

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of United States Department of Housing and Urban Development (“HUD”) (collectively the “United States”) and RBC Mortgage Company (“RBC Mortgage”), a subsidiary of the Royal Bank of Canada, a Canadian corporation, (hereafter referred to as “the Parties”), through their authorized representatives.

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. RBC Mortgage is a subsidiary of the Royal Bank of Canada, a publicly traded Canadian corporation. RBC Mortgage had offices located throughout the United States including Rockford, Illinois. RBC Mortgage was engaged in, *inter alia*, residential mortgage lending and had “Direct Endorsement Authority” to originate and process Federal Housing Administration (“FHA”) insured loans without waiting for prior review of the application by HUD. 24 C.F.R § 203.5. RBC Mortgage has not originated a mortgage loan since September 2005.

B. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against RBC Mortgage arising during the period from at least February 2001 through April 30, 2004, for submitting false or fraudulent statements or claims to HUD in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; 24 C.F.R. Part 28, and common law doctrines, concerning RBC Mortgage’s submission to the FHA for endorsement of the FHA insured properties identified in Exhibit A (“the Relevant Properties”) by FHA number. The United States further contends that RBC Mortgage is

vicariously liable under the False Claims Act for the acts of its employees, committed in the course of the corporation's business.

C. On March 29, 2005, the HUD Office of Inspector General completed an audit (number 2005-CH-1007) ("the Audit") of loans that RBC Mortgage, pursuant to its Direct Endorsement Authority, submitted to FHA. As a result of the Audit, HUD identified numerous loans that it contends were improperly certified by RBC Mortgage as being current. HUD contends that it has certain claims against RBC Mortgage under the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; 24 C.F.R. Part 28, arising from the improperly certified loans identified in the Audit and set forth in Exhibit B attached hereto. RBC Mortgage responded to the Audit by agreeing that certain loans were incorrectly certified and contesting other claims by HUD. The allegations described in this paragraph and in the preceding paragraph B will hereinafter be referred to as "the Covered Conduct."

D. RBC Mortgage denies that it has liability for the claims asserted by the United States. Nonetheless, in order to avoid the costs and uncertainties of litigation, RBC Mortgage is willing to enter a negotiated resolution of this matter as set forth herein.

E. This Agreement is not a concession by the United States that its claims are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

1. RBC Mortgage agrees to pay the following amounts to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit: \$10,715,084.58 for the United States' claims described in Paragraph B above and \$264,000 for HUD's claims described in Paragraph C above. (The total amount of \$10,979,084.58 to be paid by RBC Mortgage shall be referred to herein as the "Settlement Amount."). RBC Mortgage agrees to make this electronic funds transfer no later than 14 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims), below, in consideration of the obligations of RBC Mortgage in this Agreement, conditioned upon RBC Mortgage's full payment of the Settlement Amount, and subject to Paragraph 11 (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release RBC Mortgage from any civil or administrative monetary claim the United States has or may have exclusively for conduct described in Paragraph B (above) related to the origination and processing of the loans set forth in Exhibit A hereto under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud. No individuals are released by this Agreement.

3. In consideration of the obligations of RBC Mortgage in this Agreement, and conditioned upon RBC Mortgage's payment of the \$264,000 described in Paragraph 1 above, HUD agrees to release RBC Mortgage from any administrative monetary claim HUD may have against

RBC Mortgage exclusively for its conduct described in Paragraph C, above, related to the submission of the loans set forth in Exhibit B hereto under the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; 24 C.F.R. Parts 28.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including RBC Mortgage) are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code).
- b. Any criminal liability;
- c. Any liability to the United States (or its agencies) for any conduct other than the conduct described in Paragraphs B and C above;
- d. Any liability based upon such obligations as are created by this Agreement;
- e. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability of individuals, including directors, officers and employees; or
- h. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of RBC Mortgage) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual); are indicted, charged, or convicted; or who enter into a plea agreement related to the Covered Conduct.

5. RBC Mortgage waives and shall not assert any defenses RBC Mortgage may have to any criminal prosecution relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. RBC Mortgage fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that RBC Mortgage has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. RBC Mortgage agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of RBC Mortgage, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any related plea agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

(3) RBC Mortgage's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement and any Plea Agreement;

(5) the payment RBC Mortgage makes to the United States pursuant to this Agreement, including costs and attorneys fees, are "Unallowable Costs" for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by RBC Mortgage, and RBC Mortgage shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: RBC Mortgage further agrees that within 90 days of the Effective Date of this Agreement it shall identify any unallowable costs (as defined in this Paragraph) included in payments previously sought by RBC Mortgage or any of its subsidiaries or affiliates from the United States. RBC Mortgage agrees that the United States, at a minimum, shall be entitled to recoup from RBC Mortgage any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs in any such payments. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by RBC Mortgage or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by RBC Mortgage, or the effect of any such Unallowable Costs on the amount of such payments.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine RBC Mortgage's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. RBC Mortgage agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, RBC Mortgage shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage the cooperation of its directors, officers, and employees including for interviews and testimony, consistent with the rights and privileges of such individuals. RBC Mortgage further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by its counsel or other agent.

9. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

10. RBC Mortgage warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to RBC Mortgage, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and

obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which RBC Mortgage was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. §548(a)(1).

11. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, RBC Mortgage commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of RBC Mortgage's debts, or seeking to adjudicate RBC Mortgage as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for RBC Mortgage or for all or any substantial part of RBC Mortgage's assets, RBC Mortgage agrees as follows:

a. RBC Mortgage's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and RBC Mortgage shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) RBC Mortgage's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) RBC Mortgage was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to RBC Mortgage.

b. If RBC Mortgage's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against RBC Mortgage for the



claims that would otherwise be covered by the releases provided in Paragraphs 2 - 3, above. RBC Mortgage agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and RBC Mortgage shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) RBC Mortgage shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 90 calendar days of written notification to RBC Mortgage that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this agreement; and (iii) the United States has a claim against RBC Mortgage in the amount of \$45,234,754.33, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. RBC Mortgage acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

12. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. RBC Mortgage represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Northern District of Illinois.

15. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

17. The individuals signing this Agreement on behalf of RBC Mortgage represent and warrant that they are authorized by RBC Mortgage to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on RBC Mortgage's successors, transferees, heirs, and assigns.

20. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

PATRICK J. FITZGERALD  
United States Attorney

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

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DATED: \_\_\_\_\_

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

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RBC MORTGAGE COMPANY - DEFENDANT

DATED: \_\_\_\_\_

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

DATED: \_\_\_\_\_

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

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