

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: August 18, 2015 Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: DEPARTMENT OF COMMUNITY SERVICES

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: **A)** Qualified Assignment and Release Agreement (QAR), and **B)** Amendment to Settlement Agreement and Release of All Claims, dated June 2, 2015, in D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor (R2015 0706).

Summary: On June 2, 2015, the Board of County Commissioners approved a settlement agreement in a lawsuit brought by the parents of a minor who participated in the Head Start program. A portion of that settlement funded an annuity. To comply with tax laws, the firm administering the annuity requests the County execute a Qualified Assignment and Release Agreement (QAR), and amend the Settlement Agreement to account for the QAR and to correct an error in the amount of the final periodic payment. Neither the QAR nor the amendment to the Settlement Agreement change the settlement amount. Staff recommends that the Board of County Commissioners approve the QAR and Amendment to Settlement Agreement. Countywide (HH)

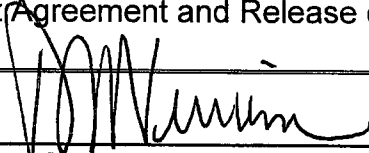
Background and Justification: The Plaintiffs and the County entered into a Settlement Agreement and Release of All Claims which provided in part that \$100,000 would be used to fund an annuity which begins payments to the minor after the age of 18. Following the Board's approval of the Settlement Agreement, the firm administering the annuity policy, BHG Structured Settlements, Inc. (BHG) requested the County execute a Qualified Assignment and Release Agreement (QAR) which assigns the County's obligation to make periodic payments to BHG. The QAR is necessary to comply with tax laws. BHG also requested an Amendment of the Settlement Agreement to reflect the County's assignment of its obligation to BHG, and to correct the amount of the final periodic payment (the amount of the final periodic payment provided by Plaintiffs' counsel was inaccurate). Neither the QAR nor the Amendment to the Settlement Agreement change the total settlement amount, which has already been paid to the Plaintiffs and BHG.

Because the QAR creates an assignment from the County to BHG, it is requested that the County sign the QAR prior to BHG signing.

Attachments:

1. R2015 0706
2. Qualified Assignment and Release of All Claims
3. Amendment to Settlement Agreement and Release of All Claims

Recommended by: _____


County Attorney

7/24/15
Date

Approved by: _____

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	*0	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___

Reporting Category _____

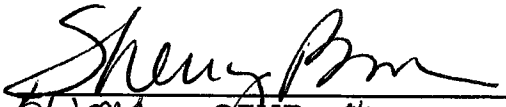
B. Recommended Sources of Funds/Summary of Fiscal Impact:

** No Fiscal Impact*

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:



 50 MS OFMB AK
 7/23 7/23 7/23/15
 Barbara Wheeler 7-24-15
 for Contract Development and Control

B. Legal Sufficiency:



 Assistant County Attorney 7-27-15

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Agenda Item #: **3D-1**
TISA 70
R2015-0706

**PALM BEACH COUNTY
 BOARD OF COUNTY COMMISSIONERS
 AGENDA ITEM SUMMARY**

Meeting Date: June 2, 2015 Consent Regular
 Public Hearing
 Department _____
 Submitted By: COUNTY ATTORNEY
 Submitted For: DEPARTMENT OF COMMUNITY SERVICES

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Settlement Agreement in D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor, Case No.: 502013CA013900XXXMB AG (Fifteenth Judicial Circuit Court) for \$265,000.00, inclusive of attorney's fees and costs.

Summary: Plaintiffs D.D.D. and N.H.D. are the parents of Plaintiff K.D., a minor who participated in the County-administered Head Start program. Plaintiffs sued Palm Beach County alleging negligent supervision and training, following two incidents in January of 2013. The parties have drafted a proposed settlement agreement which would settle the claims of the three Plaintiffs in the amount of \$265,000, inclusive of attorney's fees and costs. Staff, including Risk Management and the Department of Community Services, recommends that the Board of County Commissioners approve this Settlement as a reasonable compromise of the claims brought by Plaintiffs, in order to limit the County's exposure in this case. Countywide (HH)

Background and Justification: In January of 2013, after observing bruising on K.D.'s legs, N.H.D., contacted the Director of K.D.'s Head Start program. The Director reviewed video monitoring taken in K.D.'s classroom on the day of N.H.D.'s report. The video revealed a teacher's failure to follow established policies and procedures regarding discipline of K.D. The program Director reported the incidents to the Florida Department of Children and Families, and the teacher was placed on Administrative Leave, and subsequently resigned. Psychological evidence from both K.D.'s treating physician and the County's examining physician revealed K.D. suffered personal injuries. K.D.'s physician causally related those personal injuries to the incidents depicted in the video. A guardian was appointed for K.D. by the Court, and the guardian recommended \$100,000 of the settlement be used to fund a Structured Settlement Annuity which begins payments to K.D. after the age of 18. The guardian's recommendation is made a part of the parties' Settlement Agreement. Staff, including Risk Management and the Department of Community Services, recommends that the Board of County Commissioners approve this Settlement as a reasonable compromise of the claims brought by Plaintiffs in order to limit the County's exposure in this case.

