fees to BFC for services rendered by BFC when HSBC electronically transfers my proceeds to me. If an electronic transfer of proceeds is not made available to me because I do not receive a tax refund, then I am required to pay all fees to BFC for services rendered by BFC on demand. HSBC also may withdraw amounts deposited into the Refund Account from my tax refund to disburse money to me in accordance with my Application. (c) I will not receive a periodic statement for the Refund Account, but I will receive notice if funds in the Refund Account are not sufficient to repay my ERA or are used for any purpose other than repayment of my ERA or disbursement to me. HSBC may, immediately after disbursement of all funds in the Refund Account, close the account without further notice to or authorization from me.
9. **Refund Account Fee.** I will pay HSBC a fee of \$24.95 for the administration of the Refund Account and any disbursements to me from that account ("Refund Account Fee"). I am obligated to pay the Refund Account Fee after the Deposit Authorization is filed with the IRS and is imposed regardless of whether (a) I apply for an ERA or (b) my Application is approved or denied. The Refund Account Fee is not imposed directly or indirectly as an incident to or condition of any extension of credit. I can avoid the Refund Account Fee if I direct that my tax refund not be deposited to HSBC before filing my Deposit Authorization with the IRS.
10. **Collections.** In consideration of the case and convenience of the following method of paying any delinquent debt I owe or the other applicant owes to HSBC, HSBC TFS, my electronic return originator ("ERO") for prior years, BFC, or Bank One, River City Bank, First Security Bank, Republic Bank or Santa Barbara Bank & Trust (the "Other ERA or RAL Lenders"), and provided that such debt has not been discharged in bankruptcy, I authorize and direct the repayment of such debt, calculated as of the date of my Application, by means of (a) having such debt deducted from the proceeds of my ERA, or (b) having my request for an ERA denied or the amount for which I have applied reduced and having such debt repaid to those entities by offset or otherwise from my tax refund directly transmitted into my Refund Account at HSBC. If I owe delinquent debt to more than one of the entities listed above, I authorize and direct HSBC to pay such debts in the following order: HSBC, HSBC TFS, Other ERA or RAL Lenders, ERO, and BFC. I also authorize and instruct HSBC and the Other ERA or RAL Lenders to disclose to each other information about their respective credit experiences concerning my present and prior ERAs, refund anticipation loans ("RALs"), or similar financial services, and my prior tax returns.

**PLEASE NOTE: If I have delinquent debt, I understand that HSBC or HSBC TFS may be acting as a debt collector hereunder to collect a debt and that any information obtained will be used for that purpose.**

11. No Fiduciary/Agency Duty. I understand that BFC is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction and has no other duties to me beyond the transmission of my tax return information to HSBC, and the electronic filing of my tax return with the IRS and/or state taxing authority, I understand that BFC or an affiliate of BFC has the right to purchase an interest in my ERA issued by HSBC. I further understand that BFC or an affiliate of BFC may receive payments from HSBC or its affiliates in connection with ERAs. I also understand that HSBC is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction.
12. Disclosure Information. (a) "Information" means my federal and state income tax returns for the tax year 2004, any information obtained in connection with my tax return (including information relating to a possible offset of my tax refund or the possibility that my tax return is incorrect), and any information relating to my Application for an ERA or similar financial service I have received or requested from HSBC. (b) "Authorized Parties" means HSBC, HSBC TFS, BFC, my Transmitter, and their respective affiliates and agents, and includes the Fraud Service Bureau operated for HSBC. (c) The Authorized Parties may share Information to process my Application, to provide ERAs to me, to collect delinquent ERAs or BFC fees, to prevent fraud, and to otherwise administer or promote the program for ERAs. (d) The Authorized Parties may disclose Information to the IRS, state tax agencies and other financial institutions that provide ERAs or other financial services. (e) The Authorized Parties may call, or input my Information on any website of, the IRS or state tax agencies in connection with my Application to, among other things, determine the status of my tax return. The IRS and state tax agencies may disclose information about me and my tax returns to the Authorized Parties. (f) BFC may not use or disclose Information for any purpose, except as permitted under Treas. Reg. Sec. 301.7216-2 or as provided herein, (g) I consent to HSBC sharing information as provided in the Privacy Statement. (g) HSBC will be my creditor.
13. Service Fees. (a) Reissued Check Fee: I agree to pay \$10 each time that a check is reissued at my request for any reason. If I request that such a check be sent by overnight mail. I agree to pay the charges for sending it by overnight mail. (b) Document Fee: If I ask for a copy of my Application, loan agreement, billing statement or other document, I may be charged \$10 per document.
14. Arbitration Provision. Any claim, dispute or controversy between me and HSBC (as specifically defined below for purposes of this Arbitration Provision), whether in contract or tort (intentional or otherwise), whether pre-existing, present or future, and including constitutional, statutory, common law, regulatory, and equitable claims in any way relating to (a) any of these or any other Documents or any ERA that I have previously requested or received from HSBC, (b) advertisements, promotions, or oral or written statements related to this or any other Application for a RAL or any ERA that I have previously requested or received from HSBC, (c) the relationship of HSBC and me relating to any of these or any other Documents or any ERA that I have previously requested or received from HSBC; and (d) except as provided below, the validity, enforceability or scope of this Arbitration Provision or any part thereof, including, but not limited to, the issue of whether any particular claim, dispute or controversy must be submitted to arbitration (collectively the "Claim"), shall be resolved, upon the election of either me or HSBC, by binding arbitration pursuant to this Arbitration Provision and the applicable rules of the American Arbitration Association ("AAA") or the National Arbitration Forum ("NAF") in effect at the time the Claim is filed. I shall have the right to select one of these arbitration administrators (the "Administrator"). The arbitrator must be a lawyer with more than ten (10) years of experience or a retired or former judge. In the event of a conflict between this Arbitration Provision and the rules of the Administrator, this Arbitration Provision shall govern. In the event of a conflict between this Arbitration Provision and the balance of this Application or any other Documents, this Arbitration Provision shall govern. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any organization that has in place a formal or informal policy that is inconsistent with and purports to override the terms of this Arbitration Provision, including the Class Action Waiver Provision defined below.

HSBC hereby agrees not to invoke its right to arbitrate an individual Claim I may bring in small claims court or an equivalent court, if any, so long as the Claim is pending only in that court. No class actions or private attorney general actions in court or in arbitration or joinder or consolidation of claims in court or in arbitration with other persons, are permitted without the consent of HSBC and me. The validity and effect of the preceding sentence (herein referred to as the "Class Action Waiver Provision") shall be determined exclusively by a court and not by the Administrator or any arbitrator. Neither the Administrator nor any arbitrator shall have the power or authority to waive, modify or fail to enforce the Class Action Waiver Provision, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable.

Any arbitration hearing that I attend will take place in a location that is reasonably convenient for me. On any Claim I file, I will pay the first \$50.00 of the filing fee. At my request, HSBC will pay the remainder of the filing fee and any administrative or hearing fees charged by the Administrator, up to \$1,500.00 on any Claim asserted by me in the arbitration. If I should be required to pay any additional fees to the Administrator, HSBC will consider a request by me to pay all or part of the additional fees; however, HSBC shall not be obligated to pay any additional fees unless the arbitrator grants me an award. If the arbitrator grants an award in my favor, HSBC will reimburse

me for any additional fees paid or owed by me to the Administrator up to the amount of the fees that would have been charged if the original Claim had been for the amount of the actual award in my favor. If the arbitrator issues an award in HSBC's favor, I will not be required to reimburse HSBC for any fees HSBC has previously paid to the Administrator or for which HSBC is responsible.

This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 (the "FAA"), and not by any state law concerning arbitration. The arbitrator shall follow and apply applicable substantive law to the extent consistent with the FAA, statutes of limitation and claims of privilege and shall be authorized to award all remedies permitted by applicable substantive law, including, without limitation, compensatory, statutory and punitive damages, declaratory, injunctive and other equitable relief and attorneys' fees and costs. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the Administrator's rules. Upon request of either party, the arbitrator shall prepare a short reasoned written opinion supporting the arbitration award. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator's award will be final and binding except for: (a) any appeal right under the FAA; and (b) any appeal of Claims involving more than \$100,000. For such Claims, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider de novo (i.e., in its entirety) any aspect or all aspects of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs (i.e., the amounts owed to the Administrator and the arbitrators), regardless of its outcome. However, HSBC will consider in good faith any reasonable request for HSBC to bear up to the full costs of the appeal. Nothing in this Arbitration Provision shall be construed to prevent HSBC's use of offset or other contractual rights involving payment of my income tax refund or other amount on deposit with HSBC to pay off any ERA, RAL, or similar financial service, or BFC or other fees, now or thereafter owed by me to HSBC or any Other ERA or RAL Lender or BFC or third party pursuant to the Documents or similar prior documents.

I ACKNOWLEDGE THAT I HAVE A RIGHT TO LITIGATE CLAIMS IN COURT BEFORE A JUDGE OR JURY, BUT I PREFER TO RESOLVE ANY SUCH CLAIMS THROUGH ARBITRATION AND HEREBY KNOWINGLY AND VOLUNTARILY WAIVE MY RIGHTS TO LITIGATE SUCH CLAIMS IN COURT BEFORE A JUDGE OR JURY, UPON ELECTION OF ARBITRATION BY HSBC OR BY ME. I ACKNOWLEDGE THAT I WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OR CLAIMANTS OR AS A PRIVATE ATTORNEY GENERAL PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. I UNDERSTAND THAT, IF I AM A MEMBER OF THE PUTATIVE CLASS IN CUMMINS, ET AL., V. H&R BLOCK, ET AL., CASE NO. 03-C-134 IN THE CIRCUIT COURT OF KANAWHA COUNTY, WV, THIS ARBITRATION CLAUSE MAY NOT ACT AS A WAIVER OF THE RIGHTS AND CLAIMS I MAY HAVE IN THAT ACTION.

This Arbitration Provision shall supersede any prior Arbitration Provisions contained in any previous ERA application or related agreement and shall survive repayment of any ERA and termination of my account; provided, however, that if I reject this Arbitration Provision as set forth below, all prior Arbitration Provisions shall remain in full force and effect. If any portion of this Arbitration Provision is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Provision. However, if a determination is made that the Class Action Waiver Provision is unenforceable, this Arbitration Provision (other than this sentence) and any prior Arbitration Provision shall be null and void.

To reject this Arbitration Provision, I must send HSBC, c/o HSBC Taxpayer Financial Services, Account Research, P.O. Box 18097, Jacksonville, FL 32229, a signed writing ("Rejection Notice") that is received within thirty (30) days after the date I submit this Application. The Rejection Notice must identify the transaction involved and must include my name, address, and social security number and must be signed by all persons signing this Application as Applicant(s). I may send the Rejection Notice in any manner I see fit as long as it is received at the specified address within the specified time. No other methods can be used to reject the Arbitration Agreement. If the Rejection Notice is sent on my behalf by a third party, such third party must include evidence of his or her authority to submit the Rejection Notice on my behalf.

As used in this Arbitration Provision, the term "HSBC" shall mean HSBC Bank USA, N. A., HSBC TFS, and H&R Block, Inc., and each of their parents, wholly or majority-owned subsidiaries, affiliates, or predecessors, successors, assigns and the franchisees of any of them, and each of their officers, directors, agents, and employees.

Contacting the Administrator: If I have a question about the Administrator mentioned in this Arbitration Provision or if I would like to obtain a copy of its arbitration rules, I can contact the Administrator as follows: American Arbitration Association, 335 Madison Avenue, New York, NY 10017, [www.adr.org](http://www.adr.org); National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405. [www.arb-forum.com](http://www.arb-forum.com).



15. Survival. The provisions of the Application shall survive the execution of any Loan Agreement and Disclosure Statement and the disbursement of funds.
16. Miscellaneous. (a) References to "I" or "me" or "my" in the Documents shall refer to the individual submitting an income tax return through this professional tax service product or, in the case of a joint income tax return, to each individual and to both individuals, and the obligations of such individuals under the Documents will be joint and several, and each shall be considered an applicant. In the case of joint applicants, the individual agreeing to the Documents and the consent to electronic disclosures represents that he or she also has the authority to agree to the Documents and consent on behalf of the other applicant. (b) If any provision of the Documents or part thereof is deemed invalid, such invalidity will not affect any other provision of the Documents or part thereof. (c) HSBC may obtain a consumer report on me, and other information from third parties, in connection with evaluating my Application, or collecting or reviewing my ERA or accounts. (d) Supervisory personnel of HSBC may listen to and record my telephone calls. (e) I agree that you may send any notices and billing statements to the address of the primary applicant and not to the address of the joint applicant if such address is different. (f) HSBC may transfer, sell, participate or assign all or a portion of its rights, duties and obligations to third parties, including HSBC TFS, BFC, or their affiliates, successors and assignees, without notice to me or my consent.
17. State Notices. California residents: Married persons may apply for a separate account. Iowa Residents: NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with the law. New York residents: Consumer reports may be requested in connection with this account or any updates, renewals, or extensions thereof. Upon my request, HSBC will inform me of me names and addresses of any consumer reporting agencies which have provided HSBC with such reports. Ohio residents: The Ohio law against discrimination requires that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights commission administers compliance with these laws. Pennsylvania residents: If this loan becomes in default, HSBC or its assignee intends to collect default charges. Utah residents: Any prepaid finance charge not exceeding 5% of the original amount of the loan shall be fully earned on the date the loan is extended, and shall be nonrefundable in the event the loan is repaid prior to the date it is due. Any additional prepaid finance charge is earned proportionally over the term of the loan, and, in the event of such prepayment, the unearned portion of such charge, calculated on a pro rata basis according to the remaining term of the loan, shall be refunded. Wisconsin residents: No provision of a marital property agreement, a unilateral statement under Wisconsin Stats. s. 766.59 or a court decree under Wisconsin Stats. s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred. All obligations described herein are being incurred in the interest of my marriage or family. A married Wisconsin resident applicant must mail the name and address of his or her spouse, as well as the applicant's name and social security number, to HSBC c/o HSBC Taxpayer Financial Services, 200 Somerset Corporate Blvd., Bridgewater, NJ 08807, within two days.
18. Certification.

I certify that the following information is true with respect to the ERA I am requesting: (1) I do not owe any tax due and/or any tax liens from prior tax years, nor have I previously filed a 2004 federal income tax return. (2) I do not have any delinquent child support, alimony payments, student loans, V.A. loans or other federally sponsored loans. (3) Presently, I do not have a petition (whether voluntary or involuntary) filed nor do I anticipate filing a petition under federal bankruptcy laws. (4) I have not had a Refund Anticipation Loan ("RAL") or ERA with HSBC, or any other RAL lender, from a prior year that has been discharged in bankruptcy. (5) I have not paid any estimated tax and/or did not have any amount of my 2003 refund applied to my 2004 tax return. (6) I am not presently making regular payments to the IRS for prior year unpaid taxes. (7) I do not have a Power of Attorney presently in effect or on file with the Internal Revenue Service ("IRS") to direct my federal income tax refund to any third party. (8) I am not filing a 2004 federal income tax return using a substitute W-2, Form 4852, or any other form of substitute wage and tax documentation, unless the source of the Form 4852 is a Military Leave and Earnings Statement. (9) I am not filing a Form 8862 (Earned Income Credit Eligibility) with my 2004 federal income tax return. (10) I am not currently incarcerated in a state or federal prison or have 2004 income earned while an inmate at a penal institution and claiming the Earned Income Credit. (11) The 2004 income I have reported is not solely from Schedule C or C-EZ (Profit or Loss from Business). (12) If Schedule C is present, EIC claimed, and return is self prepared or other, I am a statutory employee and the W-2 indicates statutory employee in Box 15. (13) I am not filing Form 8379 (Injured Spouse Claim & Allocation) with my 2004 federal income tax return. (14) I am not filing Form 1310 (Statement of Person Claiming Refund Due Deceased Taxpayer) with the 2004 Federal Income Tax Return or filing a Federal Income Tax Return Form 1040 on behalf of deceased taxpayer (15) I do not have an amount paid with request for an extension to file on Line 66, Field 1190 of Form 1040. (16) Everything that I have stated in this Application is correct.

By clicking I AGREE below, I am indicating that I fully understand that I am applying for a loan and that I have read, understand and agree to this Application, including: (a) Section 10 in which I agree that HSBC may use amounts received from my tax refund to pay delinquent debts I owe HSBC or others; and (b) Section 14 in which I agree, upon my or HSBC's election, to arbitrate any Claims that I may have. I also acknowledge that I have 30 days from today's date to reject the Arbitration Provision by following the procedure described in Section 14. If I receive an ERA, I promise to pay the amount set forth in the "Total of Payments" section on my Loan Agreement and Disclosure Statement or subsequent replacement TILA Disclosure Statement; if any, on demand or when the anticipated refund from the IRS is electronically deposited into my Refund Account, whichever comes first, and I agree to repay the ERA whether or not my tax refund is paid in whole or in part to HSBC.

I AGREE

HSBC Taxpayer Financial Services Toll-Free Customer Service Number 1-800-524-0628

**HSBC TAXPAYER FINANCIAL SERVICES DIVISION OF HSBC BANK USA, NATIONAL  
ASSOCIATION  
Privacy Statement**

**Applicability**

This Privacy Statement only applies to customers' accounts with the HSBC Taxpayer Financial Services division of HSBC Bank USA, National Association ("HSBC"). All other HSBC accounts are governed by the HSBC Bank USA National Association Personal Banking Policy.

**Introduction — Our Commitment to You**

HSBC is proud to be part of a financial services organization that has been providing superior products and services to its customers for many years. We greatly appreciate the trust that you and millions of customers have placed in us, and we will protect that trust by continuing to respect the privacy of all our applicants and customers even if our formal customer relationship ends.

**How We Handle Information we Obtain**

It is important for you to know that in order to ensure that our customers get the very best service and the highest quality products, HSBC collects demographic information (like your name and address) and credit information (like information related to your accounts with us and others). This information comes either directly from you, for instance, from your application and transactions on your account; or, it may come from an outside source such as your credit bureau report. In addition, if you visit our Internet web site, we may collect certain information about your Internet usage.

Because some of the information we gather is not publicly available, we take great care to ensure that this information is kept safe from unauthorized access, and we would never share the information in violation of any regulation or law. Because we respect your privacy and we value your trust, the only employees or companies who can access your private personal information are those who use it to service your account or provide services to you or to us. HSBC diligently maintains physical, electronic and procedural safeguards that comply with applicable federal standards to guard your private personal information and to assist us in preventing unauthorized access to that information.

**How We Share Information with Companies Affiliated with Us**

From time to time, for general business purposes such as fraud control, or when we think it may benefit you, we do share certain information with our affiliated companies, except as prohibited by applicable law. These affiliated companies all provide financial services, such as banking, consumer finance, insurance, mortgage, and brokerage services. Some examples include companies doing business under the names Household, Beneficial, or HSBC. We may also share certain information with non-financial service providers that become affiliated with us in the future (such as travel, auto, or shopping clubs), except as prohibited by applicable law. The information we share might come from your application, for instance your name, address, telephone number, social security number, and e-mail address. Also, the information we share could include your transactions with us or our affiliated companies (such as your account balance, payment history, and parties to the transaction), your Internet usage, or your credit card usage. Except for Vermont residents, the information we share could also include your assets, income, or credit reports.

**How We Share Information under a Joint Marketing Agreement**

We may also provide information to non-affiliated financial companies (such as a tax preparer, mortgage banker or insurance service provider) with whom we have a joint marketing agreement. The sharing of information with these types of companies is permitted by law. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

**How We Share Information with Other Third Parties**

Except for California or Vermont residents, we also may share information with non-affiliated companies that are able to extend special offers we feel might be of value to you. These companies may be financial services providers (such as mortgage bankers or insurance agents) or they may be non-financial companies (such as retailers, tax preparers, or marketing companies). These offers are typically for products and services that you might not otherwise hear about. The information we may provide them comes from the sources described above and might include your name, address and phone number. You may tell us not to share information with non-affiliated companies in this way by completing the form below. For California and Vermont residents, applicable law requires us to obtain your permission in order to share information about you in this way, and we have chosen not to share your information in this way.

We may also provide information to non-affiliated companies that perform operational, collection, or fraud control services related to your account. The sharing of information with these types of companies is permitted by law. Such a company might include a financial company (such as an insurance service provider) or a non-financial company (such as a data processor or internet service provider) with whom we have an agreement. The information

we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

Finally, we provide information about you to non-affiliated companies such as credit reporting agencies and companies which provide services related to your account. This information sharing is also permitted by law.

We reserve the right to change our privacy practices at any time in accordance with applicable law. Notice of such changes will be provided if required by applicable law.

**How to Opt-Out (non-affiliated companies) (Applicable to residents of all states except California and Vermont)**

If you do not want us to share your private information with non-affiliated companies (unless we are permitted or required by law to do so), please let us know by simply calling 1-800-365-2641. If you have previously informed us of your preference, you do not need to do so again. We will be happy to comply with your "opt-out" request, which will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account. Opt-out requests will not apply to information sharing that is permitted by law. Please allow sufficient time for us to process your request.

**How to Opt-Out (affiliated companies) (Applicable to residents of all states except Vermont)**

If you do not want us to share your credit information (such as your credit bureau information) with companies that are affiliated with us, please let us know by simply calling 1-800-365-2641. If you have previously informed us of your preference, you do not need to do to again. This request will not apply to information about your transactions or experience with HSBC (such as account information, account usage, or payment history), except as required by law, and will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account.

---

Atención clientes hispanoparlantes: Esta Declaración Sobre la Privacidad proporciona información sobre cómo manejamos información personal no publica acerca de nuestros clientes, las circunstancias bajo las cuales podemos compartir tal información con otras personas, y cómo usted puede pedir que no compartamos esa información con terceros que no sean afiliados nuestros. Si quisiera que le proporcionemos una traducción al español de la Declaración Sobre la Privacidad en su totalidad, sírvase comunicarse con nosotros llamándonos gratis al 1-800-365-2641.

**LOAN AGREEMENT AND DISCLOSURE STATEMENT**

In this Loan Agreement and Disclosure Statement ("Agreement"), "ERA" means an Electronic Refund Advance Loan, "HSBC" means HSBC Bank USA, National Association, and "I", "me" and "my" means each person who has applied to HSBC for an ERA. "H&R Block" means each of H&R Block, Inc., and each of its affiliates and subsidiaries (and franchisees thereof).

**Truth in Lending Act Disclosure Statement**

- |  |             |
|--|-------------|
| 1. Amount Financed (the amount of credit provided to me or on my behalf)                       | \$ _____    |
| 2. FINANCE CHARGE (the dollar amount the credit will cost me)                                  | \$ _____    |
| 3. Total of Payments (the amount I will have paid after I have made all payments as scheduled) | \$ _____    |
| 4. ANNUAL PERCENTAGE RATE (the cost of my credit as a yearly rate)                             | _____ % (e) |

"e" = estimate

If line is left blank, amount is "0"

Creditor: My creditor is HSBC Bank USA, National Association.

Demand Feature: My loan will be repayable on demand or when the anticipated tax refund is electronically deposited in my Refund Account with HSBC, whichever is earlier.

Payment Schedule: HSBC estimates that the total loan amount will be due in a single payment approximately 12 days from the date of this Agreement.

Security Interest: I am providing HSBC with a security interest in my tax refund payment by the IRS, and, except for Virginia residents, in all funds deposited in the Refund Account and that Refund Account.

Late Charge: A late charge equal to 1.5% of the unpaid Total of Payments may be imposed on the date 35 days after payment of my loan is demanded, and on the same date of each succeeding month (or if there is no such date, the last date of the month).

Prepayment: If I pay off early, I will not be entitled to a refund of part or all of the Finance Charge.

Contract Reference: Refer to the Application and the Loan Agreement for additional information about nonpayment, default, any right to accelerate the maturity of the obligation, and any prepayment rebates or penalties.

Required Deposit: The Annual Percentage Rate does not take into account my required deposit.

---

Itemization of Amount Financed

1. Amount paid directly to me	\$ _____(e)
2. Amount paid for my Refund Account Fee to HSBC	\$ _____
3. Amount paid for Tax Prep to H&R Block	\$ _____
4. Amount paid for debt owed to H&R Block	\$ _____
5. Amount paid for System Administration Fee to H&R Block	\$ _____
6. Amount paid for Peace of Mind to H&R Block	\$ _____
7. Amount paid for E Filing to H&R Block	\$ _____
8. Amount Financed (Items 1+2+3+4+5+6+7)	\$ _____(e)
9. Prepaid FINANCE CHARGE (ERA Fee to HSBC)	\$ _____(e)
10. Total ERA (Items 8+9)	\$ _____(e)

“(e)” = estimate

If line is left blank, amount is “0”

**Loan Agreement**

1. Obligation on ERA.

(a) I am obligated, on the date I agree to this Agreement, to accept an ERA if HSBC approves my application, unless HSBC approves me for a smaller ERA than the amount set forth in the Total of Payments section in the TILA Disclosure Statement above. If I am approved for a smaller ERA, I will be provided with a replacement TILA Disclosure Statement and I will be obligated to accept the smaller ERA if I accept the ERA proceeds. My loan will begin, and HSBC will earn the finance charge, when I am approved for the ERA and a transfer is initiated to my bank account.

(b) I may cancel my ERA transaction, or my obligation to accept a ERA, for up to 48 hours after I become obligated to accept the ERA. To do so, I must return to HSBC cash in the amount of the ERA proceeds and comply with other requirements set by HSBC. I must call the customer service number (1-800-524-0628) for further instructions on how to return the ERA proceeds to HSBC. I understand that, if I use my right to cancel, my finance charge will be refunded to me, HSBC will provide me with any tax refund only after HSBC receives the refund from the IRS, and I must still pay a Refund Account Fee.

2. Security Interest. If I receive a ERA, I grant HSBC a security interest in the property described in the TILA Disclosure Statement as collateral for my obligations to repay the ERA and perform my other obligations under the Application and this Agreement.

3. Deductions. My Prepaid Finance Charge and Refund Account Fee shall be deducted from the proceeds of my ERA.

4. Other Charges. (a) I agree to pay a returned check charge of \$ 19 if any check or similar instrument I give HSBC is not honored. (b) I agree to pay a late charge as described in the TILA Disclosure Statement if I do not repay my loan when due. (c) In the event that I pay my account by telephone, I agree to pay up to a \$10 fee for each such payment HSBC reserves the right to change this fee from time to time. I may call Customer Service for a current

fee schedule. (d) I also agree to pay any attorney's fees and collection agency costs incurred by HSBC or its affiliates to collect any delinquent ERA as permitted by law.

5. Application of Payments. Each payment I make on the ERA will be applied in any order determined by HSBC.

BY CLICKING I AGREE BELOW, I AGREE TO THE TERMS OF THIS LOAN AGREEMENT. I ALSO ACKNOWLEDGE RECEIVING A COMPLETED COPY OF THIS LOAN AGREEMENT AND DISCLOSURE STATEMENT.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT. NOTICE TO CUSTOMER

- (a) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- (b) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- (c) HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

I AGREE

References to "you" and "your" herein shall refer to the individual submitting an income tax return through this software or, in the case of a joint return, to each individual and to both individuals submitting the return.

By consenting below to receive information electronically, you will receive the following information and disclosures electronically: Application for an Electronic Refund Advance and Loan Agreement and Disclosure Statements.

To access and/or retain these disclosures, you will need a desktop or laptop personal computer and the following:

**Windows**

486 or faster PC  
Windows 95, 98, 2000, ME, NT 4.0, or XP  
16 MB RAM  
30 MB disk space  
640x480, 256 color monitor or better  
Windows compatible printer

**Macintosh**

68030 or better (Power PC recommended)  
MAC OS 7.5.3 or higher  
5 MB free RAM  
20 MB disk space  
640x480, 256 color monitor or better  
Macintosh compatible printer

Does the computer you are using now satisfy these requirements?

Yes  No

By clicking the "Yes" button below, you (i) agree to receive the above-referenced documents electronically and confirm that you will download or print the disclosures for your records, (ii) acknowledge that you can access information that is provided electronically in this program, and (iii) acknowledge that you are providing your consent to receive electronic communications pursuant to the Electronic Signatures in Global and National Commerce Act and intend that this statute apply to the fullest extent possible.

Yes  No

You may withdraw your consent to receiving records electronically by clicking the appropriate "No" button above, but if you do so, you may not proceed with this transaction.

You understand that the information you have elected to receive is confidential in nature. We are not responsible for unauthorized access by third parties to information and/or communications provided electronically nor for any damages, including direct, indirect, special, incidental or consequential damages, caused by unauthorized access. If you have any questions about these disclosures, you may contact us by telephone at 1-800-524-0628.

You have the option to receive any information provided electronically in paper form. To receive specific information in paper form, please contact us at 1-800-524-0628. Please specify the information you wish to be provided in paper form. Your request will only apply to those specific items of information designated by you.

---



**APPLICATION FOR  
AN ELECTRONIC REFUND ADVANCE LOAN AND TO OPEN A DEPOSIT ACCOUNT**

**System Protected by U.S. Patent Nos. 4,890,228,5,193,057, and 5,963,921**

This Application is submitted to HSBC Bank USA, National Association ("HSBC") for an Electronic Refund Advance Loan ("ERA") and a Refund Account. As used herein, "BFC" means Block Financial Corporation and its parents, subsidiaries and affiliates; "HSBC TFS" means HSBC Taxpayer Financial Services Inc.; "IRS" means the Internal Revenue Service; and "RAL" means a refund anticipation loan.

**1. INFORMATION**

Applicant's Name \_\_\_\_\_  
 \_\_\_\_\_ ( )  
 First M.I. Last Maiden

---

Home Address \_\_\_\_\_

---

Mailing Address \_\_\_\_\_

---

Social Security/Taxpayer Identification # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

---

Date of Birth \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Joint Applicant — Spouse (if joint return) \_\_\_\_\_  
 \_\_\_\_\_ ( )  
 First M.I. Last Maiden

---

Home Address \_\_\_\_\_

---

Mailing Address \_\_\_\_\_

---

Social Security/Taxpayer Identification # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

---

Date of Birth \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**2. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY, AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT. WHAT THIS MEANS FOR ME: WHEN I OPEN AN ACCOUNT, YOU WILL ASK FOR MY NAME, ADDRESS, DATE OF BIRTH, AND OTHER INFORMATION THAT WILL ALLOW YOU TO IDENTIFY ME. YOU MAY ALSO SEEK TO VERIFY MY IDENTITY THROUGH NON-DOCUMENTARY METHODS.

**3. Payment Instructions**

- A. If I receive an ERA, I understand I am to receive my ERA proceeds via direct deposit into the bank account that I will designate on the Direct Deposit screen of this software application during the Electronic Filing process, and I authorize HSBC to direct deposit my funds to that designated account.
- B. If my refund is greater than my ERA, I understand I am to receive my excess funds via direct deposit into the bank account that I previously designated on the Direct Deposit screen of this software application and I authorize HSBC to direct deposit my funds to that designated account.

**4. HSBC ERA DISCLOSURE STATEMENT:**

The FINANCE CHARGE for my ERA is set forth on my Truth In Lending Disclosure. I know that even if my ERA is denied, I am responsible for my electronic filing, as applicable. I am also responsible for the repayment of my ERA whether or not my tax refund is paid to my account with HSBC in whole or in part. I understand that my income tax return can be filed electronically without obtaining in ERA and, subject to IRS processing, the usual time within which I can expect to receive a refund check if I file electronically and without an ERA is within approximately three weeks from the date I file my return. The IRS normally makes an electronic deposit in an average of about 12 days after an electronic filing. Alternatively, if I elect to obtain and am approved for an ERA, the loan proceeds usually will be made available to me within approximately 1-2 days of my loan application.

The usual duration of an ERA is approximately 11 days from the date of approval of the ERA. The following are examples of the estimated ANNUAL PERCENTAGE RATE ("APR") and ERA FINANCE CHARGES on ERAs of varying amounts based on 11-day maturity periods. Because the APR on an ERA may be high in certain cases relative to other sources of credit, I understand that it may cost less to use such sources; e.g., credit cards, equity lines, etc., instead of an ERA.

Example Loan Amount	\$ 500	\$ 750	\$ 1,000	\$ 1,500	\$ 2,000	\$ 3,000	\$ 4,000	\$ 5,000
ERA Finance Charge*	\$ 18	\$ 28	\$ 28	\$ 58	\$ 58	\$ 88	\$ 98	\$ 98
Estimated Annual Percentage Rate	124%e	129%e	96%e	133%e	99%e	100%e	83%e	66%e

\* I understand I will be given disclosures which will show the actual finance charge and other charges applicable to my ERA transaction.  
 "e"= estimate

5. Applicable Law. This Application and all the other documents executed in connection with this Application or my ERA (collectively, "Documents"), shall be governed by and construed, interpreted, and enforced in accordance with federal law and, to the extent state law applies, the law of the state of Delaware (without reference to conflict of laws principles).
6. Important Information About ERAs. I understand that: (a) I can file my federal income tax return electronically I without obtaining an ERA; (b) the IRS will send me a refund check or electronically deposit my refund to my existing bank account; (c) the IRS normally makes an electronic deposit in an average of about 12 days after an electronic filing; (d) HSBC tries to initiate the direct deposit of proceeds of an ERA on the first business day after application; (e) HSBC cannot guarantee when any proceeds of an ERA will be available to me; and (f) a ERA may cost substantially more than another type of loan I might obtain.
7. Deposit Authorization. (a) After I submit my Application, BFC will electronically transmit my tax return to the IRS and my Application to HSBC. I understand that I will authorize or agree to an IRS Transmittal Form 8453 or IRS e-file signature authorization ("Deposit Authorization") as part of my Application and electronic tax filing, and that the Deposit Authorization and this Application provide an irrevocable agreement to have my tax refund disbursed to HSBC, and irrevocably transfers to HSBC all my rights, title, and interest in the proceeds of my tax refund for purposes of the ERA I have requested and other purposes authorized by this Application. (b) If my Application is denied or cancelled, and HSBC receives my tax refund, HSBC will forward to me promptly my proceeds of my refund after deducting amounts permitted by this Agreement. (c) If for any reason, any part of the anticipated tax refund is disallowed or offset by the IRS, or if I should receive a refund check in the mail, I will advise HSBC immediately and promptly pay HSBC any amounts owing with respect to my Application or an ERA, and pay BFC any fees owed to them involving my tax return.
8. Refund Account. (a) I request that a deposit account be opened ("Refund Account") at HSBC upon receipt of my tax refund for the purposes of ensuring the repayment of my ERA and other amounts described in the Documents. The Annual Percentage Yield and interest rate on the Refund Account will be 0%. This means I will not receive any interest on funds in the Refund Account. I understand that I cannot make withdrawals from the Refund Account and that the funds in the Refund Account will be disbursed only as expressly provided in the Documents. (b) HSBC may deduct any amounts I owe HSBC or BFC from my tax refund, any funds received in the Refund Account, and any proceeds of an ERA. I am required to pay all fees to BFC for services rendered by BFC when HSBC electronically transfers my proceeds to me. If an electronic transfer of proceeds is not made available to me because I do not receive a tax refund, then I am required to pay all fees to BFC for services rendered by BFC on demand. HSBC also may withdraw amounts deposited into the Refund Account from my tax refund to disburse money to me in accordance with my Application. (c) I will not receive a periodic statement for the Refund Account, but I will receive notice if funds in the Refund Account are not sufficient to repay my ERA or are used for any purpose other than repayment of my ERA or disbursement to me. HSBC may, immediately after disbursement of all funds in the Refund Account, close the account without further notice to or authorization from me.
9. Refund Account Fee. I will pay HSBC a fee of \$11.95 for the administration of the Refund Account and any disbursements to me from that account ("Refund Account Fee"). I am obligated to pay the Refund Account Fee after the Deposit Authorization is filed with the IRS and is imposed regardless of whether (a) I apply for an ERA or (b) my Application is approved or denied. The Refund Account Fee is not imposed directly or indirectly as an incident to or condition of any extension of credit. I can avoid the Refund Account Fee if I direct that my tax refund not be deposited to HSBC before filing my Deposit Authorization with the IRS.
10. Collections. In consideration of the ease and convenience of the following method of paying any delinquent debt I owe or the other applicant owes to HSBC, HSBC TFS, my electronic return originator ("ERO") for prior years, BFC, or Bank One, River City Bank, First Security Bank, Republic Bank or Santa Barbara Bank & Trust (the "Other ERA or RAL Lenders"), and provided that such debt has not been discharged in bankruptcy, I authorize and direct the repayment of such debt, calculated as of the date of my Application, by means of (a) having such debt deducted from the proceeds of my ERA, or (b) having my request for an ERA denied or the amount for which I have applied reduced and having such debt repaid to those entities by offset or otherwise from my tax refund directly transmitted into my Refund Account at HSBC. If I owe delinquent debt to more than one of the entities listed above, I authorize and direct HSBC to pay such debts in the following order: HSBC, HSBC TFS, Other ERA or RAL Lenders, ERO, and BFC. I also authorize and instruct HSBC and the Other ERA or RAL Lenders to disclose to each other information about their

**respective credit experiences concerning my present and prior ERAs, refund anticipation loans (“RALs”), or similar financial services, and my prior tax returns.**

PLEASE NOTE: If I have delinquent debt, I understand that HSBC or HSBC TFS may be acting as a debt collector hereunder to collect a debt and that any information obtained will be used for that purpose.

11. No Fiduciary/Agency Duty. I understand that BFC is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction and has no other duties to me beyond the transmission of my tax return information to HSBC, and the electronic filing of my tax return with the IRS and/or state taxing authority. I understand that BFC or an affiliate of BFC may have the right to purchase an interest in my ERA issued by HSBC. I further understand that BFC or an affiliate of BFC may receive payments from HSBC or its affiliates in connection with ERAs. I also understand that HSBC is not acting in a fiduciary, confidential, or agency capacity with respect to me in connection with this transaction.
12. Disclosure Information. (a) “Information” means my federal and state income tax returns for the tax year 2004, any information obtained in connection with my tax return (including information relating to a possible offset of my tax refund or the possibility that my tax return is incorrect), and any information relating to my Application for an ERA or similar financial service I have received or requested from HSBC. (b) “Authorized Parties” means HSBC, HSBC TFS, BFC, my Transmitter, and their respective affiliates and agents, and includes the Fraud Service Bureau operated for HSBC. (c) The Authorized Parties may share Information to process my Application, to provide ERAs to me, to collect delinquent ERAs or BFC fees, to prevent fraud, and to otherwise administer or promote the program for ERAs. (d) The Authorized Parties may disclose Information to the IRS, state tax agencies and other financial institutions that provide ERAs or other financial services. (e) The Authorized Parties may call, or input my Information on any website of, the IRS or state tax agencies in connection with my Application to, among other things, determine the status of my tax return. The IRS and state tax agencies may disclose information about me and my tax returns to the Authorized Parties. (f) BFC may not use or disclose Information for any purpose, except as permitted under Treas. Reg. See. 301.7216-2 or as provided herein. (f) I consent to HSBC sharing information as provided in the Privacy Policy set forth in Section 18.
13. Service Fees. (a) Reissued Check Fee: I agree to pay \$10 each time that a check is reissued at my request for any reason. If I request that such a check be sent by overnight mail, I agree to pay the charges for sending it by overnight mail, (b) Document Fee: If I ask for a copy of my Application, loan agreement, billing statement or other document, I may be charged \$10 per document.
14. Arbitration Provision. Any claim, dispute or controversy between me and HSBC (as specifically defined below for purposes of this Arbitration Provision), whether in contract or tort (intentional or otherwise), whether pre-existing, present or future, and including constitutional, statutory, common law, regulatory, and equitable claims in any way relating to (a) any of these or any other Documents or any ERA that I have previously requested or received from HSBC, (b) advertisements, promotions, or oral or written statements related to this or any other Application for a RAL or any ERA that I have previously requested or received from HSBC, (c) the relationship of HSBC and me relating to any of these or any other Documents or any ERA that I have previously requested or received from HSBC; and (d) except as provided below, the validity, enforceability or scope of this Arbitration Provision or any part thereof, including, but not limited to, the issue whether any particular claim, dispute or controversy must be submitted to arbitration (collectively the “Claim”), shall be resolved, upon the election of either me or HSBC, by binding arbitration pursuant to this Arbitration Provision and the applicable rules of the American Arbitration Association (“AAA”) or the National Arbitration Forum (“NAF”) in effect at the time the Claim is filed. I shall have the right to select one of these arbitration administrators (the “Administrator”). The arbitrator must be a lawyer with more than ten (10) years of experience or a retired or former judge. In the event of a conflict between this Arbitration Provision and the rules of the Administrator, this Arbitration Provision shall govern. In the event of a conflict between this Arbitration Provision and the balance of this Application or any other Documents, this Arbitration Provision shall govern. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any organization that has in place a formal or informal policy that is inconsistent with and purports to override the terms of this Arbitration Provision, including the Class Action Waiver Provision defined below.

HSBC hereby agrees not to invoke its right to arbitrate an individual Claim I may bring in small claims court or an equivalent court, if any, so long as the Claim is pending only in that court. No class actions or private attorney general actions in court or in arbitration or joinder or consolidation of claims in court or in arbitration with other

persons, are permitted without the consent of HSBC and me. The validity and effect of the preceding sentence (herein referred to as the "Class Action Waiver Provision") shall be determined exclusively by a court and not by the Administrator or any arbitrator. Neither the Administrator nor any arbitrator shall have the power or authority to waive, modify or fail to enforce the Class Action Waiver Provision, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable.

Any arbitration bearing that I attend will take place in a location that is reasonably convenient for me. On any Claim I file, I will pay the first \$50.00 of the filing fee. At my request, HSBC will pay the remainder of the filing fee and any administrative or hearing fees charged by the Administrator, up to \$ 1,500.00 on any Claim asserted by me in the arbitration. If I should be required to pay any additional fees to the Administrator, HSBC will consider a request by me to pay all or part of the additional fees; however, HSBC shall not be obligated to pay any additional fees unless the arbitrator grants me an award. If the arbitrator grants an award in my favor, HSBC will reimburse me for any additional fees paid or owed by me to the Administrator up to the amount of the fees that would have been charged if the original Claim had been for the amount of the actual award in my favor. If the arbitrator issues an award in HSBC's favor, I will not be required to reimburse HSBC for any fees HSBC has previously paid to the Administrator or for which HSBC is responsible.

This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16 (the "FAA"), and not by any state law concerning arbitration. The arbitrator shall follow and apply applicable substantive law to the extent consistent with the FAA, statutes of limitation and claims of privilege and shall be authorized to award all remedies permitted by applicable substantive law, including, without limitation, compensatory, statutory and punitive damages, declaratory, injunctive and other equitable relief and attorneys' fees and costs. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the Administrator's rules. Upon request of either party, the arbitrator shall prepare a short reasoned written opinion supporting the arbitration award. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator's award will be final and binding except for: (a) any appeal right under the FAA; and (b) any appeal of Claims involving more than \$100,000. For such Claims, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider de novo (i.e., in its entirety) any aspect or all aspects of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs (i.e., the amounts owed to the Administrator and the arbitrators), regardless of its outcome. However, HSBC will consider in good faith any reasonable request for HSBC to bear up to the full costs of the appeal. Nothing in this Arbitration Provision shall be construed to prevent HSBC's use of offset or other contractual rights involving payment of my income tax refund or other amount on deposit with HSBC to pay off any ERA, RAL, or similar financial service, or BFC or other fees, now or thereafter owed by me to HSBC or any Other ERA or RAL Lender or BFC or third party pursuant to the Documents or similar prior documents.

I ACKNOWLEDGE THAT I HAVE A RIGHT TO LITIGATE CLAIMS IN COURT BEFORE A JUDGE OR JURY, BUT I PREFER TO RESOLVE ANY SUCH CLAIMS THROUGH ARBITRATION AND HEREBY KNOWINGLY AND VOLUNTARILY WAIVE MY RIGHTS TO LITIGATE SUCH CLAIMS IN COURT BEFORE A JUDGE OR JURY, UPON ELECTION OF ARBITRATION BY HSBC OR BY ME. I ACKNOWLEDGE THAT I WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OR CLAIMANTS OR AS A PRIVATE ATTORNEY GENERAL PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. I UNDERSTAND THAT, IF I AM A MEMBER OF THE PUTATIVE CLASS IN CUMMINS, ET AL. V. H&R BLOCK, ET AL., CASE NO. 03-C-134 IN THE CIRCUIT COURT OF KANAWHA COUNTY, WV, THIS ARBITRATION CLAUSE MAY NOT ACT AS A WAIVER OF THE RIGHTS AND CLAIMS I MAY HAVE IN THAT ACTION.

This Arbitration Provision shall supersede any prior Arbitration Provisions contained in any previous ERA application or related agreement and shall survive repayment of any ERA and termination of my account; provided, however, that if I reject this Arbitration Provision as set forth below, all prior Arbitration Provisions shall remain in full force and effect. If any portion of this Arbitration Provision is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Provision. However, if a determination is made that the Class Action Waiver Provision is unenforceable, this Arbitration Provision (other than this sentence) and any prior Arbitration Provision shall be null and void.

To reject this Arbitration Provision, I must send HSBC, c/o HSBC Taxpayer Financial Services, Account Research, P.O. Box 18097, Jacksonville, FL 32229, a signed writing ("Rejection Notice") that is received within thirty (30) days after the date I submit this Application. The Rejection Notice must identify the transaction involved and must include my name, address, and social security number and must be signed by all persons signing this Application as

Applicant(s). I may send the Rejection Notice in any manner I see fit as long as it is received at the specified address within the specified time. No other methods can be used to reject the Arbitration Agreement. If the Rejection Notice is sent on my behalf by a third party, such third party must include evidence of his or her authority to submit the Rejection Notice on my behalf.

As used in this Arbitration Provision, the term "HSBC" shall mean HSBC Bank USA, N. A., HSBC TFS, and H&R Block, Inc., and each of their parents, wholly or majority-owned subsidiaries, affiliates, or predecessors, successors, assigns and the franchisees of any of them, and each of their officers, directors, agents, and employees.

Contacting the Administrator: If I have a question about the Administrator mentioned in this Arbitration Provision or if I would like to obtain a copy of its arbitration rules, I can contact the Administrator as follows: American Arbitration Association, 335 Madison Avenue, New York, NY 10017, [www.adr.org](http://www.adr.org); National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405. [www.arb-fotum.com](http://www.arb-fotum.com).

15. Survival. The provisions of the Application shall survive the execution of any Loan Agreement and Disclosure Statement and the disbursement of funds.
16. Miscellaneous. (a) References to "I" or "me" or "my" in the Documents shall refer to the individual submitting an income tax return through this software or, in the case of a joint income tax return, to each individual and to both individuals, and the obligations of such individuals under the Documents will be joint and several, and each shall be considered an applicant. In the case of joint applicants, the individual agreeing to the Documents and the consent to electronic disclosures represents that he or she also has the authority to agree to the Documents and consent on behalf of the other applicant. (b) If any provision of the Documents or part thereof is deemed invalid, such invalidity will not affect any other provision of the Documents or part thereof, (c) HSBC may obtain a consumer report on me, and other information from third parties, in connection with evaluating my Application, or collecting or reviewing my ERA or accounts. (d) Supervisory personnel of HSBC may listen to and record my telephone calls. (e) I agree that you may send any notices and billing statements to the address of the primary applicant and not to the address of the joint applicant if such address is different. (f) HSBC may transfer, sell, participate or assign all or a portion of its rights, duties and obligations to third parties, including HSBC TFS, BFC, or their affiliates, successors and assignees, without notice to me or my consent.
17. State Notices. **California residents**: Married persons may apply for a separate account. **Iowa Residents**: NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with the law. **New York residents**: Consumer reports may be requested in connection with this account or any updates, renewals, or extensions thereof. Upon my request, HSBC will inform me of the names and addresses of any consumer reporting agencies which have provided HSBC with such reports. **Ohio residents**: The Ohio law against discrimination requires that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights commission administers compliance with these laws. **Pennsylvania residents**: If this loan becomes in default, HSBC or its assignee intends to collect default charges. **Utah residents**: Any prepaid finance charge not exceeding 5% of the original amount of me loan shall be fully earned on the date the loan is extended, and shall be nonrefundable in the event the loan is repaid prior to the date it is due. Any additional prepaid finance charge is earned proportionally over the term of the loan, and, in the event of such prepayment, the unearned portion of such charge, calculated on a pro rata basis according to the remaining term of the loan, shall be refunded. **Wisconsin residents**: No provision of a marital property agreement, a unilateral statement under Wisconsin State, s. 766.59 or a court decree under Wisconsin Stats. s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred. All obligations described herein are being incurred in the interest of my marriage or family. A married Wisconsin resident applicant must mail the name and address of his or her spouse, as well as the applicant's name and social security number, to HSBC c/o HSBC Taxpayer Financial Services, 20D Somerset Corporate Blvd., Bridgewater, NJ 08807, within two days.
18. Certification.  
I certify that the following information is true with respect to the ERA I am requesting: (1) I do not owe any tax due and/or any tax liens from prior tax years, nor have I previously filed a 2004 federal income tax return. (2) I do not have any delinquent child support, alimony payments, student loans, V.A. loans or other federally sponsored loans. (3) Presently, I do not have a petition (whether voluntary or involuntary) filed nor do I anticipate filing a petition under federal bankruptcy laws. (4) I have not had a Refund Anticipation Loan ("RAL") or ERA with any lender,

from a prior year that has been discharged in bankruptcy. (5) I have not paid any estimated tax and/or did not have any amount of my 2003 refund applied to my 2004 tax return. (6) I am not presently making regular payments to the IRS for prior year unpaid taxes. (7) I do not have a Power of Attorney presently in effect or on file with the Internal Revenue Service ("IRS") to direct my federal income tax refund to any third party. (8) I am not filing a 2004 federal income tax return using a substitute W-2, Form 4852, or any other form of substitute wage and tax documentation, unless the source of the Form 4852 is a Military Leave and Earnings Statement. (9) I am not filing a Form 8862 (Earned Income Credit Eligibility) with my 2004 federal income tax return. (10) I am not currently incarcerated in a state or federal prison or have 2004 income earned while an inmate at a penal institution and claiming the Earned Income Credit. (11) No portion of the 2004 income I have reported is from Schedule C or C-EZ (Profit or Loss from Business). (12) If Schedule C is present, EIC claimed, and return is self prepared or other, I am a statutory employee and the W-2 indicates statutory employee in Box 15. (13) I am not filing Form 8379 (Injured Spouse Claim & Allocation) with my 2004 federal income tax return. (14) I am not filing Form 1310 (Statement of Person Claiming Refund Due Deceased Taxpayer) with the 2004 Federal Income Tax Return or filing a Federal Income Tax Return Form 1040 on behalf of deceased taxpayer (15) I do not have an amount paid with request for an extension to file on Line 68, Field 1190 of Form 1040. (16) I do not have Other Taxes on Schedule A of Form 1040. (17) Everything that I have stated in this Application is correct

---

By clicking I AGREE, I am indicating that I fully understand that I am applying for a loan and that I have read, understand and agree to this Application, including: (a) Section 10 in which I agree that HSBC may use amounts received from my tax refund to pay delinquent debts I owe HSBC or others; and (b) Section 14 in which I agree, upon my or HSBC's election, to arbitrate any Claims that I may have. I also acknowledge that I have 30 days from today's date to reject the Arbitration Provision by following the procedure described in Section 14. If I receive an ERA, I promise to pay the amount set forth in the "Total of Payments" section on my Loan Agreement and Disclosure Statement or subsequent replacement TILA Disclosure Statement, if any, on demand or when the anticipated refund from the IRS is electronically deposited into my Refund Account, whichever comes first, and I agree to repay the ERA whether or not my tax refund is paid in whole or in part to HSBC.

I AGREE

HSBC Taxpayer Financial Services Toll-Free Customer Service Number 1-800-524-0628

**HSBC TAXPAYER FINANCIAL SERVICES DIVISION OF HSBC BANK USA, NATIONAL  
ASSOCIATION  
Privacy Statement**

**Applicability**

This Privacy Statement only applies to customers' accounts with the HSBC Taxpayer Financial Services division of HSBC Bank USA, National Association ("HSBC"). All other HSBC accounts are governed by the HSBC Bank USA National Association Personal Banking Policy.

**Introduction — Our Commitment to You**

HSBC is proud to be part of a financial services organization that has been providing superior products and services to its customers for many years. We greatly appreciate the trust that you and millions of customers have placed in us, and we will protect that trust by continuing to respect the privacy of all our applicants and customers even if our formal customer relationship ends.

**How We Handle Information we Obtain**

It is important for you to know that in order to ensure that our customers get the very best service and the highest quality products, HSBC collects demographic information (like your name and address) and credit information (like information related to your accounts with us and others). This information comes either directly from you, for instance, from your application and transactions on your account; or, it may come from an outside source such as your credit bureau report. In addition, if you visit our Internet web site, we may collect certain information about your Internet usage.

Because some of the information we gather is not publicly available, we take great care to ensure that this information is kept safe from unauthorized access, and we would never share the information in violation of any regulation or law. Because we respect your privacy and we value your trust, the only employees or companies who can access your private personal information are those who use it to service your account or provide services to you or to us. HSBC diligently maintains physical, electronic and procedural safeguards that comply with applicable federal standards to guard your private personal information and to assist us in preventing unauthorized access to that information.

**How We Share Information with Companies Affiliated with Us**

From time to time, for general business purposes such as fraud control, or when we think it may benefit you, we do share certain information with our affiliated companies, except as prohibited by applicable law. These affiliated companies all provide financial services, such as banking, consumer finance, insurance, mortgage, and brokerage services. Some examples include companies doing business under the names Household, Beneficial, or HSBC. We may also share certain information with non-financial service providers that become affiliated with us in the future (such as travel, auto, or shopping clubs), except as prohibited by applicable law. The information we share might come from your application, for instance your name, address, telephone number, social security number, and e-mail address. Also, the information we share could include your transactions with us or our affiliated companies (such as your account balance, payment history, and parties to the transaction), your Internet usage, or your credit card usage. Except for Vermont residents, the information we share could also include your assets, income, or credit reports.

**How We Share Information under a Joint Marketing Agreement**

We may also provide information to non-affiliated financial companies (such as a tax preparer, mortgage banker or insurance service provider) with whom we have a joint marketing agreement. The sharing of information with these types of companies is permitted by law. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

**How We Share Information with Other Third Parties**

Except for California or Vermont residents, we also may share information with non-affiliated companies that are able to extend special offers we feel might be of value to you. These companies may be financial services providers (such as mortgage bankers or insurance agents) or they may be non-financial companies (such as retailers, tax preparers, or marketing companies). These offers are typically for products and services that you might not otherwise hear about. The information we may provide them comes from the sources described above and might include your name, address and phone number. You may tell us not to share information with non-affiliated companies in this way by completing the form below. For California and Vermont residents, applicable law requires us to obtain your permission in order to share information about you in this way, and we have chosen not to share your information in this way.

We may also provide information to non-affiliated companies that perform operational, collection, or fraud control services related to your account. The sharing of information with these types of companies is permitted by law. Such a company might include a financial company (such as an insurance service provider) or a non-financial company (such as a data processor or internet service provider) with whom we have an agreement. The information we may share also comes from the sources described above and might include your name, address, phone number, and account experience with us.

Finally, we provide information about you to non-affiliated companies such as credit reporting agencies and companies which provide services related to your account. This information sharing is also permitted by law.

We reserve the right to change our privacy practices at any time in accordance with applicable law. Notice of such changes will be provided if required by applicable law.

**How to Opt-Out (non-affiliated companies) (Applicable to residents of all states except California and Vermont)**

If you do not want us to share your private information with non-affiliated companies (unless we are permitted or required by law to do so), please let us know by simply calling 1-800-365-2641. If you have previously informed us of your preference, you do not need to do so again. We will be happy to comply with your "opt-out" request, which will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account. Opt-out requests will not apply to information sharing that is permitted by law. Please allow sufficient time for us to process your request.

**How to Opt-Out (affiliated companies) (Applicable to residents of all states except Vermont)**

If you do not want us to share your credit information (such as your credit bureau information) with companies that are affiliated with us, please let us know by simply calling 1-800-365-2641. If you have previously informed us of your preference, you do not need to do so again. This request will not apply to information about your transactions or experience with HSBC (such as account information, account usage, or payment history), except as required by law, and will only apply to the HSBC account you have designated on the form by account number. An opt-out request by any party on a joint account will apply to all parties on the joint account.

---

Atención clientes hispanoparlantes: Esta Declaración Sobre la Privacidad proporciona información sobre cómo manejamos información personal no pública acerca de nuestros clientes, las circunstancias bajo las cuales podemos compartir tal información con otras personas, y cómo usted puede pedir que no compartamos esa información con terceros que no son afiliados nuestros. Si quisiera que le proporcionemos una traducción al español de la Declaración Sobre la Privacidad en su totalidad, sírvase comunicarse con nosotros llamándonos gratis al 1-800-365-261.



**LOAN AGREEMENT AND DISCLOSURE STATEMENT**

In this Loan Agreement and Disclosure Statement ("Agreement"), "ERA" means an Electronic Refund Advance Loan, "HSBC" means HSBC Bank USA, National Association, and "I", "me" and "my" means each person who has applied to HSBC for an ERA. "H&R Block" means each of H&R Block, Inc., and each of its affiliates and subsidiaries (and franchisees thereof).

Truth in Lending Act Disclosure Statement

1. Amount Financed (the amount of credit provided to me or on my behalf)	\$ _____
2. FINANCE CHARGE (the dollar amount the credit will cost me)	\$ _____
3. Total of Payments (the amount I will have paid after I have made all payments as scheduled)	\$ _____
4. ANNUAL PERCENTAGE RATE (the cost of my credit as a yearly rate)	_____ %(e)

\_\_\_\_\_  
"e"= estimate

If line is left blank, amount is "0"

Creditor: My creditor is HSBC Bank USA, National Association.

Demand Feature: My loan will be repayable on demand or when the anticipated tax refund is electronically deposited in my Refund Account with HSBC, whichever is earlier.

Payment Schedule: HSBC estimates that the total loan amount will be due in a single payment approximately 12 days from the date of this Agreement.

Security Interest: I am providing HSBC with a security interest in my tax refund payment by the IRS, and, except for Virginia residents, in all funds deposited in the Refund Account and that Refund Account.

Late Charge: A late charge equal to 1.5% of the unpaid Total of Payments may be imposed on the date 35 days after payment of my loan is demanded, and on the same date of each succeeding month (or if there is no such date, the last date of the month).

Prepayment: If I pay off early, I will not be entitled to a refund of part or all of the Finance Charge.

Contract Reference: Refer to the Application and the accompanying Loan Agreement for additional information about nonpayment, default, any right to accelerate the maturity of the obligation, and any prepayment rebates or penalties.

Required Deposit: The Annual Percentage Rate does not take into account my required deposit.

---

Itemization of Amount Financed

1. Amount paid directly to me	\$ _____
2. Amount paid for my Refund Account Fee to HSBC	\$ _____
3. Amount Financed (Items 1 +2)	\$ _____(e)
4. Prepaid FINANCE CHARGE (ERA Fee)	\$ _____(e)
5. Total ERA Amount (Items 3+4)	\$ _____(e)

“(e)” = estimate

If line is left blank, amount to “0”

Loan Agreement

1. Obligation on ERA.

(a) I am obligated, on the date I agree to this Agreement, to accept an ERA if HSBC approves my application. My loan will begin, and HSBC will earn the finance charge, when I am approved for the ERA and a transfer is initiated to my bank account.

(b) I may cancel my ERA transaction, or my obligation to accept an ERA, for up to 48 hours after I become obligated to accept the ERA. To do so, I must return to HSBC cash in the amount of the ERA proceeds and comply with other requirements set by HSBC. I must call the customer service number (1-800-524-0628) for further instructions on how to return the ERA proceeds to HSBC. I understand that, if I use my right to cancel, my finance charge will be refunded to me, HSBC will provide me with any tax refund only after HSBC receives the refund from the IRS, and I must still pay a Refund Account Fee.

2. Security Interest. If I receive a ERA, I grant HSBC a security interest in the property described in the TILA Disclosure Statement as collateral for my obligations to repay the ERA and perform my other obligations under the Application and this Agreement.

3. Deductions. My Prepaid Finance Charge and Refund Account Fee shall be deducted from the proceeds of my ERA.

4. Other Charges. I agree to pay a returned check charge of \$19 if any check or similar instrument I give HSBC is not honored. (b) I agree to pay a late charge as described in the TILA Disclosure Statement if I do not repay my loan when due. (c) In the event that I pay my account by telephone, I agree to pay up to a \$10 fee for each such payment. HSBC reserves the right to change this fee from time to time. I may call Customer Service for a current fee schedule. (d) I also agree to pay any attorney’s fees and collection agency costs incurred by HSBC or its affiliates to collect any delinquent ERA as permitted by law.

5. Application of Payments. Each payment I make on the ERA will be applied in any order determined by HSBC.

BY CLICKING I AGREE ABOVE, I AGREE TO THE TERMS OF THIS LOAN AGREEMENT. I ALSO ACKNOWLEDGE RECEIVING A COMPLETED COPY OF THIS LOAN AGREEMENT AND DISCLOSURE STATEMENT.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT, NOTICE TO CUSTOMER

(a) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

(b) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(c) HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

I AGREE

References to "you" and "your" herein shall refer to the individual submitting an income tax return through this software or, in the case of a joint return, to each individual and to both individuals submitting the return.

By consenting below to receive information electronically, you will receive the following information and disclosures electronically:

Application for an Electronic Refund Advance Loan Agreement and Disclosure Statements.

To access and/or retain these disclosures, you will need a desktop or laptop personal computer and the following:

**Windows**

486 or faster PC  
Windows 95, 98, 2000, ME, NT 4.0, or XP  
**16 MB RAM**  
30 MB disk space  
640x480, 256 color monitor or better  
Windows compatible printer

**Macintosh**

68030 or better (Power PC recommended)  
MAC OS 7.5.3 or higher  
5 MB free RAM  
20 MB disk space  
640x480, 256 color monitor or better  
Macintosh compatible printer

Does the computer you are using now satisfy these requirements?

Yes       No

By clicking the "Yes" button above, you (i) agree to receive the above-referenced documents electronically and confirm that you will download or print the disclosures for your records, (ii) acknowledge that you can access information that is provided electronically in this program, and (iii) acknowledge that you are providing your consent to receive electronic communications pursuant to the Electronic Signatures in Global and National Commerce Act and intend that this statute apply to the fullest extent possible.

Yes       No

You may withdraw your consent to receiving records electronically by clicking the appropriate "No" button above, but if you do so, you may not proceed with this transaction.

You understand that the information you have elected to receive is confidential in nature. We are not responsible for unauthorized access by third parties to information and/or communications provided electronically nor for any damages, including direct, indirect, special, incidental or consequential damages, caused by unauthorized access. If you have any questions about these disclosures, you may contact us by telephone at 1-800-524-0628.

You have the option to receive any information provided electronically in paper form. To receive specific information in paper form, please contact us at 1-800-524-0628. Please specify the information you wish to be provided in paper form. Your request will only apply to those specific items of information designated by you.

