

## SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** is made and entered into by and among the **United States of America** ("United States"), acting through the **United States Department of Justice**, on behalf of the **Department of Housing and Urban Development** ("HUD"), collectively the "Agencies," and **Mr. Bill Elko** ("Mr. Elko"). Mr. Elko and the Agencies identified above shall be collectively referred to in this Settlement Agreement as the "Parties."

**WHEREAS** the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701 et seq. ("Act"), requires certain developers and agents, as those term are defined in Sections 1701(5) and (6) of the Act, to file a statement of record with HUD and to furnish a property report to purchasers of lots subject to the Act, prohibits developers and agents from engaging in improper or fraudulent practices in connection with the sale of lots subject to the Act, and provides that failure to provide a property report to a purchaser authorizes the purchaser to rescind the purchase transaction;

**WHEREAS** Buyers Source Sugarmill, L.L.C., a Virginia limited liability company, Buyers Source Savannah, L.L.C., a Virginia limited liability company, Buyers Source Valley Group, L.L.C., a Virginia limited liability company, Island Realty, L.L.C. f/k/a Buyers Source Island, L.L.C., an Arkansas limited liability company (collectively referred to as "Buyers Source"), and Belmont Properties, Inc. are, or were, primarily engaged in the sale of lots, including lots located in subdivisions in Sugarmill Woods, Florida; Savannah Lakes, South Carolina; Apple Valley, Ohio; Holiday Island, Arkansas; Rayburn Country, Texas; and Angel Fire, New Mexico (hereinafter the "Subdivisions");

**WHEREAS** Bill Elko was a sales manager for certain of the Buyers Source companies and Belmont Properties, Inc.;

**WHEREAS** the Agencies allege that, in connection with lots located in certain of the Subdivisions, Mr. Elko was an agent under the Act and sold property without a valid statement of record in effect and without furnishing property reports to certain purchasers of lots located in the Subdivisions, and engaged in a series of improper sales practices in connection with the sale of lots located in the Subdivisions (collectively the "Prohibited Practices");

**WHEREAS** the Agencies are investigating Buyers Source's Prohibited Practices and have commenced litigation against Mr. Elko, Buyers Source and other parties in connection with the Prohibited Practices;

**WHEREAS** HUD contends that Mr. Elko violated the Act in connection with the Prohibited Practices by, among other things, selling and offering to sell lots without providing required disclosures and by using various fraudulent practices;

**WHEREAS** Mr. Elko denies any wrongdoing in connection with the alleged Prohibited Practices, denies that he violated the Act, and asserts that he was unaware of the requirement that subdivision lots be registered or that property reports be provided to purchasers;

**WHEREAS** the Settlement Agreement shall not constitute an admission of wrongdoing, liability, or legal fault on the part of Mr. Elko for any conduct underlying this Settlement Agreement, nor shall it be construed as an admission that any person or entity acted wrongfully, unjustifiably or otherwise;

**WHEREAS** the Agencies desire to use the monetary penalties in this Agreement to aid injured purchasers;

**WHEREAS** Mr. Elko agrees that the financial obligations set forth in the Agreement are non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(7) and that the Agencies retain the right to establish Mr. Elko's liability for fraud to establish

the non-dischargeability of the debt under 11 U.S.C. § 523(a)(2), and Mr. Elko retains the right to claim in such a proceeding that he is not liable for fraud;

**WHEREAS**, to avoid litigation and further expense, and to reach a mutually satisfactory settlement and compromise of the Agencies' allegations against Mr. Elko;

**NOW, THEREFORE**, in consideration of the mutually negotiated promises, covenants, and obligations in this Settlement Agreement (hereinafter, the "Settlement Agreement" or the "Agreement"), the Parties reach a complete and final settlement as set forth below:

1. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement (hereinafter, the "Effective Date").

