

Exhibit 1

SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) made subject to approval by the Court, as defined herein, by Shirley D. Morrow (“Plaintiff Morrow”), individually and as the proposed representative of the “RFC Settlement Class,” as defined herein, and Residential Funding Company, LLC (“RFC”), on its own behalf and as attorney-in-fact for Homecomings Financial, LLC, GMAC Mortgage, LLC, the Home Loan Trust 1998-HI2, Home Loan Trust 1998-HI4, Home Loan Trust 1999-HI1, Home Loan Trust 1999-HI4, Home Loan Trust 1999-HI6, Home Loan Trust 1999-HI8, Home Loan Trust 2000-HI1, Home Loan Trust 2000-HI2, Home Loan Trust 2000-HI3, Home Loan Trust 2000-HI4, Home Loan Trust 2000-HI5, Mortgage Asset-Backed Pass-Through Certificate Series 1998-KS1 Trust, Residential Funding Mortgage Securities II, Inc., Wilmington Trust Company, and JPMorgan Chase Bank, N.A. (collectively, the “Settling Defendants”), all as assignees, owners, holders, trustees, servicers, and/or master servicers of the “SMC-RFC Loans,” as defined herein. Plaintiff Morrow, the Settling Defendants and the RFC Settlement Class are collectively referred to as the “Parties.”

WHEREAS, Plaintiff Morrow, together with Plaintiffs Danita S. Couch and Jack T. Chastain, Sr. and Plaintiffs David R. and Nancy J. Beebe (collectively, the “Named Plaintiffs”) filed the civil action currently pending before the Circuit Court of Clay County, Missouri (the “Court”) styled *Danita S. Couch, et al. v. SMC Lending, Inc. et al.*, Case No. 7CV 100-4332 (the “Litigation”); and

WHEREAS, Plaintiff Morrow is asserting claims against SMC Lending, Inc. (“SMC”) and the Settling Defendants for alleged violations of the Missouri Second Mortgage Loans Act (“MSMLA”), Mo.Rev.Stat. §§ 408.231-408.241, and seeks compensatory and punitive damages and other relief on her own behalf, and on behalf of a class of persons similarly situated as a result of certain loan fees and interest amounts that Plaintiff Morrow contends SMC and the

Settling Defendants, and each of them, directly or indirectly charged, contracted for or received in connection with certain loans made to the RFC Settlement Class, which loans were purchased by, assigned to, serviced by and/or master serviced by RFC; and

WHEREAS, on December 11, 2002, the Court certified a litigation class in the Litigation comprising those persons who obtained a second mortgage loan from SMC on or after June 29, 1994 (the "Litigation Class"); and

WHEREAS, notice was thereafter provided to the members of the Litigation Class of their opportunity to opt out and exclude themselves from the Litigation Class; and

WHEREAS, the Settling Defendants deny the claims and causes of action being asserted against them in the Litigation and deny any and all liability to Plaintiff Morrow, the other Named Plaintiffs, and the Litigation Class; and

WHEREAS, counsel for Plaintiff Morrow (hereinafter, "Plaintiffs' Counsel") and counsel for the Settling Defendants have thoroughly investigated the facts relating to the claims alleged in the Litigation and the events and transactions underlying the Litigation, through formal and informal discovery, and have made a thorough study of the legal principles applicable to the claims being asserted against the Settling Defendants; and

WHEREAS, the Parties have reached an agreement, subject to Court approval, to resolve the Litigation as between Plaintiff Morrow and the RFC Settlement Class on one hand and the Settling Defendants on the other in accordance with the terms set forth herein; and

WHEREAS, Plaintiffs' Counsel and counsel for the Settling Defendants have engaged in arm's length negotiations concerning the settlement of the claims and causes of action being asserted against the Settling Defendants in the Litigation; and

WHEREAS, Plaintiff Morrow and Plaintiffs' Counsel have concluded that a settlement

with the Settling Defendants as stated herein will be fair, just, equitable, reasonable, adequate and in the best interests of Plaintiff Morrow and the members of the RFC Settlement Class based upon their investigation, study, negotiations and discovery taken in the *Litigation*, and taking into account the contested issues involved, the expense and time necessary to prosecute the *Litigation* against the Settling Defendants through trial, the delays and the risks and costs of further prosecution of the *Litigation* against the Settling Defendants, the uncertainties of complex litigation, the benefits to be received pursuant to this Settlement, and the fact that Named Plaintiffs Danita S. Couch, Jack T. Chastain Sr., David R. Beebe, Nancy J. Beebe and the remaining "Non-RFC Plaintiff Borrowers," as defined herein, will continue to pursue their claims on the "SMC Loans," as defined herein, against SMC, the other defendants in the *Litigation* and any other non-released persons; and

WHEREAS, the Settling Defendants desire to settle the claims being asserted against them in the *Litigation* on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest all controversies that have been or could be raised against the Settling Defendants in the *Litigation*; and

WHEREAS, the Parties acknowledge and agree that this Agreement constitutes a compromise in settlement of the claims and causes of action that have been or could be raised by Plaintiff Morrow and the RFC Settlement Class against the Settling Defendants and the other "Released Persons," as defined herein, as to the "SMC-RFC Loans," but shall in no way release or affect the existing or future claims, causes of action, remedies, and/or rights to relief of any Plaintiff or member of the *Litigation Class*, including without limitation, Plaintiff Morrow, Plaintiffs Danita S. Couch, Jack T. Chastain Sr., David R. Beebe, Nancy J. Beebe, the RFC

Settlement Class and/or any of the "Non-RFC Plaintiff Borrowers" against any person, association or entity with respect to the "SMC Loans," except for the claims of Plaintiff Morrow and the RFC Settlement Class Members against the "Released Persons" with respect to the SMC-RFC Loans.

NOW THEREFORE, the undersigned parties, each intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth herein, do hereby agree, subject to approval of the Court of this Agreement, that the Litigation and the "Released Claims," as defined herein, against the "Released Persons," as defined herein, are finally and fully compromised and settled and that the claims of the RFC Settlement Class Members, as defined herein, against the "Released Persons" shall be dismissed with prejudice as against the "Released Persons" as follows:

