

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Agreement”) is entered into this \_\_\_ day of January, 2022 (the “Effective Date”), by and between Mary Shea, on the one hand, and Mike Cherwenka and Best Buy Homes, LLC (“Best Buy”), on the other. Shea, Cherwenka, and Best Buy may be referred to individually as a “Party” and collectively as “the Parties.”

### RECITALS

**WHEREAS**, the Parties are currently in litigation in a case styled *Shea v. Best Buy Homes, LLC & Mike Cherwenka*, No. 1:20-cv-2387 (N.D. Ga.);

**WHEREAS**, Shea brought claims for a declaratory judgment, Georgia RICO, fraud, securities fraud, negligent misrepresentation, promissory estoppel, and attorney’s fees;

**WHEREAS**, Best Buy counterclaimed for breach of contract, promissory estoppel, and attorney’s fees;

**WHEREAS**, by letter dated July 31, 2020, Best Buy relinquished its claim to specific performance of the sale of the property at 217 Leafwood Lane, Riverdale, Georgia, 30274;

**WHEREAS**, Best Buy and Cherwenka have represented that they lack assets to satisfy any monetary judgment in *Shea v. Best Buy Homes, LLC & Mike Cherwenka*, No. 1:20-cv-2387 (N.D. Ga.);

**WHEREAS**, the Parties desire to resolve all of their disputes without incurring further costs of litigation, including attorney’s fees;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **I. Dismissal with Prejudice.**

Within five (5) business days after the Effective Date, the Parties shall cause a Joint Dismissal with Prejudice to be filed in *Shea v. Best Buy Homes, LLC & Mike Cherwenka*, No. 1:20-cv-2387 (N.D. Ga.). The Joint Dismissal with Prejudice shall dismiss all claims and counterclaims with prejudice. No Party will take any payment of any kind from any other Party for the claims and counterclaims asserted in *Shea v. Best Buy Homes, LLC & Mike Cherwenka*, No. 1:20-cv-2387 (N.D. Ga.). Each Party will bear its own attorney’s fees, taxes, expenses, and costs in this matter.

#### **II. Mutual Release.**

**A. Release of Cherwenka and Best Buy.** Upon the filing of the Joint Dismissal with Prejudice provided in Section I, Shea, on behalf of herself and her successors, assigns, heirs,

administrators, representatives, and trustees, hereby releases and forever discharges Cherwenka and Best Buy from any and all legal and equitable claims, obligations, demands, actions, causes of action, suits, damages, costs or liabilities, asserted or unasserted, known or unknown, whether based on a statute, tort or contract, in law or in equity that were or could have been asserted in *Shea v. Best Buy Homes, LLC*, No. 1:20-cv-2387 (N.D. Ga.).

**B. Release of Shea.** Upon the filing of the Joint Dismissal with Prejudice provided in Section I, Cherwenka and Best Buy, on behalf of themselves and their successors, assigns, heirs, administrators, representatives, and trustees hereby releases and forever discharges Shea from any and all legal and equitable claims, obligations, demands, actions, causes of action, suits, damages, costs or liabilities, asserted or unasserted, known or unknown, whether based on a statute, tort or contract, in law or in equity that were or could have been asserted in *Shea v. Best Buy Homes, LLC*, No. 1:20-cv-2387 (N.D. Ga.).

**C. No Release of this Agreement.** Nothing in the foregoing Releases will release any Party from any obligations in this Agreement, nor does the Release preclude any action, at law or in equity, arising from a breach of this Agreement.

### **III. Miscellaneous Provisions.**

**A. Choice of law.** This Agreement shall be construed and interpreted by and according to the laws of the State of Georgia, without regard to Georgia's choice of law rules.

**B. Forum Selection.** The Parties agree that any action to enforce this Agreement shall subject to the exclusive jurisdiction of the Superior Court of Fulton County, Georgia or the United States District Court for the Northern District of Georgia.

**C. Entire Agreement.** This Agreement constitutes the Parties' entire agreement and understanding; this Agreement merges and supersedes all prior discussions, negotiations, understandings and agreements among the Parties. No Party shall be bound by any condition, definition, warranty, right, duty or covenant other than as expressly stated in this Agreement or as subsequently set forth in a written document signed by the Parties hereto. The provisions of this Agreement, including this paragraph, may be modified or waived only in writing signed by the Party to be charged. The Parties specifically agree that no Party will be bound by any failure to respond or object to a written or oral communication from the other Party that purports to impose or confirm any obligation not expressly set forth in this Agreement.

**D. Authority to Execute.** The undersigned represent and warrant that they have the authority to enter into this Agreement on behalf of Shea, Cherwenka, and Best Buy, respectively.

**E. Successors and Assigns.** This Agreement shall inure to the benefit of and be binding on each Party's successors, assigns, heirs, administrators, representatives, and trustees.

**F. No Drafting Presumption.** This Agreement shall be construed as if each Party participated equally in its negotiation and drafting.

**G. Headings.** The headings contained in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement in any way.

**H. Execution in Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be enforceable against the Party who has executed it. Facsimile and e-mail signatures shall be deemed as effective as original signatures.

**I. No Admission.** This Agreement shall not be construed as an admission by any Party that any allegation, claim, or counterclaim lacked merit.

**J. No Contact.** Cherwenka and Best Buy agree not to communicate with or contact Shea by any means. Any communications related to this agreement shall be directed to Bondurant Mixson & Elmore, LLP, One Atlantic Center, 1201 W. Peachtree St. NW, Suite 3900, Atlanta, GA 30309. This is a material term of this Agreement enforceable by injunctive relief. Breach by Cherwenka or Best shall also entitle Shea to damages equal to the value of the attorney's fees she incurred in *Shea v. Best Buy Homes, LLC & Mike Cherwenka*, No. 1:20-cv-2387 (N.D. Ga.), which is not less than \$90,000. The parties agree that this sum represents Shea's liquidated damages and is not a penalty.

**K. Attorney's Fees.** In the event of litigation arising from a breach of this Agreement or litigation to enforce the Releases contained in Section II, the prevailing party in such litigation will be entitled to reasonable attorney's fees, costs, and expenses.

IN WITNESS WHEREOF, signed as of the dates below.

Mary Shea

\_\_\_\_\_

Dated: \_\_\_\_\_

Mike Cherwenka

 \_\_\_\_\_

Dated: 1/13/2022

Best Buy Homes, LLC

By:  \_\_\_\_\_

Its: member \_\_\_\_\_

Dated: 1/13/2022 \_\_\_\_\_