

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	FINDINGS OF FACT
Novastar Mortgage, Inc.,)	CONCLUSIONS OF LAW
8140 Ward Parkway,)	AND
Kansas City, Missouri)	AGREEMENT

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Mortgage Bankers Registration and Licensing Act, Neb. Rev. Stat. §§ 45-701 to 45-721 (Reissue 2004; Cum. Supp. 2006) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Reissue 2004), the DEPARTMENT has investigated the actions of Novastar Mortgage, Inc., 8140 Ward Parkway, Kansas City, Missouri (“NOVASTAR”). As a result of such investigation, and being duly advised and informed in the matter, the Director and NOVASTAR enter into the following Findings of Fact, Conclusions of Law, and Agreement.

FINDINGS OF FACT

1. On June 8, 1998, the DEPARTMENT issued a mortgage banker license to NOVASTAR pursuant to Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006). The license has been renewed annually on March 1st of each year thereafter pursuant to Neb. Rev. Stat. § 45-706(3) (Cum. Supp. 2006).
2. On February 25, 2002, NOVASTAR submitted its 2002 Mortgage Banker License Renewal Application (“Renewal Application”) to the DEPARTMENT. Question #8 of the 2002 Renewal Application stated: “Has applicant, or any director or principal

officer or partner or member of applicant, ever been subject to a federal or state administrative investigation or order, if not previously disclosed?" NOVASTAR answered "No."

3. On February 7, 2003, NOVASTAR submitted its 2003 Renewal Application to the DEPARTMENT. Question #8 of the 2003 Renewal Application stated: "Has applicant, or any director or principal officer or partner or member of applicant, ever been subject to a federal or state administrative investigation or order, if not previously disclosed?" NOVASTAR answered "No."

4. On February 19, 2004, NOVASTAR submitted its 2004 Renewal Application to the DEPARTMENT. Question #8 of the 2004 Renewal Application stated: "Has applicant, or any director, shareholder or principal officer or partner or member of applicant, ever been subject to a federal or state administrative investigation or order, if not previously disclosed?" NOVASTAR answered "No."

5. Question #12 of the 2004 Renewal Application stated: "Has applicant, or any director, shareholder, partner, member or principal officer of the applicant ever entered into a consent agreement with a state or federal regulatory agency, if not previously disclosed?" NOVASTAR answered "No."

6. On January 12, 2005, NOVASTAR submitted its 2005 Renewal Application to the DEPARTMENT. Question #8 of the 2005 Renewal Application stated: "Has applicant, or any director, shareholder or principal officer or partner or member of applicant, ever been subject to a federal or state administrative investigation or order, if not previously disclosed?" NOVASTAR answered "No."

7. Question #12 of the 2005 Renewal Application stated: "Has applicant, or any director, shareholder, partner, member or principal officer of the applicant ever been fined by a state or federal regulatory or law enforcement entity, if not previously disclosed?"

NOVASTAR answered "No."

8. Question #13 of the 2005 Renewal Application stated: "Has applicant, or any director, shareholder, partner, member or principal officer of the applicant ever entered into a consent agreement with a state or federal regulatory agency, if not previously disclosed?"

NOVASTAR answered "No."

9. On February 22, 2006, NOVASTAR submitted its 2006 Renewal Application to the DEPARTMENT. Question #8 of the 2006 Renewal Application stated: "Has applicant, or any director, shareholder or principal officer or partner or member of applicant, ever been subject to a federal or state administrative investigation or order, if not previously disclosed?" NOVASTAR answered "Yes" and disclosed that an investigation by the Florida Attorney General had concluded in December 2005 without the taking of any action.

10. Question #12 of the 2006 Renewal Application stated: "Has applicant, or any director, shareholder, partner, member or principal officer of the applicant ever been fined by a state or federal regulatory or law enforcement entity, if not previously disclosed?"

NOVASTAR answered "Yes" and disclosed a September 1998 action by the Maryland Commissioner of Finance assessing NOVASTAR a \$70,000 fine. The DEPARTMENT maintains that NOVASTAR failed to disclose this fine on any previous Renewal Application.

