

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into on this _____ day of _____ 2023, by and between **ALACHUA COUNTY**, a charter county and political subdivision of the State of Florida (“County”) **ABILITY HOUSING, INC.**, a Florida not for profit corporation, **ABILITY DWV I, LLC**, a Florida Limited Liability Company, **ABILITY DWV I MSM, LLC**, a Florida Limited Liability Company, **ABILITY DWV II, LLC**, a Florida Limited Liability Company, and **ABILITY DWV II MSM, LLC**, a Florida Limited Liability Company, collectively referred to herein as the “Parties” or individually as a “Party”.

RECITALS:

WHEREAS, Alachua County is a charter county and a political subdivision of the State of Florida, with its headquarters located at 12 SE 1st Street, Gainesville, Florida 32601; and

WHEREAS, Ability Housing, Inc. is a Florida not for profit corporation with a principal address of 3740 Beach Boulevard, Suite 304, Jacksonville, Florida 32207, that was organized for the purpose of developing, owning and operating affordable housing, addressing redevelopment of disadvantages communities, supporting and coordinating programs for adults with disabilities and homeless persons, facilitating the development of independent living skills and community inclusion of adults with disabilities, and to solicit, receive, and disburse funds in support of its own and similar programs and organizations. Ability Housing, Inc. is the Manager of both Ability DWV I MSM, LLC and Ability DWV II MSM, LLC; and

WHEREAS, Ability DWV I, LLC, is a Florida Limited Liability Company with a principal address of 3740 Beach Boulevard, Suite 304, Jacksonville, Florida 32207, and is the record owner of that certain real property bearing Alachua County Parcel Identification No. 16107-150-000; and

WHEREAS, Ability DWV I MSM, LLC, is a Florida Limited Liability Company with a principal address of 3740 Beach Boulevard, Suite 304, Jacksonville, Florida 32207, is the Manager and Sole Member of Ability DWV I, LLC, and is wholly owned subsidiary of Ability Housing, Inc.; and

WHEREAS, Ability DWV II, LLC, is a Florida Limited Liability Company with a principal address of 3740 Beach Boulevard, Suite 304, Jacksonville, Florida 32207, and is the record owner of that certain real property bearing Alachua County Parcel Identification No. 16106-129-000; and

WHEREAS, Ability DWV II MSM, LLC, is a Florida Limited Liability Company with a principal address of 3740 Beach Boulevard, Suite 304, Jacksonville, Florida 32207, is the Manager and Sole Member of Ability DWV II, LLC, and is wholly owned subsidiary of Ability Housing, Inc.; and

WHEREAS, as used herein, Ability Housing, Inc., Ability DWV I, LLC, Ability DWV I MSM, LLC, Ability DWV II, LLC, and Ability DWV II MSM, LLC, along with any other unnamed subsidiary or affiliate company of Ability Housing, Inc. that may have an interest in the Dogwood Village Project, shall be collectively referred to as “**Ability**”; and

WHEREAS, Ability’s Dogwood Village Project was a proposed affordable rental housing development to be located on property purchased and owned by Ability, Parcel Identification Nos. 16107-150-000 and 16106-129-000, located at or about the corner of SE 8th Avenue and SE 15th Street in Gainesville, Florida; and

WHEREAS, on or about September 20, 2020, the Alachua County Board of County Commissioners (“Board”) approved a \$230,000.00 funding match for an applicant to be determined that received Low-Income Housing Tax Credits (“LIHTC”) to qualified developers from the Florida Housing Finance Corporation (“FHFC”), with the release of loan funding contingent on the applicant executing the appropriate loan and other documentation required by the County; and

WHEREAS, on or about July 20, 2021, FHFC issued a Request for Applications 2021-201 Housing Credit Financing for Affordable Housing Development Located in Medium and Small Counties, through which the State of Florida would award LIHTC to qualified developers (“FHFC RFA”); and

WHEREAS, on or about June 19, 2021, the Alachua County Housing Finance Authority issued NOFA and Request for Application 2021-201 for Local Government Area of Opportunity designation and corresponding Local Government Loan Contribution in the amount of \$460,000.00 support of a developer’s application for Housing Credit Financing pursuant to the FHFC 2021-201 (“ACHFA RFA”), with \$230,000.00 of the \$460,000.00 to be provided by the County and other \$230,000.00 to be provided by the ACHFA; and

WHEREAS, on or about August 6, 2021, Ability submitted its application to the ACHFA, in response to the ACHFA RFA, for Local Government Area of Opportunity designation and corresponding Local Government Loan Contribution for its Dogwood Village Project; and

