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9  
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: ) CFL LICENSE NO.: 603H883;  
13 ) 60DBO-101361;  
14 THE COMMISSIONER OF BUSINESS ) 60DBO-103491;  
15 OVERSIGHT, ) 60DBO-94374  
16 ) 60DBO-96737  
17 Complainant, )  
18 v. ) AMENDMENT TO CONSENT ORDER  
19 )  
20 WYNDHAM CAPITAL MORTGAGE, INC. )  
21 )  
22 Respondent, )  
23 )  
24 )  
25 )

26 This Amendment to Consent Order is entered into between the Commissioner of Business  
27 Oversight (Complainant or Commissioner) and Respondent Wyndham Capital Mortgage, Inc.  
28 (Respondent) and is made with respect to the following facts:

29 **I.**

30 **RECITALS**

31 A. On April 24, 2020, the Commissioner entered into a Consent Order with Respondent  
32 regarding the filing of Respondent's 2019 annual report as a licensed finance lender pursuant to  
33 Financial Code section 22159. The true and correct copy of the Consent Order is attached hereto.  
34 Subsequently, the Commissioner requested modification of the Consent Order to accurately reflect

1 all licenses of Respondent that were revoked for failure to file its annual report by March 15, 2020.  
2 This Amendment to the Consent Order includes the following licenses held by Respondent that were  
3 revoked: 603H883, 60DBO-101361, 60DBO-103491, 60DBO-94374, 60DBO-96737. All other  
4 terms and conditions contained in the Consent Order will remain unchanged. NOW, THEREFORE,  
5 in consideration of the foregoing, and the terms and conditions set forth herein, the parties agree as  
6 follows:

7 B. The Commissioner has jurisdiction over the licensing and regulation of persons and  
8 entities engaged in the business of finance lending or brokering under the California Financing Law  
9 (CFL) (Fin. Code, § 22000 et seq.).

10 C. Respondent is a corporation, with a principal place of business at 4064 Colony Road,  
11 Morrocroft 2, Floor 2 and 3, Charlotte, North Carolina 28211.

12 D. Respondent is licensed as a finance lender under the CFL with license numbers  
13 603H883, 60DBO-101361, 60DBO-103491, 60DBO-94374, 60DBO-96737.

14 E. Respondent does not operate any offices in California.

15 F. In accordance with Financial Code section 22159, CFL licensees must file an annual  
16 report with the Commissioner by March 15 of each year (Annual Report).

17 G. On December 16, 2019, the Commissioner notified CFL licensees of the March 15,  
18 2020 deadline to file their annual reports by sending notice to the email address of each CFL  
19 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated  
20 November 22, 2013. The notification admonished licensees that the Commissioner could assess  
21 penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

22 H. On January 29, 2020, the Commissioner again notified CFL licensees of the March  
23 15, 2020 deadline to file their annual reports by sending notice to the email address each CFL  
24 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated  
25 November 22, 2013. The notification again warned that the Commissioner could assess monetary  
26 penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

27 I. On March 2, 2020, the Commissioner again notified CFL licensees of the March 15,  
28 2020 deadline to file their annual reports by sending notice to the email address each CFL licensee

1 established pursuant to the Commissioner’s Order on Electronic Communications, dated November  
2 22, 2013. The notification warned that the Commissioner could assess penalties and summarily  
3 revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

4 J. As of March 15, 2020, Respondent had not filed its Annual Report with the  
5 Commissioner. As a result, the Commissioner issued a notice on March 18, 2020 to Respondent to  
6 Respondent’s email address established pursuant to the Commissioner’s Order on Electronic  
7 Communications, dated November 22, 2013, advising Respondent that it should file its annual report  
8 by or before March 30, 2020 or else its license would be summarily revoked pursuant to Financial  
9 Code section 22715 (Notice email).

10 K. As of March 30, 2020, Respondent had not filed its Annual Report with the  
11 Commissioner as directed in the Notice Email. As a result, on April 3, 2020, the Commissioner  
12 issued an Order Summarily Revoking California Finance Lender and / or Broker’s License Pursuant  
13 to Financial Code Section 22715 for CFL License Numbers 603H883, 60DBO-101361, 60DBO-  
14 103491, 60DBO-94374, 60DBO-96737 (Summary Revocation Order).

15 L. Upon receiving the Summary Revocation Order(s), Respondent timely notified the  
16 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order(s).

17 M. On April 8, 2020 Respondent submitted its Annual Report, which was due on March  
18 15, 2020, 17 business days late. Pursuant to Financial Code Section 22715, the maximum penalty  
19 that may be imposed for filing 17 business days late is \$6,500.00 (\$100 per business day for the first  
20 five business days and \$500 per business day thereafter up to a maximum of \$25,000).

21 N. In connection with these proceedings, Respondent represented to the Commissioner  
22 that it had taken no new applications under its license.

23 O. The Commissioner finds that entering into this Consent Order is in the public interest  
24 and consistent with the purposes fairly intended by the policies and provisions of the CFL.

25 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
26 forth herein, the parties agree as follows:  
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**II.**

**TERMS AND CONDITIONS**

1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy and expediency and without the uncertainty and expense of a hearing or other litigation.

2. Order Rescinding Penalty Order. The Commissioner hereby rescinds the Order Summarily Revoking California Finance Lenders License which had been issued on April 3, 2020.

3. Administrative Penalty. Respondent shall pay an administrative penalty of \$3,500.00 no later than 30 days after the effective date of this Consent Order as defined in paragraph 25. The penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department of Business Oversight and transmitted to the attention of Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment must be concurrently sent to Taylor Herrlinger, Counsel, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.

