

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ALANNA L. CURRY, *et al.*,

individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

FAIRBANKS CAPITAL CORPORATION,

Defendant.

Civil Action No. 03-10895-DPW

**SETTLEMENT AGREEMENT AND RELEASE**

SETTLEMENT AGREEMENT AND RELEASE (“Agreement”), dated November 14, 2003 between FAIRBANKS CAPITAL CORP., a Utah corporation, and ALANNA CURRY and each of the PLAINTIFFS, on behalf of themselves and the Class.

Background

A. Fairbanks is a Utah corporation and is engaged in the business of servicing single-family mortgage residential loans.

B. Plaintiffs and others have commenced a series of putative class action lawsuits against Fairbanks and others (the “Actions”). They allege that Fairbanks has engaged in a pattern and practice of uniform nationwide unfair, unlawful and deceptive business practices in its Servicing of residential mortgage loans, and that Fairbanks has engaged in other conduct that breaches statutes, contracts, and common law. Plaintiffs and others allege that Fairbanks’

misconduct has resulted in substantial overpayments of fees and charges in connection with their mortgage loans, and has exacerbated delinquencies and caused unnecessary or illegal foreclosures. Plaintiffs and others have asserted substantial damage claims and have sought injunctive relief to prevent additional misconduct in the future.

C. Fairbanks denies each and every one of the allegations contained in the Actions, denies any wrongdoing of any kind, and further believes that the requirements for a class action are not met in the Actions and that a class action should not be certified or maintained (other than for purposes of settlement as provided in this Agreement), and is vigorously contesting the claims against it.

D. Contested issues of both law and fact exist concerning the allegations and claims made between the parties in the Actions.

E. The Parties are thoroughly familiar with the factual and legal issues presented by their respective claims and defenses raised in the Actions and recognize the uncertainties as to the ultimate outcome in the Actions and the likelihood that any final result would require years of further complex litigation and substantial expense.

F. Fairbanks' Servicing practices have been the subject of investigation by the Federal Trade Commission ("FTC") and other government entities, as well as unfavorable press and media reports, and, as a result of these and other factors, Fairbanks has limited financial resources. Fairbanks' financial limitations were disclosed to Co-Lead Counsel by provision of financial statements during settlement negotiations.

G. Class Counsel believe that the claims Plaintiffs and others have asserted in the Actions have merit; however, Class Counsel also recognize that in the event the Actions are not settled: (a) it would be necessary to continue prosecuting the Actions against Fairbanks through trial and, even if successful there, through the appeals Fairbanks has indicated it will take, including, but not limited to, appeals from any class certification order or adverse judgment (and any further trials that might be necessary in the wake of an initial appeal), all of which will delay substantially the Settlement Class Members' receipt of benefits; (b) there are significant risks in litigation, the outcome of which is uncertain; and (c) Fairbanks' financial and business condition presents substantial additional risk that, even if ultimately successful, Class Members in the Actions may recover nothing. In addition, Class Counsel believe that Class Members and others with open loans serviced by Fairbanks will benefit from the practice changes contained herein and that if those changes are delayed by further litigation, many Class Members will thereby suffer potentially irreparable harm including preventable loss of their homes. Therefore, balancing the costs, risks, and delay of continued litigation against the benefits of the settlement to the Class, Class Counsel and the Plaintiffs have concluded that a settlement as provided in this Agreement will be fair and reasonable and in the best interests of the Class.

H. Since early 2003, Fairbanks has attempted to address concerns raised by regulatory agencies (including the FTC), consumer groups, legislators, private litigants (including the Plaintiffs) and others regarding its Servicing practices. Consistent with these initiatives and in the best interests of all concerned parties, Fairbanks has agreed to address the FTC's and Plaintiffs' concerns with its previous Servicing practices by providing a comprehensive set of remedies, including monetary redress and practice changes as part of this Settlement and the FTC Agreement.

I. Contemporaneously and in conjunction with the negotiation of an agreement in principle on the settlement embodied in this Agreement, Fairbanks negotiated an agreement with FTC and the Department of Housing and Urban Development (“FTC Agreement”).

J. This Settlement and the FTC Agreement are intended to jointly comprise a global settlement providing for consumer redress throughout the United States. The two settlements were negotiated simultaneously, and are inextricably intertwined. Fairbanks has informed Class Counsel and the FTC that Fairbanks would not enter into either settlement without the other, and that is the basis on which settlement negotiations proceeded.

K. Consistent with this negotiating structure, Co-Lead Counsel has consulted and worked with FTC staff during the course of the negotiation of this Settlement and of the FTC Agreement on all major issues including settlement amount, business practice changes, and plan of distribution.

L. The Settlement incorporates three forms of relief. First, the proposed Settlement incorporates relief in the amount of a \$40 million consumer redress program, negotiated jointly with the FTC, and also included in the proposed FTC Order. Second, Fairbanks will embark on a “reverse or reimburse” program with respect to certain practices, through which it will remedy customer accounts allegedly affected adversely by certain practices. Third, Fairbanks will implement a comprehensive set of Servicing practice changes. Plaintiffs and Class Counsel agree that this package of relief is fair, reasonable and adequate because it provides substantial benefits, is in the best interests of the Class, and fairly resolves the claims alleged in light of the attendant circumstances.

M. This Agreement was entered into after extensive arm's-length discussions and negotiations between Co-Lead Counsel and counsel for Fairbanks over a period of more than six months. Counsel for Fairbanks and Class Counsel agree that the Settlement embodied in this Agreement is a fair, reasonable, and adequate resolution of the class actions concerning the Servicing practices that are the subject of this Settlement and the FTC Agreement.

N. Class Counsel have obtained both formal and informal discovery concerning relevant facts and circumstances underlying the agreements embodied herein. In addition, during settlement negotiations, Fairbanks made certain representations concerning issues material to the Agreement, including representations concerning the business and financial condition of Fairbanks and the number of individuals who will be affected by this Agreement. That information will be subject to confirmatory discovery as set forth herein.

O. The Parties desire to compromise and settle all issues and claims that have, or could have, been brought against Fairbanks or others by Plaintiffs or any Settlement Class Member. By agreeing to this Settlement, Fairbanks does not retract or surrender any of the factual or legal positions it asserted in the Actions, or concede the invalidity of those positions.

P. The Parties desire and intend to seek court approval of the Settlement as set forth in this Agreement, in conjunction with and in the same Court as the FTC Order, and, upon such judicial approval, the Parties intend also to seek a final order and judgment from the Court dismissing the claims of all Plaintiffs and Settlement Class Members with prejudice and providing for releases of claims and parties as set forth herein.

## Agreement

In consideration of the Background, which is incorporated by reference, the promises and mutual covenants set forth in this Agreement, and the entry by the Court of a Final Approval Order and Judgment approving the Settlement, the Parties, intending to be bound legally, agree as follows:

### I. DEFINITIONS

Whenever the following capitalized terms are used in this Agreement, and in the attached Exhibits and Schedules (in addition to any definitions elsewhere in this Agreement), they shall have the following meanings:

1. “Actions” means those putative class action lawsuits pending or recently pending against Fairbanks and others arising in connection with Servicing on the Serviced Loans.
2. “Agreement” means this Settlement Agreement and Release, including all attachments hereto. The term shall also include all amendments to the Settlement Agreement and Release and all amendments to the attachments, so long as in writing and with the formalities required herein.
3. “Class” means all persons, other than the Excluded Persons, whose loans were serviced by Fairbanks in the Class Period, and:
  - (a) whose loans were (i) in Default or treated as being in Default by Fairbanks and (A) who incurred or were assessed late fees and/or Default-Related fees including, without limitation, fees denominated by Fairbanks as “corporate advances,” or (B) who were affected by Default-Related conduct; and/or (ii) ones in which the Member incurred or was

assessed prepayment penalties in Massachusetts, Alabama or West Virginia or in violation of law or contract; or

(b) who otherwise were affected, or whose loans were otherwise affected, by one of the Covered Practices.

4. “Class Counsel” means the counsel and firms of: Grant & Roddy; National Consumer Law Center; Cotchett, Pitre, Simon & McCarthy; Lieff, Cabraser, Heimann & Bernstein LLP; Jenkins & Mulligan; Edelman, Combs & Lattuner; Wolf Popper LLP; Miller Shea PC; Brancart Law Firm; Nevada Fair Housing Center; Donovan Searles LLC; Mildenberg & Stalbaum; Community Legal Services, Inc.; Finkelstein, Thompson & Loughran; Hoffman & Edelson LLC; Kevin C. Schoenberger; Legg Law Firm LLC; Langone Law Firm; Consumer Advocacy Center; Pope, McGlamry, Kilpatrick, Morrision & Norwood LLP; McKoon & Thomas; James, Hoyer, Newcomer & Smiljanich; Buckman & Buckman; Seidel & McGory; Aronovitz Trial Lawyers; Chavez & Gertler; Devine, Goodman, Pallot & Wells, PA; and LawServ Chartered; plus other class counsel who may choose to join the settlement; plus all predecessors and successors to each such firm.

5. “Class Member” means a member of the Class. When more than one person is or was obligated on a Loan, each of those persons shall be treated as only one Class Member for purposes of Section I, II and III of this Agreement. Only persons who are a Settlement Class Member, defined below, will be eligible to receive a settlement benefit.

6. “Class Notice” means the notice to the Class of the pendency of the Curry Action and of this Settlement, in the manner described in this Agreement.

7. “Class Period” means January 1, 1999 through the date of Preliminary Approval.

8. “Co-Lead Counsel” means the firms of: Cotchett, Pitre, Simon, & McCarthy, LLP; Lieff Cabraser Heimann & Bernstein, LLP; Grant & Roddy; and Jenkins & Mulligan.

9. “Consolidated Class Action Complaint” means the amended complaint to be filed in the Curry Action, attached hereto as Exhibit A.

10. “Court” means the United States District Court for the District of Massachusetts and/or the Judge to whom the Curry Action is or may hereafter be assigned.

11. “Covered Practices” means those Servicing practices that are defined as “additional practices that are the subject of this complaint” in ¶ 28 of the Consolidated Class Action Complaint, and all related transactions or occurrences or series of transactions or occurrences, which are:

- a. Assessment of excess or improper force-placed hazard insurance premiums;
- b. Payment or assessment of property tax penalties or excess interest on property taxes despite a valid and timely paid escrow account maintained by Fairbanks to cover property tax obligations;
- c. Assessment of broker’s price opinion charges and/or inspection fees for work that was not completed;
- d. Assessment of interest at the time of loan payoffs that was not then due; or
- e. Assessment of interest due on corporate advances on the basis of improper rounding.

12. “Curry Action” means Curry et al. v. Fairbanks Capital Corporation, No. 1-03 CV 10895-DPW (D. Mass.).

13. “Default” when used in this Agreement only shall mean the breach of a promise or covenant of a mortgage loan, including without limitation the promise to pay when

due, the promise to insure the secured property, and the promise to maintain the secured property.

14. “Default-Related” when used in this Agreement shall mean any and all acts, omissions, practices, conduct or behavior by Fairbanks or one of the Fairbanks-Related Parties that was taken at any time with respect to a Serviced Loan that is or ever was in Default or treated by Fairbanks as being in Default, and, subject to the foregoing, shall include, but not be limited to, those Servicing practices that are the subjects of the Consolidated Class Action Complaint, and all related transactions or occurrences or series of transactions or occurrences.

15. “Effective Date” means the first business day after the occurrence of all of the following: (a) Final Approval, (b) the date the FTC Order becomes effective, in accordance with its terms, and (c) the date after all appellate remedies are exhausted, with respect to the FTC Order, with no modification of that Order. In its sole discretion, Fairbanks may waive, in whole or in part, any of these conditions precedent to the occurrence of the Effective Date.

16. “Excluded Persons” means (a) officers and employees of Fairbanks, (b) customers who previously have released all claims they have that are the subject of the Release to be given in the Settlement, and (c) the Court and members of its immediate family.

17. “Fairbanks” means Fairbanks Capital Corp., a Utah corporation, but does not include any actual or alleged predecessors or successors thereto.

18. “Fairbanks-Related Parties” means (a) Fairbanks, Fairbanks’ present and former officers, directors, employees, agents, attorneys, advisors, accountants, consultants, independent contractors, successors, assignees, subsidiaries, affiliates (including, but not limited to, Residential Real Estate Review, Inc.), parents (including, but not limited to, Fairbanks Capital Holding Corp.), divisions, predecessors, and shareholders (including, but not limited to, The PMI

Group, Inc., PMI Mortgage Insurance Co., PMI Capital Corporation, and Financial Security Assurance, Inc.); (b) all persons or entities that are or have been investors, owners, trustees or beneficiaries of all or part of the legal or equitable rights for any of the Serviced Loans (including , but not limited to, Equicredit, Nationscredit Financial Services Corp., WMC Mortgage Corp., Credit Suisse First Boston, Inc., and the mortgage-backed securities trusts) or are or have been servicers of the Class Member Loans, for whom Fairbanks serviced or subserviced the Serviced Loans; (c) all subsequent investors, owners, trustees, beneficiaries, and servicers of Serviced Loans; (d) all present and former vendors (including, but not limited to, Balboa Insurance Co., Balboa Life & Casualty, and force place insurers) used by Fairbanks for Servicing of the Serviced Loans; (e) all present and former foreclosure and deed of trust trustees and attorneys, and appointed providers thereto (including, but not limited to, sheriffs and auctioneers), in connection with the Serviced Loans; (f) all present and former insurers, creditors, investment bankers, or financial advisors of Fairbanks; and (g) the officers, directors, employees, agents, attorneys, consultants, independent contractors, heirs, executors, administrators, successors, reorganized successors, spin-offs, assignees, subsidiaries, affiliates, parents, divisions, and predecessors of each of the foregoing.

