

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (“Agreement”) is made by and between Adams County Board of County Commissioners (“Plaintiff”) and Arising Hope (“Arising Hope”) and Angela McMahan (“McMahan”) (collectively “Defendants”), and

WHEREAS, the Plaintiff commenced an action against Defendants in the Adams County District Court, State of Colorado, 2018CV32096, alleging breach of contract and other claims for money damages related to the property located at 12155 Monaco Drive, Brighton, CO 80602 (“the Litigation” and “the Property”); and,

WHEREAS, subsequent to the filing of the Litigation, the Property that is the subject of the Litigation was sold for a price of \$365,000; and,

WHEREAS, the sale of the Property resulted in recovery of amounts paid for the Property as well as a profit in the amount of \$57,000; and

WHEREAS, of the \$57,000 in profit, \$42,065.54 was paid in closing costs, real estate broker fees, and payment of invoices for improvements to the Property; and,

WHEREAS, after the sale, Defendants’ title company wired \$308,000 to Plaintiff on or about June 11, 2019 from the sale of the Property; and,

WHEREAS, the \$308,000 paid to Plaintiff resulted in full reimbursement for the funds granted to Defendant Arising Hope by Plaintiff under the Community Development Block Grant program; and,

WHEREAS, the parties wish to resolve their claims to the remaining \$13,046.46 in profit from the sale of the Property; and,

WHEREAS, Defendants have denied and continue to deny all material allegations set forth in the Litigation; and,

WHEREAS, Plaintiff wishes to resolve and settle in full all claims it has, had or may have against Defendants or Defendants' past or present attorneys, agents, or assigns, to the date of execution of this Agreement, including but not limited to all claims that were or could have been raised in the Litigation, claims related to the Property, and claims related to the Community Development Block Grant funds granted to Defendant Arising Hope; and,

WHEREAS, Plaintiff agrees to voluntarily release and waive any potential claims and allegations relating to the events underlying the Litigation under all applicable laws, statutes and/or ordinances, including but not limited to any federal, state or local law, any and all claims under common law, including any potential claims related to the Property or the sale of the Property.

NOW, THEREFORE, in order to avoid additional time-consuming and costly litigation and in exchange for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Plaintiff and Defendants agree as follows:

1. PAYMENT AND CONSIDERATION TO PLAINTIFF.

In consideration for Plaintiff's release and waiver of its claims and covenant not to sue as provided in paragraph 2 below, and for other mutual promises made in the Agreement:

- A. Defendants shall issue a check payable to Adams County in the amount of \$10,433.30. This amount represents program income to Plaintiff under 24 CFR §570.503. Payment shall be made to Adams County and provided to Plaintiff's counsel within 30 days of the full execution of this Agreement.
- B. Defendant Arising Hope will retain the \$2,613.16 remaining from sale proceeds to reimburse Defendant Arising Hope for funds expended by it to maintain the habitability of the Property after the Property was vacated by all

residents and until the Property was sold.

C. Plaintiff and Defendants have fully considered the nature of Plaintiff's claims brought in the Litigation and Defendants' potential claims related to the Property in arriving at the above stated payments and consideration and have determined that the amount set forth above reasonably represents a compromise of Plaintiff's claims as alleged in the Litigation.

2. GENERAL RELEASE. For and in consideration of the payments and consideration described above, Plaintiff hereby releases and discharges Defendants and any of their respective past or present attorneys, agents, employees or assigns from all claims, demands, causes of action, and liabilities that could have been brought in the Litigation.

3. INDEMNIFICATION. Defendants agree to indemnify and hold harmless Plaintiff against any claims for compensation brought by any party related to the Property or Defendants' business transactions at the Property.

4. COVENANT NOT TO SUE OR ASSERT CLAIMS. Plaintiff covenants not to commence, maintain or prosecute any civil action, charge, complaint or proceeding of any kind, (on his own behalf and/or on behalf of any other person or entity and/or on behalf of or as a member of any alleged class of persons) in any court, or before any administrative or investigative body or agency (whether public, quasi-public or private), unless consistent with their promises to release herein, except as may be compelled by law, court order, or in response to a valid subpoena, or as a witness against Defendants and/or their respective past or present attorneys, agents or employees with respect to any act, omission, transaction or occurrence up to and including the date of the execution of this Agreement.

5. NO ADMISSION OF LIABILITY. This Agreement is not, and shall not be

construed as, an admission of liability, fault or wrongdoing of any kind by either party.

6. NON-DISPARAGEMENT. The parties shall not make any disparaging or defamatory statements (or cause any such statements to be made), verbal or written, about each other to any third party. This includes, but is not limited to, comments or statements about Plaintiff or Defendants, its/their past or present attorneys, agents, employees or assigns, or entities with whom the parties had or have a business relationship. It is expressly understood and agreed that this non-disparagement provision is an essential provision of this Agreement.

7. NO MODIFICATIONS. This Agreement represents the complete understanding between the parties. This Agreement may not be changed orally and any modifications to it shall not be binding except by a writing signed by all parties hereto.

8. BINDING NATURE. This Agreement is binding upon, and shall inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

9. SEVERABILITY/FURTHER AGREEMENT. If, at any time after the date of the execution of this Agreement, any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect. However, the illegality or unenforceability of such provisions shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement.

10. GOVERNING LAW. This Agreement is made and entered into in the State of Colorado, and shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

11. INTERPRETATION/CONSTRUCTION. Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the person or

entity interpreting or construing this Agreement shall not apply a presumption that the provisions hereof shall be more strictly construed against any party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the Agreement, it being agreed that all parties, by their respective attorneys, have participated in the preparation of all provisions of this Agreement.

12. COUNTERPARTS. This Agreement may be executed in more than one counterpart, each of which shall be deemed as original, but all which shall constitute one and the same instrument.



Arising Hope


7/20/2019
Date



Angela McMahon

7/20/2019
Date

APPROVED AS TO FORM:



Temitayo "Tayo" Okunade
Attorney for Defendants

7/26/2019
Date

Board of County Commissioners

Steven J. O'Dorisio, Chair

Date

APPROVED AS TO FORM:

Meredith P. Van Horn
Assistant County Attorney

Date