

MEDIATED SETTLEMENT AGREEMENT

THIS MEDIATED SETTLEMENT AGREEMENT (the “Agreement”) is entered into between Sovereign Health of Florida, Inc., (“Sovereign”) and the City of Fort Myers (“City”) (collectively, the “Parties”).

WHEREAS, Sovereign has filed a civil action against the City styled: *Sovereign Health of Florida, Incorporated v. City of Fort Myers*, Case No.: 2:15-CV-265-JES-CM (the “Action”) which is now pending in the United States District Court for the Middle District of Florida, Fort Myers Division; and

WHEREAS, the Action arose out of Sovereign’s claims of discrimination by the City under the Americans with Disability Act (ADA) and the Fair Housing Act (FHA) (the “Claims”), related to that property located at 3331 E. Riverside Drive, Fort Myers, Florida (the “Riverside Property”); and

WHEREAS, the Parties have agreed to a settlement and compromise of the claims brought in the action and desire to resolve the dispute between them in accordance with this Agreement.

I. Authority.

A. Sovereign’s Authority. Sovereign represents and warrants that it has the full right, and legal capacity and authority to enter into this Agreement and carry out the obligations noted herein and that the person executing this Agreement on its behalf has full authority and capacity to execute this Agreement.

B. City Authority. The City is a municipal corporation. The City Manager and the City Attorney will recommend approval of the Agreement to the City Council. Sovereign acknowledges that this Agreement shall not be effective until and unless approved by the City Council of the City of Fort Myers. The City Council has the authority to approve the Agreement. The City Council shall consider the Agreement and affirmatively vote to approve or deny it on or before February 6, 2017. If approved, the Agreement shall become effective on the date of the approval by the City Council (the “Effective Date”). If the City Council modifies any terms of this Agreement, Sovereign retains the

right to cancel this Agreement in its entirety so long as such cancellation is made within ten (10) business days of any modification.

II. Reasonable Accommodation Request. Herein, Sovereign makes the following reasonable accommodation request (the "RA Request") under the federal Fair Housing Act and Title II of the Americans with Disabilities Act: That the City interpret its Land Development Code definition of Residential Care Facility to allow (as a principle use allowed as a matter of right without any further approvals from the City) the operation of a dual diagnosis treatment facility licensed by the Agency for Health Care Administration ("AHCA") and the Florida Department of Children and Families ("DCF"). The individuals receiving treatment at the Riverside Property would include those individuals who are suffering from a mental disease and who may or may not suffer from the disease of addiction. The types of activities that are allowed and are prohibited at the Riverside Property are attached hereto as Exhibit "A." Sovereign submits that it is necessary for this interpretation in order for it to continue providing services under its AHCA and DCF licenses and to allow its residents to therapeutically benefit from the group living arrangements for which they are seeking approval.

III. City's Approval of Reasonable Accommodation. The City has reviewed the RA Request and has had a sufficient time to review the activities occurring at the Riverside Property through depositions, document review, and discussion with state regulators. The City has determined that the RA Request is reasonable because it does not result in a fundamental alteration of the neighborhood and will not otherwise disrupt any existing City program. In fact, the Riverside Property will fulfill an important need for housing to the disabled population, which is something that the City believes is important and strongly seeks to promote throughout its jurisdictional boundaries. Finally, the City believes that the RA Request will allow residents to receive therapeutic benefits through the treatment that Sovereign provides. Providing such a service to persons with disabilities not only helps Sovereign's residents and their families; it also helps to promote the City's health, safety, and welfare by encouraging those in need of help to secure necessary services from qualified providers like Sovereign. As a result, the City Manager, the City Attorney recommend that the City Council grant the RA Request.

IV. No Change in Use. As a result of the RA Request, the City agrees that there is no change in use of the Riverside Property for the purposes of

building, fire, occupancy, or any other codes, unless otherwise mandated by law, that may otherwise require any upgrades to the physical structures or improvements located on the Riverside Property.

V. Settlement Amount. The City shall pay Ninety Nine Thousand Dollars and 00/100 (\$99,000.00) to the law firm of Smolker, Bartlett, Loeb, Hinds & Sheppard, P.A., 100 N. Tampa Street, Suite 2050, Tampa, Florida 33602, within thirty (30) days of the Effective Date in order to settle the Claims (the "Settlement Amount"). As a condition of making the Settlement Payment, Smolker, Bartlett, Loeb, Hinds & Sheppard, P.A. agrees to provide the City with a W-9 tax form. In addition to the Settlement Amount, the City agrees to reimburse Sovereign up to Fifty Thousand Dollars and 00/100 (\$50,000.00) for security related improvements to the Riverside Property, including security cameras, lighting, gate improvements, or any other feature that would enhance the security of the Riverside Property. Such reimbursement shall be made to Sovereign by the City within thirty (30) days of the submission of receipts for expenses for security related improvements by Sovereign. Sovereign agrees that it will apply for and obtain any permits necessary for the installation of such security related improvements.

