

## SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** is made and entered into by and among the **United States Department of Housing and Urban Development** ("HUD" or "Department"), and:

- a. Closing and Escrow Company of Tulsa, Inc. ("CECT"), an Oklahoma Corporation;
- b. Closings of Tulsa, L.L.C. ("COT"), an Oklahoma Limited Liability Company;
- c. 2003 Builders Services L.L.C. ("Builders Services"), an Oklahoma Limited Liability Company;
- d. Builders Title and Escrow L.L.C. ("Builders Title"), an Oklahoma Limited Liability Company;
- e. Robert Dailey, individually, and on behalf of CECT and Builders Title;
- f. Helen Elizabeth Dailey, individually, and on behalf of CECT and Builders Title;
- g. Darrell Jenkins, individually, and on behalf of Builders Services;

The persons, corporations, and limited liability companies, identified in a-g, above, shall be collectively referred to in this Settlement Agreement as the "Investigated Parties."

## RECITALS

**WHEREAS**, Builders Title is a provider of title and settlement services involving federally related mortgage loans in Tulsa, Oklahoma; COT is a provider of title and settlement services involving federally related mortgage loans in Tulsa,

Oklahoma; Builders Services owns a 49% membership interest in Builders Title; and CECT owns a 51% membership interest in Builders Title and a 55% membership interest in COT, and

**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, or to secure information to serve as a basis for recommending legislation concerning real estate settlement practices, and

**WHEREAS**, Section 8(a) of RESPA prohibits any person from giving or receiving any fee, kickback or thing of value pursuant to an agreement or understanding 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**, the Department has conducted a formal federal investigation of the Investigated Parties concerning possible violations of Sections 8(a) and (b) of RESPA, for which the Investigated Parties have cooperated and

**WHEREAS**, following this investigation, the Department asserts that the investigated parties engaged in a series of practices; specifically:

(A) In October 2003, a group of approximately (40) forty Tulsa area home builders formed Builders Services, solely for the purpose of forming Builders Title, and distributing funds from Builders Title to its builder members. In November 2003, Builders Services and CECT formed Builders Title. CECT and COT contributed capital and assets from their ongoing title business in exchange for CECT receiving 51% share of Builders Title, and Builders Services contributed capital in exchange for a 49% interest in Builders Title. Builders Services and CECT implicitly agreed that Builders Services' builder members would refer consumers to Builders Title. In exchange, Builders Services acquired its membership interest for less than fair market value.

(B) Builders Services received allocations and quarterly distribution from Builders Title equal to 49% of Builders Title's net profits. Each quarter, Builders Services' builder members received an allocation and distribution from Builders Services that fluctuated based on the total sales prices of the real estate contracts that each Builders Services' member referred to Builders Title.

(C) The builders received significant financial benefits arising from their referral of business to Builders Title.

(D) In some cases, Builders Title outsourced core title work to COT, and

**WHEREAS** based upon the results of its investigation, HUD asserts that the Investigated Parties 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** the Investigated Parties deny any wrongdoing in connection with the alleged practices, and deny that they violated RESPA or the regulations, and

**WHEREAS** Builders Services represents that it has discontinued its practice of allocating and distributing income, gain, loss, and deductions among its members in a manner that takes into consideration the business that each Builders Services member referred to Builders Title, and

**WHEREAS** CECT and Builders Title represent that they have discontinued their practice of facilitating Builders Services allocations and distributions of income, gain, loss, and deductions among its members in a manner that takes into consideration the business that each Builders Services member referred to Builders Title, and

**WHEREAS** Builders Title represents that it has taken certain steps to ensure that it performs all core title services, and

**WHEREAS** the Department and the Investigated 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 the Investigated Parties 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 to this Settlement Agreement now desire to avoid any further expense and proceedings and to finally resolve this matter on the terms and conditions set forth below, and

**WHEREAS** the terms of this Settlement Agreement are an appropriate disposition of this matter and in the public interests.

### **AGREEMENTS**

**NOW, THEREFORE**, in consideration of the mutually negotiated promises, covenants, and obligations in this Settlement Agreement, the Department and the Investigated Parties reach a 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. Based on the Investigated Parties' compliance with this settlement agreement, the Department will terminate its investigation, and HUD agrees to take no further enforcement action under RESPA against the Investigated Parties, their shareholders, members, directors, officers, managers,- employees, agents, representatives and attorneys with respect to the practices described herein, or for which the Department received information about during this investigation, unless such practices recur.

3. The Investigated Parties hereby waive, release, and remit any and all claims, directly or indirectly, against the Department, or any of its employees, agents, or representatives, with respect to any actions arising from HUD's investigation or this settlement.

4. The Investigated Parties agree to comply with the RESPA and its implementing regulations, and conduct their business in a manner consistent with the Department's RESPA policy statements.

