

1 WHEREAS, pursuant to NRS 645B.080, "(e)ach mortgage broker shall keep and
2 maintain at all times at each location where the mortgage broker conducts business in this
3 state complete and suitable records of all mortgage transactions made by the mortgage
4 broker at that location...." See, NRS 645B.080(1).

5 WHEREAS, pursuant to Nevada Administrative Code ("NAC") 645B.072, "(a)s used in
6 NRS 645B.080, the Commissioner interprets 'complete and suitable records' to mean...(f)or
7 loans brokered to private investors, a file that must include all the items required pursuant to
8 subsection 1, if applicable, and any additional documents or disclosures required pursuant to
9 this chapter, chapter 645B of NRS or federal law, including, but not limited to...(i)f the
10 mortgage broker maintains any account pursuant to NRS 645B.175, the mortgage broker
11 must include records that demonstrate compliance with the provisions of NRS 645B.115 and
12 NAC 645B.150 and 645B.160 and any other applicable law...." See, NAC 645B.072(2)(c)

14 WHEREAS, pursuant to NRS 645B.060, with limited exceptions, the Division is
15 charged with conducting "...an annual examination of each mortgage broker doing business
16 in this State...." See, NRS 645B.060(2)(d).

17 WHEREAS, pursuant to NRS 645B.060, the Division conducted a regularly scheduled
18 examination of Respondent's books and records which commenced on July 31, 2009.

19 WHEREAS, during the course of the examination, it was determined that at relevant
20 times herein mentioned, the monthly reconciliations from the payoff collection trust account
21 showed a discrepancy of \$20,400.00 carried over from February 2006. Further, incorrect
22 information was recorded on Respondent's payoff collection trust account reconciliations.
23 Deposits recorded as "deposits in transit" in April 2009 for the payoff collection trust account
24 were, in fact, deposits into the payoff collection trust account in May 2009.

25 WHEREAS, pursuant to NRS 645B.670, with limited exceptions, "(f)or each violation
26 committed by a mortgage broker, the Commissioner may impose upon the mortgage broker
27
28

1 an administrative fine of not more than \$25,000, may suspend, revoke or place conditions
2 upon his license, or may do both, if the mortgage broker...(i)s grossly negligent or
3 incompetent in performing any act for which he is required to be licensed pursuant to the
4 provisions of this chapter...(d)oes not conduct his business in accordance with law or has
5 violated any provision of this chapter, a regulation adopted pursuant to this chapter or an
6 order of the Commissioner....” See, NRS 645B.670(2)(b), (c).

7 WHEREAS, after settlement negotiations, the Division and Respondent (collectively,
8 “the parties”) herein mutually desire to resolve this matter without further proceedings through
9 this Agreement.

10 NOW, THEREFORE, in consideration of the representations, covenants and
11 conditions set forth herein, IT IS HEREBY STIPULATED AND AGREED by the parties that
12 the purported violations found during the examination of Respondent’s books and records
13 shall be settled on the following terms and conditions:

14 1. Respondent admits that it failed to conduct business in accordance with the law
15 by failing to keep and maintain at all times complete and suitable books and records of all
16 mortgage transactions made by Respondent, in violation of NRS 645B.080(1) and NRS
17 645B.670(2)(b), (c), as evidenced by the monthly reconciliations from the payoff collection
18 trust account showing a discrepancy of \$20,400.00 carried over from February 2006 and the
19 incorrect information recorded on Respondent’s payoff collection trust account reconciliations.
20 Deposits recorded as “deposits in transit” in April 2009 for the payoff collection trust account
21 were, in fact, deposits into the payoff collection trust account in May 2009.

22 2. Respondent acknowledges and agrees, with full knowledge, to waive its right to
23 have the Division file a complaint, if one has not been filed by the date that Respondent
24 executes this Agreement, or if a complaint has been filed, to go to a hearing in this matter.

25 3. In light of the parties’ desire to resolve this matter, Respondent shall, pursuant to
26
27
28

1 NRS 645B.670 and/or NRS 622.400, pay to the Division an administrative fine in the amount
2 of Five Thousand Dollars and No Cents (\$5,000.00) and the Division's investigative costs in
3 the amount of One Hundred Eighty Dollars and No Cents (\$180.00). Respondent shall make
4 payment, in full, to the Division of the administrative fine and investigative costs upon its
5 execution of this Agreement.

6 4. Respondent agrees that in the event it violates any of the provisions of this
7 Agreement, the Division shall retain any and all remedies available to it in accordance with
8 NRS Chapter 645B.

9 5. The parties agree and acknowledge that this Agreement shall constitute the
10 complete and final resolution of any issues arising out of the Division's July/August 2009
11 examination of Respondent.
12

13 6. The parties represent and warrant that the persons executing this Agreement on
14 behalf of each party has full power and authority to do so, and has the legal capacity to
15 conduct the legal obligations assigned to it hereunder.

