

**STATE OF NEW YORK BANKING DEPARTMENT**

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**In the Matter of**

**FIRST PLATINUM CAPITAL CORP.**

**SETTLEMENT AGREEMENT**

**A Registered Mortgage Broker Pursuant To  
Article XII-D of the New York Banking Law**

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This Settlement Agreement ("Agreement"), is made and entered into by and among First Platinum Capital Corp. ("First Platinum") and The State of New York Banking Department ("Banking Department"), collectively ("the Settling Parties") evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations cited herein by First Platinum of Part 38 of the General Regulations of the Banking Board, 3 N.Y.C.R.R. Part 38, and Section 226.24 of Regulation Z of the Truth in Lending Act, 12 C.F.R. Section 226.24, upon and subject to the terms and conditions hereof.

**I.**

**RECITALS**

1. First Platinum, headquartered at 4400 Route 9 South, Suite 1000, Office #44 Freehold, NJ 0772, was granted a registration by the Banking Department on March 13, 2007 to engage in the business of a mortgage broker pursuant to Article XII-D of the New York Banking Law ("Banking Law").

2. Section 44 of the Banking Law provides, in part, that the New York Superintendent of Banks (“Superintendent”) may, in a proceeding after notice and a hearing, require a registered mortgage broker to pay to the people of this State a penalty for a violation of the Banking Law and any regulation promulgated thereunder.

3. Part 38 Section 38.8 of the General Regulations of the Banking Board, provides that a mortgage broker may be subject to disciplinary action by the Banking Department for, among other things, violations of Article 12-D of the Banking Law, the regulations promulgated thereunder, or violations of state or federal law indicating that the entity is unfit to engage in the business of a mortgage broker.

4. First Platinum placed an advertisement for mortgage loans in various local newspapers, including the March 22, 2007 edition of the New York Post and the June 6, 2007 edition of the Staten Island Advance. Copies of these advertisements are annexed as Exhibit A.

5. These advertisements prominently offer a low introductory teaser interest rate of 1% on mortgage loans and low monthly payment amounts at that rate of \$529.69 per month on a \$ 200,000 loan, \$1,324.22 per month on a \$500,000 loan and \$1,853.91 per month on a \$700,000 loan.

6. However, the advertisements fail to clearly and conspicuously disclose the actual terms of repayment of the loans, including that that the advertised low interest rate and low monthly payments are subject to

increase and do not last over the life of the loan. The fact that the rate is subject to change is disclosed only in small print at the bottom of the advertisements.

7. In addition, the advertisements fail to clearly and conspicuously disclose the interest rate expressed as an annual percentage rate (“APR”). In fact, the actual APR of 6.92 is significantly higher than the prominently advertised interest rate and is disclosed only in small print at the bottom of the advertisements.

8. Accordingly, the advertisements violate Regulation Z under the Truth in Lending Act, Section 226.24(b), which provides: “If an advertisement states a rate of finance charge, it shall state the rate as an “annual percentage rate,” using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but no more conspicuously than, the annual percentage rate.”

9. The advertisements also violate Regulation Z under the Truth in Lending Act, Section 226.24(c), which provides: any advertisement stating the amount of any payment shall also state certain specific terms, including the amount or percentage of down payment and the terms of repayment.

10. Additionally, the advertisement of interest rates and monthly payment amounts as described in paragraphs 5 through 9 violates the General

Regulations of the Banking Board, Part 38.2(e) which provides that no mortgage broker shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement therefor.

### **Other Advertised Terms**

11. The advertisements prominently target borrowers with “Bad credit” and offer without limitation “No income verification” and “No asset verification” loans with “100%” financing. These statements represent directly and by implication that all applicants, including those with bad credit, will have unqualified access to the credit advertised without disclosing what material limitations on the availability of credit may exist. In fact, “no income verification” and “no asset verification” loans are not products that should be offered to all borrowers, particularly those with bad credit. Prudent underwriting requires a lender to more diligently verify and document a borrower’s income and ability to repay when a borrower has bad credit and a higher level of credit risk.

12. Additionally, the advertisements of the terms described in paragraph 11 violate the General Regulations of the Banking Board, Part 38.2(e), which provides in general that no mortgage broker shall fraudulently or deceitfully advertise a mortgage loan or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement therefor and, in particular, in Part 38.2(e)(3), that an advertisement shall be deemed fraudulent, deceitful or misleading if it provides that an applicant will have unqualified access

to credit without disclosing what material limitations on the availability of credit may exist.