Attachments:

1. Settlement Agreement and Release of All Claims
2. Budget Availability Statement

Recommended by: _____ **County Attorney** **5/7/15**
Date

Approved by: _____ **N/A**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$265,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$265,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Budget Account No.: Fund 5010 Department 700 Unit 7130 Object 4511
 Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

<p><u><i>Sherry Brown</i></u> 5/17/15 OFMB</p>	<p><u><i>Joe S. Jacobson</i></u> 5/20/15 Contract Development and Control 5-19-15 <i>Wheeler</i></p>
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B. Legal Sufficiency:
Helen C. King
 Assistant County Attorney

C. Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY

CASE NO. 502013CA013900XXXXMB AG

D.D.D. and N.H.D, Individually and As
Parents and Natural Guardians of K.D.,
a minor,

Plaintiffs,

vs.

PALM BEACH COUNTY and
DOROTHY KELLY,
Defendants.

R2015-0706

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS is made and entered into ~~June 02 2015~~ ^{June 02 2015} of June, 2015, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners (COUNTY) and Darren Duncombe and Netoshia Howzell-Duncombe, individually and as Parents and Natural Guardians of Kansas Faith Duncombe (PLAINTIFFS).

WHEREAS PLAINTIFFS sued the COUNTY in a lawsuit presently styled D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor, v. PALM BEACH COUNTY and DOROTHY KELLY, Case No. 502013CA013900XXXXMB AG, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the Pending Lawsuit), for damages arising from incidents that occurred in January, 2013, at a Head Start school located at 100 Chillingworth Drive in Palm Beach County, Florida.

WHEREAS the COUNTY has denied liability and raised several affirmative defenses in the Pending Lawsuit; and

WHEREAS, PLAINTIFFS and the COUNTY have agreed to adjust, compromise, and settle all controversies, disputes and differences existing between them which might have been raised in the above-entitled action, and to enter into a Stipulation for Dismissal of the Pending Lawsuit with Prejudice;

NOW THEREFORE, in consideration of the mutual promises and undertakings of the parties to this agreement, including, but not limited to, execution of a Stipulation of Dismissal, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. This Settlement Agreement and Release of All Claims is subject to the review and approval of the Palm Beach County Board of County Commissioners, and will be considered by the Board of County Commissioners at its scheduled meeting of June 2, 2015.
3. The undersigned PLAINTIFFS, being of lawful age, for the sole consideration of **TWO HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$265,000)**, to the undersigned PLAINTIFFS in hand paid, the receipt and sufficiency whereof is hereby acknowledged, do hereby for themselves and for Kansas Faith Duncombe and each of their executors, administrators, successors and assignees, release, acquit and forever discharge **PALM BEACH COUNTY**, and its officers, agents, employees, heirs, executors, administrators, successors and assigns, none of whom admit any liability to the undersigned PLAINTIFFS, and all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which the undersigned PLAINTIFFS may now have or which may hereafter accrue or develop, particularly on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, emotional, bodily and personal injuries and any and all consequences thereof, resulting or to result from alleged incidents which occurred on or about January, 2013, in Palm Beach County, Florida, which are the subject of the Pending Lawsuit. The COUNTY agrees to pay PLAINTIFFS the sole consideration referenced above as follows:
 - a. Within twenty (20) days of the vote of the Palm Beach County Board of County Commissioners approving this Settlement Agreement and Release of All Claims, the COUNTY shall pay to PLAINTIFFS the amount of **ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000)**, by a check made payable to Trust Account of Searcy Denney Scarola Barnhart & Shipley f/b/o Netoshia Howzell-Duncombe and Darren Duncombe.
 - b. Within twenty (20) days of the vote of the Palm Beach County Board of County Commissioners approving this Settlement Agreement and Release of All Claims, the COUNTY shall pay to PLAINTIFFS the amount of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)**, by a check made payable to United of Omaha Life Insurance Company to fund a Structured Settlement Annuity which will provide periodic payments to Kansas Faith Duncombe according to the schedule as follows (the "Periodic Payments"):
 - \$10,000.00 semiannually, guaranteed 4 years, beginning after age 18 (on July 1, 2026);