SALE AND SERVICING AGREEMENT

among

OPTION ONE OWNER TRUST 2005-9  
as Issuer

and

OPTION ONE LOAN WAREHOUSE CORPORATION  
as Depositor

and

OPTION ONE MORTGAGE CORPORATION  
as Loan Originator and Servicer

and

WELLS FARGO BANK, N.A.  
as Indenture Trustee

Dated as of December 30, 2005

OPTION ONE OWNER TRUST 2005-9  
MORTGAGE-BACKED NOTES

---

---

## TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE I</u>	
<u>DEFINITIONS</u>	
Section 1.01	Definitions. 1
Section 1.02	Other Definitional Provisions. 24
<u>ARTICLE II</u>	
<u>CONVEYANCE OF THE TRUST ESTATE; ADDITIONAL NOTE PRINCIPAL BALANCES</u>	
Section 2.01	Conveyance of the Trust Estate; Additional Note Principal Balances. 24
Section 2.02	Ownership and Possession of Loan Files. 26
Section 2.03	Books and Records Intention of the Parties. 26
Section 2.04	Delivery of Loan Documents. 27
Section 2.05	Acceptance by the Indenture Trustee of the Loans; Certain Substitutions and Repurchases; Certification by the Custodian. 27
Section 2.06	Conditions Precedent to Transfer. 29
Section 2.07	Termination or Suspension of Revolving Period. 31
Section 2.08	Correction of Errors 31
<u>ARTICLE III</u>	
<u>Article III REPRESENTATIONS AND WARRANTIES</u>	
Section 3.01	Representations, Warranties and Covenants of the Depositor. 32
Section 3.02	Representations, Warranties and Covenants of the Loan Originator. 34
Section 3.03	Representations, Warranties and Covenants of the Servicer. 36
Section 3.04	Reserved. 38
Section 3.05	Representations and Warranties Regarding Loans 38
Section 3.06	Purchase and Substitution. 38
Section 3.07	Dispositions. 40
Section 3.08	Loan Originator Put; Servicer Call. 43
Section 3.09	Modification of Underwriting Guidelines. 43
<u>ARTICLE IV</u>	
<u>ADMINISTRATION AND SERVICING OF THE LOANS</u>	
Section 4.01	Servicer's Servicing Obligations 44
Section 4.02	Financial Statements; Other Statements and Notices. 44
<u>ARTICLE V</u>	
<u>ESTABLISHMENT OF TRUST ACCOUNTS; TRANSFER OBLIGATION</u>	
Section 5.01	Collection Account and Distribution Account. 44
Section 5.02	Payments to Securityholders. 48

---

Section 5.03	Trust Accounts; Trust Account Property.	<u>Page</u> 49
Section 5.04	Advance Account.	51
Section 5.05	Transfer Obligation Account.	51
Section 5.06	Transfer Obligation.	52

## TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE VI</u>	
<u>STATEMENTS AND REPORTS; SPECIFICATION OF TAX MATTERS</u>	
Section 6.01	Statements. 53
Section 6.02	Specification of Certain Tax Matters. 56
Section 6.03	Valuation of Loans; Hedge Value and Retained Securities Value, Market Value Agent. 56
<u>ARTICLE VII</u>	
<u>HEDGING; FINANCIAL COVENANTS</u>	
Section 7.01	Hedging Instruments. 57
Section 7.02	Financial Covenants 58
<u>ARTICLE VIII</u>	
<u>THE SERVICER</u>	
Section 8.01	Indemnification, Third Party Claims. 58
Section 8.02	Merger or Consolidation of the Servicer. 60
Section 8.03	Limitation on Liability of the Servicer and Others. 60
Section 8.04	Servicer Not to Resign; Assignment. 61
Section 8.05	Relationship of Servicer to Issuer and the Indenture Trustee. 61
Section 8.06	Servicer May Own Securities. 61
Section 8.07	Indemnification of the Indenture Trustee, Noteholders and Noteholder Agent. 62
<u>ARTICLE IX</u>	
<u>SERVICER EVENTS OF DEFAULT</u>	
Section 9.01	Servicer Events of Default. 62
Section 9.02	Appointment of Successor. 64
Section 9.03	Waiver of Defaults. 65
Section 9.04	Accounting Upon Termination of Servicer. 65
<u>ARTICLE X</u>	
<u>TERMINATION; PUT OPTION</u>	
Section 10.01	Termination. 65
Section 10.02	Optional Termination. 66
Section 10.03	Notice of Termination. 66
Section 10.04	Put Option. 66
<u>ARTICLE XI</u>	
<u>MISCELLANEOUS PROVISIONS</u>	
Section 11.01	Acts of Securityholders. 66
Section 11.02	Amendment. 67
Section 11.03	Recordation of Agreement. 67

---



Section 11.04	Duration of Agreement.	<u>Page</u> 67
Section 11.05	Governing Law.	68
Section 11.06	Notices.	68
Section 11.07	Severability of Provisions.	68
Section 11.08	No Partnership.	69

## TABLE OF CONTENTS

	<u>Page</u>	
Section 11.09	Counterparts.	69
Section 11.10	Successors and Assigns.	69
Section 11.11	Headings.	69
Section 11.12	Actions of Securityholders.	69
Section 11.13	Non-Petition Agreement.	70
Section 11.14	Holders of the Securities.	70
Section 11.15	Due Diligence Fees, Due Diligence.	70
Section 11.16	No Reliance.	71
Section 11.17	Confidential Information.	71
Section 11.18	Conflicts.	72
Section 11.19	Limitation on Liability.	72
Section 11.20	No Agency.	73

### SERVICING ADDENDUM

#### SERVICING ADDENDUM

#### EXHIBITS

EXHIBIT A	Form of Notice of Additional Note Principal Balance
EXHIBIT B	Form of Servicer's Remittance Report to Trustee
EXHIBIT C	Form of S&SA Assignment
EXHIBIT D	Piggy-Backed Loan Underwriting Criteria
EXHIBIT E	Loan Schedule
EXHIBIT F	Representations and Warranties Regarding the Loans
EXHIBIT G	Servicing Addendum
EXHIBIT H	Capital Adequacy Test
EXHIBIT I	Quarterly Compliance Certificate Form

## SALE AND SERVICING AGREEMENT

This Sale and Servicing Agreement is entered into effective as of December 30, 2005, among OPTION ONE OWNER TRUST 2005-9, a Delaware statutory trust (the "Issuer" or the "Trust"), OPTION ONE LOAN WAREHOUSE CORPORATION, a Delaware corporation, as Depositor (in such capacity, the "Depositor"), OPTION ONE MORTGAGE CORPORATION, a California corporation ("Option One"), as Loan Originator (in such capacity, the "Loan Originator") and as Servicer (in such capacity, the "Servicer"), and WELLS FARGO BANK, N.A., a national banking association, as Indenture Trustee on behalf of the Noteholders (in such capacity, the "Indenture Trustee").

### WITNESSETH:

In consideration of the mutual agreements herein contained, the Issuer, the Depositor, the Loan Originator, the Servicer and the Indenture Trustee hereby agree as follows for the benefit of each of them and for the benefit of the holders of the Securities:

### ARTICLE I

#### DEFINITIONS

##### Section 1.01 Definitions.

Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the meanings specified in this Article. Unless otherwise specified, all calculations of interest described herein shall be made on the basis of a 360-day year and the actual number of days elapsed in each Accrual Period.

Accepted Servicing Practices: The Servicer's normal servicing practices in servicing and administering similar mortgage loans for its own account, which in general will conform to the mortgage servicing practices of prudent mortgage lending institutions which service for their own account mortgage loans of the same type as the Loans in the jurisdictions in which the related Mortgaged Properties are located and will give due consideration to the Noteholders' reliance on the Servicer.

Accrual Period: With respect to the Notes, the period commencing on and including the preceding Payment Date (or, in the case of the first Payment Date, the period commencing on and including the first Transfer Date (which first Transfer Date is the first date on which the Note Principal Balance is greater than zero)) and ending on the day preceding the related Payment Date.

Act or Securities Act: The Securities Act of 1933, as amended.

Additional Note Principal Balance: With respect to each Transfer Date, the aggregate Sales Prices of all Loans conveyed on such date.

Adjustment Date: With respect to each ARM, the date set forth in the related Promissory Note on which the Loan Interest Rate on such ARM is adjusted in accordance with the terms of the related Promissory Note.

Administration Agreement: The Administration Agreement, dated as of December 30, 2005, between the Issuer and the Administrator.

---

Administrator: Option One Mortgage Corporation, in its capacity as Administrator under the Administration Agreement.

Advance Account: The account established and maintained pursuant to Section 5.04.

Affiliate: With respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person, including a Subsidiary of such Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Agreement: This Agreement, as the same may be amended and supplemented from time to time.

ALTA: The American Land Title Association and its successors in interest.

Appraised Value: With respect to any Loan, and the related Mortgaged Property, the lesser of:

(i) the lesser of (a) the value thereof as determined by an appraisal made for the originator of the Loan at the time of origination of the Loan by an appraiser who met the minimum requirements of Fannie Mae or Freddie Mac, and (b) the value thereof as determined by a review appraisal process which may include an automated appraisal process consistent with the Underwriting Guidelines conducted by the Loan Originator in the event any such review appraisal determines an appraised value more than 10% lower than the value thereof, in the case of a Loan with a Loan-to-Value Ratio less than or equal to 80%, or more than 5% lower than the value thereof, in the case of a Loan with a Loan-to-Value Ratio greater than 80%, as determined by the appraisal referred to in clause (i)(a) above; and

(ii) the purchase price paid for the related Mortgaged Property by the Borrower with the proceeds of the Loan; provided, however, that in the case of a Refinanced Loan or a Loan originated in connection with a "lease option purchase" if the "lease option purchase price" was set 12 months or more prior to origination, such value of the Mortgaged Property shall be based solely upon clause (i) above.

ARM: Any Loan, the Loan Interest Rate with respect to which is subject to adjustment during the life of such Loan.

Assignment: An LPA Assignment or S&SA Assignment.

Assignment of Mortgage: With respect to any Loan, an assignment of the related Mortgage in blank or to Wells Fargo Bank, N.A., as custodian or trustee under the applicable custodial agreement or trust agreement, and notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment and pledge of such Mortgage.

Balloon Loan: Any Loan for which the related monthly payments, other than the monthly payment due on the maturity date stated in the Promissory Note, are computed on the basis of a period to full amortization ending on a date that is later than such maturity date.

Basic Documents: This Agreement, the Administration Agreement, the Custodial Agreement, the Indenture, the Loan Purchase and Contribution Agreement, the Master Disposition Confirmation Agreement, the Note Purchase Agreement, the Trust Agreement, the Pricing Letter, the Blocked Account Agreements, each Hedging Instrument, if any, and, as and when required to be executed and delivered, the Assignments.

Blocked Account Agreements: The blocked account agreements entered into with respect to the Collection Account/Deposit Account, the Advance Account and the Transfer Obligation Account, each dated as of December 30, 2005, and by and among the Trust, the Servicer, the Indenture Trustee and Mellon Bank, N.A.

Borrower: The obligor or obligors on a Promissory Note.

Business Day: Any day other than (i) a Saturday or Sunday, or (ii) a day on which banking institutions in New York City, California, Maryland, Minnesota, Pennsylvania, Delaware or in the city in which the corporate trust office of the Indenture Trustee is located or the city in which the Servicer's servicing operations are located are authorized or obligated by law or executive order to be closed.

Certificateholder: A holder of a Trust Certificate.

Change of Control: As defined in the Indenture.

Clean-up Call Date: The first Payment Date occurring after the end of the Revolving Period and the date on which the Note Principal Balance declines to 10% or less of the aggregate Note Principal Balance as of the end of the Revolving Period.

Closing Agent: As defined in the Custodial Agreement.

Closing Date: December 30, 2005.

Closing Protection Letter: A letter of indemnification with respect to a Wet Funded Loan issued by the related title insurance company, naming the related Closing Agent and providing for reimbursement to the Loan Originator for any loss incurred in connection with closing of such Wet Funded Loan by such Closing Agent, which letter is effective on or before the closing of such Wet Funded Loan.

Code: The Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated by the United States Treasury thereunder.

Collateral Value: As defined in the Pricing Letter.

Collection Account: The account designated as such, established and maintained by the Servicer in accordance with Section 5.01(a)(1) hereof.

Combined LTV or CLTV: With respect to any Second Lien Loan, the ratio of (a) the outstanding Principal Balance on the related date of origination of such Loan plus the loan constituting the first lien, to (b) the lesser of (x) the Appraised Value of the Mortgaged Property at origination or (y) if the Mortgaged Property was purchased within 12 months of the origination of the Loan, the purchase price of the Mortgaged Property, expressed as a percentage.

**Committed Note Principal Balance:** With respect to the Notes, as of any date of determination (a) the sum of the Additional Note Principal Balances purchased on or prior to such date pursuant to the Note Purchase Agreement up to the Maximum Committed Note Principal Balance less (b) all amounts previously distributed in respect of the Note Principal Balance on or prior to such day.

**Committed Purchaser:** DB Structured Products, Inc. and its permitted successors and assigns or an Affiliate thereof identified in writing by DB Structured Products, Inc. to the Indenture Trustee and the other parties hereto, subject to the consent of the Loan Originator, which may not be unreasonably withheld or delayed.

**Conduit Purchaser:** Gemini Securitization Corp., LLC, Aspen Funding Corp. and/or Newport Funding Corp., as the case may be.

**Convertible Loan:** A Loan that by its terms and subject to certain conditions contained in the related Mortgage or Promissory Note allows the Borrower to convert the adjustable Loan Interest Rate on such Loan to a fixed Loan Interest Rate.

**Custodial Agreement:** The custodial agreement dated as of December 30, 2005, among the Issuer, the Servicer, the Indenture Trustee, the Noteholder Agent and the Custodian, providing for the retention of the Custodial Loan Files by the Custodian on behalf of the Indenture Trustee.

**Custodial Loan File:** As defined in the Custodial Agreement.

**Custodian:** The custodian named in the Custodial Agreement, which custodian shall not be affiliated with the Servicer, the Loan Originator, the Depositor or any Subservicer. Wells Fargo Bank, N.A., a national banking association, shall be the initial Custodian pursuant to the terms of the Custodial Agreement.

**Custodian Fee:** For any Payment Date, the fee payable to the Custodian on such Payment Date as set forth in the Custodian Fee Notice for such Payment Date, which fee shall be calculated in accordance with the separate fee letter between the Custodian and the Servicer.

**Custodian Fee Notice:** For any Payment Date, the written notice provided by the Custodian to the Servicer and the Indenture Trustee pursuant to Section 6.01, which notice shall specify the amount of the Custodian Fee payable on such Payment Date.

**Daily Interest Accrual Amount:** With respect to each day and the related Accrual Period, the interest accrued at the Note Interest Rate with respect to such Accrual Period on the Note Principal Balance as of the preceding Business Day after giving effect to all changes to the Note Principal Balance on or prior to such preceding Business Day.

**Deemed Cured:** With respect to the occurrence of a Rapid Amortization Trigger, when the condition that originally gave rise to the occurrence of such trigger has not continued for 20 consecutive days, or if the occurrence of such Rapid Amortization Trigger has been waived in writing by the Noteholder Agent.

**Default:** Any occurrence that is, or with notice or the lapse of time or both would become, an Event of Default.

**Defaulted Loan:** With respect to any Determination Date, any Loan, including, without limitation, any Liquidated Loan with respect to which any of the following has occurred as of the end of

the related Remittance Period: (a) foreclosure or similar proceedings have been commenced; or (b) the Servicer or any Subservicer has determined in good faith and in accordance with the servicing standard set forth in Section 4.01 of the Servicing Addendum that such Loan is in default or imminent default.

Default LIBOR Margin: As defined in the Pricing Letter.

Deleted Loan: A Loan replaced or to be replaced by one or more Qualified Substitute Loans.

Delinquent: A Loan is "Delinquent" if any Monthly Payment due thereon is not made by the close of business on the day such Monthly Payment is required to be paid. A Loan is "30 days Delinquent" if any Monthly Payment due thereon has not been received by the close of business on the corresponding day of the month immediately succeeding the month in which such Monthly Payment was required to be paid or, if there is no such corresponding day (e.g., as when a 30-day month follows a 31-day month in which a payment was required to be paid on the 31st day of such month), then on the last day of such immediately succeeding month. The determination of whether a Loan is "60 days Delinquent," "90 days Delinquent," etc., shall be made in like manner.

Delivery: When used with respect to Trust Account Property means:

(a) with respect to bankers' acceptances, commercial paper, negotiable certificates of deposit and other obligations that constitute "instruments" within the meaning of Section 9-102(a)(47) of the UCC and are susceptible of physical delivery (except with respect to Trust Account Property consisting of certificated securities (as defined in Section 8-102(a)(4) of the UCC)), physical delivery to the Indenture Trustee or its custodian (or the related Securities Intermediary) endorsed to the Indenture Trustee or its custodian (or the related Securities Intermediary) or endorsed in blank (and if delivered and endorsed to the Securities Intermediary, by continuous credit thereof by book-entry to the related Trust Account);

(b) with respect to a certificated security (i) delivery of such certificated security endorsed to, or registered in the name of, the Indenture Trustee or endorsed in blank to its custodian or the related Securities Intermediary and the making by such Securities Intermediary of appropriate entries in its records identifying such certificated securities as credited to the related Trust Account, or (ii) by delivery thereof to a "clearing corporation" (as defined in Section 8-102(a)(5) of the UCC) and the making by such clearing corporation of appropriate entries in its records crediting the securities account of the related Securities Intermediary by the amount of such certificated security and the making by such Securities Intermediary of appropriate entries in its records identifying such certificated securities as credited to the related Trust Account (all of the Trust Account Property described in Subsections (a) and (b), "Physical Property"); and, in any event, any such Physical Property in registered form shall be in the name of the Indenture Trustee or its nominee or custodian (or the related Securities Intermediary); and such additional or alternative procedures as may hereafter become appropriate to effect the complete transfer of ownership of any such Trust Account Property to the Indenture Trustee or its nominee or custodian, consistent with changes in applicable law or regulations or the interpretation thereof;

(c) with respect to any security issued by the U.S. Treasury, Fannie Mae or Freddie Mac that is a book-entry security held through the Federal Reserve System pursuant to federal book-entry regulations, the following procedures, all in accordance with applicable law, including applicable federal regulations and Articles 8 and 9 of the UCC: the making by a Federal Reserve Bank of an appropriate entry crediting such Trust Account Property to an account of the related Securities Intermediary or the securities intermediary that is (x) also a "participant" pursuant to applicable federal regulations and (y) is acting as securities intermediary on behalf of the Securities Intermediary with respect to such Trust

Account Property; the making by such Securities Intermediary or securities intermediary of appropriate entries in its records crediting such book-entry security held through the Federal Reserve System pursuant to federal book-entry regulations and Articles 8 and 9 of the UCC to the related Trust Account; and such additional or alternative procedures as may hereafter become appropriate to effect complete transfer of ownership of any such Trust Account Property to the Indenture Trustee or its nominee or custodian, consistent with changes in applicable law or regulations or the interpretation thereof; and

(d) with respect to any item of Trust Account Property that is an uncertificated security (as defined in Section 8-102(a)(18) of the UCC) and that is not governed by clause (c) above, registration in the records of the issuer thereof in the name of the related Securities Intermediary, and the making by such Securities Intermediary of appropriate entries in its records crediting such uncertificated security to the related Trust Account.

**Designated Depository Institution:** With respect to an Eligible Account, an institution whose deposits are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the FDIC, the long-term deposits of which shall be rated A or better by S&P or A2 or better by Moody's and the short-term deposits of which shall be rated P-1 or better by Moody's and A-1 or better by S&P, unless otherwise approved in writing by the Noteholder Agent and which is any of the following: (A) a federal savings and loan association duly organized, validly existing and in good standing under the federal banking laws, (B) an institution duly organized, validly existing and in good standing under the applicable banking laws of any state, (C) a national banking association duly organized, validly existing and in good standing under the federal banking laws, (D) a principal subsidiary of a bank holding company or (E) approved in writing by the Noteholder Agent and, in each case acting or designated by the Servicer as the depository institution for the Eligible Account; provided, however, that any such institution or association shall have combined capital, surplus and undivided profits of at least \$50,000,000.

**Depositor:** Option One Loan Warehouse Corporation, a Delaware corporation, and any successors thereto.

**Determination Date:** With respect to any Payment Date occurring on the 10th day of a month, the last calendar day of the month immediately preceding the month of such Payment Date, and with respect to any other Payment Date, as mutually agreed by the Servicer and the Noteholders.

**Disposition:** A Securitization, Whole Loan Sale transaction, or other disposition of Loans.

**Disposition Agent:** Deutsche Bank Structured Products, Inc. and its successors and assigns acting at the direction, and as agent, of the Majority Noteholders.

**Disposition Participant:** As applicable, with respect to a Disposition, any "depositor" with respect to such Disposition, the Disposition Agent, the Majority Noteholders, the Issuer, the Servicer, the related trustee and the related custodian, any nationally recognized credit rating agency, the related underwriters, the related placement agent, the related credit enhancer, the related whole-loan purchaser, the related purchaser of securities and/or any other party necessary or, in the good faith belief of any of the foregoing, desirable to effect a Disposition.

**Disposition Proceeds:** With respect to a Disposition, (x) the proceeds of the Disposition remitted to the Trust in respect of the Loans transferred on the date of and with respect to such Disposition, including without limitation, any cash and Retained Securities created in any related Securitization less all costs, fees and expenses incurred in connection with such Disposition, including, without limitation, all amounts deposited into any reserve accounts upon the closing thereof plus or minus



(y) the net positive or net negative value of all Hedging Instruments, if any, terminated in connection with such Disposition minus (z) all other amounts agreed upon in writing by the Noteholder Agent, the Trust and the Servicer.

Distribution Account: The account established and maintained pursuant to Section 5.01(a)(2) hereof.

Due Date: The day of the month on which the Monthly Payment is due from the Borrower with respect to a Loan.

Due Diligence Fees: Shall have the meaning provided in Section 11.15 hereof.

Early Payment Default Loan: As defined in the Pricing Letter.

Eligible Account: At any time, a deposit account or securities account which is: (1) maintained with a Designated Depository Institution; (ii) fully insured by either the Bank Insurance Fund or the Savings Association Insurance Fund of the FDIC; (iii) a trust account (which shall be a “segregated trust account”) maintained with the corporate trust department of a federal or state chartered depository institution or trust company with trust powers and acting in its fiduciary capacity for the benefit of the Indenture Trustee and the Issuer, which depository institution or trust company shall have capital and surplus of not less than \$50,000,000; or (iv) with the prior written consent of the Noteholder Agent, any other deposit account or securities account.

Eligible Servicer: Option One or any other Person to which the Majority Noteholders may consent in writing.

Escrow Payments: With respect to any Loan, the amounts constituting ground rents, taxes, assessments, water rates, sewer rents, municipal charges, fire, hazard, liability and other insurance premiums, condominium charges, and any other payments required to be escrowed by the related Borrower with the lender or servicer pursuant to the Mortgage or any other document.

Event of Default: An Event of Default under the Indenture.

Exceptions: The meaning set forth in the Custodial Agreement.

Exceptions Report: The meaning set forth in the Custodial Agreement.

Exchange Act: The Securities Exchange Act of 1934, as amended.

Fannie Mae: The Federal National Mortgage Association and any successor thereto.

Fatal Exception: As defined in the Custodial Agreement.

FDIC: The Federal Deposit Insurance Corporation and any successor thereto.

Fidelity Bond: As described in Section 4.10 of the Servicing Addendum.

Final Put Date: The Put Date following the end of the Revolving Period on which the Majority Noteholders (or the Market Value Agent on their behalf) exercise the Put Option with respect to the entire outstanding Note Principal Balance.

**Final Recovery Determination:** With respect to any defaulted Loan or any Foreclosure Property, a determination made by the Servicer that all Mortgage Insurance Proceeds, Liquidation Proceeds and other payments or recoveries which the Servicer, in its reasonable good faith judgment, expects to be finally recoverable in respect thereof have been so recovered. The Servicer shall maintain records, prepared by a servicing officer of the Servicer, of each Final Recovery Determination.

**Financial Covenants:** As defined in Section 7.02 hereof.

**First Lien Loan:** A Loan secured by the lien on the related Mortgaged Property, subject to no prior liens on such Mortgaged Property.

**Foreclosed Loan:** As of any Determination Date, any Loan that as of the end of the preceding Remittance Period has been discharged as a result of (i) the completion of foreclosure or comparable proceedings by the Servicer, on behalf of the Issuer; (ii) the acceptance of the deed or other evidence of title to the related Mortgaged Property in lieu of foreclosure or other comparable proceeding; or (iii) the acquisition of title to the related Mortgaged Property by operation of law.

**Foreclosure Property:** Any real property securing a Foreclosed Loan that has been acquired by the Servicer on behalf of the Issuer through foreclosure, deed in lieu of foreclosure or similar proceedings in respect of the related Loan.

**40/30 Loan:** A Loan with a 40 year amortization period that becomes due and payable in full at the end of the 30th year.

**Freddie Mac:** The Federal Home Loan Mortgage Corporation and any successor thereto.

**GAAP:** Generally Accepted Accounting Principles as in effect in the United States.

**Gross Margin:** With respect to each ARM, the fixed percentage spread to the Index, set forth in the related Promissory Note.

**Hedge Funding Requirement:** With respect to any day, all amounts required to be paid or delivered by the Issuer under any Hedging Instrument, whether in respect of payments thereunder or in order to meet margin, collateral or other requirements thereof. Such amounts shall be calculated by the Market Value Agent and the Indenture Trustee shall be notified of such amount by the Market Value Agent.

**Hedge Value:** With respect to any Business Day and a specific Hedging Instrument, the positive amount, if any, that is equal to the amount that would be paid to the Issuer in consideration of an agreement between the Issuer and an unaffiliated third party, that would have the effect of preserving for the Issuer the net economic equivalent, as of such Business Day, of all payment and delivery requirements payable to and by the Issuer under such Hedging Instrument until the termination thereof, as determined by the Market Value Agent in accordance with Section 6.03 hereof.

**Hedging Counterparty:** A Person (i) (A) the long-term and commercial paper or short-term deposit ratings of which are acceptable to the Majority Noteholders and (B) which shall agree in writing that, in the event that any of its long-term or commercial paper or short-term deposit ratings cease to be at or above the levels deemed acceptable by the Majority Noteholders, it shall secure its obligations in accordance with the request of the Majority Noteholders, (ii) that has entered into a Hedging Instrument and (iii) that is acceptable to the Majority Noteholders.

**Hedging Instrument:** Any interest rate cap agreement, interest rate floor agreement, interest rate swap agreement or other interest rate hedging agreement that may be entered into by the Issuer with a Hedging Counterparty, and which requires the Hedging Counterparty to deposit all amounts payable thereby directly to the Collection Account. Each Hedging Instrument shall meet the requirements set forth in Article VII hereof with respect thereto.

**High LTV Loans:** First Lien Loans with an LTV and Second Lien Loans with a CLTV (that are not Piggy Backed Loans) greater than or equal to 90% and less than or equal to 100%.

**Indenture:** The Indenture dated as of December 30, 2005, between the Issuer and the Indenture Trustee, as the same may be further amended or supplemented from time to time.

**Indenture Trustee:** Wells Fargo Bank, N.A., a national banking association, as Indenture Trustee under the Indenture, or any successor indenture trustee under the Indenture.

**Indenture Trustee Fee:** An annual fee of \$5,000 payable by the Servicer in accordance with a separate fee agreement between the Indenture Trustee and the Servicer and Section 5.01 hereof.

**Independent:** When used with respect to any specified Person, such Person (i) is in fact independent of the Loan Originator, the Servicer, the Depositor or any of their respective Affiliates, (ii) does not have any direct financial interest in, or any material indirect financial interest in, the Loan Originator, the Servicer, the Depositor or any of their respective Affiliates and (iii) is not connected with the Loan Originator, the Depositor, the Servicer or any of their respective Affiliates, as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions; provided, however, that a Person shall not fail to be Independent of the Loan Originator, the Depositor, the Servicer or any of their respective Affiliates merely because such Person is the beneficial owner of 1% or less of any class of securities issued by the Loan Originator, the Depositor, the Servicer or any of their respective Affiliates, as the case may be.

**Index:** With respect to each ARM, the index set forth in the related Promissory Note for the purpose of calculating the Loan Interest Rate thereon.

**Interest Carry-Forward Amount:** With respect to any Payment Date, the excess, if any, of (A) the Interest Payment Amount for such Payment Date plus the unpaid portion of the Interest Payment Amount for the prior Payment Date over (B) the amount in respect of interest that is actually paid from the Distribution Account on such Payment Date in respect of the interest for such Payment Date.

**Interest Only Mortgage Loan:** A Mortgage Loan for which an interest-only payment feature is allowed during the period prior to the first Adjustment Date.

**Interest Payment Amount:** With respect to any Payment Date, the sum of the Daily Interest Accrual Amounts for all days in the related Accrual Period.

**LIBOR Determination Date:** With respect to each Accrual Period, each day during such Accrual Period.

**LIBOR Margin:** As defined in the Pricing Letter.

**Lien:** With respect to any asset, (a) any mortgage, lien, pledge, charge, security interest, hypothecation, option or encumbrance of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, financing lease or other title retention agreement relating

to such asset. When used with reference to the Indenture, all of the rights assigned to the Indenture Trustee by virtue of the Granting Clause of the Indenture.

Lifetime Cap: The provision in the Promissory Note for each ARM which limits the maximum Loan Interest Rate over the life of such ARM.

Lifetime Floor: The provision in the Promissory Note for each ARM which limits the minimum Loan Interest Rate over the life of such ARM.

Liquidated Loan: As defined in Section 4.03(c) of the Servicing Addendum.

Liquidated Loan Losses: With respect to any Determination Date, the difference between (i) the aggregate Principal Balances as of such date of all Loans that became Liquidated Loans and (ii) all Liquidation Proceeds allocable to principal received on or prior to such date.

Liquidation Proceeds: With respect to a Liquidated Loan, any cash amounts received in connection with the liquidation of such Liquidated Loan, whether through trustee's sale, foreclosure sale or other disposition, any cash amounts received in connection with the management of the Mortgaged Property from Defaulted Loans, any proceeds from Primary Insurance Policies and any other amounts required to be deposited in the Collection Account pursuant to Section 5.01(b) hereof, in each case other than Mortgage Insurance Proceeds and Released Mortgaged Property Proceeds. Liquidation Proceeds shall also include any awards or settlements in respect of the related Mortgage Property, whether permanent or temporary, partial or entire, by exercise of the power of eminent domain or condemnation.

Loan: Any loan sold to the Trust hereunder and pledged to the Indenture Trustee, which loan includes, without limitation, (i) a Promissory Note or Lost Note Affidavit and related Mortgage and (ii) all right, title and interest of the Loan Originator in and to the Mortgaged Property covered by such Mortgage. The term Loan shall be deemed to include the related Promissory Note or Lost Note Affidavit, related Mortgage, all other Loan Documents and related Foreclosure Property, if any.

Loan Documents: With respect to a Loan, the documents comprising the Loan File for such Loan.

Loan File: With respect to each Loan, the Custodial Loan File and the Servicer's Loan File.

Loan Interest Rate: With respect to each Loan, the annual rate of interest borne by the related Promissory Note, as shown on the Loan Schedule, and, in the case of an ARM, as the same may be periodically adjusted in accordance with the terms of such Loan.

Loan Originator: Option One and its permitted successors and assigns.

Loan Originator Put: The mandatory repurchase by the Loan Originator, at the option of the Majority Noteholders, of a Loan pursuant to Section 3.08(a) hereof.

Loan Pool: As of any date of determination, the pool of all Loans conveyed to the Issuer pursuant to this Agreement on all Transfer Dates up to and including such date of determination, which Loans have not been released from the Lien of the Indenture pursuant to the terms of the Basic Documents, together with the rights and obligations of a holder thereof, and the payments thereon and proceeds therefrom received on and after the applicable Transfer Cut-off Date, as identified from time to time on the Loan Schedule.

Loan Purchase and Contribution Agreement: The Fourth Amended and Restated Loan Purchase and Contribution Agreement, between Option One, as seller and the Depositor, as purchaser, dated as of September 1, 2005, as heretofore supplemented, amended and restated, and as it may hereafter be further supplemented, amended and restated.

Loan Schedule: The schedule of Loans conveyed to the Issuer on the Closing Date and on each Transfer Date and delivered to the Noteholder Agent and the Custodian in the form of a computer-readable transmission specifying the information set forth in Exhibit E hereto and with respect to Wet Funded Loans, Exhibit C to the Custodial Agreement.

Loan-to-Value Ratio or LTV: With respect to any First Lien Loan, the ratio of the original outstanding principal amount of such Loan to the Appraised Value of the Mortgaged Property at origination.

Lost Note Affidavit: With respect to any Loan as to which the original Promissory Note has been permanently lost or destroyed and has not been replaced, an affidavit from the Loan Originator certifying that the original Promissory Note has been lost, misplaced or destroyed (together with a copy of the related Promissory Note and indemnifying the Issuer against any loss, cost or liability resulting from the failure to deliver the original Promissory Note) in the form of Exhibit L attached to the Custodial Agreement.

LPA Assignment: The assignment of Loans from Option One to the Depositor under the Loan Purchase and Contribution Agreement.

Majority Certificateholders: As defined in the Trust Agreement.

Majority Noteholders: The holder or holders of in excess of 50% of the Note Principal Balance. In the event of the release of the Lien of the Indenture in accordance with the terms thereof, the Majority Noteholders shall mean the Majority Certificateholders.

Market Value: The market value of a Loan as of any Business Day as determined by the Market Value Agent in accordance with Section 6.03 hereof.

Market Value Agent: DB Structured Products, Inc. or an Affiliate thereof designated by DB Structured Products, Inc. in writing to the parties hereto and, in either case, its successors in interest.

Master Disposition Confirmation Agreement: The Fourth Amended and Restated Master Disposition Confirmation Agreement, dated as of June 1, 2005, by and among Option One, the Depositor, the Delaware statutory trusts listed on Schedule I thereto and each of the Lenders listed on Schedule II thereto, as amended and supplemented from time to time.

Maturity Date: With respect to the Notes, as set forth in the Indenture or such later date as may be agreed in writing by the Majority Noteholders.

Maximum Committed Note Principal Balance: As defined in the Pricing Letter.

Maximum Note Principal Balance: As defined in the Pricing Letter.

Monthly Advance: The aggregate of the advances made by the Servicer on any Remittance Date pursuant to Section 4.14 of the Servicing Addendum.

Monthly Payment: The scheduled monthly payment of principal and/or interest required to be made by a Borrower on the related Loan, as set forth in the related Promissory Note.

Monthly Remittance Amount: With respect to each Remittance Date, the sum, without duplication, of (i) the aggregate payments on the Loans collected by the Servicer pursuant to Section 5.01(b)(i) during the immediately preceding Remittance Period and (ii) the aggregate of amounts deposited into the Collection Account pursuant to Section 5.01(b)(ii) through 5.01(b)(x) during the immediately preceding Remittance Period.

Moody's: Moody's Investors Service, Inc., or any successor thereto.

Mortgage: With respect to any Loan, the mortgage, deed of trust or other instrument securing the related Promissory Note, which creates a first or second lien on the fee in real property and/or a first or second lien on the leasehold estate in real property securing the Promissory Note and the assignment of rents and leases related thereto.

Mortgage Insurance Policies: With respect to any Mortgaged Property or Loan, the insurance policies required pursuant to Section 4.08 of the Servicing Addendum.

Mortgage Insurance Proceeds: With respect to any Mortgaged Property, all amounts collected in respect of Mortgage Insurance Policies and not required either pursuant to applicable law or the related Loan Documents to be applied to the restoration of the related Mortgaged Property or paid to the related Borrower.

Mortgaged Property: With respect to a Loan, the related Borrower's fee and/or leasehold interest in the real property (and/or all improvements, buildings, fixtures, building equipment and personal property thereon (to the extent applicable) and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral securing repayment of the debt evidenced by the related Promissory Note.

Net Liquidation Proceeds: With respect to any Payment Date, Liquidation Proceeds received during the prior Remittance Period, net of any reimbursements to the Servicer made from such amounts for any unreimbursed Servicing Compensation and Servicing Advances (including Nonrecoverable Servicing Advances) made and any other fees and expenses paid in connection with the foreclosure, inspection, conservation and liquidation of the related Liquidated Loans or Foreclosure Properties pursuant to Section 4.03 of the Servicing Addendum.

Net Loan Losses: With respect to any Defaulted Loan that is subject to a modification pursuant to Section 4.01 of the Servicing Addendum, an amount equal to the portion of the Principal Balance, if any, released in connection with such modification.

Net Worth: With respect to any Person, the excess of total assets of such Person, over total liabilities of such Person, determined in accordance with GAAP.

Non-Fatal Exception: As defined in Section 2.05(b)(i) hereof.

Nonrecoverable Monthly Advance: Any Monthly Advance previously made or proposed to be made with respect to a Loan or Foreclosure Property that, in the good faith business judgment of the Servicer, as evidenced by an Officer's Certificate of a Servicing Officer delivered to the Noteholder Agent, will not, or, in the case of a proposed Monthly Advance, would not be, ultimately recoverable

from the related late payments, Mortgage Insurance Proceeds, Liquidation Proceeds or condemnation proceeds on such Loan or Foreclosure Property as provided herein.

**Nonrecoverable Servicing Advance:** With respect to any Loan or any Foreclosure Property, (a) any Servicing Advance previously made and not reimbursed from late collections, condemnation proceeds, Liquidation Proceeds, Mortgage Insurance Proceeds or the Released Mortgaged Property Proceeds on the related Loan or Foreclosure Property or (b) a Servicing Advance proposed to be made in respect of a Loan or Foreclosure Property either of which, in the good faith business judgment of the Servicer, as evidenced by an Officer's Certificate of a Servicing Officer delivered to the Noteholder Agent, would not be ultimately recoverable.

**Nonutilization Fee:** As defined in the Pricing Letter.

**Note:** As defined in the Indenture.

**Noteholder:** As defined in the Indenture.

**Noteholder Agent:** DB Structured Products, Inc. and its successors and assigns acting at the direction, and as agent, of the Majority Noteholders.

**Note Interest Rate:** As defined in the Pricing Letter.

**Note Principal Balance:** With respect to the Notes, as of any date of determination (a) the sum of the Additional Note Principal Balances purchased on or prior to such date pursuant to the Note Purchase Agreement less (b) all amounts previously distributed in respect of principal of the Notes on or prior to such day.

**Note Purchase Agreement:** The Note Purchase Agreement among the Purchasers, the Noteholder Agent, the Issuer and the Depositor, dated as of December 30, 2005 and any amendments thereto.

**Note Redemption Amount:** As of any Determination Date, an amount without duplication equal to the sum of (i) the then outstanding Note Principal Balance of the Notes, plus the Interest Payment Amount for the related Payment Date, (ii) any Trust Fees and Expenses due and unpaid on the related Payment Date, (iii) any Servicing Advance Reimbursement Amount as of such Determination Date, and (iv) all amounts due to Hedging Counterparties in respect of the termination of all related Hedging Instruments.

**Officer's Certificate:** A certificate signed by a Responsible Officer of the Depositor, the Loan Originator, the Servicer or the Issuer, in each case, as required by this Agreement.

**One-Month LIBOR:** With respect to each Accrual Period, the rate determined by the Noteholder Agent on the related LIBOR Determination Date on the basis of the offered rate for one-month U.S. dollar deposits, as such rate appears on Telerate Page 3750 as of 11:00 a.m. (London time) on such LIBOR Determination Date; provided that if such rate does not appear on Telerate Page 3750, the rate for such date will be determined on the basis of the offered rates of the Reference Banks for one-month U.S. dollar deposits, as of 11:00 a.m. (London time) on such LIBOR Determination Date. In such event, the Noteholder Agent will request the principal London office of each of the Reference Banks to provide a quotation of its rate. If on such LIBOR Determination Date, two or more Reference Banks provide such offered quotations, One-Month LIBOR for the related Accrual Period shall be the arithmetic mean of all such offered quotations (rounded to the nearest whole multiple of 1/16%). If on such LIBOR

Determination Date, fewer than two Reference Banks provide such offered quotations, One-Month LIBOR for the related Accrual Period shall be the higher of (i) LIBOR as determined on the previous LIBOR Determination Date and (ii) the Reserve Interest Rate. Notwithstanding the foregoing, if, under the priorities described above, One-Month LIBOR for a LIBOR Determination Date would be based on One-Month LIBOR for the previous LIBOR Determination Date for the third consecutive LIBOR Determination Date, the Noteholder Agent shall select an alternative comparable index (over which the Noteholder Agent has no control), used for determining one-month Eurodollar lending rates that is calculated and published (or otherwise made available) by an independent party.

Opinion of Counsel: A written opinion of counsel who may be employed by the Servicer, the Depositor, the Loan Originator or any of their respective Affiliates.

Option One: Option One Mortgage Corporation, a California corporation.

Overcollateralization Shortfall: With respect to any Business Day, a positive amount, if any, equal to (a) the Note Principal Balance on such Business Day minus (b) the aggregate Collateral Value of all Loans in the Loan Pool as of such Business Day; provided, however, that on (A) the termination of the Revolving Period, (B) the occurrence of a Rapid Amortization Trigger, (C) the Payment Date on which the Trust is to be terminated pursuant to Section 10.02 hereof or (D) the Final Put Date, the Overcollateralization Shortfall shall be equal to the Note Principal Balance. Notwithstanding anything to the contrary herein, in no event shall the Overcollateralization Shortfall, with respect to any Business Day, exceed the Note Principal Balance as of such date. If, as of such Business Day, no Rapid Amortization Trigger or Default under this Agreement or the Indenture shall be in effect, the Overcollateralization Shortfall shall be reduced (but in no event to an amount below zero) by all or any portion of the aggregate Hedge Value (if any) as of such Payment Date as the Majority Noteholders may, in their sole discretion, designate in writing.

Owner Trustee: Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee, and any successor owner trustee under the Trust Agreement.

Owner Trustee Fee: The annual fee of \$4,400 payable in equal monthly installments to the Servicer pursuant to Section 5.01(c)(3)(i), and the Servicer shall, in turn, pay such amount annually to the Owner Trustee on the anniversary of the Closing Date occurring each year during the term of this Agreement.

Paying Agent: As defined in the Indenture.

Payment Date: Each of, (i) the 10<sup>th</sup> day of each calendar month commencing on the first such 10<sup>th</sup> day to occur after the first Transfer Date, or if any such day is not a Business Day, the first Business Day immediately following such day, (ii) any day a Loan is sold pursuant to the terms hereof, (iii) a Put Date as specified by the Majority Noteholders pursuant to Section 10.05 of the Indenture and (iv) an additional Payment Date pursuant to Section 5.01(c)(4)(i) and 5.01(c)(4)(iii). From time to time, the Majority Noteholders and the Issuer may agree, upon written notice to the Owner Trustee and the Indenture Trustee, to additional Payment Dates in accordance with Section 5.01(c)(4)(ii).

Payment Statement: As defined in Section 6.01(b) hereof.

Percentage Interest: As defined in the Trust Agreement.



Periodic Cap: With respect to each ARM Loan and any Rate Change Date therefor, the annual percentage set forth in the related Promissory Note, which is the maximum annual percentage by which the Loan Interest Rate for such Loan may increase or decrease (subject to the Lifetime Cap or the Lifetime Floor) on such Rate Change Date from the Loan Interest Rate in effect immediately prior to such Rate Change Date.

Permitted Investments: Each of the following:

- (a) Direct general obligations of the United States or the obligations of any agency or instrumentality of the United States fully and unconditionally guaranteed, the timely payment or the guarantee of which constitutes a full faith and credit obligation of the United States.
- (b) Federal Housing Administration debentures rated Aa2 or higher by Moody's and AA or better by S&P.
- (c) Freddie Mac senior debt obligations rated Aa2 or higher by Moody's and AA or better by S&P.
- (d) Federal Home Loan Banks' consolidated senior debt obligations rated Aa2 or higher by Moody's and AA or better by S&P.
- (e) Fannie Mae senior debt obligations rated Aa2 or higher by Moody's.
- (f) Federal funds, certificates or deposit, time and demand deposits, and bankers' acceptances (having original maturities of not more than 365 days) of any domestic bank, the short-term debt obligations of which have been rated A-1 or better by S&P and P-1 or better by Moody's.
- (g) Investment agreements approved by the Noteholder Agent provided:
  - (1) The agreement is with a bank or insurance company which has an unsecured, uninsured and unguaranteed obligation (or claims-paying ability) rated Aa2 or better by Moody's and AA or better by S&P, and
  - (2) Monies invested thereunder may be withdrawn without any penalty, premium or charge upon not more than one day's notice (provided such notice may be amended or canceled at any time prior to the withdrawal date), and
  - (3) The agreement is not subordinated to any other obligations of such insurance company or bank, and
  - (4) The same guaranteed interest rate will be paid on any future deposits made pursuant to such agreement, and
  - (5) The Indenture Trustee and the Noteholder Agent receive an opinion of counsel that such agreement is an enforceable obligation of such insurance company or bank.
- (h) Commercial paper (having original maturities of not more than 365 days) rated A-1 or better by S&P and P-1 or better by Moody's.
- (i) Investments in money market funds rated AAAM or AAAM-G by S&P and Aaa or P-1 by Moody's.

(j) Investments approved in writing by the Noteholder Agent;

provided, that no instrument described above is permitted to evidence either the right to receive (a) only interest with respect to obligations underlying such instrument or (b) both principal and interest payments derived from obligations underlying such instrument and the interest and principal payments with respect to such instrument provide a yield to maturity at par greater than 120% of the yield to maturity at par of the underlying obligations; and provided, further, that no instrument described above may be purchased at a price greater than par if such instrument may be prepaid or called at a price less than its purchase price prior to stated maturity; and provided, further, that, with respect to any instrument described above, such instrument qualifies as a "permitted investment" within the meaning of Section 860G(a)(5) of the Code and the regulations thereunder.

Person: Any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, national banking association, unincorporated organization or government or any agency or political subdivision thereof.

Physical Property: As defined in clause (b) of the definition of "Delivery" above.

Piggy-Backed Loan: A combined First Lien Loan, with an LTV less than or equal to 80%, and Second Lien Loan, with a CLTV less than or equal to 100%, that satisfy the underwriting criteria set forth in Exhibit D hereto and have a minimum FICO score of 580, with respect to a Loan with full documentation, or 620, with respect to a Loan with stated income documentation

Pool Principal Balance: With respect to any Determination Date, the aggregate Principal Balances of the Loans as of such Determination Date.

Prepaid Installment: With respect to any Loan, any installment of principal thereof and interest thereon received prior to the scheduled Due Date for such installment, intended by the Borrower as an early payment thereof and not as a Prepayment with respect to such Loan.

Prepayment: Any payment of principal of a Loan which is received by the Servicer in advance of the scheduled due date for the payment of such principal (other than the principal portion of any Prepaid Installment), and the proceeds of any Mortgage Insurance Policy which are to be applied as a payment of principal on the related Loan shall be deemed to be Prepayments for all purposes of this Agreement.

Preservation Expenses: Expenditures made by the Servicer in connection with a foreclosed Loan prior to the liquidation thereof, including, without limitation, expenditures for real estate property taxes, hazard insurance premiums, property restoration or preservation.

Pricing Letter: The Pricing Letter among the Issuer, the Depositor, Option One and the Indenture Trustee, dated December 30, 2005 and any amendments thereto.

Primary Insurance Policy: A policy of primary mortgage guaranty insurance issued by a Qualified Insurer pursuant to Section 4.06 of the Servicing Addendum.

Principal Balance: With respect to any Loan or related Foreclosure Property, (i) at the Transfer Cut-off Date, the Transfer Cut-off Date Principal Balance and (ii) with respect to any other date of determination, the outstanding unpaid principal balance of the Loan as of the end of the preceding Remittance Period (after giving effect to all payments received thereon and the allocation of any Net Loan

Losses with respect thereto for a Defaulted Loan prior to the end of such Remittance Period); provided, however, that any Liquidated Loan shall be deemed to have a Principal Balance of zero.

**Promissory Note:** With respect to a Loan, the original executed promissory note or other evidence of the indebtedness of the related Borrower or Borrowers.

**Purchasers:** The Committed Purchaser and the Conduit Purchasers and their permitted successors and assigns.

**Put/Call Loan:** Any (i) Loan that has become 30 or more days (but less than 60 days) Delinquent, (ii) Loan that has become 60 or more days (but less than 90 days) Delinquent, (iii) Loan that has become 90 or more days Delinquent, (iv) Loan that is a Defaulted Loan, (v) Loan that has been in default for a period of 30 days or more (other than a Loan referred to in clause (i), (ii), (iii) or (iv) hereof), (vi) Loan that does not meet criteria established by independent rating agencies or surety agency conditions for Dispositions which criteria have been established at the related Transfer Date and may be modified only to match changed criteria of independent rating agencies or surety agents, or (vii) Loan that is inconsistent with the intended tax status of a Securitization.

**Put Date:** Any date on which all or a portion of the Notes are to be purchased by the Issuer as a result of the exercise of the Put Option.

**Put Option:** The right of the Majority Noteholders to require the Issuer to repurchase all or a portion of the Notes in accordance with Section 10.04 of the Indenture.

**QSPE Affiliate:** Any of Option One Owner Trust 2001-1 A, Option One Owner Trust 2001-1 B, Option One Owner Trust 2002-3, Option One Owner Trust 2003-4, Option One Owner Trust 2003-5, Option One Owner Trust 2005-6, Option One Owner Trust 2005-7, Option One Owner Trust 2005-8, or any other Affiliate which is a "qualified special purpose entity" in accordance with Financial Accounting Standards Board's Statement No. 140 or 125.

**Qualified Insurer:** An insurance company duly qualified as such under the laws of the states in which the Mortgaged Property is located, duly authorized and licensed in such states to transact the applicable insurance business and to write the insurance provided and that meets the requirements of Fannie Mae and Freddie Mac.

**Qualified Substitute Loan:** A Loan or Loans substituted for a Deleted Loan pursuant to Section 3.06 hereof, which (i) has or have been approved in writing by the Majority Noteholders and (ii) complies or comply as of the date of substitution with each representation and warranty set forth in Exhibit F and is or are not 30 or more days Delinquent as of the date of substitution for such Deleted Loan or Loans.

**Rapid Amortization Trigger:** Shall exist as of any Determination Date, if the aggregate Principal Balance of all Loans that are Delinquent greater than or equal to 30 days (including Defaulted Loans and Foreclosed Loans) as of such Determination Date is greater than or equal to 15% of the Pool Principal Balance as of such Determination Date; provided, however, that a Rapid Amortization Trigger shall not occur if such percentage is reduced to less than 15% within one (1) Business Day as of such Determination Date as a result of the exercise of a Servicer Call. A Rapid Amortization Trigger shall continue to exist until it is Deemed Cured.

**Rate Change Date:** The date on which the Loan Interest Rate of each ARM is subject to adjustment in accordance with the related Promissory Note.

Rating Agencies: S&P and Moody's or such other nationally recognized credit rating agencies as may from time to time be designated in writing by the Majority Noteholders in their sole discretion.

Record Date: With respect to each Payment Date, the close of business of the immediately preceding Business Day.

Reference Banks: Deutsche Bank AG, Barclay's Bank PLC, The Tokyo Mitsubishi Bank and National Westminster Bank PLC and their successors in interest; provided, however, that if the Noteholder Agent determines that any of the foregoing banks are not suitable to serve as a Reference Bank, then any leading banks selected by the Noteholder Agent with the approval of the Issuer, which approval shall not be unreasonably withheld, which are engaged in transactions in Eurodollar deposits in the international Eurocurrency market (i) with an established place of business in London and (ii) which have been designated as such by the Noteholder Agent with the approval of the Issuer, which approval shall not be unreasonably withheld.

Refinanced Loan: A Loan the proceeds of which were not used to purchase the related Mortgaged Property.

Released Mortgaged Property Proceeds: With respect to any Loan, proceeds received by the Servicer in connection with (i) a taking of an entire Mortgaged Property by exercise of the power of eminent domain or condemnation or (ii) any release of part of the Mortgaged Property from the lien of the related Mortgage, whether by partial condemnation, sale or otherwise; which proceeds in either case are not released to the Borrower in accordance with applicable law and/or Accepted Servicing Practices.

Remittance Date: The Business Day immediately preceding each Payment Date.

Remittance Period: With respect to any Payment Date, the period commencing immediately following the Determination Date for the preceding Payment Date (or, in the case of the initial Payment Date, commencing immediately following the initial Transfer Cut-off Date) and ending on and including the related Determination Date.

Repurchase Price: With respect to a Loan the sum of (i), the Principal Balance thereof as of the date of purchase or repurchase, plus (ii) all accrued and unpaid interest on such Loan to the date of purchase or repurchase computed at the applicable Loan Interest Rate, plus (iii) the amount of any unreimbursed Servicing Advances made by the Servicer with respect to such Loan (after deducting therefrom any amounts received in respect of such purchased or repurchased Loan and being held in the Collection Account for future distribution to the extent such amounts represent recoveries of principal not yet applied to reduce the related Principal Balance or interest (net of the Servicing Fee) for the period from and after the date of repurchase). The Repurchase Price shall be (i) increased by the net negative value or (ii) decreased by the net positive value of all Hedging Instruments (if any) that are terminated with respect to the purchase of such Loan. To the extent the Servicer does not reimburse itself for amounts, if any, in respect of the Servicing Advance Reimbursement Amount pursuant to Section 5.01(c) (1) hereof, with respect to such Loan, the Repurchase Price shall be reduced by such amounts.

Reserve Interest Rate: With respect to any LIBOR Determination Date, the rate per annum that the Noteholder Agent determines to be either (i) the arithmetic mean (rounded to the nearest whole multiple of 1/16%) of the one-month U.S. dollar lending rates which New York City banks selected by the Noteholder Agent are quoting on the relevant LIBOR Determination Date to the principal London offices of leading banks in the London interbank market or (ii) in the event that the Noteholder Agent can determine no such arithmetic mean, the lowest one-month U.S. dollar lending rate which New

York City banks selected by the Noteholder Agent are quoting on such LIBOR Determination Date to leading European banks.

**Responsible Officer:** When used with respect to the Indenture Trustee or Custodian, any officer within the corporate trust office of such Person, including any Vice President, Assistant Vice President, Secretary, Assistant Secretary or any other officer of such Person customarily performing functions similar to those performed by any of the above designated officers and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject. When used with respect to the Issuer, any officer of the Owner Trustee who is authorized to act for the Owner Trustee in matters relating to the Issuer and who is identified on the list of Authorized Officers delivered by the Owner Trustee to the Indenture Trustee on the date hereof (as such list may be modified or supplemented from time to time thereafter) and, so long as the Administration Agreement is in effect, any Vice President or more senior officer of the Administrator who is authorized to act for the Administrator in matters relating to the Issuer and to be acted upon by the Administrator pursuant to the Administration Agreement and who is identified on the list of Responsible Officers delivered by the Administrator to the Owner Trustee on the date hereof (as such list may be modified or supplemented from time to time thereafter). When used with respect to the Depositor, the Loan Originator or the Servicer, the President, any Vice President, or the Treasurer.

**Retained Security or Retained Securities:** With respect to a Securitization, any subordinated securities issued or expected to be issued, or excess collateral value retained or expected to be retained, in connection therewith to the extent the Depositor, the Loan Originator or an Affiliate thereof retains, instead of sells, such securities.

**Retained Securities Value:** With respect to any Business Day and a Retained Security, the market value thereof as determined by the Market Value Agent in accordance with Section 6.03(d) hereof.

**Revolving Period:** With respect to the Notes, the period commencing on the Closing Date and ending on the earlier of (i) the Maturity Date and (ii) the date on which the Revolving Period is terminated pursuant to Section 2.07.

**Sales Price:** For any Transfer Date, the sum of the Collateral Values with respect to each Loan conveyed on such Transfer Date as of such Transfer Date.

**S&SA Assignment:** An assignment, in the form of Exhibit C hereto, of Loans and other property from the Depositor to the Issuer pursuant to this Agreement.

**Second Lien Loan:** A Loan secured by the lien on the Mortgaged Property, subject to one Senior Lien on such Mortgaged Property.

**Securities:** The Notes and the Trust Certificates.

**Securities Intermediary:** A "securities intermediary" as defined in Section 8-102(a)(14) of the UCC that is holding a Trust Account for the Indenture Trustee as the sole "entitlement holder" as defined in Section 8-102(a)(7) of the UCC.

**Securitization:** A sale or transfer of Loans by the Issuer at the direction of the Majority Noteholders to any other Person in order to effect one or a series of structured-finance securitization transactions, including but not limited to transactions involving the issuance of securities which may be

treated for federal income tax purposes as indebtedness of Option One or one or more of its wholly-owned subsidiaries.

Securityholder: Any Noteholder or Certificateholder.

Senior Lien: With respect to any Second Lien Loan, the mortgage loan having a senior priority lien on the related Mortgaged Property.

Servicer: Option One, in its capacity as the servicer hereunder, or any successor appointed as herein provided.

Servicer Call: The optional purchase by the Servicer of a Loan pursuant to Section 3.08(b) hereof.

Servicer Event of Default: As described in Section 9.01 hereof.

Servicer's Fiscal Year: May 1st of each year through April 30th of the following year.

Servicer's Loan File: With respect to each Loan, the file held by the Servicer, consisting of all documents (or electronic images thereof) relating to such Loan, including, without limitation, copies of all of the Loan Documents included in the related Custodial Loan File.

Servicer's Remittance Report: A report prepared and computed by the Servicer in substantially the form of Exhibit B attached hereto.

Servicing Addendum: The terms and provisions set forth in Exhibit G attached hereto relating to the administration and servicing of the Loans.

Servicing Advance Reimbursement Amount: With respect to any Determination Date, the amount of any Servicing Advances that have not been reimbursed as of such date, including Nonrecoverable Servicing Advances.

Servicing Advances: As defined in Section 4.14(b) of the Servicing Addendum.

Servicing Compensation: The Servicing Fee and other amounts to which the Servicer is entitled pursuant to Section 4.15 of the Servicing Addendum.

Servicing Fee: As to each Loan (including any Loan that has been foreclosed and for which the related Mortgaged Property has become a Foreclosure Property, but excluding any Liquidated Loan), the fee payable monthly to the Servicer, which shall be the product of 0.50% (50 basis points), or such other lower amount as shall be mutually agreed to in writing by the Majority Noteholders and the Servicer, and the Principal Balance of such Loan as of the beginning of the related Remittance Period, divided by 12. The Servicing Fee shall only be payable with respect to a Loan to the extent interest is collected on such Loan.

Servicing Officer: Any officer of the Servicer or Subservicer involved in, or responsible for, the administration and servicing of the Loans whose name and specimen signature appears on a list of servicing officers annexed to an Officer's Certificate furnished by the Servicer or the Subservicer, respectively, on the date hereof to the Issuer and the Indenture Trustee, on behalf of the Noteholders, as such list may from time to time be amended.

S&P: Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc.

Subservicer: Any Person with which the Servicer has entered into a Subservicing Agreement and which is an Eligible Servicer and satisfies any requirements set forth in Section 4.22 of the Servicing Addendum in respect of the qualifications of a Subservicer.

Subservicing Account: An account established by a Subservicer pursuant to a Subservicing Agreement, which account must be an Eligible Account.

Subservicing Agreement: Any agreement between the Servicer and any Subservicer relating to subservicing and/or administration of any or all Loans as provided in Section 4.22 in the Servicing Addendum.

Subsidiary: With respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

Substitution Adjustment: With respect to Loans, as to any date on which a substitution occurs pursuant to Section 2.05 or Section 3.06 hereof, the amount, if any, by which (a) the aggregate principal balance of any Qualified Substitute Loans (after application of principal payments received on or before the related Transfer Cut-off Date) is less than (b) the aggregate of the Principal Balances of the related Deleted Loans as of the first day of the month in which such substitution occurs.

Tangible Net Worth: With respect to any Person, as of any date of determination, the consolidated Net Worth of such Person and its Subsidiaries, less (i) the consolidated net book value of all assets of such Person and its Subsidiaries (to the extent reflected as an asset in the balance sheet of such Person or any Subsidiary at such date) which will be treated as intangibles under GAAP, including, without limitation, such items as deferred financing expenses, net leasehold improvements, goodwill, trademarks, trade names, service marks, copyrights, patents, licenses and unamortized debt discount and expense; provided, that residual securities issued by such Person or its Subsidiaries shall not be treated as intangibles for purposes of this definition; (ii) any loans outstanding to any officer or director of Option One or its Affiliates, and (iii) any receivables from H&R Block, Inc.

Termination Price: As of any Determination Date, an amount without duplication equal to the greater of (A) the Note Redemption Amount and (B) the sum of (i) the Principal Balance of each Loan included in the Trust as of the end of the preceding Remittance Period; (ii) all unpaid interest accrued on the Principal Balance of each such Loan at the related Loan Interest Rate to the end of the preceding Remittance Period; and (iii) the aggregate fair market value of each Foreclosure Property included in the Trust as of the end of the preceding Remittance Period, as determined by an Independent appraiser acceptable to the Majority Noteholders as of a date not more than 30 days prior to such Payment Date.

Total Required Capital: The sum of total required capital for all assets set forth on Exhibit H attached hereto.

**Transfer Cut-off Date:** With respect to each Loan, (i) the first day of the month in which the Transfer Date with respect to such Loan occurs or if originated in such month, the date of origination or (ii) in the case of a purchase from a QSPE Affiliate, unless otherwise specified in the confirmation delivered in accordance with the Master Disposition Confirmation Agreement in connection with such purchase, the related Transfer Date.

**Transfer Cut-off Date Principal Balance:** As to each Loan, its Principal Balance as of the opening of business on the Transfer Cut-off Date (after giving effect to any payments received on the Loan before the Transfer Cut-off Date).

**Transfer Date:** With respect to each Loan, the day such Loan is either (i) sold and conveyed to the Depositor by the Loan Originator pursuant to the Loan Purchase and Contribution Agreement and to the Issuer by the Depositor pursuant to Section 2.01 hereof or (ii) sold to the Issuer pursuant to the Master Disposition Confirmation Agreement, which results in an increase in the Note Principal Balance by the related Additional Note Principal Balance. With respect to any Qualified Substitute Loan, the Transfer Date shall be the day such Loan is conveyed to the Trust pursuant to Section 2.05 or 3.06 hereof.

**Transfer Obligation:** The obligation of the Loan Originator to make certain payments under Section 5.06 hereof.

**Transfer Obligation Account:** The account designated as such, established and maintained pursuant to Section 5.05 hereof.

**Transfer Obligation Target Amount:** With respect to any Payment Date, the cumulative total of all withdrawals pursuant to Section 5.05(e), 5.05(f), 5.05(g), and 5.05(h) hereof from the Transfer Obligation Account to but not including such Payment Date minus any amount withdrawn from the Transfer Obligation Account to return to the Loan Originator pursuant to Section 5.05(i)(i).

**Trust:** Option One Owner Trust 2005-9, the Delaware statutory trust created pursuant to the Trust Agreement.

**Trust Account Property:** The Trust Accounts, all amounts and investments held from time to time in the Trust Accounts and all proceeds of the foregoing.

**Trust Accounts:** The Distribution Account, the Collection Account, the Advance Account and the Transfer Obligation Account.

**Trust Agreement:** The Trust Agreement dated as of December 30, 2005 between the Depositor and the Owner Trustee, as the same may be further amended or supplemented from time to time.

**Trust Certificate:** The meaning assigned thereto in the Trust Agreement.

**Trust Estate:** Shall mean the assets subject to this Agreement, the Trust Agreement and the Indenture and assigned to the Trust, which assets consist of (i) such Loans as from time to time are subject to this Agreement as listed in the Loan Schedule, as the same may be amended or supplemented on each Transfer Date and by the removal of Deleted Loans and Unqualified Loans and by the addition of Qualified Substitute Loans, together with the Servicer's Loan Files and the Custodial Loan Files relating thereto and all proceeds thereof, (ii) the Mortgages and security interests in the Mortgaged Properties, (iii) all payments in respect of interest and principal with respect to each Loan received on or after the related



Transfer Cut-off Date, (iv) such assets as from time to time are identified as Foreclosure Property, (v) such assets and funds as are from time to time deposited in the Distribution Account, Collection Account, Advance Account and the Transfer Obligation Account, including, without limitation, amounts on deposit in such accounts that are invested in Permitted Investments, (vi) lenders' rights under all Mortgage Insurance Policies and to any Mortgage Insurance Proceeds, (vii) Net Liquidation Proceeds and Released Mortgaged Property Proceeds, (viii) all right, title and interest of the Trust (but none of the obligations) in and to the obligations of Hedging Counterparties under Hedging Instruments (if any) and (ix) all right, title and interest of each of the Depositor, the Loan Originator and the Trust in and under the Basic Documents including, without limitation, the obligations of the Loan Originator under the Loan Purchase and Contribution Agreement, the Master Disposition Confirmation Agreement, and all proceeds of any of the foregoing.

Trust Fees and Expenses: As of each Payment Date, an amount equal to the Servicing, Compensation, the Owner Trustee Fee, the Indenture Trustee Fee and the Custodian Fee, if any, and any expenses of the Servicer, the Owner Trustee, the Indenture Trustee or the Custodian.

UCC: The Uniform Commercial Code as in effect in the State of New York.

UCC Assignment: A form "UCC-2" or "UCC-3" statement meeting the requirements of the Uniform Commercial Code of the relevant jurisdiction to reflect an assignment of a secured party's interest in collateral.

UCC-1 Financing Statement: A financing statement meeting the requirements of the Uniform Commercial Code of the relevant jurisdiction.

Underwriting Guidelines: The underwriting guidelines (including the loan origination guidelines) of the Loan Originator, as the same may be amended from time to time with notice to the Noteholder Agent.

Unfunded Transfer Obligation: With respect to any date of determination, an amount equal to the greater of:

(A) the sum of (i) 10% of the aggregate Sales Prices of all Loans owned by the Issuer at the close of business on the immediately preceding day minus all payments actually made by the Loan Originator in respect of the Unfunded Transfer Obligation pursuant to Section 5.06 hereof with respect to such Loans since the related Transfer Dates plus (ii) 10% of the aggregate Sales Prices of all Loans purchased by the Issuer on such date of determination; and

(B) 10% of the average daily aggregate Sales Prices (as of the related Transfer Date) of all Loans owned by the Issuer over the 90 day period immediately preceding such date of determination minus all payments actually made by the Loan Originator in respect of the Unfunded Transfer Obligation pursuant to Section 5.06 with respect to such Loans.

Unfunded Transfer Obligation Percentage: As of any date of determination, an amount equal to (x) the Unfunded Transfer Obligation as of such date, divided by (y) 100% of the aggregate Collateral Values as of the related Transfer Date of all Loans in the Loan Pool.

Unqualified Loan: As defined in Section 3.06(a) hereof

Wet Funded Custodial File Delivery Date: With respect to a Wet Funded Loan, the fifteenth calendar day after the date the funds for such Wet Funded Loan were released to the related

Borrower, provided that if a Default or Event of Default shall have occurred, the Wet Funded Custodial File Delivery Date shall be the earlier of (x) such fifteenth calendar day and (y) the second Business Day after the occurrence of such event.

**Wet Funded Loan:** A Loan for which the Custodian has not received the related Custodial Loan File as of the related Transfer Date and for which the Custodian has issued a Trust Receipt with respect to the Wet Funded Loan, in substantially the form of Exhibit M attached to the Custodial Agreement.

**Whole Loan Sale:** A Disposition of Loans in a permanent and outright sale, either servicing-released or servicing-retained.

**Section 1.02 Other Definitional Provisions.**

(a) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

(b) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(c) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under GAAP. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under GAAP, the definitions contained in this Agreement or in any such certificate or other document shall control.

(d) The words “hereof,” “herein,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Article, Section, Schedule and Exhibit references contained in this Agreement are references to Articles, Sections, Schedules and Exhibits in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation.”

(e) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

**ARTICLE II**

**CONVEYANCE OF THE TRUST ESTATE;  
ADDITIONAL NOTE PRINCIPAL BALANCES**

**Section 2.01 Conveyance of the Trust Estate; Additional Note Principal Balances.**

(a) (i) On the terms and conditions of this Agreement, on each Transfer Date during the Revolving Period, the Depositor agrees to offer for sale and to sell a portion of each of the Loans, and contribute to the capital stock of the Issuer the balance of each of the Loans and deliver the

related Loan Documents to or at the direction of the Issuer. To the extent the Issuer has or is able to obtain sufficient funds under the Note Purchase Agreement and the Notes for the purchase thereof, the Issuer agrees to purchase such Loans offered for sale by the Depositor. On the terms and conditions of this Agreement and the Master Disposition Confirmation Agreement, on each Transfer Date during the Revolving Period, the Issuer may acquire Loans from another QSPE Affiliate of the Loan Originator to the extent the Issuer has or is able to obtain sufficient funds for the purchase thereof.

(ii) In consideration of the payment of the Additional Note Principal Balance pursuant to Section 2.06 hereof and as a contribution to the assets of the Issuer, the Depositor as of the related Transfer Date and concurrently with the execution and delivery hereof, hereby sells, transfers, assigns, sets over and otherwise conveys to the Issuer, without recourse, but subject to the other terms and provisions of this Agreement, all of the right, title and interest of the Depositor in and to the Trust Estate.

