

DECLARATION OF STEVEN G. POLIN

DISTRICT OF COLUMBIA) ss.

I, STEVEN G. POLIN, declare as follows:

1. I am over 18 years of age and have personal knowledge of the facts contained in this Declaration. If called upon to testify, I could and would testify competently as to the truth of the facts stated herein.

2. I am an attorney whose expertise since 1993 has focused primarily on the application of the Federal Fair Housing Act as it pertains to exclusionary zoning enforcement to persons with disabilities residing in group living environments. My practice is national in scope.

3. I serve as General Counsel to Oxford House, Inc., an organization that assists in the establishment of housing for persons in recovery from alcoholism and substance abuse. There are over 4,000 Oxford Houses nationally, including several in Arizona.

4. I also represent and provide expert testimony and assistance to other providers of housing for persons with disabilities.

5. In 2016, I was the recipient of the Vernon Johnson Award from Faces and Voices of Recovery for my advocacy on behalf of persons in recovery. I have also received an award from the National Alliance for Recovery Residences for protection of civil rights to providers of housing for persons in recovery from alcoholism and substance abuse.

6. In 1995, I was the recipient of the Public Justice Achievement Award, Trial Lawyers for Public Justice, for my contributions to the protection of civil rights and public interest.

7. I make this Declaration in support of Legacy Recovery Center's appeal of the April 15, 2025 Zoning Administrator's Interpretation to the City of Mesa Board of Adjustment (the "**Appeal**"). The Appeal challenges the Zoning Administrator's April 15th interpretation regarding

the residential property located at 2338 E. Minton Street, Mesa, Arizona 85213 (the “**Property**”), and requests that the Board of Adjustment grant the appeal and uphold the original family community residence approval granted for the Property on or about February 5, 2025.

8. By way of background, I have experience representing disabled residents in actions against the City of Mesa. I represented the Plaintiff in *Women in New Recovery, Inc., et al v. City of Mesa* in the United States District Court of Arizona Case No. CIV 98-0381-PHX-PGR. In that matter, on January 16, 2003, the City of Mesa entered into a settlement agreement with my client agreeing to certain modifications of the Mesa code applicable to group homes for the handicapped and a payment of \$40,000 to satisfy my client’s claim for attorneys’ fees. *See Exhibit “A”* attached hereto and incorporated herein.

9. The Fair Housing Amendments Act of 1988 (“FHAA”) extended Fair Housing Act protections to persons with disabilities, making it unlawful “[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap.” This includes people with an addiction to illegal drugs or alcohol who are not currently using illegal drugs or alcohol.

10. The FHAA had the effect of guaranteeing the rights of disabled individuals to live in the residence of their choice within the community.

11. The FHAA does not afford lesser protections to persons with certain disabilities or persons who may live in a residence for 2 months as opposed to one (1) year. The FHAA protects the rights of individuals to live in housing of their choice regardless of length of stay. The protections work two ways, one is to the housing provider, and the other is to the individual residents. It is acknowledged that in providing recovery housing, a small minority of residents

will relapse or will leave the program for personal reasons. The turnover of residents does not affect the services provided by the housing provider.

12. There is no uniform term for housing for persons with disabilities living in a group setting.

13. In the case of the City of Mesa, the Zoning Ordinance uses the phrase “community residence” which is defined in Section 11-86-2 as follows:

Community Residence: A community residence is a residential living arrangement for five to ten individuals with disabilities, excluding staff, living as a family in a single dwelling unit who are in need of the mutual support furnished by other residents of the community residence as well as the support services, if any, provided by the staff of the community residence. Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services related to the residents' disabilities. A community residence seeks to emulate a biological family to foster normalization of its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family-like environment. Medical treatment is incidental as in any home. Supportive interrelationships between residents are an essential component. Community residence includes sober living homes and assisted living homes but does not include any other group living arrangement for unrelated individuals who are not disabled nor any shelter, rooming house, boarding house or transient occupancy.

14. The City of Mesa has created two (2) types of community residences in its Zoning Ordinance: family community residence and transitional community residence. The only difference in the two types of community residences is the length of residency, as demonstrated by the definitions in Section 11-86-2 of the Zoning Ordinance:

Family Community Residence: A community residence is a relatively permanent living arrangement with no limit on the length of tenancy as determined in practice or by the rules, charter, or other governing documents of the community residence. The minimum length of tenancy is typically a year or longer.