WHEREAS, on or about August 24, 2021, the ACHFA approved Ability’s Dogwood Village Project application for Local Government Area of Opportunity designation and corresponding \$460,000 Local Government Loan Contribution; and

WHEREAS, on or about August 26, 2021, the Chair of the Board executed the FHFC’s Local Government Verification of Contribution – Loan Form for Ability’s Dogwood Village Project; and

WHEREAS, on or about August 26, 2021, Ability submitted its application to the FHFC, in response to the FHFC RFA, for housing credit financing for its Dogwood Village Project; and

WHEREAS, on or about December 10, 2021, the FHFC determined that Ability’s application housing credit financing met all of the necessary criteria and obtained a sufficient

scoring to be ranked within the tentative funding range for an award of Housing Credits (“Preliminary Award”), but an actual award of said credits does not occur until successful completion of the credit underwriting process; and

WHEREAS, numerous applicants protested the Preliminary Award, which delayed the effectiveness of FHFC’s Preliminary Award to Ability; and

WHEREAS, on or about April 29, 2022, the FHFC resolved the litigation regarding its proposed Preliminary Award, and by letter dated May 5, 2022, the FHFC invited Ability to enter credit underwriting for Housing Credits; and

WHEREAS, on or about September 13, 2022, the Board voted to request that FHFC allow Ability to relocate its Dogwood Village Project to another location within Alachua County and requested that Ability consider alternative sites; and

WHEREAS, on or about December 13, 2022, the Board voted to rescind its support of Ability’s Dogwood Village Project; and

WHEREAS, by letter dated December 28, 2022, the FHFC denied the County’s request to allow Ability to relocate its Dogwood Village Project and requested Ability to voluntarily return its preliminary funding award or FHFC staff would request that the FHFC Board of Directors de-obligate the Preliminary Award; and

WHEREAS, in order to remain eligible for future funding opportunities from FHFC, Ability returned the Preliminary Award to the FHFC; and

WHEREAS, Ability alleges that it has incurred damages as a results of the County’s action; and

WHEREAS, Ability and the County desire to enter into this Settlement Agreement for the purposes of resolving any and all filed or unfiled claims, causes of action, potentials claims or causes of action, and disputes involving or related to the Dogwood Village Projects, and are motivated by a desire to avoid the costs, time, and uncertainty associated with litigation and to arrive at a fair and reasonable agreement to resolve any dispute between the Parties related to the Dogwood Village Project.

NOW, THEREFORE, in consideration of the terms and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Recitals**. The above-referenced recitals are true and correct and are hereby incorporated into this Agreement for all purposes.
2. **Effective Date**. This Settlement Agreement shall become effective upon execution by all Parties.

3. **Contract to Purchase Real Property.** Within two calendar days after the Effective Date, the Parties shall enter into the Contract to Purchase Real Property attached hereto as **Exhibit 1** regarding Alachua County Parcel Identification Nos. 16107-150-000 and 16106-129-000 (the “Property”).
4. **Settlement Payment.** At the closing for the Property, the County shall remit to the Closing Agent the total amount of \$2,964,730.60, which includes the purchase price for the Property as settlement for damages that have been claimed, or that could be claimed now or in the future, by Ability arising from or in any way related to, its Dogwood Village Project. Upon closing, the Closing Agent shall remit to Ability Housing, Inc. the entire balance of the Settlement Payment, less any monies applied to pay mortgages, taxes due, prorated taxes, or to satisfy and release any other encumbrances on the Property other than the Permitted Exceptions.
5. **Mutual Releases Contingent on Closing.** This Settlement Agreement, including but not limited to the Parties’ mutual releases set forth in Paragraph 6 of this Settlement Agreement, shall be null and void and the Parties shall retain all of their rights, including but not limited to the right to assert claims and pursue litigation if, for any reason other than a default by the Seller under the Contract to Purchase Real Property, the County does not close on the purchase the Property and pay \$2,964,730.60 to the Closing Agent as set forth in Paragraph 4 of this Settlement Agreement on or before the Closing Date set forth in the Contract to Purchase Real Property attached hereto as **Exhibit 1**.
6. **Mutual Releases.**
 - a. Ability hereby waives and releases, acquits, satisfies, and forever discharges the Alachua County Housing Finance Authority and the County, including its elected officials and employees, and any and all affiliates, legal representatives, insurance carriers, successors, and assigns thereof (collectively, the “County’s Related Parties”), from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever which Ability ever had or now has, in law or in equity, for, upon, or by any reason arising from or related to its Dogwood Village Project and the Property. In addition, and without waiving the generality of the foregoing, Ability covenants with and warrants to the Alachua County Housing Finance Authority and the County, including the County’s Related Parties, that no other subsidiary or affiliated company of Ability has, nor will have, any claims that are not included in, covered by, and settled in-full by this Settlement Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Settlement Agreement.