11. Question #13 of the 2006 Renewal Application stated: "Has applicant, or any director, shareholder, partner, member or principal officer of the applicant ever entered into a consent agreement with a state or federal regulatory agency, if not previously disclosed?" NOVASTAR answered "Yes" and disclosed a September 1998 action by the Maryland Commissioner of Finance assessing NOVASTAR a \$70,000 fine. The DEPARTMENT maintains that NOVASTAR failed to disclose this fine on any previous Renewal Application.

12. On January 18, 2007, NOVASTAR submitted its 2007 Renewal Application to the DEPARTMENT. Question #8 of the 2007 Renewal Application stated: "Has applicant, or any director, shareholder or principal officer or partner or member of applicant, ever been subject to a federal or state administrative investigation or order, if not previously disclosed?" NOVASTAR answered "Yes" and listed three actions. The first action was a settlement agreement between NOVASTAR and the New Jersey Department of Banking and Insurance ("NEW JERSEY SETTLEMENT") in October 2005 in which NOVASTAR agreed to pay \$56,000.00 to resolve alleged licensing violations. The second action was a Letter of Admonishment issued by the Rhode Island Department of Business Regulation, Division of Banking ("RHODE ISLAND ACTION") in January 2006 in which NOVASTAR paid \$1,093.00 as a result of a recurring violation. The final action was a settlement agreement between NOVASTAR and the Ohio Division of Financial Institutions in December 2006 in which NOVASTAR paid a \$2,000.00 penalty.

13. Question #12 of the 2007 Renewal Application stated: "Has applicant, or any director, shareholder, partner, member or principal officer of the applicant ever been fined

by a state or federal regulatory or law enforcement entity, if not previously disclosed?”

NOVASTAR answered “No.”

14. Question #13 of the 2007 Renewal Application stated: “Has applicant, or any director, shareholder, partner, member or principal officer of the applicant ever entered into a consent agreement with a state or federal regulatory agency, if not previously disclosed?”

NOVASTAR answered “No.”

15. Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) provides that the Director may suspend or revoke any license issued under the Act or impose an administrative fine if the licensee has made statements which at the time or in light of the circumstance in which they were made were false or misleading in any material respect.

16. The NEW JERSEY SETTLEMENT and RHODE ISLAND ACTION were administrative actions taken by regulatory agencies. Therefore, the DEPARTMENT maintains NOVASTAR should have included the NEW JERSEY SETTLEMENT and RHODE ISLAND ACTION on its list of actions in response to Questions #8, #12 and #13 of the 2006 Renewal Application. Therefore, the DEPARTMENT maintains that NOVASTAR committed two violations of Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp.2006) in connection with its 2006 Renewal Application when it failed to include the NEW JERSEY SETTLEMENT and RHODE ISLAND ACTION on the list of administrative actions.

17. From information gathered by the DEPARTMENT, it appears that NOVASTAR was fined by the Georgia Department of Banking and Finance (“GEORGIA FINES”). This information suggests that NOVASTAR was fined \$1,000 on April 6, 2001; \$300 on April 11, 2001; \$1,000 on March 22, 2002; \$300 on April 9,

2002, \$300 on April 8, 2003, and \$1000 on April 20, 2004. None of these GEORGIA FINES had been disclosed on any Renewal Application submitted by NOVASTAR to the DEPARTMENT.

18. From information gathered by the DEPARTMENT, it appears that NOVASTAR was fined by the California Department of Corporations. This information suggests that NOVASTAR was fined \$1,000 on March 15, 2001; \$1,000 on March 15, 2002; \$1,000 on July 8, 2002 ("CALIFORNIA FINES"). On September 9, 2002, a third Order initiating license revocation procedures was issued as NOVASTAR had failed to pay the CALIFORNIA FINES. None of these CALIFORNIA FINES nor the initiation of the revocation proceeding had been disclosed to the DEPARTMENT on any Renewal Application submitted by NOVASTAR to the DEPARTMENT.

19. From information gathered by the DEPARTMENT, it appears that NOVASTAR was fined by the New York State Banking Department. This information suggests that NOVASTAR was fined \$2,500 on May 13, 2003 and \$500 on August 23, 2003 ("NEW YORK FINES"). None of these NEW YORK FINES had been disclosed on any Renewal Application submitted by NOVASTAR to the DEPARTMENT.

20. NOVASTAR neither admits nor denies the existence of such fines and administrative actions taken by other states. NOVASTAR further neither admits nor denies that these items were required to be listed on its various Renewal Applications as submitted to the DEPARTMENT.