Transitional Community Residence: A community residence that provides a relatively temporary living arrangement with a limit on length of tenancy less than a year that is measured in weeks or months, as determined either in practice or by the rules, charter, or other governing document of the community residence.

15. Table 11-5-2 of the City's Zoning Ordinance distinguishes between the two (2) types of community residences as follows:

a. Family Community Residences are a permitted use as of right in all single-family residential zoning districts (RS Single Residences and RSL Small Lot Single Residences), versus,

b. Transitional Community Residences require SUP approval by the Board of Adjustment (consisting of a public hearing, neighborhood notifications, and posting of a sign on the property) in all single-family residential zoning districts (RS Single Residences and RSL Small Lot Single Residences).

16. The City of Mesa Zoning Ordinance discriminates against persons with disabilities who typically live in community residences for less than a year. Transiency cannot be used to deny housing to a housing provider, or even deny it protections under the Fair Housing Act. See *Oxford House, Inc. v. Babylon*, 819 F. Supp. 1179, 1183 (E.D.N.Y. 1993). The Court in *Oxford House, Inc. v. Babylon* stated:

Applying § 213-1 of the Town Code to evict plaintiffs would discriminate against them because of their handicap. Recovering alcoholics or drug addicts require a group living arrangement in a residential neighborhood for psychological and emotional support during the recovery process. As a result, residents of an Oxford House are more likely than those without handicaps to live with unrelated individuals. Moreover, because residents of an Oxford House may leave at any time due to relapse or any other reason, they cannot predict the length of their stay. Therefore, a finding of a violation of the Town Code leading to the town's eviction of plaintiffs from a dwelling due to the size or transient nature of plaintiffs' group living arrangement actually or predictably results in discrimination.

17. There is no legitimate basis for distinguishing between community residences based on length of stay and requiring additional zoning approvals for disabled persons with residency periods less than a year when the Zoning Ordinance does not require additional zoning approvals for short term rentals or other families with shorter residencies living in Mesa's single-family residential zoning districts.

18. In *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 580 (2d Cir. 2003) the court rejected the notion that transiency could be used to deny a protected class from residing in a single-family zone:

We also affirm the district court's finding that plaintiffs requested a reasonable accommodation and the City failed to grant it. The City is not required to grant an exception for a group of people to live as a single family, but it cannot deny the variance request based solely on plaintiffs' handicap where the requested accommodation is reasonable. The district court found that these plaintiffs operated much like a family. Additionally, there is evidence that these particular plaintiffs needed to live in group homes located in single-family areas. *See Tsombanidis II*, 180 F. Supp. 2d at 293. The City concedes that, from a municipal services standpoint, it would bear minimal financial cost from the proposed accommodation. While legitimate concerns of residential zoning laws include the integrity of the City's housing scheme and problems associated with large numbers of unrelated transient persons living together, such as traffic congestion and noise, see *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 9, 39 L. Ed. 2d 797, 94 S. Ct. 1536 (1974); *Oxford House-C*, 77 F.3d at 252, the City points to no evidence that those concerns were present here.

19. The *Tsombanidis* rationale was adopted by the United States Court of Appeals for the 11th Circuit in *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1224 (11th Cir. Fla. 2008).

20. The following cases also reject the transient argument: *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514 (W.D. Pa. 2007); *Cnty. Servs. v. Heidelberg Twp.*, 439 F. Supp. 2d 380, 397 (M.D. Pa. 2006); and *Lakeside Resort Enters., LP v. Bd. of Supervisors*, 455 F.3d 154, 157-158 (3d Cir.2006).

21. Furthermore, a city or town that consistently interprets a certain housing type for persons with disabilities to be a family community residence over the course of four (4) years, but then attempts to revoke one such approval after receiving discriminatory neighborhood complaints, would be acting in violation of the FHAA. This would be especially true if the city or town made no attempt to revoke the prior family community residence approvals issued to other operators or residents with similar housing types.

22. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Dated this 21st day of July, 2025.