- \$500.00 per month, guaranteed 4 years, beginning after age 18 (on July 1, 2026). The last payment will be made on June 1, 2030;
 - \$15,000.00 guaranteed lump sum payable at age 22 (on April 22, 2030);
 - \$27,357.85 guaranteed lump sum payable at age 25 (on April 22, 2033).
 - All sums set forth herein constitute damages on account of personal injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.
 - PLAINTIFFS acknowledge that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the PLAINTIFFS or any payee; nor shall the PLAINTIFF or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.
 - PLAINTIFFS' beneficiaries - Any payments to be made after the death of the Payee pursuant to the terms of this Settlement Agreement and Release shall be made to the Estate of the Payee. After the age of majority, Payee may submit a change of beneficiary in writing to the Assignee. The designation must be in a form acceptable to the Assignee.
4. Within five (5) days of the deposit of the check made payable to Trust Account of Searcy Denney Scarola Barnhart & Shipley f/b/o Netoshia Howzell-Duncombe and Darren Duncombe by Plaintiff's counsel, and the availability of those funds, Plaintiff's counsel shall execute and deliver to the Palm Beach County Attorney's Office the Stipulation and Final Order of Dismissal with Prejudice attached hereto as Exhibit A.
 5. PLAINTIFFS acknowledge and agree that the release and discharge set forth above is a general release. PLAINTIFFS expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which PLAINTIFFS do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect PLAINTIFFS' decisions to enter into this Settlement Agreement. PLAINTIFFS further agree that PLAINTIFFS have accepted payment of the sums specified herein as a complete settlement and compromise of matters involving disputed issues of law and fact. PLAINTIFFS assume the risk that the facts or law may be other than PLAINTIFFS believe.
 6. PLAINTIFFS agree to satisfy or otherwise resolve any lien or subrogated interest arising from Medicare, Medicaid, workers compensation and/or health care benefits paid or payable to the undersigned as a consequence of the occurrence settled pursuant to this agreement, including but not limited to the known lien with Avmed. PLAINTIFFS

acknowledge and agree that they are responsible for the payment of any liens against this Settlement Agreement and that the COUNTY shall not be responsible for any portion of said liens.

7. PLAINTIFFS agree to be responsible for any claims or liens by Medicare and agree that PLAINTIFFS will defend the COUNTY from any liens, suits, or actions arising under the Medicare Secondary Payer Statute (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.
8. PLAINTIFFS declare and represent that any injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Settlement Agreement and Release of All Claims, PLAINTIFFS understand and agree that they relied wholly on their own judgment, belief, and knowledge of the nature, extent, effect, and duration of any injuries and liability therefore, without reliance on any statement or representation by the COUNTY, or by the COUNTY'S representatives or by any physician employed by the COUNTY.
9. Each party represents to the other that each party giving a release herein set forth knows, has examined, and has investigated to their full satisfaction all matters concerning the incidents and claims between or among them or at issue in the Pending Lawsuit, and that the settlement of their differences and the execution of this Settlement Agreement and Release of All Claims is not based on, or induced by, any representations made by the other party, their respective counsel, or by any person or persons representing or employed by such other party concerning the subject matter of the Pending Lawsuit.
10. Each party shall bear its respective attorneys fees and costs.
11. This Settlement Agreement and Release of All Claims does not constitute an admission of liability by any party.
12. In any litigation brought to enforce the terms, or remedy a violation, of this Settlement Agreement, the Settlement Agreement shall be construed in accordance with Florida law, and the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.
13. PLAINTIFFS declare and acknowledge that PLAINTIFFS have relied on the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to PLAINTIFFS by their attorneys; and the terms of this Settlement Agreement are fully understood and voluntarily accepted by PLAINTIFFS.

14. PLAINTIFFS represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and Release of All Claims, except as otherwise set forth herein; that PLAINTIFFS have the sole right and exclusive authority to execute this Settlement Agreement and Release of All Claims and receive the sums specified in it; and that PLAINTIFFS have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement and Release of All Claims.
15. This Settlement Agreement and Release of All Claims contains the entire agreement between the PLAINTIFFS and the COUNTY, and shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.
16. This Settlement Agreement and Release of All Claims may be modified only in writing when the modification is executed by all parties to this Settlement Agreement and Release of All Claims.
17. The parties have entered into this Settlement Agreement and Release of All Claims on the advice and consent of their counsel who have explained all of its terms and conditions to their complete satisfaction.
18. This Settlement Agreement and Release of All Claims shall become effective immediately following execution by each of the parties.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS HEREOF:

I, **DARREN DUNCOMBE**, have hereunto set my hand and seal this 7th day of May, 2015.

IN THE PRESENCE OF:

Catherine M. Coia
WITNESS

D D
Darren Duncombe, Individually and as
Parent and Natural Guardian of
Kansas Faith Duncombe

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 7th day of May, 2015, by Darren Duncombe who [] is personally known to me; OR [] has produced _____ as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.



Catherine M. Coia
Notary Public
My Commission Expires:

I, **NETOSHIA HOWZELL-DUNCOMBE**, have hereunto set my hand and seal this 7th day of May, 2015.

IN THE PRESENCE OF:

Catherine M. Coia
WITNESS

NH-DUNC
Netoshia Howzell-Duncombe, Individually
and as Parent and Natural Guardian of
Kansas Faith Duncombe

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 7th day of May, 2015, by Netoshia Howzell-Duncombe who [] is personally known to me; OR [] has produced _____ as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]

Catherine M. Coia
Notary Public
My Commission Expires:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

[Signature]
Rosalya Sia Baker-Barnes, Esq.
Attorney for Plaintiffs

5-7-15
Date

R2015-0706

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

[Signature]
By: Shelley Vana, Mayor
Board of County Commissioners

JUN 02 2015
Date

Witness Sharon R. Bock Clerk & Comptroller
Palm Beach County

DEPARTMENT OF COMMUNITY SERVICES

[Signature]
By: Channell Wilkins, Director

5-18-15
Date

By [Signature]
Witness [Signature]
Deputy Clerk
Palm Beach County
FLORIDA
COMMISSIONERS

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

[Signature]
Helene C. Hvizd,
Assistant County Attorney,
Palm Beach County, Florida

5-18-15
Date

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY

CASE NO. 502013CA013900XXXXMB AG

D.D.D. and N.H.D, Individually and As
Parents and Natural Guardians of K.D.,
a minor,
Plaintiffs,

vs.