19.     “Final Approval” means the last date on which all of the following have occurred:

a.       the Court has issued all necessary orders under Fed. R. Civ. P. 23 approving the Settlement, including the Final Approval Order and Judgment, in accordance with the terms and intent of this Agreement;

b.       the clerk enters a judgment in the Curry Action, in accordance with the terms and intent of the Agreement;

c. all appellate remedies are exhausted (including the date for Supreme Court review) in a manner that affirms or finalizes the Final Approval Order and Judgment, in accordance with the terms and intent of the Agreement;

d. all other putative class actions in which one of the Class Counsel is counsel of record are dismissed with prejudice. In its sole discretion, Fairbanks may waive, in whole or in part, any of these conditions precedent to the occurrence of Final Approval.

20. “FTC” means the Federal Trade Commission.

21. “FTC Order” means the “Order Preliminarily Approving Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp.”, which is to be filed in the Court, contemporaneous with the filing of a motion for preliminary approval of the Settlement, so as to effectuate the FTC Agreement.

22. “FTC Agreement” means the agreement between FTC and Fairbanks, as embodied in the FTC Order, which resolves the investigation of Fairbanks.

23. “Material Event” means a lawsuit, order, injunction or restraining order, or any type of formal governmental proceeding or action (other than the FTC Order or a filed objection to the Settlement of the Curry Action), civil investigative demand (or similar process), administrative subpoena, or administrative investigation by a federal administrative agency, board or commission, by an administrative agency or attorney general of a State, by the United States Department of Justice, by a court, or by any other law enforcement agency, of which Fairbanks is not aware (or is not aware is material) and is material to Fairbanks’ Servicing in that such event is likely (a) to render any material aspect of the Settlement impracticable, or (b) result in a substantial alteration or increase in Fairbanks’ obligations to benefit the persons who would

qualify as members of the Class, or (c) substantially restrict Fairbanks' license(s) to service loans or to collect upon or process foreclosures with respect to defaulted loans.

24. "Parties" means Fairbanks, Plaintiffs, and Class Members, as each of those terms is defined herein.

25. "Plaintiffs" means and includes all named plaintiffs and class representatives in the Curry Action, as listed in the Consolidated Class Action Complaint, or as currently appear in any Actions, as that term is defined herein, in which one of the Class Counsel is counsel of record.

26. "Preliminary Approval" means the order or orders of the Court approving preliminarily the terms and conditions of this Agreement, as contemplated by the Agreement.

27. "Preliminary Approval Date" means the date on which the Court enters the order or orders constituting Preliminary Approval.

28. "Redress Fund" means the \$40 million fund through which Settlement Class Members may obtain redress, as provided herein.

29. "Release" means the release of claims set forth in section IV.

30. "Released Claims" means, collectively, all claims, demands, rights, liabilities, defenses, counterclaims and cross-claims, third-party claims, set-offs, rights of recoupment, and causes of action of every nature and description whatsoever for any losses, damages, harms, injuries, statutory penalties, consequential or incidental damages, punitive damages, or other monetary or non-monetary relief that result, concern or arise from or in connection with (a) the transactions or occurrences or series of transactions or occurrences alleged in the Consolidated Class Action Complaint; (b) the acts or omissions of Fairbanks or of any Fairbanks-Related Party in connection with Fairbanks' Servicing of the Serviced Loans

related to the transactions or occurrences or series of transactions or occurrences alleged in the Consolidated Class Action Complaint; (c) Fairbanks' Servicing of a Serviced Loan that ever was in Default or treated by Fairbanks as being in Default; or (d) any charge, assessment or collection of a prepayment charge, fee or penalty in Massachusetts, Alabama or West Virginia, or in violation of law or contract. The Released Claims shall include, without limiting the generality of the foregoing, claims, demands, rights, liabilities, and causes of action that are: known or unknown; matured or unmatured; now existing or coming into existence in the future; at law or in equity; before a local, state or federal court, tribunal, administrative agency, commission, arbitrator or arbitration panel, or other adjudicative body; now liquidated or unliquidated; concealed or hidden; asserted or might have been asserted, provided, however, that such are encompassed by the first sentence of this definition. The Released Claims also shall include, without limiting the generality of the foregoing, all claims, rights and demands under any federal, state or local consumer protection statute or administrative rule or regulation, or under any other state or federal statute, rule, or regulation, or under the common law or contract, provided, however, that such are encompassed by the first sentence of this definition. The Reserved Claims and Defenses shall be a specific exception to the scope of the Released Claims.

31. “Reserved Claims and Defenses” means the following claims and defenses that are excepted from the Release:

(a) any claims or defenses that a Settlement Class Member asserts, affirmatively or defensively, with respect to Fairbanks' Servicing in an effort to defeat any pending or future real estate foreclosure action (whether judicial or nonjudicial), including those related to the Servicing practices covered by this Agreement, shall be unaffected by the Release in connection with such action.

This exception does not apply to the extent the Settlement Class Member (a) previously raised such claim or defense in any individual, bankruptcy or foreclosure action and it was resolved unfavorably to the Member; (b) previously settled or resolved such claim or defense (other than by a release executed in a forbearance agreement); and, (c) is subject to a *res judicata* defense (other than as a result of this Settlement) with respect to such claim or defense. In addition, this exception does not apply to the extent a Reserved Claim or Defense is raised in a putative or actual class action or representative action.

(b) any claim arising from an alleged violation of 12 U.S.C. § 2605, but only with respect to requests thereunder made entirely after the Preliminary Approval Date.

Nothing in the definition of Released Claims shall prevent a Settlement Class Member from seeking relief or pursuing a claim that does not arise out of or in connection with Fairbanks' Servicing on a Serviced Loan.

32. "Serviced Loan" means a mortgage loan on which Fairbanks conducted the Servicing.

33. "Serviced" shall mean conducted the Servicing.

33. "Servicing" means receiving any scheduled monthly payments from a consumer pursuant to the terms of any loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the loan and includes any related loan servicing activity such as the administration of loan accounts, the collection of loan payments, the foreclosure of real property, the use of consumer reports and the furnishing of information to consumer reporting agencies, and the collection or imposition of fees in relation to any of the foregoing. Servicing shall also include, without limitation, all activities undertaken

by Fairbanks or by a person acting on its behalf or in conjunction with Fairbanks in connection with the administration of a loan account. Servicing shall also include, but not be limited to, all activities undertaken (or failed to be undertaken) with respect to an account that is in Default or treated as being in Default; to the provision of notices, statements, or other information; to the force placement of insurance; to each of the Covered Practices; and to the protection of the interests and rights of the servicer, investor, trustee or beneficiary of the loan.

34. “Settlement” means the resolution of the matters within the scope of the Releases set forth herein, as embodied in this Settlement Agreement and as may hereafter be amended or changed with the consent of Fairbanks.

35. “Settlement Administrator” means L. Stephens Tilghman, Tilghman & Associates, 3419 Independence Drive, Suite 102, Birmingham, Alabama, 35209.

36. “Settlement Class Members” means all Class Members who have not timely and validly opted out or excluded themselves from the Settlement, as provided in this Agreement.

37. “Suit Injunction” means an injunction, to be jointly requested by the parties, that shall restrain Class Members, upon issuance of the preliminary approval order, and pending decision by the Court on whether to grant final approval of the Settlement, from commencing or prosecuting any suit against the Released Persons with respect to the matters within the scope of the Release in this Agreement.

38. “Valid Claim Form” means a timely filed Claim Form with release attached that is filled out in a manner that verifies eligibility to receive benefits under this Settlement (including, where applicable, the Redress Fund), with an appropriate and correct response to applicable questions, executed under penalty of perjury by each living person who is

a Settlement Class Member (or legal representative) and who was or is an obligor on a Serviced Loan. A Claim Form shall be treated as incorrect if the statements contained thereon are materially false or incomplete, or if the Settlement Class Member otherwise is not entitled to be treated as claimed.

39. As used herein, all references to persons or Class Members or Settlement Class Members shall include, and be construed (unless the context or this Agreement requires otherwise) to include, any person or any entity that has an interest, whether legal, equitable or otherwise, in that person's or Class Member's or Settlement Class Members' testamentary estate, bankruptcy estate, trust, marital estate, or similar estate or interest.

40. As used herein, the plural of any defined term includes the singular thereof and *vice versa*, except where the context requires otherwise.

41. Other terms are defined in the text of the Agreement, and shall have the meaning given those terms in the text.

## II. SETTLEMENT PROCEDURES

### A. Preliminary Approval.

1. As soon as possible after the execution of this Agreement, Class Counsel shall file a motion for leave to file the Consolidated Class Action Complaint in the Curry Action ("Motion for Leave to Amend"), in conjunction with the filing of the proposed FTC Order. The Consolidated Class Action Complaint shall encompass all factual allegations and legal claims made in the Actions against Fairbanks (and against Fairbanks-Related Parties in any class action that also is against Fairbanks) and all Released Claims to be released. Fairbanks will not oppose the Motion for Leave to Amend so long as drawn in conformity with this Agreement, and will

allow Class Counsel to represent to the Court Fairbanks' lack of opposition in connection with such motion.

2. As soon as possible after the execution of this Agreement, and contemporaneous with the filing of the Motion for Leave to Amend, Plaintiffs shall move the Court for an order: (a) approving preliminarily the Settlement memorialized in this Agreement as fair, reasonable and adequate; (b) certifying the Class for settlement purposes only, and as defined herein; (c) setting a date for a final approval hearing ("Fairness Hearing"); (d) approving a form of Notice agreed to by the Parties and FTC ("Notice"), and authorizing the dissemination of the Notice to Class Members; (e) approving the Summary Notice in a form agreed to by the parties and FTC ("Summary Notice"), and authorizing its publication; (f) approving the requirement that Class Members file a claim form in order to obtain benefit from the Redress Fund, and the form of Claim Form agreed to by the Parties and FTC ("Claim Form"); (g) setting deadlines consistent with this Agreement for mailing of the Class Notices, publication of the Summary Notice, submission of Claim Forms, filing of objections, filing of motions to intervene, opting out of the Settlement, and filing papers in connection with the Fairness Hearing and the consideration of the approval or disapproval of the Settlement; (h) appointing the Plaintiffs as class representatives, Class Counsel as counsel for the Class, and Co-Lead Class Counsel; (i) appointing the Settlement Administrator; and (j) granting the Motion for Leave to Amend. Fairbanks agrees that it shall not oppose the entry of the Preliminary Approval Order.

3. Simultaneous with the filing of the Consolidated Class Action Complaint and Plaintiffs' motion for the Preliminary Approval Order, Fairbanks and Plaintiffs will jointly move for entry of the Suit Injunction. If an event occurs that makes clear that Final Approval will not occur, Fairbanks will not oppose a motion to vacate the Suit Injunction, if entered, and

will allow Class Counsel to represent to the Court Fairbanks' lack of opposition in connection with such motion. Fairbanks will also cooperate in achieving any modifications to the Suit Injunction that become necessary by virtue of material changes to this Agreement made pursuant to the formalities required under section VIII.3. of this Agreement.

4. The Settlement Administrator shall assist the FTC in implementing the Redress Fund, and shall otherwise assist in administering this Settlement. Unless otherwise agreed with FTC, the Settlement Administrator shall administer the receipt, review, and management of Requests for Exclusion, but not Claim Forms. Fairbanks shall have sole responsibility to pay all reasonable charges and expenses incurred by the Settlement Administrator.

B. Administration.

1. Within twenty (20) business days after the Preliminary Approval Date, or such other later date as may be consistent with the FTC Order, Fairbanks shall create a list of Class Members ("Class Member List"). In preparing the Class Member List, Fairbanks shall use information obtainable from its readily searchable computer media, and shall update all addresses by use of the National Change of Address ("NCOA") database. Fairbanks shall have no further obligation to locate Class Members or Settlement Class Members. Co-Lead Counsel will have access to the Class Member List after it is created, solely for purposes of ensuring that the List is correct and this paragraph was complied with by Fairbanks.

2. FTC and Co-Lead Counsel shall cause the Notice, with Claim Form, to be mailed, as soon as practicable after entry of the preliminary approval order, to the address for the Class Member on the Class Member List and, if returned, re-mailed once to any forwarding address on the returned notice. There shall be no further obligation to re-mail Notices. The cost

to print, process and mail the Notice shall be borne by Fairbanks, to the extent not otherwise paid for as provided in the FTC Order.

3. The Settlement Administrator shall cause the Summary Notice to be published in the national edition of the USA Today twice during the four weeks following initial mailing of the Notice. The two publications will be separated by at least seven days. The size of the Summary Notice shall be such that the cost for publication on each occasion shall not exceed \$30,000, unless otherwise ordered by the Court. The cost to print and process the Summary Notice shall be borne by Fairbanks.