2. Mr. Elko shall pay \$20,000 ("the Monetary Obligation") to the individual or entity appointed by the Court in Alphonso Jackson v. Buyers Source Sugarmill, L.L.C., Case No. 2:03cv591 (E.D. Va.), for the purpose of collecting and distributing said funds ("the Receiver"). In the event that payments come due prior to the Court's appointment of the Receiver, payments shall be made to Donna J. Hall, Receiver, at Troutman, Sanders, LLP, 222 Central Park Avenue, Suite 2000, Virginia Beach, Virginia 23462. Notwithstanding any other provision of this Agreement, the Parties agree that the Monetary Obligation, together with the obligations set forth in paragraph 4, is and shall be construed as a penalty or forfeiture that is payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss. The Parties further agree that the amount of the penalty reflects the disgorgement of profits from the Prohibited Practices, limited only by the amount of Mr. Elko's profits and his represented ability to pay. In the event that Mr. Elko should declare bankruptcy, Mr. Elko shall not oppose a motion by the United States, the Agencies, and/or the Receiver to lift the stay as to the Net Monetary Obligation or any other obligation set forth in this Agreement. In the event that Mr. Elko should declare bankruptcy within ninety-one (91)

days of the deposit of the Initial Payment (defined in paragraph 3), Mr. Elko shall send written notice of the declaration of bankruptcy via Federal Express to Samuel C. Kaplan at the Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Ave., N.W., Room 7302, Washington, D.C. 20001, and the Agencies shall have the right to withdraw from the Agreement and pursue their claims in the bankruptcy court by sending written notice to Mr. Elko within 30 days of their receipt of notice concerning the declaration of bankruptcy.

3. On or before January 1, 2005, Mr. Elko shall make an initial payment of \$5,000 to the Receiver (hereinafter, "the Initial Payment"). Mr. Elko shall satisfy the remaining obligation of \$15,000 by making additional \$5,000 payments on or before July 1, 2005, January 1, 2006, and July 1, 2006. If Mr. Elko fails to make the Initial Payment or any other payment within 15 days of the due date for the payment, the Receiver shall have the right to collect interest from Mr. Elko on any late payment and outstanding balance at a rate of eleven and 99/100 (11.99 percent) percent per annum, in addition to retaining any other remedies provided by law, equity, or this Agreement, including the right of the Agencies, the United States, and/or the Receiver to move that Mr. Elko be held in contempt of any order entered by the Court. The Agencies agree that they will not move for contempt of any order entered by the Court by virtue of a late Initial Payment so long as Mr. Elko pays the Receiver \$10,000 as well as all outstanding interest on or before July 1, 2005. In the event that Mr. Elko is delinquent by more than ninety days on the second or third payments, the Receiver may, in addition to any other remedy, declare immediately due and payable the total of all remaining installments to be paid by Mr. Elko under the Agreement.

4. Mr. Elko represents that he has disclosed to the Agencies in an affidavit executed under penalty of perjury, all assets that he owned, possessed, or controlled as of July 1, 2004, either individually or jointly with any other individual or entity. In the

event that Mr. Elko has failed to disclose all of the assets that he owned, possessed, or controlled as of July 1, 2004, and in addition to any other obligation set forth in this Agreement, Mr. Elko shall transfer any undisclosed assets, up to an amount not exceeding \$200,000, to the Receiver within two weeks of written notice from the Receiver or the Agencies.

5. Mr. Elko agrees to cooperate with the Agencies in their ongoing investigation of and ongoing or potential litigation with Buyers Source and any other entity related to this matter. Mr. Elko further agrees to cooperate with the Agencies and the Receiver in their efforts to collect and distribute any sums paid or due under this Agreement, including any investigation meant to determine whether Mr. Elko disclosed all assets that he owned, controlled, or possessed as of July 1, 2004.

6. Mr. Elko shall not violate any provision of the Act or its implementing regulations, either in his individual capacity, through a company owned or controlled by Mr. Elko, or in concert with any other individual or entity. Mr. Elko shall not engage in any transaction, either in his individual capacity, through a company owned or controlled by Mr. Elko, or in concert with any other individual or entity, in which a time-share interest is used in any fashion as an item of exchange or marketing inducement in the sale or exchange of subdivision lots not exempt under 15 U.S.C. § 1702(a).