1. Denial of Liability; No Admissions

The Parties are entering into this Agreement for the sole purpose of resolving vigorously disputed claims that have arisen between them and in the interest of avoiding the burdens, expense, and risk of further litigation. By entering into any preliminary settlement discussions, agreeing to the terms of this Agreement, or seeking the approval of this Settlement, the Parties are not making any admissions or concessions, whatsoever, with respect to any claims or defenses alleged or asserted, or any factual or legal assertions in the Litigation. Neither this Agreement nor any of its terms or provisions nor any of the negotiations between the Parties or their counsel shall be construed as an admission or concession by any of the Parties or their counsel of anything whatsoever, including but not limited to: any alleged violation or breach of contract or duty, any alleged fraud, misrepresentation or deception, or any alleged violation of any federal, state, or local law, rule, regulation, guideline or legal requirement (or any other

applicable law, rule, regulation, guideline or legal requirement), the merits of any defenses that the Settling Defendants asserted; or the propriety of class certification of the RFC Settlement Class if the Litigation were to be litigated rather than settled. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish: (a) any liability or admission on the part of the Settling Defendants or their respective parent or subsidiary companies, or to establish the existence of any condition constituting a violation of or non-compliance with any federal, state, local or other applicable law, rule, regulation, guideline or other legal requirement; (b) the truth or relevance of any fact alleged by Plaintiffs; (c) the existence of any class alleged by Plaintiffs; (d) the propriety of class certification if the Litigation were to be litigated rather than settled; (e) the validity of any claim or any defense that has been or could have been asserted in the Litigation or in any other litigation; (f) that the consideration to be given to RFC Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial; or (g) the propriety of class certification in any other proceeding or action. The Parties expressly agree that, in the event the Settlement does not become final and effective in accordance with Paragraph 12 hereof, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Agreement, or any effort to seek approval of the Agreement, to affect or prejudice any other Party's procedural or substantive rights in any ensuing litigation. The Settling Defendants expressly reserve all procedural and substantive rights and defenses to all claims and causes of action and do not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

2. **Definitions**

As used in this Agreement, the following terms shall be defined as set forth below:

2.1 **Class Counsel.** "Class Counsel" shall mean Plaintiffs' Counsel, Walters Bender Strohbehn & Vaughan, P.C., 2500 City Center Square, 1100 Main Street, Kansas City, Missouri 64105.

2.2 **Class Mail Notice.** "Class Mail Notice" means a document in a form substantially the same as that attached hereto as **Exhibit A**.

2.3 **Effective Date.** The "Effective Date" of this Agreement means the date when all of the conditions set forth in Paragraph 12 have occurred and the Settlement thereby becomes effective in all respects.

2.4 **Final Approval Order.** "Final Approval Order" means an Order of the Court in a form substantially the same as that attached hereto as **Exhibit C**, finally approving this Agreement and the Settlement pursuant to Mo. Rule 52.08.

2.5 **Final Hearing Date.** "Final Hearing Date" means the date set by the Court for the hearing on final approval of the Settlement.

2.6 **Final Judgment.** "Final Judgment" means a Judgment of the Court in a form substantially the same as that attached hereto as **Exhibit D**.

2.7 **Litigation Class.** "Litigation Class" means the class of Missouri borrowers defined by the Court in the Order Certifying Plaintiffs' Class, entered December 11, 2002.

2.8 **Net Distributable Settlement Fund.** "Net Distributable Settlement Fund" means the "Net Settlement Fund" less: (a) the amount of any awards for attorney's fees or attorney compensation approved by the Court and awarded to Plaintiffs' Counsel, and (b) any interest earned and attributable to the amount of such awards while in escrow.

2.9 Net Settlement Fund. "Net Settlement Fund" means the "Settlement Fund" less: (a) the amount of any litigation expenses and/or costs approved by the Court and awarded to Plaintiffs' Counsel; (b) the amount of any incentive award approved by the Court and paid to Plaintiff Morrow; and (c) any interest earned and attributable to these awards, respectively, while in escrow.

2.10 Non-RFC Plaintiff Borrower. "Non-RFC Plaintiff Borrower" means the Named Plaintiffs, other than Plaintiff Morrow, and the members of the Litigation Class certified by the Court in the Litigation who obtained an "SMC Loan" that was not an "SMC-RFC Loan," as defined below. "Non-RFC Plaintiff Borrower" includes, but is not limited to, Plaintiffs Danita S. Couch, Jack T. Chastain, Sr. David R. Beebe and Nancy J. Beebe., who are Named Plaintiffs in the Litigation.

2.11 Plaintiff Morrow. "Plaintiff Morrow" means Plaintiff Shirley D. Morrow and any person(s) claiming by, through and/or under her.

2.12 Plaintiffs' Counsel. "Plaintiffs' Counsel" means, collectively, Walters Bender Strohbehn & Vaughan, P.C., 2500 City Center Square, 1100 Main Street, Kansas City, Missouri 64105.

2.13 Preliminary Approval Order. "Preliminary Approval Order" means an Order of the Court preliminarily approving the Settlement, conditionally or preliminarily certifying a class for settlement purposes, directing the issuance of a class notice and scheduling a settlement hearing in accordance with Mo. Rule 52.08, in a form substantially similar to that attached hereto as Exhibit B.

2.14 Releasers. "Releasers" means Plaintiff Morrow and all RFC Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and

successors, and any other person claiming by or through any or all of them. The Releasors shall not include any of the following: (a) any members of the RFC Settlement Class who opt out of the Settlement in accordance with Paragraph 9 below; (b) any person(s) whom RFC fails to identify as a member of the RFC Settlement Class on Exhibit E; or (c) the Non-RFC Plaintiff Borrowers.

2.15 **Released Persons.** "Released Persons" shall mean the Settling Defendants, individually and together with the RFC affiliates, parent companies and subsidiaries listed on **Exhibit G**, and each of their past and present officers, directors, shareholders, employees, attorneys (including any consultants hired by counsel), accountants, insurers, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns. Notwithstanding anything in this Agreement to the contrary, the term "Released Persons" **does not include any of the following**: (a) SMC Lending, Inc.; (b) Wilmington Trust Company in its capacity as an assignee, holder, trustee, servicer and/or master servicer of loans other than the SMC-RFC Loans; (c) J.P. Morgan Chase Bank, NA, individually and/or formerly and/or as successor to Banc One, NA, Chase Manhattan Bank and others, in its capacity as an assignee, holder, trustee, servicer and/or master servicer of loans other than SMC-RFC Loans; (d) the "U.S. Bank Defendants" and any other current and/or former defendant named in the Litigation, other than the Settling Defendants; (e) any person, association or entity who is not a Released Person, including, but not limited to, Franklin Credit Management Corporation and Wells Fargo Bank, N.A., including any predecessor or other companies acquired or merged into Wells Fargo; (f) any person, association or entity, who is not a Released Person, that serviced any of the SMC-RFC Loans; (g) any person, association or entity that serviced any of the loans of any of the Non-RFC Plaintiff Borrowers; (h) any person, association or entity to whom any of the SMC-

RFC Loans were sold, assigned, transferred and/or conveyed prior to the sale, assignment, transference or conveyance to RFC; or (i) any person, association or entity to whom any of the loans of any of the Non-RFC Plaintiff Borrowers were sold, assigned or otherwise transferred or conveyed.

