



**City of Bunnell, Florida
Agenda Item No. H-1.**

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| Document Date: | 9/18/2015 | Amount: N/A |
| Department: | City Attorney | Account #: |
| Subject: | Settlement of Open Door Re-Entry and Recovery Ministry, Inc. v. City of Bunnell | |
| Attachments: <i>Please number items as they will appear on the agenda.</i> | Mediated Settlement Agreement, including Exhibit “B” containing program restrictions, requirements and prohibitions. | |
| Agenda Section: | H. New Business | |
| Summary/Highlights: Settlement of Open Door Re-Entry and Recovery Ministry, Inc. v. City of Bunnell | | |
| Background: Open Door filed suit against the City in April, 2014 relating to its operations at 309 E. Booe St., the City’s Prison Diversion Program ordinance, and allegations of violations of the ADA and FHA. After meetings with area pastors and community leaders, mediation between representatives of the parties, and subsequent negotiation, Open Door has agreed to a settlement of the pending litigation that includes an extensive list of program restrictions, requirements and prohibitions that will govern the activities of Open Door and 309 E. Booe St. Many of the program restrictions, requirements and prohibitions imposed came directly from meetings with area pastors and community leaders to gather and address community concerns. | | |
| Staff Recommendation: Staff recommends approval of the Mediated Settlement Agreement, including Exhibit “B” containing program restrictions, requirements and prohibitions. | | |
| City Attorney Review: City Attorney recommends approval. | | |
| Approver Name: | Approval Status: | Date: |
| Sandra Bolser, CMC, City Clerk | Approved for the 2015 09 28 Agenda | 9/18/2015 |

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

DATED: 9/11/15

**OPEN DOOR RE-ENTRY AND
RECOVERY MINISTRY, INC.**

By: Charles R. Silano

Print: Charles R. Silano

DATED: 9/11/15

**CITY OF BUNNELL
REPRESENTATIVE**

By: Lawrence Williams

Print: Lawrence Williams

DATED: _____

CITY OF BUNNELL

By: _____

Catherine Robinson, Mayor

ATTEST:

City Clerk

MEDIATED SETTLEMENT AGREEMENT

THIS MEDIATED SETTLEMENT AGREEMENT (the “Agreement”) is entered into between Open Door Re-Entry and Recovery Ministry, Inc., (“Open Door”) and the City of Bunnell (“City”).

WHEREAS, Open Door filed a civil action against the City styled: *Open Door Re-Entry and Recovery Ministry, Inc. v. City of Bunnell*, Case Number: 3:14-cv-424-J-25-MCR (the “Action”) which is now pending in the United States District Court for the Middle District of Florida, Jacksonville Division; and

WHEREAS, the Action arose out of Open Door’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 309 E. Booe Street, Bunnell, Florida (the “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.

NOW THEREFORE the parties agree as follows:

I. Effective Date

This Agreement will become effective when at least one identical counterpart of this Agreement is executed by each of the parties and delivered to the other party or, alternatively, when this Agreement has been fully executed by both of the Parties and one executed copy has been delivered to each of the parties. Such date is called the “Effective Date”.

II. Consideration

A. Obligations of City of Bunnell.

The City shall permit use of the Property under those conditions set forth in **Exhibit “B”** attached hereto. The **Exhibit “B”** conditions shall run with the land and shall be binding on Open Door and/or any future entity which operates a sober living home at the Property. In the event that Open Door sells or in any way transfers its interest in the Property or its right to operate a sober living home on the Property, it shall disclose the requirements of this provision and the binding nature of the conditions set forth in **Exhibit “B”**, to any such subsequent owner or sober living home operator. This provision shall remain fully enforceable and survive the dismissal of the above styled cause of action.

B. Obligations of and Release by Open Door.

No later than three (3) business days after payment of the Settlement Amount as set forth in Section IV (B) hereof, and receipt of same, Open Door shall cause the original of the Joint Agreement for Dismissal attached hereto as **Exhibit “A”** to be filed in the United States District Court for the Middle District of Florida, Jacksonville Division. In addition, no later than three (3) business days after payment of the Settlement Amount and receipt of same, Open Door shall execute and deliver the Release attached hereto as **Exhibit “C”** to counsel for the City.

III. Authority.

A. Open Door Authority

Open Door 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 government entity which must obtain final authority for this Agreement from the City Commission in accordance with its charter. The undersigned City representative is fully supportive of this Agreement and will represent said support to the City Commission in an effort to gain final approval. Open Door acknowledges that this Agreement shall not be effective until and unless approved by the City Commission of the City of Bunnell. The City Commission has the authority to approve this Agreement.

IV. 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. Settlement Amount.

The City, through its Insurer, shall pay Three Hundred Twelve Thousand Five Hundred Dollars and 0/100's (\$312,500.00) 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").