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Steven G. Polin

EXHIBIT A

602-532-7950

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| CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA BY <i>[Signature]</i> | |

1 Kathleen L. Wieneke, 011139
 2 **JONES, SKELTON & HOCHULI**
 2901 North Central Avenue, Suite 800
 3 Phoenix, Arizona 85012
 (602) 263-1700
 4 Kwieneke@jshfirm.com

5 Attorneys for *Defendant City of Mesa*

8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF ARIZONA**

10 Women in New Recovery, Inc., an
 11 Arizona not-for-profit corporation; and
 12 Transitional Living Communities, Inc.,
 13 an Arizona non-for-profit corporation,
 Plaintiff,

14 v.

15 City of Mesa, Arizona, a body
 16 corporate,

17 Defendant.

NO. CIV 98-0381-PHX-PGR

**NOTICE OF FILING COPY OF
 SETTLEMENT AGREEMENT AND
 RELEASE**

18 Defendant City of Mesa, in compliance with the Court's Order,
 19 hereby files a of a copy of the Settlement Agreement and Release executed in
 20 the above-referenced case.

21 **DATED** this 4th day of February, 2003.

22 **JONES, SKELTON & HOCHULI**

23 By *[Signature]*

24 Kathleen L. Wieneke
 25 2901 North Central Avenue, Suite 800
 26 Phoenix, Arizona 85012
 Attorneys for *Defendant City of Mesa*

JONES, SKELTON & HOCHULI, P.L.C.

ATTORNEYS AT LAW
 2901 NORTH CENTRAL AVENUE
 SUITE 800
 PHOENIX, ARIZONA 85012
 TELEPHONE (602) 263-1700

99

1 **COPY** of the foregoing mailed this
2 14th day of February, 2003, to:

3 Steve G. Polin, Esq.
4 1712 I St NW, Suite 310
5 Washington, DC 20006-3745

6 Patricia A. Gitre
7 331 North First Avenue, Suite 150
8 Phoenix, Arizona 85003-4527

9 *Attorneys for Plaintiffs*

JONES, SKELTON & HOCHULL, P.L.C.
ATTORNEYS AT LAW
2901 NORTH CENTRAL AVENUE
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10
11 *Patricia A. Gitre*
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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into this 16th day of January, 2003, by Women in New Recovery, Inc., Transitional Living Communities, Inc., its agents and officers (hereinafter "Plaintiffs"), and City of Mesa (hereinafter "Defendant").

1. RELEASE AND DISCHARGE

a) In exchange for and in consideration of the acts, promises and mutual agreements contained in this Settlement Agreement and Release the Parties agree to fully discharge all past, present, and future claims known and unknown arising out of the allegations set forth in The Plaintiff's Complaint CIV 98-0381-PHX-PGR filed in the United States District Court, District of Arizona. Plaintiffs further agree to hereby release and discharge any and all claims that have been or could be asserted by the Plaintiffs, their officers, agents, heirs, executors, administrators, conservators, personal representatives, successors and assigns arising from the alleged actions or omissions of Defendant. Plaintiffs further agree that this Release is applicable to any cause of action right, claim, lawsuit, injunction, or litigation that may be filed or maintained by the Plaintiff, and/or their companies, corporations, LLCs, representatives, assigns, or agents, including but not limited to, the appropriateness of the 1,200 foot spacing requirement as contained in the Mesa City Code, or any other portion of the Mesa City Code pertaining to the zoning and regulation of group homes for the handicapped and/or supervised living facilities. Nothing in this agreement shall be construed to act as a waiver of Plaintiffs' right to seek redress arising out of new future conduct on the part of the Defendant.

b) Defendant agrees to amend the Mesa City Code, Title 5, Chapter 2, as follows:

5-2-4 LICENSE PROVISIONS:

~~(B) 3. CERTIFICATION THAT THE GROUP HOME SHALL NOT SERVE RESIDENTS WHO ARE IN THE FACILITY AS A RESULT OF PROBATION, PAROLE, PRETRIAL RELEASE OR PURSUANT TO THE TERMS OF A CONDITIONAL RELEASE OR PRERELEASE FROM JAIL, PRISON, OR CORRECTIONAL FACILITY.~~

(c) Further, Defendant agrees to pay Plaintiffs \$40,000 in complete and full satisfaction for their claim of attorneys' fees. It is expressly understood and agreed that this Settlement Agreement and Release is executed as a compromise of a disputed claim and that the action and payments contemplated herein are not in any manner to be construed as an admission of liability on the part of the Defendant, its agents, servants, employees and attorneys, and any and all other persons, firms or corporations, such liability being expressly denied.