2.16 Released Claims. "Released Claims" means any and all claims, demands, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, liens, costs, surcharges, losses, attorney's fees, expenses or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential or punitive damages, as well as any and all claims for treble damages, penalties, attorney's fees, costs or expenses, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, relate to, or arise out of the SMC-RFC Loans and which any of the Releasers have had, or now have, from the beginning of time up through and including the Effective Date, against the Released Persons ("Claims"), including but not limited to, any and all Claims arising out of or relating to: (1) allegations that were or could have been asserted against the Released Persons in the Litigation in any way relating to the RFC Settlement Class Members' SMC-RFC Loans; (2) any activities of the Released Persons with respect to the SMC-RFC Loans including, without limitation, any alleged representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act, deceptions, acts of unconscionability, unfair business practices, breaches of contract, usury, unfulfilled promises, breaches of warranty or fiduciary duty, conspiracy, excessive fees collected, or violations of any consumer protection statute, any state unfair trade practice statute,

or any other body of case, statutory or common law or regulation, federal or state, including but not limited to the Missouri Second Mortgage Loans Act, Mo.Rev.Stat. § 408.231, *et seq.*, or any other similar state statute; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, 12 C.F.R. part 226; the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, *et seq.*, and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, *et seq.*, and its implementing regulation, 12 C.F.R. part 203; the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.*; and the Federal Trade Commission Act, 15 U.S.C. §§ 45, *et seq.*; and/or (3) any conduct undertaken by any of the Released Persons to defend the Litigation, including but not limited to, any alleged improper discovery conduct and/or any request for sanctions in this Litigation. It is the intention of the Releasers to provide a general release of the Released Claims against the Released Persons; provided, however, that anything in this Agreement to the contrary notwithstanding, the term Released Claims does not include: (1) any claims of any kind or type by the Releasers against any person, association or entity that is not a Released Person, whether such claims arise out of or relate to SMC-RFC Loans or some other conduct, transaction, loan or occurrence; (2) any claims of any kind or type by the Releasers against any person, association or entity in connection with a loan and/or loan transaction originated or made by a person, association or entity other than SMC, notwithstanding the fact that the loan, in whole or in part, was purchased by, assigned to, serviced by and/or master serviced by RFC; and/or (3) any claims of any kind or type by the Non-RFC Plaintiff Borrowers

with respect to the SMC Loans.

2.17 **RFC.** "RFC" means Defendant Residential Funding Company, LLC (f/k/a Residential Funding Corporation).

2.18 **RFC Settlement Class.** "RFC Settlement Class" shall have the meaning set forth in Paragraph 3(a) below. The "RFC Settlement Class" does not include Danita S. Couch, Jack T. Chastain, Sr., David R. Beebe, Nancy J. Beebe, or any of the other "Non-RFC Plaintiff Borrowers."

2.19 **RFC Settlement Class Member.** "RFC Settlement Class Member" means any member of the RFC Settlement Class who does not timely opt out of the Settlement pursuant to Paragraph 9(a) below. If an RFC Settlement Class Member has died, filed for bankruptcy, or otherwise voluntarily or involuntarily transferred his or her rights under an SMC-RFC Loan, the person's heir, representative, successor or assign shall be deemed an RFC Settlement Class Member.

2.20 **RFC Settlement Class Member Payment.** "RFC Settlement Class Member Payment" means the portion of the "Net Distributable Settlement Funds" shown on **Schedule A** to be paid to the respective RFC Settlement Class Member(s) pursuant to the Settlement, plus any interest earned and attributable to such sum while in escrow.

2.21 **Settlement.** "Settlement" means the compromise in settlement memorialized by this Agreement.

2.22 **Settlement Fund.** "Settlement Fund" means the amount to be delivered by RFC in accordance with Paragraph 4(a) below.

2.23 **Settlement Hearing.** "Settlement Hearing" means the hearing on final approval of the partial class action settlement memorialized by this Agreement.

2.24 **Settling Defendants.** "Settling Defendants" means RFC, GMAC Mortgage, LLC, Home Loan Trust 1998-HI2, Home Loan Trust 1998-HI4, Home Loan Trust 1999-HI1, Home Loan Trust 1999-HI4, Home Loan Trust 1999-HI6, Home Loan Trust 1999-HI8, Home Loan Trust 2000-HI1, Home Loan Trust 2000-HI2, Home Loan Trust 2000-HI3, Home Loan Trust 2000-HI4, Home Loan Trust 2000-HI5, Homecomings Financial, LLC, Mortgage Asset-Backed Pass-Through Certificate Series 1998-KS1 Trust, Residential Funding Mortgage Securities II, Inc., Wilmington Trust Company in its capacity as an assignee, holder, trustee, servicer and/or master servicer of the SMC-RFC Loans, and JPMorgan Chase Bank, N.A. in its capacity as an assignee, holder, trustee, servicer and/or master servicer of the SMC-RFC Loans, or any one or more of them.

2.25 **Settling Defendants' Counsel.** "Settling Defendants' Counsel" means Bryan Cave, LLP, 1200 Main Street, Suite 3500, Kansas City, Missouri 64105

2.26 **SMC.** "SMC" means Defendant SMC Lending, Inc., as identified in the Eighth Amended Petition in the Litigation.

2.27 **SMC Loan.** "SMC Loan" means any "Second Mortgage Loan," as defined in Mo.Rev.Stat. § 408.231.1, secured by a mortgage or a deed of trust on residential real property located in the state of Missouri, that was originated by SMC Lending, Inc. ("SMC") on or after June 29, 1994.

2.28 **SMC-RFC Loan.** "SMC-RFC Loan" means any SMC Loan that was purchased by, assigned to, serviced by and/or master serviced by RFC.

2.29 **U.S. Bank Defendants.** "U.S. Bank Defendants" means U.S. Bank, National Association, Wilmington Trust Company, in its capacity as assignee, holder, agent, trustee, servicer and/or master servicer of loans other than the SMC-RFC Loans, and any trust, fund or

pool which is not a Settling Defendant and for which U.S. Bank, NA and/or Wilmington Trust Company served or serve as assignee(s), holder(s), agent(s), trustee(s), servicer(s) and/or master servicer(s) including, but not limited to, any of the Trusts including, without limitation, FirstPlus Home Loan Owner Trusts 1997-3, 1997-4, 1998-1, 1998-2, 1998-4, 1998-5, and U.S. Bank National Association, ND, each being identified individually and together with its and/or their joint or respective officers, directors, trustees, agents, parents, subsidiaries, affiliates, predecessors, successors or assigns.

3. Certification of the RFC Settlement Class

a. Plaintiff Morrow and Plaintiffs' Counsel shall file a motion requesting that the Court approve a settlement for a class of persons for purposes of settlement only (referred to and defined herein as the "RFC Settlement Class"), defined as follows:

All persons who, on or after June 29, 1994, obtained a "Second Mortgage Loan," as defined in Mo.Rev.Stat. § 408.231.1, that was secured by a mortgage or a deed of trust on residential real property located in the state of Missouri, originated by SMC Lending, Inc., and purchased by, assigned to, serviced by and/or master serviced by Residential Funding Company, LLC (f/k/a Residential Funding Corporation), and who did not timely exercise their right and option to exclude themselves from the litigation class that the Court previously certified on December 11, 2002.

b. A list of all members of the RFC Settlement Class is attached hereto as **Exhibit E**, but said Exhibit shall be filed under seal with the Court pursuant to the terms of the Stipulated Protective Order dated July 9, 2001 to protect the privacy of the names and addresses of the members of the RFC Settlement Class.

c. If this Agreement is not approved by the Court pursuant to the proposed Final Approval Order and Final Judgment, or if for any reason this Settlement fails to become effective pursuant to Paragraph 12, this Agreement, the conditional settlement class certification provided herein, the Settlement (including any modifications made with the consent of the Parties), and any action(s) taken or to be taken in connection therewith, shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated, the Parties shall be restored to their respective positions existing prior to the execution of this Agreement, and the Parties' rights and obligations with respect to the use of this Agreement and the settlement contemplated hereby will be subject to Paragraphs 1 and 16(m) hereof. In addition, neither this Agreement, the preliminary certification of the RFC Settlement Class, the Preliminary Approval Order, nor any other document relating in any way to any of the foregoing, shall be relied on, referred to or used in any way for any purpose in connection with any further proceedings in this Litigation or any related action. In such case, or in the event that this Agreement shall terminate or the settlement embodied herein does not become effective for any reason, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, who shall be restored to their respective positions existing prior to the execution of this Agreement and any Party may reassert their claims against the other Party or Parties as provided in Paragraph 13 and in such event evidence relating to the Agreement, and all negotiations, shall not be discoverable or admissible in the Litigation or otherwise.