C. 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.

D. 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.

E. 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.

F. 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 will be given full force and effect as though the void or invalid provisions had never been a part of the Agreement.

G. 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.

H. 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.

I. Electronic Signatures.

Faxed and emailed signatures shall be deemed originals.

J. 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.

(Signatures on following page)

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

DATED: _____

OPEN DOOR RE-ENTRY AND RECOVERY MINISTRY, INC.

By: _____

Print: _____

DATED: _____

CITY OF BUNNELL REPRESENTATIVE

By: _____

Print: _____

DATED: _____

CITY OF BUNNELL

By: _____

Catherine Robinson, Mayor

ATTEST:

City Clerk

EXHIBIT "A"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

OPEN DOOR RE-ENTRY AND
RECOVERY MINISTRY,
INCORPORATED, a Florida
not-for-profit corporation,

Case No. 3:14-cv-424-J-25-MCR

Plaintiff

v.

CITY OF BUNNELL, 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 in this matter.

DATED this ____ day of August, 2015.

EXHIBIT "A"

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

EXHIBIT "A"

Sherry G. Sutphen
Florida Bar No.: 399681
Bell & Roper, P.A.
2707 E. Jefferson Street
Orlando, Florida 32803
Telephone: (407) 897-5150
Email: ssutphen@bellroperlaw.com
Secondary: kreed@bellroperlaw.com
Attorney for Defendant

EXHIBIT “B”
Conditions of Approval

1. By virtue of and subject to the Mediated Settlement Agreement, in accordance with the R-1 zoning permitted use: Special Care Housing, City of Bunnell Land Development Code, Section 34-111(b)(5), 309 E. Booe Street may be operated as a sober living home, with no more than 6 (six) residents plus a house supervisor living in the home at any one time. In the event of a future code change or zoning change which alters the permitted uses for 309 E. Booe Street, the sober living home use will be grandfathered so long as the structure does not cease to be used as a sober living home for a period of six (6) consecutive months. Use of the Open Door sober living home in a manner consistent with the terms and conditions set forth herein shall not constitute a prison diversion program as defined within the City of Bunnell Code of Ordinances.
2. The Booe Street sober living home may only accept residents who suffer from the disability of addiction to alcohol or controlled substances. Each resident must have either been assigned by the Flagler County Drug Court, have been individually determined through the judicial process to suffer from the disability of addiction to alcohol or controlled substances before beginning their residency at the Booe Street location or who are voluntarily seeking drug or alcohol treatment, unrelated to any criminal activity. The entity which operates the Booe Street sober living home will not accept individuals who are (i) already incarcerated in prison and seek to obtain early release via participation in the program, (ii) have committed a sexual related offense, and/or (iii) have committed any kind of violent crime.
3. The entity which operates the Booe Street sober living home shall maintain current records to show that no resident or supervisor has been convicted of a sexual related crime, in any state, or a crime which would require their registration on a sexual offender registry of any sort in any state. Upon reasonable written notice, all such records shall be available to the City for inspection at the City’s expense.
4. All residents of the Booe Street sober living home, including the house supervisor shall be drug and/or alcohol tested, as applicable, no less frequently than once per week. The entity which operates the Booe Street sober living home shall maintain records of all such drug/alcohol tests for no less than one (1) year after an individual leaves the home. Upon reasonable written notice, all such records shall be available to the City for inspection,

at the City's expense, subject to any Federal or State laws which prohibit such disclosure.

5. The entity which operates the Booe Street sober living home represents and warrants that it imposes curfew and program restrictions on its residents pursuant to its program. Residents shall adhere to the curfew and program restrictions imposed by the entity which operates the Booe Street sober living home. Upon request, the entity which operates the Booe Street sober living home shall provide such current curfew and program restrictions to the City, at the City's expense.
6. The entity which operates the Booe Street sober living home must, at all times, maintain certification for faith based organizations for recovery through the Florida Association of Recovery Residences (FARR) or such future equivalent regulatory organization in the event that FARR ceases to exist. In addition, the entity which operates the Booe Street sober living home shall obtain and maintain certification through any State of Florida statutory recovery residence program once implemented. Proof of certification shall be made available to the City upon request.
7. The structure located on the Booe Street property will be maintained as a residential structure, taking on the characteristics of a home rather than having the appearance of a commercial structure. Residential type landscaping and shrubbery will be planted and maintained to the extent possible. The entity which operates the Booe Street sober living home shall be entitled to maintain the sign which has already been approved and permitted by the City .
8. The entity which operates the Booe Street sober living home shall maintain properly functioning surveillance cameras on the inside of the structure which record and save footage of, for a period of no less than thirty (30) days, the activities occurring on the inside of the structure. All such footage shall be made available to the City upon request pursuant to a criminal investigation.
9. Except for children who are participating in specially-planned, family events which are part of the program for the residents, no person under eighteen (18) years of age shall be on the Booe Street property or in the structure located on the Booe Street property at any time. Children of staff are exempted from this provision.