PALM BEACH COUNTY and
DOROTHY KELLY,
Defendants.

STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE

The Plaintiffs, D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D. with counsel, joined by co-defendant, Palm Beach County (the County), by and through its attorney, shows unto the Court that all matters in controversy have been compromised and settled to the satisfaction of Plaintiffs and the County. It is agreed that the action of the Plaintiffs against the County, be dismissed with prejudice, that the County be dismissed from this action, and that the Plaintiffs and the County each bear their own costs and attorney's fees. The Plaintiffs shall hold the County harmless from all subrogation claims and other liens that are or may be claimed by any party as a result of the matters giving rise to the Plaintiffs' claims against the County.

By: _____ Date
Helene C. Hvizd
Florida Bar No. 868442
300 North Dixie Hwy, Suite 359
West Palm Beach, FL 33401
Attorney for the County
hhvizd@pbcgov.org
(561) 355-6337

By: _____ Date
Rosalyn Sia Baker-Barnes, Esq.
Florida Bar No. 327920
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
Attorney for the Plaintiffs
rsb@searcyllaw.com
(561) 686-6300

tabler
A

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY

CASE NO. 502013CA013900XXXXMB AG

D.D.D. and N.H.D, Individually and As
Parents and Natural Guardians of K.D.,
a minor,
Plaintiffs,

vs.

PALM BEACH COUNTY and
DOROTHY KELLY,
Defendants.

FINAL ORDER DISMISSING WITH PREJUDICE
CO-DEFENDANT PALM BEACH COUNTY

THIS CAUSE having come before the Court upon the foregoing Stipulation, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that Co-defendant PALM BEACH COUNTY, (the County), is hereby Dismissed with Prejudice from this action. Plaintiffs and the County shall bear their own costs and attorney's fees, and the Plaintiffs, D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor, shall hold the County harmless from all subrogation and other liens that are or may be claimed by any party as a result of the matters giving rise to Plaintiffs' claims against co-defendant, the County.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this ____ day of _____, 2015.

DONALD W. HAFELE, Circuit Judge

Copies Furnished:

Rosalyn Sia Baker-Barnes, 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409

Helene C. Hvizd, 300 N. Dixie Hwy, Suite 359, West Palm Beach, FL 33401

Dorothy Kelly, 1210 West 26th Court, Riviera Beach, FL 33404

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT


REQUEST DATE: 5/4/15 REQUESTED BY: County Attorney

REQUESTED FOR: D.D.D. and N.H.D., Individually and As Parents and Natural Guardians of K.D., a minor,
Case No.: 502013CA013900XXXXMB AG

REQUESTED AMOUNT: \$265,000 AGENDA DATE: June 2, 2015

BUDGET ACCOUNT NUMBER:

FUND: 5010 DEPT: 700 UNIT: 7130 OBJ: 4511

BAS APPROVED BY:  DATE: 5/5/2015

Qualified Assignment and Release Agreement
In Accordance With
Internal Revenue Code Section 130

"Claimant(s)": Kansas Faith Duncombe, a minor, by and through her parents and natural guardians,
Netoshia Howzell-Duncombe and Darren Duncombe

"Assignor": Palm Beach County, a political subdivision of the State of Florida, by and through its
Board of Commissioners

"Settlement Agreement": Settlement Agreement and Release of All Claims, dated June 2, 2015, as
amended August 18, 2015
[Exact title of Settlement Agreement or Order]

"Governing Law": Florida

"Assignee": BHG STRUCTURED SETTLEMENTS, INC.

"Annuity Issuer": BERKSHIRE HATHAWAY LIFE INSURANCE COMPANY OF NEBRASKA

"Effective Date": _____

"Payee(s)": As shown in Addendum No. 1, Description of Periodic Payments

Annuity Contract No: _____

This Qualified Assignment and Release Agreement ("Agreement") is made and entered into as of the Effective Date by and among the undersigned parties with reference to the following facts:

- A. Claimant(s) and Assignor are parties to or are otherwise subject to the above-referenced Settlement Agreement under which Assignor has liability to make certain periodic payments to the designated Payee(s) as specified in Addendum No. 1 of this Agreement (the "Periodic Payments"). Where no Payee(s) other than Claimant(s) are shown in Addendum No. 1, it is understood that any references herein to Payee(s) shall apply to Claimant(s).
- B. Assignor and Assignee wish to effect a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code of 1986, as amended (the "Code").
- C. This Agreement will be effective contingent upon Assignee's receipt of the full premium to fund the Periodic Payments contained herein.

