

## SETTLEMENT AGREEMENT AND STIPULATION

This SETTLEMENT AGREEMENT AND STIPULATION 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," Ms. Sue Smothers ("Ms. Smothers"), and Mr. Henry Montgomery ("Mr. Montgomery"). Ms. Smothers, Mr. Montgomery and the Agencies identified above shall be collectively referred to in this Settlement Agreement and Stipulation 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 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, and BSMC, Inc., a Virginia corporation (collectively referred to as "Buyers Source"), Belmont Properties, Inc., a Virginia corporation, and One

Source Equity, LLC, an Ohio limited liability company, are, or were, primarily engaged in the sale of lots at one or more of the following subdivisions: Sugarmill Woods, Florida; Savannah Lakes, South Carolina; Apple Valley, Ohio; Holiday Island, Arkansas, and Valley View Village South, Missouri (hereinafter the "Subdivisions");

WHEREAS the Agencies allege that Sue Smothers was and is a part owner of Belmont Properties, Inc., One Source Equity, LLC, and at least one of the Buyers Source companies, and received monies from Buyers Source, either directly or through Nomads, LLC, as a result of the sales made by Buyers Source;

WHEREAS Sue Smothers and Henry Montgomery have been married since 1996;

WHEREAS the Agencies allege that, in connection with lots located in the Subdivisions, Buyers Source, Belmont, One Source Equity, Henry Montgomery and Sue Smothers were developers 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 have commenced litigation against Ms. Smothers, Mr. Montgomery, Buyers Source and other parties in connection with the Prohibited Practices;

WHEREAS Mr. Montgomery and Ms. Smothers agree 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. Montgomery and Ms. Smothers' liability for fraud to establish the non-dischargeability of the debt under 11 U.S.C. § 523(a)(2), and Mr. Montgomery and Ms. Smothers retain the right to claim in any such proceeding that they are not liable for fraud;

WHEREAS Ms. Smothers contends, among other things, that (A) she is not a developer under the statute, (B) any interest that she had in Buyers Source, Belmont, or One Source Equity was controlled by Mr. Montgomery, (C) she was not in any way involved in the management of Buyers Source, Belmont, or One Source Equity, (D) any action she took in connection with any of the companies was taken at the behest of Mr. Montgomery, and (E) she was unaware of any violations of the Act;

WHEREAS Mr. Montgomery denies, among other things, that he had knowledge of any violations of the Act;

WHEREAS Ms. Smothers and Mr. Montgomery deny any wrongdoing in connection with the alleged Prohibited Practices, and deny that they violated the Act;

WHEREAS the Settlement Agreement shall not constitute an admission of wrongdoing, liability, or legal fault on the part of Ms. Smothers or Mr. Montgomery 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 and compromise of the Agencies' allegations against Mr. Montgomery and Ms. Smothers;

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

1. This Agreement is effective on the date of signature of the last signatory to the Agreement (hereinafter, the "Effective Date").
2. Mr. Montgomery and Ms. Smothers assign their interests in the assets of Nomads, L.L.C., Baldwin Management, and all entities that are defendants in Alphonso Jackson v. Buyers Source Sugarmill, L.L.C., Case No. 2:03cv591 ("the Litigation"), to the individual or entity appointed by the Court in that case for the purpose of collecting and distributing said funds ("the Receiver"). In the event that any assets are transferable prior to the Court's appointment of the Receiver, such assets shall be transferred to Donna J. Hall, Receiver, at Troutman, Sanders, LLP, 222 Central Park Avenue, Suite 2000, Virginia Beach, Virginia 23462. Mr. Montgomery and Ms. Smothers agree to exercise any ownership rights they may have in any of the defendant entities to transfer the assets of any such defendant to the Receiver. To the extent that Mr.

Montgomery and Ms. Smothers do not have a controlling interest in any such defendant, they shall only be obligated to transfer said assets with the assent of any necessary corporate official, owner, or shareholder. Mr. Montgomery and Ms. Smothers agree to provide reasonable cooperation in aiding the Receiver and the Agencies in facilitating the transfer of any assets to the Receiver, and in selling any such assets. Notwithstanding the provisions of this paragraph, Mr. Montgomery and Ms. Smothers retain any and all legal claims, if any, to indemnification and contribution against any defendant in this case.

3. Mr. Montgomery agrees to pay the Agencies \$105,000 according to the following schedule: (1) \$15,000 within one week of the Effective Date ("the Initial Payment"), (2) \$2,500 on the first day of every October, January, April, and July from October 1, 2004 until July 1, 2008 ("the Quarterly Payments"), and (3) a balloon payment of \$50,000 by October 1, 2008 ("the Balloon Payment"). If Mr. Montgomery fails to make any required Quarterly Payment within 30 days of the due date for that payment, he shall pay the Receiver that payment as well as an additional \$2,500 payment ("the Delinquency Payment") prior to the due date for the next Quarterly Payment. Any Delinquency Payment shall be in addition to, and shall not reduce, the overall monetary obligation. In the event that Mr. Montgomery fails to pay the Balloon Payment on or before October 1, 2008, the Receiver shall have the right to collect interest on any delinquent amount at an annual rate of 11.99 percent. The Receiver and Agencies shall also retain any other remedies provided by law, equity, or this Agreement, including applicable

collection laws, and the right of the Agencies, the United States, and/or the Receiver to move that Mr. Montgomery be held in contempt.