4. Settlement Consideration and Distribution of the Settlement Fund to the RFC Settlement Class Members

a. Within three (3) business days after entry of the Final Approval Order and receipt by Settling Defendants' Counsel in writing of appropriate wiring instructions and a completed

W-9 Tax Form from Plaintiffs' Counsel, RFC shall deliver \$4,255,437.84 , subject to Paragraph 4(d) below (referred to and defined herein as the "Settlement Fund") to the Escrow Agent, as defined below, by wire transfer at its own expense.

b. The Settlement Fund shall be wired into an interest-bearing escrow account that the Parties shall establish, pursuant to mutually agreeable terms, at Missouri Bank & Trust, 1044 Main Street, Kansas City, Missouri, or some other insured depository institution in Missouri selected by Plaintiffs' Counsel (the "Escrow Agent"). All interest earned on the Settlement Fund while in escrow shall be added to and included within the definition of "Settlement Fund" and shall be allocated to the persons identified on **Schedule A** in proportion to his, her or their share of the Net Distributable Settlement Fund. The Settlement Fund, including any interest earned in escrow, shall be returned to RFC in the event that the Settlement is rescinded, terminated, vacated, or the Effective Date does not arrive for any other reason. The Settlement Fund while in the escrow account shall be invested in a manner that generates the highest return that can be obtained without risk to the principal.

c. The Parties' escrow agreement shall provide that the Settlement Fund will be released to Plaintiffs' Counsel from escrow the first business day after the Effective Date. Plaintiffs' Counsel, subject to such supervision and direction of the Court as may be necessary, shall be responsible for and shall administer and oversee the distribution of the Settlement Fund, Net Settlement Fund, and Net Distributable Settlement Fund in accordance with the terms of this Agreement and **Schedule A**, which shall be filed under seal with the Court pursuant to the terms of the Stipulated Protective Order dated July 9, 2001 to protect the privacy of the members of the RFC Settlement Class.

d. If any member(s) of the RFC Settlement Class timely opt out and exclude

themselves from the Settlement, the name(s) of the "opt out" class member(s) shall be removed from **Schedule A** and the portion of the Net Distributable Settlement Fund attributable to said "opt outs" shall remain a part of the Net Distributable Settlement Fund and will be reallocated to the RFC Settlement Class Members pro rata. The Parties shall submit any required revisions to Schedule A to the Court under seal prior to the Final Hearing Date.

e. The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the RFC Settlement Class electing to opt out or exclude themselves from the Settlement pursuant to Sub-Paragraph 4(d), or for any other reason.

f. Upon release of the Settlement Fund by the escrow agent to Plaintiffs' Counsel, Plaintiffs' Counsel shall calculate the Net Settlement Fund and Net Distributable Settlement Fund and distribute the Net Distributable Settlement Fund, plus any interest earned on said fund while in escrow, to the RFC Settlement Class Members (i.e., those members of the RFC Settlement Class, if any, who did not timely opt out) in the amounts and to the addresses shown on Schedule A, or as the Court may otherwise determine and approve. Such distributions to the RFC Settlement Class Members are referred to and defined as the "RFC Settlement Class Member Payments." Plaintiffs' Counsel shall distribute the RFC Settlement Class Member Payments to the RFC Settlement Class Members within 30 days of the Effective Date by checks mailed to the RFC Settlement Class Members or, in the event of an RFC Settlement Class Member bankruptcy under Chapter 7, to the Chapter 7 bankruptcy trustee for said RFC Settlement Class Member, with notice of said mailing to said RFC Settlement Class Member. Plaintiffs' Counsel will re-mail any returned checks to any new address disclosed. To the extent any check is returned a second time, Plaintiffs' Counsel shall undertake reasonable efforts to locate a current address for said RFC Settlement Class Member. If any RFC Settlement Class

Member refuses to accept receipt of an RFC Settlement Class Member Payment check, or does not cash an RFC Settlement Class Member Payment check within 30 days of receipt, Plaintiffs' Counsel shall undertake reasonable efforts to locate and/or contact the RFC Settlement Class Member and inquire about receiving and/or cashing the check. Within 210 days of the Effective Date, Plaintiffs' Counsel shall file a report with the Court confirming that the entirety of the Net Distributable Settlement Funds/RFC Settlement Class Member Payments were distributed to the RFC Settlement Class Members pursuant to the original or any revised Schedule A and checks cashed or, if such a confirmation cannot be provided, outlining the steps that remain to distribute any unclaimed portion of the Net Distributable Settlement Funds to the RFC Settlement Class Members. Plaintiffs' Counsel shall reallocate the amounts of any unclaimed checks to the paid RFC Settlement Class Members pro rata based on their allocable share of their total paid distributions of claimed checks at such time as Plaintiffs' Counsel determines appropriate in their sole discretion, but which in any event shall be prior to the expiration of any period of escheatment.

g. Plaintiffs' Counsel shall be responsible for preparing, filing and addressing any requisite IRS Form 1099s. RFC Settlement Class Members shall be responsible for any taxes due or any tax liability arising out of the distribution of the Settlement Funds.

h. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to or arising out of the investment, allocation or distribution of the Settlement Funds, the determination, administration, calculation, or payment of claims, the payment or withholding of taxes, or any losses incurred in connection therewith.

i. Any RFC Settlement Class Member who receives a payment pursuant to the Settlement shall be solely responsible for distributing or allocating such payment between or

among all co-borrowers on his, her, or their SMC-RFC Loan, regardless of whether a payment check has been made out to all or only some of the RFC Settlement Class Members' co-borrowers.

j. No person shall have any claim against the Released Persons, Plaintiffs' Counsel, or any agent designated pursuant to this Agreement based upon any distributions made substantially in accordance with this Agreement or any Orders of the Court.