4. Any Class Member that wishes may elect not to participate in the Settlement, except for those aspects of the Settlement that concern or contain standards of conduct or action by Fairbanks with respect to Servicing, and related relief. Any such person must personally complete an individual, written and signed notice of intention to opt out of the Settlement and mail it to the address of the Settlement Administrator as printed in the Notice or the Summary Notice. The notice of intention to opt out shall (i) set forth the Class Member's full name, current address and telephone number; (ii) provide information identifying the loan(s) as to which the Class Member seeks exclusion; (iii) contain the signatures of each Class Member who was a party to the promissory note as to that loan; and (iv) unequivocally state an intent not to participate in the Settlement and to waive all rights to the benefits given in the Settlement. The notice of intention to opt out shall be postmarked on or before the date specified in the Notice or the Summary Notice, which shall be no earlier than 45 days after the initial mailing of the Notices and no later than 20 days before the Final Approval Hearing. Any Class Member who does not submit a timely notice of intent to opt out, and otherwise comply with all requirements for opting out as may be contained in this Agreement, in the Notice or Summary

Notice, and otherwise as ordered by the Court, shall be bound by this Agreement, this Settlement and the Release.

5. If a Class Member opts out, that Member shall be excluded from the Settlement, and shall not receive any benefits of the Settlement other than the practice changes. If a loan has or had more than one obligor Class Member when it was a Serviced Loan, all obligors must elect to opt out in a timely and valid fashion in order for any of such obligor Class Members to be treated as having been excluded from the Settlement. No person shall purport to exercise any exclusion rights of any other person, or purport to opt out other Class Members as a group, aggregate, or class involving more than one Class Member, or as an agent or representative. Any such purported opt outs shall be void, and the Class Member(s) that is or are the subject of such purported opt out shall be treated as a Settlement Class Member.

6. Any Class Member who wishes to object to the proposed Settlement must mail a written objection to the Settlement (“Objection”) to Co-Lead Counsel and Fairbanks’ Counsel, at the addresses set forth in the Notice. Any Objection to the Settlement must be postmarked on or before the deadline specified in the Notice and the Summary Notice, which shall be no earlier than forty-five (45) days after the initial mailing of the Notice and no later than twenty (20) days before the Final Approval Hearing. Each Objection must (i) set forth the Class Member’s full name, current address, and telephone number; (ii) state that the Class Member objects to the Settlement, in whole or in part; (iii) set forth a statement of the legal and factual basis for the Objection; and (iv) provide copies of any documents that the objector wishes to submit in support of his/her position. Any Class Member who does not submit a timely Objection in complete accordance with this Agreement, the Notice, the Summary Notice and

otherwise as ordered by the Court shall not be treated as having filed a valid Objection to the Settlement, and it shall not be considered by the Court.

7. Any Class Member who wishes to appear at the Fairness Hearing, whether pro se or through counsel, must file a notice of appearance in the Curry Action, take all other actions or make any additional filings as may be required in the Notice, the Summary Notice, or as otherwise ordered by the Court, and serve the notice and other pleadings upon Co-Lead Counsel and Fairbanks' Counsel at least twenty (20) days before the Fairness Hearing. No Class Member shall be permitted to raise matters at the Fairness Hearing that the Class Member could have raised in an Objection, but failed to do so. Any Class Member who fails to comply with this Agreement, the Notice, the Summary Notice and as otherwise ordered by the Court shall be barred from appearing at the Fairness Hearing.

8. Any Class Member who wishes to intervene in the Curry Action must file a motion or application to do so within the time permitted for the filing of Objections.

9. Unless the Court directs otherwise, with consent of Fairbanks, the dates set forth in the form of Notice and Summary Notice attached hereto shall govern the rights of the Class Members.

C. Final Approval.

1. At the time appointed by the Court, Plaintiffs shall move the Court for an order and final judgment, consistent with this Agreement ("Final Approval Order and Judgment"): approving finally the Settlement and the Agreement as fair, reasonable and adequate; giving the terms of the Settlement final and complete effect; finding that all requirements of statute, rule and Constitution necessary to effectuate this Settlement have been met and satisfied; making the Suit Injunction permanent as to Settlement Class Members;

incorporating into the Final Approval Order and Judgment the Releases, covenants not to sue, and injunction against further litigation contained in this Settlement; and otherwise entering final judgment of dismissal on the merits and with prejudice in the Curry Action. Fairbanks agrees that it will not oppose the entry of the Final Approval Order.

2. At the Fairness Hearing, Plaintiffs and Class Counsel shall present sufficient evidence to support the entry of the Final Approval Order and Judgment to obtain the approval of this Agreement, and to obtain the approval of the Settlement.

3. Plaintiffs and Class Counsel shall make application, in writing at least ten (10) days prior to the Fairness Hearing, for any awards to them for attorneys' fees, costs and incentive awards. Any applications shall be consistent with the Agreement. They shall also file, at the same time, such evidence as they deem appropriate to support any award of attorneys' fees, costs and incentive awards. Such awards shall be by motion separate from the motion seeking Final Approval and action on the applications shall be by order separate from the Final Approval Order and Judgment.

4. Class Counsel agree that they shall not seek an amount in excess of \$8,250,000 in attorneys' fees for Class Counsel to be entered in the Curry Action. Said amount was negotiated only after all other material terms of this Agreement were complete. As an additional benefit to the Settlement Class Members, said amount will be paid in addition to any relief otherwise set forth in this Agreement and shall not diminish the benefits of the settlement to the Settlement Class Members. Fairbanks agrees that it shall not oppose any request that an award up to and including \$8,250,000 be entered in the Curry Action, and that it will not oppose an Order that such amounts be paid in addition to, and not out of, the total consideration to be paid to Settlement Class Members. Fairbanks and the Fairbanks-Related Parties shall not be

obligated to pay any award of attorneys' fees to Class Counsel that collectively is in excess of \$8,250,000. Plaintiffs, Class Counsel and Co-Lead Counsel expressly disclaim any and all right to collect in excess of the amount awarded by the Court or \$8,250,000, whichever amount is less, for attorneys' fees collectively, from any person or entity, and agree, upon demand, to execute a release of any person's or entity's obligation to pay such sums.

5. Class Counsel agree that they shall not seek an award of litigation costs to Class Counsel in excess of the total sum calculated as follows: (i) \$100,000, plus (ii) documented out-of-pocket charges paid by class counsel for filing fees, service costs, and hearing and deposition transcripts to date, plus (iii) documented travel expenses of Co-Lead Counsel who negotiated the settlement, for the face-to-face meetings attended by Co-Lead Counsel in Washington, Chicago and San Francisco ("Stipulated Costs Amount"). Fairbanks agrees that it shall not oppose any request that an award up to and including the Stipulated Costs Amount be entered in the Curry Action, and that it will not oppose an Order that such Amount be paid in addition to, and not out of, the total consideration to be paid to Settlement Class Members. Fairbanks and the Fairbanks-Related Parties shall not be obligated to pay any award of litigation costs, expenses or similar items to Class Counsel that collectively is in excess of the Stipulated Costs Amount. Plaintiffs, Class Counsel and Co-Lead Counsel expressly disclaim any and all right to collect in excess of the amount awarded by the Court or the Stipulated Costs Amount, whichever is less, for expenses, litigation cost, or similar items collectively, from any person or entity, and agree, upon demand, to execute a release of any person's or entity's obligation to pay such sums.

6. Plaintiffs agree that they shall not seek awards in an amount in excess of \$3,500 each (with only one award per named party, couple or co-obligor), to be entered in the

Curry Action. Fairbanks agrees that it shall not oppose any motion for an award up to and including that amount, and that it will not oppose an Order that such amounts be paid in addition to, and not out of, the total consideration to be paid to Settlement Class Members. Fairbanks and the Fairbanks-Related Parties shall not be obligated to pay any incentive award in excess of \$3,500 to any named party, couple or co-obligor. Except as they may otherwise be eligible for benefits under this Agreement, Plaintiffs each expressly disclaim any and all right to collect more than \$3,500 from any person or entity, and agree, upon demand, to execute a release of any person's or entity's obligation to pay such sum.

7. Fairbanks and the Fairbanks-Related Parties shall have no obligation to pay attorneys' fees, costs or incentive awards to other attorneys or other plaintiffs in lawsuits against Fairbanks, it being the express agreement that the awards that may be sought hereby are the total maximum liability of Fairbanks and the Fairbanks-Related Parties for attorneys fees, costs and incentive awards in connection with the settlement and resolution of any lawsuits or claims within the scope of the Release.

8. Within ten days after Fairbanks' receipt of written notice of entry of the Final Approval Order by the district court and all orders concerning attorneys fees, costs and incentive payments, whichever occurs last, Fairbanks will make the payments of attorneys' fees, costs and incentive payments into an interest-bearing escrow account by wire, ACH or other electronic transfer or other mutually agreed method of delivery, to be held or controlled by the Settlement Administrator. Upon the Effective Date or entry of a final and non-appealable order awarding attorneys' fees, costs and incentive payments, whichever occurs last, said funds, with interest accrued, shall be released to Co-Lead Counsel. If no Effective Date occurs, then

Fairbanks shall have no obligation to pay any award of attorneys' fees, costs or incentive awards, and all said funds shall be returned to Fairbanks.

9. If the Court denies, in whole or part, Class Counsel's fee and expense application, and/or incentive awards, the remainder of the terms of this Agreement and of the Settlement shall remain in effect.

10. Fairbanks shall pay all costs of notice and settlement administration (other than for time and expenses of Class Counsel) not otherwise allocated or provided for by the FTC Order.

### III. SETTLEMENT RELIEF

1. In consideration of the Settlement and provision of the Releases, the Settlement Class Members shall be provided by Fairbanks with benefits set forth in this Agreement by Fairbanks. Fairbanks shall be required to provide benefits under this Settlement and this Agreement only after the Effective Date, unless otherwise required by the FTC Order. Nothing shall prevent Fairbanks from providing some or any of the benefits, in its sole discretion, prior to the Effective Date.

2. A significant factor in the creation of the \$40 million Redress Fund was the existence of the various putative class actions and the pendency of the settlement discussions with Co-Lead Counsel that resulted in this Agreement. Absent this Agreement, and its approval by the Court, no funds would be available to the Redress Fund or to the Settlement Class Members.

3. Those persons in the Class who are within the scope of the FTC Order shall accept as consideration for the Release given hereby the right to share equitably, as determined by FTC, in the distribution of the Redress Fund established pursuant to this

Agreement and the FTC Order together with relief available to such persons, if any, under other provisions of this Agreement. Settlement Class Members will be deemed to have opted-in to the FTC Agreement as set forth in the FTC Order in *United States of America v. Fairbanks Capital Corp. et al.*, Case No. \_\_\_\_\_.

a. Settlement Class Members are required to return a Valid Claim Form to obtain a settlement benefit under this Section. Settlement Class Members who do not return a Valid Claim Form nonetheless will be bound by the Final Approval Order and Judgment, the Agreement and the Release as to that person.

b. The Redress Fund shall be distributed based on the total amount of fees or charges paid by or assessed to the Settlement Class Member, or based on the other harm to such Member. Each person within the scope of the Redress Fund shall receive the opportunity to make a claim against the Redress Fund in an amount proportionate to the total amount of fees and charges paid by or assessed to such person by Fairbanks or in proportion to the economic harm or statutory damages suffered by such person. Fairbanks, Plaintiffs and Class Counsel will be consulted regarding, and have input in, the administration of the Redress Fund; however, the FTC shall have final decision making authority with respect to the Redress Fund if any disputes occur.

c. Other than such rights as Fairbanks has to a return of the Redress Fund, including in the event the FTC Order and/or this Settlement does not become effective, Fairbanks and the Fairbanks-Related Parties shall have no responsibility for, interest in, or liability whatsoever with respect to, the Redress Fund, including the determination, administration, calculation or payment of claims made. Fairbanks and the Fairbanks-Related

Parties are released from any and all liability and claims arising from or with respect to administration or disbursement of the Fund.