(iii) During the Revolving Period, on each Transfer Date, subject to the conditions precedent set forth in Section 2.06 hereof and in accordance with the procedures set forth in Section 2.01(c), the Depositor, pursuant to an S&SA Assignment, will assign to the Issuer without recourse all of its respective right, title and interest, in and to the Loans and all proceeds thereof listed on the Loan Schedule attached to such S&SA Assignment, including all interest and principal received by the Loan Originator, the Depositor or the Servicer on or with respect to the Loans on or after the related Transfer Cut-off Date, together with all right, title and interest in and to the proceeds of any related Mortgage Insurance Policies and all of the Depositor's rights, title and interest in and to (but none of its obligations under) the Loan Purchase and Contribution Agreement and all proceeds of the foregoing.

(iv) The foregoing sales, transfers, assignments, set overs and conveyances do not, and are not intended to, result in a creation or an assumption by the Issuer of any of the obligations of the Depositor, the Loan Originator or any other Person in connection with the Trust Estate or under any agreement or instrument relating thereto except as specifically set forth herein.

(b) As of the Closing Date and as of each Transfer Date, the Issuer acknowledges (or will acknowledge, pursuant to the S&SA Assignment) the conveyance to it of the Trust Estate, including, as applicable, all rights, title and interest of the Depositor and any QSPE Affiliate in and to the Trust Estate, receipt of which is hereby acknowledged by the Issuer. Concurrently with such delivery, as of the Closing Date and as of each Transfer Date, pursuant to the Indenture, the Issuer pledges the Trust Estate to the Indenture Trustee. In addition, concurrently with such delivery and in exchange therefor, the Owner Trustee, pursuant to the instructions of the Depositor, has executed (not in its individual capacity, but solely as Owner Trustee on behalf of the Issuer) and caused the Trust Certificates to be authenticated and delivered to or at the direction of the Depositor.

(c) (i) Pursuant to and subject to the Note Purchase Agreement, the Issuer may, at its sole option, from time to time request advances on any Transfer Date of Additional Note Principal Balances.

(ii) Notwithstanding anything to the contrary herein, in no event shall any Purchaser be required to advance Additional Note Principal Balances on a Transfer Date if the conditions precedent with respect to such Transfer Date under Section 2.06 and the conditions precedent to the purchase of Additional Note Principal Balances set forth in Section 3.01 of the Note Purchase Agreement have not been fulfilled.

(iii) The Servicer shall appropriately note such Additional Note Principal Balance (and the increased Note Principal Balance) in the next succeeding Payment Statement; provided, however, that failure to make any such notation in such Payment Statement or any error in such notation

shall not adversely affect any Noteholder's rights with respect to its Note Principal Balance and its right to receive interest and principal payments in respect of the Note Principal Balance held by such Noteholder. Each Noteholder shall record on the schedule attached to such Noteholder's Note, the date and amount of any Additional Note Principal Balance advanced by it; provided, that failure to make such recordation on such schedule or any error in such schedule shall not adversely affect any Noteholder's rights with respect to its Note Principal Balance and its right to receive interest payments in respect of the Note Principal Balance held by such Noteholder.

(iv) Absent manifest error, the Note Principal Balance of each Note as set forth in the Noteholder's records shall be binding upon the Noteholders and the Trust, notwithstanding any notation made by the Servicer in its Payment Statement pursuant to the preceding paragraph.

**Section 2.02 Ownership and Possession of Loan Files.**

With respect to each Loan, as of the related Transfer Date the ownership of the related Promissory Note, the related Mortgage and the contents of the related Servicer's Loan File and Custodial Loan File shall be vested in the Trust for the benefit of the Securityholders, although possession of the Servicer's Loan File on behalf of and for the benefit of the Securityholders shall remain with the Servicer, and the Custodian shall take possession of the Custodial Loan Files as contemplated in Section 2.05 hereof.

**Section 2.03 Books and Records Intention of the Parties.**

(a) As of each Transfer Date, the sale of each of the Loans conveyed by the Depositor on such Transfer Date shall be reflected on the balance sheets and other financial statements of the Depositor and the Loan Originator, as the case may be, as a sale of assets and a contribution to capital by the Loan Originator and the Depositor, as applicable, under GAAP. Each of the Servicer and the Custodian shall be responsible for maintaining, and shall maintain, a complete set of books and records for each Loan which shall be clearly marked to reflect the ownership of each Loan as of the related Transfer Date, by the Issuer and for the benefit of the Securityholders.

(b) It is the intention of the parties hereto that, other than for federal, state and local income or franchise tax purposes (as to which no treatment is herein contemplated), the transfers and assignments of the Trust Estate on the initial Closing Date, on each Transfer Date and as otherwise contemplated by the Basic Documents and the Assignments shall constitute a sale of the Trust Estate including, without limitation, the Loans and all other property comprising the Trust Estate specified in Section 2.01(a) hereof, from the Depositor to the Issuer and such property shall not be property of the Depositor. The parties hereto shall treat the Notes as indebtedness for federal, state and local income and franchise tax purposes.

(c) Each transfer and assignment contemplated by this Agreement shall constitute a sale in part, and a contribution to capital in part, of the Loans from the Depositor to the Issuer. Upon the consummation of those transactions the Loans shall be owned by and be the property of the Issuer, and not owned by or otherwise the property of, the Depositor for any purpose including without limitation any bankruptcy, receivership, insolvency, liquidation, conservatorship or similar proceeding relating to either the Depositor or the Issuer or any property of either. The parties hereto hereby acknowledge that the Issuer and its creditors are relying, and its subsequent transferees and their creditors will rely, on such sales and contributions being recognized as such. If (A) any transfer and assignment contemplated hereby is subsequently determined for any reason under any circumstances to constitute a transfer to secure a loan rather than a sale in part, and a contribution in part, of the Loans or (B) any Loan is otherwise held to be property of the Depositor, then this Agreement (i) is and shall be a security agreement within the

meaning of Articles 8 and 9 of the applicable Uniform Commercial Code and (ii) shall constitute a grant by the Depositor to the Issuer of a first priority security interest in all of the Depositor's right, title and other interest in and to the Loans and the proceeds and other distributions and payments and general intangibles and other rights and benefits in respect thereof. For purposes of perfecting that security interest under any applicable Uniform Commercial Code, the possession by, and notices and other communications with respect thereto to and from, the Issuer or any agent thereof, of money, notes and other documents evidencing ownership of and other rights with respect to the Loans shall be "possession" by the secured party or purchaser and required notices and other communications to and from applicable financial intermediaries, bailees and other agents.

(d) The Depositor at its expense shall take such actions as may be necessary or reasonably requested by the Issuer to ensure the perfection, and priority to all other security interests, of the security interest described in the preceding paragraph including without limitation the execution and delivery of such financing statements and amendments thereto, continuation statements and other documents as the Issuer may reasonably request.

#### **Section 2.04 Delivery of Loan Documents.**

(a) With respect to each Loan, the Loan Originator shall, prior to the related Transfer Date (or in the case of each Wet Funded Loan, on or before the related Wet Funded Custodial File Delivery Date), in accordance with the terms and conditions set forth in the Custodial Agreement, deliver or cause to be delivered to the Custodian, as the designated agent of the Indenture Trustee, a Loan Schedule, and each of the documents constituting the related Custodial Loan File. The Loan Originator shall ensure that (i) in the event that any Wet Funded Loan is not closed and funded to the order of the appropriate Borrower on the day funds are provided to the Loan Originator by the applicable Purchaser, on behalf of the Issuer, such funds shall be promptly returned to such Purchaser, on behalf of the Issuer and (ii) in the event that any Wet Funded Loan is subject to a rescission, all funds received in connection with such rescission shall be promptly returned to such Purchaser, on behalf of the Issuer.

(b) With respect to each Loan, the Loan Originator shall, on the related Transfer Date (or in the case of each Wet Funded Loan, on or before the related Wet Funded Custodial File Delivery Date), deliver or cause to be delivered to the Servicer the related Servicer's Loan File (i) for the benefit of, and as agent for, the Noteholders and (ii) for the benefit of the Indenture Trustee, on behalf of the Noteholders, for so long as the Notes are outstanding; after the Notes are not outstanding, the Servicer's Loan File shall be held in the custody of the Servicer for the benefit of, and as agent for, the Certificateholders.

(c) The Indenture Trustee shall cause the Custodian to take and maintain continuous physical possession of the Custodial Loan Files in the State of California (or upon prior written notice from the Custodian to the Loan Originator and the Noteholder Agent and delivery of an Opinion of Counsel with respect to the continued perfection of the Indenture Trustee's security interest, in the State of Minnesota or Utah) and, in connection therewith, shall act solely as agent for the Noteholders in accordance with the terms hereof and not as agent for the Loan Originator, the Servicer or any other party.

#### **Section 2.05 Acceptance by the Indenture Trustee of the Loans; Certain Substitutions and Repurchases; Certification by the Custodian.**

(a) The Indenture Trustee declares that it will cause the Custodian to hold the Custodial Loan Files and any additions, amendments, replacements or supplements to the documents contained therein, as well as any other assets included in the Trust Estate and delivered to the Custodian, in trust, upon and subject to the conditions set forth herein. The Indenture Trustee further agrees to cause

the Custodian to execute and deliver such certifications as are required under the Custodial Agreement and to otherwise direct the Custodian to perform all of its obligations with respect to the Custodial Loan Files in strict accordance with the terms of the Custodial Agreement.

(b) (i) With respect to (1) any non-Wet Funded Loan which has a Fatal Exception in the Exceptions Report, the Loan Originator shall cure such exceptions by delivering such missing documents to the Custodian or otherwise curing the exceptions within one (1) Business Day of the Transfer Date, (2) any non-Wet Funded Loans which are set forth as exceptions in the Exceptions Report (other than Fatal Exceptions) (a “Non-Fatal Exception”), the Loan Originator shall cure such exceptions by delivering such missing documents to the Custodian or otherwise curing the defect within thirty (30) calendar days of the Transfer Date; or (3) any Wet Funded Loans which are set forth as exceptions in the Exceptions Report, the Loan Originator shall cure such exceptions by delivering such missing documents to the Custodian or otherwise curing the defect no later than one (1) Business Day after the Wet Funded Custodial File Delivery Date, in each case, following the receipt of the first Exceptions Report listing such exception with respect to such Loan.

(ii) In the event that, with respect to any Loan, the Loan Originator does not comply with the document delivery requirements of this Section 2.05 (including the failure of Loan Originator to cure any exceptions as provided in this Section 2.05), and such failure has a material adverse effect on the value or enforceability of any Loan, or the interests of the Securityholders in any Loan, the Loan Originator shall repurchase such Loan within one (1) Business Day of notice thereof from the Indenture Trustee or the Noteholder Agent at the Repurchase Price thereof with respect to such Loan by depositing such Repurchase Price in the Collection Account. In lieu of such a repurchase, the Depositor and Loan Originator may comply with the substitution provisions of Section 3.06 hereof. The Loan Originator shall provide the Servicer, the Indenture Trustee, the Issuer and the Noteholder Agent with a certification of a Responsible Officer on or prior to such repurchase or substitution indicating that the Loan Originator intends to repurchase or substitute such Loan.

(iii) It is understood and agreed that the obligation of the Loan Originator to repurchase or substitute any such Loan pursuant to this Section 2.05(b) shall constitute the sole remedy with respect to such failure to comply with the foregoing delivery requirements.

(c) In performing its reviews of the Custodial Loan Files pursuant to the Custodial Agreement, the Custodian shall have no responsibility to determine the genuineness of any document contained therein and any signature thereon. The Custodian shall not have any responsibility for determining whether any document is valid and binding, whether the text of any assignment or endorsement is in proper or recordable form, whether any document has been recorded in accordance with the requirements of any applicable jurisdiction, or whether a blanket assignment is permitted in any applicable jurisdiction.

(d) The Servicer’s Loan File shall be held in the custody of the Servicer (i) for the benefit of, and as agent for, the Noteholders and (ii) for the benefit of the Indenture Trustee, on behalf of the Noteholders, for so long as the Notes are outstanding; after the Notes are not outstanding, the Servicer’s Loan File shall be held in the custody of the Servicer for the benefit of, and as agent for, the Certificateholders. It is intended that, by the Servicer’s agreement pursuant to this Section 2.05(d), the Indenture Trustee shall be deemed to have possession of the Servicer’s Loan Files for purposes of Section 9-313 of the UCC of the state in which such documents or instruments are located. The Servicer shall promptly report to the Indenture Trustee any failure by it to hold the Servicer’s Loan File as herein provided and shall promptly take appropriate action to remedy any such failure. In acting as custodian of such documents and instruments, the Servicer agrees not to assert any legal or beneficial ownership interest in the Loans or such documents or instruments. Subject to Section 8.01(d) hererof, the Servicer

agrees to indemnify the Securityholders and the Indenture Trustee, their officers, directors, employees, agents and “control persons” as such term is used under the Act and under the Securities Exchange Act of 1934, as amended for any and all liabilities, obligations, losses, damages, payments, costs or expenses of any kind whatsoever which may be imposed on, incurred by or asserted against the Securityholders or the Indenture Trustee as the result of the negligence or willful misconduct by the Servicer relating to the maintenance and custody of such documents or instruments which have been delivered to the Servicer; provided, however, that the Servicer will not be liable for any portion of any such amount resulting from the negligence or willful misconduct of any Securityholders or the Indenture Trustee; and provided, further, that the Servicer will not be liable for any portion of any such amount resulting from the Servicer’s compliance with any instructions or directions consistent with this Agreement issued to the Servicer by the Indenture Trustee or the Majority Noteholders. The Indenture Trustee shall have no duty to monitor or otherwise oversee the Servicer’s performance as custodian of the Servicer Loan File hereunder.

**Section 2.06 Conditions Precedent to Transfer.**

(a) In the case of Wet Funded Loans, by 4:00 p.m. (New York City time) one (1) Business Day prior to the related Transfer Date, the Issuer shall give notice to the Noteholder Agent of such upcoming Transfer Date and shall deliver or cause to be delivered to the Noteholder Agent: an estimated funding request amount. By 4:00 p.m. (New York City time) on the related Transfer Date, and up to two times on each such day, the Issuer shall deliver or cause to be delivered to the Noteholder Agent a final funding request amount, and to the Noteholder Agent and the Custodian (i) a Wet Funded Loan Schedule in computer-readable form with respect to the Loans requested to be transferred on such Transfer Date, (ii) an LPA Assignment, and (iii) an S&SA Assignment.

(b) In the case of non-Wet Funded Loans, by 4:00 p.m. (New York City time) two (2) Business Days prior to each Transfer Date, the Issuer shall give notice to the Noteholder Agent of such upcoming Transfer Date and shall deliver or cause to be delivered to the Noteholder Agent a preliminary Loan Schedule. By 8:00 a.m. (New York City time) on the related Transfer Date, the Issuer shall deliver or cause to be delivered to the Noteholder Agent: (i) a final Loan Schedule in computer-readable form with respect to the Loans requested to be transferred on such Transfer Date, (ii) an LPA Assignment, and (iii) an S&SA Assignment.

(c) On each Transfer Date, the Depositor or the applicable QSPE Affiliate shall convey to the Issuer, the Loans and the other property and rights related thereto described in the related S&SA Assignment, and the Issuer, only upon the satisfaction of each of the conditions set forth below on or prior to such Transfer Date, shall deposit or cause to be deposited cash in the amount of the Additional Note Principal Balance received from the applicable Purchaser in the Advance Account in respect thereof, and the Paying Agent shall, promptly after such deposit, withdraw the amount deposited in respect of applicable Additional Note Principal Balance from the Advance Account, and distribute such amount to or at the direction of the Depositor or the applicable QSPE Affiliate in payment of the Sales Price for the related Loans.

(d) As of the Closing Date and each Transfer Date:

(i) the Depositor, the QSPE Affiliate and the Servicer, as applicable, shall have delivered to the Issuer and the Noteholder Agent duly executed Assignments, which shall have attached thereto a Loan Schedule setting forth the appropriate information with respect to all Loans conveyed on such Transfer Date and shall have delivered to the Noteholder Agent a computer readable transmission of such Loan Schedule;

(ii) the Depositor shall have deposited, or caused to be deposited, in the Collection Account all collections received with respect to each of the Loans on and after the applicable Transfer Cut-off Date or, in the case of purchases from a QSPE Affiliate, such QSPE Affiliate shall have deposited, or caused to be deposited, in the Collection Account all collections received with respect to each of the Loans and allocable to the period after the related Transfer Date;

(iii) as of such Transfer Date, none of the Loan Originator, the Depositor or the QSPE Affiliate, as applicable, shall (A) be insolvent, (B) be made insolvent by its respective sale of Loans or (C) have reason to believe that its insolvency is imminent;

(iv) the Revolving Period shall not have terminated;

(v) as of such Transfer Date (after giving effect to the sale of Loans on such Transfer Date), there shall be no Overcollateralization Shortfall;

(vi) in the case of non-Wet Funded Loans, the Issuer shall have delivered the Custodial Loan File to the Custodian in accordance with the Custodial Agreement and the Noteholder Agent shall have received a Trust Receipt by 12:00 noon New York City time on the Transfer Date reflecting such delivery, or, in the case of Wet Funded Loans, the Issuer shall have delivered the Wet Funded Loan Schedule to the Custodian in accordance with the Custodial Agreement and the Noteholder Agent shall have received a Trust Receipt within one (1) hour of receipt by the Custodian of such Wet Funded Loan Schedule, reflecting such delivery;

(vii) each of the representations and warranties made by the Loan Originator contained in Exhibit F with respect to the Loans shall be true and correct in all material respects as of the related Transfer Date with the same effect as if then made and the proviso set forth in Section 3.05 hereof with respect to Loans sold by a QSPE Affiliate shall not be applicable to any Loans, and the Depositor or the QSPE Affiliate, as applicable, shall have performed all obligations to be performed by it under the Basic Documents on or prior to such Transfer Date;

(viii) the Depositor or the QSPE Affiliate shall, at its own expense, within one (1) Business Day following the Transfer Date, indicate in its computer files that the Loans identified in each S&SA Assignment have been sold to the Issuer pursuant to this Agreement and the S&SA Assignment;

(ix) the Depositor or the QSPE Affiliate shall have taken any action requested by the Indenture Trustee, the Issuer or the Noteholders required to maintain the ownership interest of the Issuer in the Trust Estate;

(x) no selection procedures believed by the Depositor or the QSPE Affiliate to be adverse to the interests of the Noteholders shall have been utilized in selecting the Loans to be conveyed on such Transfer Date;

(xi) the Depositor shall have provided the Issuer, the Indenture Trustee and the Noteholder Agent no later than two (2) Business Days prior to such date a notice of Additional Note Principal Balance in the form of Exhibit A hereto;

(xii) after giving effect to the Additional Note Principal Balance associated therewith, the Note Principal Balance will not exceed the Maximum Note Principal Balance;



(xiii) all conditions precedent to the Depositor's purchase of Loans pursuant to the Loan Purchase and Contribution Agreement shall have been fulfilled as of such Transfer Date, and, in the case of purchases from a QSPE Affiliate, all conditions precedent to the Issuer's purchase of Loans pursuant to the Master Disposition Confirmation Agreement shall have been fulfilled as of such Transfer Date;

(xiv) all conditions precedent to the Noteholders' purchase of Additional Note Principal Balance pursuant to the Note Purchase Agreement shall have been fulfilled as of such Transfer Date; and

(xv) with respect to each Loan acquired from any QSPE Affiliate that has a limited right of recourse to the Loan Originator under the terms of the applicable loan purchase agreement, the Loan Originator has not been required to pay any amount to or on behalf of such QSPE Affiliate that lowered the recourse to the Loan Originator available to such QSPE Affiliate below the maximum recourse to the Loan Originator available to such QSPE Affiliate under the terms of the related loan purchase contract providing for recourse by that QSPE Affiliate to the Loan Originator.

**Section 2.07 Termination or Suspension of Revolving Period.**

At the end of the Revolving Period or upon the occurrence of (i) an Event of Default or Default, (ii) a Rapid Amortization Trigger, or (iii) the Unfunded Transfer Obligation Percentage equals 4% or less, or (iv) Option One or any of its Affiliates shall default under, or shall otherwise materially breach the terms of any repurchase agreement, loan and security agreement or similar credit facility or agreement entered into by Option One or any of its Affiliates, including without limitation, (1) the Sale and Servicing Agreement, dated as of April 1, 2001, among the Option One Owner Trust 2001-1A, the Depositor, Option One and the Indenture Trustee, (2) the Sale and Servicing Agreement, dated as of April 1, 2001, among the Option One Owner Trust 2001-1B, the Depositor, Option One and the Indenture Trustee, (3) the Sale and Servicing Agreement, dated as of July 2, 2002, among the Option One Owner Trust 2002-3, the Depositor, Option One and the Indenture Trustee, (4) the Sale and Servicing Agreement, dated as of August 8, 2003, among the Option One Owner Trust 2003-4, the Depositor, Option One and the Indenture Trustee, (5) the Sale and Servicing Agreement, dated as of November 1, 2003, among the Option One Owner Trust 2003-5, the Depositor, Option One and the Indenture Trustee, (6) the Sale and Servicing Agreement, dated as of June 1, 2005, among the Option One Owner Trust 2005-6, the Depositor, Option One and the Indenture Trustee, (7) the Sale and Servicing Agreement, dated as of September 1, 2005, among the Option One Owner Trust 2005-7, the Depositor, Option One and the Indenture Trustee, and (8) the Sale and Servicing Agreement, dated as of October 1, 2005, among the Option One Owner Trust 2005-8, the Depositor, Option One and the Indenture Trustee, and such default, failure or breach entitles any counterparty to declare the Indebtedness thereunder to be due and payable prior to the maturity thereof, the Noteholder Agent may, in any such case, in its sole discretion, terminate the Revolving Period.

**Section 2.08 Correction of Errors.**

The parties hereto who have relevant information shall cooperate to reconcile any errors in calculating the Sales Price from and after the Closing Date. In the event that an error in the Sales Price is discovered by either party, including without limitation, any error due to miscalculations of Market Value where insufficient information has been provided with respect to a Loan to make an accurate determination of Market Value as of any applicable Transfer Date, any miscalculations of Principal Balance, accrued interest, Overcollateralization Shortfall or aggregate unreimbursed Servicing Advances attributable to the applicable Loan, or any prepayments not properly credited, such party shall give

prompt notice to the other parties hereto, and the party that shall have benefited from such error shall promptly remit to the other, by wire transfer of immediately available funds the amount of such error with no interest thereon.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

##### **Section 3.01 Representations, Warranties and Covenants of the Depositor.**

The Depositor hereby represents, warrants and covenants to the other parties hereto and the Securityholders that as of the Closing Date and as of each Transfer Date:

(a) The Depositor is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has, and had at all relevant times, full power to own its property, to carry on its business as currently conducted, to enter into and perform its obligations under each Basic Document to which it is a party;

(b) The execution and delivery by the Depositor of each Basic Document to which the Depositor is a party and its performance of and compliance with all of the terms thereof will not violate the Depositor's organizational documents or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or result in the breach or acceleration of, any material contract, agreement or other instrument to which the Depositor is a party or which are applicable to the Depositor or any of its assets;

(c) The Depositor has the full power and authority to enter into and consummate the transactions contemplated by each Basic Document to which the Depositor is a party, has duly authorized the execution, delivery and performance of each Basic Document to which it is a party and has duly executed and delivered each Basic Document to which it is a party; each Basic Document to which it is a party, assuming due authorization, execution and delivery by the other party or parties thereto, constitutes a valid, legal and binding obligation of the Depositor, enforceable against it in accordance with the terms thereof, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other similar laws relating to or affecting the rights of creditors generally, and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(d) The Depositor is not in violation of, and the execution and delivery by the Depositor of each Basic Document to which the Depositor is a party and its performance and compliance with the terms of each Basic Document to which the Depositor is a party will not constitute a violation with respect to, any order or decree of any court or any order or regulation of any federal, state, municipal or governmental agency having jurisdiction, which violation would materially and adversely affect the condition (financial or otherwise) or operations of the Depositor or any of its properties or materially and adversely affect the performance of any of its duties hereunder;

(e) There are no actions or proceedings against, or investigations of, the Depositor currently pending with regard to which the Depositor has received service of process and no action or proceeding against, or investigation of, the Depositor is, to the knowledge of the Depositor, threatened or otherwise pending before any court, administrative agency or other tribunal (A) that if determined adversely to the Depositor, would have a reasonable possibility of prohibiting or preventing its entering into any of the Basic Documents to which it is a party or render the Securities invalid, (B) that seeks to prevent the issuance of the Securities or the consummation of any of the transactions contemplated by any

of the Basic Documents to which it is a party, (C) that if determined adversely to the Depositor, would reasonably be expected to prohibit or materially and adversely affect (i) the sale of the Loans to the Issuer, (ii) the performance by the Depositor of its obligations under, or the validity or enforceability of, any of the Basic Documents to which it is a party, (iii) the Securities, or (D) as to which there is a reasonable possibility of an adverse determination of such action, proceeding or investigation that would affect the satisfaction by the Loan Originator of the Financial Covenants;

(f) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Depositor of, or compliance by the Depositor with, any of the Basic Documents to which the Depositor is a party or the Securities, or for the consummation of the transactions contemplated by any of the Basic Documents to which the Depositor is a party, except for such consents, approvals, authorizations and orders, if any, that have been obtained prior to such date;

(g) The Depositor is solvent, is able to pay its debts as they become due and has capital sufficient to carry on its business and its obligations hereunder; it will not be rendered insolvent by the execution and delivery of any of the Basic Documents to which it is a party or the assumption of any of its obligations thereunder; no petition of bankruptcy (or similar insolvency proceeding) has been filed by or against the Depositor;

(h) The Depositor did not transfer the Loans sold thereon by the Depositor to the Trust with any intent to hinder, delay or defraud any of its creditors; nor will the Depositor be rendered insolvent as a result of such sale;

(i) The Depositor had good title to, and was the sole owner of, each Loan sold thereon by the Depositor free and clear of any lien other than any such lien released simultaneously with the sale contemplated herein, and, immediately upon each transfer and assignment herein contemplated, the Depositor will have delivered to the Trust good title to, and the Trust will be the sole owner of, each Loan transferred by the Depositor thereon free and clear of any lien;

(j) The Depositor acquired title to each of the Loans sold thereon by the Depositor in good faith, without notice of any adverse claim;

(k) None of the Basic Documents to which the Depositor is a party, nor any Officer's Certificate, statement, report or other document prepared by the Depositor and furnished or to be furnished by it pursuant to any of the Basic Documents to which it is a party or in connection with the transactions contemplated thereby contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading;

(l) The Depositor is not required to be registered as an "investment company," under the Investment Company Act of 1940, as amended;

(m) The transfer, assignment and conveyance of the Loans by the Depositor thereon pursuant to this Agreement is not subject to the bulk transfer laws or any similar statutory provisions in effect in any applicable jurisdiction;

(n) The Depositor's principal place of business and chief executive offices are located at Irvine, California or at such other address as shall be designated by such party in a written notice to the other parties hereto;

(o) The Depositor covenants that during the continuance of this Agreement it will comply in all respects with the provisions of its organizational documents in effect from time to time; and

(p) The representations and warranties set forth in (h), (i), (j) and (m) above were true and correct (with respect to the applicable QSPE Affiliate) with respect to each Loan transferred to the Trust by any QSPE Affiliate at the time such Loan was transferred to a QSPE Affiliate.

**Section 3.02 Representations, Warranties and Covenants of the Loan Originator.**

The Loan Originator hereby represents, warrants and covenants to the other parties hereto and the Securityholders that as of the Closing Date and as of each Transfer Date:

(a) The Loan Originator is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and (i) is duly qualified, in good standing and licensed to carry on its business in each state where any Mortgaged Property related to a Loan sold by it is located and (ii) is in compliance with the laws of any such jurisdiction, in both cases, to the extent necessary to ensure the enforceability of such Loans in accordance with the terms thereof and had at all relevant times, full corporate power to originate such Loans, to own its property, to carry on its business as currently conducted and to enter into and perform its' obligations under each Basic Document to which it is a party;

(b) The execution and delivery by the Loan Originator of each Basic Document to which it is a party and its performance of and compliance with the terms thereof will not violate the Loan Originator's articles of organization or by-laws or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or result in the breach or acceleration of, any contract, agreement or other instrument to which the Loan Originator is a party or which may be applicable to the Loan Originator or any of its assets;

(c) The Loan Originator has the full power and authority to enter into and consummate all transactions contemplated by the Basic Documents to be consummated by it, has duly authorized the execution, delivery and performance of each Basic Document to which it is a party and has duly executed and delivered each Basic Document to which it is a party; each Basic Document to which it is a party, assuming due authorization, execution and delivery by each of the other parties thereto, constitutes a valid, legal and binding obligation of the Loan Originator, enforceable against it in accordance with the terms hereof, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other similar laws relating to or affecting the rights of creditors generally, and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(d) The Loan Originator is not in violation of, and the execution and delivery of each Basic Document to which it is a party by the Loan Originator and its performance and compliance with the terms of each Basic Document to which it is a party will not constitute a violation with respect to, any order or decree of any court or any order or regulation of any federal, state, municipal or governmental agency having jurisdiction, which violation would materially and adversely affect the condition (financial or otherwise) or operations of the Loan Originator or its properties or materially and adversely affect the performance of its duties under any Basic Document to which it is a party;

(e) There are no actions or proceedings against, or investigations of, the Loan Originator currently pending with regard to which the Loan Originator has received service of process and no action or proceeding against, or investigation of, the Loan Originator is, to the knowledge of the Loan Originator, threatened or otherwise pending before any court, administrative agency or other

tribunal (A) that if determined adversely to the Loan Originator, would have a reasonable possibility of prohibiting or preventing its entering into any Basic Document to which it is a party or render the Securities invalid, (B) that seeks to prevent the issuance of the Securities or the consummation of any of the transactions contemplated by any Basic Document to which it is a party, (C) that if determined adversely to the Loan Originator, would reasonably be expected to prohibit or materially and adversely affect the (i) the sale of the Loans to the Depositor, (ii) the performance by the Loan Originator of its obligations under, or the validity or enforceability of, any of the Basic Documents to which it is a party, (iii) the Securities, or (D) as to which there is a reasonable possibility of an adverse determination of such action, proceeding or investigation that would affect the satisfaction by the Loan Originator of the Financial Covenants;

(f) No consent, approval, authorization or order of any court or governmental agency or body is required for: (1) the execution, delivery and performance by the Loan Originator of, or compliance by the Loan Originator with, any Basic Document to which it is a party, (2) the issuance of the Securities, (3) the sale and contribution of the Loans, or (4) the consummation of the transactions required of it by any Basic Document to which it is a party, except such as shall have been obtained before such date;

(g) Immediately prior to the sale of any Loan to the Depositor, the Loan Originator had good title to such Loan sold by it on such date, without notice of any adverse claim;

(h) The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of the Loan Originator to the Noteholder Agent in connection with the negotiation, preparation or delivery of the Basic Documents to which it is a party or delivered pursuant thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of the Loan Originator to the Noteholder Agent or any Noteholder in connection with the Basic Documents to which it is a party and the transactions contemplated thereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified.

(i) The Loan Originator is solvent, is able to pay its debts as they become due and has capital sufficient to carry on its business and its obligations under each Basic Document to which it is a party; it will not be rendered insolvent by the execution and delivery of this Agreement or by the performance of its obligations under each Basic Document to which it is a party; no petition of bankruptcy (or similar insolvency proceeding) has been filed by or against the Loan Originator prior to the date hereof;

(j) The Loan Originator has transferred the Loans transferred by it on or prior to such Transfer Date without any intent to hinder, delay or defraud any of its creditors;

(k) The Loan Originator has received fair consideration and reasonably equivalent value in exchange for the Loans sold by it on such Transfer Date to the Depositor;

(l) The Loan Originator has not dealt with any broker or agent or other Person who might be entitled to a fee, commission or compensation in connection with the transaction contemplated by this Agreement;

(m) The Loan Originator has not engaged in any practice or activity with respect to the Loans that is predatory, abusive, deceptive or otherwise wrongful under the statutes, regulations and ordinances, if any, that are applicable to the Loans, or that is otherwise actionable;

(n) The Loan Originator is in compliance with each of the Financial Covenants; and

(o) The Loan Originator's principal place of business and chief executive offices are located at Irvine, California or at such other address as shall be designated by such party in a written notice to the other parties hereto.

It is understood and agreed that the representations, warranties and covenants set forth in this Section 3.02 shall survive delivery of the respective Custodial Loan Files to the Indenture Trustee or the Custodian on its behalf and shall inure to the benefit of the Securityholders, the Depositor, the Servicer, the Indenture Trustee, the Owner Trustee and the Issuer. Upon discovery by the Loan Originator, the Depositor, the Servicer, the Indenture Trustee, the Owner Trustee or the Issuer of a breach of any of the foregoing representations and warranties that materially and adversely affects the value of any Loan or the interests of the Securityholders in any Loan or in the Securities, the party discovering such breach shall give prompt written notice (but in no event later than two (2) Business Days following such discovery) to the other parties. The obligations of the Loan Originator set forth in Sections 2.05 and 3.06 hereof to cure any breach or to substitute for or repurchase an affected Loan shall constitute the sole remedies available hereunder to the Securityholders, the Depositor, the Servicer, the Indenture Trustee, the Owner Trustee or the Issuer respecting a breach of the representations and warranties contained in this Section 3.02. The fact that the Noteholder Agent or any Noteholder has conducted or has failed to conduct any partial or complete due diligence investigation of the Loan Files shall not affect the Securityholders' rights to demand repurchase or substitution as provided under this Agreement.

**Section 3.03 Representations, Warranties and Covenants of the Servicer.**

The Servicer hereby represents and warrants to and covenants with the other parties hereto and the Securityholders that as of the Closing Date and as of each Transfer Date:

(a) The Servicer is a corporation duly organized, validly existing and in good standing under the laws of the State of California and (i) is duly qualified, in good standing and licensed to carry on its business in each state where any Mortgaged Property is located, and (ii) is in compliance with the laws of any such state, in both cases, to the extent necessary to ensure the enforceability of the Loans in accordance with the terms thereof and to perform its duties under each Basic Document to which it is a party and had at all relevant times, full corporate power to own its property, to carry on its business as currently conducted, to service the Loans and to enter into and perform its obligations under each Basic Document to which it is a party;

(b) The execution and delivery by the Servicer of each Basic Document to which it is a party and its performance of and compliance with the terms thereof will not violate the Servicer's articles of incorporation or by-laws or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or result in the breach or acceleration of any material contract, agreement or other instrument to which the Servicer is a party or which are applicable to the Servicer or any of its assets;

(c) The Servicer has the full power and authority to enter into and consummate all transactions contemplated by each Basic Document to which it is a party, has duly authorized the execution, delivery and performance of each Basic Document to which it is a party and has duly executed and delivered each Basic Document to which it is a party. Each Basic Document to which it is a party,

assuming due authorization, execution and delivery by each of the other parties thereto, constitutes a valid, legal and binding obligation of the Servicer, enforceable against it in accordance with the terms hereof, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other similar laws relating to or affecting the rights of creditors generally, and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(d) The Servicer is not in violation of, and the execution and delivery of each Basic Document to which it is a party by the Servicer and its performance and compliance with the terms of each Basic Document to which it is a party will not constitute a violation with respect to, any order or decree of any court or any order or regulation of any federal, state, municipal or governmental agency having jurisdiction, which violation would materially and adversely affect the condition (financial or otherwise) or operations of the Servicer or materially and adversely affect the performance of its duties under any Basic Document to which it is a party;

(e) There are no actions or proceedings against, or investigations of, the Servicer currently pending with regard to which the Servicer has received service of process and no action or proceeding against, or investigation of, the Servicer is, to the knowledge of the Servicer, threatened or otherwise pending before any court, administrative agency or other tribunal (A) that if determined adversely to the Servicer, would have a reasonable possibility of prohibiting or preventing its entering into any Basic Document to which it is a party, (B) that seeks to prevent the consummation of any of the transactions contemplated by any Basic Document to which it is a party, (C) that if determined adversely to the Servicer, would reasonably be expected to prohibit or materially and adversely affect (i) the performance by the Servicer of its obligations under, or the validity or enforceability of, any Basic Document to which it is a party, or (ii) the Securities, or (D) as to which there is a reasonable possibility of an adverse determination of such action, proceeding or investigation that would affect the satisfaction by the Loan Originator of the Financial Covenants;

(f) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Servicer of, or compliance by the Servicer with, any Basic Document to which it is a party or the Securities, or for the consummation of the transactions contemplated by any Basic Document to which it is a party, except for such consents, approvals, authorizations and orders, if any, that have been obtained prior to such date;

(g) The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of the Servicer to the Majority Noteholders in connection with the negotiation, preparation or delivery of the Basic Documents to which it is a party or delivered pursuant thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of the Servicer to the Majority Noteholders in connection with the Basic Documents to which it is a party and the transactions contemplated thereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified.

(h) The Servicer is solvent and will not be rendered insolvent as a result of the performance of its obligations pursuant to under the Basic Documents to which it is a party;

(i) The Servicer acknowledges and agrees that the Servicing Compensation represents reasonable compensation for the performance of its services hereunder and that the entire Servicing Compensation shall be treated by the Servicer, for accounting purposes, as compensation for the servicing and administration of the Loans pursuant to this Agreement;

(j) The Servicer is in compliance with each of the Financial Covenants;

(k) Each Subservicer is an Eligible Servicer and the Servicer covenants to cause each Subservicer to be an Eligible Servicer; and

(l) The Servicer has not engaged in any practice or activity with respect to the Loans, or any other loans, that is predatory, abusive, deceptive or otherwise wrongful under the statutes, regulations and ordinances, if any, that are applicable to the particular loans, or that is otherwise actionable.

It is understood and agreed that the representations, warranties and covenants set forth in this Section 3.03 shall survive delivery of the respective Custodial Loan Files to the Indenture Trustee or the Custodian on its behalf and shall inure to the benefit of the Depositor, the Securityholders, the Indenture Trustee, the Owner Trustee and the Issuer. Upon discovery by the Loan Originator, the Depositor, the Servicer, the Indenture Trustee, the Owner Trustee or the Issuer of a breach of any of the foregoing representations, warranties and covenants that materially and adversely affects the value of any Loan or the interests of the Securityholders in any Loan or in the Securities, the party discovering such breach shall give prompt written notice (but in no event later than two (2) Business Days following such discovery) to the other parties. The fact that the Noteholder Agent or any Noteholder has conducted or has failed to conduct any partial or complete due diligence investigation shall not affect the Securityholders' rights to exercise their remedies as provided under this Agreement.

**Section 3.04 Reserved.**

**Section 3.05 Representations and Warranties Regarding Loans.** The Loan Originator makes each of the representations and warranties set forth on Exhibit F hereto with respect to each Loan, provided, however, that with respect to each Loan proposed to be transferred to the Issuer by a QSPE Affiliate, to the extent that the Loan Originator has at the time of such transfer actual knowledge of any facts or circumstances that would render any of such representations or warranties materially false, the Loan Originator shall notify the Noteholder Agent of such facts or circumstances and, in such event, shall have no obligation to make such materially false representation and warranty and the Issuer shall not purchase such Loan. In addition, the Loan Originator represents and warrants with respect to each Loan sold by a QSPE Affiliate that the Loan Originator has not been required to pay any amount to or on behalf of such QSPE Affiliate that lowered the recourse to the Loan Originator available to such QSPE Affiliate below the maximum recourse to the Loan Originator available to such QSPE Affiliate under the terms of any loan purchase agreement providing for recourse by that QSPE Affiliate to the Loan Originator.

**Section 3.06 Purchase and Substitution.**

(a) It is understood and agreed that the representations and warranties set forth in Exhibit F hereto shall survive the conveyance of the Loans to the Indenture Trustee on behalf of the Issuer, and the delivery of the Securities to the Securityholders. Upon discovery by the Depositor, the Servicer, the Loan Originator, the Custodian, the Issuer, the Indenture Trustee, the Owner Trustee or any Securityholder of a breach of any of such representations and warranties or the representations and warranties of the Depositor, Loan Originator or Servicer set forth in Sections 3.01, 3.02 or 3.03, respectively, which materially and adversely affects the value or enforceability of any Loan or the interests of the Securityholders in any Loan (notwithstanding that such representation and warranty was made to the Depositor's, Loan Originator's or Servicer's best knowledge) or which, constitutes a breach of the representations and warranties set forth in Exhibit E, the party discovering such breach shall give prompt written notice (but in no event later than two (2) Business Days following such discovery) to the others. The Depositor, Loan Originator or Servicer, as applicable, shall, within five (5) Business Days of



the earlier of the Depositor's, Loan Originator's or Servicer's discovery or the Depositor's, Loan Originator's or Servicer's receiving notice of any breach of a representation or warranty, promptly cure such breach in all material respects. If within five (5) Business Days after the earlier of the Depositor's, Loan Originator's or Servicer's discovery of such breach or the Depositor's, Loan Originator's or Servicer's receiving notice thereof such breach has not been remedied by the Depositor, Loan Originator or Servicer, as applicable, and such breach materially and adversely affects the interests of the Securityholders in the related Loan (an "Unqualified Loan"), the Loan Originator shall, promptly upon receipt of written instructions from the Majority Noteholders, either (i) remove such Unqualified Loan (in which case it shall become a Deleted Loan) from the Trust and substitute one or more Qualified Substitute Loans (in place of a Deleted Loan) in the manner and subject to the conditions set forth in this Section 3.06 or (ii) purchase such Unqualified Loan at a purchase price equal to the Repurchase Price with respect to such Unqualified Loan by depositing or causing to be deposited such Repurchase Price in the Collection Account.

Any substitution of Loans pursuant to this Section 3.06(a) shall be accompanied by payment by the Loan Originator of the Substitution Adjustment, if any, (x) if no Overcollateralization Shortfall exists on the date of such substitution (after giving effect to such substitution), remitted to the Noteholders in accordance with Section 5.01(c)(4)(i) or (y) otherwise to be deposited in the Collection Account pursuant to Section 5.01(b) hereof.

(b) As to any Deleted Loan for which the Loan Originator substitutes a Qualified Substitute Loan or Loans, the Loan Originator shall effect such substitution by delivering to the Indenture Trustee and the Noteholder Agent a certification executed by a Responsible Officer of the Loan Originator to the effect that the Substitution Adjustment, if any, has been (x) if no Overcollateralization Shortfall exists on the date of such substitution (after giving effect to such substitution), remitted to the Noteholders in accordance with Section 5.01(c)(4)(i), or (y) otherwise deposited in the Collection Account. As to any Deleted Loan for which the Loan Originator substitutes a Qualified Substitute Loan or Loans, the Loan Originator shall effect such substitution by delivering to the Custodian the documents constituting the Custodial Loan File for such Qualified Substitute Loan or Loans.

The Servicer shall deposit in the Collection Account all payments received in connection with each Qualified Substitute Loan after the date of such substitution. Monthly Payments received with respect to Qualified Substitute Loans on or before the date of substitution will be retained by the Loan Originator. The Trust will be entitled to all payments received on the Deleted Loan on or before the date of substitution and the Loan Originator shall thereafter be entitled to retain all amounts subsequently received in respect of such Deleted Loan. The Loan Originator shall give written notice to the Issuer, the Servicer (if the Loan Originator is not then acting as such), the Indenture Trustee and the Noteholder Agent that such substitution has taken place and the Servicer shall amend the Loan Schedule to reflect (i) the removal of such Deleted Loan from the terms of this Agreement and (ii) the substitution of the Qualified Substitute Loan. The Servicer shall promptly deliver to the Issuer, the Loan Originator, the Indenture Trustee and the Noteholder Agent a copy of the amended Loan Schedule. Upon such substitution, such Qualified Substitute Loan or Loans shall be subject to the terms of this Agreement in all respects, and the Loan Originator shall be deemed to have made with respect to such Qualified Substitute Loan or Loans, as of the date of substitution, the covenants, representations and warranties set forth in Exhibit F hereto. On the date of such substitution, the Loan Originator will (x) if no Overcollateralization Shortfall exists as of the date of substitution (after giving effect to such substitution), remit to the Noteholders as provided in Section 5.01(c)(4)(i) or (y) otherwise deposit into the Collection Account, in each case an amount equal to the related Substitution Adjustment, if any. In addition, on the date of such substitution, the Servicer shall cause the Indenture Trustee to release the Deleted Loan from the Lien of the Indenture and the Servicer will cause each such Qualified Substitute Loan to be pledged to the Indenture Trustee under the Indenture as part of the Trust Estate.

(c) With respect to all Unqualified Loans and other Loans repurchased by the Loan Originator pursuant to this Agreement, upon the deposit of the Repurchase Price therefor into the Collection Account or the conveyance of one or more Qualified Substitute Loans and payment of any Substitution Adjustment, (i) the Issuer shall assign to the Loan Originator, without representation or warranty, all of the Issuer's right, title and interest in and to each such Unqualified Loan or Loan, which right, title and interest were conveyed to the Issuer pursuant to Section 2.01 hereof and (ii) the Indenture Trustee shall assign to the Loan Originator, without recourse, representation or warranty, all the Indenture Trustee's right, title and interest in and to each such Unqualified Loan or Loan, which right, title and interest were conveyed to the Indenture Trustee pursuant to Section 2.01 hereof and the Indenture. The Issuer and the Indenture Trustee shall, at the expense of the Loan Originator, take any actions as shall be reasonably requested by the Loan Originator to effect the repurchase of any such Loans and to have the Custodian return the Custodial Loan File of the Deleted Loan to the Servicer.

(d) It is understood and agreed that the obligations of the Loan Originator set forth in this Section 3.06 to cure, purchase or substitute for an Unqualified Loan constitute the sole remedies hereunder of the Depositor, the Issuer, the Indenture Trustee, the Owner Trustee and the Securityholders respecting a breach of the representations and warranties contained in Section 3.02 hereof and in Exhibit F hereto. Any cause of action against the Loan Originator relating to or arising out of a defect in a Custodial Loan File or against the Depositor, the Loan Originator or the Servicer relating to or arising out of a breach of any representations and warranties made in Sections 3.01, 3.02 or 3.03 hereof, respectively, and in Exhibit F hereto shall accrue as to any Loan upon (i) discovery of such defect or breach by any party and notice thereof to the Depositor, the Loan Originator or the Servicer, as applicable, or notice thereof by the Depositor, the Loan Originator or the Servicer, as applicable, to the Indenture Trustee, (ii) failure by the Depositor, the Loan Originator or the Servicer, as applicable, to cure such defect or breach or failure by the Loan Originator to purchase or substitute such Loan as specified above, and (iii) demand upon the Loan Originator, as applicable, by the Issuer or the Majority Noteholders for all amounts payable in respect of such Loan.

(e) Neither the Issuer nor the Indenture Trustee shall have any duty to conduct any affirmative investigation other than as specifically set forth in this Agreement as to the occurrence of any condition requiring the repurchase or substitution of any Loan pursuant to this Section or the eligibility of any Loan for purposes of this Agreement.

### **Section 3.07 Dispositions.**

(a) The Majority Noteholders may at any time in their sole discretion, and from time to time, require that the Issuer redeem all or any portion of the Note Principal Balance of the Notes by paying the Note Redemption Amount with respect to the Note Principal Balance to be redeemed in accordance with Section 10.04. In connection with any such redemption, the Issuer shall effect Dispositions at the direction of the Majority Noteholders in accordance with this Agreement, including in accordance with this Section 3.07.

(b) (i) In consideration of the consideration received from the Depositor under the Loan Purchase and Contribution Agreement, the Loan Originator hereby agrees and covenants that in connection with each Disposition it shall effect the following:

(A) make such representations and warranties concerning the Loans as of the "cut-off date" of the related Disposition to the Disposition Participants as may be necessary to effect the Disposition and such additional representations and warranties as may be necessary, in the reasonable opinion of any of the Disposition Participants, to effect such Disposition; provided, that, to the extent that the Loan Originator has at the time of the Disposition actual knowledge of

any facts or circumstances that would render any of such representations and warranties materially false, the Loan Originator shall notify the Disposition Participants of such facts or circumstances and, in such event, shall have no obligation to make such materially false representation and warranty;

(B) supply such information, opinions of counsel, letters from law and/or accounting firms and other documentation and certificates regarding the origination of the Loans as any Disposition Participant shall reasonably request to effect a Disposition and enter into such indemnification agreements customary for such transaction relating to or in connection with the Disposition as the Disposition Participants may reasonably require;

(C) make itself available for and engage in good faith consultation with the Disposition Participants concerning information to be contained in any document, agreement, private placement memorandum, or filing with the Securities and Exchange Commission relating to the Loan Originator or the Loans in connection with a Disposition and shall use reasonable efforts to compile any information and prepare any reports and certificates, into a form, whether written or electronic, suitable for inclusion in such documentation;

(D) to implement the foregoing and to otherwise effect a Disposition, enter into, or arrange for its Affiliates to enter into insurance and indemnity agreements, underwriting or placement agreements, servicing agreements, purchase agreements and any other documentation which may reasonably be required of or reasonably deemed appropriate by the Disposition Participants in order to effect a Disposition;

(E) to deliver to the applicable Disposition Participants for inclusion in any prospectus or other offering material any documentation or information required in connection with Regulation AB, and to provide indemnification in connection with such information; and

(F) take such further actions as may be reasonably necessary to effect the foregoing;

provided, that notwithstanding anything to the contrary, (a) the Loan Originator shall have no liability for the Loans arising from or relating to the ongoing ability of the related Borrowers to pay under the Loans; (b) none of the indemnities hereunder shall constitute an unconditional guarantee by the Loan Originator of collectability of the Loans; (c) the Loan Originator shall have no obligation with respect to the financial inability of any Borrower to pay principal, interest or other amount owing by such Borrower under a Loan; and (d) the Loan Originator shall only be required to enter into documentation in connection with Dispositions that is consistent with the prior public securitizations of affiliates of the Loan Originator, provided that to the extent an Affiliate of any Noteholder acts as “depositor” or performs a similar function in a Securitization, additional indemnities and informational representations and warranties are provided which are consistent with those in the Basic Documents and may upon request of the Loan Originator be set forth in a separate agreement between such Affiliate of the Noteholder and the Loan Originator.

(ii) In the event of any Disposition to the Loan Originator or any of its Affiliates (except in connection with a Securitization or a Disposition to a QSPE Affiliate), the purchase price paid by the Loan Originator or any such Affiliate shall be the “fair market value” of the Loans subject to such Disposition (as determined by the Market Value Agent based upon recent sales of comparable loans or such other objective criteria as may be approved for determining “fair market value” by a “Big Four” national accounting firm).

(iii) As long as no Event of Default or Default shall have occurred and be continuing under this Agreement or the Indenture, the Servicer may continue to service the Loans included in any Disposition subject to any applicable “term-to-term” servicing provisions in Section 9.01(b) and subject to any required amendments to the related servicing provisions as may be necessary to effect the related Disposition including but not limited to the obligation to make recoverable principal and interest advances on the Loans.

After the termination of the Revolving Period, the Issuer shall effect one or more Dispositions at the direction of the Disposition Agent, and the Loan Originator, the Issuer and the Depositor shall use commercially reasonable efforts to effect a Disposition at the direction of the Disposition Agent.

(c) The Issuer shall effect Dispositions at the direction of the Majority Noteholders in accordance with the terms of this Agreement and the Basic Documents. In connection therewith, the Trust agrees to assist the Loan Originator in such Dispositions and accordingly it shall, at the request and direction of the Majority Noteholders:

(i) transfer, deliver and sell all or a portion of the Loans as of the “cut-off dates” of the related Dispositions, to such Disposition Participants as may be necessary to effect the Dispositions; provided, that any such sale shall be for “fair market value,” as determined by the Market Value Agent in its reasonable discretion;

(ii) deposit the cash Disposition Proceeds into the Distribution Account pursuant to Section 5.01(c)(2)(D);

(iii) to the extent that a Securitization creates any Retained Securities, to accept such Retained Securities as a part of the Disposition Proceeds in accordance with the terms of this Agreement; and

(iv) take such further actions, including executing and delivering documents, certificates and agreements, as may be reasonably necessary to effect such Dispositions.

(d) The Servicer hereby covenants that (i) it will take such actions as may be reasonably necessary to effect Dispositions as the Disposition Participants may request and direct, including without limitation providing the Loan Originator such information as may be required to make representations and warranties required hereunder, (ii) it will make such representations and warranties regarding its servicing of the Loans hereunder as of the Cut-off Date of the related Disposition as reasonably required by the Disposition Participants, and (iii) it will deliver to the applicable Disposition Participants for inclusion in any prospectus or other offering material any documentation or information required in connection with Regulation AB, and will provide indemnification in connection with such information.

(e) The Majority Noteholders may effect Whole Loan Sales upon written notice to the Servicer of its intent to cause the Issuer to effect a Whole Loan Sale at least five (5) Business Days in advance thereof. The Disposition Agent shall serve as agent for Whole Loan Sales and will receive a reasonable fee for such services provided that no such fee shall be payable if (i) the Loan Originator or its Affiliates purchase such Loans, and (ii) no Event of Default or Default shall have occurred. The Loan Originator or its Affiliates may concurrently bid to purchase Loans in a Whole Loan Sale; provided, however, that neither the Loan Originator nor any such Affiliates shall pay a price in excess of the fair market value thereof (as determined by the Market Value Agent based upon recent sales of comparable loans or such other objective criteria as may be approved for determining “fair market value” by a “Big

Four” national accounting firm). In the event that the Loan Originator does not bid in any such Whole Loan Sale, it shall have a right of first refusal to purchase the Loans offered for sale at the price offered by the highest bidder. The Disposition Agent shall conduct any Whole Loan Sale subject to the Loan Originator’s right of first refusal and shall promptly notify the Loan Originator of the amount of the highest bid. The Loan Originator shall have five (5) Business Days following its receipt of such notice to exercise its right of first refusal by notifying the Disposition Agent in writing.

(f) Except as otherwise expressly set forth under this Section 3.07, the parties’ rights and obligations under this Section 3.07 shall continue notwithstanding the occurrence of an Event of Default.

(g) The Disposition Participants (and the Majority Noteholders to the extent directing the Disposition Participants) shall be independent contractors to the Issuer and shall have no fiduciary obligations to the Issuer or any of its Affiliates. In that connection, the Disposition Participants shall not be liable for any error of judgment made in good faith and shall not be liable with respect to any action they take or omit to take in good faith in the performance of their duties.

**Section 3.08 Loan Originator Put; Servicer Call.**

(a) **Loan Originator Put.** The Loan Originator shall promptly purchase, upon the written demand of the Majority Noteholders, any Put/Call Loan; provided that the Loan Originator may (if it is at that time the Servicer), upon receipt of such demand, elect to repurchase such Put/Call Loan pursuant to (b) below, in which case such repurchase shall be deemed a Servicer Call.

(b) **Servicer Call.** The Servicer may repurchase any Put/Call Loan at any time. Such Servicer Calls shall be solely at the option of the Servicer. Prior to exercising a Servicer Call, the Servicer shall deliver written notice to the Majority Noteholders and the Indenture Trustee which notice shall identify each Loan to be purchased and the Repurchase Price therefor; provided, however, that the Servicer may irrevocably waive its right to repurchase any Put/Call Loan as soon as reasonably practicable following its receipt of notice of the occurrence of any event or events giving rise to such Loan being a Put/Call Loan.

(c) In connection with each Loan Originator Put, the Loan Originator shall deposit into the Collection Account the Repurchase Price for the Loans to be repurchased. In connection with each Servicer Call, the Servicer shall deposit into the Collection Account the Repurchase Price for the Loans to be purchased. The aggregate Repurchase Price of all Loans transferred pursuant to Section 3.08(a) as of any date shall in no event exceed the Unfunded Transfer Obligation at the time of any Loan Originator Put.

**Section 3.09 Modification of Underwriting Guidelines.**

The Loan Originator shall give the Noteholders prompt written notification of any modification or change to the Underwriting Guidelines. If the Noteholder Agent objects in writing to any modification or change to the Underwriting Guidelines within 15 days after receipt of such notice, no Loans may be conveyed to the Issuer pursuant to this Agreement unless such Loans have been originated pursuant to the Underwriting Guidelines without giving effect to such modification or change. Notwithstanding anything contained in this Agreement to the contrary, any Loan conveyed to the Issuer pursuant to this Agreement pursuant to a modification or change to the Underwriting Guidelines that has been rejected by the Noteholders or which the Noteholders did not receive notice of, such Loan shall be deemed an Unqualified Loan and be repurchased or substituted for in accordance with Section 3.06.

## ARTICLE IV

### ADMINISTRATION AND SERVICING OF THE LOANS

#### **Section 4.01 Servicer's Servicing Obligations.**

The Servicer, as independent contract servicer, shall service and administer the Loans in accordance with the terms and provisions set forth in the Servicing Addendum, which Servicing Addendum is incorporated herein by reference.

#### **Section 4.02 Financial Statements; Other Statements and Notices.**

(a) So long as the Notes remain outstanding, the Servicer (or if the Servicer is not Option One, the Loan Originator) shall furnish to the Noteholders:

(i) annual consolidated audited financial statements of the Servicer (or if the Servicer is not Option One, the Loan Originator) and its Affiliates and Subsidiaries no later than ninety (90) days after the Servicer's Fiscal Year;

(ii) quarterly unaudited statements of the Servicer (or if the Servicer is not Option One, the Loan Originator) no later than fifty (50) days after quarter-end;

(iii) monthly unaudited statements of the Servicer (or if the Servicer is not Option One, the Loan Originator) no later than thirty (30) days after month-end;

(iv) on a timely basis, (i) quarterly and annual consolidating financial statements reflecting material intercompany adjustments, (ii) all form 10-K, registration statements and other "corporate finance" filings made with the SEC (other than 8-K filings), provided, however, that the Servicer (or if the Servicer is not Option One, the Loan Originator) shall provide the Noteholders a copy of the H&R Block, Inc.'s annual SEC Form 10-K filing no later than ninety (90) days after year-end, and (iii) any other financial information that the Noteholders may reasonably request; and

(v) monthly portfolio performance data with respect to the mortgage loans the Servicer services, including, without limitation, any outstanding delinquencies, prepayments in whole or in part, and repurchases by the Servicer.

(b) Any and all financial statements set forth in Section 4.02(a)(i)-(iv) above shall be prepared in accordance with GAAP.

(c) So long as the Notes remain outstanding, the Servicer (or if the Servicer is not Option One, the Loan Originator) shall furnish to the Noteholders prompt written notice of the occurrence of any Default, Event of Default or Term Event.

## ARTICLE V

### ESTABLISHMENT OF TRUST ACCOUNTS; TRANSFER OBLIGATION

#### **Section 5.01 Collection Account and Distribution Account.**

(a) (1) **Establishment of Collection Account.** The Servicer, for the benefit of the Noteholders, shall cause to be established and maintained one or more Collection Accounts (collectively, the "Collection Account"), which shall be separate Eligible Accounts entitled "Option One Owner Trust 2005-9 Collection Account, Wells Fargo Bank, N.A., as Indenture Trustee, for the benefit of the Option One Owner Trust 2005-9 Mortgage-Backed Notes." The Collection Account shall be maintained with a depository institution and shall satisfy the requirements set forth in the definition of Eligible Account. Funds in the Collection Account shall be invested in accordance with Section 5.03 hereof. Net investment earnings shall not be considered part of funds available in the Collection Account.

(2) **Establishment of Distribution Account.** The Servicer, for the benefit of the Noteholders, shall cause to be established and maintained, one or more Distribution Accounts (collectively, the "Distribution Account"), which shall be separate Eligible Accounts, entitled "Option One Owner Trust 2005-9 Distribution Account, Wells Fargo Bank, N.A., as Indenture Trustee, for the benefit of the Option One Owner Trust 2005-9 Mortgage-Backed Notes." The Distribution Account shall be maintained with a depository institution and shall satisfy the requirements set forth in the definition of Eligible Account. Funds in the Distribution Account shall be invested in accordance with Section 5.03 hereof. The Servicer may, at its option, maintain one account to serve as both the Distribution Account and the Collection Account, in which case, the account shall be entitled "Option One Owner Trust 2005-9 Collection/Distribution Account, Wells Fargo Bank, N.A., as Indenture Trustee, for the benefit of the Option One Owner Trust 2005-9 Mortgage-Backed Notes." If the Servicer makes such an election, all references herein or in any other Basic Document to either the Collection Account or the Distribution Account shall mean the Collection/Distribution Account described in the preceding sentence.

(3) The Servicer will inform the Indenture Trustee of the location of any accounts held in the Indenture Trustee's name, **including** any location to which an account is transferred.

(b) **Deposits to Collection Account.** The Servicer shall deposit or cause to be deposited (without duplication):

(i) all payments on or in respect of each Loan collected on or after the related Transfer Cut-off Date (net, in each case, of any Servicing Compensation retained therefrom) within two (2) Business Days after receipt thereof;

(ii) all Net Liquidation Proceeds within two (2) Business Days after receipt thereof;

(iii) all Mortgage Insurance Proceeds within two (2) Business Days after receipt thereof;

(iv) all Released Mortgaged Property Proceeds within two (2) Business Days after receipt thereof;

(v) any amounts payable in connection with the repurchase of any Loan and the amount of any Substitution Adjustment pursuant to Sections 2.05 and 3.05 hereof concurrently with payment thereof;

(vi) any Repurchase Price payable in connection with a Servicer Call pursuant to Section 3.08 hereof concurrently with payment thereof;

(vii) the deposit of the Termination Price under Section 10.02 hereof concurrently with payment thereof;

(viii) any Nonutilization Fees;

(ix) any payments received under Hedging Instruments (if any) or the return of amounts by the Hedging Counterparty pledged pursuant to prior Hedge Funding Requirements in accordance with the last sentence of this Section 5.01(b); and

(x) any Repurchase Price payable in connection with a Loan Originator Put remitted by the Loan Originator pursuant to Section 3.08(c).

Except as otherwise expressly provided in Section 5.01(c)(4)(i), the Servicer agrees that it will cause the Loan Originator, Borrower or other appropriate Person paying such amounts, as the case may be, to remit directly to the Servicer for deposit into the Collection Account all amounts referenced in clauses (i) through (x) to the extent such amounts are in excess of a Monthly Payment on the related Loan. To the extent the Servicer receives any such amounts, it will deposit them into the Collection Account on the same Business Day as receipt thereof.

**(c) *Withdrawals From Collection Account; Deposits to Distribution Account.***

**(1) *Withdrawals From Collection Account — Reimbursement Items.*** The Paying Agent shall periodically but in any event on each Determination Date, make the following withdrawals from the Collection Account prior to any other withdrawals, in no particular order of priority:

- (i) to withdraw any amount not required to be deposited in the Collection Account or deposited therein in error, including Servicing Compensation;
- (ii) to withdraw the Servicing Advance Reimbursement Amount; and
- (iii) to clear and terminate the Collection Account in connection with the termination of this Agreement.

**(2) *Deposits to Distribution Account — Payment Dates.***

(i) On the Business Day prior to each Payment Date, the Paying Agent shall deposit into the Distribution Account such amounts as are required from the Transfer Obligation Account pursuant to Sections 5.05(e), 5.05(f), 5.05(g) and 5.05(h).

(ii) After making all withdrawals specified in Section 5.01(c)(1) above, on each Remittance Date, the Paying Agent (based on information provided by the Servicer for such Payment Date), shall withdraw the Monthly Remittance Amount (or, with respect to an additional Payment Date pursuant to Section 5.01(c)(4)(ii), all amounts on deposit in the Collection Account on such date up to the amount necessary to make the payments due on the related Payment Date in accordance with Section 5.01(c)(3)) from the Collection Account not later than 5:00 P.M., New York City time and deposit such amount into the Distribution Account.

(iii) The Servicer shall deposit or cause to be deposited in the Distribution Account any cash Disposition Proceeds pursuant to Section 3.07. To the extent the Servicer receives such amounts, it will deposit them into the Distribution Account on the same Business Day as receipt thereof

**(3) *Withdrawals From Distribution Account — Payment Dates.*** On each Payment Date, to the extent funds are available in the Distribution Account, the Paying Agent (based on the



information provided by the Servicer contained in the Servicer's Remittance Report for such Payment Date) shall make withdrawals therefrom for application in the following order of priority:

(i) to distribute on such Payment Date the following amounts in the following order: (a) to the Indenture Trustee, an amount equal to the Indenture Trustee Fee and all unpaid Indenture Trustee Fees from prior Payment Dates and all amounts owing to the Indenture Trustee pursuant to Section 6.07 of the Indenture and not paid by the Servicer or the Depositor up to an amount not to exceed \$25,000 per annum, (b) to the Custodian, an amount equal to the Custodian Fee and all unpaid Custodian Fees from prior Payment Dates, (c) to the Servicer, (x) an amount equal to the Servicing Compensation and all unpaid Servicing Compensation from prior Payment Dates (to the extent not retained from collections or remitted to the Servicer pursuant to Section 5.01(c)) and (y) all Nonrecoverable Servicing Advances not previously reimbursed and (d) to the Servicer, in trust for the Owner Trustee, an amount equal to the Owner Trustee Fee and all unpaid Owner Trustee Fees from prior Payment Dates;

(ii) to distribute on such Payment Date the Hedge Funding Requirement (if any) to the appropriate Hedging Counterparties;

(iii) to the holders of the Notes pro rata, the sum of the Interest Payment Amount for such Payment Date and the Interest Carry-Forward Amount for the preceding Payment Date;

(iv) to the holders of the Notes pro rata, the Overcollateralization Shortfall for such Payment Date; provided, however, that if (a) a Rapid Amortization Trigger shall have occurred and not been Deemed Cured or (b) an Event of Default under the Indenture or Default shall have occurred, the holders of the Notes shall receive, in respect of principal, all remaining amounts on deposit in the Distribution Account;

(v) to the Committed Purchaser, the Nonutilization Fee for such Payment Date, to the extent payable, together with any Nonutilization Fees unpaid from any prior Payment Dates;

(vi) to the appropriate Person, amounts in respect of Issuer/Depositor Indemnities (as defined in the Trust Agreement) and Due Diligence Fees until such amounts are paid in full;

(vii) to the Transfer Obligation Account, all remaining amounts until the balance therein equals the Transfer Obligation Target Amount;

(viii) to the Indenture Trustee all amounts owing to the Indenture Trustee pursuant to Section 6.07 of the Indenture and not paid pursuant to clause (i) (a) above, including amounts required to be paid to the Indenture Trustee under Section 6.07 of the Indenture that are in excess of the \$25,000 limitation set forth in clause (i)(a) above; and

(ix) to the holders of the Trust Certificates, subject to Section 5.2(b) of the Trust Agreement, all amounts remaining therein; provided, however, if the Owner Trustee has notified the Paying Agent that any amounts are due and owing to it and remain unpaid, then first to the Owner Trustee, such amounts.