5. Incentive Award and Attorney's Fees and Costs

a. Plaintiff Morrow may petition the Court for the payment of an incentive award in a total amount not to exceed \$20,000 in recognition of services rendered for the benefit of the RFC Settlement Class throughout the course of the Litigation. Any such incentive award shall be in addition to the amount to be paid on her individual claims. The amount of any incentive award approved by the Court, and any interest attributable to said amount while in escrow, shall be deducted from the Settlement Fund to determine the "Net Settlement Fund" from which any award of attorney's fees to Plaintiffs' Counsel shall be deducted before the balance is distributed to the RFC Settlement Class Members as the "Net Distributable Settlement Fund" in accordance with Schedule A. RFC will not object to Plaintiff Morrow applying to the Court for and/or receiving an incentive award in the above-stated amount. To the extent the Court approves an incentive award in an amount less than the not to exceed amount stated above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Fund.

b. Plaintiffs' Counsel and/or Plaintiff Morrow may petition the Court for an award of litigation expenses and/or court costs not to exceed \$58,510.50. The amount of any such award, and any interest attributable to said amount(s) while in escrow, shall also be deducted

from the Settlement Fund to determine the Net Settlement Fund from which any award of attorney's fees to Plaintiffs' Counsel shall be deducted before the balance is distributed to the RFC Settlement Class Members as the "Net Distributable Settlement Fund" in accordance with Schedule A. RFC will not object to Plaintiffs' Counsel and/or Plaintiff Morrow applying to the Court for, and receiving, an award of expenses and/or costs in the above amount. To the extent the Court awards expenses and/or costs in an amount that is less than the not to exceed amount stated above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Settlement Fund.

c. Plaintiffs' Counsel and/or Plaintiff Morrow may also petition the Court for an award of attorney's fees not to exceed forty percent (40%) of the Net Settlement Fund, which award of attorney's fees is estimated to be \$1,670,770.94 if the Court approves the award as proposed. The amount of any such fee award approved by the Court, and any interest attributable to said amount while in escrow, shall be deducted from the Net Settlement Fund to determine the Net Distributable Settlement Fund and the individual RFC Settlement Class Member Payments. RFC will not object to Plaintiffs' Counsel and/or Plaintiff Morrow applying to the Court for, and receiving, an award of attorney's fees in the above amount. To the extent the Court awards attorney's fees in an amount that is less than the not to exceed amount stated above, the difference, and any interest attributable to the amount of the difference while in escrow, shall be included in and treated as a part of the Net Distributable Settlement Fund.

d. Except as provided in this Paragraph 5, each Party shall bear its own attorney's fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Litigation, and specifically, without limitation, the Settling Defendants shall bear no other attorney's fees, court costs or expenses.

6. Releases

a. On the Effective Date, in exchange for the agreement by RFC to make available and pay the Settlement Fund pursuant to the terms and conditions of this Agreement, and for other good and valuable consideration, Releasers, by operation of this Release and the judgment set forth in the Final Order and Judgment, shall be deemed without further action by any person or the Court (i) to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the Released Persons of and from any and all Released Claims; (ii) to have consented to dismiss with prejudice the Released Claims of the Releasers against the Released Persons in the Litigation; and (iii) to be forever barred and enjoined from instituting or further prosecuting in any forum whatsoever including, but not limited to, any state, federal, or foreign court, or regulatory agency, the Released Claims. The Parties agree that the Released Persons will suffer irreparable harm if any RFC Settlement Class Member takes action inconsistent with this Paragraph 6(a), and that, in such event, the Released Persons may seek an injunction as to such action without further showing of irreparable harm.

b. The Releasers acknowledge and agree that they are aware that they may hereafter discover material or immaterial facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Releases, but that it is their intention to, and they do hereby, upon the Effective Date of this Agreement, fully, finally and forever settle and release each and every of the Released Persons from each and every Released Claim, known or unknown, suspected or unsuspected, accrued or not accrued, contingent or matured, which now exist, may hereafter exist, or may heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

c. Subject to Court approval, each RFC Settlement Class Member shall be bound by

this Agreement and all of their claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Litigation or the Settlement in the form of the Class Mail Notice or otherwise. The Releases and agreements contained in this Paragraph 6 shall apply to and bind all RFC Settlement Class Members, including those RFC Settlement Class Members whose Class Mail Notices are returned as undeliverable, and those for whom no current address can be found, if any.

7. **Representations and Stipulations**

a. RFC represents, warrants and declares that: (i) it has acted in good faith and has used its best efforts in identifying the members of the RFC Settlement Class and in producing the loan documents and loan payment and payoff information on which the distribution of the individual RFC Settlement Class Member Payments shown on Schedule A is based; and (ii) based on said best efforts, there are no members of the RFC Settlement Class other than those identified on **Exhibit E**.

b. Upon the Effective Date, the following stipulations shall be made:

i. **No Privilege Waiver**. Each Party stipulates and acknowledges that neither this Agreement nor a Party's decision to negotiate and/or execute the Agreement can be used to show or establish that a Party's conduct during this Litigation, including that of counsel, gives rise to or constitutes a waiver of the attorney-client, common interest or joint defense privilege or work product doctrines.

ii. **Claims of the Non-RFC Plaintiff Borrowers**. The Parties stipulate and agree for purposes of this Agreement that, based on the loan files, payment histories and other information and documents produced in the case, the SMC Loans of the Non-RFC Plaintiff Borrowers are not SMC-RFC Loans, and thus, the Non-RFC Plaintiff Borrowers cannot recover any damages, penalties or other relief from the Settling Defendants with respect to the SMC

Loans. The Parties agree that a finding and/or conclusion to this effect shall be included in the Final Approval Order, but such a finding and/or conclusion by the Court shall not in any way be deemed a holding that the Non-RFC Plaintiff Borrowers have released any claims of any kind or type with respect to the SMC Loans.

iii. Use of Discovery Information. The Parties agree to comply with the terms of the Stipulated Protective Order entered July 9, 2001, except as the Parties have previously agreed or may hereafter agree.

c. Plaintiffs' Counsel represent and warrant to the Settling Defendants that they have not been retained by any existing client or contacted by any potential client to commence a new lawsuit or pursue any claims or right of relief against RFC with respect to any of the Released Claims and that they have not been informed of an intention on the part of any member of the RFC Settlement Class to opt out of the Settlement. In addition, Plaintiffs' Counsel agree that they will not solicit the right to legally represent any person, including any member or members of the RFC Settlement Class who opt(s) out of the RFC Settlement Class and Settlement, with respect to the Released Claims, but this agreement does not (and shall not) in any way prohibit or restrict Plaintiffs' Counsel from undertaking such representation if requested by any such person or persons.