VI. Security and Community Contact Phone. Sovereign Health agrees to (i) have its staff shall provide security for the Riverside Property; (ii) continue to have a fence with a security gate at the Riverside Property; (iii) at all times comply with the safety protocols mandated by DCF; and (iv) establish a phone number for community contact purposes that residents can call if they have any concerns regarding the Riverside Property. Sovereign Health will respond to any such call and seek to resolve any concern within seventy two (72) hours.

VII. Pending Actions.

- a. **Federal Litigation.** Within five (5) days upon execution of this Agreement, the parties will jointly file a motion with the Court informing it of the pending Settlement Agreement and ask that the matter be abated pending the outcome of the City Council's decision to approve or reject the Agreement. Within twenty-four (24) hours of the execution of the Agreement, the City shall file a notice with the Court withdrawing its Motion for Sanctions (Dkt. 37) with prejudice. Sovereign agrees that it will bear the full cost of the redaction and

production of all patient files and other documents produced in this matter in response to the Court's Order on the City's Motion to Compel. All discovery shall be stayed pending the outcome of the City Council's decision to approve or reject the Agreement. If the City Council rejects the Agreement, the parties shall jointly file a motion to lift the abatement, complete any remaining discovery, and schedule a new trial with the court. To the extent permitted by law, the City shall return to Sovereign Health or destroy all patient files that it received during the litigation.

- b. **State Litigation.** Within five (5) days upon execution of this Agreement, the parties will jointly file a motion with the Court in the following matters informing it of the pending Settlement Agreement and ask that these matters be abated pending the outcome of the City Council's decision to approve or reject the Agreement: *Sovereign Health of Florida, Inc. v. City of Fort Myers*, Case No. 15-CA-674 and *Sovereign Health of Florida, Inc. v. City of Fort Myers Florida Code Enforcement Board*, Case No. 15-CA-889. (the "State Court Action").

- c. **Code Enforcement Proceedings, Fines, and Lien.** The City has code enforcement proceedings presently pending against Florentine Holding Company, LLC and Sovereign Health for the Riverside Property. Within five (5) business days of the execution of this Agreement, the City shall take all necessary steps to abate the accumulation of fees, fines, or costs for all code enforcement proceedings that exist against Florentine Holding Company, LLC and Sovereign Health for the Riverside Property from the beginning of time to the date of the execution of this Agreement. Within five (5) days of the Effective Date, the City shall prepare, execute, and file all necessary documentation to (i) eliminate any fees, fines, or costs that have accumulated; (ii) release any liens that may exist; and (iii) dismiss with prejudice all code enforcement proceedings that exist against Florentine Holding Company, LLC and Sovereign Health for the Riverside Property.

VIII. Department of Children & Families and Agency for Health Care Administration. The City agrees that it shall not file any administrative challenge of any kind, whatsoever, to any license that the DCF or AHCA has issued to Sovereign.

IX. Zoning Verification Letter. Within five (5) days of the Effective date, the City agrees that it will issue a zoning verification letter consistent with the RA Request, a Business Tax Receipt, and a Certificate of Use so that Sovereign may submit them to DCF and AHCA.

X. Obligations of Sovereign and Release. No later than three (3) business days after payment of the Settlement Amount as set forth in Section V hereof, and receipt of same, Sovereign shall cause the original of the Joint Agreement for Dismissal attached hereto as **Exhibit "B"** to be filed in the United States District Court for the Middle District of Florida, Fort Myers Division and a similar dismissal with prejudice in the Twentieth Judicial Circuit Court for the State Court Action. In addition, no later than three (3) business days after payment of the Settlement Amount and receipt of same, Sovereign and the City shall execute and exchange executed copies of the Release attached hereto as **Exhibit "C"** to counsel for the City.