16 7. Respondent further acknowledges and agrees that the Division shall keep the
17 original of this Agreement.
18

19 8. This Agreement may be signed in counterparts and a facsimile signature shall be
20 deemed as valid as an original; however, Respondent shall immediately forward all original
21 signature pages to the Division.

22 9. This Agreement, as well as the rights and obligations of the parties hereto, shall be
23 interpreted, governed, and construed pursuant to the laws of the State of Nevada.

24 10. Any action to enforce this Agreement shall be brought in the Eighth Judicial District
25 Court of the State of Nevada in and for Clark County.
26

27 11. If the Division is successful in any action to enforce this Agreement, the court may
28 award it attorney's fees. It is specifically agreed that reasonable attorney's fees for the State-

1 employed attorneys shall be \$140.00 per hour.

2 12. Failure to declare a breach or the actual waiver of any particular breach of this
3 Agreement or its material terms, by either party, shall not operate as a waiver by such party of
4 any of its rights or remedies as to any other breach.

5 13. Respondent has the right to retain an attorney to review this Agreement at its sole
6 cost and expense and has freely and voluntarily chosen not to do so.

7 14. Other than the fine set forth herein, each side shall pay its own costs and fees,
8 including attorney's fees.

9 15. If any provision contained in this Agreement is held to be unenforceable by a court
10 of law or equity, this Agreement shall be construed as if such a provision(s) did not exist and
11 the unenforceability of such provision(s) shall not be held to render any other provision(s) of
12 this Agreement unenforceable.

13 16. This Agreement constitutes the entire agreement of the parties, and it is intended
14 as a complete and exclusive statement of the promises, representations, negotiations, and
15 discussions of the parties. Unless otherwise expressly authorized by its terms, this Agreement
16 shall be binding upon the parties unless the same is in writing, signed by the respective
17 parties hereto, and approved by the Office of the Attorney General.

18 19. **NOTICE TO RESPONDENT:** By executing this Agreement, you hereby agree that
19 you are waiving certain rights as set forth herein. As Respondent, you are specifically
20 informed that you have the right to request that the Division file an administrative complaint
21 against you, and at any hearing on such a complaint, you would have the right to appear and
22 be heard in your defense, either personally or through your counsel of choice. If the Division
23 were to file a complaint, at the hearing, the Division would have the burden of proving the
24 allegations in the complaint and would call witnesses and present evidence against you. You
25 would have the right to respond and to present relevant evidence and argument on all issues
26
27
28

1 involved. You would have the right to call and examine witnesses, introduce exhibits, and
2 cross-examine opposing witnesses on any matter relevant to the issues involved.

3 You would have the right to request that the Commissioner of the Division issue
4 subpoenas to compel witnesses to testify and/or offer evidence on your behalf. In making this
5 request, you may be required to demonstrate the relevance of the witness's testimony and/or
6 evidence. Other important rights you have are listed in NRS Chapter 645B and NRS
7 Chapter 233B.

8 18. Respondent understands and agrees that this Agreement may be used to show
9 that past violations have occurred should any future disciplinary action be taken by the
10 Division.
11

12 19. In consideration of the execution of this Agreement, Respondent, for itself, its
13 owners, heirs, executors, administrators, successors, and assigns, hereby release, remise,
14 and forever discharge the State of Nevada, the Department of Business and Industry of the
15 State of Nevada, the Division, and each of their members, agents, attorneys (including any
16 and all employees of the Nevada Attorney General), and employees in their individual and
17 representative capacities, from any and all manner of actions, causes of action, suits, debts,
18 judgments, executions, claims, and demands whatsoever, known and unknown, in law or
19 equity, that Respondent ever had, now has, may have, or claim to have against any or all of
20 the persons or entities named in this section, arising out of or by reason of the Division's
21 examination of Respondent, and all other matters relating thereto.
22

23 20. Respondent hereby indemnifies and holds harmless the State of Nevada, the
24 Department of Business and Industry of the State of Nevada, the Division, and each of their
25 members, agents, and employees, and employees of the Nevada Attorney General in their
26 individual and representative capacities against any and all claims, suits, and actions brought
27 against said persons and/or entities by reason of the Division's examination of Respondent,
28

1 this Agreement, and all other matters relating thereto, and against any and all expenses,
2 damages, and costs, including court costs and attorney fees, which may be sustained by the
3 persons and/or entities named in this section as a result of said claims, suits, and actions.

4 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed
5 and intend to be legally bound thereby.

6 Dated this 15th day of February, 2010.

7
8
9 Builder's Capital, Inc.

10 By: 

11 Stephen Brockman

12 Dated this 4th day of MARCH
15 day of February, 2010.

13 State of Nevada
14 Department of Business and Industry
15 Division of Mortgage Lending

16 By: 

17 Joseph L. Waltuch, Commissioner
18
19
20
21
22
23
24
25
26
27
28