- b. The County hereby waives and releases, acquits, satisfies, and forever discharges Ability, including its legal representatives, insurance carriers, successors, heirs, and assigns thereof (collectively, the “Related Parties”), from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever which the County ever had or now has, in law or in equity, for, upon, or by any reason arising from or related to Ability’s Dogwood Village Project or the Property. The release set forth in this provision does not apply to any rights granted by or arising from this Settlement Agreement.’
- c. The foregoing releases shall be of no force and effect should this Settlement Agreement terminate and become null and void as provided in Paragraph 5 above.
7. **Future Cooperation.** The Parties agree to use good faith efforts to identify and work together on an affordable housing project in Alachua County, Florida, and to identify and work collaboratively to secure capital for development of the project.
8. **Authority.** Each Party represents and warrants, with respect to itself, that the execution and delivery of this Settlement Agreement has been authorized by all necessary action of said Party, and that this Agreement constitutes the legal, valid, and binding agreement of each Party, enforceable in accordance with its terms.
9. **Governing Law; Venue.** This Settlement Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Sole and exclusive venue for any action arising out of or related to this Settlement Agreement shall be in Alachua County, Florida.
10. **Binding Effect.** This Settlement Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs, assigns, agents, trustees, and representatives of the Parties.
11. **Non-Waiver.** Failure by the Parties to insist upon the strict performance of any of the terms, conditions, or provisions of this Settlement Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and any Party, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Agreement as set forth herein.

12. **Construction; Headings.** The Parties acknowledge that they participated in the negotiation and drafting of the terms of this Settlement Agreement and acknowledge that no provision shall be strictly construed against one party or the other based solely on draftsmanship. The Parties have entered into this Settlement Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to avoid the costs, time, and uncertainty associated with litigation, and to arrive at a fair and reasonable agreement with regard to the Parties' dispute. The Parties acknowledge that they enter into this Settlement Agreement freely and voluntarily. All sections and descriptive headings in this Settlement Agreement are inserted for convenience only, and shall neither affect the construction or interpretation hereof, nor add or subtract from the meaning of the contents of each section.
13. **Interpretation.** This Settlement Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. The terms "hereby," "hereof," "herein," "hereto," "hereunder," and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. All words, terms, and phrases specifically defined by a capitalized term shall apply throughout this Settlement Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. In construing this Settlement Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.
14. **Entire Agreement; Amendments.** This Settlement Agreement and the Contract to Purchase Real Property attached hereto as **Exhibit 1** represent the entire understanding and agreement between the Parties with respect to the subject matter hereof. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Settlement Agreement. This Settlement Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated except by an instrument in writing, executed by all Parties.
15. **Enforcement; Remedies.** The Parties shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Settlement Agreement, and the terms of this Settlement Agreement shall be specifically enforceable in court. In the event of any dispute hereunder or any action to interpret or enforce this Settlement Agreement, any provision hereof, or any matter arising herefrom, the prevailing party shall be paid by the non-prevailing party the

reasonable attorneys' fees and costs incurred in enforcing its rights and remedies, whether incurred at the pre-trial, trial, or appellate levels, including any fees and costs incurred in determining the amount of awardable fees.

16. **Severability.** If any part of this Settlement Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Settlement Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effectuated. To that end, this Settlement Agreement is declared severable.
17. **Disclaimer of Third-Party Beneficiaries.** This Settlement Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than as expressly stated herein.
18. **Purpose of this Agreement; Not Establishing Precedent.** By entering into this Settlement Agreement, the Parties do not admit any liability whatsoever to the other, or to any other person, arising out of any claims alleged or asserted, and expressly deny any and all such liability. The Parties acknowledge and agree that this Settlement Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability or violation of any law, statute, ordinance, regulation, agreement, or other legal duty of any nature whatsoever. Rather, this Settlement Agreement is for the compromise of potential and disputed claims, involving both fact and law, and the Parties enter into this Settlement Agreement in a spirit of cooperation for the purpose of resolving alleged claims, alleged damages, and potential litigation, and in recognition of the desire for the speedy and reasonable resolution of the Parties' dispute. The acceptance of proposals for purposes of this Settlement Agreement was part of an informal settlement meeting affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances.
19. **Notices.** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the third day after

mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and (iii) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows:

a. To **Ability**:

Shannon L. Nazworth
3740 Beach Boulevard
Suite 304
Jacksonville, Florida 32207

b. To **County**:

Alachua County, Florida
c/o County Manager
12 SE 1st Street
Gainesville, Florida 32601

With a copy to:

Sylvia Torres, County Attorney
Alachua County Attorney's Office
12 SE 1st Street
Gainesville, Florida 32601

or to such other address as any party hereto shall from time to time designate to the other party by notice in writing as herein provided.

20. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties hereto and all of which shall constitute one and the same agreement. The Parties hereto further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.
21. **Waiver of Jury Trial**. The Parties hereby knowingly, voluntarily, and intentionally waive any right to a jury trial with respect to any claims arising in connection with this Settlement Agreement.

EXECUTED this ____ day of _____, 2023, by the Chair of the Alachua County Board of County Commissioners, on behalf of Alachua County, a charter county and political subdivision of the State of Florida, acting within her signature authority as granted by the Board of County Commissioners.

**BOARD OF COUNTY COMMISSIONERS,
ALACHUA COUNTY, FLORIDA**

ATTEST:

By: _____
Anna Prizzia, Chair

J.K. "Jess" Irby, Esq.

APPROVED AS TO FORM

Alachua County Attorney's Office

EXECUTED this _____ day of _____, 20____, by **ABILITY HOUSING, INC.**, a Florida not for profit corporation.

ABILITY HOUSING, INC.,
a Florida not-for-profit corporation,

By: _____
Shannon L. Nazworth, President

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on _____ by SHANNON L. NAZWORTH as President of Ability Housing, Inc., a Florida not-for-profit corporation, on behalf of said corporation. Said person is personally known to me or produced _____ as identification.
(type of identification)

Notary Public – State of Florida

Print Name: _____

Commission Number: _____

Commission Expiration Date: _____

EXECUTED this _____ day of _____, 20____, by **ABILITY DWV I, LLC**, a Florida limited liability company.

ABILITY DWV I, LLC
a Florida limited liability company

By: Ability DWV I MSM, LLC
a Florida limited liability company,
its Manager and Sole Member

By: Ability Housing, Inc.,
a Florida not-for-profit corporation,
its Manager

By: _____
Shannon L. Nazworth, President

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on _____ by SHANNON L. NAZWORTH as President of Ability Housing, Inc., a Florida not-for-profit corporation, as Manager of Ability DWV I MSM, LLC, a Florida limited liability company, as Manager of Ability DWV I, LLC, a Florida limited liability company, on behalf of said the companies. Said person is personally known to me or produced _____ as identification.
(type of identification)

Notary Public – State of Florida

Print Name: _____

Commission Number: _____

Commission Expiration Date: _____

EXECUTED this _____ day of _____, 20____, by **ABILITY DWV I MSM, LLC**, a Florida limited liability company.

ABILITY DWV I MSM, LLC
a Florida limited liability company

By: Ability Housing, Inc.,
a Florida not-for-profit corporation,
its Manager

By: _____
Shannon L. Nazworth, President

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on _____ by SHANNON L. NAZWORTH as President of Ability Housing, Inc., a Florida not-for-profit corporation, as Manager of Ability DWV I MSM, LLC, a Florida limited liability company, on behalf of said the companies. Said person is personally known to me or produced _____ as identification.

(type of identification)

Notary Public – State of Florida

Print Name: _____

Commission Number: _____

Commission Expiration Date: _____

EXECUTED this _____ day of _____, 20____, by **ABILITY DWV II, LLC**, a Florida limited liability company.

ABILITY DWV II, LLC
a Florida limited liability company

By: Ability DWV II MSM, LLC
a Florida limited liability company,
its Manager and Sole Member

By: Ability Housing, Inc.,
a Florida not-for-profit corporation,
its Manager

By: _____
Shannon L. Nazworth, President

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on _____ by SHANNON L. NAZWORTH as President of Ability Housing, Inc., a Florida not-for-profit corporation, as Manager of Ability DWV II MSM, LLC, a Florida limited liability company, as Manager of Ability DWV II, LLC, a Florida limited liability company, on behalf of said the companies. Said person is personally known to me or produced _____ as identification.
(type of identification)

Notary Public – State of Florida

Print Name: _____

Commission Number: _____

Commission Expiration Date: _____

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ABILITY DWV II MSM, LLC
a Florida limited liability company

By: Ability Housing, Inc.,
a Florida not-for-profit corporation,
its Manager

By: _____
Shannon L. Nazworth, President

STATE OF FLORIDA
COUNTY OF DUVAL

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(type of identification)

Notary Public – State of Florida

Print Name: _____

Commission Number: _____

Commission Expiration Date: _____