(d) In consideration of the actions and payments called for herein, Plaintiffs completely release and forever discharge the Defendant, its agents, servants, successors, heirs, executors and administrators, and all other persons, firms, corporations, associations or partnerships, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, including court costs, legal expenses and attorneys fees which Plaintiffs have or had or which may hereafter accrue on account of or in any way growing out of any and all known or unknown, foreseen and unforeseen consequences resulting from the ordinance listed in Plaintiffs Complaint or its amendment

contemplated by this Agreement. Settlement Agreement and Release shall be a full, binding and complete settlement between the parties, save only and excepting the executory provisions of this Agreement. This Agreement is intended to be global in nature and is intended to bar any further claims arising out of the ordinance or amendment, whether a part of Plaintiffs' current Complaint or not.

(e) In consideration of the actions and payments called for herein, and, Plaintiffs agree to provide a list of all houses and/or entities operated by Plaintiffs which are considered existing group homes for the handicapped and/or supervised living facilities as defined under Title 5, Chapter 2 of the Mesa City Code prior to the signing of the Agreement. Further, Plaintiffs agree to register, license and/or certify all existing group homes for the handicapped and/or supervised living facilities as currently defined under Title 5, Chapter 2 of the Mesa City Code operated and/or owned by them or their companies and comply with any and all license, registration and certification requirements in the City of Mesa Code by the effective date of this Agreement. It is expressly understood that only those group homes for the handicapped or supervised living facilities which are properly registered, licensed and/or certified by Plaintiffs at the time of the effective date of this Agreement will be protected by this Agreement. The City of Mesa agrees to grandfather all houses/homes that are properly certified, registered, and/or licensed as of the date of the effective date of the proposed amendment of the Code.

(f) The undersigned hereby warrant that out of the proceeds paid herein to Plaintiffs, the undersigned will satisfy any and all unpaid or unsatisfied liens, and that the undersigned will indemnify and hold harmless Defendant from any and all liability whatsoever, including but not limited to, costs, attorneys fees, or

judgments which might arise from any unpaid or unsatisfied lien of any other kind which might apply to the proceeds paid herein.

2. PAYMENTS

In consideration of the full discharge of claims set forth above, the Defendant hereby agrees to pay the following sums in the following manner:

- Cash payment of \$40,000 no later than four (4) weeks after the effective date of the amendment to the City Code.

3. REPRESENTATION BY PLAINTIFFS

Women in New Recovery, Inc. and their representatives and Transitional Living Communities, Inc. and their representatives represent that they have carefully read this Agreement in its entirety, have conferred with their attorneys, and know and understand the contents of this Agreement. They further understand and acknowledge that this Agreement has been negotiated by the parties through their respective counsel. They represent that they are not relying on the advice of Defendant, or anyone associated with Defendant, concerning the legal consequences of this Agreement. Plaintiffs hereby release and hold harmless Defendant and any and all counsel or consultants from any claim of any kind which Plaintiffs may assert because of any unforeseen consequences of this Settlement Agreement and Release.

4. DELIVERY OF DISMISSAL WITH PREJUDICE

As part of this Settlement Agreement and Release, counsel for Plaintiffs shall file an executed Stipulation for Dismissal With Prejudice of the civil action described above. Plaintiffs authorize Plaintiffs attorney to execute the Stipulation for Dismissal with Prejudice on Plaintiffs behalf and hereby authorize Plaintiffs attorney to file such Stipulation for Dismissal with Prejudice with the Court.

5. ADDITIONAL DOCUMENTS

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full effect to the basic terms and intent of this Agreement.