4. In addition to the benefits under the Redress Fund, Fairbanks will provide additional benefits to the Settlement Class Members. One such benefit is that no later than thirty (30) days after the Effective Date, Fairbanks shall undertake a “Reverse or Reimburse Program.” For the purposes of this provision, “reverse or reimburse” means cancellation of improperly or unnecessarily assessed charges on open accounts of the Settlement Class Members together with refund of improperly or unnecessarily paid charges on the accounts of the Settlement Class Members, whether open or closed. Such charges include money recovered by Fairbanks following a completed foreclosure. For purposes of this provision, “open accounts” includes any account on which Fairbanks continues to provide Servicing as of the Effective Date. For purposes of this provision, “reimburse” means repayment in cash whether the account is open or closed. The scope of the program includes only fees and charges listed in items a-e below.

a. Fairbanks will reverse and reimburse in full all improper or unnecessary force placed hazard insurance charges imposed on Settlement Class Members, together with any charges that follow as a result of improper force placed insurance (such as late fees). For purposes of this aspect of the Program, “improper or unnecessary charges” refers only to charges for forced place hazard insurance when the Settlement Class Member had overlapping hazard insurance in force. Reversal or reimbursement of charges will be automatic if Fairbanks has satisfactory written evidence of overlapping hazard insurance coverage. For other Settlement Class Members who had force placed insurance, Fairbanks will provide notice and a period of ninety days for such Member (or his or her insurance agent or other designee) to supply satisfactory written evidence of overlapping hazard insurance coverage during the period during

which the force placed insurance was in force. Borrowers who provide such evidence will be entitled to the same treatment as borrowers for whom Fairbanks already has satisfactory written hazard insurance evidence. Failure to obtain the benefit where such failure is due solely to the Member's failure to supply such evidence shall excuse any obligation on Fairbanks' part to provide the benefit, but shall have no effect on the validity of the Release as to that person.

b. Fairbanks shall reverse or reimburse all penalties, interest and follow on charges from contractual escrow accounts of the Settlement Class Members that resulted from late payments of tax for Settlement Class Members outside the scope of the Redress Fund. The refunds or credits shall be completed in the same ratio as such fees are refunded to Settlement Class Members within the scope of the Redress Fund. If the Settlement Class Member provides proof that the borrower directly paid such penalty, interest or follow on charges, Fairbanks will provide the same benefit to the Settlement Class Member directly; notice of the availability of this benefit will be given to all Settlement Class Members for whom Fairbanks has maintained a contractual escrow account, together with instructions concerning how to obtain reimbursement for such direct payment of penalty, interest or follow on charge.

c. Fairbanks shall reverse or reimburse charges assessed to Settlement Class Members for broker's price opinions and property inspections that were charged prior to the completion of the underlying work when the work was not then completed for Settlement Class Members outside the scope of the Redress Fund. Based on Fairbanks' reasonable efforts to identify Class Members who would be eligible for such benefit, Fairbanks estimates this involves 90,000 accounts.

d. Fairbanks shall reverse or reimburse those interest charges to Settlement Class Members that were collected after having been incorrectly reported as due as

part of the payoff of the Serviced Loan for Settlement Class Members outside the scope of the Redress Fund. Based on Fairbanks' reasonable efforts to identify Class Members who would be eligible for such benefit, Fairbanks estimates this involves 160,000 accounts.

e. Fairbanks shall reverse or reimburse increased interest (attributable to interest on corporate advances) charged to Settlement Class Members due to rounding of interest up to the nearest penny for Settlement Class Members outside the scope of the Redress Fund. Based on Fairbanks' reasonable efforts to identify Class Members who would be eligible for such benefit, Fairbanks estimates this involves 160,000 accounts

5. The Reverse and Reimburse Program shall also be administered in accordance with the following guidelines:

a. Fairbanks shall be permitted to enter into agreements with FTC to ensure that Settlement Class Members do not receive duplicate benefits. Fairbanks shall have no obligation to provide a benefit that it or another has already provided or provides.

b. Any check sent to a person being provided benefits under the Program shall be mailed to the last known address for the Settlement Class Member in Fairbanks' computer records, as updated by the NCOA database, and, if returned, re-mailed once to any forwarding address on the returned notice. Fairbanks shall have no further obligation to re-mail checks to Settlement Class Members.

c. Reversal of charges shall be provided in the manner that Fairbanks selects, and charges will be reversed whether the Loan is in active status, in bankruptcy, in foreclosure, paid off, closed, charged off, inactive or in any other status, so long as Fairbanks has an accurate record of account against which such a credit can be made.

d. Fairbanks shall commence the program no later than 30 days after the Effective Date and will complete the Program as soon as practicable in light of the notice available to Settlement Class Members of the force placed hazard insurance refund and escrow account refund programs.

6. Within thirty (30) days after the Effective Date, Fairbanks also will implement the “Default Resolution Program,” attached hereto as Appendix 1, for all loans serviced by Fairbanks. The Program shall remain in effect for a minimum of five (5) years.

7. Within sixty (60) days after the Effective Date, Fairbanks will implement the “Operational Practices,” attached hereto as Appendix 2, for all loans serviced by Fairbanks. The Operational Practices shall remain in effect for a minimum of five (5) years.

8. If, and to the extent that, the Reverse or Reimburse Program, the Default Resolution Program and/or the Operational Practices are or become, in whole or in part, (i) contrary to law or (ii) contrary to third party written standards dictated to Fairbanks by which Fairbanks becomes bound in the future to Service a loan, Fairbanks shall be excused from the requirements of the Programs and Practices, as the case may be.

9. The Default Resolution Program and Operational Practices each shall be governed by the following additional guidelines:

a. The Parties recognize that changes in company or industry practices, technology or economics may make it advisable in the future to revisit some standard or standards in the Default Resolution Program and/or the Operational Practices. The Parties also recognize that it may become advisable in the future for Fairbanks to pursue a change in a policy, procedure or practice that is more beneficial to a consumer than that set forth in the Default Resolution Program and/or the Operational Practices, or that FTC Staff may permit

Fairbanks to take certain actions notwithstanding the FTC Order. In the event Fairbanks determines that any such actions in variance from the Default Resolution Program and/or the Operational Practice are necessary, due to expected or actual materially changed circumstances, Fairbanks shall give written notice to Co-Lead Counsel of such a contemplated action, specifying the reasons therefore. Any contemplated action shall be deemed automatically to modify the attached appendices twenty (20) days thereafter, without Court involvement; provided however, that Co-Lead Counsel may object to such contemplated action within the 20 day period, in which case such action will not be implemented for 60 days. An objection may only be made of and to the extent Co-Lead Counsel reasonably believes the contemplated action will materially undermine established rights of Settlement Class Members. Actions not objected to may be implemented, but actions objected to may only be implemented after the objection is resolved or abandoned. During the first 40 days of such 60-day period, the parties will negotiate in good faith concerning the proposed action with a view towards resolving the objection. During the last 20 days of such 60 day period, Co-Lead Counsel may (but has no obligation to) commence a proceeding in the Court to pursue any unresolved objection and Fairbanks also may institute a proceeding to resolve the objection. There shall be no further notice provided to Class Members, other than notice to Co-Lead Counsel and to Fairbanks. In any such proceeding, the burden will be on Fairbanks to show that such contemplated actions being objected to do not materially undermine the established rights of Settlement Class Members, and the Court should be permitted to enter such orders on the objection as it deems just and equitable, considering all of the circumstances. If no such proceeding is commenced by either Party, prior to the expiration of the 60-day period, contemplated actions that were objected to may be implemented.

b. Unless expressly covered in the Default Resolution Program or the Operational Practices, nothing in the Default Resolution Program or the Operational Practices shall restrict Fairbanks' freedom of contract, servicing activities, or other business activities or pursuits.

c. In agreeing to implement the Default Resolution Program and the Operational Practices, Fairbanks does not admit that any of the contents thereof, or the policies, procedures and practices they or the Reverse or Reimburse Program reflect, are required by law or contract. Plaintiffs, Class Counsel, and the Class do not, by this Agreement, admit that any of the contents of the Program or the Practices are permitted by law or contract. No claim to enforce either the Default Resolution Program or the Operational Practices shall be brought other than in the Court in a proceeding to enforce this Agreement, and customers of Fairbanks, or anyone else, may not sue or claim for damages or other personal relief based on the terms of the Default Resolution Program or the Operational Practices, *provided however* that an action, claim or defense based upon the Default Resolution Program or the Operational Practices may be raised as a defense to an individual foreclosure (and will be treated like a Reserved Claim and Defense is treated under this Agreement).

d. If and to any extent the Operational Practices are directly inconsistent with the Default Resolution Program, the Default Resolution Program shall control.

10. In the event that the provision of a particular form of relief would cause an adverse tax consequence to a Settlement Class Member, neither Fairbanks nor the Fairbanks-Related Parties shall be obligated to compensate the Settlement Class member for the tax consequence.

11. Neither Fairbanks nor any Fairbanks-Related Party shall have any liability to any person, including any Settlement Class Member or any co-obligor on a Serviced Loan, arising from or in connection with any claim regarding the division or allocation of settlement benefits to, between and among such persons.

12. Reports issued by the persons or entity performing Fairbanks' internal audit function (currently PriceWaterhouseCoopers) shall be made accessible to Co-Lead Counsel upon demand, to be exercised no more frequently than once a year, to audit all practice enhancements. Co-Lead Counsel shall execute a reasonably-acceptable confidentiality agreement on or after the Effective Date, if Fairbanks so requests as a precondition to reviewing such reports.

13. Within ninety (90) days of the Effective Date, Fairbanks will deliver to Co-Lead Counsel an affidavit as to implementation of the Settlement. In the event implementation is not complete at that time, Fairbanks shall supplement the affidavit upon reasonable request.

#### IV. RELEASES

1. Upon the Effective Date, except as set forth herein, and in consideration of the promises and covenants set forth in this Agreement, Plaintiffs and each Settlement Class Member, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, trustees, successors, predecessors, joint tenants, tenants in common, tenants by the entirety, co-borrowers, co-obligors, co-debtors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government or bankruptcy trustees in the capacity as *parens patriae* or on behalf of creditors or estates of the releasees) (collectively,

“Class Releasers”), shall be deemed to have released completely and forever discharged Fairbanks and the Fairbanks-Related Parties, and each of them (“Fairbanks Releasees”), from the Released Claims, except for the Reserved Claims and Defenses. This Release shall specifically apply to bar any dispute about the Covered Practices and about the matters that are within the scope of this Release, whether, whenever and however such dispute or issue may arise or be raised.

Subject to the obligations of this Agreement, this Release shall be construed to entitle the Fairbanks Releasees to continue to process, prosecute or otherwise pursue legal or administrative proceedings that they have previously commenced, to maintain previously-filed or sent pleadings or notices, and to take actions within the normal course of Servicing as to the Settlement Class Members’ loans. The Release shall not affect any rights between Class Releasers or any rights between Fairbanks Releasees.

2. Plaintiffs and Settlement Class Members hereby covenant not to sue Fairbanks and/or the Fairbanks-Related Parties regarding any of the Released Claims except for the right to assert the Reserved Claims and Defenses. Plaintiffs and Settlement Class Members hereby further covenant not to sue Fairbanks and/or the Fairbanks-Related Parties other than as an individual (rather than as a member of a class or putative class or as a beneficiary of a representative action of any sort) regarding any of the Reserved Claims or Defenses. To support this covenant, Plaintiffs and each Settlement Class Member hereby disclaim, waive, release and forever forbear any rights any of them may have to participate in or benefit from any class or representative action commenced or prosecuted with respect to the Reserved Claims and Defenses.

3. Plaintiffs and Settlement Class Members agree expressly that, upon the Effective Date, each will waive and release any and all provisions, rights, and benefits conferred either (a) by Section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims and rights released. Section 1542 of the California Civil Code reads:

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.

Whether a beneficiary of California law or otherwise, each Plaintiff and Settlement Class Member acknowledges that he or she may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released, but each of those individuals agree expressly that, upon entry of the final judgment contemplated by this Agreement, he or she shall have waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the claims released, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts. This waiver shall be understood to include all such claims which each Plaintiff and Settlement Class Member does not know of or suspect to exist in their favor at the time of this release and which, if know by them, might have affected their settlement and release of Fairbanks and Fairbanks-Related Parties, or might have affected their decision not to object to this Settlement.

4. Upon the Effective Date, Fairbanks shall be deemed to have released Plaintiffs, each Settlement Class Member, and Class Counsel from all claims arising out of

maintenance of the Curry Action or of any Action brought by Class Counsel for attorneys' fees, costs or sanctions.

5. For purposes of all obligations to return confidential materials produced in litigation, the earlier of the date the action concludes or the Effective Date shall be deemed to be the date on which such lawsuit or administrative proceeding within the scope of the Released Claims is resolved.

## V. REPRESENTATIONS AND WARRANTIES

1. In addition to the provisions hereof, this Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Fed. R. Civ. P. 23(e). Until and unless this Agreement is dissolved or becomes null and void by its own terms or unless otherwise ordered by the Court or if Final Approval is not achieved, Plaintiffs and Class Counsel represent and warrant to Fairbanks and the Fairbanks-Related Parties that they shall: take all appropriate steps in the Curry Action necessary to preserve the jurisdiction of the Court; take all appropriate steps to oppose and prevent the prosecution of competing litigation in which a Class Member seeks to undermine, thwart, frustrate or avoid the Settlement; use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible; use their best efforts to resist and oppose any or all nonmeritorious Objections to the Settlement, any or all proposed interventions, and any or all attempts to opt out of the Settlement on any basis other than an individual basis; cooperate with Fairbanks in effectuating the FTC Agreement and in ensuring that the FTC Agreement and this Settlement are coordinated so as to provide Fairbanks and the Fairbanks-Related Parties with the benefit of the releases and peace provided in each; and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. Without limiting the foregoing,

Plaintiff and Class Counsel represent and warrant that each shall: (a) amend the pleadings and/or seek and obtain the participation of additional parties plaintiff, as may be necessary and consented-to by Fairbanks; (b) seek approval of this Agreement and of the Settlement by the Court; (c) move for the entry of the orders set forth in paragraphs II.A.2 and II.C.1; (d) join in the entry of such other orders or revisions of orders or notices, as are required by Fairbanks, subject to the Plaintiffs' consent, not to be unreasonably withheld; and (e) work with the FTC and secure a distribution of the Redress Fund that will provide benefits to each Settlement Class Member who is within the scope of the FTC Order, and present such distribution plan to the Court for the Court's consideration of the Settlement.

2. Plaintiffs and Class Counsel represent and warrant that they shall express unequivocal public and private support for the Settlement and this Agreement, and shall not disparage, criticize or comment unfavorably on Fairbanks or any of the Fairbanks-Related Parties.

3. Plaintiffs and Class Counsel warrant that any motion and/or application that they file requesting an award of attorneys' fees and costs to Class Counsel shall include within its scope all attorneys and law firms with a financial interest in any such award with respect to the Actions brought by Class Counsel that are settled in the Curry Action. Plaintiffs and Class Counsel represent and warrant that they have authority to bind Class Counsel to the provisions of paragraphs II.C.4 and II.C.5 and Plaintiffs to paragraph II.C.6.