21. The DEPARTMENT maintains that the GEORGIA FINES, CALIFORNIA FINES, and NEW YORK FINES were actions taken by administrative agencies and involved the levying of a fine. Therefore, the DEPARTMENT maintains NOVASTAR

committed multiple violations of Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) in connection with its Renewal Applications by failing to disclose these items.

22. The DEPARTMENT has incurred a minimum of one thousand dollars in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-705 (Cum. Supp. 2006) provides, in part, that no person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or registered with the DEPARTMENT.

2. Neb. Rev. Stat. § 45-706(1) (Cum. Supp. 2006) provides that the business of a mortgage banker shall be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Act.

3. Neb. Rev. Stat. § 45-706(3) (Cum. Supp. 2006) provides that mortgage banker licenses may be renewed annually by filing an application for renewal containing such information as the Director may require to indicate any material change in the original application or succeeding renewal applications.

4. Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) provides that if the Director, following an administrative hearing, finds that a licensee has made or caused to be made, in any document filed with the Director or in any proceeding under the Act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the Director any information which, if submitted by the licensee, would have resulted in denial of the license application, the Director may suspend or revoke the license, or issue an administrative fine not exceeding five thousand dollars for each violation of the Act.

5. Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006) provides that if the Director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by Section 45-707 or has otherwise violated the Act, the Director may order such person to pay an administrative fine not exceeding five thousand dollars for each separate violation plus the costs of investigation.

6. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that NOVASTAR has violated the Act and that proceedings could be commenced to impose an administrative fine in an amount of not more than five thousand dollars for each of the violations plus costs of investigation in accordance with Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006).

7. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

8. It is in the best interest of NOVASTAR, and in the best interest of the public, for NOVASTAR and the DEPARTMENT to resolve the issues included herein.

AGREEMENT

The DEPARTMENT and NOVASTAR agree as follows:

Stipulations: In connection with this Agreement, NOVASTAR and the DEPARTMENT stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Agreement shall resolve all matters between the DEPARTMENT and NOVASTAR in connection with the Findings of Fact listed above. Should future

circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.

3. This Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Agreement.

NOVASTAR further represents as follows:

1. NOVASTAR is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.

2. NOVASTAR is acting free from any duress or coercion of any kind or nature.

3. This Agreement is executed to avoid further proceedings and NOVASTAR does not admit nor deny any of the allegations cited in this Agreement.

IT IS, THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Agreement, NOVASTAR shall pay an assessment of seven thousand five hundred dollars (\$7,500.00) for alleged violations of Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) where NOVASTAR provided incorrect information in documents filed with the DEPARTMENT by not listing fines allegedly imposed by state administrative agencies on its Renewal Applications.

2. Within ten (10) days after the effective date of this Agreement, NOVASTAR shall pay the investigation costs of the DEPARTMENT in the amount of one thousand dollars (\$1,000.00).

3. The total amount of the assessment and investigation costs, eight thousand five hundred dollars (\$8,500.00), shall be payable in one check or money order to the DEPARTMENT.

4. For a period of five (5) years after the effective date of this Agreement, NOVASTAR shall provide a copy of any Order issued by a state or federal regulatory agency negatively affecting NOVASTAR or any of its officers, directors, or shareholders, within thirty (30) days of receipt of such Order. For purposes of this paragraph, an Order negatively affecting NOVASTAR shall include, but not be limited to, (a) Orders imposing a fine, assessment, fee or cost; (b) Orders denying an application, registration or license; (c) Orders revoking, suspending or otherwise imposing conditions upon its license; (d) Consent Agreements; (e) Orders to cease and desist; and (f) any other similar document however titled or styled in which NOVASTAR agrees to any action to settle any regulatory action, complaint, or inquiry.

5. In the event NOVASTAR fails to comply with any of the provisions of this Agreement, the DEPARTMENT may commence such action regarding NOVASTAR as it deems necessary and appropriate in the public interest.

6. The effective date of this Agreement shall be the date of the Director's signature.

DATED this 2nd day of ^{August}~~July~~, 2007.

Novastar Mortgage, Inc.

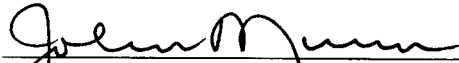
By: 

David A. Pazgan, President & CEO

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DATED this 17th day of August, 2007.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**

By: 
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