

## SETTLEMENT AGREEMENT

### RECITALS

This Settlement Agreement is made and entered into between the U.S. Department of Housing and Urban Development (“HUD” or “Department”), and Downing Homes, LLC (“Downing Homes”) with a principal place of business located at 144 North Sanga Road, Cordova, Tennessee.

**WHEREAS**, the Secretary of Housing and Urban Development is authorized to enforce the Real Estate Settlement Procedures Act of 1974 (“RESPA” or “the Act”), 12 U.S.C. § 2601 *et seq.*, and its implementing regulations (the “regulations”), 24 C.F.R. § 3500 *et seq.*; and

**WHEREAS**, the Secretary is authorized by Section 19 of RESPA to investigate any facts, conditions, practices, or matters deemed necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or regulation prescribed pursuant thereto; and

**WHEREAS**, Section 8(a) of RESPA, 12 U.S.C. § 2607(a), prohibits the giving or receiving any fee, kickback or thing of value pursuant to an agreement or understanding, oral or otherwise, that business incident to or part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person; and

**WHEREAS**, Section 8(b) of RESPA prohibits the giving or accepting of any portion, split or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed; and

**WHEREAS**, 24 CFR 3500.14 sets forth the implementing regulations for RESPA Sections 8(a) and 8(b) and 24 CFR 3500.15 sets forth requirements for affiliated business arrangements; and

**WHEREAS**, HUD's Statement of Policy 1996-2 sets forth the factors that the Department uses to determine whether a controlled business arrangement is a sham under RESPA or whether it constitutes a bona fide provider of settlement services; and

**WHEREAS**, Downing Homes is a builder of properties involving federally related mortgage loans in or about Cordova, Tennessee; and

**WHEREAS**, the Department has conducted a formal federal investigation of Downing Homes concerning possible violations of Sections 8(a) and (b) of RESPA, and

**WHEREAS**, following this investigation, the Department determined that:

(A) On or about January 1, 2002, or subsequent to January 1, 2002, First American Title Insurance Company d.b.a. Memphis Title Company ("First American") formed Title Group IV. Title Group IV, a limited liability corporation, is composed of builders and First American.

(B) Downing Homes and seven other builders were involved in this business arrangement with First American.

(C) Little or no title work was provided by the Title Group IV, and services purported to be provided by the Title Group IV were essentially provided by First American.

(D) The Title Group IV was not an independent business entity, is considered a sham controlled business arrangements under RESPA and thus, is not a bona fide provider of settlement services.

(E) The builders with ownership interests in the Title Group IV received substantial financial benefits from the referral of business to the Title Group IV.

(F) Downing Homes received approximately \$1,382.00 in financial benefits arising from business referred by First American between May 2002 and December 2004.

**WHEREAS**, based upon the results of its investigation, HUD determined that Downing Homes violated RESPA and the regulations, and/or aided and abetted others in violation of the Act and regulations, with respect to practices described above; and

**WHEREAS**, Downing Homes has voluntarily ceased their business activities with First American Title; and

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

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

**WHEREAS**, the Parties desire to avoid formal proceedings, any further expense, and to finally resolve this matter under the terms and conditions set forth below; and

**WHEREAS**, the terms of this Settlement Agreement are an appropriate disposition of this case and are in the public interest;

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

### **AGREEMENTS**

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

2. Based on Downing Homes's compliance with this Settlement Agreement, the Department will terminate its investigation of Downing Homes, and HUD agrees to take no further enforcement action under RESPA against Downing Homes, its shareholders, directors, officers, and employees, with respect to the practices described herein, or for which the Department received information about during this investigation, unless such practices recur.

3. Downing Homes hereby waives, releases, and remits any and all claims, directly or indirectly, against the Department, or any of its employees, agents, or representatives, with respect to HUD's investigation or this Settlement Agreement.

4. Downing Homes agrees hereafter to fully comply with all provisions of RESPA and its implementing regulations, and conduct its business in a manner consistent with the Department's RESPA policy statements.

5. Within thirty (30) business days of the Effective Date, Downing Homes shall make a settlement payment totaling one thousand three hundred eighty two dollars (\$1,382.00), payable to the United States Treasury, and delivered to Nilda Gallegos, U.S. Department of Housing and Urban Development, 451 7<sup>th</sup> Street, S.W., Room 9253, Washington, D.C. 20410.

6. Within thirty (30) business days of the Effective Date, Downing Homes will withdraw from Title Group IV and cease all operations with Title Group IV.

7. At all times in the future, any title entities formed in which Downing Homes has any interest, will be operated in accordance with the following terms:

- a. Each title entity will have sufficient initial and operating capital and net worth to conduct the settlement service for which it was created.
- b. Return on ownership interest to each owner shall be proportional to the percentage of that party's capital contribution.

- c. Each title entity will be staffed with employees who work only for that entity, and who are not shared with any other title entity, builder, real estate agent, mortgage broker, or other settlement service provider.
  - d. Each title entity will manage its own business affairs and will not be managed or controlled by any other entity or person, except that Downing Homes and other owners of such an entity shall be entitled to exercise the ownership and control typical for owners of a business entity.
  - e. Each title entity will have an office for its use in conducting business that is separate and apart from that of any other title entity.
  - f. Each title entity will pay fair market value for the facilities that it occupies and uses in its business.
  - g. Each title entity will comply with HUD Policy Statement 1996-4 with regard to the performance of and payment for title services.
  - h. Each title entity will actively compete in the marketplace for title insurance business, and will actively seek business from parties other than the builders, real estate agents, and mortgage brokers, or other settlement service providers with which it has had an affiliate relationship.
  - i. Each title entity will refrain from business practices that provide unearned fees or kickbacks in return for the referral of settlement service business.
8. Downing Homes agrees to cooperate with any HUD investigations of settlement service providers, including but not limited to the other members/managers of Title Group IV.
9. Should Downing Homes fail to comply with the terms set out above, or should any of its representations prove to be false or incomplete in any material manner, HUD may take

appropriate enforcement action, and/or refer the matter to other governmental authorities for further action.

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. By entering into and performing its obligations under this Settlement Agreement, Downing Homes does not admit any liability to HUD or any other person or entity. Downing Homes denies any liability or violation of RESPA and the implementing regulations. This Settlement Agreement is entered into solely to compromise and to settle disputed matters.

12. 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.

13. This Settlement Agreement applies to and binds Downing Homes and its respective predecessors, successors, directors, officers, principals, employees, representatives, and assigns, provided, however, that Downing Homes shall be entitled to relief from the provisions of Paragraph 7 in order to engage in conduct permitted by any potential amendments to RESPA, Section 8 of RESPA or provisions of Regulation X interpreting and applying Section 8 of RESPA.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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.

On Behalf of Downing Homes, L.L.C.:

Philip Downing  
Signature

12-8-05  
Date

Philip Downing  
Print Name

President  
Title

On Behalf of the U.S. Department of Housing and Urban Development:

Brian D. Montgomery  
Brian D. Montgomery  
Assistant Secretary for Housing-Federal  
Housing Commissioner

12/15/05  
Date