



Legal Department

Sovereign Health Group

1211 Puerta Del Sol, Suite 280
San Clemente, CA 92673

Tel 949.276.5553
Fax 949.272.5797
s.zajac@sovhealth.com

January 18, 2016

Scott C. Smith
San Clemente City Attorney
BEST BEST & KRIEGER LLP
18101 Von Karman Ave., Ste. 1000
Irvine, CA 92612

City of San Clemente
Avenida Presidio
San Clemente, CA 92672

VIA Certified Mail

**RE: City of Fort Myers to Pay Sovereign Health Six Figures to Settle
NIMBY/Discrimination Lawsuit**

You're next.

A handwritten signature in black ink, appearing to be "Seth Zajac", written in a cursive style.

Seth Zajac
General Counsel

Attachment
(Fort Myers Settlement Agreement)

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 cancelation 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