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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
9 OF THE STATE OF CALIFORNIA  
10

11 In the Matter of: )  
12 THE COMMISSIONER OF FINANCIAL ) CRMLA LICENSE No.: 413-0722  
PROTECTION AND INNOVATION, ) CFL LICENSE No.: 603-K249  
13 )  
14 Complainant, ) SETTLEMENT AGREEMENT  
15 v. )  
16 LENOX FINANCIAL MORTGAGE )  
CORPORATION, )  
17 Respondent. )

18  
19 This Settlement Agreement is entered into by and between the Commissioner of Financial  
20 Protection and Innovation (Commissioner) and Lenox Financial Mortgage Corporation (Lenox), and  
21 is made with respect to the following facts:  
22

23 **I.**

24 **Recitals**

25 A. The Department of Financial Protection and Innovation (Department), through the  
26 Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in  
27 the business of lending and/or servicing pursuant to the California Residential Mortgage Lending Act  
28 (CRMLA) (Financial Code §50000 et seq.) and lending and/or brokering under the California

1 Financing Law (CFL) (Financial Code § 22000 et seq.), including mortgage loan originators.

2 B. Lenox is a corporation in good standing, duly formed and existing pursuant to the laws  
3 of the State of California and is authorized to conduct business in the State of California.

4 C. Lenox is a residential mortgage lender and servicer licensed by the Commissioner  
5 pursuant to the CRMLA. Lenox has its principal place of business for its CRMLA license located at  
6 200 East Sandpointe, Suite 800, Santa Ana, California 92707. Lenox currently has 26 branch office  
7 locations under its CRMLA license. Lenox employs mortgage loan originators in its CRMLA  
8 business.

9 D. Lenox is also a finance lender and broker licensed by the Commissioner pursuant to  
10 the CFL. Lenox has its principal place of business for its CFL license located at 200 East Sandpointe,  
11 Suite 800, Santa Ana, California 92707. Lenox has no branch office locations under its CFL license.  
12 Lenox employs mortgage loan originators in its CFL business.

13 E. Wesley C. Hoagland is the chief executive officer of Lenox and is authorized to enter  
14 into this Settlement Agreement on behalf of Lenox.

15 F. On June 2, 2021, Lenox was personally served by the Commissioner with a Notice of  
16 Intention to Issue Order Suspending Residential Mortgage Lender and Servicer Licenses and Finance  
17 Lender License and to Levy Penalties; Accusation and accompanying documents dated May 20, 2021  
18 (Accusation). In the Accusation, the Commissioner alleged that Lenox had failed to pay 2% interest  
19 on borrower escrow impounds as required under Financial Code section 50202, subdivision (d)  
20 and/or Civil Code section 2954.8 (Accusation Allegations).

21 G. On June 3, 2021, Lenox timely submitted a Notice of Defense to the Commissioner  
22 requesting an administrative hearing on the Accusation Allegations.

23 H. It is the intention of Lenox and the Commissioner (the Parties) to resolve the  
24 Accusation Allegations without the necessity of a hearing.

25 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
26 contained herein, the Parties agree as follows:

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1 II.

2 **Terms and Conditions**

3 1. **Purpose.** This Settlement Agreement resolves the Accusation Allegations in a  
4 manner that avoids the expense of a hearing and other possible court proceedings, protects  
5 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of  
6 the Escrow Law.

7 2. **Penalty.** Lenox shall pay to the Commissioner a penalty of \$15,000.00 (Penalty). The  
8 Penalty is payable as follows - \$7,500.00 is due within 10 days of the Effective Date, as defined in  
9 Paragraph 28 below (Effective Date) with the remaining \$7,500.00 due 30 days thereafter. Payment  
10 should be made payable in the form of a cashier's check or Automated Clearing House deposit to the  
11 "Department of Financial Protection and Innovation" and transmitted to the attention of: Accounting  
12 – Enforcement Division, Department of Financial Protection and Innovation, 2101 Arena Boulevard,  
13 Sacramento, California 95834. Notice of such payment shall be forwarded to Judy L. Hartley, Senior  
14 Counsel, Department of Financial Protection and Innovation, Enforcement Division, 320 West 4th  
15 Street, Suite 750, Los Angeles, California 90013.

16 3. **Restitution.** Lenox represents that it has conducted self-audits regarding payment of  
17 escrow impound interest for the period commencing March 1, 2017 through November 5, 2020 and  
18 made restitution totaling \$84,848.53 on 1,191 loans.