4. Neither Mr. Montgomery nor Ms. Smothers shall defend against the collection of any amounts owed under paragraphs 3 and 4 on the ground that the asset or income which is the subject of the collection action is in the name of Ms. Smothers except where the asset or income is bona fide wages, assets, dividends, or inheritance of Ms. Smothers. For purposes of this paragraph, income or assets in the name of Mr. Montgomery or Ms. Smothers traceable to proceeds from any of the Buyers Source entities shall not constitute bona fide wages, assets, dividends, or inheritance. Mr. Montgomery and Ms. Smothers further agree not to structure their financial affairs in such a manner as to hinder or obstruct the collection of Mr. Montgomery's obligations, including any actions taken in anticipation of a delinquency.

5. Notwithstanding any other provision of this Agreement, the Parties agree that the obligations set forth in paragraphs 3-4 are 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. Montgomery and Ms. Smothers' profits and their represented ability to pay. In the event that either or both should declare bankruptcy, neither party shall oppose a motion by the United States, the Agencies, and/or the Receiver to lift the stay as to the obligations set forth in

paragraphs 3-4 or any other obligation set forth in this Agreement. In the event that either party should declare bankruptcy within ninety days of the deposit of the Initial Payment, that party 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., 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 said party within 30 days of their receipt of notice concerning the declaration of bankruptcy.

6. Mr. Montgomery and Ms. Smothers represent that they disclosed to the Agencies in affidavits, executed under penalty of perjury on April 14, 2004, all assets that they owned, possessed, or controlled as of that date. In the event that Mr. Montgomery and Ms. Smothers have failed to disclose all of their assets, and in addition to any other obligation set forth in this Agreement, Mr. Montgomery and Ms. Smothers shall transfer any undisclosed assets, up to an amount not exceeding \$1 million, to the Receiver within two weeks of written notice from the Receiver or the Agencies.

7. In consideration of Ms. Smothers' and Mr. Montgomery's full satisfaction of the obligations set forth in this Agreement, the Agencies hereby waive, release, and remit Mr. Montgomery and Ms. Smothers 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. Montgomery and Ms. Smothers, 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 and including claims related to any evidence of indebtedness transferred to the Agencies or the Receiver from Thomas Brewer or any other person. It is further understood that in consideration of Ms. Smothers' and Mr. Montgomery's full execution of the obligations set forth in the Settlement Agreement, the Agencies will not seek to enforce against Mr. Montgomery and Ms. Smothers personally any judgment that they may obtain against Buyers Source or any other entity related to this matter. The Agencies expressly do not waive any claim against any individual or entity other than Mr. Montgomery and Ms. Smothers. Any order submitted by the Agencies to the Court related to the Receiver shall contain a provision requiring the Receiver to abide by the terms of this Agreement.

8. Mr. Montgomery and Ms. Smothers hereby waive, release, and remit 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. Mr. Montgomery and Ms. Smothers shall not violate any provision of the Act or its implementing regulations, either in their individual capacities, through a company owned or controlled by Ms. Smothers or Mr. Montgomery, or in concert with any other individual or entity. Ms. Smothers and Mr. Montgomery shall not engage in any transaction either in their individual capacities, through a

company owned or controlled by Ms. Smothers or Mr. Montgomery, or in concert with any other individual or entity, in which a time-share interest is used in any fashion as a marketing inducement in the sale of real property, except where disclosed to and expressly approved by HUD pursuant to the procedure for amendment set forth in paragraph 12. Mr. Montgomery shall not engage in any transaction either in his individual capacity, through a company owned or controlled by Ms. Smothers or Mr. Montgomery, 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 in the sale or exchange of real property, except where the current fair market value of the specific lot that is the subject of the transaction is appraised by an independent certified, licensed, or registered appraiser and such appraisal is disclosed to the purchaser prior to the transaction.

10. Mr. Montgomery and Ms. Smothers agree to cooperate with the Agencies in their ongoing investigation of and ongoing or potential litigation with Buyers Source and any other individual or entity related to this matter. Mr. Montgomery and Ms. Smothers further agree to cooperate with the Agencies and the Receiver in their efforts to collect any sums paid or due under this Agreement, including any investigation meant to determine whether Mr. Montgomery and Ms. Smothers disclosed all assets that they owned, controlled, or possessed, as of the date of their affidavits.

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. 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.

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

14. The Parties represent that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. Mr. Montgomery and Ms. Smothers represent that they have been advised by counsel in connection with the negotiation and execution of this Agreement. 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 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.

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

18. 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.

19. 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. Montgomery and Ms. Smothers to abide by the terms of this Agreement, or declines to appoint a Receiver, the Agencies reserve the right to withdraw from the Agreement and declare it null and void by providing written notice to counsel for Ms. Smothers and Mr. Montgomery within 15 days of the Court's decision.

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

Dated: <u>6/09/04</u>	By: <u>J. C. Weicher</u> 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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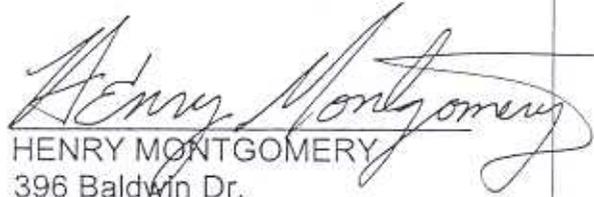
ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: <u>June 16, 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, D.C. 20001
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ON BEHALF OF HENRY MONTGOMERY AND SUE SMOTHERS

Dated: 6-10-04

By:



HENRY MONTGOMERY  
396 Baldwin Dr.  
Howard, OH 43028



SUE SMOTHERS  
396 Baldwin Dr.  
Howard, OH 43028