

1 CLOTHILDE V. HEWLETT  
Commissioner  
2 MARY ANN SMITH  
Deputy Commissioner  
3 SEAN ROONEY  
Assistant Chief Counsel  
4 QUINCY VIEN (State Bar No. 334617)  
Counsel  
5  
6 Department of Financial Protection and Innovation  
320 West 4<sup>th</sup> Street, Suite 750  
7 Los Angeles, California 90013  
Telephone: (213) 819-0358  
8 Email: Quincy.Vien@dfpi.ca.gov

9 Attorneys for Complainant

11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
12 OF THE STATE OF CALIFORNIA

13 In the Matter of:	)	CFL LICENSE NO.: 60DBO-151137
14 THE COMMISSIONER OF FINANCIAL	)	CONSENT ORDER
15 PROTECTION AND INNOVATION,	)	
16 Complainant,	)	
17 v.	)	
18 SENIOR REAL ESTATE FINANCE	)	
19 ACCOUNT (N) FACILITY BORROWER,	)	
20 LLC,	)	
21 Respondent.	)	

22 This Consent Order is entered into between the Commissioner of Financial Protection and  
23 Innovation (Commissioner) and Senior Real Estate Finance Account (N) Facility Borrower, LLC  
24 (Respondent) and is made with respect to the following facts:

25 **I.**

26 **RECITALS**

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

1 B. Respondent is a limited liability company with a principal place of business at 250  
2 Vesey Street, 11<sup>th</sup> Floor, New York, New York 10281.

3 C. Respondent is licensed as a finance lender under the CFL with main license number  
4 60DBO-151137.

5 D. Respondent operates no branch office in California.

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

8 F. As of March 15, 2022, Respondent had not filed its Annual Report with the  
9 Commissioner. As a result, the Commissioner issued a notice on March 18, 2022 to Respondent to  
10 the email address that Respondent established pursuant to the Commissioner's Order on Electronic  
11 Communications, dated November 22, 2013, advising Respondent that it should file its Annual  
12 Report by or before March 30, 2022 or else its license would be summarily revoked pursuant to  
13 Financial Code section 22715.

14 G. As of March 30, 2022, Respondent had not filed its Annual Report with the  
15 Commissioner as directed in the March 18, 2022 notice. As a result, on April 19, 2022, the  
16 Commissioner issued an Order Summarily Revoking California Finance Lender and/or Broker  
17 License(s) pursuant to Financial Code Section 22715 for CFL License Number 60DBO-151137  
18 (Summary Revocation Order).

19 H. Upon receiving the Summary Revocation Order, Respondent timely notified the  
20 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order.

21 I. On May 2, 2022, Respondent submitted its Annual Report, which was due on March  
22 15, 2022, 33 business days late. Pursuant to Financial Code Section 22715, the maximum penalty  
23 that may be imposed for filing 33 business days late is \$14,500.00 (\$100 per business day for the  
24 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

25 J. In connection with these proceedings, Respondent represented to the Commissioner  
26 that it had taken no new applications under its license.

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

1 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
2 forth herein, the parties agree as follows:

3 II.

4 **TERMS AND CONDITIONS**

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

7 2. Order Rescinding the Summary Revocation Order. The Commissioner hereby  
8 rescinds the Summary Revocation Order which had been issued on April 19, 2022 (Summary  
9 Revocation Order).

10 3. Administrative Penalty. Respondent shall pay an administrative penalty of  
11 \$13,500.00 no later than 30 days after the effective date of this Consent Order as defined in  
12 paragraph 25. The penalty must be made payable in the form of a cashier’s check or Automated  
13 Clearing House deposit to the Department of Financial Protection and Innovation and transmitted to  
14 the attention of Accounting – Litigation, Department of Financial Protection and Innovation, 2101  
15 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent  
16 to Quincy Vien, Counsel, Department of Financial Protection and Innovation, 320 West 4<sup>th</sup> Street,  
17 Suite 750, Los Angeles, California 90013.

18 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph  
19 3, the Commissioner may summarily suspend Respondent from engaging in business under its  
20 license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent  
21 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,  
22 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any  
23 other provision of law to contest the summary suspension contemplated by this paragraph.

24 5. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready,  
25 willing, and able to proceed with a hearing on the Summary Revocation Order on the charges  
26 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any  
27 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the  
28 California Administrative Procedure Act, the California Code of Civil Procedure, or any other

1 provision of law. Respondent further expressly waives any requirement for the filing of an  
2 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,  
3 Respondent effectively consents to this Consent Order and the Order Rescinding the Summary  
4 Revocation Order becoming final.

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

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

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

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

26 ///

27 ///

28 ///

1           10.    Assisting Other Agencies. Nothing in this Consent Order limits the  
2 Commissioner’s ability to assist any other government agency (city, county, state or federal) with  
3 any prosecution, administrative, civil or criminal action brought by that agency against Respondent  
4 or any other person based on any of the activities alleged in this matter or otherwise.

5           11.    No Presumption Against Drafter. Each party acknowledges that it has had the  
6 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties  
7 intend no presumption for or against the drafting party will apply in construing any part of this  
8 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or  
9 corresponding provisions of any successor statute, which provide that in cases of uncertainty,  
10 language of a contract should be interpreted most strongly against the party who caused the  
11 uncertainty to exist.

12           12.    Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
13 has had the opportunity to receive independent advice from an attorney(s) and/or representatives  
14 with respect to the advisability of executing this Consent Order.

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

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

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

1           16.    Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
2 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.  
3 The waiver of any provision of this Consent Order will not be deemed a waiver of any other  
4 provision. No waiver by either party of any breach of, or of compliance with, any condition or  
5 provision of this Consent Order by the other party will be considered a waiver of any other condition  
6 or provision or of the same condition or provision at another time.

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

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

To Respondent: Senior Real Estate Finance Account (N) Facility Borrower, LLC  
c/o James Sharkey, Senior Vice President  
250 Vesey Street, 11<sup>th</sup> Floor  
New York, New York 10281  
SrrealestatefinanceN@brookfield.com

To Respondent's Counsel: Sherry-Maria Safchuk, Partner  
Buckley LLP  
100 Wilshire Boulevard, Suite 1000  
Santa Monica, California 90401  
ssafchuk@buckleyfirm.com

To the Commissioner: Quincy Vien, Counsel  
Department of Financial Protection and Innovation  
320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013  
Quincy.Vien@dfpi.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: SrrealestatefinanceN@brookfield.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.

///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: June 14, 2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: June 10, 2022

SENIOR REAL ESTATE FINANCE ACCOUNT (N)  
FACILITY BORROWER, LLC

By: \_\_\_\_\_  
JAMES ROBERT SHARKEY  
Senior Vice President  
(On Behalf of Senior Real Estate Finance Account (N)  
Facility Borrower, LLC)