

SETTLEMENT AGREEMENT

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 the Department of Housing and Urban Development (“HUD”) (collectively the “United States”) and Primary Residential Mortgage, Inc. (“PRMI”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. PRMI was, and remains, a Direct Endorsement Lender approved by the Federal Housing Administration (“FHA”). PRMI has its principal place of business in Salt Lake City, Utah.

B. PRMI agrees that it engaged in the conduct set forth in Attachment A. The United States contends that it has certain civil claims against PRMI arising from PRMI’s origination, underwriting, and endorsement of the 100 loans insured by the FHA that are listed in Attachment B (the “Released Loans”). That conduct is referred to below as the “Covered Conduct.”

C. This Settlement Agreement is neither an admission of liability by PRMI nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. PRMI shall pay to the United States \$5,000,000.00 (“Settlement Amount”), plus simple interest accruing from October 4, 2016 to the date on which

payment is made at a rate of 1 percent per year, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice no later than seven (7) days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon PRMI's full payment of the Settlement Amount, the United States releases PRMI, together with its current and former parent corporations, predecessor and successor corporations, divisions, direct and indirect subsidiaries, and affiliates, (the "PMRI Released Parties") from any civil or administrative monetary claim the United States has for the Covered Conduct 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, or any other statutory or common law cause of action that the Civil Division of the Department of Justice has authority to assert and compromise pursuant to 28 C.F.R. § 0.45(d) in connection with the Covered Conduct.

3. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;

4. PRMI waives and shall not assert any defenses PRMI may have to any criminal prosecution or administrative action 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 or administrative action. 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.

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

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

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) PRMI's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment PRMI makes to the United States pursuant to this Agreement,

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 PRMI, and PRMI shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, PRMI shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by PRMI or any of its subsidiaries or affiliates from the United States. PRMI agrees that the United States, at a minimum, shall be entitled to recoup from PRMI any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the

affected agencies, reserves its rights to audit, examine, or re-examine PRMI's books and records and to disagree with any calculations submitted by PRMI or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by PRMI, or the effect of any such Unallowable Costs on the amount of such payments.

7. PRMI agrees to cooperate fully and truthfully with any investigation by the United States of PRMI's underwriting and origination of FHA loans with regard to individuals and entities not released in this Agreement by encouraging, and by agreeing not to impair, the cooperation of its directors, officers, and employees, in making themselves available, on reasonable notice, for interviews and testimony, consistent with the rights and privileges of such individuals, as well as the rights and obligations of PRMI under existing laws or regulations. PRMI further agrees to furnish to the United States, upon request, complete and unredacted copies of all 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 another on its behalf other than documents covered by the attorney work-product doctrine or the attorney client privilege.

8. This Agreement is intended to be for the benefit of the Parties only.

9. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

11. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Colorado. For purposes of construing this Agreement, 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.

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

13. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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


15. This Agreement is binding on PRMI's successors, transferees, heirs, and assigns.

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

17. 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: 9/30/16

BY: 
Samuel J. Buffone Jr.
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Robert C. Troyer
Acting United States Attorney

DATED: 9/30/2016

BY: 
Jasand Mock
Assistant United States Attorney
District of Colorado

PRIMARY RESIDENTIAL MORTGAGE, INC.

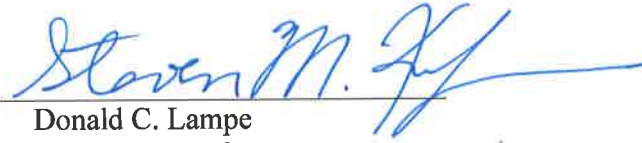
DATED: _____

BY: _____

David G. Zitting
Chief Executive Officer
Primary Residential Mortgage, Inc.

DATED: 9/30/2016

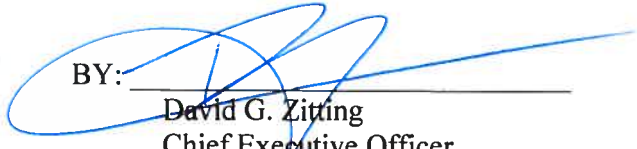
BY: _____



Donald C. Lampe
Steven M. Kaufmann
Morrison & Foerster LLP
Counsel for Primary Residential Mortgage, Inc.

PRIMARY RESIDENTIAL MORTGAGE, INC.

DATED: 9/30/14

BY: 

David G. Zitting
Chief Executive Officer
Primary Residential Mortgage, Inc.

DATED: _____

BY: _____
Donald C. Lampe
Steven M. Kaufmann
Morrison & Foerster LLP
Counsel for Primary Residential Mortgage, Inc.

ATTACHMENT B

Loan Count	case_nbr
1	011-6040822
2	023-2926490
3	031-3494999
4	045-6531336
5	045-6974285
6	048-4743265
7	048-4807797
8	052-4529512
9	052-5737347
10	061-3203895
11	094-5547930
12	094-5584479
13	094-5599445
14	095-0514049
15	095-1161636
16	095-1236690
17	095-1581742
18	095-1713012
19	105-2974197
20	105-3517227
21	105-3701822
22	105-3910884
23	105-4174951
24	105-4215898
25	105-4216995
26	105-4442843
27	105-4448484
28	105-4790914
29	105-4908972
30	105-5877576
31	105-6019616
32	105-6065610
33	121-2296161
34	121-2505974
35	137-4234865
36	137-4391312
37	141-1452192
38	151-8626741
39	181-2309845
40	181-2312499
41	201-3759074
42	201-3770880
43	221-3986886
44	241-8119313
45	241-8796096
46	249-5163307

ATTACHMENT B

Loan Count	case_nbr
47	249-5172808
48	249-5375064
49	251-3231028
50	251-3774641
51	261-9520410
52	321-2533067
53	332-4714426
54	361-3180006
55	361-3215525
56	361-3230667
57	361-3381866
58	381-7873453
59	381-8623518
60	381-8912560
61	411-3972592
62	411-4068941
63	413-4770143
64	413-5241257
65	421-4306234
66	431-4434246
67	441-8629020
68	461-4257847
69	483-3676801
70	483-3821011
71	483-3858028
72	483-4073103
73	491-9080228
74	491-9488225
75	492-7931640
76	492-8005497
77	492-8078987
78	493-8411261
79	493-8466321
80	493-8487213
81	493-8501916
82	493-8691879
83	493-9282551
84	495-7783938
85	495-7788870
86	511-0007632
87	521-6315793
88	521-6539313
89	521-6549520
90	521-6555713
91	521-6604338
92	521-6627482

ATTACHMENT B

Loan Count	case_nbr
93	521-6938459
94	521-6980836
95	521-7126676
96	541-7482264
97	561-8347084
98	561-8495731
99	561-8826145
100	561-9125632