4. Until and unless this Agreement is dissolved or becomes null and void by its own terms or unless otherwise ordered by the Court or if Final Approval is not achieved, Fairbanks represents and warrants to Plaintiffs that it shall: take no steps in the Curry Action to avoid or defeat the jurisdiction of the Court; take all appropriate steps to oppose and prevent the

prosecution of competing litigation in which a Class Member seeks to undermine, thwart, frustrate or avoid the Settlement; take no steps to avoid or defeat motions for Preliminary or Final Approval of this Agreement as promptly as possible; use its best efforts to resist and oppose any or all non-meritorious Objections to the Settlement, proposed interventions, and any or all attempts to opt out of the Settlement on any basis other than an individual basis; cooperate in ensuring that the FTC Agreement and this Settlement are coordinated; and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. Without limiting the foregoing, Fairbanks represents and warrants that it shall: (a) oppose non-meritorious Objections, not cooperate with objectors or prospective opt outs, and defend, protect, and seek enforcement of the Agreement and the Settlement before the Court or before any other court or on appeal, if any, (b) not oppose amendments to the pleadings, orders or notices as may be necessary to effectuate the Settlement; and (c) work with the FTC and secure a distribution of the Redress Fund that will provide benefits to each Settlement Class Member who is within the scope of the FTC Order, and present such distribution plan to the Court for the Court's consideration of the Settlement.

5. Plaintiffs and Fairbanks represent and warrant that they are fully authorized to enter into this Agreement and to carry out the obligations provided for herein. All persons executing this Agreement on behalf of a Party covenants, warrants and represents that they are and have been fully authorized to do so by such Party. All Parties hereto further represent and warrant that they intend to be bound fully by the terms of this Agreement.

6. Except as provided in Section VI, or otherwise as permitted by this Agreement or with consent, Plaintiffs, Class Counsel and Fairbanks represent and warrant that they have not and will not: (a) attempt to void this Agreement or the Settlement in any way; (b)

commence or assist any new or ongoing litigation inconsistent with this Agreement; (c) object to any aspect of the Settlement when such aspect is consistent with the Agreement; (d) opt out of the Settlement under this Agreement; (e) solicit, encourage or assist, in any fashion, Class Members to opt out; (f) solicit, encourage or assist, in any fashion, any effort by any person (natural or legal) to object to the Settlement under this Agreement; (g) appeal from or seek review of any order that approves the Settlement; or (h) seek injunctive, declaratory or equitable relief against foreclosure for any person, based on the Settlement. Nothing in this provision shall prevent Class Counsel from advising a client of his or her right to opt out or acting at the direction of a client to do what is necessary to opt out a Member, not a Plaintiff, on an individual basis where Class Counsel is counsel of record for that client in a lawsuit filed prior to November 10, 2003.

7. Any dispute concerning the truth or effectiveness of these representation and warranties, or the effect of any breach, shall be brought only in the Court, and the Parties, including the Settlement Class Members, consent to the Court as having exclusive jurisdiction to entertain such proceedings.

8. Fairbanks and Co-Lead Counsel will work diligently and cooperatively to obtain dates for preliminary and final approval that will allow settlement to be completed at the earliest practicable date.

## VI. SUBSEQUENT EVENTS

1. This Agreement is dependent upon the FTC Agreement and the entry and final effectiveness of the FTC Order. This Agreement shall be voidable up to the Effective Date, at the option of Fairbanks, if (a) the FTC Order is never submitted to the Court, or does not become effective in accordance with its terms, or the FTC exercises its option to terminate under

Section XVIII of the FTC Order, (b) the FTC Order is not approved by the Court or is overturned or materially modified on appeal, (c) the FTC commences a legal action (administrative or litigation) against Fairbanks or any Fairbanks-Related Party concerning Fairbanks' Servicing (other than the action in which the FTC Order is filed or an action to enforce the FTC Order), or, (d) Fairbanks delivers notice to Class Counsel that, in its reasonable and good faith judgment, the FTC Agreement is no longer effective or the effective date of the FTC Order is not likely to occur. Fairbanks is not required to declare this Agreement or Settlement void. In the event Fairbanks has a right under this paragraph to do so, Fairbanks may elect, in its sole discretion, to proceed with this Settlement. In such event, the sum currently contemplated to be the Redress Fund, together with the benefits available under the Reverse or Reimburse provisions hereunder, shall remain the mechanisms for monetary relief (and shall not be increased in amount), and all other provisions of this Agreement, including all benefits, and the Release shall remain in effect. Further, in that event, the Parties shall amend this Agreement as may be necessary to conform its terms to effectuate a settlement without an FTC Agreement.

2. In the best interest of the Class, given the limited resources of many Settlement Class Members, and potential for delays in appeals, Plaintiffs and Class Counsel have consented to permitting the FTC to have the right to commence distribution from the Redress Fund under the FTC Order. This aspect of the Agreement is part of the bargained-for benefit to the Settlement Class Members. In the event distributions are made, but the Final Approval Date or the Effective Date under this Agreement does not occur, those Settlement Class Members to whom a distribution was mailed or tendered, or a settlement benefit otherwise provided, shall be deemed to have provided and agreed to the Release set forth in this Agreement.

3. In addition to the other provisions of this Agreement, the Agreement shall be voidable, at the sole option of Fairbanks, (a) if valid opt-outs are received from persons who together number in excess of that number which Plaintiffs and Fairbanks have agreed upon (which number shall be kept confidential by the Parties but disclosed to the Court if requested); (b) in the event the Court fails to enter the orders contemplated by paragraphs II.A.2 and II.C.1, or does so in a form materially different from the forms contemplated by this Agreement, or it becomes reasonably likely that the Court will not enter all such orders before the passage of ten (10) months after the filing of the FTC Order; (c) if the orders contemplated by paragraphs II.A.2 and II.C.1 are reversed or modified on appeal; (d) if the Court or any other court permits a person or persons to opt out as a representative or otherwise to exercise or preserve the opt out or substantive rights of others; (e) if there is a Material Event; or (f) if the Suit Injunction is not entered and Fairbanks is subjected to class action or representative litigation, existing or newly filed, brought by a Class Member that would otherwise qualify as a Material Event. The Agreement also shall be terminable upon the mutual written agreement of the Parties.

4. If this Agreement is terminated pursuant to its terms, any order certifying the Class and the Order granting leave to file the Consolidated Class Action Complaint shall be vacated *nunc pro tunc*, and the Curry Action shall proceed as though the Class had never been certified, or the Consolidated Class Action Complaint filed, without prejudice to the Parties' rights including but not limited to the right to seek relief from or under the Consolidated Class Action Complaint and the right to oppose class certification. If the Final Approval Date does not occur or if this Agreement is not approved in full, or Fairbanks elects to terminate this Agreement pursuant to its terms, any and all orders vacated or modified as a result of this Agreement shall be reinstated, and any judgment or order entered by the Court in accordance

with the terms of this Agreement shall be treated as vacated *nunc pro tunc*, and the order amending the Complaint shall be void.

5. If this Agreement is terminated by its terms, Fairbanks will not oppose any motion or other proceeding to reinstate any other action affected by this Agreement or otherwise to return such action to its *status quo* in such court in which such action was pending as of the date of this Agreement, but only to the extent such action was affected by this Agreement.

6. The Parties will negotiate in good faith towards an agreement, reasonably acceptable to each, on a form of preliminary approval order, a form of suit injunction, a form of final approval order, the Notice, the Claim Form, and the Summary Notice; such negotiations will be in consultation with FTC with respect to the Notice, the Claim Form, and the Summary Notice.

## VII. CONFIRMATORY DISCOVERY

Subsequent to preliminary approval of this Settlement, Class Counsel will be permitted to conduct one or more depositions and/or will accept affidavits sufficient to assure that (1) all information provided to Co-Lead Counsel during settlement negotiations concerning class size parameters and the Company's financial status was accurate, or Fairbanks had a reasonable belief as to its accuracy based on its investigation at the time; (2) Class Members have been properly identified; (3) the Default Resolution Program and Operational Practices contemplated by this Agreement have been or will be implemented; and (4) Fairbanks has or will have systems in place to assure compliance with the Settlement. Plaintiffs will act reasonably in accepting affidavits as to the aspects of these subjects which are most conveniently addressed in writing. Topic areas for any such deposition will be limited to subjects not adequately addressed by affidavit, and will be submitted to counsel for Fairbanks at least ten (10) days in advance. If a

deposition(s) is conducted, Fairbanks will produce a knowledgeable person with respect to each such topic area.

#### VIII. ADDITIONAL TERMS

1. The obligations of Fairbanks, including those contained in the Agreement, in the Default Resolution Program, and in the Operational Practices, shall be performed reasonably and in good faith. So long as it abides by the terms of the Settlement and performs reasonably and in good faith in carrying out the Agreement, the Default Resolution Program, and the Operational Practices, Fairbanks shall not be liable for erroneous, improper or inaccurate actions, omissions, crediting or payment, or breach of the Agreement, the Default Resolution program or the Operational Practices, and the releases and any judgment shall be effective as of Final Approval as to every Plaintiff and Settlement Class Member notwithstanding any error or dispute and regardless of whether such error or dispute is corrected or addressed only thereafter, unless such act or omission is as a result of gross negligence or willful misconduct. In the event a dispute arises concerning Fairbanks' performance of its obligations under the Agreement, Fairbanks shall have the right to cure (or commence cure within 30 days of notice of the dispute) as to such act or omission that gave rise to the dispute, in which event Fairbanks shall have no liability for breach of the Agreement.

2. This Agreement is intended to and shall be governed as if a contract executed under the laws of the Commonwealth of Massachusetts.

3. The terms and conditions set forth in this Agreement constitute the complete and exclusive agreement between the Parties hereto, and may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement. Any modification of the

Agreement must be made in a writing signed by the Parties or their counsel, and served pursuant to paragraph VIII.20.

4. This Agreement shall inure to the benefit of the respective heirs, successors, and assigns of the Parties, the Released Persons and the beneficiaries of the Release, and the Released Persons and the beneficiaries of the Release shall be deemed to be intended third party beneficiaries of this Agreement and, once approved by the Court, of the Settlement.

5. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

6. Except as otherwise provided in this Agreement, under no circumstances shall the Settlement or the Agreement or the releases be deemed to alter, amend, or change the terms and conditions of any mortgage loan as to which any Settlement Class Member is or was a party, or to increase or decrease the amounts due thereunder, or to provide a defense to any such loan or to enforcement of the loan obligation (except as such rights are preserved by the Reserved Claims and Defenses), including but not limited to a defense based on the so-called “one action” rule. Plaintiffs and the Settlement Class Members shall be deemed to have expressly covenanted and agreed as of the Preliminary Approval Date, as a material inducement to Fairbanks, that each of them waive and forever relinquish any rights or entitlement they may possess or come to possess to have Fairbanks and/or the Fairbanks-Related Parties or the Released Persons amend, alter or revise issued or to be issued notices, letters, complaints, bankruptcy proofs of claims, rights, demands, suits or other claims made in order to reflect the benefits provided or to be provided or to reflect the other terms of this Agreement, the Settlement and/or the FTC Agreement, so long as the Effective Date occurs and that Fairbanks’ loan account records hereinafter reflect accurately the Settlement or the benefits of the Settlement are actually

provided. In the event this provision is not enforced or upheld as to a particular Settlement Class Member, the Agreement can be declared by Fairbanks to be null and void as to that Member only (and, in such latter event, the Releases as to that Member shall also be void).

7. This Agreement, and the Settlement, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence or support a contention that Fairbanks or any Fairbanks-Related Party acted illegally, improperly or in breach of law, contract, ethics, or proper conduct.

8. This Agreement, and the Settlement, shall not affect the commencement or continued prosecution of any judicial or nonjudicial foreclosure, or otherwise limit or restrict in any way the rights of Fairbanks or the Fairbanks-Related Parties to pursue default and foreclosure remedies (other than as such rights may be affected by the terms of the Default Resolution Program or Operational Practice changes).

9. Although the Court shall enter a final judgment, the Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Agreement and of any question, issue, proceeding or action regarding the effect the Agreement and the Settlement shall have. If the Court determines it does not have such jurisdiction, or it does not exercise its jurisdiction, the exclusive jurisdiction and venue for such action shall be a court in the jurisdiction where Fairbanks has its principal place of business.

10. The provisions of this Agreement are severable insofar as the partial or complete invalidity, illegality or legal ineffectiveness of any term in the Agreement shall not affect the validity, legality or legal effectiveness of the remainder of such term or of any other terms therein, unless the Party adversely affected thereby does not consent, such consent not to

be unreasonably withheld. Nothing in this paragraph shall affect the right to terminate this Agreement or other express rights inconsistent with this paragraph.

11. This Agreement is for settlement purposes only. Neither the fact of, any provision contained in, nor any action taken under this Agreement shall be construed as an admission of the validity of any claim or any factual allegation that was or could have been made by Plaintiffs and Settlement Class Members in the Curry Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Fairbanks or the Fairbanks-Related Parties. Neither this Agreement nor any class certification pursuant to this Agreement shall constitute, in this or any other proceeding, an admission, finding, or evidence that any requirement for class certification is satisfied in the Curry Action, or any other litigation, except for the limited purposes related to this Agreement. This Agreement is made with the understanding that under applicable law, a class may be certified for settlement purposes only (*i.e.*, without regard to the certifiability of the matter or for litigation purposes). This Agreement shall not be offered or be admissible in evidence by or against Fairbanks or the Fairbanks-Related Parties or cited or referred to in any other action or proceeding, except one (1) brought by or against the Parties to enforce or otherwise implement the terms of this Agreement, (2) involving any Plaintiff or Settlement Class Member to support a defense of *res judicata*, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense, or (3) involving an attempt to enforce the Suit Injunction or otherwise to stay or limit other litigation inconsistent with the terms set forth in this Agreement and the Court's Order preliminarily approving this Agreement.