(4) (i) If the Loan Originator or the Servicer, as applicable, repurchases, purchases or substitutes a Loan pursuant to Section 2.05, 3.06, 3.08(a), 3.08(b) or 3.08(c), then the

Noteholders and the Issuer shall deem such date to be an additional Payment Date and the Issuer shall provide written notice to the Indenture Trustee and the Paying Agent of such additional Payment Date at least one (1) Business Day prior to such Payment Date. On such additional Payment Date, the Loan Originator or the Servicer, in satisfaction of its obligations under Section 2.05, 3.06, 3.08(a), 3.08(b) or 3.08(c) and in satisfaction of the obligations of the Issuer and the Paying Agent to distribute such amounts to the Noteholders pursuant to Section 5.01(c), shall remit to the Noteholders, on behalf of the Issuer and the Paying Agent, an amount equal to the Repurchase Prices and any Substitution Adjustments (as applicable) to be paid by the Loan Originator or the Servicer by 12:00 noon New York City time, as applicable, under such Section, on such Payment Date, and the Note Principal Balance will be reduced accordingly. Such amounts shall be deemed deposited into the Collection Account and the Distribution Account, as applicable, and such amounts will be deemed distributed pursuant to the terms of Section 5.01(c). Upon notice of an additional Payment Date to the Paying Agent and the Indenture Trustee as provided above, the Paying Agent shall provide the Loan Originator or the Servicer (as applicable) information necessary so that remittances to the Noteholders pursuant to this clause (4)(i) may be made by the Loan Originator or the Servicer, as applicable, in compliance with Section 5.02(a) hereof.

(ii) To the extent that there is deposited in the Collection Account or the Distribution Account any amounts referenced in Section 5.01(b)(vii) and 5.01(c)(2)(iii), the Majority Noteholders and the Issuer may agree, upon reasonable written notice to the Paying Agent and the Indenture Trustee, to additional Payment Dates. The Issuer and the Majority Noteholders shall give the Paying Agent and the Indenture Trustee at least one (1) Business Day's written notice prior to such additional Payment Date and such notice shall specify each amount in Section 5.01(c) to be withdrawn from the Collection Account and Distribution Account on such day.

(iii) To the extent that there is deposited in the Distribution Account any amounts referenced in Section 5.05(f), the Majority Noteholders may, in their sole discretion, establish an additional Payment Date by written notice delivered to the Paying Agent and the Indenture Trustee at least one Business Day prior to such additional Payment Date. On such additional Payment Date, the Paying Agent shall pay the sum of the Overcollateralization Shortfall to the Noteholders in respect of principal on the Notes.

Notwithstanding that the Notes have been paid in full, the Indenture Trustee, the Paying Agent and the Servicer shall continue to maintain the Distribution Account hereunder until this Agreement has been terminated.

#### **Section 5.02 Payments to Securityholders.**

(a) All distributions made on the Notes on each Payment Date or pursuant to Section 5.04(b) of the Indenture will be made on a pro rata basis among the Noteholders of record of the Notes on the next preceding Record Date based on the Percentage Interest represented by their respective Notes, without preference or priority of any kind, and, except as otherwise provided in the next succeeding sentence, shall be made by wire transfer of immediately available funds to the account of such Noteholder, if such Noteholder shall own of record Notes having a Percentage Interest (as defined in the Indenture) of at least 20% and shall have so notified the Paying Agent and the Indenture Trustee 5 Business Days prior to the related Record Date and otherwise by check mailed to the address of such Noteholder appearing in the Notes Register. The final distribution on each Note will be made in like manner, but only upon presentment and surrender of such Note at the location specified in the notice to Noteholders of such final distribution.

(b) All distributions made on the Trust Certificates on each Payment Date or pursuant to Section 5.04(b) of the Indenture will be made in accordance with the Percentage Interest among the holders of the Trust Certificates of record on the next preceding Record Date based on their Percentage Interests (as defined in the Trust Agreement) on the date of distribution, without preference or priority of any kind, and, except as otherwise provided in the next succeeding sentence, shall be made by wire transfer of immediately available funds to the account of each such holder, if such holder shall own of record a Trust Certificate in an original denomination aggregating at least 25% of the Percentage Interests and shall have so notified the Paying Agent and the Indenture Trustee five (5) Business Days prior to the related Record Date, and otherwise by check mailed to the address of such Certificateholder appearing in the Certificate Register. The final distribution on each Trust Certificate will be made in like manner, but only upon presentment and surrender of such Trust Certificate at the location specified in the notice to holders of the Trust Certificates of such final distribution. Any amount distributed to the holders of the Trust Certificates on any Payment Date shall not be subject to any claim or interest of the Noteholders. In the event that at any time there shall be more than one Certificateholder, the Indenture Trustee shall be entitled to reasonable additional compensation from the Servicer for any increases in its obligations hereunder.

**Section 5.03 Trust Accounts; Trust Account Property.**

(a) **Control of Trust Accounts.** Each of the Trust Accounts established hereunder has been pledged by the Issuer to the Indenture Trustee under the Indenture and shall be subject to the Lien of the Indenture. Amounts distributed from each Trust Account in accordance with the terms of this Agreement shall be released for the benefit of the Securityholders from the Trust Estate upon such distribution thereunder or hereunder. The Indenture Trustee shall possess all right, title and interest in and to all funds on deposit from time to time in the Trust Accounts and in all proceeds thereof (including all income thereon) and all such funds, investments, proceeds and income shall be part of the Trust Account Property and the Trust Estate. If, at any time, any Trust Account ceases to be an Eligible Account, the Indenture Trustee shall, within ten (10) Business Days (or such longer period, not to exceed thirty (30) calendar days, with the prior written consent of the Majority Noteholders) (i) establish a new Trust Account as an Eligible Account, (ii) terminate the ineligible Trust Account, and (iii) transfer any cash and investments from such ineligible Trust Account to such new Trust Account.

With respect to the Trust Accounts, the Issuer and the Indenture Trustee agree, that each such Trust Account shall be subject to the “control” (in accordance with Section 9-104 of the UCC) of the Indenture Trustee for the benefit of the Noteholders, and, except as may be consented to in writing by the Majority Noteholders, or provided in the related Blocked Account Agreement, the Indenture Trustee shall have sole signature and withdrawal authority with respect thereto.

The Servicer (unless it is also the Paying Agent) shall not be entitled to make any withdrawals or payments from the Trust Accounts.

(b) (1) **Investment of Funds.** Funds held in the Collection Account and the Distribution Account and the Transfer Obligation Account may be invested (to the extent practicable and consistent with any requirements of the Code) in Permitted Investments, as directed by the Servicer prior to the occurrence of an Event of Default and by the Majority Noteholders thereafter, in writing or facsimile transmission confirmed in writing by the Servicer or Majority Noteholders, as applicable. In the event the Indenture Trustee has not received such written direction, such Funds shall be invested in any Permitted Investment described in clause (i) of the definition of Permitted Investments. In any case, funds in the Collection Account, the Distribution Account and the Transfer Obligation Account must be available for withdrawal without penalty, and any Permitted Investments must mature or otherwise be available for withdrawal, one (1) Business Day prior to the next Payment Date and shall not be sold or

disposed of prior to its maturity subject to Subsection (b)(2) of this Section. All interest and any other investment earnings on amounts or investments held in the Collection Account and the Distribution Account and the Transfer Obligation Account shall be paid to the Servicer immediately upon receipt by the Indenture Trustee. All Permitted Investments in which funds in the Collection Account or the Distribution Account or the Transfer Obligation Account are invested must be held by or registered in the name of "Wells Fargo Bank, N.A., as Indenture Trustee, in trust for the Option One Owner Trust 2005-9 Mortgage-Backed Notes."

(2) **Insufficiency and Losses in Trust Accounts.** If any amounts are needed for disbursement from the Collection Account, the Distribution Account or the Transfer Obligation Account held by or on behalf of the Indenture Trustee and sufficient uninvested funds are not available to make such disbursement, the Indenture Trustee shall cause to be sold or otherwise converted to cash a sufficient amount of the investments in the Collection Account or the Distribution Account or the Transfer Obligation Account, as the case may be. The Indenture Trustee shall not be liable for any investment loss or other charge resulting therefrom, unless such loss or charge is caused by the failure of the Indenture Trustee to perform in accordance with written directions provided pursuant to this Section 5.03.

If any losses are realized in connection with any investment in the Collection Account or the Distribution Account or the Transfer Obligation Account pursuant to this Agreement during a period in which the Servicer has the right to direct investments pursuant to Section 5.03(b), then the Servicer shall deposit the amount of such losses (to the extent not offset by income from other investments in the Collection Account or the Distribution Account or the Transfer Obligation Account, as the case may be) into the Collection Account or the Distribution Account or the Transfer Obligation Account, as the case may be, immediately upon the realization of such loss. All interest and any other investment earnings on amounts held in the Collection Account and the Distribution Account and the Transfer Obligation Account shall be taxed to the Issuer and for federal and state income tax purposes the Issuer shall be deemed to be the owner of the Collection Account or the Distribution Account or the Transfer Obligation Account, as the case may be.

(c) Subject to Section 6.01 of the Indenture, the Indenture Trustee shall not in any way be held liable by reason of any insufficiency in any Trust Account held by the Indenture Trustee resulting from any investment loss on any Permitted Investment included therein.

(d) With respect to the Trust Account Property, the Indenture Trustee acknowledges and agrees that:

(1) any Trust Account Property that is held in deposit accounts or securities accounts shall be held solely in the Eligible Accounts, subject to the last sentence of Subsection (a) of this Section 5.03; and each such Eligible Account shall be subject to the "control" (in accordance with Section 9-104 of the UCC) of the Indenture Trustee; and, without limitation on the foregoing, the Indenture Trustee shall have sole signature authority with respect thereto;

(2) any Trust Account Property that constitutes Physical Property shall be delivered to the Indenture Trustee in accordance with paragraphs (a) and (b) of the definition of "Delivery" in Section 1.01 hereof and shall be held, pending maturity or disposition, solely by the Indenture Trustee or a securities intermediary (as such term is defined in Section 8-102(a)(14) of the UCC) acting solely for the Indenture Trustee;

(3) any Trust Account Property that is a book-entry security held through the Federal Reserve System pursuant to federal book-entry regulations shall be delivered in accordance with paragraph (c) of the definition of “Delivery” in Section 1.01 hereof and shall be maintained by the Indenture Trustee, pending maturity or disposition, through continued book-entry registration of such Trust Account Property as described in such paragraph; and

(4) any Trust Account Property that is an “uncertificated security” under Article 8 of the UCC and that is not governed by clause (3) above shall be delivered to the Indenture Trustee in accordance with paragraph (d) of the definition of “Delivery” in Section 1.01 hereof and shall be maintained by the Indenture Trustee, pending maturity or disposition, through continued registration of the Indenture Trustee’s (or its nominee’s) ownership of such security.

**Section 5.04 Advance Account.**

(a) The Servicer shall cause to be established and maintained an Advance Account (the “Advance Account”), with respect to which a Blocked Account Agreement acceptable to the Purchasers shall be duly executed. The Advance Account shall be a separate Eligible Account. The Advance Account shall be maintained with a financial institution acceptable to the Purchasers and shall be maintained for and on behalf of the Purchasers, entitled “Option One Owner Trust 2005-9 Advance Account, Wells Fargo Bank, N.A., as Indenture Trustee, for the benefit of the Option One Owner Trust 2005-9 Mortgage-Backed Notes.” The Indenture Trustee shall have no monitoring or calculation obligation with respect to withdrawals from the Advance Account. Amounts in the Advance Account shall not be invested.

(b) **Deposits and Withdrawals.** Amounts in respect of the transfer of Additional Note Principal Balances and Loans shall be deposited into and withdrawn from the Advance Account as provided in Sections 2.01(c) and 2.06 hereof and Section 3.01 of the Note Purchase Agreement. Any amounts on deposit in the Advance Account but not applied on any Transfer Date shall remain in the Advance Account and may be applied to any subsequent transfer of Additional Note Principal Balances and Loans, subject to the conditions set forth in Section 2.01(c) and 2.06 hereof and Section 3.01(b) of the Note Purchase Agreement. Notwithstanding the foregoing, in the event that any amounts on deposit in the Advance Account are not applied to a transfer of Additional Note Principal Balances and Loans on the day in which such amounts were deposited therein, such amounts shall be returned to the Purchasers by the close of business on such day.

**Section 5.05 Transfer Obligation Account.**

(a) The Servicer, for the benefit of the Noteholders, shall cause to be established and maintained in the name of the Indenture Trustee a Transfer Obligation Account (the “Transfer Obligation Account”), which shall be a separate Eligible Account and may be interest-bearing, entitled “Option One Owner Trust 2005-9 Transfer Obligation Account, Wells Fargo Bank, N.A., as Indenture Trustee, in trust for the Option One Owner Trust 2005-9 Mortgage-Backed Notes.” The Indenture Trustee shall have no monitoring or calculation obligation with respect to withdrawals from the Transfer Obligation Account. Amounts in the Transfer Obligation Account shall be invested in accordance with Section 5.03 hereof.

(b) In accordance with Section 5.06 hereof, the Loan Originator shall deposit into the Transfer Obligation Account any amounts as may be required thereby.

(c) On each Payment Date, the Paying Agent will deposit in the Transfer Obligation Account any amounts required to be deposited therein pursuant to Section 5.01(c)(3)(vii).

(d) On the date of each Disposition, the Paying Agent shall withdraw from the Transfer Obligation Account such amount on deposit therein in respect of the payment of Transfer Obligations as may be requested by the Disposition Agent in writing to effect such Disposition.

(e) On each Payment Date, the Paying Agent shall withdraw from the Transfer Obligation Account and deposit into the Distribution Account on such Payment Date the lesser of (x) the amount then on deposit in the Transfer Obligation Account and (y) the Interest Carry-Forward Amount as of such date.

(f) If with respect to any Business Day there exists an Overcollateralization Shortfall, the Paying Agent, upon the written direction of the Majority Noteholders, shall withdraw from the Transfer Obligation Account and deposit into the Distribution Account on such Business Day the lesser of (x) the amount then on deposit in the Transfer Obligation Account and (y) the amount of such Overcollateralization Shortfall as of such date.

(g) If with respect to any Payment Date there shall exist a Hedge Funding Requirement, the Paying Agent, upon the written direction of the Servicer or the Majority Noteholders, shall withdraw from the Transfer Obligation Account and deposit into the Distribution Account on the Business Day prior to such Payment Date the lesser of (x) the amount then on deposit in the Transfer Obligation Account (after making all other required withdrawals therefrom with respect to such Payment Date) and (y) the amount of such Hedge Funding Requirement as of such date.

(h) In the event of the occurrence of an Event of Default under the Indenture, the Paying Agent shall withdraw all remaining funds from the Transfer Obligation Account and apply such funds in satisfaction of the Notes as provided in Section 5.04(b) of the Indenture.

(i) The Paying Agent shall return to the Loan Originator all amounts on deposit in the Transfer Obligation Account (after making all other withdrawals pursuant to this Section 5.05) until the Majority Noteholders provide written notice to the Indenture Trustee (with a copy to the Loan Originator and the Servicer) of the occurrence of a default or event of default (however defined) under any Basic Document with respect to the Issuer, the Depositor, the Loan Originator or any of their Affiliates and (ii) upon the date of the termination of this Agreement pursuant to Article X, the Paying Agent shall withdraw any remaining amounts from the Transfer Obligation Account and remit all such amounts to the Loan Originator.

**Section 5.06 Transfer Obligation.**

(a) In consideration of the transactions contemplated by the Basic Documents, the Loan Originator agrees and covenants with the Depositor that:

(i) In connection with each Disposition it shall fund, or cause to be funded, reserve funds, pay credit enhancer fees, pay, or cause to be paid, underwriting fees, fund any negative difference between the cash Disposition Proceeds and the aggregate Note Principal Balance at the time of such Disposition, and make, or cause to be made, such other payments as may be, in the reasonable opinion of the Disposition Agent, commercially reasonably necessary to effect Dispositions, in each case to the extent that Disposition Proceeds are insufficient to pay such amounts;

(ii) In connection with Hedging Instruments (if any), on the Business Day prior to each Payment Date, it shall deliver to the Servicer for deposit into the Transfer Obligation Account any Hedge Funding Requirement (to the extent amounts available on the related Payment Date pursuant to Section 5.01 hereof are insufficient to make such payment), when, as and if due to any Hedging Counterparty;

(iii) If any Interest Carry-Forward Amount shall occur, it shall deposit into the Transfer Obligation Account any such Interest Carry-Forward Amount on or before the Business Day preceding such related Payment Date;

(iv) If on any Business Day, there exists an Overcollateralization Shortfall, upon the written direction of the Majority Noteholders, it shall, on such Business Day remit to the Paying Agent for deposit into the Transfer Obligation Account the full amount of the Overcollateralization Shortfall as of such date, provided, that in the event that notice of such Overcollateralization Shortfall is provided to the Loan Originator after 4:30 p.m. New York City time, the Loan Originator shall make such deposit on the following Business Day;

(v) If on any applicable Payment Date, the amount available in the Distribution Account to pay the Nonutilization Fee is insufficient, the Loan Originator shall deposit into the Transfer Obligation Account the amount of such shortfall on the Business Day prior to such Payment Date;

(vi) If the amount available to pay the Indemnified Party against any Losses (as such terms are defined in the Note Purchase Agreement) is insufficient, the Loan Originator shall promptly deposit the amount of such shortfall; and

(vii) Notwithstanding anything to the contrary herein, in the event of the occurrence of an Event of Default under the Indenture, the Loan Originator shall promptly deposit into the Transfer Obligation Account the entire amount of the Unfunded Transfer Obligation;

provided, that notwithstanding anything to the contrary contained herein, the Loan Originator's cumulative payments under or in respect of the Transfer Obligations (after subtracting therefrom any amounts returned to the Loan Originator pursuant to Section 5.05(i)(i)), together with the Loan Originator's payments in respect of any Loan Originator Puts, shall not in the aggregate exceed the Unfunded Transfer Obligation.

(b) The Loan Originator agrees that the Noteholders, as ultimate assignee of the rights of the Depositor under this Agreement and the other Basic Documents, may enforce the rights of the Depositor directly against the Loan Originator.

## ARTICLE VI STATEMENTS AND REPORTS; SPECIFICATION OF TAX MATTERS

### **Section 6.01 Statements.**

(a) No later than 12:00 noon (New York City time) on each Remittance Date, the Servicer shall deliver to the Indenture Trustee and the Noteholders by electronic transmission, the receipt and legibility of which shall be confirmed by telephone, and with hard copy thereof to be delivered no later than one (1) Business Day after such Remittance Date, the Servicer's Remittance Report, setting forth the date of such Report (day, month and year), the name of the Issuer (i.e., "Option One Owner

Trust 2005-9”), and the date of this Agreement, all in substantially the form set out in Exhibit B hereto. Furthermore, on each Remittance Date, the Servicer shall deliver to the Indenture Trustee and the Noteholders a data file providing, with respect to each Loan in the Loan Pool as of the last day of the related Remittance Period (i) if such Loan is an ARM, the current Loan Interest Rate; (ii) the Principal Balance with respect to such Loan; (iii) the date of the last Monthly Payment paid in full; and (iv) such other information as may be reasonably requested by the Noteholder Agent and the Indenture Trustee. In addition, no later than 12:00 noon (New York City time) on the fifteenth (15<sup>th</sup>) day of each calendar month (or if such day is not a Business Day, the preceding Business Day), the Custodian shall prepare and provide to the Servicer and the Indenture Trustee by facsimile, the Custodian Fee Notice for the Payment Date falling in such calendar month.

(b) No later than 12:00 noon (New York City time) on each Remittance Date, the Servicer shall prepare (or cause to be prepared) and provide to the Indenture Trustee electronically, receipt confirmed by telephone, and each Noteholder, a statement (the “Payment Statement”), stating each date and amount of a purchase of Additional Note Principal Balance (day, month and year), the name of the Issuer (i.e., “Option One Owner Trust 2005-9”), the date of this Agreement, restating all of the information set forth in the Loan Schedule for all Loans as of such Remittance Date and the following information:

- (1) the aggregate amount of collections in respect of principal of the Loans received by the Servicer during the preceding Remittance Period;
- (2) the aggregate amount of collections in respect of interest on the Loans received by the Servicer during the preceding Remittance Period;
- (3) all Mortgage Insurance Proceeds received by the Servicer during the preceding Remittance Period and not required to be applied to restoration or repair of the related Mortgaged Property or returned to the Borrower under applicable law or pursuant to the terms of the applicable Mortgage Insurance Policy;
- (4) all Net Liquidation Proceeds deposited by the Servicer into the Collection Account during the preceding Remittance Period;
- (5) all Released Mortgaged Property Proceeds deposited by the Servicer into the Collection Account during the preceding Remittance Period;
- (6) the aggregate amount of all Servicing Advances made by the Servicer during the preceding Remittance Period;
- (7) the aggregate of all amounts deposited into the Distribution Account in respect of the repurchase of Unqualified Loans and the repurchase of Loans pursuant to Section 2.05 hereof during the preceding Remittance Period;
- (8) the aggregate Principal Balance of all Loans for which a Servicer Call was exercised during the preceding Remittance Period;
- (9) the aggregate Principal Balance of all Loans for which a Loan Originator Put was exercised during the preceding Remittance Period;
- (10) the aggregate amount of all payments received under Hedging Instruments (if any) during the preceding Remittance Period



- (11) the aggregate amount of all withdrawals from the Distribution Account pursuant to Section 5.01(c)(1)(i) hereof during the preceding Remittance Period;
- (12) the aggregate amount of cash Disposition Proceeds received during the preceding Remittance Period;
- (13) withdrawals from the Collection Account in respect of the Servicing Advance Reimbursement Amount with respect to the related Payment Date;
- (14) the number and aggregate Principal Balance of all Loans that are (i) 30-59 days Delinquent, (ii) 60-89 days Delinquent, (iii) 90 or more days Delinquent as of the end of the related Remittance Period;
- (15) the aggregate amount of Liquidated Loan Losses incurred (i) during the preceding Remittance Period, and (ii) during the preceding three Remittance Periods;
- (16) the aggregate of the Principal Balances of all Loans in the Loan Pool as of the end of the related Remittance Period;
- (17) the aggregate amount of all deposits into the Distribution Account from the Transfer Obligation Account pursuant to Sections 5.05(e), 5.05(f), 5.05(g), and 5.05(h) on the related Payment Date;
- (18) the aggregate amount of distributions in respect of Servicing Compensation to the Servicer, and unpaid Servicing Compensation from prior Payment Dates for the related Payment Date;
- (19) the aggregate amount of distributions in respect of Indenture Trustee Fees and unpaid Indenture Trustee Fees from prior Payment Dates for the related Payment Date;
- (20) the aggregate amount of distributions in respect of the Custodian Fee and unpaid Custodian Fees from prior Payment Dates for the related Payment Date;
- (21) the aggregate amount of distributions in respect of the Owner Trustee Fees and unpaid Owner Trustee Fees from prior Payment Dates and for the related Payment Date;
- (22) the Unfunded Transfer Obligation and Overcollateralization Shortfall on such Payment Date for the related Payment Date;
- (23) the aggregate amount of distributions in respect of Trust/Depositor Indemnities for the related Payment Date;
- (24) the aggregate amount of distributions to the Transfer Obligation Account for the related Payment Date;
- (25) the aggregate amount of distributions to the holders of the Trust Certificates for the related Payment Date;
- (26) the Note Principal Balance of the Notes as of the last day of the related Remittance Period (without taking into account any Additional Note Principal Balance between

the last day of such Remittance Period and the related Payment Date) before and after giving effect to distributions made to the holders of the Notes for such Payment Date;

(27) the Pool Principal Balance as of the end of the preceding Remittance Period; and

(28) whether a Rapid Amortization Trigger exists with respect to such Payment Date.

Such Payment Statement shall also be provided on the Remittance Date to the Noteholders and Indenture Trustee in the form of a data file mutually agreed to by and between the Noteholders, the Indenture Trustee and the Servicer. The Indenture Trustee shall have no duty to monitor the occurrence of a Rapid Amortization Trigger or any events resulting in withdrawals from the Transfer Obligation Account.

(c) Within fifty (50) days of the end of each financial quarter, each of the Loan Originator and the Servicer shall prepare and deliver to the Noteholder Agent a quarterly compliance certificate and report in the form of Exhibit I attached hereto.

**Section 6.02 Specification of Certain Tax Matters.**

The Paying Agent shall comply with all requirements of the Code and applicable state and local law with respect to the withholding from any distributions made to any Securityholder of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith, giving due effect to any applicable exemptions from such withholding and effective certifications or forms provided by the recipient. Any amounts withheld pursuant to this Section 6.02 shall be deemed to have been distributed to the Securityholders, as the case may be, for all purposes of this Agreement. The Indenture Trustee shall have no responsibility for preparing or filing any tax returns.

**Section 6.03 Valuation of Loans; Hedge Value and Retained Securities Value, Market Value Agent.**

(a) The Noteholders hereby irrevocably appoint, and the Issuer hereby consents to the appointment of, the Market Value Agent as agent on behalf of the Noteholders to determine the Market Value of each Loan, the Hedge Value of each Hedging Instrument (if any) and the Retained Securities Value of all Retained Securities.

(b) Except as otherwise set forth in Section 3.07 hereof, on each Business Day, the Market Value Agent shall determine the Market Value of each Loan, for purposes of the Basic Documents, in its sole discretion, exercised in good faith. In determining the Market Value of each Loan, the Market Value Agent may consider any information that it may deem relevant, including, without limitation, the expected proceeds of the sale of such Loan following the occurrence and continuation of an Event of Default. The Market Value Agent's determination, in its sole discretion exercised in good faith, of Market Value shall be conclusive and binding upon the parties hereto, absent manifest error (including without limitation, any error contemplated in Section 2.08).

(c) On each Business Day, the Market Value Agent shall determine in its sole judgment the Hedge Value of each Hedging Instrument as of such Business Day. In making such determination the Market Value Agent may rely exclusively on quotations provided by the Hedging Counterparty, by leading dealers in instruments similar to such Hedging Instrument, which leading

dealers may include the Market Value Agent and its Affiliates and such other sources of information as the Market Value Agent may deem appropriate.

(d) On each Business Day, the Market Value Agent shall determine in its sole judgment the Retained Securities Value of the Retained Securities, if any, expected to be issued pursuant to such Securitization as of the closing date of such Securitization. In making such determination the Market Value Agent may rely exclusively on quotations provided by leading dealers in instruments similar to such Retained Securities, which leading dealers may include the Market Value Agent and its Affiliates and such other sources of information as the Market Value Agent may deem appropriate.

## ARTICLE VII

### HEDGING; FINANCIAL COVENANTS

#### Section 7.01 Hedging Instruments.

(a) From time to time, the Trust shall enter into such Hedging Instruments as the Market Value Agent, on behalf of the Noteholders, may determine are necessary in order to hedge the interest rate risk with respect to the Collateral; provided that each such Hedging Instrument shall conform to the requirements of Section 7.01(b), (c), and (d), as determined by the Market Value Agent in its sole discretion, exercised in good faith.

(b) Each Hedging Instrument shall expressly provide that in the event of a Disposition or other removal of the Loan from the Trust, such portion of the Hedging Instrument shall terminate as the Disposition Agent deems appropriate to facilitate the hedging of the risks specified in Section 7.01(a). In the event that the Hedging Instrument is not otherwise terminated, it shall contain provisions that allow the position of the Trust to be assumed by an Affiliate of the Trust upon the liquidation of the Trust. The terms of the assignment documentation and the credit quality of the successor to the Trust shall be subject to the Hedging Counterparty's approval.

(c) Any Hedging Instrument that provides for any payment obligation on the part of the Issuer must (i) be without recourse to the assets of the Issuer, (ii) contain a non-petition covenant provision in the form of Section 11.13, (iii) limit payment dates thereunder to Payment Dates and (iv) contain a provision limiting any cash payments due on any day under such Hedging Instrument solely to funds available therefor in the Collection Account on such day pursuant to Section 5.01(c)(3)(ii) hereof and funds available therefor in the Transfer Obligation Account.

(d) Each Hedging Instrument must (i) provide for the direct payment of any amounts thereunder to the Collection Account pursuant to Section 5.01(b)(ix), (ii) contain an assignment of all of the Issuer's rights (but none of its obligations) under such Hedging Instrument to the Indenture Trustee and shall include an express consent to the Hedging Counterparty to such assignment, (iii) provide that in the event of the occurrence of an Event of Default, such Hedging Instrument shall terminate upon the direction of the Majority Noteholders, (iv) prohibit the Hedging Counterparty from "setting-off" or "netting" other obligations of the Issuer or its Affiliates against such Hedging Counterparty's payment obligations thereunder, (v) provide that the appropriate portion of the Hedging Instrument will terminate upon the removal of the related Loans from the Trust Estate and (vi) have economic terms that are fixed and not subject to alteration after the date of assumption or execution.

(e) If agreed to by the Majority Noteholders, the Issuer may pledge its assets in order to secure its obligations in respect of Hedge Funding Requirements (if any), provided that such right shall

be limited solely to Hedging Instruments for which an Affiliate of the Noteholder Agent is a Hedging Counterparty.

(f) The aggregate notional amount of all Hedging Instruments shall not exceed the Note Principal Balance as of the date on which each Hedging Instrument is entered into by the Issuer and a Hedging Counterparty.

**Section 7.02 Financial Covenants.** For so long as the Notes are outstanding, each of the Loan Originator and the Servicer shall comply with the following financial covenants (collectively, the “Financial Covenants”):

(a) Each of the Loan Originator and the Servicer shall maintain a minimum Tangible Net Worth of \$425 million as of any day;

(b) Each of the Loan Originator and the Servicer shall maintain a ratio of Tangible Net Worth to Total Required Capital of 1:1 or greater at any time;

(c) Neither the Loan Originator nor the Servicer shall exceed a maximum non-warehouse leverage ratio (the ratio of (i) the sum of (A) all funded debt (excluding debt from H&R Block, Inc. or any of its Affiliates and all non-recourse debt) less (B) 91% of its mortgage loan inventory held for sale less (C) 90% of servicing advance receivables (determined and valued in accordance with GAAP) to (ii) Tangible Net Worth) of 1:2 at any time;

(d) Each of the Loan Originator and the Servicer shall maintain a minimum liquidity facility (defined as a committed, unsecured, non-amortizing liquidity facility from H&R Block not to mature (scheduled or accelerated) prior to the Maturity Date) in an amount no less than \$150 million. Such facility from H&R Block cannot contain covenants or termination events more restrictive than the covenants or termination events contained in the Basic Documents; and

(e) Each of the Loan Originator and the Servicer shall not permit “Net Income” (defined and determined in accordance with GAAP), for any quarter, together with the three preceding, consecutive fiscal quarters commencing with the quarter ending October 31, 2005, to be less than \$1.

## ARTICLE VIII

### THE SERVICER

#### **Section 8.01 Indemnification, Third Party Claims.**

(a) The Servicer shall indemnify the Loan Originator, the Owner Trustee, the Trust, the Depositor, the Indenture Trustee and the Noteholders, their respective officers, directors, employees, agents and “control persons,” as such term is used under the Act and under the Securities Exchange Act of 1934 as amended (each a “Servicer Indemnified Party”) and hold harmless each of them against any and all claims, losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and other costs and expenses resulting from any claim, demand, defense or assertion based on or grounded upon, or resulting from, a breach of any of the Servicer’s representations and warranties and covenants contained in this Agreement or in any way relating to the failure of the Servicer to perform its duties and service the Loans in compliance with the terms of this Agreement except to the extent such loss arises out of such Servicer Indemnified Party’s gross negligence or willful misconduct; provided, however, that if the Servicer is not liable pursuant to the provisions of Section 8.01(b) hereof for its failure to perform its duties and service the Loans in compliance with the terms of this Agreement, then

the provisions of this Section 8.01 shall have no force and effect with respect to such failure. The provisions of this indemnity shall run directly to and be enforceable by a Servicer Indemnified Party subject to the limitations hereof.

(b) None of the Loan Originator, the Depositor or the Servicer or any of their respective Affiliates, directors, officers, employees or agents shall be under any liability to the Owner Trustee, the Issuer, the Indenture Trustee or the Securityholders for any action taken, or for refraining from the taking of any action, in good faith pursuant to this Agreement, or for errors in judgment; provided, however, that this provision shall not protect the Loan Originator, the Depositor, the Servicer or any of their respective Affiliates, directors, officers, employees, agents against the remedies provided herein for the breach of any warranties, representations or covenants made herein, or against any expense or liability specifically required to be borne by such party without right of reimbursement pursuant to the terms hereof, or against any expense or liability which would otherwise be imposed by reason of misfeasance, bad faith or negligence in the performance of the respective duties of the Servicer, the Depositor or the Loan Originator, as the case may be. The Loan Originator, the Depositor, the Servicer and any of their respective Affiliates, directors, officers, employees, agents may rely in good faith on any document of any kind which, prima facie, is properly executed and submitted by any Person respecting any matters arising hereunder.

(c) The Loan Originator agrees to indemnify and hold harmless the Depositor and the Noteholders, as the ultimate assignees from the Depositor (each an “Originator Indemnified Party,” together with the Servicer Indemnified Parties, the “Indemnified Parties”), from and against any loss, liability, expense, damage, claim or injury arising out of or based on (i) any breach of any representation, warranty or covenant of the Loan Originator, the Servicer or their Affiliates, in any Basic Document, including, without limitation, the origination or prior servicing of the Loans by reason of any acts, omissions, or alleged acts or omissions arising out of activities of the Loan Originator, the Servicer or their Affiliates, and (ii) any untrue statement by the Loan Originator, the Servicer or its Affiliates of any material fact or any such Person’s failure to state a material fact necessary to make such statements not misleading with respect to any such Person’s statements contained in any Basic Document, including, without limitation, any Officer’s Certificate, statement, report or other document or information prepared by any such Person and furnished or to be furnished by it pursuant to or in connection with the transactions contemplated thereby and not corrected prior to completion of the relevant transaction including, without limitation, such written information as may have been and may be furnished in connection with any due diligence investigation with respect to the Loans or any such Person’s business, operations or financial condition, including reasonable attorneys’ fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim; provided that the Loan Originator shall not indemnify an Originator Indemnified Party to the extent such loss, liability, expense, damage or injury is due to either an Originator Indemnified Party’s willful misconduct, bad faith or gross negligence or by reason of an Originator Indemnified Party’s reckless disregard of its obligations hereunder; provided, further, that the Loan Originator shall not be so required to indemnify an Originator Indemnified Party or to otherwise be liable hereunder or under any provision of the Basic Documents to an Originator Indemnified Party for any losses in respect of the performance of the Loans, the insolvency, bankruptcy, delinquency, creditworthiness and similar characteristics of the Borrowers under the Loans, the uncollectability of any principal, interest, and any other charges (including late fees) under such loans, changes in the market value of the Loans or other similar investment risks associated with the Loans arising from a breach of any representation or warranty set forth in Exhibit F hereto, the sole remedy for the breach of which is provided in Section 3.06 hereof. The provisions of this indemnity shall run directly to and be enforceable by an Originator Indemnified Party subject to the limitations hereof.

(d) With respect to a claim subject to indemnity hereunder made by any Person against an Indemnified Party (a “Third Party Claim”), such Indemnified Party shall notify the related indemnifying parties (each an “Indemnifying Party”) in writing of the Third Party Claim within a reasonable time after receipt by such Indemnified Party of written notice of the Third Party Claim unless the Indemnifying Parties shall have previously obtained actual knowledge thereof. Thereafter, the Indemnified Party shall deliver to the Indemnifying Parties, within a reasonable time after the Indemnified Party’s receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. No failure to give such notice or deliver such documents shall effect the rights to indemnity hereunder. Each Indemnifying Party shall promptly notify the Indenture Trustee and the Indemnified Party (if other than the Indenture Trustee) of any claim of which it has been notified and shall promptly notify the Indenture Trustee and the Indemnified Party (if applicable) of its intended course of action with respect to any claim.

(e) If a Third Party Claim is made against an Indemnified Party, while maintaining control over its own defense, the Indemnified Party shall cooperate and consult fully with the Indemnifying Party in preparing such defense, and the Indemnified Party may defend the same in such manner as it may deem appropriate, including settling such claim or litigation after giving notice to the Indemnifying Party of such terms and the Indemnifying Party will promptly reimburse the Indemnified Party upon written request; provided, however, that the Indemnified Party may not settle any claim or litigation without the consent of the Indemnifying Party; provided, further, that the Indemnifying Party shall have the right to reject the selection of counsel by the Indemnified Party if the Indemnifying Party reasonably determines that such counsel is inappropriate in light of the nature of the claim or litigation and shall have the right to assume the defense of such claim or litigation if the Indemnifying Party determines that the manner of defense of such claim or litigation is unreasonable.

**Section 8.02 Merger or Consolidation of the Servicer.**

The Servicer shall keep in full effect its existence, rights and franchises as a corporation, and will obtain and preserve its qualification to do business as a foreign corporation and maintain such other licenses and permits in each jurisdiction necessary to protect the validity and enforceability of each Basic Document to which it is a party and each of the Loans and to perform its duties under each Basic Document to which it is a party; provided, however, that the Servicer may merge or consolidate with any other corporation upon the satisfaction of the conditions set forth in the following paragraph.

Subject to the prior written consent of the Majority Noteholders, any Person into which the Servicer may be merged or consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any Person succeeding to the business of the Servicer, shall be an Eligible Servicer and shall be the successor of the Servicer, as applicable hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. The Servicer shall send notice of any such merger, conversion, consolidation or succession to the Indenture Trustee and the Issuer.

**Section 8.03 Limitation on Liability of the Servicer and Others.**

The Servicer and any director, officer, employee or agent of the Servicer may rely on any document of any kind which it in good faith reasonably believes to be genuine and to have been adopted or signed by the proper authorities respecting any matters arising hereunder. Subject to the terms of Section 8.01 hereof, the Servicer shall have no obligation to appear with respect to, prosecute or defend any legal action which is not incidental to the Servicer’s duty to service the Loans in accordance with this Agreement.

**Section 8.04 Servicer Not to Resign; Assignment.**

The Servicer shall not resign from the obligations and duties hereby imposed on it except (a) with the consent of the Majority Noteholders or (b) upon determination that its duties hereunder are no longer permissible under applicable law. Any such determination pursuant to clause (b) of the preceding sentence permitting the resignation of the Servicer shall be evidenced by an Independent opinion of counsel to such effect delivered (at the expense of the Servicer) to the Indenture Trustee and the Majority Noteholders. No resignation of the Servicer shall become effective until a successor servicer, appointed pursuant to the provisions of Section 9.02 hereof shall have assumed the Servicer's responsibilities, duties, liabilities (other than those liabilities arising prior to the appointment of such successor) and obligations under this Agreement.

Except as expressly provided herein, the Servicer shall not assign or transfer any of its rights, benefits or privileges hereunder to any other Person, or delegate to or subcontract with, or authorize or appoint any other Person to perform any of the duties, covenants or obligations to be performed by the Servicer hereunder and any agreement, instrument or act purporting to effect any such assignment, transfer, delegation or appointment shall be void.

The Servicer agrees to cooperate with any successor Servicer in effecting the transfer of the Servicer's servicing responsibilities and rights hereunder pursuant to the first paragraph of this Section 8.04, including, without limitation, the transfer to such successor of all relevant records and documents (including any Loan Files in the possession of the Servicer) and all amounts received with respect to the Loans and not otherwise permitted to be retained by the Servicer pursuant to this Agreement. In addition, the Servicer, at its sole cost and expense, shall prepare, execute and deliver any and all documents and instruments to the successor Servicer including all Loan Files in its possession and do or accomplish all other acts necessary or appropriate to effect such termination and transfer of servicing responsibilities.

**Section 8.05 Relationship of Servicer to Issuer and the Indenture Trustee.**

The relationship of the Servicer (and of any successor to the Servicer as servicer under this Agreement) to the Issuer, the Owner Trustee and the Indenture Trustee under this Agreement is intended by the parties hereto to be that of an independent contractor and not of a joint venturer, agent or partner of the Issuer, the Owner Trustee or the Indenture Trustee.

**Section 8.06 Servicer May Own Securities.**

Each of the Servicer and any Affiliate of the Servicer may in its individual or any other capacity become the owner or pledgee of Securities with the same rights as it would have if it were not the Servicer or an Affiliate thereof except as otherwise specifically provided herein; provided, however, that at any time that Option One or any of its Affiliates is the Servicer, neither the Servicer nor any of its Affiliates (other than an Affiliate which is a corporation whose purpose is limited to holding securities and related activities and which cannot incur recourse debt) may be a Noteholder. Securities so owned by or pledged to the Servicer or such Affiliate shall have an equal and proportionate benefit under the provisions of this Agreement, without preference, priority, or distinction as among all of the Securities; provided, however, that any Securities owned by the Servicer or any Affiliate thereof, during the time such Securities are owned by them, shall be without voting rights for any purpose set forth in this Agreement unless the Servicer or such Affiliate owns all outstanding Securities of the related class. The Servicer shall notify the Indenture Trustee promptly after it or any of its Affiliates becomes the owner or pledgee of a Security.

**Section 8.07 Indemnification of the Indenture Trustee, Noteholders and Noteholder Agent.**

The Servicer agrees to indemnify the Indenture Trustee and its employees, officers, directors and agents, and reimburse its reasonable out-of-pocket expenses in accordance with Section 6.07 of the Indenture as if it was a signatory thereto. The Servicer agrees to indemnify the Noteholders and the Noteholder Agent in accordance with Section 9.01 of the Note Purchase Agreement as if it were signatory thereto.

**ARTICLE IX**

**SERVICER EVENTS OF DEFAULT**

**Section 9.01 Servicer Events of Default.**

(a) In case one or more of the following Servicer Events of Default by the Servicer shall occur and be continuing, that is to say:

(1) any failure by the Servicer to deposit into the Collection Account or the Distribution Account any amounts required to be deposited therein or any failure by the Servicer to make any of the required payments therefrom in accordance with Section 5.01 hereof; or

(2) any failure on the part of the Servicer duly to observe or perform in any material respect any other of the material covenants or agreements on the part of the Servicer, contained in any Basic Document to which it is a party, which continues unremedied for a period of thirty (30) days (or, in the case of payment of insurance premiums, for a period of fifteen (15) days) after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer by any other party hereto or to the Servicer (with copy to each other party hereto), by Holders of 25% of the Percentage Interests of the Notes or the Trust Certificates; or

(3) any breach on the part of the Servicer of any representation or warranty contained in any Basic Document to which it is a party that materially and adversely affects the interests of any of the parties hereto or any Securityholder and which continues unremedied for a period of thirty (30) days after the date on which notice of such breach, requiring the same to be remedied, shall have been given to the Servicer by any other party hereto or to the Servicer (with copy to each other party hereto), by the Noteholder Agent or Holders of 25% of the Percentage Interests (as defined in the Indenture) of the Notes; or

(4) there shall have been commenced before a court or agency or supervisory authority having jurisdiction in the premises an involuntary proceeding against the Servicer under any present or future federal or state bankruptcy, insolvency or similar law for the appointment of a conservator, receiver, liquidator, trustee or similar official in any bankruptcy, insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, which action shall not have been dismissed for a period of sixty (60) days; or

(5) the Servicer shall consent to the appointment of a conservator, receiver, liquidator, trustee or similar official in any bankruptcy, insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings of or relating to it or of or relating to all or substantially all of its property; or



(6) the Servicer (or the Loan Originator if the Servicer is not Option One) fails to comply with the Financial Covenants; or

(7) a Change in Control of the Servicer without prior written consent of the Noteholders or the Servicer otherwise ceases to be a 100% direct or indirect wholly-owned subsidiary of H&R Block Inc.; or

(8) the Servicer shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable bankruptcy, insolvency or reorganization statute, make an assignment for the benefit of its creditors, voluntarily suspend payment of its obligations, or take any corporate action in furtherance of the foregoing.

Then, and in each and every such case, so long as a Servicer Event of Default shall not have been remedied, the Indenture Trustee or the Majority Noteholders, by notice in writing to the Servicer may, in addition to whatever rights such Person may have at law or in equity to damages, including injunctive relief and specific performance, may terminate all the rights and obligations of the Servicer under this Agreement and in and to the Loans and the proceeds thereof, as servicer under this Agreement. Upon receipt by the Servicer of such written notice, all authority and power of the Servicer under this Agreement, whether with respect to the Loans or otherwise, shall, subject to Section 9.02 hereof, pass to and be vested in a successor servicer, and the successor servicer is hereby authorized and empowered to execute and deliver, on behalf of the Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments and do or cause to be done all other acts or things necessary or appropriate to effect the purposes of such notice of termination, including, but not limited to, the transfer and endorsement or assignment of the Loans and related documents. The Servicer agrees to cooperate with the successor servicer in effecting the termination of the Servicer's responsibilities and rights hereunder, including, without limitation, the transfer to the successor servicer for administration by it of all amounts which shall at the time be credited by the Servicer to each Collection Account or thereafter received with respect to the Loans.

(b) Upon the occurrence of (i) an Event of Default or Default under any of the Basic Documents, (ii) a Servicer Event of Default under this Agreement, (iii) a Rapid Amortization Trigger, or (iv) an event that shall have a reasonable possibility of materially impairing the ability of the Servicer to service and administer the Loans in accordance with the terms and provisions set forth in the Basic Documents (each, a "Term Event"), the Servicer's right to service the Loans pursuant to the terms of this Agreement shall be in effect for an initial period commencing on the date on which such Term Event occurred and shall automatically terminate at 5:00 p.m., New York City time, on the last Business Day of the calendar month in which such Term Event occurred (the "Initial Term"). Thereafter, the Initial Term shall be extendible in the sole discretion of the Majority Noteholders by written notice (each, a "Servicer Extension Notice") of the Majority Noteholders for successive one-month terms (each such term ending at 5:00 p.m., New York City time, on the last business day of the related month). Following a Term Event, the Servicer hereby agrees that the Servicer shall be bound for the duration of the Initial Term and the term covered by any such Servicer Extension Notice to act as the Servicer pursuant to this Agreement. Following a Term Event, the Servicer agrees that if, as of 3:00 p.m. (New York City time) on the last Business Day of any month, the Servicer shall not have received a Servicer Extension Notice from the Majority Noteholders, the Servicer shall give written notice of such non-receipt to the Noteholders by 4:00 p.m. (New York City time). Following a Term Event, the failure of the Majority Noteholders to deliver a Servicer Extension Notice by 5:00 p.m. (New York City time) shall result in the automatic and immediate termination of the Servicer (the "Termination Date"). Notwithstanding these time frames, the Servicer and the Noteholders shall comply with all applicable laws in connection with such transfer and the Servicer shall continue to service the Loans until completion of such transfer.

**Section 9.02 Appointment of Successor.**

On and after the date the Servicer receives a notice of termination pursuant to Section 9.01 hereof or is automatically terminated pursuant to Section 9.01(b) hereof, or the Owner Trustee receives the resignation of the Servicer evidenced by an Opinion of Counsel or accompanied by the consents required by Section 8.04 hereof, or the Servicer is removed as servicer pursuant to this Article IX or Section 4.01 of the Servicing Addendum, then, the Majority Noteholders shall appoint a successor servicer to be the successor in all respects to the Servicer in its capacity as Servicer under this Agreement and the transactions set forth or provided for herein and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof, provided, however, that the successor servicer shall not be liable for any actions of any servicer prior to it.

The successor servicer shall be obligated to make Servicing Advances hereunder. As compensation therefor, the successor servicer appointed pursuant to the following paragraph, shall be entitled to all funds relating to the Loans which the Servicer would have been entitled to receive from the Collection Account pursuant to Section 5.01 hereof as if the Servicer had continued to act as servicer hereunder, together with other Servicing Compensation in the form of assumption fees, late payment charges or otherwise as provided in Section 4.15 of the Servicing Addendum. The Servicer shall not be entitled to any termination fee if it is terminated pursuant to Section 9.01 hereof but shall be entitled to any accrued and unpaid Servicing Compensation to the date of termination.

Any collections received by the Servicer after removal or resignation shall be endorsed by it to the Indenture Trustee and remitted directly to the successor servicer. The compensation of any successor servicer appointed shall be the Servicing Fee, together with other Servicing Compensation provided for herein. The Indenture Trustee, the Issuer, any Custodian, the Servicer and any such successor servicer shall take such action, consistent with this Agreement, as shall be reasonably necessary to effect any such succession. Any costs or expenses incurred by the Indenture Trustee in connection with the termination of the Servicer and the succession of a successor servicer shall be an expense of the outgoing Servicer and, to the extent not paid thereby, an expense of such successor servicer. The Servicer agrees to cooperate with the Indenture Trustee and any successor servicer in effecting the termination of the Servicer's servicing responsibilities and rights hereunder and shall promptly provide the successor servicer all documents and records reasonably requested by it to enable it to assume the Servicer's functions hereunder and shall promptly also transfer to the successor servicer all amounts which then have been or should have been deposited in any Trust Account maintained by the Servicer or which are thereafter received with respect to the Loans. Upon the occurrence of an Event of Default, the Majority Noteholders shall have the right to order the Servicer's Loan Files and all other files of the Servicer relating to the Loans and all other records of the Servicer and all documents relating to the Loans which are then or may thereafter come into the possession of the Servicer or any third party acting for the Servicer to be delivered to such custodian or servicer as it selects and the Servicer shall deliver to such custodian or servicer such assignments as the Majority Noteholders shall request. No successor servicer shall be held liable by reason of any failure to make, or any delay in making, any distribution hereunder or any portion thereof caused by (i) the failure of the Servicer to deliver, or any delay in delivering, cash, documents or records to it or (ii) restrictions imposed by any regulatory authority having jurisdiction over the Servicer hereunder. No appointment of a successor to the Servicer hereunder shall be effective until written notice of such proposed appointment shall have been provided to the Noteholders, the Indenture Trustee, the Issuer and the Depositor, and the Majority Noteholders and the Issuer shall have consented in writing thereto.

In connection with such appointment and assumption, the Majority Noteholders may make such arrangements for the compensation of such successor servicer out of payments on the Loans as they and such successor servicer shall agree.

**Section 9.03 Waiver of Defaults.**

The Majority Noteholders may waive any events permitting removal of the Servicer as servicer pursuant to this Article IX. Upon any waiver of a past default, such default shall cease to exist and any Servicer Event of Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto except to the extent expressly so waived.

**Section 9.04 Accounting Upon Termination of Servicer.**

Upon termination of the Servicer under this Article IX, the Servicer shall, at its own expense:

- (a) deliver to its successor or, if none shall yet have been appointed, to the Indenture Trustee the funds in any Trust Account maintained by the Servicer;
- (b) deliver to its successor or, if none shall yet have been appointed, to the Custodian all Loan Files and related documents and statements held by it hereunder and a Loan portfolio by computer transmission or disk;
- (c) deliver to its successor or, if none shall yet have been appointed, to the Indenture Trustee and to the Issuer and the Securityholders a full accounting of all funds, including a statement showing the Monthly Payments collected by it and a statement of monies held in trust by it for payments or charges with respect to the Loans; and
- (d) execute and deliver such instruments and perform all acts reasonably requested in order to effect the orderly and efficient transfer of servicing of the Loans to its successor and to more fully and definitively vest in such successor all rights, powers, duties, responsibilities, obligations and liabilities of the Servicer under this Agreement.

**ARTICLE X  
TERMINATION; PUT OPTION**

**Section 10.01 Termination.**

(a) This Agreement shall terminate upon either: (A) the later of (i) the satisfaction and discharge of the Indenture and the provisions thereof, including payment to the Noteholders of all amounts due and owing in accordance with the provisions hereof or (ii) the disposition of all funds with respect to the last Loan and the remittance of all funds due hereunder and the payment of all amounts due and payable, including, without limitation, indemnification payments payable pursuant to any Basic Document to the Indenture Trustee, the Owner Trustee, the Issuer, the Servicer and the Custodian, written notice of the occurrence of either of which shall be provided to the Indenture Trustee by the Servicer; or (B) the mutual consent of the Servicer, the Depositor and all Securityholders in writing and delivered to the Indenture Trustee by the Servicer.

(b) The Securities shall be subject to an early redemption or termination at the option of the Servicer and the Majority Noteholders in the manner and subject to the provisions of Section 10.02 and 10.04 of this Agreement.

(c) Except as provided in this Article X, none of the Depositor, the Servicer nor any Certificateholder or Noteholder shall be entitled to revoke or terminate the Trust.

**Section 10.02 Optional Termination.**

The Servicer may, at its option, effect an early termination of the Trust on any Payment Date on or after the Clean-up Call Date. The Servicer shall effect such early termination by providing notice thereof to the Indenture Trustee and Owner Trustee and by purchasing all of the Loans at a purchase price, payable in cash, equal to or greater than the Termination Price. The expense of any Independent appraiser required in connection with the calculation and payment of the Termination Price under this Section 10.02 shall be a nonreimbursable expense of the Servicer.

Any such early termination by the Servicer shall be accomplished by depositing into the Collection Account on the third Business Day prior to the Payment Date on which the purchase is to occur the amount of the Termination Price to be paid. The Termination Price and any amounts then on deposit in the Collection Account (other than any amounts withdrawable pursuant to Section 5.01(c)(1) hereof) shall be deposited in the Distribution Account and distributed by the Indenture Trustee pursuant to Section 5.01(c)(3) of this Agreement and Section 9.1 of the Trust Agreement on the next succeeding Payment Date; and any amounts received with respect to the Loans and Foreclosure Properties subsequent to the final Payment Date shall belong to the purchaser thereof.

**Section 10.03 Notice of Termination.**

Notice of termination of this Agreement or of early redemption and termination of the Issuer pursuant to Section 10.01 shall be sent by the Indenture Trustee to the Noteholders in accordance with Section 10.02 of the Indenture.

**Section 10.04 Put Option.**

The Majority Noteholders may, at their option, effect a put of the entire outstanding Note Principal Balance, or any portion thereof, to the Trust on any date by exercise of the Put Option. The Majority Noteholders shall effect such put by providing notice thereof in accordance with Section 10.05 of the Indenture.

Unless otherwise agreed by the Majority Noteholders, on the third Business Day prior to the Put Date the Issuer shall deposit the Note Redemption Amount into the Distribution Account and, if the Put Date occurs after the termination of the Revolving Period and constitutes a put of the entire outstanding Note Principal Balance, any amounts then on deposit in the Collection Account (other than any amounts withdrawable pursuant to Section 5.01(c)(1) hereof) shall be deposited in the Distribution Account and distributed by the Paying Agent pursuant to Section 5.01(c)(3) of this Agreement on the Put Date; and any amounts received with respect to the Loans and Foreclosure Properties subsequent to the Put Date shall belong to the Issuer.

**ARTICLE XI**

**MISCELLANEOUS PROVISIONS**

**Section 11.01 Acts of Securityholders.**

Except as otherwise specifically provided herein and except with respect to Section 11.02(b), whenever action, consent or approval of the Securityholders is required under this Agreement,

such action, consent or approval shall be deemed to have been taken or given on behalf of, and shall be binding upon, all Securityholders if the Majority Noteholders agree to take such, action or give such consent or approval.

**Section 11.02 Amendment.**

(a) This Agreement may be amended from time to time by the Depositor, the Servicer, the Loan Originator, the Indenture Trustee and the Issuer by written agreement with notice thereof to the Securityholders, without the consent of any of the Securityholders, to cure any error or ambiguity, to correct or supplement any provisions hereof which may be defective or inconsistent with any other provisions hereof or to add any other provisions with respect to matters or questions arising under this Agreement; provided, however, that such action will not adversely affect in any material respect the interests of the Securityholders, as evidenced by an Opinion of Counsel to such effect provided at the expense of the party requesting such Amendment.

(b) This Agreement may also be amended from time to time by the Depositor, the Servicer, the Loan Originator, the Indenture Trustee and the Issuer by written agreement, with the prior written consent of the Majority Noteholders, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement, or of modifying in any manner the rights of the Securityholders; provided, however, that no such amendment shall (i) reduce in any manner the amount of, or delay the timing of, collections of payments on Loans or distributions which are required to be made on any Security, without the consent of the holders of 100% of the Securities, (ii) adversely affect in any material respect the interests of any of the holders of the Securities in any manner other than as described in clause (i), without the consent of the holders of 100% of the Securities, or (iii) reduce the percentage of the Securities, the consent of which is required for any such amendment, without the consent of the holders of 100% of the Securities.

(c) It shall not be necessary for the consent of Securityholders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent shall approve the substance thereof.

Prior to the execution of any amendment to this Agreement, the Issuer and the Indenture Trustee shall be entitled to receive and rely upon an Opinion of Counsel provided at the expense of the party requesting such amendment stating that the execution of such amendment is authorized or permitted by this Agreement. The Issuer and the Indenture Trustee may, but shall not be obligated to, enter into any such amendment which affects the Issuer's own rights, duties or immunities of the Issuer or the Indenture Trustee, as the case may be, under this Agreement.

**Section 11.03 Recordation of Agreement.**

To the extent permitted by applicable law, this Agreement, or a memorandum thereof if permitted under applicable law, is subject to recordation in all appropriate public offices for real property records in all of the counties or other comparable jurisdictions in which any or all of the Mortgaged Property is situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by the Servicer at the Securityholders' expense on direction of the Majority Noteholders but only when accompanied by an Opinion of Counsel to the effect that such recordation materially and beneficially affects the interests of the Securityholders or is necessary for the administration or servicing of the Loans.

**Section 11.04 Duration of Agreement.**

This Agreement shall continue in existence and effect until terminated as herein provided.

**Section 11.05 Governing Law.**

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

**Section 11.06 Notices.**

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered personally, mailed by overnight mail, certified mail or registered mail, postage prepaid, or (ii) transmitted by telecopy, upon telephone confirmation of receipt thereof, as follows:

(1) in the case of the Depositor, to Option One Loan Warehouse Corporation, 3 Ada, Irvine, California 92618, or such other addresses or telecopy or telephone numbers as may hereafter be furnished to the Securityholders and the other parties hereto in writing by the Depositor;

(2) in the case of the Trust, to Option One Owner Trust 2005-9, c/o Wilmington Trust Company, One Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, Attention: Corporate Trust Administration, telephone number: (302) 651-1000, telecopy number: (302) 636-4144, or such other address or telecopy or telephone numbers as may hereafter be furnished to the Noteholders and the other parties hereto in writing by the Trust;

(3) in the case of the Loan Originator, to Option One Mortgage Corporation, 3 Ada, Irvine, California 92618, Attention: William O'Neill, telecopy number: (949) 790-7540, telephone number: (949) 790-7504 or such other addresses or telecopy or telephone numbers as may hereafter be furnished to the Securityholders and the other parties hereto in writing by the Loan Originator,

(4) in the case of the Servicer, to Option One Mortgage Corporation 3 Ada, Irvine, California 92618, Attention: William O'Neill, telecopy number: (949) 790-7540, telephone number: (949) 790-7504 or such other addresses or telecopy or telephone numbers as may hereafter be furnished to the Securityholders and the other parties hereto in writing by the Servicer; and

(5) in the case of the Indenture Trustee, at P.O. Box 98, Columbia, Maryland 21046, Attention: Option One Owner Trust 2005-9, with a copy to the Corporate Trust Office, as defined in the Indenture, any such notices shall be deemed to be effective with respect to any party hereto upon the receipt of such notice or telephone confirmation thereof by such party, except; provided, that notices to the Securityholders shall be effective upon mailing or personal delivery.

**Section 11.07 Severability of Provisions.**

If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held invalid for any reason whatsoever, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other covenants, agreements, provisions or terms of this Agreement.

**Section 11.08 No Partnership.**

Nothing herein contained shall be deemed or construed to create any partnership or joint venture between the parties hereto and the services of the Servicer shall be rendered as an independent contractor.

**Section 11.09 Counterparts.**

This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed to be an original; such counterparts, together, shall constitute one and the same Agreement.

**Section 11.10 Successors and Assigns.**

This Agreement shall inure to the benefit of and be binding upon the Servicer, the Loan Originator, the Depositor, the Indenture Trustee, the Issuer and the Securityholders and their respective successors and permitted assigns.

**Section 11.11 Headings.**

The headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

**Section 11.12 Actions of Securityholders.**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Depositor, the Loan Originator, the Servicer or the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and conclusive in favor of the Depositor, the Loan Originator, the Servicer and the Issuer if made in the manner provided in this Section 11.12.

(b) The fact and date of the execution by any Securityholder of any such instrument or writing may be proved in any reasonable manner which the Depositor, the Loan Originator, the Servicer or the Issuer may deem sufficient.

(c) Any request, demand, authorization, direction, notice, consent, waiver or other act by a Securityholder shall bind every holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done, or omitted to be done, by the Depositor, the Loan Originator, the Servicer or the Issuer in reliance thereon, whether or not notation of such action is made upon such Security.

(d) The Depositor, the Loan Originator, the Servicer or the Issuer may require additional proof of any matter referred to in this [Section 11.12](#) as it shall deem necessary.

**Section 11.13 Non-Petition Agreement.**

Notwithstanding any prior termination of any Basic Document, the Loan Originator, the Servicer, the Depositor and the Indenture Trustee each severally and not jointly covenants that it shall not, prior to the date which is one year and one day after the payment in full of the all of the Notes, acquiesce, petition or otherwise, directly or indirectly, invoke or cause the Trust or the Depositor to invoke the process of any governmental authority for the purpose of commencing or sustaining a case against the Issuer or Depositor under any Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Issuer or Depositor or any substantial part of their respective property or ordering the winding up or liquidation of the affairs of the Issuer or the Depositor.

**Section 11.14 Holders of the Securities.**

(a) Any sums to be distributed or otherwise paid hereunder or under this Agreement to the holders of the Securities shall be paid to such holders pro rata based on their Percentage Interests;

(b) Where any act or event hereunder is expressed to be subject to the consent or approval of the holders of the Securities, such consent or approval shall be capable of being given by the holder or holders evidencing in the aggregate not less than 51% of the Percentage Interests.

**Section 11.15 Due Diligence Fees, Due Diligence.**

The Loan Originator acknowledges that the Noteholder Agent shall have the right to perform continuing due diligence reviews with respect to the Loans, for purposes of verifying compliance with the representations, warranties and specifications made hereunder, or otherwise, and the Loan Originator agrees that upon reasonable prior notice (with no notice being required upon the occurrence of an Event of Default) to the Loan Originator, the Noteholder Agent, the Indenture Trustee and Custodian or their respective authorized representatives will be permitted during normal business hours to examine, inspect, and make copies and extracts of, the Loan Files and any and all documents, records, agreements, instruments or information relating to such Loans in the possession or under the control of the Servicer and the Indenture Trustee. The Loan Originator also shall make available to the Noteholder Agent a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Loan Files and the Loans and the financial condition of the Loan Originator. Without limiting the generality of the foregoing, the Loan Originator acknowledges that the Noteholders may purchase Notes based solely upon the information provided by the Loan Originator to the Noteholders in the Loan Schedule and the representations, warranties and covenants contained herein, and that the Noteholder Agent, at its option, has the right at any time to conduct a partial or complete due diligence review on some or all of the Loans securing such purchase, including without limitation ordering new credit reports and new appraisals on the related Mortgaged Properties and otherwise re-generating the information used to originate such Loan. The Noteholder Agent may underwrite such Loans itself or engage a mutually agreed upon third party underwriter to perform such underwriting. The Loan Originator agrees to cooperate with the Noteholder Agent and any third party underwriter in connection with such underwriting, including, but not limited to, providing the Noteholder Agent and any third party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Loans in the possession, or under the control, of the Servicer. The Loan Originator further agrees that the Loan Originator shall reimburse the Noteholder Agent for any and all reasonable out-of-pocket costs and expenses incurred by the Noteholder Agent in connection with the Noteholder Agent's activities pursuant to this [Section 11.15](#) hereof (the



“Due Diligence Fees”), provided that, unless an Event of Default shall occur, the aggregate reimbursement obligation of the Loan Originator with respect to Due Diligence Fees shall be limited to \$50,000 per annum. In addition to the obligations set forth in Section 11.17 of this Agreement, Noteholders agree (on behalf of themselves and their Affiliates, directors, officers, employees and representatives) to use reasonable precaution to keep confidential, in accordance with its customary procedures for handling confidential information and in accordance with safe and sound practices, and not to disclose to any third party, any non-public information supplied to it or otherwise obtained by it hereunder with respect to the Loan Originator or any of its Affiliates (including, but not limited to, the Loan File); provided, however, that nothing herein shall prohibit the disclosure of any such information to the extent required by statute, rule, regulation or judicial process; provided, further that, unless specifically prohibited by applicable law or court order, the Noteholders shall, prior to disclosure thereof, notify the Loan Originator of any request for disclosure of any such non-public information. The Noteholders further agree not to use any such non-public information for any purpose unrelated to this Agreement and that the Noteholders shall not disclose such non-public information to any third party underwriter in connection with a potential Disposition without obtaining a written agreement from such third party underwriter to comply with the confidentiality provisions of this Section 11.15. Without limiting the foregoing, non-public information shall not include information which (i) is or becomes generally available to the public other than as a result of a disclosure; (ii) was available to the Noteholders on a non-confidential basis prior to its disclosure to such Noteholders by the Servicer or the Loan Originator; (iii) is required to be disclosed by a governmental authority or related governmental agencies or as otherwise required by law; or (iv) becomes available to the Noteholders on a non-confidential basis from a Person other than the Servicer or the Loan Originator who, to the best knowledge of such Noteholders, is not otherwise bound by a confidentiality agreement with the Servicer or the Loan Originator and is not otherwise prohibited from transmitting the information to such Noteholders.

**Section 11.16 No Reliance.**

Each of the Loan Originator, the Depositor, the Servicer and the Issuer hereby acknowledges that it has not relied on any of the Noteholder Agent, the Noteholders or any of their officers, directors, employees, agents and “control persons” as such term is used under the Act and under the Securities Exchange Act of 1934, as amended, for any tax, accounting, legal or other professional advice in connection with the transactions contemplated by the Basic Documents, that each of the Loan Originator, the Depositor, the Servicer and the Issuer has retained and been advised by such tax, accounting, legal and other professionals as it has deemed necessary in connection with the transactions contemplated by the Basic Documents and that neither the Noteholder Agent nor any of the Noteholders makes any representation or warranty, and shall have no liability with respect to, the tax, accounting or legal treatment or implications relating to the transactions contemplated by the Basic Documents.