Now, therefore, in consideration of the foregoing and for other good and valuable consideration, the parties agree as follows:

- 1. **Assignment and Assumption; Release of Assignor.** Assignor hereby assigns to Assignee, and Assignee hereby accepts and assumes, all of Assignor's liability to make the Periodic Payments. Each Claimant hereby accepts and consents to such assignment by Assignor and assumption by Assignee. Effective on the Effective Date, each Claimant hereby releases and discharges Assignor from all liability to make the Periodic Payments, including the failure of Assignee to make any of the Periodic Payments and/or Annuity Issuer to fund any of the Periodic Payments for any reason whatsoever.
- 2. **Nature of Periodic Payments.** The Periodic Payments constitute:
 - i. damages (other than punitive damages), whether by suit or agreement, or
 - ii. compensation under a workers' compensation act,on account of personal injury or sickness in a case involving physical injury or physical sickness, within the meaning of Sections 130(c) and 104(a) of the Code.
- 3. **Extent of Assignee's Liability.** Assignee's liability to make the Periodic Payments shall be no greater than the liability of Assignor as

of the Effective Date. Assignee is not required to set aside specific assets to secure the Periodic Payments. Claimant(s), Payee(s) and Successor Payee(s) have no rights against Assignee greater than those of a general creditor. Assignee assumes no liability other than the liability to make the Periodic Payments. Assignee's liability to make the Periodic Payments shall be unaffected by any bankruptcy, insolvency, liquidation or rehabilitation of Assignor.

4. **Qualified Funding Asset.** Assignee will fund the Periodic Payments by purchasing from Annuity Issuer a "qualified funding asset," as defined in Section 130(d) of the Code, in the form of an annuity contract (the "Annuity") issued by Annuity Issuer and providing for payments corresponding to the Periodic Payments. Assignee shall be designated as the owner of the Annuity. All rights of legal ownership and control of the Annuity shall (subject to paragraph 9 of this Agreement) be and remain vested exclusively in Assignee; provided, however, that the Annuity shall be used by Assignee to fund the Periodic Payments and shall at all times be designated by Assignee on its records as being taken into account, under Section 130 of the Code, with respect to this Agreement. Notwithstanding anything to the contrary contained in this Agreement, neither any Claimant, any Payee, nor any Successor Payee (as defined in paragraph 8 of this Agreement) shall have any rights with respect to the Annuity or the payments thereunder that would cause any amount attributable to the Annuity to be currently includable in the recipient's income or would otherwise affect the determination of when any recipient is treated as having received any payment for income tax purposes, or would otherwise prevent this Agreement from satisfying all of the conditions for a "qualified assignment" within the meaning of Section 130(c) of the Code.
5. **Delivery of Payments.** Assignee may instruct Annuity Issuer to send payments directly to Payee or Successor Payee, or to deliver payments by electronic funds transfer ("EFT") to an FDIC-insured depository institution in the United States for credit (directly or indirectly) to an insured account in the name of such Payee or Successor Payee. Such direction of payments under the Annuity shall not be deemed to afford Claimant, Payee or any Successor Payee any rights of ownership or control of the Annuity.

Each Claimant, Payee and any Successor Payee shall at all times keep Annuity Issuer

apprised of such Claimant's, Payee's or Successor Payee's current mailing address and telephone number and, if Payee or Successor Payee receives payments by EFT, the name, address, ABA routing number and telephone number of the applicable U.S. financial institution and the account name and account number to which the payments are to be credited. Such notices shall be in a form provided by Annuity Issuer and must be received at least thirty (30) days prior to the date payment is due.

6. **Discharge of Liability.** Assignee's liability to make each Periodic Payment to any Payee or Successor Payee designated to receive such payment shall be fully discharged upon:
- the mailing of a valid check on or before the due date for such payment to the address of record specified by Payee or Successor Payee; or
 - the initiation of an EFT payment on or before the due date for such payment to the United States financial institution account designated by Payee or Successor Payee

If Payee or Successor Payee does not receive a scheduled payment by check, Payee or Successor Payee shall notify Assignee. Upon receipt of such notification, Assignee shall initiate a stop payment action for such check and upon confirmation that such check was not previously negotiated shall promptly mail a replacement check; or

If Payee or Successor Payee does not receive a scheduled EFT payment, Payee or Successor Payee shall notify Assignee. Upon receipt of such notification, Assignee shall initiate a trace for such payment and upon confirmation that such payment was not credited to the account shall promptly issue a replacement EFT payment.

7. **Acceleration, Transfer of Payment Rights.** None of the Periodic Payments and no rights to or interest in any of the Periodic Payments (all of the foregoing being hereinafter collectively referred to as "Payment Rights") can be
- Accelerated, deferred, increased or decreased by any recipient of any of the Periodic Payments; or
 - Sold, assigned, pledged, hypothecated or otherwise transferred or encumbered, either directly or indirectly, unless such sale, assignment, pledge, hypothecation or other transfer or encumbrance (any

such transaction being hereinafter referred to as a "Transfer") has been approved in advance in a "Qualified Order" as defined in Section 5891(b)(2) of the Code (a "Qualified Order") and otherwise complies with applicable state law, including without limitation any applicable state structured settlement protection statute.