XI. General Provisions.

a. **No Admission of Liability.** This Agreement represents an accord and satisfaction of contested claims and affects the settlement of such claims, all of which are denied and contested, and nothing contained in this Agreement will be construed as an admission by either of the parties of any liability or wrongdoing in connection with the Claims.

b. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties concerning the subject matter. No provision of this Agreement may be waived unless in writing and signed by the party or parties against whom the same is offered. This Agreement may not be altered, amended, or otherwise changed or modified, except in writing and signed by the party or parties against whom the same is offered. The requirements of this section may not be modified except by a writing that complies with the requirements hereof. No oral communications or representations prior to or during the mediation are binding on either party, and no party shall be entitled to use any such oral communications to support any claim for breach of oral contract, fraud, or negligent misrepresentation.

c. **Choice of Law and Jurisdiction.** The Agreement shall be governed by the laws of the State of Florida without regard to choice of law rules.

d. **Legal Advice.** Each Party has had the opportunity to consult with independent legal counsel with respect to the advisability of making this Agreement. Each Party has read and fully understands all of the provisions of this Agreement, and is voluntarily entering into this Agreement.

e. **Severability.** If any part of this Agreement is void or otherwise invalid, such invalid or void portion will be deemed to be separate and severable from the balance of this Agreement, and the Agreement will be given full force and effect as though the void or invalid provisions had never been a part of the Agreement.

f. **Construction.** Each term and provision of this Agreement shall be construed and interpreted so as to render it enforceable. This Agreement shall be deemed to have been drafted jointly by the parties; accordingly, any rule pertaining to the construction of contracts to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement or of any modification of or amendment to this Agreement.

g. **Execution in Counterparts.** This Agreement may be executed in counterparts and, if so executed, all counterparts collectively will constitute one agreement binding on all Parties.

h. **Electronic Signatures.** Faxed and emailed signatures shall be deemed originals.

i. **Notices.** Any notice or notices required or permitted by this Agreement or that shall be given by reason of this Agreement shall be in writing and shall be delivered to the last attorney of record for each of the parties in the manner and at the address required for service of pleadings and papers, except that electronic mail notices shall be effective only if separately acknowledged by the person to whom the notice is given.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates noted opposite their names.

DATED: 12/7/16

SOVEREIGN HEALTH OF
FLORIDA, INC.

By: Audrey Smith

DATED: 12/7/16

CITY OF FORT MYERS

By: [Signature]

DATED: 12/7/2016

CITY OF FORT MYERS

By: [Signature]

DATED: 12/7/16

[Signature]

ROBIN DOYLE

LIST OF APPROVED AND PROHIBITED ACTIVITIES/USES

Approved Activities/Uses

1. Meals – breakfast, lunch, dinner, and snacks
2. Meditation
3. Yoga
4. Art therapy/class
5. Music therapy/class
6. Dance therapy/class
7. Equine therapy (offsite)
8. Laundry time
9. Cleaning time
10. Exercise
11. Computer training/lab which includes cognitive compute work
12. Recreation time which includes puzzles
13. Group discussions/counseling
14. Video seminars
15. Transportation to off-site outings, doctor visits, diagnostic/labs, AA and NA meetings, etc.
16. Nurse/personnel check on residents' wellbeing on a daily basis and on an as needed basis
17. Individual counseling
18. Life skills lectures/classes
19. General health care, including basics of nutrition and healthy diet, personal hygiene, and exercise
20. Referral of residents to a provider of services for mental health crises
21. Inpatient and outpatient care (including medically assisted withdrawal treatment (detoxification)) for dual diagnosis patients suffering from mental illness who may also suffer from addiction, except as set forth below

Prohibited Activities/Uses

1. Addiction receiving facility
2. Residential or outpatient methadone detoxification
3. Social services as defined by DCF
4. Methadone clinic or medically assisted treatment for opiate addiction that uses methadone
5. On-site pharmacy



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

SOVEREIGN HEALTH OF
FLORIDA, a Delaware corporation,

Case No. 2:15-CV-265-JES-CM

Plaintiff

v.

CITY OF FORT MYERS, a Florida
municipal corporation,

Defendant.

JOINT AGREEMENT FOR DISMISSAL WITH PREJUDICE

The Parties hereto, by and through their undersigned counsel, represent to the Court that this matter has been amicably settled and would jointly request entry of a Final Order of Dismissal with Prejudice with all parties to bear their own fees and costs in this matter.

DATED this ____ day of _____.

Ethan J. Loeb
Florida Bar No.: 0668338
Smolker, Bartlett, Loeb,
Hinds & Sheppard, P.A.
100 N. Tampa St., Suite 2050
Tampa, Florida 33602
Telephone (813) 223-3888
Email: ethanl@smolkerbartlett.com
Attorney for Plaintiff



GENERAL RELEASE

DEFINITIONS

A. As used in this General Release and Settlement of Claim the term "Sovereign" shall mean Sovereign Health of Florida, Inc., as well as their respective heirs, executors, administrators, personal representatives, successors and assigns, singular or plural, where ever the context so admits or requires.