12. The Parties further agree that negotiations, statements, proceedings, and other items related to this Agreement are also for settlement purposes only, and therefore shall

not be offered or be admissible in evidence by or against Fairbanks or any Fairbanks-Related Party or cited or referred to in any other action or proceeding.

13. Time is of the essence to this Agreement.

14. The terms of this Agreement are material to the Parties, and each term shall be so construed. In particular, and without limiting the foregoing, the terms of this Agreement may not be modified, changed, waived or overridden based on a conclusion or determination that such term is not as important as every other term, or that any person other than a Party hereto, or counsel of record in the Curry Action, has modified, changed, waived or overridden such term.

15. The Parties hereby agree and stipulate that all proceedings in the Actions in which a Plaintiff is a party shall be stayed until the Effective Date or ten (10) days after termination of this Agreement pursuant to its terms, *except* the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to the approval of this Agreement. The Parties shall work cooperatively to file such motions or other pleadings as may be reasonably necessary to effectuate this clause.

16. Fairbanks and Plaintiffs acknowledge that they have been represented and advised by independent legal counsel throughout the negotiations that have culminated in the execution of this Agreement, and that they have voluntarily executed the Agreement with the consent and on the advice of counsel. The Parties have negotiated and reviewed fully the terms of this Agreement, and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction of this Agreement by a court or any other adjudicating body.

17. The Exhibits and Schedules to this Agreement are incorporated herein by reference.

18. This Agreement may be executed in counterpart by the Parties.

19. Whenever, under the terms of this Agreement, a person is required to provide service or written notice to Fairbanks or to Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing:

As to Class Counsel:

Niall P. McCarthy, Esq.  
COTCHETT, PITRE, SIMON & McCARTHY  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010

John Roddy, Esq.  
Gary Klein, Esq.  
GRANT & RODDY  
44 School Street, Suite 400  
Boston, MA 02108

As to Fairbanks:

Gregory E. Harmer, Esq.  
Executive Vice President & General Counsel  
FAIRBANKS CAPITAL CORP.  
3815 South West Temple  
Salt Lake City, UT 84115

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as

follows:

ON BEHALF OF PLAINTIFFS AND CLASS:

Date: \_\_\_\_\_

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

John Roddy, Esq. or Gary Klein, Esq.  
GRANT & RODDY

Date: \_\_\_\_\_

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

Niall P. McCarthy, Esq.  
COTCHETT, PITRE, SIMON &  
McCARTHY

Date: \_\_\_\_\_

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

Kelly M. Dermody, Esq.  
LIEFF, CABRASER, HEIMANN  
& BERNSTEIN LLP

Date: \_\_\_\_\_

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

Daniel J. Mulligan, Esq.  
JENKINS & MULLIGAN

Attorneys for  
Plaintiffs and Class

ON BEHALF OF FAIRBANKS CAPITAL CORP.:

Date: \_\_\_\_\_

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

Gregory E. Harmer, Esq.  
Executive Vice President and General Counsel  
FAIRBANKS CAPITAL CORP.

Date: \_\_\_\_\_

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

Thomas M. Hefferon, Esq.  
GOODWIN PROCTER LLP  
Attorney for Fairbanks Capital Corp.

## APPENDIX 1 – DEFAULT RESOLUTION PROGRAM

Fairbanks Capital Corp. (“Fairbanks”) will implement the following Default Resolution Program (“DRP”) described in Section III.6. of the Settlement Agreement and Release, executed to resolve *Curry v. Fairbanks Capital Corp.*, No. 03-CV-10895-DPW. Unless otherwise noted, capitalized terms have the same meaning as in the Settlement Agreement.

### I. PROGRAM NOTICE

A. Fairbanks will provide a letter to delinquent borrowers by first class mail at 45 days of delinquency. The letter will contain the following information, except where inconsistent with legal or investor requirements:

1. A statement of the amount of the borrower’s deficiency as of the date of the letter, with a breakdown of the amount to reinstate by delinquent payments, advances, escrow advances and fees.

2. A statement that Fairbanks assists borrowers to resolve delinquencies and avoid foreclosures, at no cost to the borrower. Fairbanks will provide the toll free number for its Primary Collections Department and a toll free contact number for its Loan Resolution Department.

3. A statement that Fairbanks is willing to review disputes about a delinquency; and a statement that Fairbanks will assist borrowers to avoid foreclosure by implementing a workout plan if the borrower meets applicable criteria.

4. A statement that Fairbanks will work with bankruptcy lawyers, foreclosure defense lawyers, housing counselors and other authorized representatives of the borrower. Fairbanks will release information to attorneys who represent borrowers without further authorization, but will require written authorization, which must include the borrower’s social security number, before releasing information about the borrower to non-lawyers.

5. A statement in Spanish that the notice provides important information about the borrower’s rights and that the borrower should “please have it translated.” The notice will also contain a statement in Spanish that bilingual staff are available to respond to borrower calls.

B. Fairbanks will undertake certain efforts to publicize its loan resolution programs, including:

1. the placement of relevant information about its loan resolution programs on its website;

2. a one-time mailing of information about those programs to housing and consumer counseling organizations, to be selected by Co-Lead Counsel;

3. a one-time mailing of information about its loan resolution programs, staged over a six-month period, made to all borrowers who are delinquent two payments. The statement shall state: "We have options and programs to help you resolve your delinquency. Please call our Loan Resolution Department at our toll free number"; and,

4. a one-time notice in or on borrowers' monthly statements.

D. Fairbanks will make available to housing counselors, once per year, a one half-day training program to apprise them of various loan resolution programs available to borrowers. The program shall be held at or in the vicinity of one of Fairbanks's business facilities. The training program will have no admission charge, and invitees shall include housing and consumer counseling organizations selected by Co-Lead Counsel.

## **II. ADDRESSING DISPUTED DELINQUENCIES**

A. Fairbanks will investigate in good faith all oral and written disputes about the fact or amount of a delinquency, including as specified in the FTC Order.

B. Fairbanks will provide a written response to a borrower dispute about a delinquency ("response letter") as required by law and as specified in the FTC Order (including by providing a written response to oral disputes if not otherwise resolved within 20 days), and will comply with applicable RESPA guidelines. Fairbanks will use reasonable efforts to resolve verbal disputes about a delinquency through "one call resolution." However, Fairbanks will confirm all denial of disputes in writing (unless the dispute was an oral dispute and was resolved within 20 days) with a specific statement of the reasons for denial.

C. Fairbanks will halt assessment of late fees, demand fees, and foreclosure related charges, and halt any legal or other action to collect the disputed amount and any related charges, pending resolution of a borrower's dispute concerning the delinquency, so long as that dispute will have a material effect on whether foreclosure is warranted, but the borrower's other payment obligations remain fully due and owing during the pendency of Fairbanks' investigation of the disputed item. Fairbanks will not report the consumer as delinquent based on the disputed amount, pending resolution of the dispute. Fairbanks may inform borrowers that they should pay the undisputed amount while the disputed amount is being investigated and payments received will be posted and credited to the undisputed amount. Fairbanks may assess fees and charges if a borrower enters into a verbal repayment agreement while Fairbanks is investigating a dispute or after it responds to a dispute, but will Reverse or Reimburse the consumer for such fees and charges if the dispute is resolved in the borrower's favor.

D. Fairbanks will inform the borrower by telephone and through a response letter when a written dispute about a delinquency is not resolved in the borrower's favor and will include a specific statement of the reasons for denial. In its letter, Fairbanks will provide an 800-number, the extension of the "team" that worked on the inquiry or otherwise is responsible for explaining the resolution if a borrower inquires, and an address to which the borrower can send written follow-up correspondence. In any such letter, Fairbanks will also inform the borrower of

its loan workout programs, if the borrower is in default, and of the toll free number to access the Loan Resolution Department.

E. Fairbanks will review any additional or follow-up information provided by a borrower. Fairbanks will respond orally or in writing, consistent with Paragraph II.B above.

F. If Fairbanks reverses and reapplies payments as a result of a dispute about a delinquency, or otherwise adjusts the account, it will clear from the borrower's account any related late fees, foreclosure costs, and interest charges. Fairbanks also will correct any adverse credit reporting, to the extent required by FCRA. Fairbanks will not clear fees, costs or charges that accrued before or after the issue that led to the reversal, except to the extent such fees or charges were assessed as a consequence of the issue that led to the reversal.

### III. LOAN RESOLUTION PROGRAMS

A. Fairbanks will use reasonable and diligent efforts to offer eligible borrowers a loan resolution program within the dictates and limits of investor requirements and restrictions, servicing agreements, and insurer guidelines. Fairbanks will expressly instruct, train and monitor its employees to do so.

B. Fairbanks will respond in writing within thirty (30) days to all requests for loan resolution. Fairbanks will expressly instruct, train and monitor its employees to do so.

C. The following provisions will apply to all loan workout programs:

1. Fairbanks will not refer any loans for foreclosure until the 92<sup>nd</sup> day after delinquency; until it verifies that the consumer has failed to make three full monthly payments; and until it otherwise complies with the procedures set forth in the FTC Order as prerequisites to referral to foreclosure.<sup>1</sup>

2. Borrowers may apply to Fairbanks for a forbearance plan at any time prior to foreclosure sale; however, there is no assurance that such application will be granted. Fairbanks will use the documentation requirements and internal standards described in Exhibit A hereto in assessing an application and eligibility for a plan.

3. Fairbanks will respond to all loan workout applications within 30 days. Fairbanks will not proceed to foreclosure sale while reviewing a borrower's application.

4. If Fairbanks denies a loan workout application, it will (a) send a letter informing the borrower of its decision and of the specific reasons for denial, and (b) send the borrower's file to an outbound team supervisor for further counseling opportunities.

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<sup>1</sup> If an investor currently requires a shorter time, that time frame will apply.

5. For forbearance plans of less than six months duration, Fairbanks will require only verbal information with respect to income and expenses for the borrower's first repayment plan, and will require pay stubs and a credit bureau report for additional plans. In other instances, Fairbanks may require more extended financial information. Fairbanks may require the borrower to submit a detailed financial package, including proof of hardship, pay stubs, bank statements, and tax returns, when required under insurer and investor guidelines.

6. Any down payment that Fairbanks may require to begin a forbearance plan, and the due date for payments under that plan, shall be based on the borrower's financial circumstances. Down payment requirements will not exceed the borrower's documented liquid resources; this does not preclude borrowers from providing a "gift letter" or similar documentary proof of liquid resources being provided to the borrower by another person.

7. Fairbanks will process partial payments made on a forbearance plan in accordance with its normal payment processing procedures, and will, in all instances where the payment tendered is within \$25 of the amount due under the forbearance agreement, accept such partial payments and not treat them as late solely because of the shortage. The borrower will ultimately be required to pay any accumulated shortfalls in order to achieve reinstatement.

8. Subject to investor requirements, for all borrower accounts that are 92 days or more delinquent, Fairbanks will allow partial reinstatement, which will suspend but not cancel any foreclosure proceedings and activities, if it collects enough funds from the borrower to pay up (a) the delinquencies in payments (including monthly payments (principal, interest, and escrowed items), to bring the borrower two payments or less past due, and (b) all advances associated with the current foreclosure proceeding. In connection with such a partial reinstatement, Fairbanks will treat as "paid" for these purposes foreclosure fees and costs (not including actually incurred BPOs or property inspections) incurred prior to 92 days after delinquency.

9. Fairbanks will suspend but not cancel any foreclosure proceedings and activities when it receives an executed forbearance plan from a borrower which is acceptable to Fairbanks. Borrowers will be notified in writing of any such suspension and its terms.

10. Fairbanks will terminate foreclosure proceedings upon successful completion of a forbearance plan.

11. Fairbanks will not assess new late fees with respect to overdue payments that are subject to a written forbearance plan during the time the borrower is on a written forbearance plan, except that Fairbanks may assess late fees for forbearance payments that are themselves late.

12. If the borrower successfully completes a forbearance plan, Fairbanks will waive foreclosure fees and costs that were incurred prior to 92 days of the subject delinquency (other than actually incurred BPO or property inspection fees and contractually due late charges).

13. Fairbanks will not cancel a forbearance plan unless the borrower falls behind for more than 30 days past (a) the plan due date or (b) the date on which the last payment was applied, whichever is later. Prior to cancellation, Fairbanks will send the borrower at least two warning letters for all forbearance plans where a payment is past due. Prior to actually canceling the forbearance plan, Fairbanks will attempt to reach borrowers by telephone in order to establish whether the borrower made the payment, in fact, but Fairbanks will assume no responsibility if it cannot reach the borrower by telephone.

14. Upon plan termination and notice thereof to the homeowner, Fairbanks may continue the foreclosure process at the point at which it was suspended.

D. Fairbanks will consider the borrower's individual situation in addressing delinquencies, as follows:

1. Fairbanks will offer forbearance plans to borrowers only if the borrower's income supports an ability to pay under such plan.