7. In consideration of Mr. Elko's full settlement of the obligations set forth in this Settlement Agreement, the Agencies hereby waive, release, and remit Mr. Elko from any civil or administrative claim, sanction, or remedy, direct or indirect, that the Agencies have for or relating to any matter underlying this Settlement Agreement or involving Mr. Elko, including the Act and any statute, regulation, or common-law theory creating a cause of action for civil or administrative claims, sanctions, remedies, damages, or penalties. It is further understood that in consideration of Mr. Elko's full settlement of the obligations set forth in the Settlement Agreement, the Agencies will not

seek to enforce against Mr. Elko personally any judgment that they may obtain against Buyers Source or any other entity related to this matter.

8. Mr. Elko hereby waives, releases, and remits any and all claims, directly or indirectly, against the Agencies, or any employee of the Agencies, for the actions of the Agencies in pursuing their rights and claims leading to the settlement of this matter.

9. Notwithstanding any other term or condition of this Settlement Agreement, specifically reserved and excluded from the scope and terms of the releases in this Settlement Agreement are any and all claims based on such obligations as are created by this Settlement Agreement.

10. This Settlement Agreement constitutes the complete agreement between the Parties as to the matters addressed herein. This Settlement Agreement may not be amended except by written consent of the Parties.

11. The Parties to this Settlement Agreement shall bear their own attorney's fees and costs, including the preparation and performance of this Settlement Agreement.

12. The Parties represent that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. No provision of this Settlement Agreement shall be construed against any party by reason of such party having drafted such provision of the Settlement Agreement.

13. This Settlement Agreement is intended for the benefit of the Agencies and Mr. Elko, and by this instrument the Parties do not waive, compromise, or release any claims or causes of action against any other person or entity not expressly released by this Settlement Agreement.

14. Failure by any Party to enforce any provision of this Settlement Agreement shall not be construed as a waiver by such Party of any provision, nor in any way affect the validity of this Settlement Agreement or any part thereof.

15. If any provision of this Settlement Agreement is determined to be invalid or unenforceable for any reason, then such provision shall be treated as severed from the remainder of this Settlement Agreement and shall not affect the validity and enforceability of all the other provisions of this Settlement Agreement as long as such severance does not materially change the Parties' rights and obligations.

16. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

17. Each person who signs this Settlement Agreement in a representative capacity warrants that his or her execution of this Settlement Agreement is duly authorized, executed, and delivered by and for the individual or entity for which he or she signs.

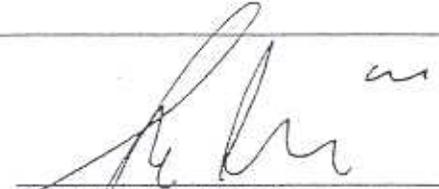
18. Within a reasonable period after the Effective Date, the parties agree to move jointly that the Court enter the Order attached as Exhibit A ("Consent Decree") as part of the proceedings in Alphonso Jackson v. Buyers Source Sugarmill, L.L.C., Civ. No. 2:03cv591 (E.D. Va.). In the event that the Court declines to enter the Consent Decree, or an order requiring Mr. Elko to abide by the terms of this Agreement, or declines to appoint a Receiver, the Agencies reserve the right to designate a different entity to receive all payments and assets due under this Agreement, or to withdraw from the Agreement and declare it null and void by providing written notice to Mr. Elko within 30 days of the Court's decision. If the Agencies elect to withdraw from the Agreement for any reason, and if the Receiver does not do so on her own initiative, the Agencies shall move the Court to order the Receiver to return any monies previously paid by Mr. Elko pursuant to this Agreement.

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ON BEHALF OF MR. BILL ELKO

Dated: <u>6-23-04</u>	By: <u>Bill Elko</u> MR. BILL ELKO P.O. Box 87 Lincolnton, GA 30817
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ON BEHALF OF THE U.S. DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT

Dated: <u>2/2/4</u>	By:  JOHN C. WEICHER Assistant Secretary for Housing - Federal Housing Commissioner U.S. Department of Housing and Urban Development Room 9100 451 Seventh Street, S.W. Washington, D.C. 20410
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ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: <u>August 5, 2004</u>	By: <u>Joseph H. Hunt</u> JOSEPH H. HUNT Director United States Department of Justice Civil Division Federal Programs Branch 20 Massachusetts Ave., N.W. Washington, DC 20001
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