6. ENTIRE AGREEMENT

This Settlement Agreement and Release contains the entire agreement between Plaintiffs and Defendant pertaining to the matter set forth and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

7. CONDITION SUBSEQUENT

This Settlement Agreement and Release is subject to a condition subsequent of approval of the City Council of the proposed amendment to the City Code, as set forth in Section 1(b) of this Agreement. Defendant warrants that its representative will make good faith effort to obtain City Council approval and will recommend the amendment to the City Council. If the City Council does not approve the amendment in whole, the Settlement Agreement is void and no provision is binding, including but not limited to, the payment of any monies, and no action may be maintained for breach of Agreement. The Agreement shall become binding thirty (30) days after the effective date of the amendment to the City Code, if passed. Payment under this Agreement shall be due thirty (30) days after the effective date of the amendment to the City Code.

8. GOVERNING LAW

This Settlement Agreement and Release shall be construed and interpreted in accordance with the laws of the State of Arizona.

Dec 05 02 12:23P

Patricia A. Gitre

9. TITLES, HEADINGS, CAPTIONS

All titles, headings and captions used in this Settlement Agreement and Release have been intended for administrative convenience only and do not constitute matters to be construed in interpreting this Settlement Agreement and Release.

EXECUTED this 5 day of December, 2002.

PLAINTIFFS:**WOMEN IN NEW RECOVERY, INC.****TRANSITIONAL COMMUNITY LIVING, INC.**

By _____

By John Schwarz**WITNESSED AND APPROVED:**

Steve G. Polin, Esq.
1712 I Street NW, Suite 310
Washington, D.C. 20006-3745

and

Patricia A. Gitre
331 North First Avenue, Suite 150
Phoenix, Arizona 85003-4527

Attorneys for Plaintiffs

Patricia A. Gitre

DEFENDANT:**CITY OF MESA**

By Mr. [Signature]
Deputy City Attorney

9. TITLES, HEADINGS, CAPTIONS

All titles, headings and captions used in this Settlement Agreement and Release have been intended for administrative convenience only and do not constitute matters to be construed in interpreting this Settlement Agreement and Release.

EXECUTED this 16 day of Dec., 2002.

PLAINTIFFS:

WOMEN IN NEW RECOVERY, INC.

TRANSITIONAL COMMUNITY LIVING, INC.

By Patricia Henderson

By _____

WITNESSED AND APPROVED:

Steve G. Polin, Esq.
1712 I Street NW, Suite 310
Washington, D.C. 20006-3745

and

Patricia A. Gitre
331 North First Avenue, Suite 150
Phoenix, Arizona 85003-4527

Attorneys for Plaintiffs

Patricia A. Gitre

DEFENDANT:

CITY OF MESA

By _____

9. TITLES, HEADINGS, CAPTIONS

All titles, headings and captions used in this Settlement Agreement and Release have been intended for administrative convenience only and do not constitute matters to be construed in interpreting this Settlement Agreement and Release.

EXECUTED this _____ day of _____, 2002.

PLAINTIFFS:

WOMEN IN NEW RECOVERY, INC.

TRANSITIONAL COMMUNITY LIVING, INC.

By _____

By _____

WITNESSED AND APPROVED:

Steve G. Polin, Esq.
1712 I Street NW, Suite 310
Washington, D.C. 20006-3745

and

Patricia A. Gitre
331 North First Avenue, Suite 150
Phoenix, Arizona 85003-4527

Attorneys for *Plaintiffs*



DEFENDANT:

CITY OF MESA

By _____

DEC 05 02 12:30P

PATRICIA M. GARCIA

WITNESSED AND APPROVED:

Kathleen L. Wieneke
JONES, SKELTON & HOCHULI
 2901 North Central Avenue, Suite 800
 Phoenix, Arizona 85012
 Attorneys for Defendant



STATE OF ARIZONA)
) ss.
 County of Maricopa)

SUBSCRIBED AND SWORN TO before me this 28 day of
 200³, by Joe Padilla

Perla P. Anderson
 Notary Public



STATE OF ARIZONA)
) ss.
 County of Maricopa)

SUBSCRIBED AND SWORN TO before me this 9 day of December
 2002, by Sylvia Garcia Suttle

Sylvia Garcia Suttle
 Notary Public

My Commission Expires:

1-10-06