2. A borrower with involuntary hardship that cannot be resolved through normal Loan Resolution channels will be moved to a special team within Loan Resolution to examine additional relief, such as variances from normal Company programs, extended financial counseling for the borrower, and identification of local agencies that might be able to assist the borrower. Involuntary hardship to be considered as factors includes those factors set forth in the Freddie Mac Seller/Service Guide, such as disability; serious illness of the borrower or family member; death of the borrower or family member; unemployment or underemployment following a previous job loss; disasters and environmental issues; Soldiers and Sailors Civil Relief Act; fixed income that has resulted in inability to pay due to other expenses (*i.e.*, medical bills); or inflation. Involuntary hardship generally will not apply to non-owner occupied properties.

3. Forbearance plans typically will last six (6) to twelve (12) months, but Fairbanks will consider, where appropriate, repayment over no more than twenty-four (24) months.

4. Fairbanks will consider special forbearance in accordance with its guidelines, allowing the borrower to make less than regular PITI payment for a period of three months, with the shortfall due at the maturity of the plan or as otherwise agreed. Fairbanks will consider extending the special forbearance period for up to twelve (12) months, when warranted by an individual borrower's circumstances. Fairbanks will review the loan at the end of the special forbearance period for further options, including modification, long term repayment plan, or liquidation.

5. If permitted under the terms of the applicable servicing agreement, investor requirements, and insurer requirements, Fairbanks will use reasonable and diligent efforts to assist borrowers who have permanent hardship (such as death of a family member, permanent disability, other permanent loss of income, or divorce or permanent separation) in

applying to their noteholder for modification of loan terms, including interest rate, change in term, and capitalization of arrears over extended term. The borrower applications would be contingent on noteholder approval.

#### **IV. MISCELLANEOUS**

1. A forbearance agreement or other default resolution plan will not require a borrower to waive or release claims against the Company.
2. If a borrower remains current on a forbearance plan or other default resolution plan, no default-related fees will be assessed during that period.
3. Fairbanks will not impose a charge for any forbearance or other default resolution plan (other than actual recording fees in those jurisdictions where the forbearance agreement needs to be recorded).
4. Operational Practice Agreements, made pursuant to Paragraph III(6) of the Stipulation (Appendix 2) will also be implemented and may affect foreclosure and default resolution. To the extent of any inconsistency, the practices contained in this document will control.
5. Fairbanks will also implement any agreements with the Federal Trade Commission that concern procedures to be followed and records to be kept in connection with dispute resolution and/or in connection with foreclosures.

## Exhibit A

### Pre-Acceleration: Forbearance Agreement

#### *Policy*

##### Program Description

Formalized written agreement where the arrears on the loan are spread substantially equally over a period of time that is greater than 3 months and up to 12 months. The borrower pays their regular monthly payment plus an equal portion of the arrearage. By the end of the agreement, the borrower is again current on the loan. While performing on a written forbearance agreement, the borrower will not be assessed any late fees nor does Fairbanks order property inspections or broker price opinions. If the borrower defaults on this plan, (default is defined as having occurred 31 days past the next payment due on the plan or the last payment posted date, whichever event is later), the loan may be immediately referred to foreclosure.

##### Eligibility

All loans in the portfolio are eligible. If the borrower has previously been discharged of the debt in a chapter 7 bankruptcy case and did not reaffirm, the borrower can voluntarily choose to enter into a forbearance plan if the purpose is to keep the property.

##### Borrower Characteristics

The borrower lacks the financial ability to resolve the arrears within 3 months which is the typical length of a verbal agreement made with Primary Collections. The borrower has had a temporary hardship but again has the ability to pay and has sufficient income to support the plan as noted below. The LSR should counsel the borrower on ways to increase income to reduce the plan term or meet underwriting criteria, such as a temporary part time job, family assistance, use of Consumer Credit Counseling to reduce unsecured debt load, overtime, etc.

#### *Procedure*

##### Requirements and Underwriting

- The plan will be written not to exceed a 1.2% debt coverage ratio inclusive of the forbearance payment. Latitude is permitted if the borrower has not previously been on a plan that has failed.
- In most cases, verbal financials will be sufficient if the plan length is less than 6 months.
- If the plan term being proposed is over 6 months, Fairbanks will obtain copies of the borrower's two most recent pay stubs for further review.
- If the mortgage is in junior lien position, the borrower may not be in default on the senior lien, or must have worked out repayment arrangements with the senior lien holder.

## **Post-Acceleration: Forbearance Agreement**

### ***Policy***

#### **Program Description**

Formalized written agreement where the arrears on the loan are spread substantially equally over a period of time that is greater than 3 months and usually does not exceed 12 months. The borrower pays their regular monthly payment plus an equal portion of the arrearage. By the end of the agreement, the borrower is again current on the account and the foreclosure action is cancelled. While performing on a written forbearance agreement, Fairbanks will put the foreclosure action on hold. The arrears will include actual foreclosure fees and costs incurred for legal action taken (after 92 days from the date of default) up to the plan start. While performing on the agreement, the borrower will not be assessed any additional late fees, nor will Fairbanks order property inspections charges or broker price opinions. (An exception will occur if the loan is FHA insured and non-owner occupied. In that event inspections will still occur monthly to comply with FHA guidelines.) If the borrower defaults on this plan (defined as having occurred 31 days past the next payment due on the plan or the last payment posted date, whichever event is later), Fairbanks may resume the foreclosure action where it left off [subject to any state restrictions].

#### **Eligibility**

All loans in the portfolio are eligible. If the borrower has previously been discharged of the debt in a chapter 7 bankruptcy case and did not reaffirm, the borrower can voluntarily chose to enter into a forbearance plan if the intention is to keep the property.

#### **Borrower Characteristics**

The loan has been accelerated into foreclosure. The borrower has had a hardship but again has the ability to pay and has sufficient income to support the plan as noted below. The LSR should counsel the borrower on ways to increase income to reduce plan term or meet underwriting criteria: temporary part time job, family assistance, use of Consumer Credit Counseling to reduce unsecured debt load, overtime, etc.

### ***Procedure***

#### **Requirements and Underwriting**

- The plan will be written not to exceed a 1.2% debt coverage ratio [NEED EXPLANATION] inclusive of the forbearance payment. Latitude is permitted if the borrower has not previously been on a plan that has failed.
- In most instances, verbal financials will be sufficient if the plan length is less than 6 months.
- If the plan term being proposed is over 6 months but less than 12 months, Fairbanks will obtain copies of the borrower's two most recent pay-stubs for further review.

- If the plan length proposed is over 12 months, Fairbanks will require written financials and the approval of the client or insurer as described in their guides, these include:
  1. Most recent month's pay-stubs or disability income.
  2. Most recent month's bank statements for all accounts including IRA's and 401K's.
  3. Most recent year's Federal tax return and all schedules, and copies of 1098's or W-2's.
  4. Written or verbal financial information form.
  5. Credit bureau report, (up to 3 months old).
- If the mortgage is in junior lien position, the borrower may not be in default on the senior lien, or must have worked out repayment arrangements with the senior lien holder.
- A plan may be proposed that requires the borrower to provide one or more payments at a higher amount (example, the plan starts in October and the borrower will have a bonus payment in December and can contribute an extra \$1,000, or the borrower has only 3 payments left on a car loan and can afford to increase his plan payments the following month). The intention is to improve the plan affordability and/or shorten its term to return the borrower to a performing status sooner.
- Actual foreclosure fees and costs must be obtained from the attorney prior to finalizing plan terms. Unexpended retainer amounts will not be included in the plan, but rather will be refunded, if the plan is successfully completed, by the attorney.
- If the plan cannot be proposed, negotiated, approved, prepared and completed at least 5 days prior to the actual foreclosure sale date, then the Fairbanks will request a postponement of the foreclosure sale before approving or proposing a forbearance agreement.
- If there is Lender Paid Insurance (LPI) on the loan, the borrower should provide proof of their own insurance as a condition of the plan. This will reduce the accrual of loan level advances and improve their ability to pay.
- If, in the bankruptcy court system Fairbanks has obtained either a 180 day rebar against further filings or *in rem* relief on the property, no repayment plan can be proposed unless the down payment on the plan equals at least 50% of the arrears.

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Fairbanks Capital Corp.  
Operational Practices  
Agreement In Connection With  
Settlement Of  
Curry *et al.* v. Fairbanks Capital  
Corporation

## APPENDIX 2 – OPERATIONAL PRACTICES AGREEMENT

Fairbanks Capital Corp. (“Fairbanks”) will implement the following Operational Practice Agreement described in Section III.7. of the Settlement Agreement and Release, executed to resolve *Curry v. Fairbanks Capital Corp.*, No. 03-CV-10895-DPW.

### **1. Loan Servicing Acquisition/Servicing Release**

- 1.1. Data integrity checkpoints and edits will be performed to assure that data received from a prior servicer is accurate and complete including randomly selecting accounts for loan level information verification against actual loan documents. Data checkpoints will include critical data fields relating to the accurate servicing of the loans. Data fields to be verified include items such as first payment date, maturity date, term, late charge assessment controls, lien position, property address information, etc.
- 1.2. “Hello letters” will be sent to the borrower alerting them of the transfer of servicing and providing toll free telephone numbers for contacting Customer Service. Additionally, the letter will advise the borrower where to send future payments so the status of their account is not impacted by the servicing transfer. RESPA requires the letters to be sent within 15 days of the loans being boarded to the new servicer’s system. Fairbanks will send welcome letters within 24 hours after transfer.
- 1.3. For delinquent loans, validation of debt letters will be sent to the borrowers within 5 days of the hello letters. These letters will provide information regarding amount due (including a specific breakdown of any amounts other than principal and interest) and allow the borrowers to validate that the information with which Fairbanks has been provided matches their records. The borrower then has the opportunity to dispute the amounts claimed owed. Contact information will also be provided in the letter.
- 1.4. Historical audits will be performed on daily simple interest (“DSI”) loans setting the standard for quality assurance of payment postings. Mortgage loans are typically amortized using a standard calculation of monthly interest regardless of the date the

Fairbanks Capital Corp.  
Operational Practices Agreements

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payment was received. When required by the note, DSI amortization methodology will be used. This methodology calculates and accumulates interest on a daily basis. A sampling of transferred DSI loans will be reviewed to ensure accurate and timely postings have occurred on the prior servicer's system and if errors are identified, they will be promptly corrected.

- 1.5. File scrubbing for hazard insurance policy information upon boarding will be performed so that Fairbanks can confirm the status of the borrower's previous insurance coverage. See Section 7, *infra*. Fairbanks will seek to prevent any unnecessary placement of hazard insurance on the borrower's behalf. This scrub will be completed within 60 days of the transfer date.
- 1.6. "Goodbye letters" will be sent to the borrower 15 days prior to service release to another servicer.

## 2. Customer Service

- 2.1. The call center hours will be Monday through Friday from 7am to 8pm (eastern) to accommodate borrower calls across the country. Additionally, the call center will be open from 8am to 5pm (eastern) on Saturday; however, on the second Saturday of every month, Fairbanks will close at 12pm (eastern).
- 2.2. Call recording software will be employed to capture phone calls for quality monitoring purposes. Calls will be reviewed and scored and the Customer Service Representative (CSR) is trained based on the call results. Each CSR to have at least three calls per week monitored and scored with an increase to a minimum of seven at the earliest possible date. CSR management will foster "one call resolution" as the primary tenet of Customer Service.
- 2.3. All bilingual CSR's have been or will be certified in Business Spanish. The interactive voice response (IVR) function will have a selection for a Spanish speaking representative. This queue will be staffed with a minimum of 11 individuals.
- 2.4. A Customer Satisfaction Survey will be administered to a random sample of borrowers who telephone the Customer Service unit, allowing Fairbanks to gauge the effectiveness of the service delivery.
- 2.5. An Executive Response Unit will be utilized to resolve disputes while the borrower is either on the phone or reasonably promptly after the telephone conversation. Expected turnaround time will be 20 days if significant research is required. If the issue can be handled by the Cash Phone Unit, which is a dedicated team to address payment issues, then the issue will usually be resolved while the borrower is on the telephone. If the issue takes longer to resolve, the borrower will be contacted to discuss the resolution and to assure that all areas of concern were addressed.
- 2.6. Qualified written requests will be addressed, without charge to the borrower, within the deadlines required by the statute. Fairbanks will seek to achieve most resolutions within 30 days of receipt of the written borrower letter, with a goal of reducing that

number to 20 days or less at the earliest possible date. A return telephone call is also made to ensure the borrower understands the resolution if the issue is not resolved in the borrower's favor.

- 2.7. A separate Quality Team will be responsible for reviewing telephone calls and written correspondence to assure quality in the communication with the borrower. The Quality Team will consist of one supervisor and eight quality analysts, five dedicated to the Advocate Department and three to the call center. In the Advocate unit, all consumer affair responses will be reviewed. In the Customer Research Group a sampling of responses will be reviewed.
- 2.8. Workforce management software has been implemented and will remain in effect to assist in forecasting customer service staffing to assure timely call accommodation and reduce overall and unnecessary hold times. This is used in conjunction with "real time adherence" which allows real time monitoring of call volume and CSR availability.
- 2.9. Upon hire, CSR's will receive two weeks of classroom training. In addition, a third week of side by side (nested) training will be provided. Nesting will offer new hires the opportunity to handle calls in a controlled environment with trainers present to answer questions immediately.
- 2.10. All customer service policies and procedures will be available and updated online on the Company intranet. This will provide all Fairbanks' staff with easy access to Company policies and procedures enabling better and quicker service.
- 2.11. Customers will be provided with Monthly Mortgage Statements that have been redesigned to make the Statement easier to read and understand. Each statement will be provided with a "How to Read Your Monthly Statement" brochure. This brochure provides step-by-step instructions for reading the Statement and provides frequently asked questions and answers most borrowers have regarding their Statement.
- 2.12. Inbound calls from borrowers that are less than 30 days delinquent will be routed to customer service instead of collections.

