

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 **Developer Finance Corporation** ("DFC"). DFC 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, as that term is defined in Section 1701(5) 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 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, Savannah, L.L.C., a Virginia limited liability company, Buyers Source, Valley Group, L.L.C., a Virginia limited liability company, and 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") are, or were, primarily engaged in the sale of lots, including lots located in subdivisions in Savannah Lakes, South Carolina, Holiday Island, Arkansas, and Apple Valley, Ohio (hereinafter the "Subdivisions");

WHEREAS the Agencies allege that, in connection with lots located in the Subdivisions, Buyers Source was a developer under the Act and failed to file a statement of record with HUD or furnish 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 are considering commencing action against Buyers Source and other third parties in connection with the Prohibited Practices;

WHEREAS the Parties agree that this Settlement Agreement constitutes the settlement of disputed claims between the Agencies and DFC, including claims under the Act;

WHEREAS DFC contends that, based on, among other things, the representations and warranties of Buyers Source and the legal opinions of independent counsel to Buyers Source, it purchased certain notes secured by lots located in the Subdivisions that were sold by Buyers Source and, contends that although not engaged in the marketing or sale of these lots, DFC is receiving payments on these notes;

WHEREAS DFC denies any wrongdoing in connection with the alleged Prohibited Practices;

WHEREAS the Settlement Agreement shall not constitute an admission of wrongdoing, liability, or legal fault on the part of DFC 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, to avoid litigation and further expense, and to reach a mutually satisfactory settlement;

NOW, THEREFORE, in consideration of the mutually negotiated promises, covenants, and obligations in this Settlement Agreement, the Parties reach a fully 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. Within thirty (30) days of the Effective Date of this Settlement Agreement, DFC shall offer to all of the consumers who made notes to Buyers Source that were purchased by DFC and who currently have outstanding obligations to DFC under the terms of those notes (hereinafter the "Consumers") the opportunity to give to DFC, or DFC's successor or assign, their deeds to the lots in consideration for full satisfaction of the Consumers' obligations under the promissory notes secured by these lots (hereinafter the "Promissory Notes").

- a. DFC shall notify the Consumers in the form of a letter (hereinafter "Letter"), a copy of which is attached, sent via registered mail, address correction requested.
- b. To be eligible to receive satisfaction of the Promissory Note, a Consumer must be current on his or her obligations to DFC through the date that the Consumer notifies DFC of the Consumer's acceptance of the offer detailed in this paragraph.

- c. Consumers who are not current on their obligations to DFC, but who nonetheless wish to receive satisfaction of the promissory note, may receive said satisfaction if they become current on their obligations to DFC within (60) sixty days of their acceptance of the offer detailed in this paragraph.
- d. Consumers who were offered a deed in lieu of foreclosure in writing prior to July 11, 2003, shall not be required to be current through the Effective Date of this Settlement Agreement to be eligible to participate in the above offer.
- e. To effect full satisfaction of the Promissory Notes, DFC, or its successor or assign, will accept deeds in satisfaction from the Consumers. The Consumer's tender of, and the acceptance by DFC, or its successor or assign, of, deeds in satisfaction shall constitute the full and final settlement of any and all claims by the Consumer against DFC, its directors, officers, investors, lenders, employees, agents, representatives, subsidiaries, affiliates, successors and assigns.
- f. DFC warrants that it is, or will be, the holder or owner of the Promissory Notes, and that it has the legal right to take all actions required under this Settlement Agreement with respect to said notes.

3. Within 120 days after the effective date of this Settlement Agreement, DFC will provide HUD with a list of:

- a. The names and addresses of all Consumers who elected to participate in this Settlement Agreement;

- b. The names and addresses of all Consumers who elected not to participate in this Settlement Agreement;
- c. The names and last known addresses of all Consumers whom DFC was unable to contact.

4. In consideration for acceptance of DFC's offer to fully satisfy the Promissory Notes, the Consumers shall agree to waive, release and remit any claim the Consumers may have, directly or indirectly, against DFC and its directors, officers, investors, lenders, employees, agents, representatives, subsidiaries, affiliates, successors and assigns in connection with the Prohibited Practices, including but not limited to, the sale of the lot by Buyers Source, DFC's purchase of the Promissory Notes from Buyers Source, DFC's acceptance of Deeds in Satisfaction and/or the Consumer's decision not to exercise the rights provided hereunder.

5. The Consumers shall have sixty (60) days from receipt of the Letter to elect to accept or reject DFC's offer. No other relief for the Consumer is required of DFC under this Settlement Agreement.