**Section 11.17 Confidential Information.**

In addition to the confidentiality requirements set forth in Section 11.15 of the Agreement, each Noteholder, as well as the Indenture Trustee and the Disposition Agent (each of said parties singularly referred to herein as a “Receiving Party” and collectively referred to herein as the “Receiving Parties”), agrees to hold and treat all Confidential Information (as defined below) in confidence and in accordance with this Section. Such Confidential Information will not, without the prior written consent of the Servicer and the Loan Originator, be disclosed or used by such Receiving Parties or their subsidiaries, Affiliates, directors, officers, members, employees, agents or controlling persons (collectively, the “Information Recipients”) other than for the purpose of making a decision to purchase or sell Notes or taking any other permitted action under this Agreement or any other Basic Document. Each Receiving Party agrees to disclose Confidential Information only to its Information Recipients who need to know it for the purpose of making a decision to purchase or sell Notes or taking any other permitted

action under this Agreement or any other Basic Document (including in connection with the servicing of the Loans and in connection with any servicing transfers) and who are informed by such Receiving Party of its confidential nature and who agree to be bound by the terms of this Section 11.17. Disclosure that is not in violation of the Right to Financial Privacy Act, the Gramm-Leach-Bliley Act or other applicable law by such Receiving Party of any Confidential Information at the request of its outside auditors or governmental regulatory authorities in connection with an examination of a Receiving Party by any such authority shall not constitute a breach of its obligations under this Section 11.17 and shall not require the prior consent of the Servicer and the Loan Originator.

Each Receiving Party shall be responsible for any breach of this Section 11.17 by its Information Recipients. The Noteholders may use Confidential Information for internal due diligence purposes in connection with their analysis of the transactions contemplated by the Basic Documents. The Disposition Agent may disclose Confidential Information to the Disposition Participants as required to effect Dispositions. This Section 11.17 shall terminate upon the occurrence of an Event of Default; provided, however, that such termination shall not relieve the Receiving Parties or their respective Information Recipients from the obligation to comply with the Gramm-Leach-Bliley Act or other applicable law with respect to their use or disclosure of Confidential Information following the occurrence of an Event of Default.

As used herein, "Confidential Information" means non-public personal information (as defined in the Gramm-Leach-Bliley Act and its enabling regulations issued by the Federal Trade Commission) regarding Borrowers. Confidential Information shall not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by a Receiving Party or any Information Recipients; (ii) was available to a Receiving Party on a non-confidential basis prior to its disclosure to such Receiving Party by the Servicer or the Loan Originator; (iii) is required to be disclosed by a governmental authority or related governmental agencies or as otherwise required by law; (iv) becomes available to a Receiving Party on a non-confidential basis from a Person other than the Servicer or the Loan Originator who, to the best knowledge of such Receiving Party, is not otherwise bound by a confidentiality agreement with the Servicer or the Loan Originator and is not otherwise prohibited from transmitting the information to such Receiving Party. Without limiting the generality of the foregoing, the parties acknowledge and agree that this Agreement and other Basic Documents will be filed with the Securities and Exchange Commission as exhibits to filings of the Loan Originator's parent corporation under the Securities Exchange Act of 1934.

**Section 11.18 Conflicts.**

Notwithstanding anything contained in the Basic Documents to the contrary, in the event of the conflict between the terms of this Agreement and any other Basic Document, the terms of this Agreement shall control.

**Section 11.19 Limitation on Liability.**

It is expressly understood and agreed by the parties hereto that (a) this Agreement is executed and delivered by Wilmington Trust Company, not individually or personally, but solely as Owner Trustee of Option One Owner Trust 2005-9, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose for binding only the Issuer, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or

under the parties hereto and (d) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Issuer under this Agreement or any other related documents.

**Section 11.20 No Agency.**

Nothing contained herein or in the Basic Documents shall be construed to create an agency or fiduciary relationship between the Noteholder Agent, any Noteholder or the Majority Noteholders or any of their Affiliates and the Issuer, the Depositor, the Loan Originator or the Servicer. None of the Noteholder Agent, any Noteholder, the Majority Noteholders or any of their Affiliates shall be liable for any acts or actions affected in connection with a disposition of Loans, including without limitation, any Securitization pursuant to Section 3.07, any Loan Originator Put or Servicer Call pursuant to Section 3.08 hereof nor any Whole Loan Sale pursuant to Section 3.07 hereof.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Issuer, the Depositor, the Servicer, the Indenture Trustee and the Loan Originator have caused their names to be signed by their respective officers thereunto duly authorized, as of the day and year first above written, to this Sale and Servicing Agreement.

OPTION ONE OWNER TRUST 2005-9,

BY: Wilmington Trust Company not in its individual capacity but solely as Owner Trustee

BY: /s/

Name: Joann A. Rozell

Title: Assistant Vice President

OPTION ONE LOAN WAREHOUSE CORPORATION, as Depositor

BY: /s/

Name: Charles R. Fulton

Title: Assistant Secretary

OPTION ONE MORTGAGE CORPORATION, as Loan Originator and Servicer

BY: /s/

Name: Charles R. Fulton

Title: Vice President

WELLS FARGO BANK, N.A., as Indenture Trustee

BY: /s/

Name: Darron C. Woodus

Title: Assistant Vice President

---

EXHIBIT A

FORM OF NOTICE OF ADDITIONAL NOTE PRINCIPAL BALANCE

[LETTERHEAD OF OPTION ONE LOAN WAREHOUSE CORPORATION]

[Date]

Option One Owner Trust 2005-9  
c/o Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust Administration

Wells Fargo Bank, N.A.  
9062 Old Annapolis Road  
Columbia, Maryland 21045  
Attention: Option One Owner Trust 2005-9

DB Structured Products, Inc.  
Gemini Securitization Corp., LLC  
Aspen Funding Corp.  
Newport Funding Corp.  
60 Wall Street  
New York, New York 10005  
Attention: Frank Grausso  
Email: frank.grausso@db.com and abs-conduits@db.com  
Telephone: (212) 250-7311  
Facsimile: (212) 797-5150

Re: Option One Owner Trust 2005-9 Mortgage-Backed Notes

Reference is made to the Sale and Servicing Agreement, dated as of December 30, 2005 (the "Sale and Servicing Agreement"), among Option One Owner Trust 2005-9, as Issuer, Option One Loan Warehouse Corporation, as Depositor, Option One Mortgage Corporation, as Loan Originator and Servicer, and Wells Fargo Bank, N.A., as Indenture Trustee. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Sale and Servicing Agreement.

The undersigned \_\_\_\_\_, a duly appointed \_\_\_\_\_ of Option One Loan Warehouse Corporation, acting in such capacity, hereby requests an advance of Additional Note Principal Balance in an amount of \$ \_\_\_\_\_, such amount to be advanced on \_\_\_\_\_, 200\_, a Business Day at least two Business Days from the date hereof.

Very truly yours,

OPTION ONE LOAN WAREHOUSE CORPORATION

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

A-1

---

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

A-2

---

EXHIBIT B

FORM OF SERVICER'S REMITTANCE REPORT TO INDENTURE TRUSTEE

Trial Balance Information Report P139

<u>Investor #</u>	<u>Category</u>	<u>Loan #</u>	<u>Investor Loan #</u>	<u>Borrower Name</u>	<u>Next Pymt Date</u>	<u>Interest Rate</u>	<u>P&amp;I Pymt</u>	<u>Principal Balance</u>
-------------------	-----------------	---------------	------------------------	----------------------	-----------------------	----------------------	---------------------	--------------------------

Collection Activity Information Report S215

<u>Investor #</u>	<u>Category</u>	<u>Loan #</u>	<u>Investor Loan #</u>	<u>Transaction Date</u>	<u>Paymt #</u>	<u>Pymt Due Date</u>	<u>Escrow</u>	<u>Principal</u>	<u>Interest</u>	<u>Service Fees</u>	<u>Net Interest</u>	<u>Total Deposit</u>	<u>Principal Balance</u>	<u>Late Charges</u>
-------------------	-----------------	---------------	------------------------	-------------------------	----------------	----------------------	---------------	------------------	-----------------	---------------------	---------------------	----------------------	--------------------------	---------------------

Payoff Activity Information Report S214

<u>Investor #</u>	<u>Category</u>	<u>Loan #</u>	<u>Investor Loan #</u>	<u>Date Paid</u>	<u>P&amp;I Pymt</u>	<u>Interest Rate</u>	<u>Service Fee Rate</u>	<u>Next Pymt Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Service Fees</u>	<u>Net Interest</u>	<u>Prepay Premium</u>	<u>Total Collected</u>
-------------------	-----------------	---------------	------------------------	------------------	---------------------	----------------------	-------------------------	-----------------------	------------------	-----------------	---------------------	---------------------	-----------------------	------------------------

EXHIBIT C

FORM OF S&SA ASSIGNMENT

ASSIGNMENT NO. \_\_\_ OF LOANS ("S&SA Assignment"), dated \_\_\_\_\_, (the "Transfer Date"), by OPTION ONE LOAN WAREHOUSE CORPORATION, (the "Depositor") to OPTION ONE OWNER TRUST 2005-9 (the "Issuer") pursuant to the Sale and Servicing Agreement referred to below.

WITNESSETH:

WHEREAS, the Depositor and the Issuer are parties to the Sale and Servicing Agreement dated as of December 30, 2005 (the "Sale and Servicing Agreement") among the Depositor, the Issuer, the Servicer, the Loan Originator and the Indenture Trustee on behalf of the Noteholders, hereinafter as such agreement may have been, or may from time to time be, amended, supplemented or otherwise modified;

WHEREAS, pursuant to the Sale and Servicing Agreement, the Depositor wishes to sell, convey, transfer and assign Loans to the Issuer in exchange for cash consideration, the Trust Certificates and other good and valid consideration the receipt and sufficiency of which is hereby acknowledged; and

WHEREAS, the Issuer is willing to acquire such Loans subject to the terms and conditions hereof and of the Sale and Servicing Agreement;

NOW THEREFORE, the Depositor and the Issuer hereby agree as follows:

1. Defined Terms. All capitalized terms defined in the Sale and Servicing Agreement and used herein shall have such defined meanings when used herein, unless otherwise defined herein.

2. Designation of Loans. The Depositor does hereby deliver herewith a Loan Schedule containing a true and complete list of each Loan to be conveyed on the Transfer Date. Such list is marked as Schedule A to this S&SA Assignment and is hereby incorporated into and made a part of this S&SA Assignment.

3. Conveyance of Loans. The Depositor hereby sells, transfers, assigns and conveys to the Issuer, without recourse, all of the right, title and interest of the Depositor in and to the Loans and all proceeds thereof listed on the Loan Schedule attached hereto, including all interest and principal received by the Depositor or the Servicer on or with respect to the Loans on or after the related Transfer Cut-off Date, together with all right, title and interest in and to the proceeds of any related Mortgage Insurance Policies.

4. Issuer Acknowledges Assignment. As of the Transfer Date, pursuant to this S&SA Assignment and Section 2.01(a) of the Sale and Servicing Agreement, the Issuer acknowledges its receipt of the Loans listed on the attached Loan Schedule and all other related property in the Trust Estate.

5. Acceptance of Rights But Not Obligations. The foregoing sale, transfer, assignment, set over and conveyance does not, and is not intended to, result in a creation or an assumption by the Issuer of any obligation of the Depositor, the Loan Originator or any other Person in connection



with this S&SA Assignment or under any agreement or instrument relating thereto except as specifically set forth herein.

6. Depositor Acknowledges Receipt of Sales Price. The Depositor hereby acknowledges receipt of the Sales Price or that is otherwise distributed at its direction.

7. Conditions Precedent. The conditions precedent in Section 2.06(a) of the Sale and Servicing Agreement have been satisfied.

8. Limitation of Liability. Section 11.19 of the Sale and Servicing Agreement is incorporated by reference.

9. Counterparts. This S&SA Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this S&SA Assignment to be duly executed and delivered by their respective duly authorized officers on the day and year first above written.

**OPTION ONE LOAN WAREHOUSE CORPORATION,**  
as Depositor

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

**OPTION ONE OWNER TRUST 2005-9,**  
as Issuer

By: Wilmington Trust Company not in its individual  
capacity but solely as Owner Trustee

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

C-3

---

EXHIBIT D

PIGGY BACKED LOAN UNDERWRITING CRITERIA

D-1

---

EXHIBIT E

LOAN SCHEDULE

The Loan Schedule shall set forth the following information with respect to each Loan (other than Wet Funded Loans):

- (1) the Loan Originator's Loan identifying number;
- (2) the Mortgagor's name and social security number;
- (3) the street address of the Mortgaged Property, including the state and zip code;
- (4) the Promissory Note date;
- (5) the loan purpose (whether purchase, cash-out refinance or rate/term refinance);
- (6) a code indicating whether the Mortgaged Property was represented by the Mortgagor as being owner-occupied on the date of origination;
- (7) the type of Residential Dwelling constituting the Mortgaged Property;
- (8) the origination date;
- (9) the months to maturity at origination, based on the original amortization schedule;
- (10) the loan-to-value ratio or, if applicable, the combined loan-to-value ratio, at origination;
- (11) the rate of interest in effect on the Transfer Cut-off Date;
- (12) the date on which the first monthly payment was due, and, if different, the date on which monthly payments are due as of the Transfer Cut-off Date;
- (13) the paid-through date and the next payment date;
- (14) the stated maturity date;
- (15) the amount of the monthly payment due at origination;
- (16) the amount of the principal and interest payment due on the first due date after the Transfer Cut-off Date;
- (17) the interest paid-through date;
- (18) the last monthly payment date on which any portion of the monthly payment was applied to the reduction of principal;
- (19) the original principal balance;
- (20) the unpaid principal balance as of the close of business on the Transfer Cut-off Date;
- (21) the unpaid principal balance as of the last day of the immediately preceding month;
- (22) a code indicating whether the interest rate on the Loan is fixed or adjustable;
- (23) if the Loan is an adjustable-rate loan, the initial adjustment date thereunder, including the look-back period;
- (24) if the Loan is an adjustable-rate loan, the gross margin over the applicable interest rate index;
- (25) a code indicating the purpose of the Loan, as indicated by the Mortgagor (*i.e.*, purchase financing, rate/term refinancing or cash-out refinancing);
- (26) (if the Loan is an adjustable-rate loan, the maximum interest rate;
- (27) if the Loan is an adjustable-rate loan, the minimum interest rate;
- (28) if the Loan is an adjustable-rate loan, the index, ARM code, adjustment frequency, spread and caps;
- (29) the interest rate at origination;

- (30) if the Loan is an adjustable-rate loan, the periodic rate cap and the maximum adjustment in the interest rate that may be made on the first adjustment date immediately following the Transfer Cut-off Date;
- (31) a code indicating the documentation program (*i.e.*, full documentation, limited documentation or stated income);
- (32) if the Loan is an adjustable-rate loan, the applicable interest rate index to which the gross margin is added, including the source of such index;
- (33) if the Loan is an adjustable-rate loan, the first adjustment date thereunder to occur after the Transfer Cut-off Date;
- (34) if the Loan is a 40/30 Loan;
- (35) the risk grade;
- (36) any risk upgrade;
- (37) the appraised value of the Mortgaged Property at origination;
- (38) if different from the appraised value, the dollar value of the review appraisal of the Mortgaged Property at origination;
- (39) the sale price of the Mortgaged Property, if applicable;
- (40) the product type code (*e.g.*, 3/27, 2/28, balloon, etc.);
- (41) a code indicating whether the Loan is a first-lien loan or a second-lien loan;
- (42) if the Loan is a second-lien loan, the outstanding principal balance of the first lien on the date of origination of such Loan and the monthly payment and maturity date of the first-lien loan;
- (43) if the Loan is a second-lien loan, the combined loan-to-value ratio of such Loan and the first lien to which it is subject, as of the origination date of such Loan;
- (44) whether such Loan is 30 days or more Delinquent;
- (45) the prepayment penalty code;
- (46) the prepayment penalty term;
- (47) the late charge;
- (48) the rounding code (next highest or nearest 0.125%);
- (49) the applicable loan grade and the Mortgagor's FICO score, if any; and
- (50) the Mortgagor's debt-to-income ratio.

The Loan Schedule to be delivered with respect to Wet Funded Loans shall set forth the following information:

MBMS Long Format '97 w\ Mersflag

<u>Field</u>	<u>Start Pos</u>	<u>length/ width</u>	<u>End Pos</u>	<u>Dec</u>	<u>Definition</u>
Loanidp	1	13	13	0	Previous loan number/ <b>(Old loan number or Investor loan number)</b>
Lname	14	35	48	0	Primary borrower's name/ <b>(Last, First Middle)</b>
Casenum	49	13	61	0	FHA or VA case number
Closed	62	6	67	0	Date the loan closed/ <b>(mmddy)</b>
Firstdue	68	6	73	0	Date first pymt on loan was due/ <b>(mmddy)</b>
Issuer	74	4	77	0	User defined issuer code/ <b>(leave blank —pad with spaces)</b>
Loanid	78	13	90	0	Loan number/ <b>(Servicer loan number)</b>

<u>Field</u>	<u>Start Pos</u>	<u>length/ width</u>	<u>End Pos</u>	<u>Dec</u>	<u>Definition</u>
Maturity	91	6	96	0	Maturity date of the loan/ <b>(mmddyy)</b>
Rate	97	9	105	0	Interest rate on note/ <b>(X 1000 to remove decimal (7.125% is 7125))</b>
Lnamount	10611		116	0	Original loan amount/ <b>(X 100 to remove decimal (100000.00 is 1000000))</b>
PI	11710		126	0	Orig principal plus interest/ <b>(X 100 to remove decimal (1000.00 is 100000))</b>
Poolnum	12710		136	0	Pool number/ <b>(Agency pool number or private investor code — CPI)</b>
State	1372		138	0	Property State abbreviation/ <b>(e.g., NY)</b>
City	13915		153	0	Property City
Zip	1545		158	0	Property Zip code
Address	15935		193	0	Property address/ <b>(Number and street name)</b>
Sid	19423		216	0	Barcode ID <b>(leave blank —pad with spaces)</b>
Armadj	2176		222	0	1st Adjustment Date <b>(mmddyy)</b>
Armconv	2231		223	0	Convertible Account <b>(Y/N)</b>
Armround	2246		229	0	Percent Rounded <b>(X 100000 to remove decimal (7.12500% is 712500))</b>
Armacap	2305		234	0	Annual Cap <b>(X 1000 to remove decimal (10.125% is 10125))</b>
Armlcap	2355		239	0	Lifetime Cap <b>(X 1000 to remove decimal (10.125% is 10125))</b>
Armmargin	2404		243	0	Margin <b>(X 1000 to remove decimal (7.125% is 7125))</b>
Armfloor	2445		248	0	Floor <b>(X 1000 to remove decimal (10.125% is 10125))</b>
Mersmin	24918		266	0	Mers Min
Mersflag	2671		267	0	Mersflag
Filler	268	33	300	0	Filler field/ <b>(Pad with spaces)</b>

If the Loan is a Wet Funded Loan, the Loan Schedule shall also include the name of the Closing Agent.

## EXHIBIT F

### REPRESENTATIONS AND WARRANTIES REGARDING THE LOANS

The Loan Originator hereby represents and warrants to the other parties to the Sale and Servicing Agreement and the Securityholders, with respect to each such Loan as of the related Transfer Date (except as otherwise expressly agreed in writing by the Majority Noteholders):

- (i) The information set forth in the related Loan Schedule and the information contained on the electronic data file delivered to the Noteholder Agent is complete, true and correct;
- (ii) All payments required to be made up to the close of business on the Transfer Date for such Loan under the terms of the Promissory Note have been made; the Loan Originator has not advanced funds, or induced, solicited or knowingly received any advance of funds from a party other than the owner of the related Mortgaged Property, directly or indirectly, for the payment of any amount required by the Promissory Note or Mortgage; and there has been no delinquency, exclusive of any period of grace, in any payment by the Borrower thereunder during the last twelve months;
- (iii) There are no delinquent taxes, ground rents, water charges, sewer rents, assessments, insurance premiums, leasehold payments, including assessments payable in future installments or other outstanding charges affecting the related Mortgaged Property;
- (iv) The terms of the Promissory Note and the Mortgage have not been impaired, waived, altered or modified in any respect and the Promissory Note and the Mortgage have not been satisfied, canceled, rescinded or subordinated in whole or in part. No instrument of waiver, alteration, modification, release, cancellation, rescission or satisfaction has been executed, and no Borrower has been released, in whole or in part;
- (v) The Promissory Note and the Mortgage are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor will the operation of any of the terms of the Promissory Note or the Mortgage, or the exercise of any right thereunder, render either the Promissory Note or the Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto;
- (vi) All buildings upon the Mortgaged Property are insured by an insurer acceptable to Fannie Mae or Freddie Mac against loss by fire, hazards of extended coverage and such other hazards as are customary in the area where the Mortgaged Property is located, pursuant to insurance policies conforming to the requirements of the Servicing Addendum, in an amount sufficient to avoid the application of any "co-insurance provisions". All such insurance policies contain a standard mortgagee clause naming the Loan Originator, its successors and assigns as mortgagee and all premiums thereon have been paid. If the Mortgaged Property is in an area identified on a Flood Hazard Map or Flood Insurance Rate Map issued by the Federal Emergency Management Agency as having special flood hazards (and such flood insurance has been made available) a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration is in effect which policy conforms to the requirements of Fannie Mae and Freddie Mac. The Mortgage obligates the Borrower thereunder to maintain all such insurance at the Borrower's cost and expense, and on the Borrower's failure to do so, authorizes the holder of the Mortgage to maintain such insurance at Borrower's cost and expense and to seek reimbursement therefor from the Borrower;

(vii) Any and all requirements of any federal, state or local law including, without limitation, usury, truth in lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, fair housing or disclosure laws applicable to the origination and servicing of the Loans have been complied with;

(viii) The Mortgage has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such satisfaction, cancellation, subordination, rescission or release;

(ix) The Mortgage is a valid, existing and enforceable first lien (or, with respect to Loans identified as Second Lien Loans on the Loan Schedule, second lien) on the Mortgaged Property, including all improvements on the Mortgaged Property subject only to (a) the lien of current real property taxes and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording being acceptable to mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Loan and which do not adversely affect the Appraised Value of the Mortgaged Property, (c) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property and (d) the first lien on the Mortgaged Property, in the case of the Second Lien Loans. Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Loan establishes and creates a valid, existing and enforceable first or second lien and first or second priority security interest on the property described therein and the Loan Originator has full right to sell and assign the same to the Depositor and the Issuer. The Mortgaged Property was not, as of the date of origination of the Loan, subject to a mortgage, deed of trust, deed to secure debt or other security instrument creating a lien subordinate to the lien of the Mortgage;

(x) The Promissory Note and the related Mortgage are genuine and each is the legal, valid and binding obligation of the maker thereof, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or reorganization;

(xi) All parties to the Promissory Note and the Mortgage had legal capacity to enter into the Loan and to execute and deliver the Promissory Note and the Mortgage, and the Promissory Note and the Mortgage have been duly and properly executed by such parties. The Borrower is a natural person;

(xii) The proceeds of the Loan have been fully disbursed to or for the account of the Borrower and there is no obligation for the mortgagee to advance additional funds thereunder and any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any escrow funds therefor have been complied with. All costs, fees and expenses incurred in making or closing the Loan and the recording of the Mortgage have been paid, and the Borrower is not entitled to any refund of any amounts paid or due to the Loan Originator pursuant to the Promissory Note or Mortgage;

(xiii) The Loan Originator has good title to and is the sole legal, beneficial and equitable owner of the Promissory Note and the Mortgage and has full right to transfer and sell the Loan to the Depositor and the Issuer free and clear of any encumbrance, equity, lien, pledge, charge, claim or security interest;



(xiv) All parties which have had any interest in the Loan, whether as mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were) in compliance with any and all applicable “doing business” and licensing requirements of the laws of the state wherein the Mortgaged Property is located;

(xv) The Loan is covered by either (i) a lender’s title insurance policy (which, in the case of an ARM has an adjustable rate mortgage endorsement) commercially acceptable to prudent mortgage lending institutions, issued by a title insurer licensed and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring (subject to the exceptions contained in (ix)(a) and (b) above) the Loan Originator, its successors and assigns as to the first or second priority lien of the Mortgage in the original principal amount of the Loan and, with respect to any ARM, against any loss by reason of the invalidity or unenforceability of the lien resulting from the provisions of the Mortgage providing for adjustment in the Loan Interest Rate and Monthly Payment or (ii) if generally acceptable in the jurisdiction where the Mortgaged Property is located, an attorney’s opinion of title given by an attorney licensed to practice law in the jurisdiction where the Mortgaged Property is located. Additionally, such lender’s title insurance policy affirmatively insures ingress and egress to and from the Mortgaged Property, and against encroachments by or upon the Mortgaged Property or any interest therein. The Loan Originator is the sole insured of such lender’s title insurance policy, and such lender’s title insurance policy is in full force and effect and will be in full force and effect, and the issuer will be insured thereunder, upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender’s title insurance policy, and no prior holder of the related Mortgage, including the Loan Originator, has done, by act or omission, anything which would impair the coverage or enforceability of such lender’s title insurance policy or the accuracy of such attorney’s opinion of title;

(xvi) There is no default, breach, violation or event of acceleration existing under the Mortgage or the Promissory Note and no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration and neither the Loan Originator nor any affiliate has not waived any default, breach, violation or event of acceleration;

(xvii) There are no mechanics’ or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to such lien) affecting the related Mortgaged Property which are or may be liens prior to, or equal or coordinate with, the lien of the related Mortgage;

(xviii) All improvements which were considered in determining the Appraised Value of the related Mortgaged Property lay wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property;

(xix) The Loan was originated by the Loan Originator or by a savings and loan association, a savings bank, a commercial bank or similar banking institution which is supervised and examined by a federal or state authority, or by a mortgagee approved as such by the Secretary of HUD;

(xx) Payments on the Loan commenced no more than two months after the proceeds of the Loan were disbursed. The Loan bears interest at the Loan Interest Rate. With respect to each Loan unless otherwise stated on the Loan Schedule, the Promissory Note is payable on the first day of each month in Monthly Payments, which, in the case of each fixed-rate Loan except for Balloon Loans (to the extent permitted under the Pricing Side Letter), are sufficient to fully amortize the original principal balance over the original term thereof and to pay interest at the related Loan Interest Rate, and,

in the case of each ARM, are changed on each Adjustment Date in accordance with the terms of the related Promissory Note or subsequent modifications, if any, and in any case, are sufficient to fully amortize the original principal balance over the original term thereof and to pay interest at the related Loan Interest Rate. The Promissory Note does not permit negative amortization. No Loan is a Convertible Loan;

(xxi) The origination and collection practices used by the Loan Originator with respect to each Promissory Note and Mortgage have been in all respects legal, proper, prudent and customary in the mortgage origination and servicing industry. The Loan has been serviced by the Loan Originator and any predecessor servicer in accordance with the terms of the Promissory Note. With respect to escrow deposits and Escrow Payments, if any, all such payments are in the possession of, or under the control of, the Loan Originator and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. No escrow deposits or Escrow Payments or other charges or payments due the Loan Originator have been capitalized under any Mortgage or the related Promissory Note and no such escrow deposits or Escrow Payments are being held by the Loan Originator for any work on a Mortgaged Property which has not been completed;

(xxii) The Mortgaged Property is free of material damage and waste and there is no proceeding pending for the total or partial condemnation thereof;

(xxiii) The Mortgage contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the mortgagee thereunder. The Mortgage and related Promissory Note contain customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (a) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (b) otherwise by judicial foreclosure. The Mortgaged Property has not been subject to any bankruptcy proceeding or foreclosure proceeding and the Borrower has not filed for protection under applicable bankruptcy laws. No material litigation or lawsuit relating to the Loan is pending. There is no homestead or other exemption available to the Borrower which would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage. The Borrower has not notified the Loan Originator and the Loan Originator has no knowledge of any relief requested or allowed to the Borrower under the Servicemembers' Relief Act of 1940;

(xxiv) The Loan was underwritten in accordance with the Underwriting Guidelines in effect at the time the Loan was originated; and the Promissory Note and Mortgage are on forms acceptable to prudent mortgage lending institutions in the secondary market;

(xxv) The Promissory Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage on the Mortgaged Property and the security interest of any applicable security agreement or chattel mortgage referred to in (ix) above;

(xxvi) The Loan File contains an appraisal of the related Mortgaged Property which satisfied the standards of Fannie Mae or Freddie Mac and was made and signed, prior to the approval of the Loan application, by a qualified appraiser, duly appointed by the Loan Originator, who had no interest, direct or indirect in the Mortgaged Property or in any loan made on the security thereof, whose compensation is not affected by the approval or disapproval of the Loan and who met the minimum qualifications of Fannie Mae or Freddie Mac. Each appraisal of the Loan was made in accordance with the relevant provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(xxvii) In the event the Mortgage constitutes a deed of trust, a trustee, duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by the Issuer to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Borrower;

(xxviii) No Loan contains provisions pursuant to which Monthly Payments are (a) paid or partially paid with funds deposited in any separate account established by the Loan Originator, the Borrower, or anyone on behalf of the Borrower, (b) paid by any source other than the Borrower or (c) contains any other similar provisions which may constitute a "buydown" provision. The Loan is not a graduated payment mortgage loan and the Loan does not have a shared appreciation or other contingent interest feature;

(xxix) The Borrower has executed a statement to the effect that the Borrower has received all disclosure materials required by applicable law with respect to the making of fixed rate mortgage loans in the case of fixed-rate Loans, and adjustable rate mortgage loans in the case of ARMs and rescission materials with respect to Refinanced Loans, and such statement is and will remain in the Loan File;

(xxx) No Loan was made in connection with (a) the construction or rehabilitation of a Mortgaged Property or (b) facilitating the trade-in or exchange of a Mortgaged Property;

(xxxi) The Loan Originator has no knowledge of any circumstances or condition with respect to the Mortgage, the Mortgaged Property, the Borrower or the Borrower's credit standing that can reasonably be expected to cause the Loan to be an unacceptable investment, cause the Loan to become delinquent, or adversely affect the value of the Loan;

(xxxii) Each Loan listed on the Loan Schedule as being subject to a Primary Mortgage Insurance Policy is and will be subject to a Primary Mortgage Insurance Policy, issued by a Qualified Insurer, which insures that portion of the Loan in excess of the portion of the Appraised Value of the Mortgaged Property required by Fannie Mae. All provisions of such Primary Insurance Policy have been and are being complied with, such policy is in full force and effect, and all premiums due thereunder have been paid. Any Mortgage subject to any such Primary Insurance Policy obligates the Borrower thereunder to maintain such insurance and to pay all premiums and charges in connection therewith. The Loan Interest Rate for the Loan does not include any such insurance premium;

(xxxiii) The Mortgaged Property is lawfully occupied under applicable law; all inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy, have been made or obtained from the appropriate authorities;

(xxxiv) No error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to a Loan has taken place on the part of any person, including without limitation the Borrower, any appraiser, any builder or developer, or any other party involved in the origination of the Loan or in the application of any insurance in relation to such Loan;

(xxxv) The Assignment of Mortgage is in recordable form and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located;

(xxxvi) Any principal advances made to the Borrower prior to the Transfer Cut-off Date have been consolidated with the outstanding principal amount secured by the Mortgage, and the secured principal amount, as consolidated, bears a single interest rate and single repayment term. The lien

of the Mortgage securing the consolidated principal amount is expressly insured as having first or second lien priority by a title insurance policy, an endorsement to the policy insuring the mortgagee's consolidated interest or by other title evidence acceptable to Fannie Mae and Freddie Mac. The consolidated principal amount does not exceed the original principal amount of the Loan;

(xxxvii) Except as set forth on the Loan Schedule, no Loan is a Balloon Loan;

(xxxviii) If the residential dwelling on the Mortgaged Property is a condominium unit or a unit in a planned unit development (other than a de minimis planned unit development) such condominium or planned unit development project meets the eligibility requirements of Fannie Mae and Freddie Mac;

(xxxix) Interest on each Loan is calculated on the basis of a 360-day year consisting of twelve 30-day months;

(xl) The Mortgaged Property is in material compliance with all applicable environmental laws pertaining to environmental hazards including, without limitation, asbestos, and neither the Loan Originator nor, to the Loan Originator's knowledge, the related Borrower has received any notice of any violation or potential violation of such law;

(xli) A Trust Receipt reflecting that no Fatal Exceptions exist with respect to the related Custodial Loan File shall be certified by the Custodian on or before the 15th day following the related Transfer;

(xlii) The Loan constitutes a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code;

(xliii) The Loan was not intentionally selected by the Loan Originator in a manner intended to adversely affect the Noteholders or the Trust;

(xliv) With respect to Second Lien Loans, either (a) no consent for the Loan is required by the holder of the related first lien or (b) such consent has been obtained and is contained in the Mortgage File;

(xlv) No Loan is a "High Cost Home Loan" as defined in the Georgia Fair Lending Act, as amended. No Loan secured by owner occupied real property or an owner occupied manufactured home located in the State of Georgia was originated (or modified) on or after October 1, 2002 through and including March 6, 2003;

(xlvi) The Loan has been acquired, serviced, collected and otherwise dealt with by the Loan Originator and any affiliate of the Loan Originator in compliance with all applicable federal, state and local laws and regulations, including, but not limited to, all applicable predatory and abusive lending laws and the terms of the related Promissory Note and Mortgage. No Loan is subject to any federal, state or local law or ordinance that would result in such Loan being ineligible for inclusion in a rated securitization transaction under the criteria of any rating agency as in effect as of the application date;

(xlvii) Any and all requirements of any federal, state or local law including, without limitation, usury, truth in lending, real estate settlement procedures, predatory and abusive lending, consumer credit protection, equal credit opportunity, fair housing or disclosure laws applicable to the

origination and servicing of mortgage loans of a type similar to the Loans have been complied with in all material respects;

(xlviii) No Loan is (a) subject to the provisions of the Homeownership and Equity Protection Act of 1994 as amended (“HOEPA”), (b) a “high cost” mortgage loan, “covered” mortgage loan or “predatory” mortgage loan or any similarly classified loan using different terminology, no matter how defined under any federal, state or local law imposing heightened regulatory scrutiny or assignee liability to holders of such mortgage loans, or (c) a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the current Standard & Poor’s LEVELS® Glossary Revised, Appendix E);

(xlix) No predatory, abusive, or deceptive lending practices, including but not limited to, the extension of credit to a mortgagor without regard for the mortgagor’s ability to repay the Loan and the extension of credit to a mortgagor which has no apparent benefit to the mortgagor, were employed by the Loan Originator in connection with the origination of the Loan. Except with respect to escrow deposits, each Points and Fees Loan is in compliance with the anti-predatory lending eligibility for purchase requirements of the Fannie Mae selling guide;

(l) Points, fees and charges related to each Loan (whether or not financed, assessed, collected or to be collected in connection with the origination and servicing of each Loan) were disclosed in writing to the mortgagor in accordance with applicable state and federal law and regulation. Unless otherwise disclosed on the related Loan Schedule, no mortgagor was charged “points and fees” (whether or not financed) in an amount greater than 5% of the principal amount of the related Loan, such 5% limitation is calculated in accordance with Fannie Mae’s anti-predatory lending requirements as set forth in the Fannie Mae selling guide;

(li) Each Wet Funded Loan was funded under a Closing Protection Letter, to the extent required by the Loan Originator’s on-line guidelines with respect to Closing Protection Letters. The Loan Originator will provide a copy of such Closing Protection Letter to Noteholder Agent upon request.

EXHIBIT G

SERVICING ADDENDUM

**Section 4.01 Duties of the Servicer.**

The Servicer, as independent contract servicer, shall service and administer the Loans in accordance with this Agreement and shall have full power and authority, acting alone, to do or cause to be done any and all things in connection with such servicing and administration which the Servicer may deem necessary or desirable and consistent with the terms of this Agreement.

The duties of the Servicer shall include collecting and posting of all payments, responding to inquiries of Borrowers or by federal, state or local government authorities with respect to the Loans, investigating delinquencies, reporting tax information to Borrowers in accordance with its customary practices and accounting for collections and furnishing monthly and annual statements to the Indenture Trustee and the Noteholder Agent, with respect to distributions, making Servicing Advances and Monthly Advances pursuant hereto. The Servicer shall follow its customary standards, policies and procedures in performing its duties as Servicer. The Servicer shall cooperate with the Indenture Trustee and furnish to the Indenture Trustee with reasonable promptness information in its possession as may be necessary or appropriate to enable the Indenture Trustee to perform its tax reporting duties hereunder, if any.

The Servicer shall give prompt notice to the Indenture Trustee and the Noteholder Agent of any Proceeding, of which the Servicer has actual knowledge, to (i) assert a claim against the Trust or (ii) assert jurisdiction over the Trust.

In the event of a Disposition or other removal of a Loan from the Trust Estate, the Servicer's obligations under this Agreement shall be terminated with respect to such Loan.

The Servicer agrees that in the event that any Notes are outstanding after the applicable Maturity Date, the Majority Noteholders may appoint a successor servicer in accordance with the provisions of Section 9.02. The Majority Noteholders may, by written notice to the Servicer and the Indenture Trustee, elect to have the Servicer continue its duties hereunder after such Maturity Date.

Consistent with the terms of this Agreement, the Servicer may waive, modify or vary any term of any Loan or consent to the postponement of strict compliance with any such term or in any manner grant indulgence to any Borrower if in the Servicer's reasonable and prudent determination such waiver, modification, postponement or indulgence is not materially adverse to the Issuer or the Noteholders; provided, however, that the Servicer shall not permit any modification with respect to any Loan that would change the Loan Interest Rate, defer or forgive the payment thereof or of any principal or interest payments, reduce the outstanding principal amount (except for actual payments of principal), make additional advances of additional principal or extend the final maturity date on such Loan. Without limiting the generality of the foregoing, the Servicer shall continue, and is hereby authorized and empowered, to execute and deliver on behalf of itself, and the Issuer, all instruments of satisfaction or cancellation, or of partial or full release, discharge and all other comparable instruments, with respect to the Loans and with respect to the Mortgaged Property. If reasonably required by the Servicer, the Issuer shall furnish the Servicer with any powers of attorney and other documents necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties under this Agreement.

The Servicer shall service and administer the Loans in accordance with Accepted Servicing Practices.

**Section 4.02 Collection of Loan Payments.**

Continuously from the date hereof until the principal and interest on all Loans are paid in full, the Servicer shall proceed diligently to collect all payments due under each Loan when the same shall become due and payable and shall, to the extent such procedures shall be consistent with this Agreement and the terms and provisions of any related Primary Insurance Policy, follow such collection procedures as it follows with respect to mortgage loans comparable to the Loans and held for its own account. Further, the Servicer shall take special care in ascertaining and estimating annual ground rents, taxes, assessments, water rates, fire and hazard insurance premiums, mortgage insurance premiums, and all other charges that, as provided in the Mortgage, will become due and payable to the end that the installments payable by the Borrowers will be sufficient to pay such charges as and when they become due and payable.

**Section 4.03 Realization Upon Defaulted Loans.**

(a) The Servicer shall use its best efforts, consistent with the procedures that the Servicer would use in servicing loans for its own account, to foreclose upon or otherwise comparably convert the ownership of such Mortgaged Properties as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments pursuant to Section 4.01. The Servicer shall use its best efforts to realize upon Defaulted Loans in such a manner as will maximize the receipt of principal and interest by the Issuer, taking into account, among other things, the timing of foreclosure proceedings; provided, however, that the Servicer shall not sell any Defaulted Loan unless it has been directed to do so by the Majority Noteholder. The foregoing is subject to the provisions that, in any case in which Mortgaged Property shall have suffered damage, the Servicer shall not be required to expend its own funds toward the restoration of such property in excess of \$2,000 unless it shall determine in its discretion (i) that such restoration will increase the proceeds of liquidation of the related Loan to the Issuer after reimbursement to itself for such expenses, and (ii) that such expenses will be recoverable by the Servicer through Mortgage Insurance Proceeds or Liquidation Proceeds from the related Mortgaged Property. In the event that any payment due under any Loan is not paid when the same becomes due and payable, or in the event the Borrower fails to perform any other covenant or obligation under the Loan and such failure continues beyond any applicable grace period, the Servicer shall take such action as it shall deem to be in the best interest of the Issuer and the Noteholders. The Servicer shall notify the Issuer and the Noteholders in writing of the commencement of foreclosure proceedings. In such connection, the Servicer shall be responsible for all costs and expenses incurred by it in any such proceedings; provided, however, that it shall be entitled to reimbursement thereof from the related Mortgaged Property.

(b) Notwithstanding the foregoing provisions of this Section 4.03, with respect to any Loan as to which the Servicer has received actual notice of, or has actual knowledge of, the presence of any toxic or hazardous substance on the related Mortgaged Property the Servicer shall not either (i) obtain title to such Mortgaged Property as a result of or in lieu of foreclosure or otherwise, or (ii) otherwise acquire possession of, or take any other action, with respect to, such Mortgaged Property if, as a result of any such action, the Issuer would be considered to hold title to, to be a mortgagee-in-possession of, or to be an owner or operator of such Mortgaged Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, or any comparable law, unless the Servicer has also previously determined, based on its reasonable judgment and a prudent report prepared by a Person who regularly conducts environmental audits using customary industry standards, that:

- (1) such Mortgaged Property is in compliance with applicable environmental laws or, if not, that it would be in the best economic interest of the Issuer and the Noteholders to take such actions as are necessary to bring the Mortgaged Property into compliance therewith; and

(2) there are no circumstances present at such Mortgaged Property relating to the use, management or disposal of any hazardous substances, hazardous materials, hazardous wastes, or petroleum-based materials for which investigation, testing, monitoring, containment, clean-up or remediation could be required under any federal, state or local law or regulation, or that if any such materials are present for which such action could be required, that it would be in the best economic interest of the Issuer and the Noteholders to take such actions with respect to the affected Mortgaged Property.

The cost of the environmental audit report contemplated by this Section 4.03 shall be advanced by the Servicer, subject to the Servicer's right to be reimbursed therefor from the Collection Account as provided in Section 5.01(c).

If the Servicer determines, as described above, that it is in the best economic interest of the Issuer and the Noteholders to take such actions as are necessary to bring any such Mortgaged Property into compliance with applicable environmental laws, or to take such action with respect to the containment, clean-up or remediation of hazardous substances, hazardous materials, hazardous wastes, or petroleum-based materials affecting any such Mortgaged Property, then the Servicer shall take such action as it deems to be in the best economic interest of the Issuer and the Noteholders. The cost of any such compliance, containment, cleanup or remediation shall be advanced by the Servicer, subject to the Servicer's right to be reimbursed therefor from the Collection Account as provided in Section 5.01(c).

(c) The Servicer shall determine, with respect to each Defaulted Loan, when it has recovered, whether through trustee's sale, foreclosure sale or otherwise, all amounts it expects to recover from or on account of such Defaulted Loan, whereupon such Loan shall become a "Liquidated Loan" and shall promptly deliver to the Noteholder Agent a related liquidation report with respect to such Liquidated Loan.

**Section 4.04 Establishment of Escrow Accounts; Deposits in Escrow Accounts.**

The Servicer shall segregate and hold all funds collected and received pursuant to each Loan which constitute Escrow Payments separate and apart from any of its own funds and general assets and shall establish and maintain one or more Escrow Accounts, in accordance with the related Mortgage and applicable law.

The Servicer shall deposit in the Escrow Account or Accounts within two (2) Business Days after receipt, and retain therein, (i) all Escrow Payments collected on account of the Loans, for the purpose of effecting timely payment of any such items as required under the terms of this Agreement, and (ii) all Mortgage Insurance Proceeds which are to be applied to the restoration or repair of any Mortgaged Property. The Servicer shall make withdrawals therefrom only to effect such payments as are required under this Agreement, and for such other purposes as shall be as set forth or in accordance with Section 4.06. The Servicer shall be entitled to retain any interest paid on funds deposited in the Escrow Account by the depository institution other than interest on escrowed funds required by law to be paid to the Borrower and, to the extent required by law, the Servicer shall pay interest on escrowed funds to the Borrower notwithstanding that the Escrow Account is non-interest bearing or that interest paid thereon is insufficient for such purposes.

**Section 4.05 Permitted Withdrawals From Escrow Account.**

Withdrawals from the Escrow Account may be made by the Servicer (i) to effect timely payments of ground rents, taxes, assessments, water rates, hazard insurance premiums, Primary Insurance Policy premiums, if applicable, and comparable items, (ii) to reimburse the Servicer for any Servicing Advance made by the Servicer with respect to a related Loan but only from amounts received on the related Loan



which represent late payments or collections of Escrow Payments thereunder, (iii) to refund to the Borrower any funds as may be determined to be overages, (iv) for transfer to the Collection Account in accordance with the terms of this Agreement, (v) for application to restoration or repair of the Mortgaged Property, (vi) to pay to the Servicer, or to the Borrower to the extent required by law, any interest paid on the funds deposited in the Escrow Account, or (vii) to clear and terminate the Escrow Account on the termination of this Agreement.

**Section 4.06 Payment of Taxes, Insurance and Other Charges; Maintenance of Primary Insurance Policies; Collections Thereunder.**

With respect to each Loan, the Servicer shall maintain accurate records reflecting the status of ground rents, taxes, assessments, water rates and other charges which are or may become a lien upon the Mortgaged Property and the status of Primary Insurance Policy premiums and fire and hazard insurance coverage and shall obtain, from time to time, all bills for the payment of such charges, including insurance renewal premiums and shall effect payment thereof prior to the applicable penalty or termination date and at a time appropriate for securing maximum discounts allowable, employing for such purpose deposits of the Borrower in the Escrow Account which shall have been estimated and accumulated by the Servicer in amounts sufficient for such purposes, as allowed under the terms of the Mortgage and applicable law. To the extent that the Mortgage does not provide for Escrow Payments, the Servicer shall determine that any such insurance premium payments are made by the Borrower at the time they first become due and any such tax payments are made in time to avoid loss of the Mortgaged Property in a tax sale. The Servicer assumes full responsibility for the timely payment of all such bills and shall effect payments of all such bills prior to the termination of any such insurance coverage or loss of any such Mortgaged Property in a tax sale irrespective of the Borrower's faithful performance in the payment of same or the making of the Escrow Payments and shall make advances from its own funds to effect such payments.

The Servicer shall maintain in full force and effect, a Primary Insurance Policy, issued by a Qualified Insurer, with respect to each Loan for which such coverage is required. Such coverage shall be maintained until the Loan-to-Value Ratio of the related Loan is reduced to that amount for which Fannie Mae no longer requires such insurance to be maintained. The Servicer will not cancel or refuse to renew any Primary Insurance Policy, if any, in effect on the Closing Date that is required to be kept in force under this Agreement unless a replacement Primary Insurance Policy, if any, for such canceled or non-renewed policy is obtained from and maintained with a Qualified Insurer. The Servicer shall not take any action which would result in non-coverage under any applicable Primary Insurance Policy of any loss which, but for the actions of the Servicer, would have been covered thereunder. In connection with any assumption or substitution agreement entered into or to be entered into pursuant to Section 4.12, the Servicer shall promptly notify the insurer under the related Primary Insurance Policy, if any, of such assumption or substitution of liability in accordance with the terms of such policy and shall take all actions which may be required by such insurer as a condition to the continuation of coverage under the Primary Insurance Policy, if any. If such Primary Insurance Policy is terminated as a result of such assumption or substitution of liability, the Servicer shall obtain a replacement Primary Insurance Policy as provided above.

In connection with its activities as servicer, the Servicer agrees to prepare and present, on behalf of itself, the Issuer and the Noteholders, claims to the insurer under any Primary Insurance Policy in a timely fashion in accordance with the terms of such policies and, in this regard, to take such action as shall be necessary to permit recovery under any Primary Insurance Policy respecting a defaulted Loan. Pursuant to Section 5.01, any amounts collected by the Servicer under any Primary Insurance Policy shall be deposited in the Collection Account.

**Section 4.07 Transfer of Accounts.**

The Servicer may transfer the Collection Account or the Escrow Account to a different depository institution from time to time. Such transfer shall be made only upon obtaining the consent of the Noteholder Agent, which consent shall not be unreasonably withheld or delayed. In any case, the Collection Account and the Escrow Account shall be an Eligible Account.

**Section 4.08 Maintenance of Hazard Insurance.**

The Servicer shall cause to be maintained for each Loan fire and hazard insurance with extended coverage as is customary in the area where the Mortgaged Property is located in an amount which is at least equal to the lesser of (i) 100% of the maximum insurable value of the improvements securing the Loan or (ii) the outstanding principal balance of the Loan, in each case in an amount not less than such amount as is necessary to prevent the Borrower and/or the Issuer from becoming a co-insurer. If the Mortgaged Property is in an area identified on a Flood Hazard Boundary Map or Flood Insurance Rate Map issued by the Flood Emergency Management Agency as having special flood hazards and such flood insurance has been made available, the Servicer will cause to be maintained a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration with a generally acceptable insurance carrier, in an amount representing coverage not less than the lesser of (i) the outstanding principal balance of the Loan or (ii) the maximum amount of insurance which is available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended. The Servicer also shall maintain on any Foreclosure Property, fire and hazard insurance with extended coverage in an amount which is at least equal to the lesser of (i) 100% of the maximum insurable value of the improvements which are a part of such property and (ii) the outstanding principal balance of the related Loan at the time it became a Foreclosure Property, liability insurance and, to the extent required and available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, flood insurance in an amount as provided above. Pursuant to Section 5.01, any amounts collected by the Servicer under any such policies other than amounts to be deposited in the Escrow Account and applied to the restoration or repair of the Mortgaged Property or Foreclosure Property, or released to the Borrower in accordance with the Servicer's normal servicing procedures, shall be deposited in the Collection Account, subject to withdrawal pursuant to Section 5.01. Any cost incurred by the Servicer in maintaining any such insurance shall not, for the purpose of calculating distributions to the Issuer or the Noteholders, be added to the unpaid principal balance of the related Loan, notwithstanding that the terms of such Loan so permit. It is understood and agreed that no earthquake or other additional insurance need be required by the Servicer or the Borrower or maintained on property acquired in respect of the Loan, other than pursuant to such applicable laws and regulations as shall at any time be in force and as shall require such additional insurance. All such policies shall be endorsed with standard mortgagee clauses with loss payable to the Servicer, or upon the direction of the Noteholder Agent to the Indenture Trustee, and shall provide for at least thirty days prior written notice of any cancellation, reduction in the amount of, or material change in, coverage to the Servicer. The Servicer shall not interfere with the Borrower's freedom of choice in selecting either his insurance carrier or agent, provided, however, that the Servicer shall not accept any such insurance policies from insurance companies unless such companies currently reflect a General Policy Rating of B:III or better in Best's Key Rating Guide and are licensed to do business in the state wherein the property subject to the policy is located.

**Section 4.09 Maintenance of Mortgage Impairment Insurance Policy.**

In the event that the Servicer shall obtain and maintain a mortgage impairment or blanket policy issued by an issuer that has a Best rating of B:III insuring against hazard losses on all of Mortgaged Properties securing the Loans, then, to the extent such policy provides coverage in an amount equal to the

amount required pursuant to Section 4.08 and otherwise complies with all other requirements of Section 4.08, the Servicer shall conclusively be deemed to have satisfied its obligations as set forth in Section 4.08, it being understood and agreed that such policy may contain a deductible clause, in which case the Servicer shall, in the event that there shall not have been maintained on the related Mortgaged Property or Foreclosure Property a policy complying with Section 4.08, and there shall have been one or more losses which would have been covered by such policy, deposit in the Collection Account the amount not otherwise payable under the blanket policy because of such deductible clause. In connection with its activities as servicer of the Loans, the Servicer agrees to prepare and present, on behalf of the Issuer and the Noteholders, claims under any such blanket policy in a timely fashion in accordance with the terms of such policy. Upon request of the Noteholder Agent, the Servicer shall cause to be delivered to the Noteholders a certified true copy of such policy and a statement from the insurer thereunder that such policy shall in no event be terminated or materially modified without thirty days prior written notice to the Issuer and the Noteholders.

**Section 4.10 Fidelity Bond, Errors and Omissions Insurance.**

The Servicer shall maintain, at its own expense, a blanket fidelity bond and an errors and omissions insurance policy, with broad coverage with financially responsible companies on all officers, employees or other persons acting in any capacity with regard to the Loans to handle funds, money, documents and papers relating to the Loans. The fidelity bond and errors and omissions insurance shall be in the form of the Mortgage Banker's Blanket Bond and shall protect and insure the Servicer against losses, including forgery, theft, embezzlement, fraud, errors and omissions and negligent acts of such persons. Such fidelity bond shall also protect and insure the Servicer against losses in connection with the failure to maintain any insurance policies required pursuant to this Agreement and the release or satisfaction of a Loan without having obtained payment in full of the indebtedness secured thereby. No provision of this Section 4.10 requiring the fidelity bond and errors and omissions insurance shall diminish or relieve the Servicer from its duties and obligations as set forth in this Agreement. The minimum coverage under any such bond and insurance policy shall be at least equal to the corresponding amounts required by Fannie Mae in the Fannie Mae Servicing Guide or by Freddie Mac in the Freddie Mac Sellers' and Servicers' Guide. Upon request of the Noteholder Agent, the Servicer shall cause to be delivered to the Noteholders a certified true copy of the fidelity bond and insurance policy and a statement from the surety and the insurer that such fidelity bond or insurance policy shall in no event be terminated or materially modified without thirty days' prior written notice to the Noteholder Agent.

**Section 4.11 Title, Management and Disposition of Foreclosure Property.**

In the event that title to the Mortgaged Property is acquired in foreclosure or by deed in lieu of foreclosure, the deed or certificate of sale shall be taken in the name of the person designated by the Issuer, or in the event such person is not authorized or permitted to hold title to real property in the state where the Foreclosure Property is located, or would be adversely affected under the "doing business" or tax laws of such state by so holding title, the deed or certificate of sale shall be taken in the name of such Person or Persons as shall be consistent with an opinion of counsel obtained by the Servicer from an attorney duly licensed to practice law in the state where the Foreclosure Property is located. Any Person or Persons holding such title other than the Issuer shall acknowledge in writing that such title is being held as nominee for the benefit of the Issuer and the Noteholders.

The Servicer shall either itself or through an agent selected by the Servicer, manage, conserve, protect and operate each Foreclosure Property (and may temporarily rent the same) in the same manner that it manages, conserves, protects and operates other foreclosed property for its own account, and in the same manner that similar property in the same locality as the Foreclosure Property is managed. If a REMIC election is or is to be made with respect to the arrangement under which the Mortgage Loans and

any Foreclosure Property are held, the Servicer shall manage, conserve, protect and operate each Foreclosure Property in a manner which does not cause such Foreclosure Property to fail to qualify as “foreclosure property” within the meaning of Section 860G(a)(8) of the Code or result in the receipt by such REMIC of any “income from non-permitted assets” within the meaning of Section 860F(a)(2)(B) of the Code or any “net income from foreclosure property” within the meaning of Section 860G(c)(2) of the Code. The Servicer shall cause each Foreclosure Property to be inspected promptly upon the acquisition of title thereto and shall cause each Foreclosure Property to be inspected at least annually thereafter. The Servicer shall make or cause to be made a written report of each such inspection. Such reports shall be retained in the Loan File and copies thereof shall be forwarded by the Servicer to the Issuer. The Servicer shall use its best efforts to dispose of the Foreclosure Property as soon as possible. The Servicer shall report monthly to the Issuer and the Noteholders as to the progress being made in selling such Foreclosure Property, and if, with the written consent of the Noteholder Agent, a purchase money mortgage is taken in connection with such sale, such purchase money mortgage shall name the Servicer as mortgagee, and a separate servicing agreement between the Servicer and the Issuer shall be entered into with respect to such purchase money mortgage. Notwithstanding the foregoing, if a REMIC election is made with respect to the arrangement under which the Loans and the Foreclosure Property are held, such Foreclosure Property shall be disposed of within three years after the end of the tax year in which such property becomes Foreclosure Property or such other period as may be permitted under Section 860G(a)(8) of the Code.

The final sale by the Servicer of any Foreclosure Property (“REO Disposition”) shall be carried out by the Servicer at such price and upon such terms and conditions as the Servicer deems to be in the best interest of the Issuer and the Noteholders only with the prior written consent of the Noteholder Agent. If as of the date title to any Foreclosure Property was acquired by the Issuer there were outstanding unreimbursed Servicing Advances with respect to the Foreclosure Property, the Servicer, upon an REO Disposition of such Foreclosure Property, shall be entitled to reimbursement for any related unreimbursed Servicing Advances from Liquidation Proceeds received in connection with such REO Disposition. The Net Liquidation Proceeds from the REO Disposition shall be deposited in the Collection Account promptly following receipt thereof for distribution on the succeeding Payment Date in accordance with Section 5.01.

#### **Section 4.12 Assumption Agreements.**

The Servicer shall, to the extent it has knowledge of any conveyance or prospective conveyance by any Borrower of the Mortgaged Property (whether by absolute conveyance or by contract of sale, and whether or not the Borrower remains or is to remain liable under the Promissory Note and/or the Mortgage), exercise its rights to accelerate the maturity of such Loan under any “due-on-sale” clause applicable thereto; provided, however, that the Servicer shall not exercise any such rights if prohibited by law from doing so or if the exercise of such rights would impair or threaten to impair any recovery under the related Primary Insurance Policy, if any, and shall not be required to exercise such rights if the transferee of the Mortgaged Property would qualify for an assumption or substitution under the Servicer’s underwriting guidelines. If the Servicer reasonably believes it is unable under applicable law to enforce such “due-on-sale” clause, the Servicer shall enter into an assumption agreement with the person to whom the Mortgaged Property has been conveyed or is proposed to be conveyed, pursuant to which such person becomes liable under the Promissory Note and, to the extent permitted by applicable state law, the Borrower remains liable thereon. Where an assumption is allowed pursuant to this Section 4.12, the Servicer, with the prior written consent of the insurer under the Primary Insurance Policy, if any, is authorized to enter into a substitution of liability agreement with the person to whom the Mortgaged Property has been conveyed or is proposed to be conveyed pursuant to which the original Borrower is released from liability and such Person is substituted as Borrower and becomes liable under the related

Promissory Note. Any such substitution of liability agreement shall be in lieu of an assumption agreement.

In connection with any such assumption or substitution of liability, the Servicer shall follow the underwriting practices and procedures of prudent mortgage lenders in the state in which the related Mortgaged Property is located. With respect to an assumption or substitution of liability, Loan Interest Rate, the amount of the Monthly Payment, and the final maturity date of such Promissory Note may not be changed. The Servicer shall notify the Issuer and the Noteholders that any such substitution of liability or assumption agreement has been completed and shall forward to the Custodian the original of any such substitution of liability or assumption agreement, which document shall be added to the related Loan File and shall, for all purposes, be considered a part of such Loan File to the same extent as all other documents and instruments constituting a part thereof. Any fee collected by the Servicer for entering into an assumption or substitution of liability agreement shall be deemed additional Servicing Compensation.

Notwithstanding the foregoing paragraphs of this Section or any other provision of this Agreement, the Servicer shall not be deemed to be in default, breach or any other violation of its obligations hereunder by reason of any assumption of a Loan by operation of law or any assumption which the Servicer may be restricted by law from preventing, for any reason whatsoever. For purposes of this Section 4.12, the term "assumption" is deemed to also include a sale of the Mortgaged Property subject to the Mortgage that is not accompanied by an assumption or substitution of liability agreement.

#### **Section 4.13 Satisfaction of Mortgages and Release of Loan Files.**

Upon the payment in full of any Loan, or the receipt by the Servicer of a notification that payment in full will be escrowed in a manner customary for such purposes, the Servicer will immediately notify the Issuer and the Noteholder Agent by a certification of a servicing officer of the Servicer (a "Servicing Officer"), which certification shall include a statement to the effect that all amounts received or to be received in connection with such payment which are required to be deposited in the Collection Account pursuant to Section 5.01 have been or will be so deposited, and shall request execution of any document necessary to satisfy the Loan and delivery to it of the portion of the Loan File held by Custodian. Upon receipt of a Request for Release and Receipt (as defined in the Custodial Agreement), the Custodian shall promptly release the related mortgage documents to the Servicer in accordance with the Custodial Agreement and the Servicer shall prepare and process any satisfaction or release. No expense incurred in connection with any instrument of satisfaction or deed of reconveyance shall be chargeable to the Collection Account or the Issuer.

In the event the Servicer satisfies or releases a Mortgage without having obtained payment in full of the indebtedness secured by the Mortgage or should it otherwise prejudice any right the Issuer or the Noteholders may have under the mortgage instruments, the Servicer, upon written demand, shall remit to the Issuer the then outstanding principal balance of the related Loan by deposit thereof in the Collection Account. The Servicer shall maintain the fidelity bond insuring the Servicer against any loss it may sustain with respect to any Loan not satisfied in accordance with the procedures set forth herein.

From time to time and as appropriate for the servicing or foreclosure of the Loan, including for this purpose collection under any Primary Insurance Policy, the Custodian shall, upon request of the Servicer and delivery to the Custodian of a servicing receipt signed by a Servicing Officer, release the requested portion of the Loan File held by the Custodian to the Servicer. Such servicing receipt shall obligate the Servicer to return the related Mortgage documents to the Custodian when the need therefor by the Servicer no longer exists, unless the Loan has been liquidated and the Liquidation Proceeds relating to the Loan have been deposited in the Collection Account or the Loan File or such document has been delivered to an attorney, or to a public trustee or other public official as required by law, for

purposes of initiating or pursuing legal action or other proceedings for the foreclosure of the Mortgaged Property either judicially or non judicially, and the Servicer has delivered to the Custodian a certificate of a Servicing Officer certifying as to the name and address of the Person to which such Loan File or such document was delivered and the purpose or purposes of such delivery. Upon receipt of a certificate of a Servicing Officer stating that such Loan was liquidated, the servicing receipt shall be released by the Custodian to the Servicer.

**Section 4.14 Advances by the Servicer.**

(a) Not later than the close of business on the Business Day preceding each Remittance Date, the Servicer shall deposit in the Collection Account an amount equal to all payments not previously advanced by the Servicer, whether or not deferred pursuant to Section 4.01, of principal (due after the Transfer Cut-off Date) and interest not allocable to the period prior to the Transfer Cut-off Date, at the Loan Interest Rate net of the Servicing Fee, which were due on a Loan and delinquent at the close of business on the related Remittance Date; provided, however, that the Servicer shall not be required to deposit such amount if the amount on deposit in the Collection Account on that Remittance Date (exclusive of any Monthly Advance required to be effected pursuant to this Section 4.14) is at least sufficient to fund in full the items described in Sections 5.01(c)(3)(i) through 5.01(c)(3)(vi) hereof on the related Payment Date, and, if the amount on deposit in the Collection Account is less than the sum of such items, the Servicer shall only be required to deposit an amount equal to the shortfall. The obligation of the Servicer to make such Monthly Advances is mandatory, notwithstanding any other provision of this Agreement, and, with respect to any Loan or Foreclosure Property, shall continue until a Final Recovery Determination in connection therewith; provided that, notwithstanding anything herein to the contrary, no Monthly Advance shall be required to be made hereunder by the Servicer if such Monthly Advance would, if made, constitute a Nonrecoverable Monthly Advance. The determination by the Servicer that it has made a Nonrecoverable Monthly Advance or that any proposed Monthly Advance, if made, would constitute a Nonrecoverable Monthly Advance, shall be evidenced by an Officers' Certificate delivered to the Issuer and the Indenture Trustee.

(b) The Servicer will pay all out-of-pocket costs and expenses incurred in the performance of its servicing obligations including, but not limited to, the cost of (i) Preservation Expenses, (ii) any enforcement or judicial proceedings, including foreclosures, (iii) inspection fees and expenses and (iv) the management and liquidation of Foreclosure Property but is only required to pay such costs and expenses to the extent the Servicer reasonably believes such costs and expenses will increase Net Liquidation Proceeds on the related Loan. Each such amount so paid will constitute a "Servicing Advance." The Servicer may recover Servicing Advances (x) from the Borrowers to the extent permitted by the Loans, from Liquidation Proceeds realized upon the liquidation of the related Loan and (y) as provided in Sections 5.01(c)(1)(ii) or 5.01(c)(3)(i) hereof. In no case may the Servicer recover Servicing Advances from principal and interest payments on any Loan or from any amounts relating to any other Loan except as provided pursuant to Sections 5.01(c)(1)(ii) or 5.01(c)(3)(i) hereof.

**Section 4.15 Servicing Compensation.**

As compensation for its services hereunder, the Servicer shall, subject to Section 5.01(c), be entitled to withdraw from the Collection Account or to retain from interest payments on the Loans the amounts provided for as the Servicer's Servicing Fee. Additional servicing compensation in the form of assumption fees, non-sufficient fund fees, modification fees, substitution fees and other ancillary income, as provided in Section 4.12, and late payment charges or otherwise shall be retained by the Servicer to the extent not required to be deposited in the Collection Account. The Servicer shall be required to pay all expenses incurred by it in connection with its servicing activities hereunder and shall not be entitled to reimbursement therefor except as specifically provided for.

**Section 4.16 Notification of Adjustments.**

On each Adjustment Date, the Servicer shall make interest rate adjustments for each ARM in compliance with the requirements of the related Mortgage and Promissory Note. The Servicer shall execute and deliver the notices required by each Mortgage and Promissory Note regarding interest rate adjustments. The Servicer also shall provide timely notification to the Noteholders of all applicable data and information regarding such interest rate adjustments and the Servicer's methods of implementing such interest rate adjustments. Upon the discovery by the Servicer or the any Noteholder that the Servicer has failed to adjust a Loan Interest Rate or a Monthly Payment pursuant to the terms of the related Promissory Note and Mortgage, the Servicer shall immediately deposit in the Collection Account from its own funds the amount of any interest loss caused thereby without reimbursement therefor.

**Section 4.17 Statement as to Compliance.**

The Servicer will deliver to the Issuer, the Indenture Trustee and the Noteholder Agent not later than 90 days following the end of each fiscal year of the Servicer, which as of the Closing Date ends on April 30, an Officers' Certificate stating, as to each signatory thereof, that (i) a review of the activities of the Servicer during the preceding year and of performance under this Agreement has been made under such officers' supervision and (ii) to the best of such officers' knowledge, based on such review, the Servicer has fulfilled all of its obligations under this Agreement throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to such officer and the nature and status thereof.