5. Within thirty (30) business days of the Effective Date, the Investigated Parties shall collectively make a settlement payment totaling \$125,000, payable to the United States Treasury, and delivered to counsel for HUD. Each Investigated Party shall be jointly and severally liable for the entire payment. Builders Services and/or its members shall pay a minimum of \$50,000 and CECT shall pay a minimum of \$75,000. The other Investigated Parties shall not make any payments to Builders Services, directly or indirectly, to reimburse Builders Services for this payment.

Builders Services and its members will not accept any reimbursement, directly or indirectly, for this payment.

6. Builders Services will amend its Operating Agreement to include a provision that provides that no member shall receive any "thing of value," as defined in RESPA and the regulations, in exchange for the referral of business to Builders Title, unless such conduct is in compliance with 12 U.S.C. § 2607(c)(4), and 24 C.F.R. § 3500.15.

7. Builders Services will not make allocations or distributions based on the member's relative: number of referrals, dollar volume of referrals, profits arising from referrals, sales price of referrals, volume of sales (regardless of whether the transactions were closed at Builders Title), or any other formula that attempts to compensate individual members for referring business to Builders Title.

8. Builders Title will amend its Operating Agreement to include a provision that provides that no member shall pay any "thing of value," as defined in RESPA and the regulations, directly or indirectly, to any person in exchange for the referral of business to Builders Title, unless such conduct is in compliance with 12 U.S.C. § 2607(c)(4), and 24 C.F.R. § 3500.15. Builders Title shall notify HUD if it has reason to believe that any of its members are engaged in this activity.

9. The Investigated Parties shall not pay or receive, directly or indirectly, any "thing of value," as defined in RESPA and the regulations, to or from any person in

exchange for the referral of business to any other person, unless such conduct is in compliance with 12 U.S.C. § 2607(c)(4), and 24 C.F.R. § 3500.15.

10. Builders Title will not admit any member or transfer any membership interest for any amount less than the fair market value of the interest, as determined by a Certified Public Accountant.

11. Builders Services will not admit any member for an amount less than the fair market value of the interest, as determined by a Certified Public Accountant.

12. Builders Services shall distribute a memorandum, in a form acceptable to HUD, to all its members, that:

- (a) describes this Settlement Agreement;
- (b) states that it is Builders Services' policy that all members must comply with the Act, regulations, and the Department's RESPA policy statements;
- (c) states that it is Builders Services' policy that its members may not require any consumer to purchase settlement services from Builders Title;
- (d) states that it is Builders Services' policy that in all cases where the member, or his/her agent, refers a consumer to Builders Title, the member, or his/her agent, shall state verbally and in writing that the member maintains an affiliated business arrangement with Builders Title, that the member may receive a financial benefit if the consumer



utilizes Builders Title, and that the consumer has a right to select a different settlement service provider, who may charge more or less.

13. Builders Services will notify HUD if it has reason to believe that any of its members are violating the policies set forth in lines d-f of the preceding paragraph.

14. At all times in the future, Builders Title will be operated in accordance with the following terms:

(a) Builders Title, through its own employees, will provide "core title services" as that term is defined in HUD Policy Statement 1996-4. Builders Services shall not outsource any of these functions to COT or another title company.

(b) Builders Title will manage its own business affairs through its own employees, who will be appropriately compensated for management services provided to the company.

(c) Builders Title will maintain an office for its use in conducting business that is separate and apart from that of any business partner or other settlement service provider, and will pay all related costs.

(d) Builders Title will acquire and maintain its own office equipment, computers, office supplies, and other items necessary to provide core title services, and will pay all related expenses;

(e) Builders Title will pay its own operating expenses;

(f) Builders Title will actively compete in the marketplace for title insurance business.

(g) Builders Title will ensure that there is full disclosure to all consumers that are referred to it from affiliated businesses, as provided for under RESPA, the regulations, and this Settlement Agreement

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. Should the Investigated Parties fail to comply with the terms set out above, or should any of the Investigated Parties' written or oral testimony prove to be false or incomplete in a material manner, HUD may take appropriate enforcement action.


21. 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 Department's and the Investigated Parties' rights and obligations.

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

23. 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 the U.S. Department of Housing & Urban Development:**

  
\_\_\_\_\_  
John C. Weicher  
Assistant Secretary for  
Housing-Federal Housing Commissioner

  
\_\_\_\_\_  
Date

On Behalf of Closings of Tulsa, L.L.C.:

Robert L. Dailey

3-18-05

Date

On Behalf of Closing and Escrow Company of Tulsa, Inc.:

Robert L. Dailey

3-18-05

Date

\_\_\_\_ Date

On Behalf of Builders Title and Escrow, L.L.C.

Robert L. Dailey

3-18-05  
Date

On Behalf of 2003 Builders Services, L.L.C.

[Signature]

3-18-05  
Date

Individually:

Helen Elizabeth Dailey  
Helen Elizabeth Dailey

3-18-05  
Date

Robert L. Dailey  
Robert Dailey

3-18-05  
Date

[Signature]  
Darrell Jenkins

3-18-05  
Date