

# SETTLEMENT AGREEMENT

**M2006-9992752**

This Settlement Agreement is entered into by and between:

THE OHIO DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS

Consumer Finance Section

77 South High Street, 21<sup>st</sup> Floor  
Columbus, OH 43215-6120

Hereinafter referred to as "DFI."

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**NOVASTAR MORTGAGE, INC.**  
**8140 WARD PARKWAY**  
**KANSAS CITY, MISSOURI 64114**

Hereinafter referred to as "Respondent."

DFI is a state agency charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act ("OMBA"), codified in Chapter 1322 of the Ohio Revised Code ("R.C."). Respondent is a company that held a certificate of registration issued by DFI to engage in business as a mortgage broker pursuant to R.C. Chapter 1322. The registration period ended on April 30, 2005, and Respondent filed an application to renew its certificate, which remains pending. On April 27, 2006, DFI issued its notice to deny Respondent's 2005 mortgage broker certificate renewal on the basis that Respondent had not fulfilled its 2004 continuing education requirement. Respondent requesting a hearing pursuant to Chapter 119 on the matter and that hearing remains pending.

Respondent voluntarily enters into this Settlement Agreement being fully informed of its right to representation by counsel, and its right to reject this Settlement Agreement and to proceed with the formal adjudicative hearing, pursuant to R.C. Chapter 119, on the issues considered herein.

This Settlement Agreement contains the entire Settlement Agreement between the parties. There is no other Settlement Agreement of any kind, verbal or otherwise, on the issues considered herein, which varies the terms of the Settlement Agreement.

## **STIPULATIONS AND ADMISSIONS**

This Settlement Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. DFI is empowered by R.C. 1322.04(B) to renew an applicant's mortgage broker certificate of registration if DFI finds, among other things, that the applicant's operations manager complied with R.C. 1322.052 by completing a minimum of six (6) hours of approved continuing education ("CE") the prior calendar year.
- B. DFI is authorized by R.C. 1322.10(A)(1)(a) to refuse to renew an applicant's mortgage broker certificate of registration if DFI finds that the applicant has violated "or fail[ed] to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted under a certificate of registration[.]"
- C. R.C. 1322.052 requires every operations manager to complete at least six (6) hours of approved continuing education every calendar year.
- D. Respondent's registration period ended on April 30, 2005. In an effort to renew its certificate, Respondent submitted to DFI a renewal application, which remains pending.
- E. Respondent admits that it failed to comply with the CE requirement of R.C. 1322.052 for the 2004 calendar year.
- F. Because Respondent failed to comply with R.C. 1322.052, DFI has the authority to refuse to renew Respondent's mortgage broker certificate of registration.
- G. DFI enters into this Settlement Agreement in lieu of formal proceedings under R.C. Chapter 119 to deny Respondent's renewal application for a mortgage broker certificate of registration on the basis of Respondent's admitted noncompliance with the OMBA. Specifically, this Settlement Agreement addresses all non-compliance issues and findings made in the Division's notice of April 27, 2006, case number M2006-9992752.
- H. DFI expressly reserves the right to institute formal proceedings based upon any violation of or noncompliance with any provision of the OMBA not specifically addressed herein, whether occurring before or after the effective date of this Settlement Agreement.

### **AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal disciplinary proceedings at this time, Respondent knowingly and voluntarily agrees with DFI to the following terms, conditions and limitations:

1. For the non-compliance of law described herein, Respondent agrees to pay a penalty of two thousand dollars (\$2,000.00). Payment shall be in the form of a **cashier's check or money order**, made payable to "DFI Consumer Finance," and shall be submitted to DFI with this Settlement Agreement.