8. Preliminary Approval Order

The Parties shall promptly move the Court in the Litigation for a Preliminary Approval Order substantially similar to **Exhibit B** that accomplishes the following:

- a. Certifying the proposed RFC Settlement Class pursuant to Mo. Rule 52.08 for settlement purposes;
- b. Preliminarily approving the Agreement as fair, reasonable and adequate under

Mo. Rule 52.08 subject to a final determination by the Court;

c. Approving the appointment of Plaintiff Morrow as representative of the RFC Settlement Class for settlement purposes;

d. Approving the appointment of Plaintiffs' Counsel as counsel for the RFC Settlement Class for settlement purposes;

e. Approving a form of mailed notice substantially similar to the Class Mail Notice attached as **Exhibit A** to be sent to the members of the RFC Settlement Class;

f. Directing Plaintiffs' Counsel to mail the Class Mail Notice promptly after entry by the Court of the Preliminary Approval Order to the RFC Settlement Class by first-class mail to the last known address of such persons;

g. Scheduling a hearing on final approval of this Agreement;

h. Establishing a procedure for members of the RFC Settlement Class to opt out and setting a date, approximately thirty (30) days after the mailing of the Class Mail Notice, after which no member of the RFC Settlement Class shall be allowed to opt out of the RFC Settlement Class;

i. Establishing a procedure for the members of the RFC Settlement Class to appear and/or object to the Settlement and setting a date, approximately thirty (30) days after the mailing of the Class Mail Notice, after which no member of the RFC Settlement Class shall be allowed to object; and

j. Containing such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable.

9. **Opt Outs and Objections By Members of the RFC Settlement Class**

a. **Procedure for Opt Outs.** The deadline for opt out requests shall be set forth in the

Preliminary Approval Order. Any request to opt out must be in writing and must include the name, address, telephone number, and last four digits of the Social Security Number of the class member seeking to opt out and a statement that the class member and all other borrowers named on the class member's promissory note are seeking exclusion. Any opt out request must be personally signed by each person who was a party to the promissory note in connection with the class member's SMC-RFC Loan, unless such person is deceased or legally incompetent. In the event a party to the promissory note is deceased or legally incompetent, the personal representative or guardian must sign the opt out request. Any opt out request must include a reference to "Couch v. SMC Lending, Case No. 7CV 100-4332" and be mailed to:

R. Frederick Walters, Esquire
Walters Bender Strohbehn & Vaughan, P.C.
2500 City Center Square
1100 Main Street
Kansas City, MO 64105
(on behalf of the RFC Settlement Class)

and

Irvin Belzer
Bryan Cave, LLP
1200 Main, Suite 3500
Kansas City, Missouri 64105
(on behalf of the Settling Defendants)

To be considered timely and effective, any opt out request must be received on or prior to the date established by the Court in the Preliminary Approval Order. No member of the RFC Settlement Class may opt out by having a request to opt out submitted by an actual or purported agent or attorney acting on behalf of the class member. No opt out request may be made on behalf of a group of class members. Each member of the RFC Settlement Class who does not submit an opt out request substantially in compliance with this Paragraph 9 shall be included in the RFC Settlement Class and deemed an RFC Settlement Class Member. For purposes of

determining timeliness, an opt out request shall be deemed to have been submitted when received by either Class Counsel or Settling Defendants' Counsel. Class Counsel shall provide to the Court, on or before the date of the Final Approval Hearing, a list of all persons who have timely and adequately filed a request to be excluded from the Settlement.

b. Effect of Opt Outs By Members of the RFC Settlement Class. If class member opt outs result in the exclusion from the Settlement of more than 2% of the number of loans that would otherwise be included in the Settlement, the Settling Defendants, acting jointly in their sole discretion, may rescind this Agreement, in which event each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement and any orders entered in connection therewith shall be vacated, rescinded, canceled, and annulled. If the Settling Defendants exercise this option, the Parties shall return to the status quo in the Litigation as if the Parties had not entered into this Agreement and any Party may reassert their claims against the other Party or Parties as provided in Paragraph 13. In addition, and in such event, this Agreement and all negotiations, court orders and proceedings relating thereto, shall be without prejudice to the rights of the Parties, and each of them, and evidence of or relating to the Agreement and all negotiations shall not be admissible or discoverable in the Litigation or otherwise. The Settling Defendants must exercise their option pursuant to this Paragraph 9(b) at least ten (10) business days prior to the Final Hearing Date, by giving written notice of such exercise to Plaintiffs' Counsel.

c. Bankruptcy Trustees. In instances where a member of the RFC Settlement Class has filed for bankruptcy under Chapter 7 after obtaining his, her, or their SMC-RFC Loan, if the member of the RFC Settlement Class opts out of the Settlement, the Chapter 7 bankruptcy trustee shall be deemed to have opted out of the Settlement. Conversely, if the Chapter 7 bankruptcy

trustee opts out of the Settlement, the member of the RFC Settlement Class shall be deemed to have opted out of the Settlement. If neither the member of the RFC Settlement Class nor the Chapter 7 bankruptcy trustee opts out of the Settlement, both shall be bound by the Release provisions of Paragraph 6.

d. Procedure for Objections to Settlement. Any member of the RFC Settlement Class who wishes to object to the Settlement or to the incentive awards or the awards of expenses, costs and/or attorney's fees must file a written notice of objection, including supporting papers as described further below (hereinafter collectively referred to as the "Notice of Objection"), with the Court on or prior to the date established by the Court in the Preliminary Approval Order. For purposes of determining timeliness, a Notice of Objection shall be deemed to have been submitted when received and filed by the Clerk of Court. Copies of the Notice of Objection must also be mailed to the following on or prior to the date established by the Court in the Preliminary Approval Order, which shall be no later than ten (10) days prior to the Final Hearing Date:

R. Frederick Walters, Esquire
Walters Bender Strohbehn & Vaughan, P.C.
2500 City Center Square
1100 Main Street
Kansas City, MO 64105
(on behalf of the RFC Settlement Class)

and

Irvin Belzer
Bryan Cave, LLP
1200 Main, Suite 3500
Kansas City, Missouri 64105
(on behalf of the Settling Defendants)

The Notice of Objection must be in writing, and shall specifically include:

- (i) The name, address, and telephone number of the class member filing the

- objection;
- (ii) A statement of each objection asserted;
 - (iii) A detailed description of the facts underlying each objection;
 - (iv) Any loan documents in the possession or control of the objector and relied upon by the objector as a basis for the objection;
 - (v) If the objector is represented by counsel, a detailed description of the legal authorities supporting each objection;
 - (vi) If the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts;
 - (vii) If the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documents by attaching them to the objection and provide any other evidence that the objector intends to present;
 - (viii) A statement of whether the objector intends to appear at the hearing;
 - (ix) A copy of any exhibits which the objector may offer during the hearing; and
 - (x) A reference to "Couch v. SMC Lending, Case No. 7CV 100-4332."

Attendance at the final hearing is not necessary. Any member of the RFC Settlement Class who does not make his or her objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Settlement or any other provision of this Agreement.