B. As used in this General Release and Settlement of Claim the term "City" shall mean the City of Ft. Myers, a municipal corporation of the State of Florida, as well as its past, present and future agents, agencies, officials, Public Officials, employees, Code Enforcement Board Members, representatives, City Manager, City Attorney, attorneys, successors and assigns in both their individual and official capacities and any entity or person in privity with them jointly or severally, singular or plural, where ever the context so admits or requires.

RECITALS

WHEREAS, Sovereign and the City are currently parties to the following State Lawsuits, Sovereign Health of Florida, Inc. v. City of Fort Myers, 15-CA-000674, and Sovereign Health of Florida, Inc. v City of Fort Myers, Florida Code Enforcement Board, 15-CA-000889 *and the following Federal Lawsuit, Sovereign Health of Florida, Incorporated v. City of Fort Myers*, Case No. 2:15-CV-265-JES-CM, Collectively the "Lawsuits", and

WHEREAS, the City has denied any wrongdoing and any liability for the allegations which were the subject matter of these Lawsuits; however, is desirous of compromising in order to settle this claim, in good faith, and to avoid further litigation and attendant costs; and

WHEREAS, Sovereign has agreed to accept payment in the amount of Ninety Nine Thousand Dollars and 00/100 in cash or its equivalent (\$99,000.00) and City agrees to reimburse Sovereign up to Fifty Thousand Dollars and 00/100 (\$50,000.00) for security related improvements to the property located at 3331 E. Riverside Drive (the "Riverside Property"), including security cameras, lighting, gate improvements, or any other feature that would enhance the security of the Riverside Property, and other good and valuable consideration, as full compromise and settlement of any and all claims that Sovereign may have, whether now not known or contemplated, against the City, arising out of or resulting from the above



described Lawsuits. Sovereign further agrees that, upon execution of this General Release, it will dismiss these Lawsuits with prejudice and agree to execute all documents and take all other necessary steps to bring about dismissal of these Lawsuits with prejudice.

NOW THEREFORE know all men by these presents, that the City, for good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, they do hereby remise, release and forever discharge Sovereign, of and from all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, which the City ever had, now has or which any personal representative, successor, heir or assign of the City, hereafter can, shall or may have, against Sovereign, by these Lawsuits referenced above, and the facts arising from or related to these Lawsuits, and including, but not limited to, any and all tort claims, claims for compensatory damages, injunctive relief, declaratory relief, punitive damages, interest, costs, attorneys' fees, civil rights violations, federal claims, state, statutory or common law claims and loss of enjoyment of property. The City further acknowledges, warrants and agrees that:

1. This General Release shall not be construed as an admission of liability or responsibility by the City, but is rather a compromise settlement of a disputed claim, designed to avoid further litigation and attendant costs. The City specifically denies liability for the claims brought by Sovereign and denies any wrongdoing whatsoever.

2. That this is a General Release of all Claims and the City expressly waives and assume the risks of any and all claims for damages which exist as of this date, which the City does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise and which if known, would materially affect the City's decision to enter into a settlement and provide this General Release. The City has accepted good and valuable consideration specified herein as a complete compromise of matters involving disputed issues of law and fact. The City assumes the risk that the facts or law may be other than the City currently believes or understands.

3. The City warrants that no promise or inducement not herein expressed have been made, that payment of the above mentioned sum is in full compromise and settlement and full satisfaction of the aforesaid actions, claims and demands,

whatsoever, that this General Release is given in good faith and discharges Sovereign from all liability for contribution to any other alleged tort feisor or any entity with condemnation authority, that the undersigned is of legal age and legally competent to execute this General Release, has read the contents of this General Release and has been adequately represented by counsel, of their own choice, and sign this General Release with full knowledge and appreciation of its meaning.

5. This General Release is to be construed and governed under the laws of the State of Florida and shall bind the City and its respective heirs, estates, successors and assigns. If any one or more provisions of this General Release shall be held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

Executed this ____ day of _____, 2017.

CITY OF FORT MYERS

Print: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing General Release was acknowledged before me this ____ day of _____, by _____, as _____ of City of Fort Myers, who personally swore or affirmed that he/she is authorized to execute this Release and thereby bind the Corporation, and who is personally known to me OR has produced _____ as identification.

(Notary Seal)

Notary Public

GENERAL RELEASE

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A. As used in this General Release and Settlement of Claim the term "Sovereign" shall mean Sovereign Health of Florida, Inc., as well as their respective heirs, executors, administrators, personal representatives, successors and assigns, singular or plural, where ever the context so admits or requires.