2. Prior to submitting the Settlement Agreement, the person designated as Respondent's operations manager must have completed six (6) hours of approved CE. Copies of the attendance certificate(s) must be submitted with this Settlement Agreement. Respondent further agrees to write in RED INK on the face of the attendance certificate(s) submitted: "PLEASE APPLY TO 2004 CE REQUIREMENT."
3. Respondent understands and agrees that the CE credits earned and submitted as part of this Settlement Agreement are to be applied only to Respondent's 2004 CE requirement; these credits cannot be applied to Respondent's 2006 CE requirement, which must be completed by December 31, 2006.
4. Respondent understands and agrees that if Respondent fails to follow any term of this Settlement Agreement or any filing instruction, DFI may reject the Settlement Agreement and continue with formal proceedings under R.C. Chapter 119 to deny Respondent's renewal application for a mortgage broker certificate of registration.
5. Respondent understands that it must comply with every provision herein, and that to be considered for acceptance by DFI, the ORIGINAL properly executed Settlement Agreement, with all 5 pages attached, must be received in the offices of DFI on or before December 15, 2006.
6. If Respondent properly files this Agreement and fully complies with every provision, DFI agrees to execute the same, terminate DFI's notice of April 27, 2006, approve Respondent's renewal application(s), and to issue Respondent a mortgage broker certificate(s) of registration for the period ending April 30, 2006. Upon issuance of the certificate of registration, Respondent's R.C. 119 hearing request in the matter of M2006-9992752 is withdrawn.
7. Should DFI discover that Respondent has provided DFI with false, fraudulent, misleading, or incomplete information pertaining to this Agreement, Respondent agrees that such evidence will establish that Respondent's character and general fitness do not command the confidence of the public and warrant the belief that it will conduct business honestly and fairly in compliance with the purposes of the OMBA. Respondent further agrees that such discovery is grounds for permanent revocation of its mortgage broker certificate of registration.
8. The above-described terms, conditions and limitations may be amended or terminated at any time upon the written agreement of both parties.

### **FAILURE TO COMPLY**

If, in the discretion of DFI, Respondent appears to have violated or breached any term or condition of this Settlement Agreement, DFI reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of any law occurring before, on, or after the effective date of this Settlement Agreement.

### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

Respondent acknowledges that it has been advised by DFI to seek legal counsel if it has any question concerning the terms and/or effect of this Settlement Agreement.

Respondent hereby releases DFI, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter. Respondent shall not seek attorney's fees or other costs arising from the within matter.

This Settlement Agreement shall be considered a public record as that term is used in R.C. 149.43, and may be reported to appropriate organizations, data banks, and governmental bodies, or released to the general public.

This Settlement Agreement in no way binds or limits actions DFI may take with respect to Respondent or any other person, individual, or company, for the same or similar violations in the future.

### **EFFECTIVE DATE**

It is expressly understood that this Settlement Agreement shall become effective upon the last date of signature below.

The Settlement Agreement must be signed by: the owner if the mortgage broker registrant is a sole proprietor; all partners if the registrant is a partnership; at least one member if a limited liability company; and the president and secretary, as duly authorized by resolution of the board of directors, if the registrant is a corporation. **The ORIGINAL, signed Agreement with all pages attached must be returned.** Keep a copy for your records.

PRINTED Name of authorized signor #1: \_\_\_\_\_  
Date

SIGNATURE of authorized signor #1: \_\_\_\_\_  
Date

PRINTED Name of authorized signor #2: \_\_\_\_\_

Date

SIGNATURE of authorized signor #2:

\_\_\_\_\_  
Date

PRINTED Name of authorized signor #3:

\_\_\_\_\_  
Date

SIGNATURE of authorized signor #3:

\_\_\_\_\_  
Date

PRINTED Name of authorized signor #4:

\_\_\_\_\_  
Date

SIGNATURE of authorized signor #4:

\_\_\_\_\_  
Date

\_\_\_\_\_  
HAYDN RICHARDS, JR.  
Attorney for Respondent

DATE

\_\_\_\_\_  
JAMES EVANS  
Assistant Attorney General

DATE

\_\_\_\_\_  
ROBERT M. GRIESER  
Deputy Superintendent for Consumer Finance  
Ohio Division of Financial Institutions

DATE

\_\_\_\_\_  
MARK L. RHEA  
Consumer Finance Licensing Attorney

DATE

Reviewed by:

\_\_\_\_\_  
Riene Roszak  
Continuing Education Coordinator