10. Final Approval Order and Final Judgment

a. Plaintiff Morrow and Plaintiffs' Counsel agree that they will request the Court to enter, after the hearing on final approval of this Agreement, a Final Approval Order substantially in the form attached as **Exhibit C**. In accordance with **Exhibit C**, the Final Approval Order will certify the RFC Settlement Class and find that the Settlement and this Agreement are fair, reasonable, and adequate and in the best interests of the RFC Settlement Class. The Final

Approval Order will require the Parties to carry out the provisions of this Agreement.

b. Plaintiff Morrow and Plaintiffs' Counsel agree that they will request the Court to enter a Final Judgment in the Litigation in a form substantially the same as that attached as **Exhibit D** after the Final Approval Hearing. In accordance with **Exhibit D**, the Final Judgment will dismiss all claims and motions of the RFC Settlement Class Members pending against the Settling Defendants in the Litigation on the merits and with prejudice as to the Releasers, declare that the RFC Settlement Class Members are bound by the Releases set forth in Paragraph 6 of this Agreement as of the Effective Date, find and/or conclude that the Non-RFC Plaintiff Borrowers cannot recover any damages, penalties or other relief from RFC with respect to the SMC Loans because the SMC Loans of the Non-Plaintiff RFC Borrowers are not SMC-RFC Loans (which finding and/or conclusion shall not be deemed a holding that the Non-RFC Plaintiff Borrowers have released any claims of any kind or type with respect to the SMC Loans), contain an express determination by the Court that "there is no just reason for delay," and reserve continuing jurisdiction over the enforcement of this Agreement, the administration and distribution of the Settlement Funds and, if necessary, vacating and/or setting aside the Final Judgment in the event the Settlement does not (or cannot) become effective pursuant to paragraph 12 below.

11. **Certifications to the Court**

a. On or before the Final Hearing Date, Plaintiffs' Counsel shall file with the Court in the Litigation an affidavit verifying that the court-approved Class Mail Notices have been sent by first-class mail.

b. On or before the Final Hearing Date, Plaintiffs' Counsel shall file with the Court an affidavit verifying that they have complied with the procedures described in Paragraph 14(a)

with respect to all Class Mail Notices returned as undeliverable.

12. Effectiveness of Settlement Agreement

a. The "Effective Date" of this Agreement shall be the date when each and all of the following conditions have occurred, at which point the Settlement shall be deemed effective in all respects:

i. This Agreement has been signed by the Plaintiff Morrow, RFC, Plaintiffs' Counsel, and Settling Defendants' Counsel;

ii. A Preliminary Approval Order has been entered by the Court in a form substantially similar to that attached as **Exhibit B**, granting preliminary approval of this Agreement, and approving a form of Class Mail Notice, as provided in Paragraph 8;

iii. The Court-approved Class Mail Notice has been duly mailed to the RFC Settlement Class as ordered by the Court;

iv. A Final Approval Order has been entered by the Court in a form substantially similar to that attached as **Exhibit C** as provided in Paragraph 10(a);

v. A Final Judgment has been entered by the Court, in a form substantially similar to that attached as **Exhibit D**, as provided in Paragraph 10(b);

vi. The Final Approval Order and the Final Judgment entered as provided in Paragraphs 10(a) and 10(b) have become final because of (a) the expiration of the time for appeals therefrom without any appeal having been taken or, (b) if review of the order, or any portion thereof, is sought by any person, the matter has been fully and finally resolved by the appellate court(s) and the time for seeking any higher level of appellate review has expired;

vii. An order finally approving a settlement as to RFC and a final judgment as

to RFC have been entered by each of the respective courts in each of the cases listed in **Exhibit F**, in forms substantially similar to the exemplar exhibits attached to the settlement agreements with RFC in those cases; and

viii. Each of the orders finally approving a settlement as to RFC and the final judgments as to RFC described in Paragraph 12(a)(vii) have become final because of (a) the expiration of the time for appeals therefrom without any appeal having been taken or, (b) if review of any such order, or any portion thereof, is sought by any person, the matter has been fully and finally resolved by the appellate court(s) and the time for seeking any higher level of appellate review has expired.

b. If any material portion of the Agreement, the Final Approval Order, or the Final Judgment is vacated, voided, modified, or otherwise altered by the Court or on appeal, any Party may, in its sole discretion, within seven (7) calendar days of such ruling, declare that the Agreement has failed to become effective and in such circumstances the Agreement shall cease to be of any force and effect as provided in Paragraph 13.

c. If for any reason the Settlement does not (or cannot) become effective pursuant to this Paragraph 12 by the day which is 3 years after the date of the latest final approval of the settlement of a case listed in **Exhibit F**, any Party in its, her or their sole discretion, by giving written notice to Plaintiffs' Counsel or Settling Defendants' Counsel, as the case may be, within three (3) days of said date, may rescind this Agreement and the Settlement, in which event each and every obligation under the Agreement shall cease to be of any force and effect as provided in Paragraph 13.

13. Failure of Condition

If, for any reason, this Agreement fails to become effective as provided in Paragraphs 3, 9

and/or 12, each and every obligation under the Agreement shall cease to be of any force and effect, and this Agreement, any dismissal entered pursuant to this Agreement, the Final Judgment and any orders entered in connection with the Settlement, dismissal order or Final Judgment, shall be vacated, rescinded, canceled, annulled and deemed "void" and/or "no longer equitable" for purposes of Mo. Rule 74.06 and the Parties shall be returned to the status quo prior to entering into this Agreement with respect to the Litigation as if this Agreement had never been entered into, except that the provisions of Paragraphs 1 and Paragraph 16(m) hereof shall survive and remain binding on the Parties and effective in all respects regardless of the reasons for such failure of condition and any Party may reassert their claims against the other Party or Parties in the Litigation; provided, however, that if at such time the Litigation is concluded or if Plaintiff Morrow and/or the RFC Settlement Class Members are otherwise precluded from reasserting their claims against the Settling Defendants in the Litigation after requesting the Court to allow them to do so, then Plaintiff Morrow and the RFC Settlement Class Members may commence a new lawsuit or proceeding against the Settling Defendants, or any one or more of them, to pursue the claims and causes of action that they are currently asserting in the Litigation as if the claims had been reasserted in the Litigation as stated herein. In such event, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all parties hereto, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Litigation or otherwise.

14. Class Notice Forms

a. **Exhibit E** constitutes a list of the members of the RFC Settlement Class to whom notice pursuant to this Agreement shall be provided. Prior to mailing, Plaintiffs' Counsel will update the addresses by use of the United States Postal Service's National Change of Address

database or another address database service (e.g., Accurint, Intelius). Plaintiffs' Counsel will re-mail any returned notices to any new address disclosed. To the extent any notice is returned a second time, Plaintiffs' Counsel shall undertake reasonable efforts to locate current addresses for said class member(s). The notices shall be mailed within five (5) days of the Preliminary Approval Order.

b. Subject to Court approval, all RFC Settlement Class Members shall be bound by this Agreement and the Released Claims shall be dismissed with prejudice and deemed released as of the Effective Date, even if an RFC Settlement Class Member did not receive actual notice of the Litigation or the Settlement. Further, the Parties expressly acknowledge and agree that a Final Judgment shall be entered by the Court dismissing the Released Claims and barring the relitigation of the Released Claims as provided herein, regardless of whether such Released Claims were actually asserted, to the fullest extent of the law and that any dismissal order or judgment shall be entitled to Full Faith and Credit in any other court, tribunal, forum, including arbitration fora, or agency.