19 4. **Restitution Reports.** Lenox has previously submitted reports to the Commissioner  
20 detailing the findings of the audit described in Paragraph 3 above. The Commissioner's receipt of the  
21 audit reports does not constitute an approval that the audit reports are correct and does not otherwise  
22 limit the Commissioner's audit or examination rights under this Settlement Agreement.

23 5. **December 1, 2020 through November 30, 2021 Audit for Escrow Impound**  
24 **Interest.** Lenox also agrees to conduct a self-audit of payment of escrow impound interest for all  
25 California loans serviced by Lenox between December 1, 2020 and November 30, 2021 (escrow  
26 impound interest audit). Lenox shall submit to the Commissioner the results of the escrow impound  
27 interest audit (escrow impound interest audit report) on or before February 28, 2022. The escrow  
28 impound interest audit report shall be submitted in Microsoft Excel format and broken down into two

1 reports; paid off loans and active loans. The escrow impound interest audit report for paid off loans  
2 shall include the borrower loan number, name, address, payoff date, interest earned on escrow,  
3 amount of interest paid (on issued check), check number, check date, and date check mailed to  
4 borrower. The escrow impound interest audit report for active loans shall include the borrower loan  
5 number, name, address, interest earned on escrow, and date interest earned on escrow credited/posted  
6 to Payment History. Lenox further agrees that it shall pay an administrative penalty to the  
7 Commissioner, upon submission of the escrow impound interest audit reports, equal to \$100.00 for  
8 each loan where Lenox failed to timely pay escrow impound interest.

9       6.       **December 1, 2020 through November 30, 2021 Audit Restitution.** Lenox shall  
10 make appropriate restitution to include interest at the rate of 10 percent per annum from the date  
11 escrow impound interest should have been paid for every failure to timely pay escrow impound  
12 interest found pursuant to the audit described in Paragraph 5 above. Restitution shall be credited to  
13 the affected borrower(s) account, or if Lenox is no longer servicing the loan, restitution shall be  
14 mailed to the last known address of the borrower prior to submission of the escrow impound interest  
15 audit report to the Commissioner.

16       7.       **Unclaimed Restitution.** Lenox shall escheat any unclaimed restitution to the  
17 California State Controller’s Office within the period provided by Code of Civil Procedure section  
18 1520 of the Unclaimed Property Law (Code of Civ. Proc., section 1500, et seq.).

19       8.       **Waiver of Hearing Rights.** Lenox acknowledges the Commissioner is ready,  
20 willing, and able to proceed with the administrative enforcement action described in Paragraph F  
21 above. Lenox hereby waives its right to any hearing, and to any reconsideration, appeal, or other right  
22 to review which may be afforded pursuant to the CRMLA, the CFL, the California Administrative  
23 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection  
24 herewith. By waiving such rights, Lenox effectively consents to this Settlement Agreement becoming  
25 final.

26       9.       **Consideration.** Except as otherwise set forth herein, in consideration of Lenox’s  
27 agreement to the submission of an escrow impound interest self-audit and payment of penalties as  
28 provided for in paragraphs 2 and 5 above, the Commissioner hereby agrees not to suspend the

1 CRMLA and CFL licenses of Lenox as a result of this action.

2 10. **Failure to Comply.** Lenox agrees that if it fails to comply with the provisions of this  
3 Settlement Agreement within 5 business days of written notice from the Commissioner of Lenox’s  
4 failure to comply, the Commissioner may, in addition to all other available remedies under the CFL,  
5 summarily suspend the CRMLA and CFL licenses of Lenox until Lenox is in compliance. Upon  
6 failure to cure within the 5 business days’ written notice period, Lenox waives any notice and hearing  
7 rights to contest such summary suspension which may be afforded under the CRMLA, the CFL, the  
8 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law in  
9 connection therewith.

10 11. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this  
11 Settlement Agreement is intended to constitute a full, final, and complete resolution of the  
12 Accusation, and that no further proceedings or actions will be brought by the Commissioner in  
13 connection with the Accusation under the CRMLA, the CFL or any other provision of law, excepting  
14 therefrom any proceeding to enforce compliance with the terms of this Settlement Agreement.

15 12. **Information Willfully Withheld or Misrepresented.** This Settlement Agreement  
16 may be revoked, and the Commissioner may pursue any and all remedies available under the law  
17 against Lenox if the Commissioner discovers that Lenox knowingly or willfully withheld information  
18 used for and relied upon in this Settlement Agreement.

19 13. **Assisting Other Agencies.** Nothing in this Settlement Agreement limits the  
20 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with  
21 any administrative, civil or criminal prosecutions brought by that agency against Lenox or any other  
22 person based upon any of the activities alleged in this matter or otherwise.