6. Within ninety (90) days of receipt of a Consumer's election to accept DFC's offer, DFC, or its successor or assign, shall effect the full satisfaction of the Consumer's obligations to DFC. The Consumer is obligated to pay all taxes, fees, and dues associated with the lot until the earlier of: (a) the date that DFC effects the full satisfaction of the consumer's obligations to DFC, or (b) 90 days following DFC's receipt of a Consumer's election to accept DFC's offer. After such time, DFC will assume liability for all taxes, fees, and dues associated with the lot. DFC agrees that it shall work to effect the full satisfaction of the consumer's obligations to DFC in good

faith. In the event that a Consumer indicates that he or she does not wish to exercise the rights provided hereunder, DFC shall have the ability to exercise all its rights as a holder of said Promissory Note, including but not limited to, the right to collect payments relating to the Promissory Note.

7. DFC's satisfaction of the Consumers' Promissory Notes in exchange for tender of the deeds on the lots in the Subdivisions sold by Buyers Source constitutes the full measure of relief in this matter. DFC shall not be required to provide further relief to those persons who purchased lots from Buyers Source under notes purchased by DFC that have been paid off by the borrower, sold back to Buyers Source, or for which a deed was tendered prior to July 11, 2003.

8. As a condition of the settlement between DFC and the Agencies, the Agencies agree that in any action the Agencies take against Buyers Source, the Agencies will not seek rescission as a remedy from Buyers Source for the notes purchased from Buyers Source by DFC. The Parties agree that nothing in this Settlement Agreement shall be construed to waive, release, reduce and/or effect in any way the right of DFC, and its successors and assigns, to seek recourse and/or pursue any and all claims or causes of action against third parties, including but not limited to, Buyers Source, its directors, officers, managers, members, attorneys, investors, lenders, employees, agents, representatives, subsidiaries, affiliates, successors and assigns for any and all injuries, losses, and damages relating, among other things, to DFC's purchase of the Promissory Notes, the Prohibited Practices, and/or this Settlement Agreement.

9. In consideration of DFC offering to fully satisfy the Promissory Notes in exchange for the Consumers tendering the deeds to the lots in the Subdivisions and other valuable consideration, the Agencies hereby waive, release, and remit DFC, its directors, officers, investors, lenders, employees, agents, representatives, subsidiaries, affiliates, successors and assigns 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 Buyers Source and DFC, 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.

10. DFC 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 its rights and claims leading to the settlement of this matter.

11. 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.

12. The Parties agree that this Settlement Agreement does not constitute cancellation of indebtedness.

13. DFC agrees to comply with the provisions of the Act and its implementing regulations.

14. DFC and its directors, officers, employees, and agents agree to reasonably cooperate with the Agencies in their ongoing investigation of, and any litigation arising out of said investigation with, Buyers Source and any other entity

related to this matter, including any entity that may have purchased notes secured by lots sold by Buyers Source; provided, however, that any and all such costs and expenses incurred in connection with the foregoing shall be the sole responsibility of the Agencies and that the Agencies shall make reasonable accommodations for personal and work schedules.

15. 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.

16. Each of the Parties to this Settlement Agreement shall bear its own attorney's fees and costs, including the preparation and performance of this Settlement Agreement.

17. 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.

18. By this Settlement Agreement 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.

19. 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.

20. If any provision of this Settlement Agreement is determined to be invalid or unenforceable for any reason, then such provisions 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.

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

22. 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 entity for which he or she signs.

23. Upon the Effective Date of this Settlement Agreement, the Agencies shall consider all matters underlying this Settlement Agreement closed, consistent with the faithful performance by the Parties of the obligations imposed herein.

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ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: September 9, 2003

By: Joseph H. Hunt

Joseph H. Hunt
Director
Federal Programs Branch
United States Department of Justice
Civil Division
20 Massachusetts, N.W.
Washington, DC 20001

ON BEHALF OF THE U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

Dated: 9/11/03

By: 

JOHN C. WEICHER
Assistant Secretary for Housing
Federal Housing Commissioner
U.S. Department of Housing
and Urban Development
451 Seventh Street, S.W., Room 9100
Washington, D.C. 20410

ON BEHALF OF DEVELOPER FINANCE CORPORATION

Dated: 8-21-03

By: 

Richard A. Stratton
Chairman
Developer Finance Corporation
4 Marshall Street
Second Floor
North Adams, MA 01247