4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph 3, the Commissioner may summarily suspend Respondent from engaging in business under its license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent hereby waives any notice or hearing rights afforded under the Administrative Procedure Act, including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to contest the summary suspension contemplated by this paragraph.

5. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement action on the charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law. Respondent further expressly waives any requirement for the filing of an Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,

1 Respondent effectively consents to this Consent Order and Order rescinding Penalty Order becoming  
2 final.

3         6.       Full and Final Resolution. The parties hereby acknowledge and agree that this  
4 Consent Order is intended to constitute a full and final resolution of the violations described herein,  
5 and that no further proceedings or actions will be brought by the Commissioner in connection with  
6 these matters except under the CFL or any other provision of law, excepting therefrom any  
7 proceeding to enforce compliance with the terms of this Consent Order.

8         7.       Failure to Comply with Consent Order. Respondent agrees that if it fails to comply  
9 with the terms of this Consent Order, the Commissioner may, in addition to all other available  
10 remedies it may invoke under the CFL, summarily suspend/revoke the CFL license of Respondent  
11 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such  
12 summary suspensions/revocations which may be afforded under the CFL, the California  
13 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law  
14 in connection therewith.

15         8.       Information Willfully Withheld or Misrepresented. This Consent Order may be  
16 revoked, and the Commissioner may pursue any and all remedies available under law against  
17 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or  
18 misrepresented information used for and relied upon in this Consent Order.

19         9.       Future Actions by Commissioner. If Respondent fails to comply with the terms of the  
20 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
21 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
22 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees or  
23 successors for any and all unknown violations of this CFL.

24         10.      Assisting Other Agencies. Nothing in this Consent Order limits the  
25 Commissioner's ability to assist any other government agency (city, county, state or federal) with  
26 any prosecution, administrative, civil or criminal action brought by that agency against Respondent  
27 or any other person based on any of the activities alleged in this matter or otherwise.  
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1           11.    No Presumption Against Drafter. Each party acknowledges that it has had the  
2 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties  
3 intend no presumption for or against the drafting party will apply in construing any part of this  
4 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or  
5 corresponding provisions of any successor statute, which provide that in cases of uncertainty,  
6 language of a contract should be interpreted most strongly against the party who caused the  
7 uncertainty to exist.

8           12.    Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
9 has received independent advice from its attorney(s) and/or representatives with respect to the  
10 advisability of executing this Consent Order.

11           13.    Headings. The headings to the paragraphs of this Consent Order are inserted for  
12 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
13 the provisions hereof.

14           14.    Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
15 interest.

16           15.    Reliance. Each of the parties represents, warrants, and agrees that in executing this  
17 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal  
18 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent  
19 Order it has placed no reliance on any statement, representation, or promise of any other party, or  
20 any other person or entity not expressly set forth herein, or upon the failure of any party or any other  
21 person or entity to make any statement, representation, or disclosure of anything whatsoever. The  
22 parties have included this clause: (1) to preclude any claim that any party was in any way  
23 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
24 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

25           16.    Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
26 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.  
27 The waiver of any provision of this Consent Order will not be deemed a waiver of any other  
28 provision. No waiver by either party of any breach of, or of compliance with, any condition or

1 provision of this Consent Order by the other party will be considered a waiver of any other condition  
2 or provision or of the same condition or provision at another time.

3 17. Full Integration. This Consent Order is the final written expression and the complete  
4 and exclusive statement of all the agreements, conditions, promises, representations, and covenants  
5 between the parties with respect to the subject matter hereof, and supersedes all prior or  
6 contemporaneous agreements, negotiations, representations, understandings, and discussions  
7 between and among the parties, their respective representatives, and any other person or entity, with  
8 respect to the subject matter covered hereby.

9 18. Governing Law. This Consent Order will be governed by and construed in  
10 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court  
11 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
12 forum to the maintenance of such action or proceeding in such court.

13 19. Counterparts. This Consent Order may be executed in one or more separate  
14 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
15 together constitute a single document.

16 20. Effect Upon Future Proceedings. If Respondent applies for any license, permit or  
17 qualification under the Commissioner's current jurisdiction, or are the subject of any future action by  
18 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for  
19 the purpose of such application(s) or enforcement proceeding(s).

20 21. Voluntary Agreement. Respondent hereby enters in this Consent Order voluntarily  
21 and without coercion and acknowledges that no promises, threats, or assurances have been made by  
22 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each  
23 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily  
24 and without any duress or undue influence of any kind from any source.

25 22. Notice. Any notice required under this Consent Order be provided to each party at  
26 the following addresses:

27 To Wyndham Capital Mortgage, Inc. Wyndham Capital Mortgage, Inc.  
28 4064 Colony Road, Morroccroft 2, Floor 2 and 3  
Charlotte, North Carolina 28211  
licensinghelp@wyndhamcapital.com

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To the Commissioner:

Taylor Herrlinger, Counsel  
Department of Business Oversight  
1515 K Street, Suite 200  
Sacramento, California 95814  
[Taylor.Herrlinger@dbo.ca.gov](mailto:Taylor.Herrlinger@dbo.ca.gov)

23. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

24. Public Record. Respondent hereby acknowledges that the Consent Order is and will be a matter of public record.

25. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following email address: [licensinghelp@wyndhamcapital.com](mailto:licensinghelp@wyndhamcapital.com)

26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: April 27, 2020

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_

MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

WYNDHAM CAPITAL MORTGAGE, INC.

Dated: April 27, 2020

By \_\_\_\_\_

ASHLEY WINGE  
Compliance Manager