**Section 4.18 Independent Public Accountants' Servicing Report.**

Not later than 90 days following the end of each fiscal year of the Servicer, the Servicer at its expense shall cause a firm of independent public accountants (which may also render other services to the Servicer) which is a member of the American Institute of Certified Public Accountants to furnish a statement to the Issuer, the Indenture Trustee and the Noteholder Agent to the effect that such firm has examined certain documents and records relating to the servicing of the Loans under this Agreement and that, on the basis of such examination conducted substantially in compliance with the Uniform Single Attestation Program for Mortgage Bankers, such firm confirms that such servicing has been conducted in compliance with such pooling and servicing agreements except for such significant exceptions or errors in records that, in the opinion of such firm, the Uniform Single Attestation Program for Mortgage Bankers requires it to report.

**Section 4.19 Access to Certain Documentation**

The Servicer shall provide to the Office of Thrift Supervision, the FDIC and any other federal or state banking or insurance regulatory authority that may exercise authority over the Issuer or any Noteholder access to the documentation regarding the Loans serviced by the Servicer required by applicable laws and regulations. Such access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the Servicer. In addition, access to the documentation will be provided to the Issuer or any Noteholder and any Person identified to the Servicer by the Issuer or any Noteholder without charge, upon reasonable request during normal business hours at the offices of the Servicer.

**Section 4.20 Reports and Returns to be Filed by the Servicer.**

The Servicer shall file information reports with respect to the receipt of mortgage interest received in a trade or business, reports of foreclosures and abandonments of any Mortgaged Property and

information returns relating to cancellation of indebtedness income with respect to any Mortgaged Property as required by Sections 6050H, 6050J and 6050P of the Code. Such reports shall be in form and substance sufficient to meet the reporting requirements imposed by such Sections 6050H, 6050J and 6050P of the Code.

**Section 4.21 Compliance with REMIC Provisions.**

If a REMIC election has been made with respect to the arrangement under which the Loans and Foreclosure Property are held, the Servicer shall not take any action, cause the REMIC to take any action or fail to take (or fail to cause to be taken) any action that, under the REMIC Provisions, if taken or not taken, as the case may be, could (i) endanger the status of the REMIC as a REMIC or (ii) result in the imposition of a tax upon the REMIC (including but not limited to the tax on “prohibited transactions” as defined in Section 860F(a)(2) of the Code and the tax on “contributions” to a REMIC set forth in Section 860G(d) of the Code) unless the Servicer has received an Opinion of Counsel (at the expense of the party seeking to take such action) to the effect that the contemplated action will not endanger such REMIC status or result in the imposition of any such tax.

**Section 4.22 Subservicing Agreements Between Servicer and Subservicers.**

The Servicer may enter into Subservicing Agreements for any servicing and administration of Loans with any institution which is in compliance with the laws of each state necessary to enable it to perform its obligations under such Subservicing Agreement and is an Eligible Servicer. The Servicer shall give notice to the Indenture Trustee and the Noteholder Agent of the appointment of any Subservicer which is not an Affiliate of the Servicer and shall furnish to the Indenture Trustee and the Noteholder Agent a copy of the Subservicing Agreement (along with any modifications thereto) between the Servicer and any Subservicer that is not an Affiliate of the Servicer. For purposes of this Agreement, the Servicer shall be deemed to have received payments on Loans when any Subservicer has received such payments. Any such Subservicing Agreement shall be consistent with and not violate the provisions of this Agreement.

**Section 4.23 Successor Subservicers.**

Upon notice to the Indenture Trustee and the Noteholder Agent (except if the Subservicer is an Affiliate of the Servicer), the Servicer shall be entitled to terminate any Subservicing Agreement in accordance with the terms and conditions of such Subservicing Agreement and to either itself directly service the related Loans or enter into a Subservicing Agreement with a successor Subservicer which qualifies under Section 4.22.

**Section 4.24 Liability of Servicer.**

The Servicer shall not be relieved of its obligations under this Agreement notwithstanding any Subservicing Agreement or any of the provisions of this Agreement relating to agreements or arrangements between the Servicer and a Subservicer or otherwise, and the Servicer shall be obligated to the same extent and under the same terms and conditions as if it alone were servicing and administering the Loans. The Servicer shall be entitled to enter into any agreement with a Subservicer for indemnification of the Servicer by such Subservicer and nothing contained in such Subservicing Agreement shall be deemed to limit or modify this Agreement. The Trust shall not indemnify the Servicer for any losses due to the Servicer’s negligence.



**Section 4.25 No Contractual Relationship Between Subservicer and Indenture Trustee or the Securityholders.**

Any Subservicing Agreement and any other transactions or services relating to the Loans involving a Subservicer shall be deemed to be between the Subservicer and the Servicer alone and no party hereto nor the Securityholders shall be deemed parties thereto and shall have no claims, rights, obligations, duties or liabilities with respect to any Subservicer except as set forth in Section 4.26.

**Section 4.26 Assumption or Termination of Subservicing Agreement by Successor Servicer.**

In connection with the assumption of the responsibilities, duties and liabilities and of the authority, power and rights of the Servicer hereunder by a successor Servicer pursuant to Section 9.02, it is understood and agreed that the Servicer's rights and obligations under any Subservicing Agreement then in force between the servicer and a Subservicer may be assumed or terminated by the successor Servicer at its option without the payment of any fee (notwithstanding any contrary provision in any Subservicing Agreement).

The Servicer shall, upon request of the successor Servicer, but at the expense of the Servicer, deliver to the assuming party documents and records relating to each Subservicing Agreement and an accounting of amounts collected and held by it and otherwise use its best reasonable efforts to effect the orderly and efficient transfer of the Subservicing Agreements to the assuming party, without the payment of any fee by the successor Servicer, notwithstanding any contrary provision in any Subservicing Agreement.

**Section 4.27 No Predatory Practices**

The Servicer shall not engage in any practices or activity, with respect to any of the Loans, that is predatory, abusive, deceptive or otherwise wrongful under an applicable statute, regulation or ordinance or that is otherwise actionable.

**EXHIBIT H**

**CAPITAL ADEQUACY TEST**

\*To calculate the Total Required Capital for each of the Loan Originator and the Servicer, for each line item asset below, multiply the HRB% set forth opposite such asset by the applicable Balance Sheet Amount (set forth as a line item for such asset on the most recent consolidated balance sheet for the Loan Originator and the Servicer) to determine Required Capital, and the sum of all Required Capital results shall equal the Total Required Capital (HRB% x Balance Sheet Amount = Required Capital).

<u>Asset</u>	<u>HRB%</u>	<u>Balance Sheet Amount</u>	<u>Required Capital</u>
Unrestricted Cash and Equivalents	0%		
Restricted Cash	0%		
Loans Held for Sale	9%		
Servicing Advances	10%		
Beneficial Interests in trusts	10%		
Subprime Mortgage NIM Residual Interest	60%		
Real Estate Held for Sale	10%		
Furniture and Equipment	0%		
Mortgage Servicing Rights	25%		
Prepaid Expenses and Other Assets	10%		
Accrued interest receivable	10%		
Receivable from H&R Block	0%		
Intangibles and goodwill	100%		
Deferred Tax Assets	10%		
Derivative Assets	10%		
<b>Total Required Capital</b>			

**EXHIBIT I**

**QUARTERLY COMPLIANCE CERTIFICATE**

I, \_\_\_\_\_, \_\_\_\_\_ of [OPTION ONE MORTGAGE CORPORATION (the "Loan Originator")] [OPTION ONE MORTGAGE CORPORATION (the "Servicer")], in accordance with that certain Sale and Servicing Agreement ("Sale and Servicing Agreement"), dated as of December 30, 2005 by and among Option One Loan Warehouse Corporation, as the Depositor, Option One Owner Trust 2005-9, as the Issuer, Option One Mortgage Corporation, as the Servicer and the Loan Originator and Wells Fargo Bank, N.A., as the Indenture Trustee on behalf of the Noteholders, do hereby certify that:

- i. Each of the Loan Originator, Depositor and Servicer is in compliance with all provisions and terms of the Sale and Servicing Agreement and all other Loan Documents to which each is a party;
- ii. [The Loan Originator] [The Servicer], at all times during the preceding calendar quarter, has maintained a ratio of Tangible Net Worth to Total Required Capital (calculated in accordance with Exhibit H to the Sale and Servicing Agreement) of greater than or equal to 1:1;
- iii. [The Loan Originator] [The Servicer], at all times during the preceding calendar quarter, has maintained a maximum non-warehouse leverage ratio (calculated pursuant to Section 7.02(c) of the Sale and Servicing Agreement) of less than or equal to 1:2;
- iv. [The Loan Originator] [The Servicer], at all times during the preceding calendar quarter, has maintained a "minimum liquidity facility" (as defined in Section 7.02(d) of the Sale and Servicing Agreement) of not less than \$150 million.
- v. [The Loan Originator] [The Servicer] has not permitted "Net Income" (defined and determined in accordance with GAAP), for the current quarter, together with the preceding, consecutive three fiscal quarters, to be less than \$1.

Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Sale and Servicing Agreement.

IN WITNESS WHEREOF, I have signed this certificate.

Date: \_\_\_\_\_, 20\_\_

OPTION ONE MORTGAGE CORPORATION,  
as [Loan Originator] [Servicer]

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

[SEAL]

I, \_\_\_\_\_, \_\_\_\_\_ of the [Loan Originator] [Servicer], do hereby certify that \_\_\_\_\_ is the duly elected or appointed, qualified and acting \_\_\_\_\_ of the [Loan Originator] [Servicer], and the signature set forth above is the genuine signature of such officer on the date hereof.

**NOTE PURCHASE AGREEMENT**

**among**

**OPTION ONE OWNER TRUST 2005-9  
as Issuer**

**and**

**OPTION ONE LOAN WAREHOUSE CORPORATION  
as Depositor**

**DB STRUCTURED PRODUCTS, INC.,  
as Noteholder Agent**

**and**

**DB STRUCTURED PRODUCTS, INC.,  
GEMINI SECURITIZATION CORP., LLC  
ASPEN FUNDING CORP.  
and  
NEWPORT FUNDING CORP.  
as Purchasers**

**DATED AS OF DECEMBER 30, 2005**

**OPTION ONE OWNER TRUST 2005-9  
MORTGAGE-BACKED NOTES**

---

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 10.1 Certain Defined Terms	1
Section 1.02 Other Definitional Provisions	2
ARTICLE II COMMITMENT; CLOSING AND PURCHASES OF ADDITIONAL NOTE PRINCIPAL BALANCES	3
Section 2.01 Commitment	3
Section 2.02 Closing	3
ARTICLE III TRANSFER DATES	3
Section 3.01 Transfer Dates	3
ARTICLE IV CONDITIONS PRECEDENT TO EFFECTIVENESS OF COMMITMENT	5
Section 4.01 Subject to Conditions Precedent	5
ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE ISSUER AND THE DEPOSITOR	7
Section 5.01 Issuer	7
Section 5.02 Securities Act	9
Section 5.03 No Fee	9
Section 5.04 Information	10
Section 5.05 The Purchased Notes	10
Section 5.06 Use of Proceeds	10
Section 5.07 The Depositor	10
Section 5.08 Taxes, etc.	10
Section 5.09 Financial Condition	10
ARTICLE VI REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PURCHASERS	10
Section 6.01 Organization	10
Section 6.02 Authority, etc.	10
Section 6.03 Securities Act	11
Section 6.04 Conflicts With Law	11
Section 6.05 Conflicts with Agreements, etc.	11
ARTICLE VII COVENANTS OF THE ISSUER AND THE DEPOSITOR	12
Section 7.01 Information from the Issuer	12
Section 7.02 Access to Information	12
Section 7.03 Ownership and Security Interests; Further Assurances	12
Section 7.04 Covenants	13
Section 7.05 Amendments	13
Section 7.06 With Respect to the Exempt Status of the Purchased Notes	13

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE VIII ADDITIONAL COVENANTS	13
Section 8.01 Legal Conditions as to Closing	13
Section 8.02 Expenses	13
Section 8.03 Mutual Obligations	14
Section 8.04 Restrictions on Transfer	14
Section 8.05 Reserved	14
Section 8.06 Information Provided by the Noteholder Agent	14
ARTICLE IX INDEMNIFICATION	14
Section 9.01 Indemnification of Purchasers	14
Section 9.02 Procedure and Defense	14
ARTICLE X MISCELLANEOUS	15
Section 10.01 Amendments	15
Section 10.02 Notices	15
Section 10.03 No Waiver, Remedies	15
Section 10.04 Binding Effect; Assignability	15
Section 10.05 Provision of Documents and Information	16
Section 10.06 Governing Law; Jurisdiction	16
Section 10.07 No Proceedings	16
Section 10.08 Execution in Counterparts	16
Section 10.09 No Recourse – Purchasers and Depositor	17
Section 10.10 Survival	17
Section 10.11 Waiver of Set-Off	17
Section 10.12 Tax Characterization	17
Section 10.13 Conflicts	18
Section 10.14 Service of Process	18
Section 10.15 Limitation of Liability	18
Schedule I — Information for Notices	

## NOTE PURCHASE AGREEMENT

**NOTE PURCHASE AGREEMENT** dated as of December 30, 2005 (the "Note Purchase Agreement"), among **OPTION ONE OWNER TRUST 2005-9** (the "Issuer"), **OPTION ONE LOAN WAREHOUSE CORPORATION** (the "Depositor"), **DB STRUCTURED PRODUCTS, INC.** (the "Noteholder Agent" and "Purchaser"), **GEMINI SECURITIZATION CORP., LLC, ASPEN FUNDING CORP.** and **NEWPORT FUNDING CORP.** (the "Purchasers").

The parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

**SECTION 1.01 Certain Defined Terms.** Capitalized terms used herein without definition shall have the meanings set forth in the Indenture and the Sale and Servicing Agreement (as defined below). Additionally, the following terms shall have the following meanings:

"Closing" shall have the meaning set forth in Section 2.02.

"Closing Date" shall have the meaning set forth in Section 2.02.

"Commitment" means the commitment of the Committed Purchaser to purchase Additional Note Principal Balances up to the Maximum Committed Note Principal Balance pursuant to Section 2.01.

"Committed Purchaser" means DB Structured Products, Inc. and its permitted successors and assigns or an Affiliate thereof identified in writing by DB Structured Products, Inc. to the Indenture Trustee and the other parties hereto, subject to the consent of the Loan Originator, which may not be unreasonably withheld or delayed.

"Conduit Purchaser" means Gemini Securitization Corp., LLC, Aspen Funding Corp. and/or Newport Funding Corp., as the case may be.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Governmental Actions" means any and all consents, approvals, permits, orders, authorizations, waivers, exceptions, variances, exemptions or licenses of, or registrations, declarations or filings with, any Governmental Authority required under any Governmental Rules.

"Governmental Authority" means the United States of America, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the applicable Person.

"Governmental Rules" means any and all laws, statutes, codes, rules, regulations, ordinances, orders, writs, decrees and injunctions, of any Governmental Authority and any and all legally binding conditions, standards, prohibitions, requirements and judgments of any Governmental Authority.

"Indemnified Party" means each of the Committed Purchaser, the Conduit Purchasers and any of their officers, directors, employees, agents, representatives, assignees and Affiliates and any Person who controls any of the Purchasers or their Affiliates within the meaning of Section 15 of the

---

Securities Act or Section 20 of the Exchange Act and any provider of liquidity or credit enhancement to the Conduit Purchaser.

“Indenture” means the Indenture dated as of December 30, 2005 between the Issuer as Issuer and Wells Fargo Bank, N.A. as Indenture Trustee.

“Investment Company Act” shall have the meaning provided in Section 5.01(i).

“Lien” means, with respect to any asset, (a) any mortgage, lien, pledge, charge, security interest, hypothecation, option or encumbrance of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, financing lease or other title retention agreement relating to such asset.

“Loan Originator” means Option One Mortgage Corporation, a California corporation.

“Maximum Committed Note Principal Balance” has the meaning set forth in the Pricing Letter.

“Maximum Note Principal Balance” has the meaning set forth in the Pricing Letter.

“Pricing Letter” means the Pricing Letter among the Issuer, the Depositor, Option One and the Indenture Trustee, dated December 30, 2005 and any amendments thereto.

“Purchased Notes” means the Option One Owner Trust 2005-9 Mortgage-Backed Notes issued by the Issuer pursuant to the Indenture.

“Purchasers” means the Committed Purchaser and the Conduit Purchasers and their permitted successors and assigns.

“Sale and Servicing Agreement” means the Sale and Servicing Agreement dated as of , 2005, among the Issuer, the Depositor, the Loan Originator, the Servicer and Wells Fargo Bank, N.A. as the Indenture Trustee, as the same may be amended, modified or supplemented from time to time.

“Servicer” means Option One Mortgage Corporation or its permitted successors and assigns.

#### **SECTION 1.02 Other Definitional Provisions.**

(a) All terms defined in this Note Purchase Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(b) As used herein and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in Section 1.01, and accounting terms partially defined in Section 1.01 to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the definitions of accounting terms herein are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained herein shall control.

(c) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Note Purchase Agreement shall refer to this Note Purchase Agreement as a whole and not to any particular provision of this Note Purchase Agreement; and Section, subsection, Schedule and Exhibit



references contained in this Note Purchase Agreement are references to Sections, subsections, schedules and Exhibits in or to this Note Purchase Agreement unless otherwise specified.

## ARTICLE II

### COMMITMENT; CLOSING AND PURCHASES OF ADDITIONAL NOTE PRINCIPAL BALANCES

#### SECTION 2.01 Commitment.

(a) (i) At any time during the Revolving Period at least two (2) Business Days in the case of a Loan that is not a Wet Funded Loan, or at least one (1) Business Day, in the case of a Wet Funded Loan, prior to a proposed Transfer Date, to the extent that the aggregate outstanding Note Principal Balance (after giving effect to the proposed purchase) is less than the Maximum Note Principal Balance, and subject to the terms and conditions hereof and in accordance with the other Basic Documents, the Issuer may request that the Purchasers purchase Additional Note Principal Balances (each such request, a "Purchase Request"). On the identified Transfer Date, the Committed Purchaser agrees to purchase the Additional Note Principal Balance requested in the Purchase Request to the extent that the aggregate outstanding Note Principal Balance (after giving effect to the proposed purchase) is less than the Maximum Committed Note Principal Balance, subject to the terms and conditions and in reliance upon the covenants, representations and warranties set forth herein and in the other Basic Documents; provided however, that the portion of such Additional Note Principal Balance required to be purchased by the Committed Purchaser shall be reduced by the amount of such Additional Note Principal Balance that any Conduit Purchaser purchases pursuant to Section 2.01(a)(ii).

(ii) In the event that a Conduit Purchaser elects, in its sole discretion, to purchase any Additional Note Principal Balance with respect to any Purchase Request hereunder, such Conduit Purchaser shall purchase such related Additional Note Principal Balance hereunder and the amount of Additional Note Principal Balance to be purchased by the Committed Purchaser shall be reduced by such amount.

(b) Reserved.

**SECTION 2.02 Closing.** The closing (the "Closing") of the execution of the Basic Documents and issuance of the Notes shall take place at 10:00 a.m. at the offices of Thacher Proffitt & Wood, Two World Financial Center, New York, New York 10281 on December 30, 2005, or if the conditions to closing set forth in Article IV of this Note Purchase Agreement shall not have been satisfied or waived by such date, as soon as practicable after such conditions shall have been satisfied or waived, or at such other time, date and place as the parties shall agree upon (the date of the Closing being referred to herein as the "Closing Date").

## ARTICLE III

### TRANSFER DATES

#### SECTION 3.01 Transfer Dates.

(a) Subject to the conditions and terms set forth herein and in Section 2.06 of the Sale and Servicing Agreement with respect to each Transfer Date, the Issuer may request, and the Conduit Purchasers may, and the Committed Purchaser shall (up to the Maximum Committed Note Principal Balance), purchase Additional Note Principal Balances (up to the Maximum Note Principal Balance)

from the Issuer from time to time in accordance with, and upon the satisfaction, as of the applicable Transfer Date, of each of the following additional conditions:

(i) With respect to each Transfer Date, each condition set forth in Section 2.06 of the Sale and Servicing Agreement shall have been satisfied;

(ii) Each of the representations and warranties of the Issuer, the Servicer, the Loan Originator and the Depositor made in the Basic Documents shall be true and correct in all material respects as of such date (except to the extent they expressly relate to an earlier or later time);

(iii) The Issuer, the Servicer, the Loan Originator and the Depositor shall be in material compliance with all of their respective covenants contained in the Basic Documents and the Purchased Notes;

(iv) No Event of Default and no Default shall have occurred or shall be occurring;

(v) With respect to each Transfer Date, the Purchasers and the Noteholder Agent shall have received evidence reasonably satisfactory to them of the completion of all recordings, registrations, and filings as may be necessary or, in the reasonable opinion of the Purchasers, desirable to perfect or evidence the assignments required to be effected on such Transfer Date in accordance with the Sale and Servicing Agreement and the Loan Purchase Agreement including, without limitation, the assignment of the Loans and the proceeds thereof;

(vi) Each Loan (i) has been originated in accordance with the Underwriting Guidelines and (ii) is not “abusive” or “predatory” as defined in or in violation of any applicable statutes, regulations, ordinances or in any other way that would be otherwise actionable by the Borrower or any Governmental Authority;

(vii) With respect to the first Transfer Date, each of the Purchasers shall have completed their initial due diligence review with respect to the Loans and the Loan Originator and determined, in such Purchaser’s sole discretion, that both the Loans and the origination, servicing and business practices of the Loan Originator are reasonably acceptable to such Purchaser;

(viii) With respect to the first Transfer Date, the Purchasers’ signature pages to the Master Disposition Confirmation Agreement, together with the revised Schedule I, Schedule II and Exhibit E thereto, each indicating the addition of the Purchasers as parties thereto, shall have been delivered to each of the other parties to the Master Disposition Confirmation Agreement; and

(ix) The Purchasers shall have received, in form and substance reasonably satisfactory to the Purchasers, an Officer’s Certificate from the Loan Originator, dated the Closing Date, certifying to the satisfaction of the conditions set forth in the preceding paragraphs (i), (ii), (iii), (iv), (vi) and (viii).

(b) The price paid by the Purchasers on each Transfer Date for the Additional Note Principal Balance purchased on such Transfer Date shall be equal to the amount of such Additional Note Principal Balance and shall be remitted not later than 3:30 p.m. (New York City time) on the Transfer Date by wire transfer of immediately available funds to the Advance Account.

(c) Each Purchaser shall record on the schedule attached to the Purchased Notes, the date and amount of any Additional Note Principal Balance purchased by it; provided, that failure to make such recordation on such schedule or any error in such schedule shall not adversely affect any Purchaser's rights with respect to its Note Principal Balance and any right to receive interest payments in respect of the Note Principal Balance actually held. Absent manifest error, the Note Principal Balance of the Purchased Notes as set forth in each Purchaser's records shall be binding upon the parties hereto, notwithstanding any notation or record made or kept by any other party hereto.

(d) Each Purchaser shall determine in its reasonable discretion whether each of the above conditions have been met in accordance with the Sale and Servicing Agreement and its determination shall be binding on the parties hereto.

#### ARTICLE IV

##### CONDITIONS PRECEDENT TO EFFECTIVENESS OF COMMITMENT

**SECTION 4.01 Subject to Conditions Precedent.** The effectiveness of the Commitment hereunder is subject to the satisfaction at the time of the Closing of the following conditions (any or all of which may be waived by the Committed Purchaser in its sole discretion):

(a) **Performance by the Issuer, the Depositor, the Servicer and the Loan Originator.** All the terms, covenants, agreements and conditions of the Basic Documents to be complied with and performed by the Issuer, the Depositor, the Servicer and the Loan Originator on or before the Closing Date shall have been complied with and performed in all material respects.

(b) **Representations and Warranties; Financial Covenants.** Each of the representations and warranties of the Issuer, the Depositor, the Servicer and the Loan Originator made in the Basic Documents shall be true and correct in all material respects as of the Closing Date (except to the extent they expressly relate to an earlier or later time).

(c) **Officer's Certificate.** The Purchasers shall have received, in form and substance reasonably satisfactory to the Purchasers, an Officer's Certificate from the Loan Originator, the Depositor and the Servicer and a certificate of an Authorized Officer of the Issuer, dated the Closing Date, certifying to the satisfaction of the conditions set forth in the preceding paragraphs (a) and (b).

(d) **Opinions of Counsel to the Issuer, the Loan Originator, the Servicer and the Depositor.** Counsel to the Issuer, the Loan Originator, the Servicer and the Depositor shall have delivered to the Purchasers favorable opinions, dated as of the Closing Date and reasonably satisfactory in form and substance to the Purchasers and their counsel. In addition to the foregoing, the Loan Originator shall have caused its counsel to deliver to the Purchasers a favorable opinion to the effect that the Issuer will not be treated as an association (or publicly traded partnership) taxable as a corporation or as a taxable mortgage pool, for federal income tax purposes.

(e) **Opinions of Counsel to the Indenture Trustee.** Counsel to the Indenture Trustee shall have delivered to the Purchasers a favorable opinion, dated as of the Closing Date and reasonably satisfactory in form and substance to the Purchasers and their counsel.

(f) **Opinions of Counsel to the Owner Trustee.** Delaware counsel to the Owner Trustee of the Issuer and the Depositor shall have delivered to the Purchasers favorable opinions regarding the formation, existence and standing of the Issuer and the Depositor and of the Issuer's and the

Depositor's execution, authorization and delivery of each of the Basic Documents to which it is a party and such other matters as the Purchasers may reasonably request, dated as of the Closing Date and reasonably satisfactory in form and substance to the Purchasers and their counsel.

(g) **Filings and Recordations.** Each Purchaser shall have received evidence reasonably satisfactory to it of (i) the completion of all recordings, registrations, and filings as may be necessary or, in the reasonable opinion of the Purchasers, desirable to perfect or evidence the assignment by the Loan Originator to the Depositor of the Loan Originator's ownership interest in the Trust Estate including, without limitation, the Loans conveyed pursuant to the Loan Purchase Agreement and the proceeds thereof, (ii) the completion of all recordings, registrations and filings as may be necessary or, in the reasonable opinion of the Purchasers, desirable to perfect or evidence the assignment by the Depositor to the Issuer of the Depositor's ownership interest in the Trust Estate including, without limitation, the Loans and the proceeds thereof and (iii) the completion of all recordings, registrations, and filings as may be necessary or, in the reasonable opinion of the Purchasers, desirable to perfect or evidence the grant of a first priority perfected security interest in the Issuer's ownership interest in the Trust Estate including, without limitation, the Loans, in favor of the Indenture Trustee, subject to no Liens prior to the Lien of the Indenture.

(h) **Documents.** The Purchasers shall have received a duly executed counterpart of each of the Basic Documents, in form reasonably acceptable to the Purchasers, the Purchased Notes and each and every document or certification delivered by any party in connection with any of the Basic Documents or the Purchased Notes, and each such document shall be in full force and effect.

(i) **Due Diligence.** Each Purchaser shall have completed its due diligence review with respect to the Loans, as provided for in Section 11.15 of the Sale and Servicing Agreement.

(j) **Actions or Proceedings.** No action, suit, proceeding or investigation by or before any Governmental Authority shall have been instituted to restrain or prohibit the consummation of, or to invalidate, any of the transactions contemplated by the Basic Documents, the Purchased Notes and the documents related thereto in any material respect.

(k) **Approvals and Consents.** All Governmental Actions of all Governmental Authorities required with respect to the transactions contemplated by the Basic Documents, the Purchased Notes and the documents related thereto shall have been obtained or made.

(l) **Accounts.** Each Purchaser shall have received evidence reasonably satisfactory to it that each Trust Account has each been established in accordance with the terms of the Sale and Servicing Agreement.

(m) **Fees and Expenses.** The fees and expenses payable by the Issuer and the Depositor pursuant to Section 8.02(b) shall have been paid.

(n) **Other Documents.** The Issuer, the Loan Originator, the Depositor and the Servicer shall have furnished to the Purchasers such other opinions, information, certificates and documents as the Purchasers may reasonably request.

(o) **Proceedings in Contemplation of Sale of Purchased Notes.** All actions and proceedings undertaken by the Issuer, the Loan Originator, the Depositor and the Servicer in connection with the issuance and sale of the Purchased Notes as herein contemplated shall be reasonably satisfactory in all respects to the Purchasers and their counsel.

(p) **Financial Covenants.** The Loan Originator and the Servicer shall be in compliance with the financial covenants set forth in Section 7.02 of the Sale and Servicing Agreement.

(q) **Underwriting Guidelines.** The Purchasers shall have received a copy of the current Underwriting Guidelines.

(r) **Fees.** The Loan Originator shall have paid all fees, costs and expenses of the Purchasers required, by the terms of the Basic Documents, to be paid by the Loan Originator on or before the Closing Date.

If any condition specified in this Section 4.01 shall not have been fulfilled when and as required to be fulfilled through no fault of the Purchasers, this Note Purchase Agreement may be terminated by the Purchasers by notice to the Loan Originator at any time at or prior to the Closing Date, and the Purchasers shall incur no liability as a result of such termination.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES OF**  
**THE ISSUER AND THE DEPOSITOR**

The Issuer and the Depositor hereby jointly and severally make the following representations and warranties to the Purchasers, as of the Closing Date, and as of each Transfer Date and the Purchasers shall be deemed to have relied on such representations and warranties in making (or committing to make) purchases of Additional Note Principal Balances on each Transfer Date:

**SECTION 5.01 Issuer.**

(a) The Issuer has been duly organized and is validly existing and in good standing as a statutory trust under the laws of the State of Delaware, with requisite trust power and authority to own its properties and to transact the business in which it is now engaged, and is duly qualified to do business and is in good standing (or is exempt from such requirements) in each State of the United States where the nature of its business requires it to be so qualified and the failure to be so qualified and in good standing would, individually or in the aggregate, have a material adverse effect on (a) the interests of the Purchasers, (b) the legality, validity or enforceability of this Note Purchase Agreement or any other Basic Document or the rights or remedies of the Purchasers or the Indenture Trustee hereunder or thereunder, (c) the ability of the Issuer to perform its obligations under this Note Purchase Agreement or any other Basic Document, (d) the Indenture Trustee's security interest in the Collateral generally or in any Loan or other item of Collateral or (e) the enforceability or recoverability of any of the Loans (a "Material Adverse Effect").

(b) The issuance, sale, assignment and conveyance of the Purchased Notes and the Additional Note Principal Balances, the performance of the Issuer's obligations under each Basic Document to which it is a party and the consummation of the transactions therein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than any Lien created by the Basic Documents), charge or encumbrance upon any of the property or assets of the Issuer or any of its Affiliates pursuant to the terms of, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it or any of its Affiliates is bound or to which any of its property or assets is subject, nor will such action result in any violation of the provisions of its organizational documents or any Governmental Rule applicable to the Issuer, in each case which could be expected to have a Material Adverse Effect.

(c) No Governmental Action which has not been obtained is required by or with respect to the Issuer in connection with the execution and delivery of the Purchased Notes. No Governmental Action which has not been obtained is required by or with respect to the Issuer in connection with the execution and delivery of any of the Basic Documents to which the Issuer is a party or the consummation by the Issuer of the transactions contemplated thereby except for any requirements under state securities or “blue sky” laws in connection with any transfer of the Purchased Notes.

(d) The Issuer possesses all material licenses, certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct the business now operated by it, and has not received any notice of proceedings relating to the revocation or modification of any such license, certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would materially and adversely affect its condition, financial or otherwise, or its earnings, business affairs or business prospects.

(e) Each of the Basic Documents to which the Issuer is a party has been duly authorized, executed and delivered by the Issuer and is a valid and legally binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, subject to enforcement of bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors’ rights and to general principles of equity.

(f) The execution, delivery and performance by the Issuer of each of its obligations under each of the Basic Documents to which it is a party will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, any agreement or instrument to which the Issuer is a party or by which the Issuer is bound or to which any of its properties are subject or of any statute, order or regulation applicable to the Issuer of any court, regulatory body, administrative agency or governmental body having jurisdiction over the Issuer or any of its properties, in each case which could be expected to have a Material Adverse Effect.

(g) The Issuer is not in violation of its organizational documents or in default under any agreement, indenture or instrument which would have a Material Adverse Effect. The Issuer is not a party to, bound by or in breach or violation of any indenture or other agreement or instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over the Issuer that could, individually or in the aggregate, be expected to have a Material Adverse Effect.

(h) There are no actions or proceedings against, or investigations of, the Issuer pending, or, to the knowledge of the Issuer threatened, before any Governmental Authority, court, arbitrator, administrative agency or other tribunal (i) asserting the invalidity of any of the Basic Documents, or (ii) seeking to prevent the issuance of the Purchased Notes or the consummation of any of the transactions contemplated by the Basic Documents or the Purchased Notes, or (iii) that, if adversely determined, could, individually or in the aggregate, be expected to have a Material Adverse Effect.

(i) Neither this Note Purchase Agreement, the other Basic Documents nor any transaction contemplated herein or therein shall result in a violation of, or give rise to an obligation on the part of either Purchaser to register, file or give notice under, Regulations T, U or X of the Federal Reserve Board or any other regulation issued by the Federal Reserve Board pursuant to the Exchange Act, in each case as in effect on the Closing Date.

(j) The Issuer has all necessary power and authority to execute and deliver the Purchased Notes. Each Purchased Note has been duly and validly authorized by the Issuer and, from and after the date on which such Purchased Note is executed by the Issuer and authenticated by the Indenture

Trustee in accordance with the terms of the Indenture and delivered to and paid for by the applicable Purchaser in accordance with the terms of this Note Purchase Agreement, shall be validly issued and outstanding and shall constitute a valid and legally binding obligation of the Issuer that is entitled to the benefits of the Indenture and enforceable against the Issuer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity, regardless of whether enforceability is considered in a proceeding in equity or at law.

(k) The Issuer is not, and neither the issuance and sale of the Purchased Notes to the Purchasers nor the activities of the Issuer pursuant to the Basic Documents, shall render the Issuer an "investment company" or under the "control" of an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended (the "Investment Company Act").

(l) It is not necessary to qualify the Indenture under the Trust Indenture Act of 1939, as amended.

(m) The Issuer is solvent and has adequate capital for its business and undertakings.

(n) The chief executive offices of the Issuer are located at Option One Owner Trust 2005-9, c/o Wilmington Trust Company, as Owner Trustee, One Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, or, with the consent of the Purchasers, such other address as shall be designated by the Issuer in a written notice to the other parties hereto.

(o) There are no contracts, agreements or understandings between the Issuer and any Person granting such Person the right to require the filing at any time of a registration statement under the Act with respect to the Purchased Notes.

(p) No Default or Event of Default exists.

**SECTION 5.02 Securities Act.** Assuming the accuracy of the representations and warranties of and compliance with the covenants of the Purchasers, contained herein, the sale of the Purchased Notes and the sale of Additional Note Principal Balances pursuant to this Note Purchase Agreement are each exempt from the registration and prospectus delivery requirements of the Act. In the case of the offer or sale of the Purchased Notes, no form of general solicitation or general advertising was used by the Issuer, any Affiliates of the Issuer or any person acting on its or their behalf, including, but not limited to, advertisements, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. Neither the Issuer, any Affiliates of the Issuer nor any Person acting on its or their behalf has offered or sold, nor will the Issuer, any Affiliates of the Issuer or any Person acting on its behalf offer or sell directly or indirectly, the Purchased Notes or any other security in any manner that, assuming the accuracy of the representations and warranties and the performance of the covenants given by the Purchasers and compliance with the applicable provisions of the Indenture with respect to each transfer of the Purchased Notes, would render the issuance and sale of the Purchased Notes as contemplated hereby a violation of Section 5 of the Securities Act or the registration or qualification requirements of any state securities laws, nor has the Issuer authorized, nor will it authorize, any Person to act in such manner.

**SECTION 5.03 No Fee.** Neither the Issuer, nor the Depositor, nor any of their Affiliates has paid or agreed to pay to any Person any compensation for soliciting another to purchase the Purchased Notes.

**SECTION 5.04 Information.** The information provided pursuant to Section 7.01(a) hereof will, at the date thereof, be true and correct in all material respects.

**SECTION 5.05 The Purchased Notes.** The Purchased Notes have been duly and validly authorized, and, when executed and authenticated in accordance with the terms of the Indenture, and delivered to and paid for in accordance with this Note Purchase Agreement, will be duly and validly issued and outstanding and will be entitled to the benefits of the Indenture.

**SECTION 5.06 Use of Proceeds.** No proceeds of a purchase hereunder will be used (i) for a purpose that violates or would be inconsistent with Regulations T, U or X promulgated by the Board of Governors of the Federal Reserve System from time to time or (ii) to acquire any security in any transaction in violation of Section 13 or 14 of the Exchange Act.

**SECTION 5.07 The Depositor.** The Depositor hereby makes to the Purchasers each of the representations, warranties and covenants set forth in Section 3.01 of the Sale and Servicing Agreement as of the Closing Date and as of each Transfer Date (except to the extent that any such representation, warranty or covenant is expressly made as of another date).

**SECTION 5.08 Taxes, etc.** Any taxes, fees and other charges of Governmental Authorities applicable to the Issuer and the Depositor, except for franchise or income taxes, in connection with the execution, delivery and performance by the Issuer and the Depositor of each Basic Document to which they are parties, the issuance of the Purchased Notes or otherwise applicable to the Issuer or the Depositor in connection with the Trust Estate have been paid or will be paid by the Issuer or the Depositor, as applicable, at or prior to the Closing Date or Transfer Date, to the extent then due.

**SECTION 5.09 Financial Condition.** On the date hereof and on each Transfer Date, neither the Issuer nor the Depositor is or will be insolvent or the subject of any voluntary or involuntary bankruptcy proceeding.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PURCHASERS

Each Purchaser hereby makes the following representations and warranties as to itself as of the Closing Date to the Issuer and the Depositor on which the same are relying in entering into this Note Purchase Agreement.

**SECTION 6.01 Organization.** Each Purchaser has been duly organized and is validly existing and in good standing under the laws of the jurisdiction of its organization with power and authority to own its properties and to transact the business in which it is now engaged.

**SECTION 6.02 Authority, etc.** Each Purchaser has all requisite power and authority to enter into and perform its obligations under this Note Purchase Agreement and to consummate the transactions herein contemplated. The execution and delivery by the Purchasers of this Note Purchase Agreement and the consummation by the Purchasers of the transactions contemplated hereby have been duly and validly authorized by all necessary organizational action on the part of each Purchaser. This Note Purchase Agreement has been duly and validly executed and delivered by the Purchasers and constitutes a legal, valid and binding obligation of each Purchaser, enforceable against each Purchaser in accordance with its terms, subject to enforcement of bankruptcy, reorganization, insolvency, moratorium and other similar laws of general applicability relating to or affecting creditors' rights and to general principles of



equity. Neither the execution and delivery by the Purchasers of this Note Purchase Agreement nor the consummation by the Purchasers of any of the transactions contemplated hereby, nor the fulfillment by the Purchasers of the terms hereof, will conflict with, or violate, result in a breach of or constitute a default under any term or provision of such Purchaser's organizational documents or any Governmental Rule applicable to such Purchaser.

**SECTION 6.03 Securities Act.** The Purchasers hereby represents and warrants to the Issuer and the Depositor as of the date of this Note Purchase Agreement, as follows:

(a) Each Purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the purchase of an interest in the Note. Each Purchaser (i) is (A) a "qualified institutional buyer" as defined under Rule 144A promulgated under the Securities Act of 1933, as amended (the "1933 Act"), acting for its own account or the accounts of other "qualified institutional buyers" as defined under Rule 144A, or (B) an "accredited investor" within the meaning of Regulation D promulgated under the 1933 Act, and (ii) is aware that the Issuer intends to rely on the exemption from registration requirements under the 1933 Act provided by Rule 144A or Regulation D, as applicable.

(b) Each Purchaser understands that neither the Note nor interests in the Note have been registered or qualified under the 1933 Act, nor under the securities laws of any state, and therefore neither the Note nor interests in the Note can be resold unless they are registered or qualified thereunder or unless an exemption from registration or qualification is available.

(c) It is the intention of each Purchaser to acquire interests in the Note (a) for investment for its own account, or (b) for resale to "qualified institutional buyers" in transactions under Rule 144A, and not in any event with the view to, or for resale in connection with, any distribution thereof. The Purchasers understand that the Note and interests therein have not been registered under the 1933 Act by reason of a specific exemption from the registration provisions of the 1933 Act which depends upon, among other things, the bona fide nature of each Purchaser's investment intent (or intent to resell only in Rule 144A transactions) as expressed herein.

**SECTION 6.04 Conflicts With Law.** The execution, delivery and performance by each Purchaser of its obligations under this Note Purchase Agreement will not result in a breach or violation of any of the terms or provisions of, or constitute a default under, any agreement or instrument to which each such Purchaser is a party or by which each such Purchaser is bound or of any statute, order or regulation applicable to each such Purchaser of any court, regulatory body, administrative agency or governmental body having jurisdiction over each such Purchaser, in each case which could be expected to have a material adverse effect on the transactions contemplated therein.

**SECTION 6.05 Conflicts With Agreements, etc.** Each Purchaser is not in violation of its organizational documents or in default under any agreement, indenture or instrument the effect of which violation or default would be materially adverse to the Purchaser in the performance of its obligations or duties under any of the Basic Documents to which it is a party. Each Purchaser is not a party to, bound by or in breach or violation of any indenture or other agreement or instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over each such Purchaser that materially and adversely affects, the ability of each Purchaser to perform its obligations under this Note Purchase Agreement.

## ARTICLE VII

### COVENANTS OF THE ISSUER AND THE DEPOSITOR

**SECTION 7.01 Information from the Issuer.** So long as the Purchased Notes remain outstanding, the Issuer and the Depositor shall each furnish to the Purchasers:

(a) the financial information required to be delivered by the Servicer under Section 4.02(a) of the Sale and Servicing Agreement;

(b) such information (including financial information), documents, records or reports with respect to the Trust Estate, the Loans, the Issuer, the Loan Originator, the Servicer or the Depositor as the Purchasers may from time to time reasonably request;

(c) as soon as possible and in any event within two (2) Business Days after the occurrence thereof, notice of each Event of Default under the Sale and Servicing Agreement or the Indenture, and each Default; and

(d) promptly and in any event within thirty (30) days after the occurrence thereof, written notice of a change in address of the chief executive office of the Issuer, the Loan Originator or the Depositor.

**SECTION 7.02 Access to Information.** So long as the Purchased Notes remain outstanding, each of the Issuer and the Depositor shall, at any time and from time to time during regular business hours, or at such other reasonable times upon reasonable notice to the Issuer or the Depositor, as applicable, permit the Purchasers, or their agents or representatives to:

(a) examine all books, records and documents (including computer tapes and disks) in the possession or under the control of the Issuer or the Depositor relating to the Loans or the Basic Documents as may be requested, and

(b) visit the offices and property of the Issuer and the Depositor for the purpose of examining such materials described in clause (a) above.

Except as provided in Section 10.05, information obtained by the Purchasers pursuant to this Section 7.02 and Section 7.01 herein shall be held in confidence in accordance with and to the extent provided in Sections 11.15 and 11.17 of the Sale and Servicing Agreement as if it constituted "Confidential Information" (as defined therein).

**SECTION 7.03 Ownership and Security Interests; Further Assurances.** The Depositor will take all action necessary to maintain the Issuer's ownership interest in the Loans and the other items sold pursuant to Article II of the Sale and Servicing Agreement. The Issuer will take all action necessary to maintain the Indenture Trustee's security interest in the Loans and the other items pledged to the Indenture Trustee pursuant to the Indenture.

The Issuer and the Depositor agree to take any and all acts and to execute any and all further instruments reasonably necessary or requested by the Purchasers to more fully effect the purposes of this Note Purchase Agreement.

**SECTION 7.04 Covenants.** The Issuer and the Depositor shall each duly observe and perform each of their respective covenants set forth in each of the Basic Documents to which they are a party.

**SECTION 7.05 Amendments.** Neither the Issuer nor the Depositor shall make, nor permit any Person to make, any amendment, modification or change to, or provide any waiver under any Basic Document to which the Issuer or the Depositor, as applicable, is a party without the prior written consent of the Purchasers.

**SECTION 7.06 With Respect to the Exempt Status of the Purchased Notes.**

(a) Neither the Issuer nor the Depositor, nor any of their respective Affiliates, nor any Person acting on their behalf will, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the Purchased Notes under the Securities Act.

(b) Neither the Issuer nor the Depositor, nor any of their Affiliates, nor any Person acting on their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D promulgated under the Securities Act) in connection with any offer or sale of the Purchased Notes.

(c) On or prior to any Transfer Date, the Issuer and the Depositor will furnish or cause to be furnished to the Purchasers and any subsequent purchaser therefrom of Additional Note Principal Balance, if the Purchasers or any such subsequent purchaser so request, a letter from each Person furnishing a certificate or opinion on the Closing Date as described in Section 4.01 hereof or on or before any such Transfer Date in which such Person shall state that such subsequent purchaser may rely upon such original certificate or opinion as though delivered and addressed to such subsequent purchaser and made on and as of the Closing Date or such Transfer Date, as the case may be, except for such exceptions set forth in such letter as are attributable to events occurring after the Closing Date or such Transfer Date.

## ARTICLE VIII

### ADDITIONAL COVENANTS

**SECTION 8.01 Legal Conditions to Closing.** The parties hereto will take all reasonable action necessary to obtain (and will cooperate with one another in obtaining) any consent, authorization, permit, license, franchise, order or approval of, or any exemption by, any Governmental Authority or any other Person, required to be obtained or made by it in connection with any of the transactions contemplated by this Note Purchase Agreement.

**SECTION 8.02 Expenses.**

(a) The Issuer and the Depositor jointly and severally covenant that, whether or not the Closing takes place, except as otherwise expressly provided herein, all reasonable costs and expenses incurred in connection with this Note Purchase Agreement and the transactions contemplated hereby shall be paid by the Issuer or the Depositor.

(b) The Issuer and the Depositor jointly and severally covenant to pay as and when billed by the Purchasers, subject to the applicable limit on Due Diligence Fees set forth in Section 11.15 of the Sale and Servicing Agreement, all of the reasonable out-of-pocket costs and expenses incurred in

connection with the consummation and administration of the transactions contemplated hereby and in the other Basic Documents including, without limitation, (i) all reasonable fees, disbursements and expenses of counsel to the Purchasers, (ii) all reasonable fees and expenses of the Indenture Trustee and the Owner Trustee and their counsel and (iii) all reasonable fees and expenses of the Custodian and its counsel.

**SECTION 8.03 Mutual Obligations.** On and after the Closing, each party hereto will do, execute and perform all such other acts, deeds and documents as any other party hereto may from time to time reasonably require in order to carry out the intent of this Note Purchase Agreement.

**SECTION 8.04 Restrictions on Transfer.** Each Purchaser agrees that it will comply with the restrictions on transfer of the Purchased Notes set forth in the Indenture and will resell the Purchased Notes only in compliance with such restrictions.

**SECTION 8.05 Reserved.**

**SECTION 8.06 Information Provided by the Noteholder Agent.** The Noteholder Agent hereby covenants to determine One-Month LIBOR in accordance with the definition thereof in the Basic Documents and shall give notice to the Indenture Trustee, the Issuer and the Depositor of the Interest Payment Amount on each Determination Date. The Noteholder Agent shall cause the Market Value Agent to give notice to the Indenture Trustee, the Issuer and the Depositor of any Hedge Funding Requirement (if any) on or before the Determination Date related to any Payment Date. In addition, on each Determination Date, the Noteholder Agent hereby covenants to give notice to the Indenture Trustee, the Issuer and the Depositor of (i) the Issuer/Depositor Indemnities (as defined in the Trust Agreement), (ii) Due Diligence Fees and (iii) the Collateral Value for each Loan for the related Payment Date.

## ARTICLE IX INDEMNIFICATION

**SECTION 9.01 Indemnification of Purchasers.** Each of the Issuer and the Depositor hereby agree to, jointly and severally, indemnify and hold harmless each Indemnified Party against any and all losses, claims, damages, liabilities, reasonable expenses or judgments (including reasonable accounting fees and reasonable legal fees and other reasonable expenses incurred in connection with this Note Purchase Agreement or any other Basic Document and any action, suit or proceeding or any claim asserted) (collectively, "Losses"), as incurred (payable promptly upon written request), for or on account of or arising from or in connection with any information prepared by and furnished or to be furnished by any of the Issuer, the Loan Originator or the Depositor pursuant to or in connection with the transactions contemplated hereby including, without limitation, such written information as may have been and may be furnished in connection with any due diligence investigation with respect to the business, operations, financial condition of the Issuer, the Loan Originator, the Depositor or with respect to the Loans, to the extent such information contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained therein in the light of the circumstances under which such statements were made not misleading, except with respect to any such information used by such Indemnified Party in violation of the Basic Documents or as a result of an Indemnified Party's gross negligence or willful misconduct which results in such Losses. The indemnities contained in this Section 9.01 will be in addition to any liability which the Issuer or the Depositor may otherwise have pursuant to this Note Purchase Agreement and any other Basic Document.

**SECTION 9.02 Procedure and Defense.** In case any action or proceeding (including any governmental or regulatory investigation or proceeding) shall be instituted involving any Indemnified Party in respect of which indemnity may be sought pursuant to Section 9.01, such Indemnified Party shall

promptly notify the Issuer and the Depositor in writing and, upon request of the Indemnified Party, the Issuer and the Depositor shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party to represent such Indemnified Party and any others the indemnifying party may designate and shall pay the reasonable fees and disbursements of such counsel related to such proceeding; provided that failure to give such notice or deliver such documents shall not affect the rights to indemnity hereunder unless such failure materially prejudices the rights of the Indemnified Party. The Indemnified Party will have the right to employ its own counsel in any such action in addition to the counsel of the Issuer and/or the Depositor, but the reasonable fees and expenses of such counsel will be at the expense of such Indemnified Party, unless (i) the employment of counsel by the Indemnified Party at its expense has been authorized in writing by the Depositor or the Issuer, (ii) the Depositor or the Issuer has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action or (iii) the named parties to any such action or proceeding (including any impleaded parties) include the Depositor or the Issuer and one or more Indemnified Parties, and the Indemnified Parties shall have been advised by counsel that there may be one or more legal defenses available to them which are different from or additional to those available to the Depositor or the Issuer. Reasonable expenses of counsel to any Indemnified Party for which the Issuer and the Depositor are responsible hereunder shall be reimbursed by the Issuer and the Depositor as they are incurred. The Issuer and the Depositor shall not be liable for any settlement of any proceeding affected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the Indemnified Party from and against any loss or liability by reason of such settlement or judgment. Neither the Issuer nor the Depositor will, without the prior written consent of the Indemnified Party, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such proceeding.

## ARTICLE X

### MISCELLANEOUS

**SECTION 10.01 Amendments.** No amendment or waiver of any provision of this Note Purchase Agreement shall in any event be effective unless the same shall be in writing and signed by all of the parties hereto, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**SECTION 10.02 Notices.** All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including teletypes) and mailed, teletyped (with a copy delivered by overnight courier) or delivered, as to each party hereto, at its address as set forth in Schedule I hereto or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be deemed effective upon receipt thereof, and in the case of teletypes, when receipt is confirmed by telephone.

**SECTION 10.03 No Waiver; Remedies.** No failure on the part of any party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**SECTION 10.04 Binding Effect; Assignability.**

(a) This Note Purchase Agreement shall be binding upon and inure to the benefit of the Issuer, the Depositor and the Purchasers and their respective permitted successors and assigns (including any subsequent holders of the Purchased Notes); provided, however, neither the Issuer nor the Depositor shall have any right to assign their respective rights hereunder or interest herein (by operation of law or otherwise) without the prior written consent of the Purchasers.

(b) The Purchasers may, in the ordinary course of its business and in accordance with the Basic Documents and applicable law, including applicable securities laws, at any time sell to one or more Persons (each, a “Participant”), participating interests in all or a portion of its rights and obligations under this Note Purchase Agreement. Notwithstanding any such sale by the Purchasers of participating interests to a Participant, the Purchasers’ rights and obligations under this Note Purchase Agreement shall remain unchanged, the Purchasers shall remain solely responsible for the performance thereof, and the Issuer and the Depositor shall continue to deal solely and directly with the Purchasers and shall have no obligations to deal with any Participant in connection with the Purchasers’ rights and obligations under this Note Purchase Agreement.

(c) This Note Purchase Agreement shall create and constitute the continuing obligation of the parties hereto in accordance with its terms, and shall remain in full force and effect until such time as all amounts payable with respect to the Purchased Notes shall have been paid in full.

**SECTION 10.05 Provision of Documents and Information.** Each of the Issuer and the Depositor acknowledges and agrees that each Purchaser is permitted to provide to any subsequent purchaser, permitted assignees and Participants, opinions, certificates, documents and other information relating to the Issuer, the Depositor and the Loans delivered to each Purchaser pursuant to this Note Purchase Agreement provided that with respect to Confidential Information, such subsequent purchaser, permitted assignees and Participants agree to be bound by Section 7.02 hereof.

**SECTION 10.06 GOVERNING LAW; JURISDICTION.** THIS NOTE PURCHASE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW. EACH OF THE PARTIES TO THIS NOTE PURCHASE AGREEMENT HEREBY AGREES TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND ANY APPELLATE COURT HAVING JURISDICTION TO REVIEW THE JUDGMENTS THEREOF. EACH OF THE PARTIES TO THIS NOTE PURCHASE AGREEMENT HEREBY WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER IN ANY OF THE AFOREMENTIONED COURTS AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

**SECTION 10.07 No Proceedings.** Until the date that is one year and one day after the last day on which any amount is outstanding under this Note Purchase Agreement, the Depositor and the Purchasers hereby covenant and agree that they will not institute against the Issuer or the Depositor or the Conduit Purchaser, or join in any institution against the Issuer or the Depositor or the Conduit Purchaser of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any United States federal or state bankruptcy or similar law.

**SECTION 10.08 Execution in Counterparts.** This Note Purchase Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of

which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

**SECTION 10.09 No Recourse — Purchasers and Depositor.**

(a) The obligations of the Purchasers under this Note Purchase Agreement, or any other agreement, instrument, document or certificate executed and delivered by or issued by the Purchasers or any officer thereof are solely the limited liability company or corporate obligations of the Purchasers, as the case may be. No recourse shall be had for payment of any fee or other obligation or claim arising out of or relating to this Note Purchase Agreement or any other agreement, instrument, document or certificate executed and delivered or issued by the Purchasers or any officer thereof in connection therewith, against any stockholder, limited partner, employee, officer, director or incorporator of the Purchasers.

(b) The obligations of the Depositor under this Note Purchase Agreement, or any other agreement, instrument, document or certificate executed and delivered by or issued by the Depositor or any officer thereof are solely the partnership or corporate obligations of the Depositor, as the case may be. No recourse shall be had for payment of any fee or other obligation or claim arising out of or relating to this Note Purchase Agreement or any other agreement, instrument, document or certificate executed and delivered or issued by the Depositor or any officer thereof in connection therewith, against any stockholder, limited partner, employee, officer, director or incorporator of the Depositor.

(c) The Purchasers, by accepting the Purchased Notes, acknowledge that such Purchased Notes represent an obligation of the Issuer and do not represent an interest in or an obligation of the Loan Originator, the Servicer, the Depositor, the Administrator, the Owner Trustee, the Indenture Trustee or any Affiliate thereof and no recourse may be had against such parties or their assets, except as may be expressly set forth or contemplated in this Note Purchase Agreement, the Purchased Notes or the Basic Documents.

**SECTION 10.10 Survival.** All representations, warranties, covenants, guaranties and indemnifications contained in this Note Purchase Agreement and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the sale, transfer or repayment of the Purchased Notes and the termination of this Note Purchase Agreement.

**SECTION 10.11 Waiver of Set-Off.** All payments due to Noteholders hereunder and under any of the Basic Documents, including without limitation all payments on account of principal, interest and fees, if any, shall be made to the Noteholders, without set-off, recoupment or counterclaim, and each of the Depositor and the Issuer hereby waive any and all right of set-off, recoupment or counterclaim hereunder or under any of the Basic Documents.

**SECTION 10.12 Tax Characterization.** Each party to this Note Purchase Agreement (a) acknowledges and agrees that it is the intent of the parties to this Note Purchase Agreement that for all purposes, including federal, state and local income, single business and franchise tax purposes, the Purchased Notes will be treated as evidence of indebtedness secured by the Loans and proceeds thereof and the trust created under the Indenture will not be characterized as an association (or publicly traded partnership) taxable as a corporation, (b) agrees to treat the Purchased Notes for federal, state and local income and franchise tax purposes as indebtedness and (c) agrees that the provisions of all Basic Documents shall be construed to further these intentions of the parties.

**SECTION 10.13 Conflicts.** Notwithstanding anything contained herein to the contrary, in the event of the conflict between the terms of the Sale and Servicing Agreement and this Note Purchase Agreement, the terms of the Sale and Servicing Agreement shall control.

**SECTION 10.14 Service of Process.** Each of the Depositor and the Issuer agrees that until such time as the Purchased Notes have been paid in full, each such party shall have appointed an agent registered with the Secretary of State of the State of New York, with an office in the County of New York in the State of New York, as its true and lawful attorney and duly authorized agent for acceptance of service of legal process. Each of the Depositor and the Issuer agrees that service of such process upon such person shall constitute personal service of such process upon it.

**SECTION 10.15 Limitation on Liability.** It is expressly understood and agreed by the parties hereto that (a) this Note Purchase Agreement is executed and delivered by Wilmington Trust Company, not individually or personally, but solely as Owner Trustee of Option One Owner Trust 2005-9, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose for binding only the Issuer, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Issuer under this Note Purchase Agreement or any other related documents.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties have caused this Note Purchase Agreement to be executed by their respective officers hereunto duly authorized, as of the date first above written.

OPTION ONE OWNER TRUST 2005-9

By: Wilmington Trust Company, not in its individual  
capacity but solely as owner trustee

By: \_\_\_\_\_ /s/

Name: Joann A. Rozell

Title: Assistant Vice President

OPTION ONE LOAN WAREHOUSE CORPORATION

By: \_\_\_\_\_ /s/

Name: Charles R. Fulton

Title: Assistant Secretary

DB STRUCTURED PRODUCTS, INC.,  
as Noteholder Agent and Committed Purchaser

By: \_\_\_\_\_ /s/

Name: Glenn Minkoff

Title: Director

By: \_\_\_\_\_ /s/

Name: John McCarthy

Title: Authorized Signatory

GEMINI SECURITIZATION CORP., LLC,  
as Conduit Purchaser

By: \_\_\_\_\_ /s/

Name: R. Douglas Donaldson

Title: Treasurer

ASPEN FUNDING CORP., as Conduit Purchaser

By: \_\_\_\_\_ /s/

Name: Doris J. Hearn

Title: Vice President

NEWPORT FUNDING CORP., as Conduit Purchaser

By: \_\_\_\_\_ /s/

Name: Doris J. Hearn

Title: Vice President

**Schedule I  
Information for Notices**

if to the Issuer:

Option One Owner Trust 2005-9  
c/o Wilmington Trust Company  
as Owner Trustee  
One Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust Administration  
Telecopy: (302) 636-4144  
Telephone: (302) 636-1000

with a copy to:

Option One Mortgage Corporation  
3 Ada Road  
Irvine, California 92618  
Attention: William O'Neill  
Telecopy number: (949) 790-7540  
Telephone number: (949) 790-7504

if to the Depositor:

Option One Loan Warehouse Corporation  
3 Ada Road  
Irvine, California 92618  
Attention: William O'Neill  
Telecopy number: (949) 790-7540  
Telephone number: (949) 790-7504

if to the Purchasers:

60 Wall Street  
New York, NY 10005  
Attention: Glenn Minkoff  
Telecopy number: (212) 250-5160  
Telephone number: (212) 250-3406

if to the Noteholder Agent:

DB Structured Products, Inc.  
60 Wall Street  
New York, NY 10005  
Attention: Glenn Minkoff  
Telecopy number: (212) 250-5160  
Telephone number: (212) 250-3406

Note Purchase Agreement

---

---

**INDENTURE**

**between**

**OPTION ONE OWNER TRUST 2005-9,  
as Issuer**

**and**

**WELLS FARGO BANK, N.A.,  
as Indenture Trustee**

**Dated as of December 30, 2005**

**OPTION ONE OWNER TRUST 2005-9  
MORTGAGE-BACKED NOTES**

---

---

## TABLE OF CONTENTS

		Page
Article I	DEFINITIONS	2
	Section 1.01. Definitions	2
	Section 1.02. Rules of Construction	7
Article II	GENERAL PROVISIONS WITH RESPECT TO THE NOTES	8
	Section 2.01. Method of Issuance and Form of Notes	8
	Section 2.02. Execution, Authentication, Delivery and Dating	8
	Section 2.03. Registration; Registration of Transfer and Exchange	9
	Section 2.04. Mutilated, Destroyed, Lost or Stolen Notes	10
	Section 2.05. Persons Deemed Noteholders	11
	Section 2.06. Payment of Principal and/or Interest; Defaulted Interest	11
	Section 2.07. Cancellation	12
	Section 2.08. Conditions Precedent to the Authentication of the Notes	12
	Section 2.09. Release of Collateral	13
	Section 2.10. Additional Note Principal Balance	14
	Section 2.11. Tax Treatment	14
	Section 2.12. Limitations on Transfer of the Notes	14
Article III	COVENANTS	15
	Section 3.01. Payment of Principal and/or Interest	15
	Section 3.02. Maintenance of Office or Agency	15
	Section 3.03. Money for Payments to Be Held in Trust	15
	Section 3.04. Existence	17
	Section 3.05. Protection of Collateral	17
	Section 3.06. Negative Covenants	18
	Section 3.07. Performance of Obligations: Servicing of Loans	19
	Section 3.08. Reserved	20
	Section 3.09. Annual Statement as to Compliance	21
	Section 3.10. Covenants of the Issuer	21
	Section 3.11. Servicer's Obligations	21
	Section 3.12. Restricted Payments	21
	Section 3.13. Treatment of Notes as Debt for All Purposes	22
	Section 3.14. Notice of Events of Default	22
	Section 3.15. Further Instruments and Acts	22
Article IV	SATISFACTION AND DISCHARGE	22
	Section 4.01. Satisfaction and Discharge of Indenture	22
	Section 4.02. Application of Trust Money	23

---

Section 4.03.	Repayment of Moneys Held by Paying Agent	Page 23
Article V	DEFAULTS AND REMEDIES	24
Section 5.01.	Events of Default	24
Section 5.02.	Acceleration of Maturity; Rescission and Annulment	26
Section 5.03.	Collection of Indebtedness and Suits for Enforcement by Indenture Trustee	26
Section 5.04.	Remedies; Priorities	28
Section 5.05.	Optional Preservation of the Collateral	30

## TABLE OF CONTENTS

(continued)

		<b>Page</b>	
	Section 5.06.	Limitation of Suits	30
	Section 5.07.	Unconditional Rights of Noteholders to Receive Principal and/or Interest	31
	Section 5.08.	Restoration of Rights and Remedies	31
	Section 5.09.	Rights and Remedies Cumulative	31
	Section 5.10.	Delay or Omission Not a Waiver	31
	Section 5.11.	Control by Noteholders	31
	Section 5.12.	Waiver of Past Defaults	32
	Section 5.13.	Undertaking for Costs	32
	Section 5.14.	Waiver of Stay or Extension Laws	33
	Section 5.15.	Action on Notes	33
	Section 5.16.	Performance and Enforcement of Certain Obligations	33
Article VI	THE INDENTURE TRUSTEE		34
	Section 6.01.	Duties of Indenture Trustee	34
	Section 6.02.	Rights of Indenture Trustee	35
	Section 6.03.	Individual Rights of Indenture Trustee	36
	Section 6.04.	Indenture Trustee's Disclaimer	36
	Section 6.05.	Notices of Default	36
	Section 6.06.	Reports by Indenture Trustee to Holders	36
	Section 6.07.	Compensation and Indemnity	36
	Section 6.08.	Replacement of Indenture Trustee	37
	Section 6.09.	Successor Indenture Trustee by Merger	38
	Section 6.10.	Appointment of Co-Indenture Trustee or Separate Indenture Trustee	38
	Section 6.11.	Eligibility	39
Article VII	NOTEHOLDERS' LISTS AND REPORTS		39
	Section 7.01.	Issuer to Furnish Indenture Trustee Names and Addresses of Noteholders	39
	Section 7.02.	Preservation of Information	40
	Section 7.03.	144A Information	40
Article VIII	ACCOUNTS, DISBURSEMENTS AND RELEASES		40
	Section 8.01.	Collection of Money	40
	Section 8.02.	Trust Accounts; Distributions	40
	Section 8.03.	General Provisions Regarding Trust Accounts	41
	Section 8.04.	The Paying Agent	42

---

		<b>Page</b>
	Section 8.05. Release of Collateral	42
	Section 8.06. Opinion of Counsel	42
Article IX	SUPPLEMENTAL INDENTURES	43
	Section 9.01. Supplemental Indentures Without the Consent of the Noteholders	43
	Section 9.02. Supplemental Indentures with Consent of Noteholders	43
	Section 9.03. Execution of Supplemental Indentures	45
	Section 9.04. Effect of Supplemental Indentures	45
	Section 9.05. Reference in Notes to Supplemental Indentures	45
Article X	REDEMPTION OF NOTES; PUT OPTION	45

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
	Section 10.01. Redemption	45
	Section 10.02. Form of Redemption Notice	46
	Section 10.03. Notes Payable on Redemption Date	46
	Section 10.04. Put Option	46
	Section 10.05. Form of Put Option Notice	46
	Section 10.06. Notes Payable on Put Date	46
Article XI	MISCELLANEOUS	47
	Section 11.01. Compliance Certificates and Opinions, etc	47
	Section 11.02. Form of Documents Delivered to Indenture Trustee	47
	Section 11.03. Acts of Noteholders	48
	Section 11.04. Notices, etc., to Indenture Trustee and Issuer	48
	Section 11.05. Notices to Noteholders, Waiver	49
	Section 11.06. Effect of Headings and Table of Contents	49
	Section 11.07. Successors and Assigns	49
	Section 11.08. Separability	50
	Section 11.09. Benefits of Indenture	50
	Section 11.10. Legal Holidays	50
	Section 11.11. GOVERNING LAW	50
	Section 11.12. Counterparts	50
	Section 11.13. Recording of Indenture	50
	Section 11.14. Trust Obligation	50
	Section 11.15. No Petition	51
	Section 11.16. Inspection	51
	Section 11.17. Third Party Beneficiary	51
	Section 11.18. Limitation on Liability	51
<b>EXHIBITS</b>		
Exhibit A-1	Form of Notes	
Exhibit B-1	Form of Transferor Affidavit (144A) Transfer Certificate	
Exhibit B-2	Form of Transferee Certificate For Institutional Accredited Investor	
Exhibit B-3	Form of Rule 144A Transferee Certificate Investor	



**TABLE OF CONTENTS**  
(continued)

Page

Exhibit C Form of Securities Legend  
INDENTURE

INDENTURE, dated and effective as of December 30, 2005 (the "Indenture"), between OPTION ONE OWNER TRUST 2005-9, a Delaware statutory trust, as Issuer (the "Issuer"), and WELLS FARGO BANK, N.A., as Indenture Trustee (the "Indenture Trustee").