B. As used in this General Release and Settlement of Claim the term "City" shall mean the City of Ft. Myers, a municipal corporation of the State of Florida, as well as its past, present and future agents, agencies, officials, Public Officials, employees, Code Enforcement Board Members, representatives, City Manager, City Attorney, attorneys, successors and assigns in both their individual and official capacities and any entity or person in privity with them jointly or severally, singular or plural, where ever the context so admits or requires.

RECITALS

WHEREAS, Sovereign and the City are currently parties to the following State Lawsuits, Sovereign Health of Florida, Inc. v. City of Fort Myers, 15-CA-000674, and Sovereign Health of Florida, Inc. v City of Fort Myers, Florida Code Enforcement Board, 15-CA-000889 *and the following Federal Lawsuit, Sovereign Health of Florida, Incorporated v. City of Fort Myers, Case No. 2:15-CV-265-JES-CM, Collectively the "Lawsuits", and*

WHEREAS, the City has denied any wrongdoing and any liability for the allegations which were the subject matter of these Lawsuits; however, is desirous of compromising in order to settle this claim, in good faith, and to avoid further litigation and attendant costs; and

WHEREAS, Sovereign has agreed to accept payment in the amount of Ninety Nine Thousand Dollars and 00/100 in cash or its equivalent (\$99,000.00) and City agrees to reimburse Sovereign up to Fifty Thousand Dollars and 00/100 (\$50,000.00) for security related improvements to the property located at 3331 E. Riverside Drive (the "Riverside Property"), including security cameras, lighting, gate improvements, or any other feature that would enhance the security of the Riverside Property, and other good and valuable consideration, as full compromise and settlement of any and all claims that Sovereign may have, whether now not known or contemplated, against the City, arising out of or resulting from the above described Lawsuits. Sovereign further agrees that, upon execution of this General

Release, it will dismiss these Lawsuits with prejudice and agree to execute all documents and take all other necessary steps to bring about dismissal of these Lawsuits with prejudice.

NOW THEREFORE know all men by these presents, that Sovereign hereby declares the above recitals as true and correct and that for and in consideration of payment in the amount Ninety Nine Thousand Dollars in cash or its equivalent (\$99,000.00) and City agrees to reimburse Sovereign up to Fifty Thousand Dollars and 00/100 (\$50,000.00) for security related improvements to the Riverside Property, including security cameras, lighting, gate improvements, or any other feature that would enhance the security of the Riverside Property, and other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, they do hereby remise, release and forever discharge the City, of and from all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, which Sovereign ever had, now have or which any personal representative, successor, heir or assign of Sovereign, hereafter can, shall or may have, against the City, by these Lawsuits referenced above, and the facts arising from or related to these Lawsuits, and including, but not limited to, any and all tort claims, claims for compensatory damages, injunctive relief, declaratory relief, punitive damages, interest, costs, attorneys' fees, civil rights violations, federal claims, state, statutory or common law claims and loss of enjoyment of property. Sovereign further acknowledges, warrants and agrees that:

1. This General Release shall not be construed as an admission of liability or responsibility by the City, but is rather a compromise settlement of a disputed claim, designed to avoid further litigation and attendant costs. The City specifically denies liability for the claims brought by Sovereign and denies any wrongdoing whatsoever.

2. That this is a General Release of all Claims and Sovereign expressly waives and assume the risks of any and all claims for damages which exist as of this date, which Sovereign does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise and which if known, would materially affect Sovereign's decision to enter into a settlement and provide this General Release. Sovereign has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Sovereign assumes the risk that the facts or law may be other than Sovereign currently believes or understands.

3. Sovereign warrants that no promise or inducement not herein expressed have been made, that payment of the above mentioned sum is in full compromise and settlement and full satisfaction of the aforesaid actions, claims and demands; whatsoever, that this Release is given in good faith and discharges the City from all liability for contribution to any other alleged tort feisor or any entity with condemnation authority, that the undersigned is of legal age and legally competent to execute this Release, has read the contents of this Release and has been adequately represented by counsel, of their own choice, and sign this General Release with full knowledge and appreciation of its meaning.

5. This General Release is to be construed and governed under the laws of the State of Florida and shall bind Sovereign and its respective heirs, estates, successors and assigns. If any one or more provisions of this General Release shall be held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

Executed this ____ day of _____, 2017.

**SOVEREIGN HEALTH OF
FLORIDA, INC.**

Print: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing General Release was acknowledged before me this ___ day of _____, by _____, as _____ of Sovereign Health of Florida, Inc., who personally swore or affirmed that he/she is authorized to execute this Release and thereby bind the Corporation, and who is personally known to me OR has produced _____ as identification.

(Notary Seal)

Notary Public