## II.

### **SETTLEMENT TERMS AND CONDITIONS**

Without admitting or denying the Department's findings, First Platinum is willing to resolve the violations cited herein by entering into this Agreement and freely and voluntarily waives its right to a hearing under Banking Law Section 595 on such violations. Therefore, in consideration of the promises and covenants set forth herein, the Settling Parties agree, as follows:

1. First Platinum agrees to take all necessary steps to ensure its compliance with all applicable federal and state laws, regulations, and supervisory requirements relating to its mortgage business, including, but not limited to:

- a. Complying with the requirements of the Federal Truth-In-Lending Act and Regulation Z , and Article 12-D of the Banking Law and Part 38 of the General Regulations of the Banking Board; and
- b. ensuring that its advertisements do not mislead consumers as to the terms and conditions of credit it is offering and that such advertisements disclose clearly and conspicuously the existence of material terms, conditions, and limitations relating

- to any advertised offer of credit; and
- c. ensuring that its advertised offers of credit are consistent with prudent lending practices, as reflected in the Banking Department's May 25, 2007 Industry Letter on Mortgage Lending Standards and its June 30, 2007 Industry Letter on Subprime Mortgage Lending (collectively, the "Guidance Letters") ; and
  - d. ensuring that when it advertises a subprime mortgage product or a nontraditional mortgage product (such as an "interest only" mortgage where a borrower pays no loan principal for the first few years of the loan or a "payment option" adjustable-rate mortgage where a borrower has flexible payment options with the potential for negative amortization), it will provide clearly and conspicuously information about the costs, terms, features and risks of such loans; and
  - e. ensuring that it will not advertise terms of credit using footnotes, asterisks, small print and color contrasts that materially contradict or modify the principal message(s) of its advertisements, and will disclose clearly and conspicuously all material information; and
  - f. ensuring that when it advertises an introductory rate or monthly payment amount that may subsequently increase it will disclose

clearly and conspicuously: (i) how long the introductory rate is in effect, (ii) the reset or adjustment period, (iii) the maximum reset rate (if there is one); and (iv) if the advertisement contains a monthly payment amount at an introductory start rate, it also will disclose the terms of repayment over the full term of the loan, including the maximum monthly payment amount at the fully indexed rate (taking into consideration the expiration of any negative amortization or interest rate caps, or if there is no interest rate cap, a rate equal to any applicable margin on the loan plus the highest value recorded during the prior ten years for the index used to calculate the interest rate) and any balloon payment.

2. First Platinum agrees to develop appropriate written advertisement policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements and the Guidance Letters. The policies and procedures shall, at a minimum: (i) designate an individual responsible for monitoring compliance with all applicable federal and state laws, regulations, supervisory requirements and the Guidance Letters; and (ii) establish a training program to ensure that First Platinum and its employees involved in preparing or approving advertisements understand all applicable federal and state laws, regulations, supervisory requirements and the Guidance Letters.

3. Within ninety (90) days from the effective date of this Agreement, First Platinum agrees to submit a draft of its advertisement policies and procedures to the Banking Department.

4. Within one hundred twenty (120) days from the effective date of this Agreement, First Platinum agrees to submit a copy of its final advertisement policies and procedures to the Banking Department together with a letter from an authorized officer of First Platinum indicating his/her approval of such policies and procedures. First Platinum further agrees to provide copies of all advertisements run by it for the twelve (12) month period following the effective date of this Agreement.

5. First Platinum agrees to pay a fine of \$3,500.00 on the effective date of this Agreement. First Platinum further agrees that such payment will be made in immediately available funds in accordance with Banking Department payment instructions.

### **III.**

#### **MISCELLANEOUS TERMS AND CONDITIONS**

6. The Settling Parties acknowledge that First Platinum's failure to comply with any of the settlement terms and conditions of this Agreement may result in the Banking Department taking action to revoke First Platinum's registration to engage in the business of a mortgage broker

under Article 12-D of the Banking Law.

7. The Settling Parties acknowledge that entering into this Agreement shall not bar, estop, or otherwise prevent the Superintendent, or any state, federal or local agency or department or any prosecutorial authority from taking any other action affecting First Platinum, any of its current or former owners, officers, directors, employees, or insiders, or their successors or assigns with respect to the violations cited herein, or any other matter whether related or not to such violations.

8. This Agreement may not be altered, modified or changed unless in writing signed by the Superintendent or his designee.

9. This Agreement shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or his designee.

10. This effective date of this Agreement is the date on which it is executed by the Deputy Superintendent of Banks for Mortgage Banking.

11. All written communications to the Banking Department regarding this Agreement should be sent as follows.

Attention:

Rholda L. Ricketts  
Deputy Superintendent of Banks  
Mortgage Banking Division  
State of New York Banking Department  
One State Street,  
New York, New York 10004

12. All written communications to First Platinum regarding this Agreement should be sent as follows.

Attention:

Jordan Epstein  
First Platinum Capital Corp.  
201 Edward Curry Avenue, Suite 201  
Staten Island, NY 10314

13. This Agreement is not confidential; therefore it is available to the public.

WHEREFORE, the Settling Parties hereto have caused this Agreement to be executed.

By: \_\_\_\_\_

Jordan Epstein  
President  
First Platinum Capital Corp.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Rholda L. Ricketts  
Deputy Superintendent of Banks  
State of New York Banking  
Department

Dated: \_\_\_\_\_