23 14. **Headings.** The headings to the paragraphs of this Settlement Agreement are for  
24 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
25 the provisions hereof.

26 15. **Binding.** This Settlement Agreement is binding on all heirs, assigns, and/or  
27 successors in interest.

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1           16.     **Reliance.** Each of the Parties represents, warrants, and agrees that in executing this  
2 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own  
3 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Settlement  
4 Agreement it has placed no reliance on any statement, representation, or promise of any other party,  
5 or any other person or entity not expressly set forth herein, or upon the failure of any party or any  
6 other person or entity to make any statement, representation or disclosure of anything whatsoever.  
7 The Parties have included this clause: (1) to preclude any claim that any party was in any way  
8 fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction of  
9 parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

10           17.     **Waiver, Amendments, and Modifications.** No waiver, amendment, or modification  
11 of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the  
12 Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of  
13 any other provision. No waiver by either party of any breach of, or of compliance with, any  
14 condition or provision of this Settlement Agreement by the other party will be considered a waiver of  
15 any other condition or provision or of the same condition or provision at another time.

16           18.     **Full Integration.** This Settlement Agreement is the final written expression and the  
17 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
18 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or  
19 contemporaneous agreements, negotiations, representations, understandings, and discussions between  
20 and among the Parties, their respective representatives, and any other person or entity, with respect to  
21 the subject matter covered hereby.

22           19.     **Governing Law.** This Settlement Agreement will be governed by and construed in  
23 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,  
24 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
25 forum to the maintenance of such action or proceeding in such court.

26           20.     **Counterparts.** This Settlement Agreement may be executed in one or more separate  
27 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
28 together constitute a single document.

1           21.    **Mandatory Disclosure in Future Applications.** Lenox agrees to disclose this  
2 Settlement Agreement in any application for a license, permit, registration, or qualification under  
3 the Commissioner’s current or future jurisdiction.

4           22.    **Effect Upon Future Proceedings.** If Lenox is the subject of any future action by the  
5 Commissioner to enforce this Settlement Agreement, then the subject matter hereof shall be admitted  
6 for the purpose of such action.

7           23.    **Third Parties.** This Settlement Agreement does not create or give rise to any private  
8 rights or remedies against Lenox, create any liability for Lenox, or limit the defenses of Lenox for  
9 any person or entity not a party to this Settlement Agreement.

10          24.    **Voluntary Agreement.** Lenox enters into this Settlement Agreement voluntarily and  
11 without coercion and acknowledges that no promises, threats or assurances have been made by the  
12 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each  
13 represent and acknowledge that he, she, or it is executing this Settlement Agreement completely  
14 voluntarily and without any duress or undue influence of any kind from any source.

15          25.    **Notice.** Any notice/report required under this Settlement Agreement shall be  
16 addressed as follows:

17           To Lenox:   Angelina Robertson, Esq.  
18   Lenox Financial Mortgage Corporation  
19   200 East Sandpointe, Suite 800  
20   Santa Ana, California 92707  
21   Angelina.Robertson@lenoxhomeloans.com

22           To the Commissioner:                           Judy L. Hartley, Esq.  
23   Senior Counsel  
24   Department of Financial Protection and Innovation  
25   320 W. 4<sup>th</sup> Street, Suite 750  
26   Los Angeles, California 90013-2344  
27   judy.hartley@dfpi.ca.gov

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

29          27.    **Public Record.** Lenox hereby acknowledges that this Settlement Agreement is and  
will be a matter of public record.

1           28.    **Effective Date.** This Settlement Agreement shall become final and effective when  
2 signed by all Parties and delivered by the Commissioner’s counsel via e-mail to the Lenox’s counsel,  
3 Angelina Robertson, Esq. at Angelina.Robertson@lenoxhomeloans.com

4           29.    **Authority to Sign.** Each signatory hereto covenants that he or she possesses all  
5 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the  
6 obligations set forth herein.

7 Dated: September 24, 2021                   CHRISTOPHER S. SHULTZ  
8   Acting Commissioner of Financial Protection and Innovation

9   By \_\_\_\_\_  
10    MARY ANN SMITH  
11    Deputy Commissioner

12 Dated: September 24, 2021                   LENOX FINANCIAL MORTGAGE CORPORATION

13   By \_\_\_\_\_  
14    WESLEY C. HOAGLAND, Chief Executive Officer

15 APPROVED AS TO FORM:

16  
17 By \_\_\_\_\_  
18 ANGELINA ROBERTSON, ESQ.  
19 General Counsel for LENOX FINANCIAL  
20 MORTGAGE CORPORATION  
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