- 2.13. Customer Service has established and will implement a quality audit process that reviews planned credit bureau reporting prior to submission to the credit reporting agencies.
- 2.14. Customer Service Operations Support fulfills various borrower requests including providing payment histories, loan documents, amortization schedules, and previous statements, changes of address, etc.

**3. Primary Collections (1-90 Days Delinquency – Prior to Foreclosure Referral)**

- 3.1. Late fees will be assessed to a borrower's account initially on the 17<sup>th</sup> day of delinquency. Late fees charged will conform to the note and follow state restrictions.
- 3.2. Fairbanks will maintain extended office hours to accommodate borrowers' needs. Borrowers are encouraged to telephone Fairbanks at any time during call center hours to discuss loan issues and resolve delinquencies. No calls will be placed to the borrower before 8am or after 9pm (borrower local time). No calls will be placed to the borrower at the borrower's place of employment if contrary to legal requirements.
- 3.3. Collectors will follow scripts provided to begin the call, identify the borrower, state the Company name and advise of the purpose of the call. Doing so ensures each borrower consistently understands why they are receiving a call from Fairbanks.
- 3.4. Collectors will identify the borrower using first and last name and refer to the borrower as Mr./Ms. for the remainder of the call.
- 3.5. Collectors will identify themselves using their full name or Mr./Ms. and their last name.
- 3.6. Collectors will focus not only on the payments due, but also on the borrower's reason for default. Collectors will utilize active listening skills to determine why the borrower fell past due and will be trained to ask follow-up questions, and clarify the details of the borrower's situation. The collector will refer borrowers to Delinquency Resolution Program ("DRP") resolutions when such programs will address a borrower's circumstances.
- 3.7. At the earliest possible date, Fairbanks will reduce the number of accounts handled per employee to ensure direct borrower contact with an assigned representative.
- 3.8. Collectors will offer real solutions that may help the borrower locate additional income or resources and educate the borrower on the benefits of making payment (*e.g.*, restore credit bureau reporting rating, avoid additional fees). Collectors will also make

appropriate referrals to non-profit Consumer Credit Counseling Services and Housing Counseling Organizations to assist in addressing debt and credit issues.

- 3.9. If a borrower is unable to afford paying the total amount due, collectors will attempt to schedule a series of payments over succeeding months equal to the amount past due or will otherwise refer the borrower for a DRP resolution.
- 3.10. If a borrower is unable to afford a payment arrangement for the total amount due before month end, the collector will calculate and offer a repayment plan that spreads the payment over 90 days. This option allows the borrower to make a series of payments that will bring the account up-to-date. The goal of the repayment plan is to help the borrower avoid fees and ultimately avoid foreclosure. If such a plan is unaffordable or otherwise unworkable given the borrower's circumstances, the collector will refer the borrower for a DRP resolution.
- 3.11. Fairbanks will record collector calls to borrowers and randomly monitor those calls for quality control. Fairbanks has a strict compliance program and disciplinary measures, including termination, for collectors who fail to meet the highest standards in customer service.
- 3.12. Collectors will have the ability to waive late fees if the borrower is experiencing a hardship such as natural disaster, disability, involuntary income impairment, etc. Collection and CSRs, Supervisors, Managers and Directors can waive fees including, late fees, NSF, EZ Pay/SpeedPay and interest on advances.
- 3.13. Collectors will set hold dates to avoid calling borrowers who have a legitimate issue that is being resolved.
- 3.14. Collectors will connect the borrower to other departments to address particular issues.
- 3.15. Collectors can suspend early collection activity for borrowers that have a consistent pay history.
- 3.16. Initial collection letters will be sent no sooner than the 17<sup>th</sup> day of delinquency when late charges are assessed. (Other collection letters may be required to be sent pursuant to contractual requirements based on whether a loan is in a certain mortgage pool.)

- 3.17. Upon the transfer of a loan from a prior servicer, Fairbanks will not assess any BPOs, initiate the foreclosure process or assess late charges for a period of 60 days after loan boarding. Because it may take a few months for the payments to come to the new servicer, this should help reduce unnecessary late charges and other fees from being assessed.

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**4. Loan Resolution (Excess 90 Day Delinquent and Referred to Foreclosure)**  
**[Covered by Default Resolution Program]**

## **5. Consumer Assurance Review Division**

- 5.1. The purpose of the Consumer Assurance Review Division (CARD) will be to ensure the timely and efficient resolution of disputes, potential servicing exceptions or origination issues to protect the borrowers or Fairbanks from loss and identify issues on behalf of the holder of the loan.
- 5.2. At the 63<sup>rd</sup> day of delinquency accounts will be referred to CARD.
- 5.3. CARD will review the account and contact history to determine if there are any unresolved disputes.
- 5.4. Additionally, specific servicing areas will be reviewed to assure there are no outstanding servicing problems. These areas will include unresolved disputes related to:
  - 5.4.1. Payment(s) Missing/Misapplied
  - 5.4.2. Payoff Statement/Prepayment Penalty Issue
  - 5.4.3. Forbearance Plan Issue
  - 5.4.4. Promise to Pay Issue
  - 5.4.5. Credit Bureau Issue
  - 5.4.6. Escrow or Lender Placed Insurance Issue
  - 5.4.7. Late Charges/NSF Charges
  - 5.4.8. Prior Servicer Issues
  - 5.4.9. Written/Verbal Dispute
  - 5.4.10. Payment Element Change
  - 5.4.11. Unapplied Balance Review
  - 5.4.12. Mortgagor Recoverable/Loan Advance
- 5.5. Upon completion of all elements above, if any unresolved servicing problems are found, the CARD specialists will then notate the account and forward the account to the appropriate Fairbanks personnel for resolution. Action taken to resolve the servicing problem will be noted in the contact history.

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- 5.6. Following resolution, the account will be forwarded to the appropriate servicing unit for continued servicing.

**6. Taxes and Insurance – Escrowed and Non-Escrowed**

- 6.1. All taxes will be paid timely and accurately to maximize allowable discounts for early payments on escrowed accounts. If taxes are not paid timely, Fairbanks will pay all penalties, interest, or fees.
- 6.2. Fairbanks will pay taxes for borrowers with delinquent taxes on non-escrowed accounts after first contacting the borrower and informing the borrower that delinquent taxes are to be paid. Payment of taxes on non-escrowed accounts will occur 60 days prior to the last day to redeem the property before tax sale. After payment, Fairbanks will send the borrower a letter stating the date on which the taxes were paid and the amount of the taxes paid, or such information will appear on a timely monthly statement.
- 6.3. Fairbanks will also timely and accurately pay insurance premiums for escrowed accounts. If insurance is not paid timely, Fairbanks will pay all penalties, interest, or fees.
- 6.4. If Fairbanks has not received updated insurance information on an escrowed account by 15 days prior to the expiration of the coverage, a call will be placed to the agent, or, if necessary to the homeowner, to assure the continuation of coverage.

## **7. Lender Placed Insurance Processing**

- 7.1. When Fairbanks does not receive updated insurance information at the expiration of a borrower's insurance coverage on a non-escrowed account, a series of calls and letters will be attempted to confirm insurance. Timing of the calls and letters is detailed below. The subsequent step will only be performed if the previous step was unsuccessful at obtaining insurance information.
- 7.1.1. Ten days after the lapse or after a new loan boards, a call will be placed to the borrower's agent or insurance carrier.
- 7.1.2. First letter will be sent at 15 days.
- 7.1.3. Second letter will be sent at 40 days.
- 7.1.4. First call to the borrower will be made at the 50<sup>th</sup> day. If the borrower does not answer, Fairbanks will leave a message if practicable, concerning how to provide information necessary to confirm insurance.
- 7.1.5. Policy will be issued on the borrower's behalf and a certified letter will be sent to the borrower at day 60 advising him of the placement of the policy and the amount of the annual premiums.
- 7.1.6. Premium will be billed; payment analysis performed; and Notice of New Payment sent to borrower between days 70 and 80.
- 7.1.7. Second call to the borrower will be made before the 90<sup>th</sup> day.
- 7.1.8. New payment becomes effective between the 120<sup>th</sup> and 150<sup>th</sup> day after the initial lapse in insurance coverage.
- 7.2. Upon proof of insurance coverage by the borrower, the following actions will occur:
- 7.2.1. Refund of all premiums paid during the overlapping coverage period will be processed within 5 days.
- 7.2.2. Additionally, any other fees or charges to the borrower's account during the overlapping coverage period will be removed.

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7.2.3. Borrower's payment will be returned to the original amount within 10 days of the cancellation.

## 8. Cashiering

- 8.1. Mortgage payments that (singly or in the aggregate) are \$25 or less of the expected principal and interest (P&I) amount will be posted to the account and the shortage amount will be advanced on behalf of the borrower. This will advance the borrower's due date. This process applies even if a borrower's account has been reanalyzed and additional payments are owed due to placement of insurance.
- 8.2. Payoffs short less than \$100 will be posted. The shortage amount will be advanced to the borrower. Reconveyance of the title will be processed as paid in full. An attempt will be made to collect the shortage amount from the borrower.
- 8.3. End of day processing will be extended to 8:30pm (mountain time) on the day late charges are typically assessed to give borrowers extra time to make a payment *via* SpeedPay or EZ Pay and thereby avoid a late charge.
- 8.4. The borrower can arrange SpeedPay payments either through the IVR unit or through a web based product accessed through the Fairbanks web site. Additionally, the borrower can make check-by-phone arrangements with customer service on current accounts or collections regarding delinquent accounts. Check by Phone arrangements will be flexible and can be future dated to meet the borrower's funding requirements. The charge for SpeedPay and EZ Pay will be disclosed to the borrower prior to the time of payment and may be waived in the event of hardship as otherwise stated in this agreement.
- 8.5. Borrowers will also have an automatic withdrawal payment option available at no charge as well as the ability to send payments *via* Western Union, at any location nationwide.
- 8.6. Fairbanks will credit a borrower's payment based on the date it was received, not the date it was posted. This practice will automatically waive any late fees incurred as a result of any unforeseen payment posting delays.

- 8.7. Fairbanks' Cashiering Department will establish a research team dedicated to resolving borrower payment issues. Issues include missing or misapplied payments. This team will work closely with the Customer Service research group and attempts to resolve issues raised by borrowers related to payment application "on the spot." In addition, CSRs and collectors have been given greater autonomy to waive fees in certain situations. (See Section 3.15).
- 8.8. Additional controls will be developed for monitoring and correctly applying borrower payments when the borrower has multiple accounts serviced by Fairbanks.

## 9. Payoffs and Reconveyance

- 9.1. Fairbanks will use its best efforts to complete and provide the borrower with a payoff quote within five days of the request.
- 9.2. To assure accurate payoff quotes, the original note and riders will be examined to determine if a prepayment penalty is applicable. Additionally, Fairbanks will review whether the originator's license status at the time of loan origination was such that the lender could include the prepayment penalty, if applicable.
- 9.3. All fees or charges included in the payoff quote will be confirmed prior to the quote being issued to the borrower. No estimates will be included for such items as foreclosure attorney fees. Actual fees will be included. Under Section XI(D) of the FTC Order, Fairbanks is required to itemize fees and charges on a going-forward basis on monthly statements; Fairbanks will insure that the fees or charges that it is required under Section XI(D) of the FTC Order to itemize on a going-forward basis on monthly statements will be itemized in future payoff quotes as well.
- 9.4. Prior servicer advances that cannot be specifically itemized and explained will not be included in payoff quotes or in bankruptcy proof of claim filings.
- 9.5. Reconveyance processing will utilize e-signatures for releases and assignments resulting in an acceleration of processing.

## 10. Bankruptcy

- 10.1. Upon receipt of bankruptcy notification, Fairbanks will immediately suspend all collection activity and contact with the borrower.
- 10.2. The borrower will receive a letter from Fairbanks confirming that Fairbanks acknowledges the bankruptcy filing and provide the borrower with the payment address.
- 10.3. Fairbanks will send a notice of default to the borrower's attorney 15 days prior to initiating any filings for motion for relief. This will ensure that there are no lost or missing payment issues that may have precipitated the default.

## 11. Miscellaneous Operational Practices

- 11.1. When a written dispute is received from the borrower, regulatory agency or borrower's specifically-authorized representative (including counseling organizations and advocacy groups), the status of the account will be changed to DISP (Dispute.) This status stops all collection and foreclosure activity until the dispute is resolved (and notice of resolution is sent to the borrower, if such notice is otherwise required under the FTC Order , the Default Resolution Program, or law) and the status of the account is changed back to the previous or correct status.
- 11.2. Broker Price Opinion (BPO) will be ordered no sooner than the 63<sup>rd</sup> day of delinquency. Additional BPOs will be re-ordered no sooner than 180-day intervals.
- 11.3. A Consumer Ombudsman will be established to address borrower issues; Fairbanks will establish a dedicated e-mail address ([ombudsman@fairbankscapital.com](mailto:ombudsman@fairbankscapital.com)) for borrowers' use.
- 11.4. Fairbanks will also implement any agreements with the Federal Trade Commission that concern procedures to be followed and records to be kept in connection with the Fairbanks' operational practices.