No Claimant, Payee or Successor Payee shall have the power to effect any Transfer of Payment Rights except as provided in sub-paragraph (ii) above, and any other purported Transfer of Payment Rights shall be wholly void, invalid and unenforceable. If Payment Rights under this Agreement become the subject of a Transfer approved in accordance with sub-paragraph (ii) above the rights of any direct or indirect transferee of such Transfer shall be subject to the terms of this Agreement and any defense or claim in recoupment arising hereunder.

8. **Contingent Beneficiaries.** Any Periodic Payments to be made after the death of any Claimant, Payee or Successor Payee shall be made to such party as shall have been designated in, or in accordance with, the Settlement Agreement or, if the Settlement Agreement does not provide for such designation, then to the party designated in conformity with this paragraph 8. Any party so designated is referred to in this Agreement as a "Contingent Beneficiary." If no Contingent Beneficiary is living at the time of the death of a Claimant, Payee or Successor Payee, payment shall be made to the decedent's estate unless otherwise provided in the Settlement Agreement. As used in this Agreement the term "Successor Payee" refers to a Contingent Beneficiary or an estate that has become entitled to receive Periodic Payments following the death of a Claimant, Payee or a Successor Payee. Except where a designation has been made in the Settlement Agreement, no designation or change of designation of a Contingent Beneficiary shall be effective unless such designation or change (i) is requested in a written request submitted to Assignee in accordance with Assignee's customary procedures for processing such requests; and (ii) is confirmed by Assignee. However, Assignee will not be liable for any payment made prior to receipt of the request or so soon thereafter that payment could not reasonably be stopped. Except for a designation that is expressly identified in the Settlement Agreement as irrevocable, any designation of a Contingent Beneficiary shall be deemed to be revocable; and no party

that is designated as a Contingent Beneficiary (other than a party irrevocably designated as a Contingent Beneficiary in the Settlement Agreement) shall, solely by virtue of its designation as a Contingent Beneficiary, be deemed to have any cognizable interest in any Periodic Payments.

9. **Termination of Settlement Agreement / Failure to Satisfy Section 130(c).** If at any time prior to completion of the Periodic Payments, the Settlement Agreement is declared terminated in a final, non-appealable order of a court of competent jurisdiction (or in the case of a workers' compensation settlement, a final order of the applicable workers' compensation authority) or if it is determined in any final order or ruling that the requirements of Section 130(c) of the Code have not been satisfied in connection with this Agreement: (i) the assignment by Assignor to Assignee of the liability to make the Periodic Payments and Assignee's acceptance of such assignment shall be of no force or effect; (ii) Assignee shall be conclusively deemed to be acting as the agent of Assignor; (iii) the Annuity shall be owned by Assignor; (iv) in the event the Settlement Agreement is not terminated, Assignor shall retain the liability to make the Periodic Payments; (v) Assignee shall have no liability to make any Periodic Payments; and (vi) the parties hereto agree to cooperate in taking such actions as may be necessary or appropriate to implement the foregoing.
10. **Governing Law; Binding Effect.**
 - i. This Agreement shall be governed by and interpreted in accordance with the internal laws of the state identified as Governing Law above; provided, however, that any Transfer of Payment Rights under this Agreement may be subject to the laws of other states in addition to the state designated above. Any legal action necessary to enforce this Agreement will be held in Palm Beach County.
 - ii. This Agreement shall be binding upon the parties hereto and their respective successors, heirs, executors, administrators and permitted assigns, including without limitation any party asserting an interest in Payment Rights.
11. **Advice, Comprehension of Agreement.** In entering into this Agreement, each Claimant warrants, represents and agrees that Claimant is solely relying on the attorneys and advisors of such Claimant's own

choosing, and not upon Assignor, Assignee or their advisors, for advice regarding the legal, government benefits and tax consequences of this Agreement. Each Claimant further warrants, represents and agrees that the terms of this Agreement have been completely read by and explained to such Claimant and are fully understood and voluntarily accepted by such Claimant. Furthermore, each Claimant hereby releases and discharges Assignor, Assignee, Annuity Issuer, their affiliates and their respective employees and advisors ("Releasees") from any and all claims, rights, damages, costs or expenses of any nature whatsoever that such Claimant now has or may have in the future against such Releasees (i) with respect to the present and future taxation of this Agreement or the Periodic Payments; or (ii) the impact that this Agreement or the Periodic Payments may have on Claimant's eligibility for, and the quantum of, any governmental benefit payments.

12. **Future Cooperation.** All parties agree to cooperate fully and to execute any and all supplementary documents and take all additional actions, which are not inconsistent with its terms, which may be necessary or appropriate to give full force and effect to the terms and intent of this Qualified Assignment and Release Agreement. Pursuant to its obligations under this paragraph 12, and without limitation, Assignor shall promptly provide Assignee with copies of any required court approval with respect to the underlying settlement and executed copies of all required settlement documents.
13. **Description of Periodic Payments.** The Periodic Payments are as set forth in attached **Addendum No. 1**, which is hereby incorporated in and made a part of this Agreement.