15. Public Comments and Press Releases

a. Plaintiff Morrow and Plaintiffs' Counsel agree that they will not issue any press release without giving the Settling Defendants and their Counsel an opportunity to review and comment on any such release prior to it being made public.

b. Before the Motion for Preliminary Approval of Class Action Settlement is filed, neither the Parties nor any of their counsel shall issue any press release or have other communications with the media regarding the Settlement, except as required by law.

c. No Party and no counsel shall make any public comments that would undermine the Settlement, adversely affect the ability of the Parties to obtain final approval of the

Settlement, or disparage any other Party or counsel for any Party.

d. Nothing in this Section shall prohibit counsel from providing legal advice to their clients or to individual RFC Settlement Class Members.

16. **General Provisions**

a. **Entire Agreement.** This Agreement constitutes the full, complete and entire understanding, agreement and arrangement of and between Plaintiff Morrow and the RFC Settlement Class Members on the one hand and the Settling Defendants on the other hand with respect to the Settlement and the Released Claims against the Released Persons. This Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the Settlement and the Released Claims against the Released Persons. Except for those set forth expressly in this Agreement, there are no agreements, covenants, promises, representations or arrangements between the Parties with respect to the Settlement and/or the Released Claims against the Released Persons.

b. **Modification in Writing.** This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by all Parties. This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

c. **Ongoing Cooperation.** The Parties hereto shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement. The execution of documents must take place prior to the Final Hearing Date.

d. **Duplicate Originals/Execution in Counterpart.** All Parties, Plaintiffs' Counsel and Settling Defendants' Counsel shall sign two copies of this Agreement and each such copy shall be considered an original. This Agreement may be signed in one or more counterparts. All executed copies of this Agreement, and photocopies thereof (including facsimile copies of the

signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

e. No Reliance. Each Party to this Agreement warrants that he, she or it is acting upon his, her, or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

f. Governing Law. This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the state of Missouri, without regard to conflict of laws rules. This Agreement shall be enforced in the Circuit Court of Clay County, Missouri. The Settling Defendants, Plaintiff Morrow and the RFC Settlement Class Members waive any objection that each such party may now have or hereafter have to the venue of such suit, action, or proceeding and irrevocably consent to the jurisdiction of the Clay County Court in any such suit, action or proceeding, and agree to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding.

g. Reservation of Jurisdiction. Notwithstanding the dismissal of and entry of a judgment on the Released Claims, the Court shall retain jurisdiction for purposes of enforcing the terms of this Agreement and implementing the Settlement, including the issuance of injunctions against actions brought by RFC Settlement Class Members in violation of the Final Judgment.

h. Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.

i. Mutual Preparation. This Agreement shall not be construed more strictly against

one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

j. Gender Neutrality. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa.

k. Taxes. All RFC Settlement Class Members shall be responsible for paying and/or reporting any and all federal, state and local income taxes due on the payments made to them pursuant to the Settlement.

l. No Other Financial Obligations on the Settling Defendants. The Settling Defendants shall not be liable or obligated to pay any fees, expenses, costs or disbursements to Plaintiff Morrow, Plaintiffs' Counsel or the RFC Settlement Class Members, either directly or indirectly, in connection with the Litigation or the administration of this Agreement, other than the amounts expressly provided for herein. Any miscellaneous settlement administration expenses of any kind shall be advanced by Plaintiffs' Counsel and reimbursed from the Settlement Funds, subject to the Court's approval.

m. Non-Use of the Agreement. In addition to the above, and as may be otherwise stated herein, Plaintiff Morrow and Plaintiffs' Counsel agree that neither this Agreement, nor its terms, nor any related negotiations, statements or court proceedings, nor the Settlement Funds, Net Settlement Funds, or any other amounts specified herein may be offered or used in the lawsuit, styled *In Re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Second Mortgage Loan Litigation*, Consolidated Case No. 03-cv-00425 (MDL No. 1674), or any of the individual cases and/or lawsuits of which MDL No. 1674 is comprised, or

any other litigation, action or proceeding in which any of the Settling Defendants are a party for any purpose except the following: (a) to enforce the terms of this Agreement; or (b) as the Court may otherwise order or direct, in which event the Party or Parties or Plaintiffs' Counsel shall request the Court to review the Agreement *in camera*, but shall make any submission or filing as required by the Court regardless of the decision. Plaintiff Morrow and Plaintiffs' Counsel further agree that they will not request, seek or suggest that this Agreement, or its terms, or any related negotiations, statements or court proceedings, or the Settlement Funds, Net Settlement Funds, or any other amounts specified herein should or will be offered or used in the lawsuit, styled *In Re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Second Mortgage Loan Litigation*, Consolidated Case No. 03-cv-00425 (MDL No. 1674), or any of the individual cases and/or lawsuits of which MDL No. 1674 is comprised, or any other litigation, action or proceeding in which any of the Settling Defendants are a party for any purpose except to enforce the terms of this Agreement.

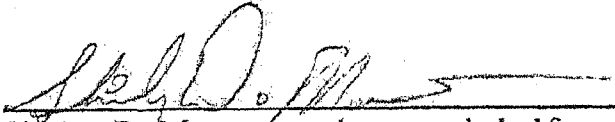
n. Authority. With respect to themselves, each of the Parties to this Agreement represents, covenants and warrants that (a) they have the full power and authority to enter into and consummate all transactions contemplated by this Agreement and have duly authorized the execution, delivery and performance of this Agreement and (b) the person executing this Agreement has the full right, power and authority to enter into this Agreement on behalf of the party for whom he/she has executed this Agreement, and the full right, power and authority to execute any and all necessary instruments in connection herewith, and to fully bind such party to the terms and obligations of this Agreement.

o. Exhibits. The exhibits attached to this Agreement are incorporated herein as though fully set forth.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed as of this ___ day of _____ 2011.

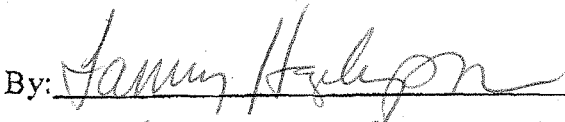
SHIRLEY D. MORROW

Dated: April 26, 2011


Shirley D. Morrow, on her own behalf and on behalf of the RFC Settlement Class Members.

RESIDENTIAL FUNDING COMPANY, LLC,
individually as attorney-in-fact for the Settling Defendants

Dated: ~~April~~ ^{JUNE} 24, 2011

By: 
Title: General Counsel

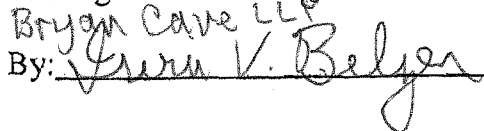
Plaintiffs' Counsel

Dated: April __, 2011

By: _____

Settling Defendants' Counsel

Dated: April __, 2011

Bryon Cave LLC
By: 

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed as of this ___ day of _____ 2011.

SHIRLEY D. MORROW

Dated: April __, 2011

Shirley D. Morrow, on her own behalf and on behalf of the RFC Settlement Class Members.

RESIDENTIAL FUNDING COMPANY, LLC,
individually as attorney-in-fact for the Settling Defendants

Dated: April __, 2011

By: Jenny Hylton
Title: General Counsel

Plaintiffs' Counsel

Dated: April 27, 2011

By: [Signature]

Settling Defendants' Counsel

Dated: April __, 2011

By: _____