WITNESSETH THAT:

In consideration of the mutual covenants herein contained, the Issuer has duly authorized the execution and delivery of this Indenture to provide for the issuance of Notes, issuable as provided in this Indenture. All covenants and agreements made by the Issuer herein are for the benefit and security of the Noteholders.

GRANTING CLAUSE

Subject to the terms of this Indenture, the Issuer hereby Grants on the Closing Date, to the Indenture Trustee, as Indenture Trustee for the benefit of the Noteholders, all of the Issuer's right, title and interest, whether now owned or hereafter acquired, in and to: (i) such Loans as from time to time are subject to the Sale and Servicing Agreement as listed in the Loan Schedule, as the same may be amended or supplemented on each Transfer Date and by the removal of Deleted Loans and Unqualified Loans and by the addition of Qualified Substitute Loans, together with the Servicer's Loan Files and the Custodial Loan Files relating thereto and all proceeds thereof, (ii) the Mortgages and security interests in the Mortgaged Properties, (iii) all payments in respect of interest and principal with respect to each Loan received on or after the related Transfer Cut-off Date, (iv) such assets as from time to time are identified as Foreclosure Property, (v) such assets and funds as are from time to time deposited in or credited to the Distribution Account, the Collection Account, the Advance Account and the Transfer Obligation Account, including, without limitation, amounts on deposit in or credited to such accounts that are invested in Permitted Investments (including, without limitation, all security entitlements (as defined in Section 8-102(17) of the UCC) of the Issuer therein), (vi) lenders' rights under all Mortgage Insurance Policies and to any Mortgage Insurance Proceeds, (vii) Net Liquidation Proceeds and Released Mortgaged Property Proceeds, (viii) all right, title and interest of the Trust (but none of the obligations) in and to the obligations of Hedging Counterparties under Hedging Instruments (if any); (ix) all right, title and interest of each of the Depositor, the Loan Originator and the Trust in and under the Basic Documents including, without limitation, the obligations of the Loan Originator under the Loan Purchase and Contribution Agreement, the Master Disposition Confirmation Agreement, and all proceeds of any of the foregoing, (x) all right, title and interest of the Issuer in and to the Sale and Servicing Agreement, including the Issuer's right to cause the Loan Originator to repurchase Loans from the Issuer under certain circumstances described therein, (xi) all other property of the Trust from time to time, and (xii) all present and future claims, demands, causes of action and choses in action in respect of any or all of the foregoing and all payments on or under and all proceeds of every kind and nature whatsoever in respect of any or all of the foregoing, including all proceeds of the conversion thereof, voluntary or involuntary, into cash or other liquid property, all cash and noncash proceeds (each as defined in Section 9-102(a) of the UCC), accounts, accounts receivable, notes, drafts, acceptances, chattel paper, checks, deposit accounts, insurance proceeds, payment intangibles, securities accounts, condemnation awards, rights to payment of any and every kind and other forms of obligations and receivables, instruments and other property which at any time constitute all or part of or are included in the proceeds of any of the foregoing (collectively, the "Collateral").

The foregoing Grant is made in trust to secure the payment of principal of and interest on, and any other amounts owing in respect of, the Notes, and to secure compliance with the provisions of

this Indenture, all as provided in this Indenture.

The Indenture Trustee, as Indenture Trustee on behalf of the Noteholders, acknowledges such Grant, accepts the trusts hereunder and agrees to perform its duties required in this Indenture to the best of its ability to the end that the interests of the Noteholders may adequately and effectively be protected.

## ARTICLE I DEFINITIONS

### **Section 1.01. Definitions.**

(a) Except as otherwise specified herein, the following terms have the respective meanings set forth below for all purposes of this Indenture.

“Act of Noteholders” has the meaning specified in Section 11.03(a) hereof.

“Additional Note Principal Balance” has the meaning set forth in the Sale and Servicing Agreement.

“Administration Agreement” means the Administration Agreement dated as of December 30, 2005, between the Issuer and the Administrator.

“Administrator” means Option One Mortgage Corporation, or any successor Administrator under the Administration Agreement.

“Authorized Officer” means, with respect to the Issuer, any officer of the Owner Trustee who is authorized to act for the Owner Trustee in matters relating to the Issuer and who is identified on the list of Authorized Officers delivered by the Owner Trustee to the Indenture Trustee on the Closing Date (as such list may be modified or supplemented from time to time thereafter) and, so long as the Administration Agreement is in effect, any Vice President or more senior officer of the Administrator who is authorized to act for the Administrator in matters relating to the Issuer and to be acted upon by the Administrator pursuant to the Administration Agreement and who is identified on the list of Authorized Officers delivered by the Administrator to the Indenture Trustee on the Closing Date (as such list may be modified or supplemented from time to time thereafter).

“Basic Documents” has the meaning set forth in the Sale and Servicing Agreement.

“Certificate of Trust” means the certificate of trust of the Issuer substantially in the form of Exhibit C to the Trust Agreement.

“Change of Control” means the acquisition by any Person, or two or more Persons acting in concert (other than a direct or indirect subsidiary of H&R Block), of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of outstanding shares of voting stock of the Loan Originator at any time if after giving effect to such acquisition (i) such Person or Persons owns twenty percent (20%) or more of such outstanding voting stock or (ii) H&R Block, Inc. does not own directly or indirectly more than fifty percent (50%) of such outstanding shares of voting stock.

“Clean-up Call Date” has the meaning set forth in the Sale and Servicing Agreement.

“Closing Date” means December 30, 2005.

“Collateral” has the meaning specified in the Granting Clause of this Indenture.

“Commission” means the Securities and Exchange Commission.

“Committed Note Principal Balance” has the meaning set forth in the Sale and Servicing Agreement.

“Corporate Trust Office” means the principal office of the Indenture Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Indenture is located, for note transfer purposes, at Sixth Street and Marquette Avenue, Minneapolis, Minnesota 55479, Attention: Option One Owner Trust 2005-9, teletype number: (612) 667-6282, telephone number: (800) 344-5128, and for all other purposes, at 9062 Old Annapolis Road, Columbia, Maryland 21045, Attention: Option One Owner Trust 2005-9, teletype number: (410) 715-2380, telephone number: (410) 884-2000, or at such other address as the Indenture Trustee may designate from time to time by notice to the Noteholders and the Issuer, or the principal corporate trust office of any successor Indenture Trustee at the address designated by such successor Indenture Trustee by notice to the Noteholders and the Issuer.

“Default” means any occurrence that is, or with notice or the lapse of time or both would become, an Event of Default.

“Depositor” has the meaning set forth in the Sale and Servicing Agreement.

“Depository Institution” means any depository institution or trust company, including the Indenture Trustee, that (a) is incorporated under the laws of the United States of America or any State thereof, (b) is subject to supervision and examination by federal or state banking authorities and (c) has outstanding unsecured commercial paper or other short-term unsecured debt obligations that are rated at a rating to which the Majority Noteholders consent in writing.

“Event of Default” has the meaning specified in Section 5.01 hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Executive Officer” means, with respect to (i) the Depositor, the Servicer, the Loan Originator or any Affiliate of any of them, the President, any Vice President or the Treasurer of such corporation; and with respect to any partnership, any general partner thereof, (ii) the Note Registrar, any Responsible Officer of the Indenture Trustee, (iii) any other corporation, the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President, Executive Vice President, any Vice President, the Secretary or the Treasurer of such entity and (iv) any partnership, any general partner thereof.

“Grant” means mortgage, pledge, bargain, sell, warrant, alienate, remise, release, convey, assign, transfer, create and grant a lien upon and a security interest in and right of set-off against, deposit, set over and confirm pursuant to this Indenture. A Grant of the Collateral or of any other agreement or instrument shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including the immediate and continuing right to claim for, collect, receive and give receipt for principal and interest payments in respect of the Collateral and all other moneys payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to

do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

“Holder” means the Person in whose name a Note is registered on the Note Register.

“ICA Owner” means “beneficial owner” as such term is used in Section 3(c)(1) of the Investment Company Act of 1940, as amended (other than any persons who are excluded from such term or from the 100-beneficial owner test of Section 3(c)(1) by law or regulations adopted by the Securities and Exchange Commission.

“Indenture” means this Indenture and any amendments hereto.

“Indenture Trustee” means Wells Fargo Bank, N.A., a national banking association, as Indenture Trustee under this Indenture, or any successor Indenture Trustee hereunder.

“Issuer” means Option One Owner Trust 2005-9.

“Issuer Order” and “Issuer Request” mean a written order or request signed in the name of the Issuer by any one of its Authorized Officers and delivered to the Indenture Trustee.

“Loan Originator” means Option One Mortgage Corporation, a California corporation.

“Majority Certificateholders” has the meaning set forth in the Sale and Servicing Agreement.

“Maturity Date” means, with respect to the Notes, 364 days after the commencement of the Revolving Period.

“Maximum Note Principal Balance” has the meaning set forth in the Pricing Letter.

“Note” means any Note authorized by and authenticated and delivered under this Indenture.

“Note Interest Rate” has the meaning set forth in the Pricing Letter.

“Note Principal Balance” has the meaning set forth in the Sale and Servicing Agreement.

“Note Purchase Agreement” means the Note Purchase Agreement, dated as of December 30, 2005, among the Issuer, the Depositor, DB Structured Products, Inc., Gemini Securitization Corp., LLC, Aspen Funding Corp. and Newport Funding Corp., as the same may be amended from time to time.

“Note Redemption Amount” has the meaning set forth in the Sale and Servicing Agreement.

“Note Register” and “Note Registrar” have the respective meanings specified in Section 2.03 hereof.

“Noteholder” means the Person in whose name a Note is registered on the Note Register.

“Noteholder Agent” has the meaning set forth in the Sale and Servicing Agreement.

“Officer’s Certificate” when used in this Indenture, means a certificate signed by any Authorized Officer of the Issuer or the Administrator, under the circumstances described in, and otherwise complying with, the applicable requirements of Section 11.01 hereof, and delivered to the Indenture Trustee. Unless otherwise specified, any reference in this Indenture to an Officer’s Certificate shall be to an Officer’s Certificate of any Authorized Officer of the Issuer or the Administrator.

“Opinion of Counsel,” when used in this Indenture, means one or more written opinions of counsel who may, except as otherwise expressly provided in this Indenture, be an employee of or counsel to the Issuer, and which opinion or opinions shall be addressed to the Indenture Trustee, as Indenture Trustee, and shall comply with any applicable requirements of Section 11.01 hereof and shall be in form and substance satisfactory to the Noteholder Agent.

“Outstanding” means, with respect to any Note and as of the date of determination, any Note theretofore authenticated and delivered under this Indenture except:

(i) Notes theretofore canceled by the Note Registrar or delivered to the Note Registrar for cancellation;

(ii) Notes or portions thereof the payment for which money in the necessary amount has theretofore been deposited with the Indenture Trustee or any Paying Agent in trust for the Noteholders (provided, however, that if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision for such notice satisfactory to the Indenture Trustee has been made); and

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture unless proof satisfactory to the Indenture Trustee is presented that any such Notes are held by a bona fide purchaser; provided, however, that in determining whether the Noteholders representing the requisite Percentage Interests of the Outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder or under any Basic Document, Notes owned by the Issuer, any other obligor upon the Notes, the Depositor or any Affiliate of any of the foregoing Persons shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Indenture Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes that the Indenture Trustee actually knows to be owned in such manner shall be disregarded. Notes owned in such manner that have been pledged in good faith may be regarded as Outstanding if the pledgee certifies to the Indenture, Trustee (y) that the pledgee has the right so to act with respect to such Notes and (z) that the pledgee is not the Issuer, any other obligor upon the Notes, the Depositor or any Affiliate of any of the foregoing Persons.

“Owner Trustee” means Wilmington Trust Company, not in its individual capacity but solely as Owner Trustee under the Trust Agreement, or any successor Owner Trustee under the Trust Agreement.

“Paying Agent” (unless the Paying Agent is the Servicer) means a Person that meets the eligibility standards for the Indenture Trustee specified in Section 6.11 hereof and is authorized by the Issuer to make payments to and distributions from the Collection Account and the Distribution Account, including payment of principal of or interest on the Notes on behalf of the Issuer. The initial Paying Agent shall be the Servicer; provided that if the Servicer is terminated as Paying Agent for any reason, the Indenture Trustee shall be the Paying Agent until another Paying Agent is appointed by the Noteholder Agent pursuant to Section 8.04 herein. The Indenture Trustee shall be entitled to reasonable additional compensation for assuming the role of Paying Agent.

“Payment Date” has the meaning set forth in the Sale and Servicing Agreement.

“Percentage Interest” means, with respect to any Note and as of any date of determination, the percentage equal to a fraction, the numerator of which is the principal balance of such Note as of such date of determination and the denominator of which is the Note Principal Balance.

“Person” has the meaning set forth in the Sale and Servicing Agreement.

“Predecessor Note” means, with respect to any particular Note, every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purpose of this definition, any Note authenticated and delivered under Section 2.04 hereof in lieu of a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

“Pricing Letter” means the Pricing Letter among the Issuer, the Depositor, Option One and the Indenture Trustee, dated December 30, 2005 and any amendments thereto.

“Proceeding” means any suit in equity, action at law or other judicial or administrative proceeding.

“Record Date” has the meaning set forth in the Sale and Servicing Agreement.

“Redemption Date” means in the case of a redemption of the Notes pursuant to Section 10.01 hereof, the Payment Date specified by the Servicer pursuant to such Section 10.01.

“Registered Holder” means the Person in the name of which a Note is registered on the Note Register on the applicable Record Date.

“Revolving Period” has the meaning set forth in the Sale and Servicing Agreement.

“Sale Agent” has the meaning assigned to such term in Section 5.11 hereof.

“Sale and Servicing Agreement” means the Sale and Servicing Agreement, dated as of December 30, 2005, among the Issuer, the Depositor, the Servicer, the Loan Originator and the Indenture Trustee on behalf of the Noteholders, as the same may be further amended or supplemented from time to time.

“Servicer” shall mean Option One Mortgage Corporation, in its capacity as servicer under the Sale and Servicing Agreement, and any successor servicer thereunder.

“State” means any one of the States of the United States of America or the District of Columbia.

“Termination Price” has the meaning set forth in the Sale and Servicing Agreement.

“Transfer Date” has the meaning set forth in the Sale and Servicing Agreement.

“Trust Agreement” means the Trust Agreement dated as of December 30, 2005, between the Depositor and the Owner Trustee.

“Trust Certificate” has the meaning assigned to such term in Section 1.1 of the Trust Agreement.

“Trust Indenture Act” means the Trust Indenture Act of 1939 as in force on the date hereof, unless otherwise specifically provided.

(b) Except as otherwise specified herein or as the context may otherwise require, capitalized terms used but not otherwise defined herein have the respective meanings set forth in the Sale and Servicing Agreement for all purposes of this Indenture.

**Section 1.02. Rules of Construction.** Unless the context otherwise requires:

- (i) a term has the meaning assigned to it;
- (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (iii) “or” is not exclusive;
- (iv) “including” means including without limitation;
- (v) words in the singular include the plural and words in the plural include the singular; and
- (vi) any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented (as provided in such agreements) and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

## ARTICLE II

### GENERAL PROVISIONS WITH RESPECT TO THE NOTES

**Section 2.01. Method of Issuance and Form of Notes.**

(a) The Notes shall be designated generally as the “Option One Owner Trust 2005-9 Mortgage-Backed Notes” of the Issuer. Each Note shall bear upon its face the designation so selected for the Notes. All Notes shall be identical in all respects except for the denominations thereof. All Notes issued under this Indenture shall be in all respects equally and ratably entitled to the benefits thereof without preference, priority or distinction on account of the actual time or times of authentication and delivery, all in accordance with the terms and provisions of this Indenture.

The Notes may be typewritten, printed, lithographed or engraved or produced by any combination of these methods, all as determined by the officers executing such Notes, as evidenced by their execution of such Notes.

Each Note shall be dated the date of its authentication. The terms of the Notes shall be set forth in this Indenture.

The Notes shall be in definitive form and shall bear a legend substantially in the form of Exhibit C attached hereto.

**Section 2.02. Execution, Authentication, Delivery and Dating.** The Notes shall be executed on behalf of the Issuer by an Authorized Officer of the Owner Trustee or the Administrator. The signature of any such Authorized Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signature of individuals who were at any time Authorized Officers of the Owner Trustee or the Administrator shall bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

Subject to the satisfaction of the conditions set forth in Section 2.08 hereof, the Indenture Trustee shall, upon Issuer Order, authenticate and deliver the Notes.

The Notes that are authenticated and delivered by the Indenture Trustee to or upon the order of the Issuer on the Closing Date shall be dated as of such Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under the Indenture shall be dated the date of their authentication. The Notes shall be issued in such denominations as may be agreed by the Issuer and the Noteholder Agent.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Indenture Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

**Section 2.03. Registration; Registration of Transfer and Exchange.** The Issuer shall cause to be kept a register (the “Note Register”) in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Indenture Trustee initially shall be the “Note Registrar” for the purpose of registering Notes and transfers of Notes as herein provided. Upon any resignation of any Note Registrar, the Issuer shall promptly appoint a successor or, if it elects not to make such an appointment, assume the duties of the Note Registrar.

If a Person other than the Indenture Trustee is appointed by the Issuer as Note Registrar, the Issuer will give the Indenture Trustee prompt written notice of the appointment of such Note Registrar and of the location, and any change in the location, of the Note Register, and the Indenture Trustee shall have the right to inspect the Note Register at all reasonable times and to obtain copies thereof, and the Indenture Trustee shall have the right to rely upon a certificate executed on behalf of the Note Registrar by an Executive Officer thereof as to the names and addresses of the Noteholders and the principal amounts and number of the Notes.

Upon surrender for registration of transfer of any Note at the office or agency of the Issuer to be maintained as provided in Section 3.02 hereof, the Issuer shall execute, and the Indenture Trustee shall authenticate and the Noteholder shall obtain from the Indenture Trustee, in the name of the designated transferee or transferees, one or more new Notes in any authorized denominations, of a like aggregate Note Principal Balance.

At the option of the Holder, Notes may be exchanged for other Notes in any authorized denominations, of a like aggregate principal amount, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Issuer shall execute, and the Indenture Trustee shall authenticate and the Noteholder shall obtain from the Indenture Trustee, the Notes which the Noteholder making the exchange is entitled to receive.



All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed by, or be accompanied by a written instrument of transfer in the form attached to the form of Note attached as Exhibit A hereto duly executed by the Holder thereof or such Holder's attorney duly authorized in writing, with such signature guaranteed by an "eligible guarantor institution" meeting the requirements of the Securities Transfer Agents' Medallion Program ("STAMP").

No service charge shall be made to a Noteholder for any registration of transfer or exchange of Notes, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 9.05 hereof not involving any transfer.

The preceding provisions of this Section 2.03 notwithstanding, the Issuer shall not be required to make, and the Note Registrar need not register, transfers or exchanges of Notes selected for redemption or of any Note for a period of 15 days preceding the due date for any payment with respect to such Note.

**Section 2.04. Mutilated, Destroyed, Lost or Stolen Notes.** If (i) any mutilated Note is surrendered to the Indenture Trustee, or the Indenture Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Issuer and Indenture Trustee such security or indemnity as may reasonably be required by it to hold the Issuer and the Indenture Trustee, as applicable, harmless, then, in the absence of notice to the Issuer, the Note Registrar or the Indenture Trustee that such Note has been acquired by a bona fide purchaser, an Authorized Officer of the Owner Trustee or the Administrator on behalf of the Issuer shall execute, and upon its written request the Indenture Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a replacement Note; provided, however, that if any such destroyed, lost or stolen Note, but not a mutilated Note, shall have become or within seven days shall be due and payable, or shall have been called for redemption, instead of issuing a replacement Note, the Issuer may pay such destroyed, lost or stolen Note when so due or payable or upon the Redemption Date without surrender thereof. If, after the delivery of such replacement Note or payment of a destroyed, lost or stolen Note pursuant to the proviso to the preceding sentence, a bona fide purchaser of the original Note in lieu of which such replacement Note was issued presents for payment such original Note, the Issuer shall be entitled to recover such replacement Note (or such payment) from the Person to which it was delivered or any Person taking such replacement Note from such Person to which such replacement Note was delivered or any assignee of such Person, except a bona fide purchaser, and the Issuer and the Indenture Trustee shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Issuer or the Indenture Trustee in connection therewith.

Upon the issuance of any replacement Note under this Section 2.04, the Issuer may require the payment by the Holder of such Note of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the fees and expenses of the Indenture Trustee) connected therewith.

Every replacement Note issued pursuant to this Section 2.04 in replacement of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuer, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.04 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

**Section 2.05. Persons Deemed Noteholders.** Prior to due presentment for registration of transfer of any Note, the Issuer, the Indenture Trustee and any agent of the Issuer or the Indenture Trustee may treat the Person in the name of which any Note is registered (as of the day of determination) as the Noteholder for the purpose of receiving payments of principal of and interest, if any, on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuer, the Indenture Trustee or any agent of the Issuer or the Indenture Trustee shall be affected by notice to the contrary.

**Section 2.06. Payment of Principal and/or Interest; Defaulted Interest.**

(a) The Notes shall accrue interest at the Note Interest Rate, and such interest shall be payable on each Payment Date, subject to Section 3.01 hereof. Any installment of interest or principal, if any, payable on any Note that is punctually paid or duly provided for by the Issuer on the applicable Payment Date shall be paid to the Person in the name of which such Note (or one or more Predecessor Notes) is registered on the next preceding Record Date based on the Percentage Interest represented by its respective Note, without preference or priority of any kind, and, except as otherwise provided in the next succeeding sentence, shall be made by wire transfer of immediately available funds to the account of such Noteholder, if such Noteholder shall own of record Notes having a Percentage Interest of at least 20% and shall have so notified the Paying Agent and the Indenture Trustee, and otherwise by check mailed to the address of such Noteholder appearing in the Note Register no less than five days preceding the related Record Date. The final installment of principal payable with respect to such Note shall be payable as provided in Section 2.06(b) below. The funds represented by any such checks returned undelivered shall be held in accordance with Section 3.03 hereof.

(b) The principal of each Note shall be payable in installments on each Payment Date as provided in Sections 5.01 and 5.02 of the Sale and Servicing Agreement and Section 5.04(b) hereof. Notwithstanding the foregoing, the entire unpaid principal amount of the Notes shall be due and payable, if not previously paid, on the earlier of (i) the Maturity Date, (ii) the Redemption Date, (iii) the Final Put Date and (iv) the date on which an Event of Default shall have occurred and be continuing, if the Indenture Trustee or the Majority Noteholders shall have declared the Notes to be immediately due and payable in the manner provided in Section 5.02 hereof.

All principal payments on the Notes shall be made pro rata to the Noteholders based on their respective Percentage Interests. The Paying Agent shall notify the Person in the name of which a Note is registered at the close of business on the Record Date preceding the Payment Date on which the Issuer expects that the final installment of principal of and interest on such Note will be paid. Such notice shall be mailed or transmitted by facsimile prior to such final Payment Date and shall specify that such final installment will be payable only upon presentation and surrender of such Note and shall specify the place where such Note may be presented and surrendered for payment of such installment. Notices in connection with redemption of Notes shall be provided to Noteholders as set forth in Section 10.02 hereof.

**Section 2.07. Cancellation.** All Notes surrendered for payment, registration of transfer, exchange or redemption shall, if surrendered to any Person other than the Indenture Trustee, be delivered to the Indenture Trustee and shall promptly be canceled by the Indenture Trustee. The Issuer may at any time deliver to the Indenture Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Notes so

delivered shall promptly be canceled by the Indenture Trustee. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.07, except as expressly permitted by this Indenture. All canceled Notes may be held or disposed of by the Indenture Trustee in accordance with its standard retention or disposal policy as in effect at the time unless the Issuer shall direct by an Issuer Order that they be destroyed or returned to it; provided, however, that such Issuer Order is timely and the Notes have not been previously disposed of by the Indenture Trustee.

**Section 2.08. Conditions Precedent to the Authentication of the Notes.** The Notes may be authenticated by the Indenture Trustee upon receipt by the Indenture Trustee of the following:

(a) An Issuer Order authorizing authentication of such Notes by the Indenture Trustee;

(b) All of the items of Collateral which are to be delivered pursuant to the Basic Documents to the Indenture Trustee or its designee by the related Closing Date shall have been delivered;

(c) An executed counterpart of each Basic Document;

(d) One or more Opinions of Counsel addressed to the Indenture Trustee to the effect that:

(i) the Owner Trustee has power and authority to execute, deliver and perform its obligations under the Trust Agreement;

(ii) the Issuer has been duly formed, is validly existing as a statutory trust under the laws of the State of Delaware, 12 Del. C. Section 3801 et seq., and has power, authority and legal right to execute and deliver this Indenture, the Note Purchase Agreement, the Custodial Agreement, the Administration Agreement and the Sale and Servicing Agreement;

(iii) assuming due authorization, execution and delivery hereof by the Indenture Trustee, the Indenture is a valid, legal and binding obligation of the Issuer, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent or preferential conveyance and other similar laws of general application affecting the rights of creditors generally and to general principles of equity (regardless of whether such enforcement is considered in a Proceeding in equity or at law);

(iv) the Notes, when executed and authenticated as provided herein and delivered against payment therefor, will be the valid, legal and binding obligations of the Issuer pursuant to the terms of this Indenture, entitled to the benefits of this Indenture, and will be enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent or preferential conveyance and other similar laws of general application affecting the rights of creditors generally and to general principles of equity (regardless of whether such enforcement is considered in a Proceeding in equity or at law);

(v) this Indenture is not required to be qualified under the Trust Indenture Act;

- (vi) no authorization, approval or consent of any governmental body having jurisdiction in the premises which has not been obtained by the Issuer is required to be obtained by the Issuer for the valid issuance and delivery of the Notes, except that no opinion need be expressed with respect to any such authorizations, approvals or consents as may be required under any state securities or “blue sky” laws; and
  - (vii) any other matters that the Indenture Trustee may reasonably request.
- (e) An Officer’s Certificate complying with the requirements of Section 11.01 hereof and stating that:
- (i) the Issuer is not in Default under this Indenture and the issuance of the Notes applied for will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, the Trust Agreement, any indenture, mortgage, deed of trust or other agreement or instrument to which the Issuer is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which the Issuer is a party or by which it may be bound or to which it may be subject, and that all conditions precedent provided in this Indenture relating to the authentication and delivery of the Notes applied for have been complied with;
  - (ii) the Issuer is the owner of all of the Loans, has not assigned any interest or participation in the Loans (or, if any such interest or participation has been assigned, it has been released) and has the right to Grant all of the Loans to the Indenture Trustee;
  - (iii) the Issuer has Granted to the Indenture Trustee all of its right, title and interest in and to the Collateral, and has delivered or caused the same to be delivered to the Indenture Trustee; and
  - (iv) all conditions precedent provided for in this Indenture relating to the authentication of the Notes have been complied with.

**Section 2.09. Release of Collateral.**

(a) Except as otherwise provided by the terms of the Basic Documents, the Indenture Trustee shall release the Collateral from the lien of this Indenture only upon receipt of an Issuer Request accompanied by the written consent of the Noteholder Agent in accordance with the procedures set forth in the Custodial Agreement.

(b) The Indenture Trustee shall, if requested by the Servicer, temporarily release or cause the Custodian temporarily to release to the Servicer the Custodial Loan File pursuant to the provisions of Section 5(b) of the Custodial Agreement upon compliance by the Servicer with the provisions thereof; provided, however, that the Custodian’s records shall indicate the Issuer’s pledge to the Indenture Trustee under the Indenture.

**Section 2.10. Additional Note Principal Balance.** In the event of payment of Additional Note Principal Balance by the Noteholders as provided in Section 2.01(c) of the Sale and Servicing Agreement, each Noteholder shall, and is hereby authorized to, record on the schedule attached

to its Note the date and amount of any Additional Note Principal Balance advanced by it, and each repayment thereof; provided that failure to make any such recordation on such schedule or any error in such schedule shall not adversely affect any Noteholder's rights with respect to its Additional Note Principal Balance and its right to receive interest payments in respect of the Additional Note Principal Balance held by such Noteholder.

Absent manifest error, the Note Principal Balance of each Note as set forth in the notations made by the related Noteholder on such Note shall be binding upon the Indenture Trustee and the Issuer; provided that failure by a Noteholder to make such recordation on its Note or any error in such notation shall not adversely affect any Noteholder's rights with respect to its Note Principal Balance and its right to receive principal and interest payments in respect thereof.

**Section 2.11. Tax Treatment.** The Issuer has entered into this Indenture, and the Notes will be issued, with the intention that for all purposes, including federal, state and local income, single business and franchise tax purposes, the Notes will qualify as indebtedness of the Issuer secured by the Collateral. The Issuer, by entering into this Indenture, and each Noteholder, by its acceptance of a Note, agrees to treat the Notes for all purposes, including federal, state and local income, single business and franchise tax purposes, as indebtedness of the Issuer. The Indenture Trustee will have no responsibility for filing or preparing any tax returns.

**Section 2.12. Limitations on Transfer of the Notes.**

(a) The Notes have not been and will not be registered under the Securities Act and will not be listed on any exchange. No transfer of a Note shall be made unless such transfer is made pursuant to an effective registration statement under the Securities Act and all applicable state securities laws or is exempt from the registration requirements under the Securities Act and such state securities laws. In order to assure compliance with the Securities Act and state securities laws, any transfer of a Note shall be made (A) in reliance on Rule 144A under the Securities Act, in which case, the Indenture Trustee shall require that the transferor deliver a certification substantially in the form of Exhibit B-1 hereto and that the transferee deliver a certification substantially in the form of Exhibit B-3 hereto, or (B) to an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act that is not a "qualified institutional buyer," in which case the Indenture Trustee shall require that the transferee deliver a certification substantially in the form of Exhibit B-2 hereto. The Indenture Trustee shall not make any transfer or re-registration of the Notes if after such transfer or re-registration, there would be more than five Noteholders. Each Noteholder shall, by its acceptance of a Note, be deemed to have represented and warranted that the number of ICA Owners with respect to all of its Notes shall not exceed four.

(b) The Note Registrar shall not register the transfer of any Note unless the Indenture Trustee has received a certificate from the transferee to the effect that either (i) the transferee is not an employee benefit plan or other retirement plan or arrangement subject to Title I of the Employee Retirement Income Security Act of 1974, as amended, or Section 4975 of the Internal Revenue Code of 1986, as amended (each, a "Plan"), and is not acting on behalf of or investing the assets of a Plan or (ii) if the transferee is a Plan or is acting on behalf of or investing the assets of a Plan, either that no prohibited transaction within the meaning of Section 406(a) of ERISA or Section 4975 of the Code would occur upon the transfer of the Note or that the conditions for exemptive relief under a prohibited transaction exemption has been satisfied, including, but not limited to: Prohibited Transaction Class Exemption ("PTCE") 96-23 (relating to transactions effected by an "in-house asset manager"), PTCE 95-60 (relating to transactions involving insurance company general accounts), PTCE 91-38 (relating to transactions involving bank collective investment funds), PTCE 90-1 (relating to transactions involving insurance

company pooled separate accounts) and PTCE 84-14 (relating to transactions effected by a “qualified professional asset manager”).

### ARTICLE III COVENANTS

**Section 3.01. Payment of Principal and/or Interest.** The Issuer will duly and punctually pay (or will cause to be paid duly and punctually) the principal of and interest on the Notes in accordance with the terms of the Notes, this Indenture and the Sale and Servicing Agreement. Amounts properly withheld under the Code by any Person from a payment to any Noteholder of interest and/or principal shall be considered as having been paid by the Issuer to such Noteholder for all purposes of this Indenture. The Notes shall be non-recourse obligations of the Issuer and shall be limited in right of payment to amounts available from the Collateral, as provided in this Indenture. The Issuer shall not otherwise be liable for payments on the Notes. If any other provision of this Indenture shall be deemed to conflict with the provisions of this Section 3.01, the provisions of this Section 3.01 shall control.

**Section 3.02. Maintenance of Office or Agency.** The Indenture Trustee shall maintain at the Corporate Trust Office an office or agency where Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Indenture Trustee shall give prompt written notice to the Issuer of the location, and of any change in the location, of any such office or agency.

**Section 3.03. Money for Payments to Be Held in Trust.** As provided in Section 8.02(a) and (b) hereof, all payments of amounts due and payable with respect to any Notes that are to be made from amounts withdrawn from the Distribution Account pursuant to Section 8.02(c) hereof shall be made on behalf of the Issuer by the Indenture Trustee or by the Paying Agent, and no amounts so withdrawn from the Distribution Account for payments of Notes shall be paid over to the Issuer except as provided in this Section 3.03.

Any Paying Agent shall be appointed by the Noteholder Agent with written notice thereof to the Indenture Trustee. The Issuer shall not appoint any Paying Agent (other than the Indenture Trustee or Servicer) which is not, at the time of such appointment, a Depository Institution.

The Issuer will cause each Paying Agent other than the Indenture Trustee to execute and deliver to the Indenture Trustee an instrument in which such Paying Agent shall agree with the Indenture Trustee (and if the Indenture Trustee acts as Paying Agent, it hereby so agrees), subject to the provisions of this Section 3.03, that such Paying Agent will:

(i) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(ii) give the Indenture Trustee notice of any Default by the Issuer (or any other obligor upon the Notes) of which it has actual knowledge in the making of any payment required to be made with respect to the Notes;

(iii) at any time during the continuance of any such Default, upon the written request of the Majority Noteholders or the Indenture Trustee, forthwith pay to the Indenture Trustee all sums so held in trust by such Paying Agent;

(iv) immediately resign as a Paying Agent and forthwith pay to the Indenture Trustee all sums held by it in trust for the payment of Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment; and

(v) comply with all requirements of the Code with respect to the withholding from any payments made by it on any Notes of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith; provided, however, that with respect to withholding and reporting requirements applicable to original issue discount (if any) on the Notes, the Issuer shall have first provided the calculations pertaining thereto to the Indenture Trustee.

The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, by Issuer Order direct any Paying Agent to pay to the Indenture Trustee all sums held in trust by such Paying Agent, such sums to be held by the Indenture Trustee upon the same trusts as those upon which the sums were held by such Paying Agent; and upon such payment by any Paying Agent to the Indenture Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Subject to applicable laws with respect to escheat of funds or abandoned property, any money held by the Indenture Trustee or any Paying Agent in trust for the payment of any amount due with respect to any Note and remaining unclaimed for two years after such amount has become due and payable shall be discharged from such trust and be paid to the Issuer on Issuer Request; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Issuer for payment thereof (but only to the extent of the amounts so paid to the Issuer), and all liability of the Indenture Trustee or such Paying Agent with respect to such trust money shall thereupon cease; provided, however, that the Indenture Trustee or such Paying Agent, before being required to make any such repayment, shall at the expense and direction of the Issuer cause to be published, once in a newspaper of general circulation in the City of New York customarily published in the English language on each Business Day, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Issuer. The Indenture Trustee shall also adopt and employ any other reasonable means of notification of such repayment (including, but not limited to, mailing notice of such repayment to Noteholders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in moneys due and payable but not claimed at the last address of record for each such Noteholder determinable from the records of the Indenture Trustee or of any Paying Agent). Any costs and expenses of the Indenture Trustee and the Paying Agent incurred in the holding of such funds shall be charged against such funds. Monies so held shall not bear interest.

**Section 3.04. Existence.**

(a) Subject to subparagraph (b) of this Section 3.04, the Issuer will keep in full effect its existence, rights and franchises as a statutory trust under the laws of the State of Delaware (unless it becomes, or any successor Issuer hereunder is or becomes, organized under the laws of any other State or of the United States of America, in which case the Issuer will keep in full effect its existence, rights and franchises under the laws of such other jurisdiction) and will obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Indenture, the Notes and the Collateral. The Issuer shall comply in all respects with the covenants contained in the Trust Agreement, including without limitation, the “special purpose entity” set forth in Section 4.1 thereof.

(b) Any successor to the Owner Trustee appointed pursuant to Section 10.2 of the Trust Agreement shall be the successor Owner Trustee under this Indenture without the execution or filing of any paper, instrument or further act to be done on the part of the parties hereto.

(c) Upon any consolidation or merger of or other succession to the Owner Trustee, the Person succeeding to the Owner Trustee under the Trust Agreement may exercise every right and power of the Owner Trustee under this Indenture with the same effect as if such Person had been named as the Owner Trustee herein.

**Section 3.05. Protection of Collateral.** The Issuer will from time to time execute and deliver all such reasonable supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance and other instruments, and will take such other action necessary or advisable to:

- (i) provide further assurance with respect to the Grant of all or any portion of the Collateral;
- (ii) maintain or preserve the lien and security interest (and the priority thereof) of this Indenture or carry out more effectively the purposes hereof;
- (iii) perfect, publish notice of or protect the validity of any Grant made or to be made by this Indenture;
- (iv) enforce any rights with respect to the Collateral; and
- (v) preserve and defend title to the Collateral and the rights of the Indenture Trustee and the Noteholders in such Collateral against the claims of all Persons and parties.

The Issuer hereby designates the Administrator, its agent and attorney-in-fact to execute any financing statement, continuation statement or other instrument required to be executed pursuant to this Section 3.05.

**Section 3.06. Negative Covenants.** Without the written consent of the Majority Noteholders, so long as any Notes are Outstanding, the Issuer shall not:

- (i) except as expressly permitted by the Basic Documents, sell, transfer, exchange or otherwise dispose of any of the properties or assets of the Issuer, including those included in any part of the Trust Estate, unless directed to do so by the Noteholders as permitted herein;
- (ii) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Notes (other than amounts properly withheld from such payments under the Code) or assert any claim against any present or former Noteholder by reason of the payment of the taxes levied or assessed upon any part of the Trust Estate;
- (iii) engage in any business or activity other than as expressly permitted by this Indenture and the other Basic Documents, other than in connection with, or relating to, the issuance of Notes pursuant to this Indenture, or amend this Indenture as in effect on the Closing Date other than in accordance with Article IX hereof;
- (iv) issue any debt obligations except under this Indenture;



(v) incur or assume any indebtedness or guaranty any indebtedness of any Person, except for such indebtedness as may be incurred by the Issuer in connection with the issuance of the Notes pursuant to this Indenture;

(vi) dissolve or liquidate in whole or in part or merge or consolidate with any other Person;

(vii) (A) permit the validity or effectiveness of this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations with respect to the Notes except as may expressly be permitted hereby, (B) except as provided in the Basic Documents, permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance to be created on or extend to or otherwise arise upon or burden the Trust Estate or any part thereof or any interest therein or the proceeds thereof (other than tax liens, mechanics' liens and other liens that arise by operation of law, in each case, on any Mortgaged Property and arising solely as a result of an action or omission of the related Borrowers) or (C) except as provided in the Basic Documents, permit any Person other than itself, the Owner Trustee and the Noteholders to have any right, title or interest in the Trust Estate;

(viii) remove the Administrator without the prior written consent of the Majority Noteholders; or

(ix) take any other action or fail to take any action which may cause the Trust to be taxable as (a) an association pursuant to Section 7701 of the Code and the corresponding regulations, or (b) as a taxable mortgage pool pursuant to Section 7701(i) of the Code.

**Section 3.07. Performance of Obligations: Servicing of Loans.**

(a) The Issuer will not take any action and will use its best efforts not to permit any action to be taken by others that would release any Person from any of such Person's material covenants or obligations under any instrument or agreement included in the Collateral or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except as expressly provided in the Basic Documents or such other instrument or agreement.

(b) The Issuer may contract with or otherwise obtain the assistance of other Persons (including, without limitation, the Administrator under the Administration Agreement) to assist it in performing its duties under this Indenture, and any performance of such duties by a Person identified to the Indenture Trustee in an Officer's Certificate of the Issuer shall be deemed to be action taken by the Issuer. Initially, the Issuer has contracted with the Servicer and the Administrator to assist the Issuer in performing its duties under this Indenture.

(c) The Issuer will punctually perform and observe all of its obligations and agreements contained in this Indenture, in the Basic Documents and in the instruments and agreements included in the Collateral, including but not limited to (i) filing or causing to be filed all UCC financing statements and continuation statements required to be filed by the terms of this Indenture and the Sale and Servicing Agreement and (ii) recording or causing to be recorded all Mortgages, Assignments of Mortgage, all intervening Assignments of Mortgage and all assumption and modification agreements required to be recorded by the terms of the Sale and Servicing Agreement, in accordance with and within the time periods provided for in this Indenture and/or the Sale and Servicing Agreement, as applicable. Except as otherwise expressly provided therein, the Issuer shall not waive, amend, modify, supplement or

terminate any Basic Document or any provision thereof without the consent of the Indenture Trustee and the Majority Noteholders.

(d) If the Issuer shall have knowledge of the occurrence of a Servicing Event of Default, the Issuer shall promptly notify the Indenture Trustee and the Noteholder Agent thereof, and shall specify in such notice the action, if any, the Issuer is taking with respect to such default. If a Servicing Event of Default shall arise from the failure of the Servicer to perform any of its duties or obligations under the Sale and Servicing Agreement with respect to the Loans, the Issuer shall take all reasonable steps available to it to remedy such failure.

(e) Upon any termination of the Servicer's rights and powers pursuant to the Sale and Servicing Agreement, the Issuer shall promptly notify the Indenture Trustee. As soon as a successor servicer is appointed, the Issuer shall notify the Indenture Trustee of such appointment, specifying in such notice the name and address of such successor servicer.

(f) Without derogating from the absolute nature of the assignment granted to the Indenture Trustee under this Indenture or the rights of the Indenture Trustee hereunder, the Issuer agrees (i) that it will not, without the prior written consent of the Indenture Trustee, amend, modify, waive, supplement, terminate or surrender, or agree to any amendment, modification, supplement, termination, waiver or surrender of, the terms of any Collateral (except to the extent otherwise permitted by the Sale and Servicing Agreement) or the Basic Documents, or waive timely performance or observance by the Servicer or the Depositor under the Sale and Servicing Agreement; and (ii) that any such amendment shall not (A) increase or reduce in any manner the amount of, or accelerate or delay the timing of, distributions that are required to be made for the benefit of the Noteholders or (B) reduce the aforesaid percentage of the Notes that is required to consent to any such amendment, without the consent of Noteholders evidencing 100% Percentage Interests of the Outstanding Notes. If any such amendment, modification, supplement or waiver shall so be consented to by the Indenture Trustee, the Issuer agrees, promptly following a request by the Indenture Trustee to do so, to execute and deliver, in its own name and at its own expense, such agreements, instruments, consents and other documents as the Indenture Trustee may deem necessary or appropriate in the circumstances.

**Section 3.08. Reserved.**

**Section 3.09. Annual Statement as to Compliance.** So long as the Notes are Outstanding, the Issuer will deliver to the Indenture Trustee, within 120 days after the end of each fiscal year of the Issuer (commencing with the fiscal year beginning on May 1, 2006), an Officer's Certificate stating, as to the Authorized Officer signing such Officer's Certificate, that:

(i) a review of the activities of the Issuer during such year and of its performance under this Indenture has been made under such Authorized Officer's supervision; and

(ii) to the best of such Authorized Officer's knowledge, based on such review, the Issuer has materially complied with all conditions and covenants under this Indenture throughout such year, or, if there has been a default in its compliance with any such condition or covenant, specifying each such default known to such Authorized Officer and the nature and status thereof.

**Section 3.10. Covenants of the Issuer.** All covenants of the Issuer in this Indenture are covenants of the Issuer and are not covenants of the Owner Trustee. The Owner Trustee is, and any successor Owner Trustee under the Trust Agreement will be, entering into this Indenture solely as Owner Trustee under the Trust Agreement and not in its respective individual capacity, and in no case whatsoever shall the Owner Trustee or any such successor Owner Trustee be personally liable on, or for

any loss in respect of, any of the statements, representations, warranties or obligations of the Issuer hereunder, as to all of which the parties hereto agree to look solely to the property of the Issuer.

**Section 3.11. Servicer's Obligations.** The Issuer shall cause the Servicer to comply with the Sale and Servicing Agreement.

**Section 3.12. Restricted Payments.** The Issuer shall not, directly or indirectly, (i) pay any dividend or make any distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, to the Owner Trustee or any owner of a beneficial interest in the Issuer or otherwise with respect to any ownership or equity interest or security in or of the Issuer or to the Servicer, (ii) redeem, purchase, retire or otherwise acquire for value any such ownership or equity interest or security or (iii) set aside or otherwise segregate any amounts for any such purpose; provided, however, that the Issuer may make, or cause to be made, (x) distributions to the Servicer, the Indenture Trustee, the Owner Trustee and the Noteholders and the holders of the Trust Certificates as contemplated by, and to the extent funds are available for such purpose under, the Sale and Servicing Agreement or the Trust Agreement and (y) payments to the Administrator pursuant to Section 4 of the Administration Agreement. The Issuer will not, directly or indirectly, make or cause to be made payments to or distributions from the Distribution Account except in accordance with this Indenture and the Basic Documents.

**Section 3.13. Treatment of Notes as Debt for All Purposes.** The Issuer shall, and shall cause the Administrator to, treat the Notes as indebtedness for all purposes.

**Section 3.14. Notice of Events of Default.** The Issuer shall give the Indenture Trustee and the Noteholder Agent prompt written notice of each Event of Default hereunder and each default on the part of the Servicer or the Loan Originator of their respective obligations under any of the Basic Documents.

**Section 3.15. Further Instruments and Acts.** Upon request of the Indenture Trustee, the Issuer will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

#### ARTICLE IV

##### SATISFACTION AND DISCHARGE

**Section 4.01. Satisfaction and Discharge of Indenture.** This Indenture shall cease to be of further effect with respect to the Notes (except as to (i) rights of registration of transfer and exchange, (ii) substitution of mutilated, destroyed, lost or stolen Notes, (iii) rights of Noteholders to receive payments of principal thereof and interest thereon, (iv) Sections 3.03, 3.04 and 3.10 hereof, (v) the rights, obligations and immunities of the Indenture Trustee hereunder (including the rights of the Indenture Trustee under Section 6.07 hereof and the obligations of the Indenture Trustee under Section 4.02 hereof) and (vi) the rights of Noteholders as beneficiaries hereof with respect to the property so deposited with the Indenture Trustee payable to all or any of them), and the Indenture Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments satisfactory to it, and prepared and delivered to it by the Issuer, acknowledging satisfaction and discharge of this Indenture with respect to the Notes, when all of the following have occurred:

(A) either

- (1) all Notes theretofore authenticated and delivered (other than (i) Notes that have been destroyed, lost or stolen and that have been replaced or

paid as provided in Section 2.04 hereof and (ii) Notes for the payment of which money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 3.03 hereof) shall have been delivered to the Indenture Trustee for cancellation; or

- (2) all Notes not theretofore delivered to the Indenture Trustee for cancellation
- a. shall have become due and payable, or
  - b. are to be called for redemption within one year under arrangements satisfactory to the Indenture Trustee for the giving of notice of redemption by the Indenture Trustee in the name, and at the expense, of the Issuer,
  - c. and the Issuer, in the case of clause a. or b. above, has irrevocably deposited or caused irrevocably to be deposited with the Indenture Trustee cash or direct obligations of or obligations guaranteed by the United States of America (which will mature prior to the date such amounts are payable), in trust for such purpose, in an amount sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Indenture Trustee for cancellation when due to the applicable Maturity Date or the Redemption Date (if Notes shall have been called for redemption pursuant to Section 10.01 hereof), as the case may be; and

(B) the latest of (a) the payment in full of all outstanding obligations under the Notes, (b) the payment in full of all unpaid Trust Fees and Expenses and (c) the date on which the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer; and

(C) the Issuer shall have delivered to the Indenture Trustee an Officer's Certificate and an Opinion of Counsel, each meeting the applicable requirements of Section 11.01 hereof and, subject to Section 11.02 hereof, each stating that all conditions precedent herein provided for, relating to the satisfaction and discharge of this Indenture with respect to the Notes, have been complied with.

**Section 4.02. Application of Trust Money.** All moneys deposited with the Indenture Trustee pursuant to Sections 3.03 and 4.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent, as the Indenture Trustee may determine, to the Noteholders for the payment or redemption of which such moneys have been deposited with the Indenture Trustee, of all sums due and to become due thereon for principal and/or interest; but such moneys need not be segregated from other funds except to the extent required herein or in the Sale and Servicing Agreement or required by law.

**Section 4.03. Repayment of Moneys Held by Paying Agent.** In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all moneys then held by any Paying Agent other than the Indenture Trustee under the provisions of this Indenture with respect to such Notes shall, upon demand of the Issuer, be paid to the Indenture Trustee to be held and applied according to Section 3.03 hereof and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

## ARTICLE V

### DEFAULTS AND REMEDIES

**Section 5.01. Events of Default.** “Event of Default,” wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) notwithstanding any insufficiency of funds in the Distribution Account for payment thereof on the related Payment Date, default in the payment of any interest on any Note when the same becomes due and payable; or

(b) notwithstanding any insufficiency of funds in the Distribution Account for payment thereof on the related Payment Date, default in the payment of any installment of the Overcollateralization Shortfall of any Note (i) on any Payment Date or (ii) on the Maturity Date, or, to the extent that there are funds available in the Distribution Account therefor, default in the payment of any installment of the principal of any Note from such available funds, as a result of the occurrence of a Rapid Amortization Trigger; or

(c) the occurrence of a Servicer Event of Default; or

(d) default in the observance or performance of any covenant or agreement of the Issuer made in any Basic Document to which it is a party (other than a covenant or agreement, a default in the observance or performance of which is elsewhere in this Section 5.01 specifically dealt with), or any representation or warranty of the Issuer made in any Basic Document to which it is a party or in any certificate or other writing delivered pursuant thereto or in connection therewith proving to have been incorrect in any material respect as of the time when the same shall have been made, and such default shall continue or not be cured, or the circumstance or condition in respect of which such misrepresentation or warranty was incorrect shall not have been eliminated or otherwise cured, for a period of 30 days after there shall have been given, by registered or certified mail, to the Issuer by the Indenture Trustee, or to the Issuer, the Depositor and the Indenture Trustee by Noteholders evidencing at least 25% Percentage Interests of the Outstanding Notes, a written notice specifying such default or incorrect representation or warranty and requiring it to be remedied and stating that such notice is a notice of Default hereunder; or

(e) default in the observance or performance of any covenant or agreement of the Depositor or the Loan Originator made in any Basic Document to which it is a party or any representation or warranty of the Depositor (except as otherwise expressly provided in the Basic Documents with respect to representations and warranties regarding the Loans) or Loan Originator made in any Basic Document to which it is a party, proving to have been incorrect in any material respect as of the time when the same shall have been made, and such default shall continue or not be cured, or the circumstance or condition in respect of which such misrepresentation or warranty was incorrect shall not have been eliminated or otherwise cured, for a period of 30 days (or 5 days in the case of the failure of the Loan Originator to make a payment in respect of the Transfer Obligation) after there shall have been given, by registered or certified mail, to the Issuer and the Depositor by the Indenture Trustee, or to the Issuer, the Depositor and the Indenture Trustee by Noteholders evidencing at least 25% Percentage Interests of the Outstanding Notes, a written notice specifying such Default or incorrect representation or warranty and requiring it to be remedied and stating that such notice is a notice of Default hereunder; or

(f) default in the observance or performance of any covenant or agreement of the Loan Originator or any direct or indirect subsidiary (other than any domestic or offshore entities established for the purpose of issuing net interest margin securities) made in any repurchase agreement, loan and security agreement or other similar credit facility agreement entered into by the Loan Originator or any such subsidiary and any third party for borrowed funds in excess of \$30,000,000, including any default which entitles any party to require acceleration or prepayment of any indebtedness thereunder; or

(g) the filing of a decree or order for relief by a court having jurisdiction over the Issuer, the Depositor or the Loan Originator or all or substantially all of the Collateral in an involuntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointing of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Issuer, the Depositor or the Loan Originator or for all or substantially all of the Collateral, or the ordering of the winding-up or liquidation of the affairs of the Issuer, the Depositor or the Loan Originator, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(h) the commencement by the Issuer, the Depositor or the Loan Originator of a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent by the Issuer, the Depositor or the Loan Originator to the entry of an order for relief in an involuntary case under any such law, or the consent by the Issuer to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Issuer, the Depositor or the Loan Originator or for any substantial part of the Collateral, or the making by the Issuer, the Depositor or the Loan Originator of any general assignment for the benefit of creditors, or the failure by the Issuer, the Depositor or the Loan Originator generally to pay its respective debts as such debts become due, or the taking of any action by the Issuer, the Depositor or the Loan Originator in furtherance of any of the foregoing; or

(i) the Notes shall be Outstanding on the day after the end of the Revolving Period; or

(j) a Change of Control of the Loan Originator.

The Loan Originator shall deliver to the Noteholders and Noteholder Agent written notice of any Event of Default as set forth above under clauses (a) through (j). The Issuer shall deliver to the Indenture Trustee, within five days after the occurrence thereof, written notice in the form of an Officer's Certificate of any event which with the giving of notice and the lapse of time would become an Event of Default under clauses (d) or (e) above, the status of such event and what action the Issuer or the Depositor, as applicable, is taking or proposes to take with respect thereto.

**Section 5.02. Acceleration of Maturity; Rescission and Annulment.** If an Event of Default should occur and be continuing, then and in every such case the Indenture Trustee, at the direction or upon the prior written consent of the Majority Noteholders, may declare all the Notes to be immediately due and payable, by a notice in writing to the Issuer (and to the Indenture Trustee if given by Noteholders), and upon any such declaration, the unpaid principal amount of such Notes, together with accrued and unpaid interest thereon through the date of acceleration, shall become immediately due and payable.

At any time after such declaration of acceleration of maturity has been made and before a judgment or decree for payment of the moneys due has been obtained by the Indenture Trustee as hereinafter in this Article V provided, the Majority Noteholders, by written notice to the Issuer and the Indenture Trustee, may rescind and annul such declaration and its consequences if:

(a) the Issuer has paid or deposited with the Indenture Trustee a sum sufficient to pay:

1. all payments of principal of and/or interest on all Notes and all other amounts that would then be due hereunder or upon such Notes if the Event of Default giving rise to such acceleration had not occurred; and
2. all sums paid or advanced by the Indenture Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee and its agents and counsel; and

(b) all Events of Default, other than the nonpayment of the principal of the Notes that has become due solely by such acceleration, have been cured or waived as provided in Section 5.12 hereof. No such rescission shall affect any subsequent default or impair any right consequent thereto.

**Section 5.03. Collection of Indebtedness and Suits for Enforcement by Indenture Trustee.**

(a) The Issuer covenants that if (i) default is made in the payment of any interest on any Note when the same becomes due and payable, and such default continues for a period of five days, or (ii) default is made in the payment of the principal of or any installment of the principal of any Note when the same becomes due and payable, the Issuer will, upon demand of the Indenture Trustee, pay to the Indenture Trustee, for the benefit of the Noteholders, the whole amount then due and payable on such Notes for principal and/or interest, with interest upon the overdue principal and, to the extent payment at such rate of interest shall be legally enforceable, upon overdue installments of interest at the rate borne by the Notes and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee and its agents and counsel.

(b) In case the Issuer shall fail forthwith to pay such amounts upon such demand, the Indenture Trustee shall at the direction of the Majority Noteholders, subject to Section 5.06(c) institute a Proceeding for the collection of the sums so due and unpaid, and may prosecute such Proceeding to judgment or final decree, and may enforce the same against the Issuer or other obligor upon such Notes and collect in the manner provided by law out of the property of the Issuer or other obligor upon such Notes, wherever situated, the moneys adjudged or decreed to be payable.

(c) If an Event of Default occurs and is continuing, the Indenture Trustee shall at the direction of the Majority Noteholders, as more particularly provided in Section 5.04 hereof, subject to Section 5.06(c) hereof, proceed to protect and enforce its rights and the rights of the Noteholders by such appropriate Proceedings as the Indenture Trustee shall deem most effective to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy or legal or equitable right vested in the Indenture Trustee by this Indenture or by law.

(d) In case there shall be pending, relative to the Issuer or any other obligor upon the Notes or any Person having or claiming an ownership interest in the Collateral, Proceedings under Title 11 of the United States Code or any other applicable federal or state bankruptcy, insolvency or other similar law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or its property or such other obligor or Person, or in case of any other comparable judicial Proceedings relative to the Issuer or other obligor upon the Notes, or to the creditors or property of the Issuer or such other

obligor, the Indenture Trustee, irrespective of whether the principal of any Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Indenture Trustee shall have made any demand pursuant to the provisions of this Section 5.03, shall be entitled and empowered by intervention in such Proceedings or otherwise:

(i) to file and prove a claim or claims for the whole amount of principal and/or interest owing and unpaid in respect of the Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee (including any claim for reasonable compensation to the Indenture Trustee, each predecessor Indenture Trustee, and its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Indenture Trustee and each predecessor Indenture Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in such Proceedings;

(ii) unless prohibited by applicable law and regulations, to vote on behalf of the Noteholders in any election of a trustee, a standby trustee or Person performing similar functions in any such Proceedings;

(iii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute all amounts received with respect to the claims of the Noteholders and the Indenture Trustee on their behalf; and

(iv) to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee or the Noteholders allowed in any judicial proceedings relative to the Issuer, its creditors and its property; and any trustee, receiver, liquidator, custodian or other similar official in any such Proceeding is hereby authorized by each of such Noteholders to make payments to the Indenture Trustee and, in the event that the Indenture Trustee shall consent to the making of payments directly to such Noteholders, to pay to the Indenture Trustee such amounts as shall be sufficient to cover reasonable compensation to the Indenture Trustee, each predecessor Indenture Trustee and their respective agents, attorneys and counsel; and all other expenses and liabilities incurred and all advances made by the Indenture Trustee and each predecessor Indenture Trustee except as a result of negligence or bad faith.

(e) Nothing herein contained shall be deemed to authorize the Indenture Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Noteholder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof or to authorize the Indenture Trustee to vote in respect of the claim of any Noteholder in any such proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

(f) All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Indenture Trustee without the possession of any of the Notes or the production thereof in any trial or other Proceedings relative thereto, and any such action or Proceedings instituted by the Indenture Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Indenture Trustee, each predecessor Indenture Trustee and their respective agents, attorneys and counsel, shall be for the ratable benefit of the Noteholders.

(g) In any Proceedings brought by the Indenture Trustee (and also any Proceedings involving the interpretation of any provision of this Indenture to which the Indenture Trustee shall be a



party), the Indenture Trustee shall be held to represent all the Noteholders, and it shall not be necessary to make any Noteholder a party to any such Proceedings.

**Section 5.04. Remedies; Priorities.**

(a) If an Event of Default shall have occurred and be continuing, the Indenture Trustee, at the direction of the Majority Noteholders shall, do one or more of the following (subject to Section 5.05 hereof):

(i) institute Proceedings in its own name and as trustee of an express trust for the collection of all amounts then payable on the Notes or under this Indenture with respect thereto, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Issuer and any other obligor upon such Notes moneys adjudged due;

(ii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Collateral;

(iii) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights and remedies of the Indenture Trustee or the Noteholders; and

(iv) sell the Collateral or any portion thereof or rights or interest therein in a commercially reasonable manner, at one or more public or private sales called and conducted in any manner permitted by law; provided, however, that the Indenture Trustee may not sell or otherwise liquidate the Collateral following an Event of Default, unless (A) the Holders of 100% Percentage Interests of the Outstanding Notes consent thereto, (B) the proceeds of such sale or liquidation distributable to the Noteholders are sufficient to discharge in full all amounts then due and unpaid upon such Notes for principal and/or interest or (C) the Indenture Trustee determines that the Collateral will not continue to provide sufficient funds for the payment of principal of and interest on the Notes as they would have become due if the Notes had not been declared due and payable, and the Indenture Trustee obtains the consent of Holders of not less than 66-2/3% Percentage Interests of the Outstanding Notes. In determining such sufficiency or insufficiency with respect to clause (B) and (C) of this subsection (a) (iv), the Indenture Trustee may, but need not, obtain and rely upon an opinion of an Independent investment banking or accounting firm of national reputation as to the feasibility of such proposed action and as to the sufficiency of the Collateral for such purpose.

(b) If the Indenture Trustee collects any money or property pursuant to this Article V, it shall pay out the money or property in the following order:

FIRST: in the following order of priority: (a) to the Indenture Trustee, an amount equal to all unreimbursed Indenture Trustee Fees and indemnities and any other amounts payable to the Indenture Trustee pursuant to the Basic Documents and to the Indenture Trustee or Sale Agents, as applicable, all reasonable fees and expenses incurred by them and their agents and representatives in connection with the enforcement of the remedies provided for in this Article V, (b) to the Custodian, an amount equal to all unpaid Custodian Fees and indemnities and any other amounts payable to the Custodian pursuant to the Basic Documents, (c) to the Owner Trustee, an amount equal to all unreimbursed Owner Trustee Fees and indemnities and any other amounts payable to the Owner Trustee pursuant to the Basic Documents, and (d) to the Servicer, an amount equal to (i) all unreimbursed Servicing Compensation and (ii) all unreimbursed Nonrecoverable Servicing Advances;

SECOND: the Hedge Funding Requirement to the appropriate Hedging Counterparties (if any);

THIRD: to the Noteholders pro rata, all amounts in respect of interest due and owing under the Notes;

FOURTH: to the Noteholders pro rata, all amounts in respect of unpaid principal of the Notes;

FIFTH: to the Purchasers or any other Indemnified Party (as each such term is defined in the Note Purchase Agreement), amounts in respect of Issuer/Depositor Indemnities (as defined in the Trust Agreement) and to the Noteholder Agent, amounts in respect of Due Diligence Fees (as set forth in Section 11.15 of the Sale and Servicing Agreement) until such amounts are paid in full;

SIXTH: to the Owner Trustee, for any amounts to be distributed pro rata to the holders of the Trust Certificates pursuant to the Trust Agreement.

The Indenture Trustee may fix a record date and payment date for any payment to be made to the Noteholders pursuant to this Section 5.04. At least 15 days before such record date, the Indenture Trustee shall mail to each Noteholder and the Issuer a notice that states the record date, the payment date and the amount to be paid.

**Section 5.05. Optional Preservation of the Collateral.** If the Notes have been declared to be due and payable under Section 5.02 hereof following an Event of Default and such declaration and its consequences have not been rescinded and annulled, the Indenture Trustee may, but need not, elect to maintain possession of the Collateral. It is the desire of the parties hereto and the Noteholders that there be at all times sufficient funds for the payment of principal of and interest on the Notes, and the Indenture Trustee shall take such desire into account when determining whether or not to maintain possession of the Collateral. In determining whether to maintain possession of the Collateral, the Indenture Trustee may, but need not, obtain and rely upon an opinion of an Independent investment banking or accounting firm of national reputation as to the feasibility of such proposed action and as to the sufficiency of the Collateral for such purpose.

**Section 5.06. Limitation of Suits.** No Noteholder shall have any right to institute any Proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Noteholder has previously given written notice to the Indenture Trustee of a continuing Event of Default;

(b) the Noteholders evidencing not less than 25% Percentage Interests of the Outstanding Notes have made written request to the Indenture Trustee to institute such Proceeding in respect of such Event of Default in its own name as Indenture Trustee hereunder;

(c) such Noteholder or Noteholders have offered to the Indenture Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in complying with such request;

(d) the Indenture Trustee for 30 days after its receipt of such notice, request and offer of indemnity has failed to institute such Proceeding; and

(e) no direction inconsistent with such written request has been given to the Indenture Trustee during such 30-day period by the Majority Noteholders.

It is understood and intended that no one or more Noteholders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Noteholders or to obtain or to seek to obtain priority or preference over any other Noteholders or to enforce any right under this Indenture, except in the manner herein provided.

In the event the Indenture Trustee shall receive conflicting or inconsistent requests and indemnity from two or more groups of Noteholders, neither of which evidences Percentage Interests of the Outstanding Notes greater than 50%, the Indenture Trustee in its sole discretion may determine what action, if any, shall be taken, notwithstanding any other provisions of this Indenture and shall have no obligation or liability to any such group of Noteholders for such action or inaction.

**Section 5.07. Unconditional Rights of Noteholders to Receive Principal and/or Interest.** Notwithstanding any other provisions in this Indenture, any Noteholder shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest, if any, on such Note on or after the applicable Maturity Date thereof expressed in such Note or in this Indenture (or, in the case of redemption, on or after the Redemption Date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Noteholder.

**Section 5.08. Restoration of Rights and Remedies.** If the Indenture Trustee or any Noteholder has instituted any Proceeding to enforce any right or remedy under this Indenture and such Proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Indenture Trustee or to such Noteholder, then and in every such case the Issuer, the Indenture Trustee and the Noteholders shall, subject to any determination in such Proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Indenture Trustee and the Noteholders shall continue as though no such Proceeding had been instituted.

**Section 5.09. Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Indenture Trustee or to the Noteholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 5.10. Delay or Omission Not a Waiver.** No delay or omission of the Indenture Trustee or any Noteholder to exercise any right or remedy accruing upon any Default or Event of Default shall impair any such right or remedy or constitute a waiver of any such Default or Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Indenture Trustee or to the Noteholders may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Noteholders, as the case may be.

