

*New York State*  
*Department of Financial Services*

\_\_\_\_\_ X  
In the Matter of

**Premium Mortgage Corp. D/B/A  
Icon Funding Group  
B500745**

**SETTLEMENT AGREEMENT**

A Licensed Mortgage Banker Pursuant To  
Article XII-D of the New York Banking Law

\_\_\_\_\_ X

This Settlement Agreement ("Agreement") is made and entered into by and between Premium Mortgage Corp. D/B/A Icon Funding Group ("Premium Mortgage") and the New York State Department of Financial Services (the "Department"), together with Premium Mortgage, collectively the "Settling Parties"), evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations of Part 38 of the General Regulations of the Banking Board (the "General Regulations") and Section 226.24 of the Truth in Lending Act (Regulation Z), cited herein by the Department, upon and subject to the terms and conditions hereof.

**I.**

**RECITALS**

1. Premium Mortgage, headquartered at 2541 Monroe Avenue, Rochester, NY 14618, was granted a license by the Department on September 5, 2003 to engage

in the business of a mortgage banker 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 Superintendent of Financial Services (the “Superintendent”) may, in a proceeding after notice and a hearing, require a licensed mortgage banker to pay to the people of this State a penalty for a violation of the Banking Law and any regulation promulgated thereunder.

3. Section 38.8 of the General Regulations provides that a mortgage banker may be subject to disciplinary action by the 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 banker.

4. Premium Mortgage placed an advertisement for mortgage loans (the “Advertisement”) in The Property Source Online pennysaver from September 2010 to February 2011. A copy of the advertisement is annexed as Exhibit A.

5. The Advertisement promoted residential mortgage loans with refinancing rates “as low as” 4.375%.

6. The Advertisement failed to clearly and conspicuously disclose the interest rate expressed as an annual percentage rate (“APR”). The actual APR of 4.525% was disclosed only in fine print at the bottom of the Advertisement.

7. Accordingly, the Advertisement violates Section 226.24(c) of the Truth in Lending Act (Regulation Z), which states that “if an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but

not more conspicuously than the annual percentage rate.”

8. In addition, this Advertisement violates Section 38.2(e) of the General Regulations, which provides that no mortgage banker shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement therefor.

## **II.**

### **SETTLEMENT TERMS AND CONDITIONS**

Without admitting or denying the Department’s findings, Premium Mortgage 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 Sections 44 and 598 on such violations. Therefore, in consideration of the promises and covenants set forth herein, the Settling Parties agree, as follows:

1. Premium Mortgage 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 (Regulation Z), Article 12-D of the Banking Law, and Part 38 of the General Regulations;
  - b. ensuring that its advertisements do not misrepresent the fees for obtaining financing, including, representing, directly or by implication, that there are no fees associated with obtaining credit when that is not the case; and

- c. ensuring that its advertisements do not otherwise 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
- d. 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 of its advertisements, and will disclose clearly and conspicuously all material information.

2. Premium Mortgage agrees to develop appropriate written advertisement policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements, and guidelines. 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 guidelines; (ii) include a listing of all applicable laws, regulations, and truth in advertising guidelines; (iii) establish a mechanism for ensuring that all applicable laws, regulations, and truth in advertising guidelines are met; (iv) establish a training program to ensure that Premium Mortgage and its employees involved in preparing or approving advertisements understand all applicable federal and state laws, regulations, and truth in advertising guidelines.

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

4. Within one hundred twenty (120) days from the effective date of this Agreement, Premium Mortgage agrees to submit a copy of its final advertisement policies and procedures to the Department together with a letter from an authorized officer of Premium Mortgage indicating his/her approval of such policies and procedures. Premium Mortgage 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. Premium Mortgage agrees to pay a fine of \$ 3,000.

6. Premium Mortgage further agrees that such payment will be made in immediately available funds in accordance with Department payment instructions.

### **III.**

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

1. The Settling Parties acknowledge that Premium Mortgage's failure to comply with any of the settlement terms and conditions of this Agreement may result in the Department taking action to revoke Premium Mortgage's license to engage in the business of a mortgage banker under Article 12-D of the Banking Law.

2. The Settling Parties acknowledge that entering into this Agreement shall not bar, estop, or otherwise prevent the Superintendent from taking further action affecting Premium Mortgage, any of its current or former owners, officers, directors, employees, or insiders, or their successors or assigns with respect to the violations cited herein, in the sole event that Premium fails to comply with the terms of this Agreement. In such an event, the Superintendent may pursue such remedies as are available to the

Department of Financial Services to enforce its regulatory authority over Premium Mortgage without any disability arising from its entry into this Agreement.

3. This Agreement may not be altered, modified or changed unless in writing signed by the Superintendent or his designee.
4. This Agreement shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or his designee.
5. The effective date of this Agreement is the date on which it is executed by the Deputy Superintendent or her designee.
6. All written communications to the Department regarding this Agreement should be sent as follows:

Attention:

Rholda L. Ricketts  
Deputy Superintendent  
State of New York Department of Financial Services  
One State Street  
New York, NY 10004

7. All written communications to Premium Mortgage regarding this Agreement should be sent as follows:

Attention:

Michael T. Donoghue  
Premium Mortgage Corp. D/B/A  
Icon Funding Group  
2541 Monroe Avenue  
Rochester, NY 14618

8. 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: \_\_\_\_\_

Michael T. Donoghue  
President  
Premium Mortgage Corp. D/B/A  
Icon Funding Group

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

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

Rholda L. Ricketts  
Deputy Superintendent  
New York State Department of Financial Services

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