10. The entity which operates the Booe Street sober living home, and any other individual or organization acting on behalf of the Booe Street sober living home, shall only advertise the home as a program for individuals who are recovering from drug or alcohol addiction and shall only seek funding, donations or contributions on behalf of the home by claiming that the home houses individuals who are recovering from drug or alcohol addiction.
11. During regular business hours, not more frequently than one (1) time per month, the City shall have the right to randomly conduct inspections of the property, including the interior, with a drug sniffing canine, accompanied by no more than two (2) officers.
12. There shall be no alcohol, illegal drugs or drug paraphernalia on premises at any time. In the event that any alcohol, illegal drugs or drug paraphernalia are found on the premises, the City shall be empowered to take any legal action which it deems appropriate.
13. There shall be no drug related crimes occurring on the premises. In the event that any drug related crimes occur on the premises, the City shall be empowered to take any legal action which it deems appropriate.
14. An egregious accumulation of minor violations of the terms of this agreement, that would not singly cause the City to take legal action, shall be cause for the City to seek judicial intervention for any and all available legal and equitable remedies.

EXHIBIT “C”

GENERAL RELEASE

DEFINITIONS

A. As used in this General Release and Settlement of Claim the term “Open Door” shall mean Open Door Re-entry and Recovery Ministries, 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 Bunnell, a municipal corporation of the State of Florida, as well as its past, present and future agents, agencies, officials, commissioners, employees, boards, representatives, 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.

C. As used in this General Release and Settlement of Claim the term “Insurer” shall mean Preferred Government Claims Solutions and/or Munich Re and any other subsidiary or division of said entities, as well as their agents, employees, representatives, attorneys, successors or assigns.

RECITALS

WHEREAS, on April 14, 2014, Open Door filed a Complaint in the United States District Court for the Middle District of Florida, Jacksonville Division, styled *Open Door Re-entry and Recovery Ministries, Inc., v. City of Bunnell*, Case Number: 3:14-cv-424-J-25-MCR, hereafter “Lawsuit”, alleging violations of the Americans with Disabilities Act and the Fair Housing Act; and

WHEREAS, at the time of the aforesaid project there was in force and effect a policy of liability insurance between the Insurer and the City which provided coverage for this type of claim; and

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

WHEREAS, Open Door has agreed to accept payment in the amount Three Hundred Twelve Thousand Five Hundred Dollars and 0/100's (\$312,500.00) and other good and valuable consideration, as full compromise and settlement of any and all claims that Open Door may have, whether now not known or contemplated, against the City and Insurer, arising out of or resulting from the above described Lawsuit. Open Door further agrees that, upon execution of this General Release, it will dismiss the Lawsuit with prejudice and agree to execute all documents and take all other necessary steps to bring about dismissal of the Lawsuit with prejudice.

NOW THEREFORE know all men by these presents, that Open Door hereby declares the above recitals as true and correct and that for and in consideration of payment in the amount Three Hundred Twelve Thousand Five Hundred Dollars and 0/100's (\$312,500.00), to them in hand paid, and other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, they do hereby remise, release and forever discharge the City and the Insurer, 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 Open Door ever had, now have or which any personal representative, successor, heir or assign of Open Door, hereafter can, shall or may have, against the City and/or the Insurer, by that certain Lawsuit referenced above, and the facts arising from or related to the Lawsuit, 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. Open Door further acknowledges, warrants and agrees that:

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

2. That this is a General Release of all Claims and Open Door expressly waives and assume the risks of any and all claims for damages which exist as of this date, which Open Door does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise and which if known, would materially affect Open Door's decision to enter into a settlement and provide this

General Release. Open Door has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Open Door assumes the risk that the facts or law may be other than Open Door currently believes or understands.

3. Open Door 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 and the Insurer from all liability for contribution to any other alleged tortfeasor 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.

4. In the event that the City or the Insurer should be required to defend any suit, claim, action, or proceeding filed by or on behalf of Open Door in violation of this General Release, Open Door shall be liable to the City for all fees of attorneys, paralegals and legal assistants and costs and expenses incurred in defending same, up to and including any and all appeals.

5. This General Release is to be construed and governed under the laws of the State of Florida and shall bind Open Door 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.

6. This General Release may be pleaded as a full and complete defense against any action, suit or proceeding that may be prosecuted, instituted or attempted by Open Door which Open Door has waived or released herein.

(Signatures on following page)

Executed this ____ day of August, 2015.

**OPEN DOOR RE-ENTRY AND
RECOVERY MINISTRY, INC.**

EXHIBIT“C”

Print: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing General Release was acknowledged before me this ____ day of August, 2015, by _____, as _____ of Open Door Re-entry and Recovery Ministry, 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