**Section 5.11. Control by Noteholders.** The Majority Noteholders shall have the right to direct the time, method and place of conducting any Proceeding for any remedy available to the Indenture Trustee with respect to the Notes or exercising any trust or power conferred on the Indenture Trustee; provided, however, that:

(a) such direction shall not be in conflict with any rule of law or with this Indenture;

(b) subject to the express terms of Section 5.04(a)(ix) hereof, any direction to the Indenture Trustee to sell or liquidate the Collateral shall be by Noteholders representing Percentage Interests of the Outstanding Notes of not less than 100%;

(c) if the conditions set forth in Section 5.05 hereof have been satisfied and the Indenture Trustee elects to retain the Collateral pursuant to such Section, then any direction to the Indenture Trustee by Noteholders representing Percentage Interests of the Outstanding Notes of less than 100% to sell or liquidate the Collateral shall be of no force and effect; and

(d) the Indenture Trustee may take any other action deemed proper by the Indenture Trustee that is not inconsistent with such direction.

In connection with any sale of the Collateral in accordance with paragraph (c) above, the Majority Noteholders may, in their sole discretion appoint agents to effect the sale of the Collateral (such agents, "Sale Agents"), which Sale Agents may be Affiliates of any Noteholder. The Sale Agents shall be entitled to reasonable compensation in connection with such activities from the proceeds of such sale.

Notwithstanding the rights of the Noteholders set forth in this Section 5.11, subject to Section 6.01 hereof, the Indenture Trustee need not take any action that it determines might involve it in liability or might materially adversely affect the rights of any Noteholders not consenting to such action.

**Section 5.12. Waiver of Past Defaults.** The Majority Noteholders may waive any past Default or Event of Default and its consequences, except a Default (a) in the payment of principal of or interest on any of the Notes or (b) in respect of a covenant or provision hereof that cannot be modified or amended without the consent of each Noteholder. In the case of any such waiver, the Issuer, the Indenture Trustee, and Noteholders shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto.

Upon any such waiver, such Default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured and not to have occurred, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto.

**Section 5.13. Undertaking for Costs.** All parties to this Indenture agree, and each Noteholder by such Noteholder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Indenture Trustee for any action taken, suffered or omitted by it as Indenture Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.13 shall not apply to (a) any suit instituted by the Indenture Trustee, (b) any suit instituted by any Noteholder, or group of Noteholders, in each case holding in the aggregate Percentage Interests of the Outstanding Notes of more than 10% or (c) any suit instituted by any Noteholder for the enforcement of the payment of principal of or interest on any Note on or after the respective due dates expressed in such Note and in this Indenture (or, in the case of redemption, on or after the Redemption Date).

**Section 5.14. Waiver of Stay or Extension Laws.** The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead or in any manner whatsoever, claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time

hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**Section 5.15. Action on Notes.** The Indenture Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking, obtaining or application of any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Indenture Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Indenture Trustee against the Issuer or by the levy of any execution under such judgment upon any portion of the Collateral or upon any of the assets of the Issuer. Any money or property collected by the Indenture Trustee shall be applied in accordance with Section 5.04(b) hereof.

**Section 5.16. Performance and Enforcement of Certain Obligations.**

(a) Promptly following a request from the Indenture Trustee to do so and at the Administrator's expense, the Issuer shall take all such lawful action as the Indenture Trustee may request to compel or secure the performance and observance by the Loan Originator and the Servicer, as applicable, of each of their obligations to the Issuer under or in connection with the Sale and Servicing Agreement or the Loan Purchase and Contribution Agreement, and to exercise any and all rights, remedies, powers and privileges lawfully available to the Issuer under or in connection with the Sale and Servicing Agreement to the extent and in the manner directed by the Indenture Trustee, including the transmission of notices of default on the part of the Loan Originator or the Servicer thereunder and the institution of legal or administrative actions or proceedings to compel or secure performance by the Loan Originator or the Servicer of each of their obligations under the Sale and Servicing Agreement and the Loan Purchase and Contribution Agreement.

(b) If an Event of Default has occurred and is continuing, the Indenture Trustee may, and at the direction (which direction shall be in writing or by telephone, confirmed in writing promptly thereafter) of the Majority Noteholders shall, subject to Section 5.06(c) exercise all rights, remedies, powers, privileges and claims of the Issuer against the Loan Originator or the Servicer under or in connection with the Sale and Servicing Agreement or the Loan Purchase and Contribution Agreement, including the right or power to take any action to compel or secure performance or observance by the Loan Originator or the Servicer, as the case may be, of each of their obligations to the Issuer thereunder and to give any consent, request, notice, direction, approval, extension, or waiver under the Sale and Servicing Agreement, and any right of the Issuer to take such action shall be suspended.

## ARTICLE VI

### THE INDENTURE TRUSTEE

**Section 6.01. Duties of Indenture Trustee.**

(a) If an Event of Default has occurred and is continuing, the Indenture Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Indenture Trustee shall undertake to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustee; and

(ii) in the absence of bad faith on its part, the Indenture Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture; provided, however, that the Indenture Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture to the extent specifically set forth herein.

(c) The Indenture Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 6.01;

(ii) the Indenture Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Indenture Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Indenture Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.11 hereof.

(d) The Indenture Trustee shall not be liable for interest on any money received by it and held in a Trust Account except as may be provided in the Sale and Servicing Agreement or as the Indenture Trustee may agree in writing with the Issuer.

(e) Money held in trust by the Indenture Trustee shall be segregated from other funds except to the extent permitted by law or the terms of this Indenture or the Sale and Servicing Agreement.

(f) No provision of this Indenture shall require the Indenture Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; provided, however, that the Indenture Trustee shall not refuse or fail to perform any of its duties hereunder solely as a result of nonpayment of its normal fees and expenses and provided, further, that nothing in this Section 6.01(f) shall be construed to limit the exercise by the Indenture Trustee of any right or remedy permitted under this Indenture or otherwise in the event of the Issuer's failure to pay the Indenture Trustee's fees and expenses pursuant to Section 6.07 hereof.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee shall be subject to the provisions of this Section 6.01.

(h) The Indenture Trustee shall not be required to take notice or be deemed to have notice or knowledge of any Event of Default (other than an Event of Default pursuant to Section 5.01(a) or (b) hereof) unless a Responsible Officer of the Indenture Trustee shall have received written notice thereof or otherwise shall have actual knowledge thereof. In the absence of receipt of notice or such knowledge, the Indenture Trustee may conclusively assume that there is no Event of Default.

**Section 6.02. Rights of Indenture Trustee.** (a) The Indenture Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Indenture Trustee need not investigate any fact or matter stated in the document.

(b) Before the Indenture Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel. The Indenture Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officer's Certificate or Opinion of Counsel.

(c) The Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys or a custodian or nominee.

(d) The Indenture Trustee shall not be liable for (i) any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by the Indenture Trustee does not constitute willful misconduct, negligence or bad faith; or (ii) any action or inaction on the part of the Custodian.

(e) The Indenture Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

**Section 6.03. Individual Rights of Indenture Trustee.** The Indenture Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Indenture Trustee. Any Paying Agent, Note Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Indenture Trustee must comply with Section 6.11 hereof.

**Section 6.04. Indenture Trustee's Disclaimer.** The Indenture Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, shall not be accountable for the Issuer's use of the proceeds from the Notes, or responsible for any statement of the Issuer in the Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Indenture Trustee's certificate of authentication.

**Section 6.05. Notices of Default.** If a Default occurs and is continuing and if it is actually known to a Responsible Officer of the Indenture Trustee, the Indenture Trustee shall mail to each Noteholder and each party to the Master Disposition Confirmation Agreement notice of the Default within two Business Days after it receives actual notice of such occurrence.

**Section 6.06. Reports by Indenture Trustee to Holders.** The Indenture Trustee shall deliver to each Noteholder such information specifically requested by each Noteholder and in the Indenture Trustee's possession and as may be reasonably required to enable such Noteholder to prepare its federal and state income tax returns.

**Section 6.07. Compensation and Indemnity.** As compensation for its services hereunder, the Indenture Trustee shall be entitled to receive, on each Payment Date, the Indenture Trustee's Fee pursuant to Section 8.02(c) hereof (which compensation shall not be limited by any law on compensation of a trustee of an express trust) and shall be entitled to reimbursement by the Servicer for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Indenture Trustee's agents, counsel, accountants and

experts. The Issuer agrees to cause the Servicer to indemnify the Indenture Trustee, the Custodian, the Paying Agent and their officers, directors, employees and agents against any and all loss, liability or expense (including reasonable attorneys' fees) incurred by it or them in connection with the administration of this trust and the performance of its or their duties under the Basic Documents. The Indenture Trustee shall notify the Issuer and the Servicer promptly of any claim for which it may seek indemnity. Failure by the Indenture Trustee so to notify the Issuer and the Servicer shall not relieve the Issuer or the Servicer of its or their obligations hereunder. The Issuer shall, or shall cause the Servicer to, defend any such claim; provided, however, that if the defendants with respect to any such claim include the Issuer and/or the Servicer and the Indenture Trustee, and the Indenture Trustee shall have reasonably concluded that there may be legal defenses available to it which are different from or in addition to those defenses available to the Issuer or the Servicer, as the case may be, the Indenture Trustee shall have the right, at the expense of the Servicer, to select separate counsel to assert such legal defenses and to otherwise defend itself against such claim. Neither the Issuer nor the Servicer need reimburse any expense or indemnify against any loss, liability or expense incurred by the Indenture Trustee through the Indenture Trustee's own willful misconduct, negligence or bad faith.

The Issuer's payment obligations to the Indenture Trustee pursuant to this Section 6.07 shall survive the discharge of this Indenture and the termination or resignation of the Indenture Trustee. When the Indenture Trustee incurs expenses after the occurrence of a Default specified in Section 5.01(e) or (f) hereof with respect to the Issuer, the expenses are intended to constitute expenses of administration under Title 11 of the United States Code or any other applicable federal or state bankruptcy, insolvency or similar law.

Notwithstanding anything in this Section 6.07 to the contrary, all amounts due the Indenture Trustee hereunder shall be payable in the first instance by the Servicer and, if not paid by the Servicer within 60 days after payment is requested from the Servicer by the Indenture Trustee, in accordance with the priorities set forth in Section 5.01 of the Sale and Servicing Agreement.

**Section 6.08. Replacement of Indenture Trustee.** No resignation or removal of the Indenture Trustee and no appointment of a successor Indenture Trustee shall become effective until the acceptance of appointment by the successor Indenture Trustee pursuant to this Section 6.08. The Indenture Trustee may resign at any time by so notifying the Issuer. The Majority Noteholders may remove the Indenture Trustee (with the consent of the Majority Certificateholders, not to be unreasonably withheld) by so notifying the Indenture Trustee and may appoint a successor Indenture Trustee; provided, that all of the reasonable costs and expenses incurred by the Indenture Trustee in connection with such removal shall be reimbursed to it prior to the effectiveness of such removal. The Issuer shall remove the Indenture Trustee if

- (a) the Indenture Trustee fails to comply with Section 6.11 hereof,
- (b) the Indenture Trustee is adjudged a bankrupt or insolvent;
- (c) a receiver or other public officer takes charge of the Indenture Trustee or its property; or
- (d) the Indenture Trustee otherwise becomes incapable of acting.

If the Indenture Trustee resigns or is removed or if a vacancy exists in the office of Indenture Trustee for any reason (the Indenture Trustee in such event being referred to herein as the retiring Indenture Trustee), the Issuer shall promptly appoint a successor Indenture Trustee.



A successor Indenture Trustee shall deliver a written acceptance of its appointment to the retiring Indenture Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Indenture Trustee shall become effective, and the successor Indenture Trustee shall have all the rights, powers and duties of the Indenture Trustee under this Indenture. The successor Indenture Trustee shall mail a notice of its succession to Noteholders. The retiring Indenture Trustee shall promptly transfer all property held by it as Indenture Trustee to the successor Indenture Trustee.

If a successor Indenture Trustee does not take office within 60 days after the retiring Indenture Trustee resigns or is removed, the retiring Indenture Trustee, the Issuer or the Majority Noteholders may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

If the Indenture Trustee fails to comply with Section 6.11 hereof, any Noteholder may petition any court of competent jurisdiction for the removal of the Indenture Trustee and the appointment of a successor Indenture Trustee.

Notwithstanding the replacement of the Indenture Trustee pursuant to this Section 6.08, the Issuer's and the Administrator's obligations under Section 6.07 hereof shall continue for the benefit of the retiring Indenture Trustee.

**Section 6.09. Successor Indenture Trustee by Merger.** If the Indenture Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Indenture Trustee; provided, however, that such corporation or banking association shall otherwise be qualified and eligible under Section 6.11 hereof. The Indenture Trustee shall provide the Majority Noteholders prior written notice of any such transaction.

In case at the time such successor or successors by merger, conversion or consolidation to the Indenture Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Indenture Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Indenture Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Indenture Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Indenture Trustee shall have.

**Section 6.10. Appointment of Co-Indenture Trustee or Separate Indenture Trustee.**

(a) Notwithstanding any other provisions of this Indenture, at any time, for the purpose of meeting any legal requirement of any jurisdiction in which any part of the Collateral may at the time be located, the Indenture Trustee shall have the power and may execute and deliver all instruments to appoint one or more Persons to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Trust, and to vest in such Person or Persons, in such capacity and for the benefit of the Noteholders, such title to the Collateral, or any part hereof, and, subject to the other provisions of this Section 6.10, such powers, duties, obligations, rights and trusts as the Indenture Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 6.11 hereof and no notice to Noteholders of the appointment of any co-trustee or separate trustee shall be required under Section 6.08 hereof.

(b) Every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Indenture Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Collateral or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Indenture Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Indenture Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Indenture Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article VI. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, jointly with the Indenture Trustee, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Indenture Trustee. Every such instrument shall be filed with the Indenture Trustee.

(d) Any separate trustee or co-trustee may at any time constitute the Indenture Trustee its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

**Section 6.11. Eligibility.** The Indenture Trustee shall (i) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition or (ii) otherwise be acceptable in writing to the Majority Noteholders.

## ARTICLE VII

### NOTEHOLDERS' LISTS AND REPORTS

**Section 7.01. Issuer to Furnish Indenture Trustee Names and Addresses of Noteholders.** The Issuer will furnish or cause to be furnished to the Indenture Trustee (a) not more than five days after the earlier of (i) each Record Date and (ii) three months after the last Record Date, a list, in such form as the Indenture Trustee may reasonably require, of the names and addresses of the Noteholders as of such Record Date, (b) at such other times as the Indenture Trustee may request in writing, within 30 days after receipt by the Issuer of any such request, a list of similar form and content as

of a date not more than 10 days prior to the time such list is furnished; provided, however, that so long as the Indenture Trustee is the Note Registrar, no such list shall be required to be furnished.

**Section 7.02. Preservation of Information.** The Indenture Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of the Noteholders contained in the most recent list furnished to the Indenture Trustee as provided in Section 7.01 hereof and the names and addresses of Noteholders received by the Indenture Trustee in its capacity as Note Registrar. The Indenture Trustee may destroy any list furnished to it as provided in such Section 7.01 upon receipt of a new list so furnished.

**Section 7.03. 144A Information.**

(a) To permit compliance with the Securities Act in connection with the sale of the Notes sold in reliance on Rule 144A, the Issuer shall furnish to the Indenture Trustee the information required to be delivered under Rule 144A(d)(4) under the Securities Act, if the Issuer is neither a reporting company under Section 13 or Section 15(d) of the United States Securities Exchange Act of 1934, as amended, nor exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act.

(b) The Indenture Trustee, to the extent it has any such information in its possession, shall provide to any Noteholder and any prospective transferee designated by any such Noteholder information regarding the Notes and the Loans and such other information as shall be necessary to satisfy the condition to eligibility set forth in Rule 144A(d)(4) under the Securities Act for transfer of any such Note without registration thereof under the Securities Act pursuant to the registration exemption provided by Rule 144A under the Securities Act.

## ARTICLE VIII

### ACCOUNTS, DISBURSEMENTS AND RELEASES

**Section 8.01. Collection of Money. General.** Except as otherwise expressly provided herein, the Indenture Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any intermediary, all money and other property payable to or receivable by the Indenture Trustee pursuant to this Indenture. The Indenture Trustee shall apply all such money received by it as provided in this Indenture. Except as otherwise expressly provided in this Indenture, if any default occurs in the making of any payment or performance under any agreement or instrument that is part of the Collateral, the Indenture Trustee may take such action as may be appropriate to enforce such payment or performance, including the institution and prosecution of appropriate Proceedings. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture and any right to proceed thereafter as provided in Article V hereof.

**Section 8.02. Trust Accounts; Distributions.**

(a) On or prior to the Closing Date, the Issuer shall cause the Servicer to establish and maintain, in the name of the Indenture Trustee for the benefit of the Noteholders, or on behalf of the Owner Trustee for the benefit of the Securityholders, the Trust Accounts as provided in the Sale and Servicing Agreement. The Servicer shall deposit amounts into each of the Trust Accounts in accordance with the terms hereof, the Sale and Servicing Agreement and the Payment Statements.

(b) Collection Account. With respect to the Collection Account, the Paying Agent shall make such withdrawals and distributions as specified in Section 5.01(c)(1) of the Sale and Servicing Agreement in accordance with the terms thereof.

(c) Distribution Account. With respect to the Distribution Account, the Paying Agent shall make (i) such deposits as specified in Sections 5.01(c)(2)(i), 5.01(c)(2)(ii), 5.05(e), 5.05(f), 5.05(g), and 5.05(h) of the Sale and Servicing Agreement and (ii) such withdrawals and distributions as specified in Section 5.01(c)(3) of the Sale and Servicing Agreement in accordance with the terms thereof.

(d) Transfer Obligation Account. With respect to the Transfer Obligation Account, the Paying Agent shall make (i) such deposits as specified in Section 5.01(c)(3)(vii) of the Sale and Servicing Agreement and (ii) such withdrawals and distributions as specified in Sections 5.05(d), 5.05(e), 5.05(f), 5.05(g), 5.05(h), and 5.05(i) of the Sale and Servicing Agreement in accordance with the terms thereof.

(e) Advance Account. With respect to the Advance Account, the Issuer shall cause the Servicer to make such withdrawals specified in Section 2.06 of the Sale and Servicing Agreement.

**Section 8.03. General Provisions Regarding Trust Accounts.**

(a) All or a portion of the funds in the Collection Account and the Transfer Obligation Account shall be invested in Permitted Investments in accordance with the provisions of Section 5.03(b) of the Sale and Servicing Agreement. The Indenture Trustee will not make any investment of any funds or sell any investment held in the Collection Account and the Transfer Obligation Account (other than in Permitted Investments in accordance with Section 5.03(b) of the Sale and Servicing Agreement) unless the security interest Granted and perfected in such account will continue to be perfected in such investment or the proceeds of such sale, in either case without any further action by any Person, as evidenced by an Opinion of Counsel delivered to the Indenture Trustee by the Noteholder Agent or the Servicer, as the case may be.

(b) Subject to Section 6.01(c) hereof, the Indenture Trustee shall not in any way be held liable by reason of any insufficiency in the Collection Account or the Transfer Obligation Account resulting from any loss on any Permitted Investments included therein.

(c) If (i) the Noteholder Agent or the Servicer, as the case may be, shall have failed to give investment directions for any funds on deposit in the Collection Account or the Transfer Obligation Account to the Indenture Trustee by 2:00 p.m. New York City time (or such other time as may be agreed by the Issuer and Indenture Trustee) on any Business Day or (ii) a Default or Event of Default shall have occurred and be continuing with respect to the Notes but the Notes shall not have been declared due and payable pursuant to Section 5.02 hereof or (iii) if such Notes shall have been declared due and payable following an Event of Default, amounts collected or receivable from the Collateral are being applied in accordance with Section 5.05 hereof as if there had not been such a declaration, then the Indenture Trustee shall, to the fullest extent practicable, invest and reinvest funds in the Collection Account and the Transfer Obligation Account in one or more Permitted Investments specified in item (3) in the definition thereof.

**Section 8.04. The Paying Agent.** The initial Paying Agent shall be the Servicer. The Paying Agent may be removed by the Noteholder Agent in its sole discretion at any time. Upon removal of the Paying Agent, the Noteholder Agent will appoint a successor Paying Agent within 30 days which, if other than the Servicer, must be a Person that is a Depository Institution and meets the eligibility standards for the Indenture Trustee specified in Section 6.11 hereof; provided that the Indenture Trustee will be the Paying Agent until such successor is appointed. Upon receiving written notice from the Noteholder Agent that the Paying Agent has been terminated, the Indenture Trustee will immediately terminate the Paying Agent's access to any and all Trust Accounts. If the Servicer or any subsequent Paying Agent is terminated as Paying Agent, the Indenture Trustee shall be the Paying Agent until

another Paying Agent is appointed by the Noteholder Agent pursuant to this Section 8.04. The Indenture Trustee shall be entitled to reasonable additional compensation for assuming the role of Paying Agent.

**Section 8.05. Release of Collateral.**

(a) Subject to the payment of its reasonable fees and expenses pursuant to Section 6.07 hereof, the Indenture Trustee may, and when required by the provisions of this Indenture shall, execute instruments acceptable to it and prepared and delivered to it by the Issuer to release property from the lien of this Indenture, or convey the Indenture Trustee's interest in the same, without recourse, representation or warranty in a manner as provided in the Custodial Agreement and under circumstances that are not inconsistent with the provisions of this Indenture and the other Basic Documents. No party relying upon an instrument executed by the Indenture Trustee as provided in this Article VIII shall be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any moneys.

(b) The Indenture Trustee shall, at such time as there are no Notes Outstanding and all sums due to the Noteholders (and their Affiliates), the Noteholder Agent, the Sales Agents, the Indenture Trustee, the Owner Trustee and the Custodian under the Basic Documents have been paid, release any remaining portion of the Collateral that secured the Notes from the lien of this Indenture and release to the Issuer or any other Person entitled thereto any funds then on deposit in the Trust Accounts. At such time as the lien of this Indenture is released, the Indenture Trustee shall cause a termination statement to be filed in any jurisdiction where a UCC financing statement has been filed hereunder with respect to the Collateral. The Indenture Trustee shall release property from the lien of this Indenture pursuant to this subsection (b) only upon receipt of an Issuer Request accompanied by an Officer's Certificate and an Opinion of Counsel meeting the applicable requirements of Section 11.01 hereof.

**Section 8.06. Opinion of Counsel.** Except to the extent specifically permitted by the terms of the Basic Documents, the Indenture Trustee shall receive at least seven (7) Business Days' prior notice when requested by the Issuer to take any action pursuant to Section 8.05(a) hereof, accompanied by copies of any instruments involved, and the Indenture Trustee may also require, as a condition to such action, an Opinion of Counsel, in form and substance satisfactory to the Indenture Trustee, from the Issuer concluding that all conditions precedent to the taking of such action have been complied with and such action will not materially and adversely impair the security for the Notes or the rights of the Noteholders in contravention of the provisions of this Indenture; provided, however, that such Opinion of Counsel shall not be required to express an opinion as to the fair value of the Collateral. Counsel rendering any such opinion may rely, without independent investigation, on the accuracy and validity of any certificate or other instrument delivered to the Indenture Trustee in connection with any such action.

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

**Section 9.01. Supplemental Indentures Without the Consent of the Noteholders.** Without the consent of any Noteholder but with prior notice to the Majority Noteholders, the Issuer and the Indenture Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Indenture Trustee, for any of the following purposes:

(i) to correct or amplify the description of any property at any time subject to the lien of this Indenture, or better to assure, convey and confirm unto the Indenture Trustee any property subject or required to be subjected to the lien of this Indenture, or to subject to the lien of this Indenture additional property;

(ii) to evidence the succession, in compliance with the applicable provisions hereof, of another Person to the Issuer, and the assumption by any such successor of the covenants of the Issuer herein and in the Notes contained;

(iii) to add to the covenants of the Issuer, for the benefit of the Noteholders, or to surrender any right or power herein conferred upon the Issuer;

(iv) to convey, transfer, assign, mortgage or pledge any property to or with the Indenture Trustee;

(v) to cure any ambiguity, to correct or supplement any provision herein or in any supplemental indenture that may be inconsistent with any other provision herein or in any supplemental indenture or to make any other provisions with respect to matters or questions arising under this Indenture or in any supplemental indenture; provided, however, that such action shall not adversely affect the interests of the Noteholders; or

(vi) to evidence and provide for the acceptance of the appointment hereunder by a successor trustee with respect to the Notes and to add to or change any of the provisions of this Indenture as shall be necessary to facilitate the administration of the trusts hereunder by more than one trustee, pursuant to the requirements of Article VI hereof.

The Indenture Trustee is hereby authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be therein contained.

**Section 9.02. Supplemental Indentures with Consent of Noteholders.** The Issuer and the Indenture Trustee, when authorized by an Issuer Order, also may, with the consent of the Majority Noteholders, by an Act of Noteholders delivered to the Issuer and the Indenture Trustee, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of any Noteholder under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of each Noteholder affected thereby:

(a) change the date of payment of any installment of principal of or interest on any Note, or reduce the principal balance thereof, the interest rate thereon or the Termination Price with respect thereto, change the provisions of this Indenture relating to the application of collections on, or the proceeds of the sale of, the Collateral to payment of principal of or interest on the Notes, or change any place of payment where, or the coin or currency in which, any Note or the interest thereon is payable, or impair the right to institute suit for the enforcement of the provisions of this Indenture requiring the application of funds available therefor, as provided in Article V hereof, to the payment of any such amount due on the Notes on or after the respective due dates thereof (or, in the case of redemption, on or after the Redemption Date);

(b) reduce the Percentage Interest, the consent of the Holders of which is required for any such supplemental indenture, or the consent of the Holders of which is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture;

(c) modify or alter the provisions of the definition of the term "Outstanding" or "Percentage Interest"

(d) reduce the Percentage Interest of the Outstanding Notes, the consent of the Holders of which is required to direct the Indenture Trustee to direct the Issuer to sell or liquidate the Collateral pursuant to Section 5.04 hereof;

(e) modify any provision of this Section 9.02 except to increase any percentage specified herein or to provide that certain additional provisions of this Indenture or the Basic Documents cannot be modified or waived without the consent of the Holder of each Outstanding Note affected thereby;

(f) modify any of the provisions of this Indenture in such manner as to affect the calculation of the amount of any payment of interest or principal due on any Note on any Payment Date (including the calculation of any of the individual components of such calculation), or to adversely affect the rights of the Noteholders to the benefit of any provisions for the mandatory redemption of the Notes contained herein; or

(g) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Collateral or, except as otherwise permitted or contemplated herein, terminate the lien of this Indenture on any property at any time subject hereto or deprive any Noteholder of the security provided by the lien of this Indenture.

The Indenture Trustee may in its discretion determine whether or not any Notes would be affected by any supplemental indenture and any such determination shall be conclusive upon each Noteholder, whether theretofore or thereafter authenticated and delivered hereunder. The Indenture Trustee shall not be liable for any such determination made in good faith.

In connection with requesting the consent of the Noteholders pursuant to this Section 9.02, the Indenture Trustee shall mail to the Noteholders to which such amendment or supplemental indenture relates a notice prepared by the Issuer setting forth in general terms the substance of such supplemental indenture. It shall not be necessary for any Act of Noteholders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act of Noteholders shall approve the substance thereof.

**Section 9.03. Execution of Supplemental Indentures.** In executing, or permitting the additional trusts created by, any supplemental indenture permitted by this Article IX or the modification thereby of the trusts created by this Indenture, the Indenture Trustee shall be entitled to receive, and subject to Sections 6.01 and 6.02 hereof, shall be fully protected in, relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Indenture Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Indenture Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise.

**Section 9.04. Effect of Supplemental Indentures.** Upon the execution of any supplemental indenture pursuant to the provisions hereof, this Indenture shall be and shall be deemed to be modified and amended in accordance therewith with respect to the Notes affected thereby, and the respective rights, limitations of rights, obligations, duties, liabilities and immunities under this Indenture of the Indenture Trustee, the Issuer and the Noteholders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**Section 9.05. Reference in Notes to Supplemental Indentures.** Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and if required by the Indenture Trustee shall, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such supplemental indenture. If the Issuer or the Indenture Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Indenture Trustee and the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Notes.

## ARTICLE X

### REDEMPTION OF NOTES; PUT OPTION

**Section 10.01. Redemption.** The Servicer may, at its option, effect an early redemption of the Notes on any Payment Date on or after the Clean-up Call Date. The Servicer shall effect such early termination in the manner specified in and subject to the provisions of Section 10.02 of the Sale and Servicing Agreement.

The Servicer shall furnish the Indenture Trustee with notice of any such redemption in order to facilitate the Indenture Trustee's compliance with its obligation to notify the Noteholders of such redemption in accordance with Section 10.02 hereof.

**Section 10.02. Form of Redemption Notice.** Notice of redemption under Section 10.01 hereof shall be by first-class mail, postage prepaid, or by facsimile mailed or transmitted not later than 10 days prior to the applicable Redemption Date to each Noteholder, as of the close of business on the Record Date preceding the applicable Redemption Date, at such Noteholder's address or facsimile number appearing in the Note Register.

All notices of redemption shall state:

- (i) the Redemption Date;
- (ii) that on the Redemption Date Noteholders shall receive the Note Redemption Amount; and
- (iii) the place where such Notes are to be surrendered for payment of the Termination Price (which shall be the office or agency of the Issuer to be maintained as provided in Section 3.02 hereof).

Notice of redemption of the Notes shall be given by the Indenture Trustee in the name of the Issuer and at the expense of the Servicer. Failure to give to any Noteholder notice of redemption, or any defect therein, shall not impair or affect the validity of the redemption of any other Note.

**Section 10.03. Notes Payable on Redemption Date.** The Notes to be redeemed shall, following notice of redemption as required by Section 10.02 hereof (in the case of redemption pursuant to Section 10.01 hereof, on the Redemption Date become due and payable at the Note Redemption Amount and (unless the Issuer shall default in the payment of the Note Redemption Amount) no interest shall accrue thereon for any period after the date to which accrued interest is calculated for purposes of calculating the Note Redemption Amount. The Issuer may not redeem the Notes unless all outstanding obligations under the Notes have been paid in full.



**Section 10.04. Put Option.** The Majority Noteholders may, at their option, put all or any portion of the Note Principal Balance of the Notes to the Issuer on any date upon giving notice in the manner set forth in Section 10.05. On each Put Date, the Issuer shall purchase the Note Principal Balance in the manner specified in and subject to the provisions of Section 10.04 of the Sale and Servicing Agreement.

**Section 10.05. Form of Put Option Notice.** Notice of exercise of a Put Option under Section 10.04 hereof shall be given by the Majority Noteholders (including to the Indenture Trustee) by first-class mail, postage prepaid, or by facsimile mailed or transmitted not later than 5 days prior to the date on which the Notes shall be repurchased by the Issuer.

**Section 10.06. Notes Payable on Put Date.** The Note Principal Balance to be put to the Issuer shall, following notice of the exercise of the Put Option as required by Section 10.05 hereof, on the Put Date become due and payable at the Note Redemption Amount and (unless the Issuer shall default in the payment of the Note Redemption Amount) no interest shall accrue thereon for any period after the date to which accrued interest is calculated for purposes of calculating the Note Redemption Amount.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01. Compliance Certificates and Opinions, etc.** Upon any application or request by the Issuer to the Indenture Trustee to take any action under any provision of this Indenture (except with respect to the Servicer's servicing activity in the ordinary course of its business), the Issuer shall furnish to the Indenture Trustee (i) an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and (ii) an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that each signatory of such certificate or opinion has read or has caused to be read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of each such signatory, such signatory has made such examination or investigation as is necessary to enable such signatory to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of each such signatory, such condition or covenant has been complied with.

**Section 11.02. Form of Documents Delivered to Indenture Trustee.** In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person,

or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an Authorized Officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which such officer's certificate or opinion is based are erroneous. Any such certificate of an Authorized Officer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Servicer, the Loan Originator, the Issuer or the Administrator, stating that the information with respect to such factual matters is in the possession of the Servicer, the Loan Originator, the Issuer or the Administrator, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Whenever in this Indenture, in connection with any application or certificate or report to the Indenture Trustee, it is provided that the Issuer shall deliver any document as a condition of the granting of such application, or as evidence of the Issuer's compliance with any term hereof, it is intended that the truth and accuracy, at the time of the granting of such application or at the effective date of such certificate or report (as the case may be), of the facts and opinions stated in such document shall in such case be conditions precedent to the right of the Issuer to have such application granted or to the sufficiency of such certificate or report. The foregoing shall not, however, be construed to affect the Indenture Trustee's right to rely upon the truth and accuracy of any statement or opinion contained in any such document as provided in [Article VI](#), hereof.

**Section 11.03. Acts of Noteholders.** (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Noteholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by agents duly appointed in writing; and except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Indenture Trustee, and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act of Noteholders" signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to [Section 6.01](#) hereof) conclusive in favor of the Indenture Trustee and the Issuer, if made in the manner provided in this [Section 11.03](#).

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner that the Indenture Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by any Noteholder shall bind the Holder of every Note issued upon the registration thereof or in exchange therefor or in lieu thereof, in respect of anything done, omitted or suffered to be done by the Indenture Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Note.

**Section 11.04. Notices, etc., to Indenture Trustee and Issuer.** Any request, demand, authorization, direction, notice, consent, waiver or Act of Noteholders or other documents provided or permitted by this Indenture shall be in writing and if such request, demand, authorization, direction, notice, consent, waiver or Act of Noteholders is to be made upon, given or furnished to or filed with:

(i) the Indenture Trustee by any Noteholder or by the Issuer shall be sufficient for every purpose hereunder, if made, given, furnished or filed in writing (including by facsimile) to or with the Indenture Trustee at P.O Box 98, Columbia, Maryland 21046, Attention: Option One Owner Trust 2005-9, with a copy to it at its Corporate Trust Office, or

(ii) the Issuer by the Indenture Trustee or by any Noteholder shall be sufficient for every purpose hereunder if in writing and made, given, furnished, filed or transmitted via facsimile to the Issuer at: Option One Owner Trust 2005-9, c/o Wilmington Trust Company as Owner Trustee, One Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, Attention: Corporate Trust Department, telephone number: (302) 636-1000, telecopy number: (302) 636-4144, or at any other address or facsimile number previously furnished in writing to the Indenture Trustee by the Issuer or the Administrator. The Issuer shall promptly transmit any notice received by it from the Noteholders to the Indenture Trustee.

**Section 11.05. Notices to Noteholders, Waiver.** Where this Indenture provides for notice to Noteholders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class, postage prepaid to each Noteholder affected by such event, at his address as it appears on the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Noteholders is given by mail, neither the failure to mail such notice nor any defect in any notice so mailed to any particular Noteholder shall affect the sufficiency of such notice with respect to other Noteholders, and any notice that is mailed in the manner herein provided shall conclusively be presumed to have duly been given.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by any Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Indenture Trustee but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such a waiver.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event to Noteholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Indenture Trustee shall be deemed to be a sufficient giving of such notice.

**Section 11.06. Effect of Headings and Table of Contents.** The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

**Section 11.07. Successors and Assigns.** All covenants and agreements in this Indenture and the Notes by the Issuer shall bind its successors and assigns, whether so expressed or not. All agreements of the Indenture Trustee in this Indenture shall bind its successors, co-trustees and agents.

**Section 11.08. Separability.** In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 11.09. Benefits of Indenture.** Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, and the Noteholders and the Noteholder Agent, and any other party secured hereunder, and any other Person with an ownership interest in any part of the Collateral, any benefit or any legal or equitable right, remedy or claim under this Indenture.

**Section 11.10. Legal Holidays.** In any case where the date on which any payment is due shall not be a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date on which nominally due, and no interest shall accrue for the period from and after any such nominal date.

**Section 11.11. GOVERNING LAW.** THIS INDENTURE SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW), AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**Section 11.12. Counterparts.** This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

**Section 11.13. Recording of Indenture.** If this Indenture is subject to recording in any appropriate public recording offices, such recording is to be effected by the Issuer and at its expense accompanied by an Opinion of Counsel (which may be counsel to the Indenture Trustee or any other counsel reasonably acceptable to the Indenture Trustee; provided, however, that the expense of such Opinion of Counsel shall in no event be an expense of the Indenture Trustee) to the effect that such recording is necessary either for the protection of the Noteholders or any other Person secured hereunder or for the enforcement of any right or remedy granted to the Indenture Trustee under this Indenture.

**Section 11.14. Trust Obligation.** No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer, the Owner Trustee or the Indenture Trustee on the Notes or, except as expressly provided for in Article VI hereof, under this Indenture or any certificate or other writing delivered in connection herewith or therewith, against (i) the Indenture Trustee or the Owner Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer, director, employee, agent or “control person” within the meaning of the Securities Act and the Exchange Act, of the Indenture Trustee or the Owner Trustee in its individual capacity, any holder of a beneficial interest in the Issuer, the Owner Trustee or the Indenture Trustee or of any successor or assign of the Indenture Trustee or the Owner Trustee in its individual capacity, except as any such Person may expressly have agreed (it being understood that the Indenture Trustee and the Owner Trustee have no such obligations in their individual capacity) and except that any such partner, owner or beneficiary of the Issuer shall be fully liable, to the extent provided by applicable law, for any unpaid consideration for stock, unpaid capital contribution or failure to pay any installment or call owing to such entity. For all purposes of this Indenture, in the performance of any duties or obligations of the Issuer hereunder, the Owner Trustee shall be subject to, and entitled to the benefits of, the terms and provisions of Articles VI, VII and VIII of the Trust Agreement.

**Section 11.15. No Petition.** The Indenture Trustee, by entering into this Indenture, and each Noteholder, by accepting a Note, hereby covenant and agree that they will not at any time institute against the Depositor or the Issuer, or join in any institution against the Depositor or the Issuer of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any United States federal or state bankruptcy or similar law, in connection with any obligations relating to the Notes, this Indenture or any of the Basic Documents.

**Section 11.16. Inspection.** The Issuer agrees that, on reasonable prior notice, it will permit any representative of the Indenture Trustee, during the Issuer's normal business hours, to examine all the books of account, records, reports and other papers of the Issuer, to make copies and extracts therefrom, to cause such books to be audited by Independent certified public accountants, and to discuss the Issuer's affairs, finances and accounts with the Issuer's officers, employees, and Independent certified public accountants, all at such reasonable times and as often as may reasonably be requested and at the expense of the Servicer. The Indenture Trustee shall and shall cause its representatives to hold in confidence all such information except to the extent disclosure may be required by law (and all reasonable applications for confidential treatment are unavailing) and except to the extent that the Indenture Trustee may reasonably determine that such disclosure is consistent with its obligations hereunder.

**Section 11.17. Third Party Beneficiary.** The Noteholders and the Noteholder Agent are intended third party beneficiaries of this Indenture and shall be entitled to rely upon and directly enforce the provisions of this Indenture as if parties hereto.

**Section 11.18. Limitation on Liability.** It is expressly understood and agreed by the parties hereto that (a) this Indenture is executed and delivered by Wilmington Trust Company, not individually or personally, but solely as Owner Trustee of Option One Owner Trust 2005-9, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose for binding only the Issuer, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Issuer under this Indenture or any other related documents.

IN WITNESS WHEREOF, the Issuer and the Indenture Trustee have caused this Indenture to be duly executed by their respective officers, thereunto duly authorized and duly attested, all as of the day and year first above written.

OPTION ONE OWNER TRUST 2005-9,

By: Wilmington Trust Company not in its individual capacity but solely as  
Owner Trustee

By: \_\_\_\_\_/s/

Name: Joann A. Rozell

Title: Assistant Vice President

WELLS FARGO BANK, N.A.,  
as Indenture Trustee

By: \_\_\_\_\_/s/

Name: Darron C. Woodus

Title: Assistant Vice President

Indenture

---

STATE OF DELAWARE )

) ss.:

COUNTY OF NEWCASTLE )

BEFORE ME, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared Joann A. Rodell, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity, but solely as Owner Trustee on behalf of OPTION ONE OWNER-TRUST 2005-9, a Delaware statutory trust, and that such person executed the same as the act of said statutory trust for the purpose and consideration therein expressed, and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23 day of December, 2005.

/s/

\_\_\_\_\_  
Notary Public  
Janel R. Havrilla  
Notary Public – State of Delaware  
My Comm. Expires Feb. 2, 2009

(Seal)

My commission expires:

\_\_\_\_\_

\_\_\_\_\_





EXHIBIT A  
FORM OF NOTES

THE OUTSTANDING PRINCIPAL AMOUNT OF THIS NOTE AT ANY TIME MAY BE LESS THAN THE MAXIMUM NOTE PRINCIPAL BALANCE SHOWN ON THE FACE HEREOF. ANY PURCHASER OF THIS NOTE MAY ASCERTAIN THE OUTSTANDING PRINCIPAL AMOUNT HEREOF BY INQUIRY OF THE INDENTURE TRUSTEE.

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS NOTE BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE ONLY (A) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE 1933 ACT, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE 1933 ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE 1933 ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (A)(1), (2),(3) OR (7) OF RULE 501 UNDER THE 1933 ACT THAT IS ACQUIRING THE NOTE FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE 1933 ACT, IN EACH CASE IN COMPLIANCE WITH THE REQUIREMENTS OF THE INDENTURE AND APPLICABLE STATE SECURITIES LAWS.

THIS NOTE MAY NOT BE TRANSFERRED UNLESS THE INDENTURE TRUSTEE HAS RECEIVED A CERTIFICATE FROM THE TRANSFEREE TO THE EFFECT THAT EITHER (I) THE TRANSFEREE IS NOT AN EMPLOYEE BENEFIT PLAN OR OTHER RETIREMENT PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (EACH, A "PLAN"), AND IS NOT ACTING ON BEHALF OF OR INVESTING THE ASSETS OF A PLAN OR (II) IF THE TRANSFEREE IS A PLAN OR IS ACTING ON BEHALF OF OR INVESTING THE ASSETS OF A PLAN, EITHER THAT NO PROHIBITED TRANSACTION WITHIN THE MEANING OF SECTION 406(a) OF ERISA OR SECTION 4975 OF THE CODE WOULD OCCUR UPON THE TRANSFER OF THE NOTE OR THAT THE CONDITIONS FOR EXEMPTIVE RELIEF UNDER A PROHIBITED TRANSACTION EXEMPTION HAS BEEN SATISFIED INCLUDING BUT NOT LIMITED TO, PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 96-23 (RELATING TO TRANSACTIONS EFFECTED BY AN "IN-HOUSE ASSET MANAGER"), PTCE 95-60 (RELATING TO TRANSACTIONS INVOLVING INSURANCE COMPANY GENERAL ACCOUNTS), PTCE 91-38 (RELATING TO TRANSACTIONS INVOLVING BANK COLLECTIVE INVESTMENT FUNDS), PTCE 90-1 (RELATING TO TRANSACTIONS INVOLVING INSURANCE COMPANY POOLED SEPARATE ACCOUNTS) AND PTCE 84-14

**(RELATING TO TRANSACTIONS EFFECTED BY A “QUALIFIED PROFESSIONAL ASSET MANAGER”).**

A-2

---

**Maximum Note Principal Balance:** \$ \_\_\_\_\_

**Initial Percentage Interest:** \_\_\_\_%

**No.** \_\_\_\_

OPTION ONE OWNER TRUST 2005-9

MORTGAGE-BACKED NOTES

OPTION ONE OWNER TRUST 2005-9, a Delaware statutory trust (the "Issuer"), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns (the "Noteholder"), the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) or so much thereof as may be advanced and outstanding hereunder and to pay interest on such principal sum or such part thereof as shall remain unpaid from time to time, at the rate and at the times provided in the Sale and Servicing Agreement and the Indenture. Principal of this Note is payable on each Payment Date in an amount equal to the result obtained by multiplying (i) the Percentage Interest of this Note by (ii) the principal amount distributed in respect of such Payment Date.

The Outstanding Note Principal Balance of this Note bears interest at the Note Interest Rate. On each Payment Date amounts in respect of interest on this Note will be paid in an amount equal to the result obtained by multiplying (i) the Percentage Interest of this Note by (ii) the aggregate amount paid in respect of interest on the Notes with respect to such Payment Date.

Capitalized terms used but not defined herein have the meanings set forth in the Indenture (the "Indenture"), dated as of December 30, 2005, between the Issuer and Wells Fargo Bank, N.A., as Indenture Trustee (the "Indenture Trustee") or, if not defined therein, the Sale and Servicing Agreement (the "Sale and Servicing Agreement"), dated as of December 30, 2005, among the Issuer, the Depositor, the Servicer, the Loan Originator and the Indenture Trustee on behalf of the Noteholders.

By its acceptance of this Note, each Noteholder covenants and agrees, until the earlier of (a) the termination of the Revolving Period and (b) the Maturity Date, on each Transfer Date to advance amounts in respect of Additional Note Principal Balance hereunder to the Issuer, subject to and in accordance with the terms of the Indenture, the Sale and Servicing Agreement and the Note Purchase Agreement.

In the event of an advance of Additional Note Principal Balance by the Noteholders as provided in Section 2.01(c) of the Sale and Servicing Agreement, each Noteholder shall, and is hereby authorized to, record on the schedule attached to its Note the date and amount of any Additional Note Principal Balance advanced by it, and each repayment thereof; provided that failure to make any such recordation on such schedule or any error in such schedule shall not adversely affect any Noteholder's rights with respect to its Additional Note Principal Balance and its right to receive interest payments in respect of the Additional Note Principal Balance held by such Noteholder.

Absent manifest error, the Note Principal Balance of each Note as set forth in the notations made by the related Noteholder on such Note shall be binding upon the Indenture Trustee and the Issuer; provided that failure by a Noteholder to make such recordation on its Note or any error in such notation shall not adversely affect any Noteholder's rights with respect to its Note Principal Balance and its right to receive principal and interest payments in respect thereof.

The Servicer may, at its option, effect an early redemption of the Notes for an amount equal to the Note Redemption Amount on any Payment Date on or after the Clean-up Call Date. The

Servicer shall effect such early termination by providing notice thereof to the Indenture Trustee and Owner Trustee and by purchasing all of the Loans at a purchase price, payable in cash, equal to the Termination Price.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

The statements in the legend set forth above are an integral part of the terms of this Note and by acceptance hereof each Holder of this Note agrees to be subject to and bound by the terms and provisions set forth in such legend.

Unless the Certificate of authentication hereon shall have been executed by an authorized officer of the Indenture Trustee, by manual signature, this Note shall not entitle the Noteholder hereof to any benefit under the Indenture or the Sale and Servicing Agreement and/or be valid for any purpose.

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK AND WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PROVISIONS THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

IN WITNESS WHEREOF, the Issuer has caused this instrument to be signed, manually or in facsimile, by its Authorized Officer, as of the date set forth below.

Date: \_\_\_\_\_, 200\_\_

OPTION ONE OWNER TRUST 2005-9,

By: Wilmington Trust Company not in its individual capacity but solely as Owner Trustee under the Trust Agreement

By: \_\_\_\_\_  
Authorized Signatory

**INDENTURE TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Notes designated above and referred to in the within-mentioned Indenture.

Date: \_\_\_\_\_, 200\_\_

WELLS FARGO BANK, N.A., not in its individual capacity but solely as Indenture Trustee

By: \_\_\_\_\_  
Authorized Signatory

This Note is one of the duly authorized Notes of the Issuer, designated as its Mortgage-Backed Notes (herein called the “Notes”), all issued under the Indenture. Reference is hereby made to the Indenture and all indentures supplemental thereto, and the Sale and Servicing Agreement for a statement of the respective rights and obligations thereunder of the Issuer, the Indenture Trustee and the Noteholders. To the extent that any provision of this Note contradicts or is inconsistent with the provisions of the Indenture or the Sale and Servicing Agreement, the provisions of the Indenture or the Sale and Servicing Agreement, as applicable, shall control and supersede such contradictory or inconsistent provision herein. The Notes are subject to all terms of the Indenture and the Sale and Servicing Agreement.

The principal of and interest on this Note are payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. All payments made by the Issuer with respect to this Note shall be applied in accordance with the Indenture and the Sale and Servicing Agreement.

The entire unpaid principal amount of this Note shall be due and payable on the earlier of the Maturity Date, the Redemption Date and the Final Put Date, if any, pursuant to Article X of the Sale and Servicing Agreement and the Indenture. Notwithstanding the foregoing, the entire unpaid principal amount of the Notes shall be due and payable on the date on which an Event of Default shall have occurred and be continuing and the Indenture Trustee, at the direction or upon the prior written consent of the Majority Noteholders, has declared the Notes to be immediately due and payable in the manner provided in Section 5.02 of the Indenture. All principal payments on the Notes shall be made *pro rata* to the Noteholders entitled thereto.

The Collateral secures this Note and all other Notes equally and ratably without prejudice, priority or distinction between any Note and any other Note. The Notes are non-recourse obligations of the Issuer and are limited in right of payment to amounts available from the Collateral, as provided in the Indenture. The Issuer shall not otherwise be liable for payments on the Notes, and none of the owners, agents, officers, directors, employees, or successors or assigns of the Issuer shall be personally liable for any amounts payable, or performance due, under the Notes or the Indenture.

Any installment of interest or principal on this Note shall be paid on the applicable Payment Date to the Person in whose name this Note (or one or more Predecessor Notes) is registered in the Note Register as of the close of business on the related Record Date by wire transfer in immediately available funds to the account specified in writing by the related Noteholder to the extent provided by the Indenture and otherwise by check mailed to the Noteholder.

Any reduction in the principal amount of this Note (or any one or more Predecessor Notes) effected by any payments made on any Payment Date shall be binding upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not noted hereon. Any increase in the principal amount of this Note (or any one or more Predecessor Notes) effected by payments to the Issuer of Additional Note Principal Balances shall be binding upon the Issuer and shall inure to the benefit of all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not noted hereon.

As provided in the Indenture and subject to certain limitations set forth therein, the transfer of this Note may be registered on the Note Register upon surrender of this Note for registration of transfer at the office or agency designated by the Issuer pursuant to the Indenture, duly endorsed by, or

accompanied by a written instrument of transfer in the form attached hereto duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, with such signature guaranteed by an "eligible guarantor institution" meeting the requirements of the Securities Transfer Agent's Medallion Program ("STAMP"), and thereupon one or more new Notes of authorized denominations and in the same aggregate principal amount will be issued to the designated transferee or transferees. No service charge will be charged for any registration of transfer or exchange of this Note, but the Issuer may require the Noteholder to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such registration of transfer or exchange.

Each Noteholder, by acceptance of a Note or a beneficial interest in a Note, covenants and agrees that no recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer, the Owner Trustee or the Indenture Trustee on the Notes or under the Indenture or any certificate or other writing delivered in connection therewith, against (i) the Indenture Trustee or the Owner Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer, director, employee or "control person" within the meaning of the 1933 Act and the Exchange Act of the Indenture Trustee or the Owner Trustee in its individual capacity, any holder of a beneficial interest in the Issuer, the Owner Trustee or the Indenture Trustee or of any successor or assign of the Indenture Trustee or the Owner Trustee in its individual capacity, except as any such Person may have expressly agreed and except that any such partner, owner or beneficiary shall be fully liable, to the extent provided by applicable law, for any unpaid consideration for stock, unpaid capital contribution or failure to pay any installment or call owing to such entity.

Each Noteholder, by acceptance of a Note or a beneficial interest in a Note, covenants and agrees by accepting the benefits of the Indenture that such Noteholder will not at any time institute against the Issuer, or join in any institution against the Issuer of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under any United States federal or state bankruptcy or similar law in connection with any obligations relating to the Notes or the Basic Documents.

The Issuer has entered into the Indenture and this Note is issued with the intention that, for federal, state and local income, single business and franchise tax purposes, the Notes will qualify as indebtedness of the Issuer secured by the Collateral. Each Noteholder, by acceptance of a Note, agrees to treat the Notes for federal, state and local income, single business and franchise tax purposes as indebtedness of the Issuer. Each Noteholder, by its acceptance of a Note, represents and warrants that the number of ICA Owners with respect to all of its Notes shall not exceed four.

Prior to the due presentment for registration of transfer of this Note, the Issuer, the Indenture Trustee and any agent of the Issuer or the Indenture Trustee may treat the Person in whose name this Note (as of the day of determination or as of such other date as may be specified in the Indenture) is registered as the owner hereof for all purposes, whether or not this Note be overdue, and none of the Issuer, the Indenture Trustee or any such agent shall be affected by notice to the contrary.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the Noteholders under the Indenture at any time by the Issuer with the consent of the Majority Noteholders. The Indenture also contains provisions permitting the Holders of Notes representing specified Percentage Interests of the Outstanding Notes, on behalf of all of the Noteholders, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note (or any one or more Predecessor Notes) shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent or waiver is made upon this Note. The Indenture also permits the Indenture Trustee to

amend or waive certain terms and conditions set forth in the Indenture without the consent of any Noteholder.

The term "Issuer" as used in this Note includes any successor to the Issuer under the Indenture.

The Notes are issuable only in registered form in denominations as provided in the Indenture, subject to certain limitations therein set forth.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal of and interest on this Note at the times, place and rate, and in the coin or currency herein prescribed.

Anything herein to the contrary notwithstanding, except as expressly provided in the Basic Documents, none of the Issuer in its individual capacity, the Owner Trustee in its individual capacity, any owner of a beneficial interest in the Issuer, or any of their respective partners, beneficiaries, agents, officers, directors, employees or successors or assigns shall be personally liable for, nor shall recourse be had to any of them for, the payment of principal of or interest on this Note or performance of, or omission to perform, any of the covenants, obligations or indemnifications contained in the Indenture. The Holder of this Note by its acceptance hereof agrees that, except as expressly provided in the Basic Documents, in the case of an Event of Default under the Indenture, the Holder shall have no claim against any of the foregoing for any deficiency, loss or claim therefrom; provided, however, that nothing contained herein shall be taken to prevent recourse to, and enforcement against, the assets of the Issuer for any and all liabilities, obligations and undertakings contained in the Indenture or in this Note.

ASSIGNMENT

Social Security or taxpayer I.D. or other identifying number of assignee:

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto:

\_\_\_\_\_;  
(name and address of assignee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints, attorney, to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature Guaranteed: \*/  
\*/

\_\_\_\_\_  
\*/ NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears on the face of the within Note in every particular, without alteration, enlargement or any change whatever. Such signature must be guaranteed by an "eligible guarantor institution" meeting the requirements of STAMP.



Schedule to Note  
 dated as of \_\_\_\_\_, 200\_\_  
 of OPTION ONE OWNER TRUST 2005-9

<u>Date of advance of Additional Note Principal Balance</u>	<u>Amount of advance of Additional Note Principal Balance</u>	<u>Percentage Interest</u>	<u>Aggregate Note Principal Balance</u>	<u>Note Principal Balance of Note</u>
		100%		

EXHIBIT B-1

FORM OF RULE 144A TRANSFEROR CERTIFICATE

Wells Fargo Bank, N.A.  
Sixth Street and Marquette Avenue  
Minneapolis, Minnesota 55479

Attention: Corporate Trust Services – Option One Owner Trust 2005-9

Re: Option One Owner Trust 2005-9

Reference is hereby made to the Indenture dated as of December 30, 2005, (the “**Indenture**”) between Option One Owner Trust 2005-9 (the “**Trust**”) and Wells Fargo Bank, N.A. (the “**Indenture Trustee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Sale and Servicing Agreement dated as of December 30, 2005, among the Trust, Option One Loan Warehouse Corporation (the “**Depositor**”), Option One Mortgage Corporation (the “**Servicer**” and the “**Loan Originator**”) and the Indenture Trustee.

The undersigned (the “**Transferor**”) has requested a transfer of \$ \_\_\_\_\_ current principal balance Notes to [insert name of transferee].

In connection with such request, and in respect of such Notes, the Transferor hereby certifies that such Notes are being transferred in accordance with (i) the transfer restrictions set forth in the Indenture and the Notes and (ii) Rule 144A under the Securities Act of 1933, as amended to a purchaser that the Transferor reasonably believes is a “qualified institutional buyer” within the meaning of Rule 144A purchasing for its own account or for the account of a “qualified institutional buyer,” which purchaser is aware that the sale to it is being made in reliance upon Rule 144A, in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other applicable jurisdiction.

This certificate and the statements contained herein are made for your benefit and the benefit of the Depositor.

\_\_\_\_\_  
[Name of Transferor]

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

Name: \_\_\_\_\_

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

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

EXHIBIT B-2

FORM OF TRANSFEREE CERTIFICATE FOR  
INSTITUTIONAL ACCREDITED INVESTOR

Wells Fargo Bank, N.A.

Sixth Street and Marquette Avenue

Minneapolis, Minnesota 55479

Attention: Corporate Trust Services — Option One Owner Trust 2005-9

Re: Option One Owner Trust 2005-9

In connection with our proposed purchase of \$\_\_\_\_\_ Note Principal Balance Mortgage-Backed Notes (the “**Offered Notes**”) issued by Option One Owner Trust 2005-9, we confirm that:

- (1) We understand that the Offered Notes have not been, and will not be, registered under the Securities Act of 1933, as amended (the “**1933 Act**”) or any state securities laws, and may not be sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell any Offered Notes we will do so only (A) pursuant to a registration statement which has been declared effective under the 1933 Act, (B) for so long as the Offered Notes are eligible for resale pursuant to Rule 144A under the 1933 Act, to a Person we reasonably believe is a “qualified institutional buyer” as defined in Rule 144A that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that the transfer is being made in reliance on Rule 144A, or (C) to an institutional “accredited investor” within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the 1933 Act (an “**Institutional Accredited Investor**”) that is acquiring the Offered Notes for its own account, or for the account of such an Institutional Accredited Investor, for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the 1933 Act, in each case in compliance with the requirements of the Indenture dated as of December 30, 2005, between Option One Owner Trust 2005-9 and Wells Fargo Bank, N.A., as Indenture Trustee, and applicable state securities laws; and we further agree, in the capacities stated above, to provide to any person purchasing any of the Offered Notes from us a notice advising such purchaser that resales of the Offered Notes are restricted as stated herein.
- (2) We understand that, in connection with any proposed resale of any Offered Notes to an Institutional Accredited Investor, we will be required to furnish to the Indenture Trustee and the Depositor a certification from such transferee as provided in Section 2.12 of the Indenture to confirm that the proposed sale is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the 1933 Act and applicable state securities laws. We further understand that the Offered Notes purchased by us will bear a legend to the foregoing effect.
- (3) We are acquiring the Offered Notes for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the 1933 Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Offered Notes, and we and any account for which we are acting are each able to bear the economic risk of such investment.

- (4) We are an Institutional Accredited Investor and we are acquiring the Offered Notes purchased by us for our own account or for one or more accounts (each of which is an Institutional Accredited Investor) as to each of which we exercise sole investment discretion.
- (5) We have received such information as we deem necessary in order to make our investment decision.
- (6) We either (i) are not, and are not acquiring the Offered Notes on behalf of or with the assets of, an employee benefit plan or other retirement plan or arrangement subject to Title I of ERISA or Section 4975 of the Code, or (ii) are, or are acquiring the Offered Notes on behalf of or with the assets of, an employee benefit plan or other retirement plan or arrangement subject to Title I of ERISA of Section 4975 of the Code and either no prohibited transaction within the meaning of Section 406(a) of ERISA or Section 4975 of the Code will occur upon the transfer of the Note or the conditions for exemptive relief under a prohibited transaction exemption has been satisfied, including but not limited to, Prohibited Transaction Class Exemption (“PTCE”) 96-23 (relating to transactions effected by an “in-house asset manager”), PTCE 95-60 (relating to transactions involving insurance company general accounts), PTCE 91-38 (relating to transactions involving bank collective investment funds), PTCE 90-1 (relating to transactions involving insurance company pooled separate accounts), and PTCE 84-14 (relating to transactions effected by a “qualified professional asset manager”). Terms used in this letter which are not otherwise defined herein have the respective meanings assigned thereto in the Indenture.

You and the Depositor are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

\_\_\_\_\_  
[Name of Transferor]

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

Name: \_\_\_\_\_

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

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

EXHIBIT B-3

[FORM OF RULE 144A TRANSFEREE CERTIFICATE]

Wells Fargo Bank, N.A.  
Sixth Street and Marquette Avenue  
Minneapolis, Minnesota 55479

Attention: Corporate Trust Services — Option One Owner Trust 2005-9

Re: Option One Owner Trust 2005-9

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_ (the “**Investor**”), a [corporation duly organized] and existing under the laws of on behalf of which he makes this affidavit.

2. The Investor either (i) is not, and is not acquiring the Option One Owner Trust 2005-9 Notes (the “**Offered Notes**”) on behalf of or with the assets of, an employee benefit plan or other retirement plan or arrangement subject to Title I of ERISA or Section 4975 of the Code, or (ii) is, or is acquiring the Offered Notes on behalf of or with the assets of, an employee benefit plan or other retirement plan or arrangement subject to Title I of ERISA of Section 4975 of the Code and either no prohibited transaction within the meaning of Section 406(a) of ERISA or Section 4975 of the Code would occur upon the transfer of the Note or the conditions for exemptive relief under a prohibited transaction exemption has been satisfied, including but not limited to, Prohibited Transaction Class Exemption (“**PTCE**”) 96-23 (relating to transactions effected by an “in-house asset manager”), PTCE 95-60 (relating to transactions involving insurance company general accounts), PTCE 91-38 (relating to transactions involving bank collective investment funds), PTCE 90-1 (relating to transactions involving insurance company pooled separate accounts), and PTCE 84-14 (relating to transactions effected by a “qualified professional asset manager”).

3. The Investor understands that the Offered Notes have not been, and will not be, registered under the Securities Act of 1933, as amended (the “**1933 Act**”) or any state securities laws, and may not be sold except as permitted in the following sentence. The Investor agrees, on its own behalf and on behalf of any accounts for which it is acting as hereinafter stated, that if it should sell any Offered Notes it will do so only (A) pursuant to a registration statement which has been declared effective under the 1933 Act, (B) for so long as the Offered Notes are eligible for resale pursuant to Rule 144A under the 1933 Act, to a Person it reasonably believes is a “qualified institutional buyer” as defined in Rule 144A that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that the transfer is being made in reliance on Rule 144A, (C) to an institutional “accredited investor” within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the 1933 Act (an “**Institutional Accredited Investor**”) that is acquiring the Offered Notes for its own account, or for the account of such an Institutional Accredited Investor, for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the 1933 Act, in each case in compliance with the requirements of the Indenture dated as of December 30, 2005, between Option One Owner Trust 2005-9 and Wells Fargo Bank, N.A., as Indenture Trustee, and applicable state securities laws; and the Investor further agrees, in the capacities stated above, to provide to any person purchasing any of the Offered Notes from it a notice advising such purchaser that resales of the Offered Notes are restricted as stated herein.

[FOR TRANSFERS IN RELIANCE UPON RULE 144A]

4. The Investor is a “qualified institutional buyer” (as such term is defined under Rule 144A under the Securities Act of 1933, as amended (the “1933 Act”), and is acquiring the Offered Notes for its own account or as a fiduciary or agent for others (which others also are “qualified institutional buyers”). The Investor is familiar with Rule 144A under the 1933 Act, and is aware that the transferor of the Offered Notes and other parties intend to rely on the statements made herein and the exemption from the registration requirements of the 1933 Act provided by Rule 144A.

\_\_\_\_\_  
[Name of Transferor]

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

Name: \_\_\_\_\_

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

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

B-3-2

---

EXHIBIT C

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS NOTE BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE ONLY (A) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE 1933 ACT, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE 1933 ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE 1933 ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (A)(1), (2),(3) OR (7) OF RULE 501 UNDER THE 1933 ACT THAT IS ACQUIRING THE NOTE FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL "ACCREDITED INVESTOR" FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE 1933 ACT, IN EACH CASE IN COMPLIANCE WITH THE REQUIREMENTS OF THE INDENTURE AND APPLICABLE STATE SECURITIES LAWS.

THIS NOTE MAY NOT BE TRANSFERRED UNLESS THE INDENTURE TRUSTEE HAS RECEIVED A CERTIFICATE FROM THE TRANSFEREE TO THE EFFECT THAT EITHER (I) THE TRANSFEREE IS NOT AN EMPLOYEE BENEFIT PLAN OR OTHER RETIREMENT PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (EACH, A "PLAN"), AND IS NOT ACTING ON BEHALF OF OR INVESTING THE ASSETS OF A PLAN OR (II) IF THE TRANSFEREE IS A PLAN, OR IS ACTING ON BEHALF OF OR INVESTING THE ASSETS OF A PLAN, EITHER THAT NO PROHIBITED TRANSACTION WITHIN THE MEANING OF SECTION 406(a) OF ERISA OR SECTION 4975 OF THE CODE WOULD OCCUR UPON THE TRANSFER OF THE NOTE OR THAT THE CONDITION FOR EXEMPTIVE RELIEF UNDER A PROHIBITED TRANSACTION EXEMPTION HAS BEEN SATISFIED INCLUDING BUT NOT LIMITED TO: PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 96-23 (RELATING TO TRANSACTIONS EFFECTED BY AN "IN-HOUSE ASSET MANAGER"), PTCE 95-60 (RELATING TO TRANSACTIONS INVOLVING INSURANCE COMPANY GENERAL ACCOUNTS), PTCE 91-38 (RELATING TO TRANSACTIONS INVOLVING BANK COLLECTIVE INVESTMENT FUNDS), PTCE 90-1 (RELATING TO TRANSACTIONS INVOLVING INSURANCE COMPANY POOLED SEPARATE ACCOUNTS) AND PTCE 84-14 (RELATING TO TRANSACTIONS EFFECTED BY A "QUALIFIED PROFESSIONAL ASSET MANAGER").

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark A. Ernst, Chief Executive Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of H&R Block, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principals;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2006

/s/ Mark A. Ernst  
Mark A. Ernst  
Chief Executive Officer  
H&R Block, Inc.



**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, William L. Trubeck, Chief Financial Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of H&R Block, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principals;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2006

/s/ William L. Trubeck  
William L. Trubeck  
Chief Financial Officer  
H&R Block, Inc.

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of H&R Block, Inc. (the "Company") on Form 10-Q for the period ending January 31, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark A. Ernst, Chief Executive Officer of the Company, certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Mark A. Ernst  
Mark A. Ernst  
Chief Executive Officer  
H&R Block, Inc.  
March 31, 2006

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of H&R Block, Inc. (the "Company") on Form 10-Q for the period ending January 31, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, William L. Trubeck, Chief Financial Officer of the Company, certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ William L. Trubeck  
William L. Trubeck  
Chief Financial Officer  
H&R Block, Inc.  
March 31, 2006