In the event of any conflict between this Agreement and the Settlement Agreement with respect to the Periodic Payments or the assignment made herein, the terms and conditions of this Agreement shall prevail.

This Qualified Assignment and Release Agreement may be signed in one or more counterparts.

Assignor: Palm Beach County, a political subdivision of the State of Florida, by and through its Board of Commissioners

Assignee: BHG Structured Settlements, Inc.

By: Shelley Vana, Mayor

By: Authorized Representative

Title: _____

Title: _____

Claimant(s) or Payee(s):

By: Netoshia Howzell-Duncombe
Kansas Faith Duncombe, a minor, by and through her parent and natural guardian, Netoshia Howzell-Duncombe

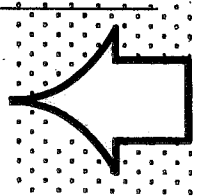
By: Darren Duncombe
Kansas Faith Duncombe, a minor, by and through her parent and natural guardian, Darren Duncombe

Attorney for Claimant(s):
Approved as to Form and Content

By: Rosalyn Sia Baker-Barnes, Esq.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Debra C. Boyd 7-22-15
County Attorney



**SIGN
HERE**

Addendum No. 1 Description of Periodic Payments

Payee: Kansas Faith Duncombe

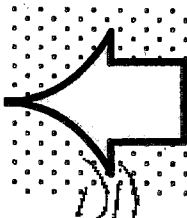
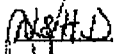
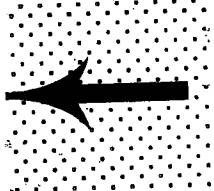
\$10,000.00 semi-annually, guaranteed 4 years, beginning on July 1, 2026. The last payment will be made on January 1, 2030.

\$500.00 per month, guaranteed 4 years, beginning on July 1, 2026. The last payment will be made on June 1, 2030.

\$15,000.00 guaranteed lump sum payable on April 22, 2030.

\$34,000.00 guaranteed lump sum payable on April 22, 2033.

INITIALS

Assignor:	_____		SIGN HERE
Assignee:	_____		
Claimant or Payee:			SIGN HERE
Attorney for Claimant:	_____		

**AMENDMENT TO SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS, DATED JUNE 2, 2015**

THIS AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS, DATED JUNE 2, 2015, (R2015 0706), is made and entered into at West Palm Beach Florida, on this ____ day of _____, 2015 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of Commissioners (COUNTY) and Darren Duncombe and Netoshia Howzell-Duncombe, Individually and as Parents and Natural guardians of Kansan Faith Duncombe (PLAINTIFFS).

Page 2, paragraph 3 of Settlement Agreement and Release of All Claims, dated June 2, 2015, in its entirety, shall be amended to read:

3. The undersigned PLAINTIFFS, being of lawful age, for the sole consideration of immediate and future periodic payments as set forth below with the combined present value sum of **TWO HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$265,000.00)**, to the undersigned PLAINTIFFS in hand paid, the receipt and sufficiency whereof is hereby acknowledged, do hereby for themselves and for Kansas Faith Duncombe and each of their executors, administrators, successors and assignees, release, acquit and forever discharge **PALM BEACH COUNTY**, and its officers, agents, employees, heirs, executors, administrators, successors and assigns, none of whom admit any liability to the undersigned PLAINTIFFS, and all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, cause of action or suits of any kind or nature whatsoever, which the undersigned PLAINTIFFS may now have or which may hereafter accrue or develop, particularly on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, emotional bodily and personal injuries and any and all consequences thereof, resulting or to result from alleges incidents which occurred on or about January, 2013, in Palm Beach County, Florida, which are the subject of the Pending Lawsuit. The COUNTY agrees to pay PLAINTIFFS the sole consideration referenced above as follows:

In consideration of the release set forth above, the Insurer on behalf of the Defendant agrees to pay the individual(s) named below (the "payee(s)") the sums outlined in this Paragraph below:

a. Payments due at the time of settlement as follows:

Within twenty (20) days of the vote of the Palm Beach County Board of County Commissioners approving this Settlement Agreement and Release of All Claims, the COUNTY shall pay to PLAINTIFFS the amount of **ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000)**, by a check made payable to Trust Account of Searcy Denney Scarola Barnhart & Shipley f/b/o Netoshia Howzell-Duncombe and Darren Duncombe.

b. Funding of Periodic Payments:

Within twenty (20) days of the vote of the Palm Beach County Board of County Commissioners approving this Settlement Agreement and Release of All Claims, the COUNTY shall pay the amount of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)**, by a check made payable to BHG Structured Settlements, Inc. to fund periodic payments to Kansas Faith Duncombe through the purchase of a structured settlement annuity according to the schedule as follows (“Periodic Payments”):

Periodic payments made according to the schedule as follows (the “Periodic Payments”):

Payee: Kansas Faith Duncombe

\$10,000.00 semi-annually, guaranteed 4 years, beginning on July 1, 2026. The last payment will be made on January 1, 2030.

\$500.00 per month, guaranteed 4 years, beginning on July 1, 2026. The last payment will be made on June 1, 2030.

\$15,000.00 guaranteed lump sum payable on April 22, 2030.

\$34,000.00 guaranteed lump sum payable on April 22, 2033.

Pursuant to Florida State Statutes §626.99296, the total cost to the Insurer for the Periodic Payments portion of the settlement is **\$100,000.00**, disclosure of which has been required as a condition of settlement. No part of the sum being paid by the Insurer to provide future Periodic Payments as set forth herein may be paid directly to the Claimant, inasmuch as the parties negotiated for a structured settlement as being in the best interest of the Payee.

All sums set forth herein constitute damages on account of personal, physical injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

c. Claimant's Rights to Payments

Claimant acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Claimant or any payee; nor shall the Claimant or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

d. Claimant's Beneficiary

Any payments to be made after the death of the Payee pursuant to the terms of this Settlement Agreement and Release shall be made to the Estate of the Payee. After the age of majority, Payee may submit a change of beneficiary in writing to the Assignee. The designation must be in a form acceptable to the Assignee.

e. Consent to Qualified Assignment

i. Claimant acknowledges and agrees that the Defendant and/or the Insurer may make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Defendant's and/or the Insurer's liability to make the Periodic Payments set forth in Section b to BHG Structured Settlements, Inc. ("the Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of Defendant and/or the Insurer (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

ii. Any such assignment, if made, shall be accepted by the Claimant without right of rejection and shall completely release and discharge the Defendant and the Insurer from the Periodic Payments obligation assigned to the Assignee. The Claimant recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and Claimant agrees that such assignment shall constitute a full release and discharge of all Defendant's and Insurer's obligations relative to the Periodic Payments set forth above.

f. Right to Purchase an Annuity

The Defendant and/or the Insurer, itself or through BHG Structured Settlements, Inc. ("Assignee") reserve the right to fund the liability to make the Periodic Payments in Section b through the purchase of an annuity policy from Berkshire Hathaway Life Insurance Company of Nebraska ("Annuity Issuer"). The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have Berkshire Hathaway Life Insurance Company of Nebraska mail payments directly to the Payee. The Claimant shall be responsible for maintaining a current mailing address for Payee with BHG Structured Settlements, Inc.

g. Discharge of Obligation

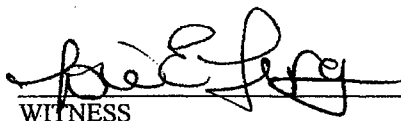
The obligation of the Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee named in Section b of this Settlement Agreement.

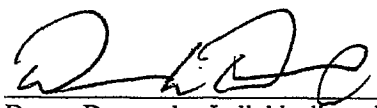
All provisions not in conflict with this Amendment of Paragraph 3, in its entirety, are still in effect and are to be performed at the same level as specified in the Settlement Agreement and Release of All Claims, dated June 2, 2015.

IN WITNESS HEREOF:

I, **DARREN DUNCOMBE**, have hereunto set my hand and seal this 5th day of June, 2015

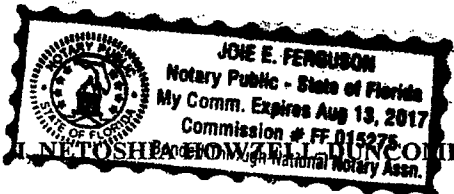
IN THE PRESENCE OF:


WITNESS


Darren Duncombe, Individually and
as Parent and Natural Guardian of
Kansas Faith Duncombe


STATE OF FLORIDA)
COUNTY OF PALM BEACH)

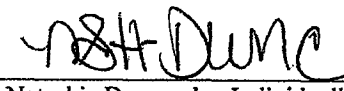
The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 5th day of June, 2015, by Darren Duncombe who [] is personally known to me; OR [] has produced _____ as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.



I, **NETOSHIA DUNCOMBE**, have hereunto set my hand and seal this 5th day of June, 2015.

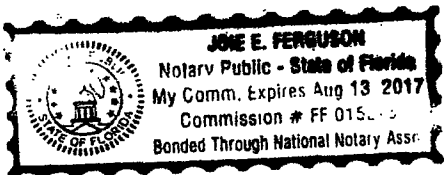
IN THE PRESENCE OF:


WITNESS


Netoshia Duncombe, Individually and
as Parent and Natural Guardian of
Kansas Faith Duncombe

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 5th day of June, 2015, by Netoshia Duncombe who [] is personally known to me; OR [] has produced _____ as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.




Notary Public
My Commission Expires:


PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

By: Shelley Vana, Mayor
Board of County Commissioners

Date

Witness

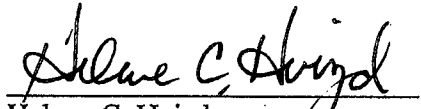
DEPARTMENT OF COMMUNITY SERVICES


By: Channell Wilkins, Director

7/22/15
Date


Witness

APPROVED AS TO FORM AND LEGAL SUFFICIENCY


Helene C. Hvizd,
Assistant County Attorney,
Palm Beach County, Florida

7-22-15
Date