

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

KEITH ST. GERMAIN NURSERY FARMS,
a sole proprietorship,

DOH Case No. 2017-0232

Petitioner

v.

FLORIDA DEPARTMENT OF HEALTH,

Respondent/Appellee.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement"), is entered this 26th day of October, 2017, by and between Petitioner Keith St. Germain Nursery Farms ("KSG"), and Respondent, State of Florida Department of Health ("DOH" or "Department") (each a "Party" and together, the "Parties").

PREMISES

WHEREAS, KSG timely filed with the Department its application to become a Dispensing Organization in the Southeast Region of Florida pursuant to section 381.986, Florida Statutes (2014);

WHEREAS, the Department reviewed, evaluated, and scored KSG's application, scoring it second in the Southeast Region of Florida and, as a result, denied KSG's application to become a Dispensing Organization;

WHEREAS, the Florida Legislature enacted Senate Bill 8-A ("SB 8-A") on June 9, 2017, in order to implement Section 29, Article X of the Florida Constitution, and to create a unified regulatory structure for the medical use of marijuana in Florida. SB 8-A amended Fla. Stat. § 381.986, in relevant part, requires the Department to issue medical marijuana treatment center licenses to certain applicants who were denied a license under the previous statutory scheme;

WHEREAS, the Governor of Florida signed SB 8-A into law on June 23, 2017; and

WHEREAS, KSG timely requested a license pursuant to SB 8-A which the Department denied on August 14, 2017. On August 17, 2017, KSG filed a Petition for Formal Administrative Proceeding (Department Case No. 2017-0232) with the Department of Health ("License Challenge") challenging the Department's denial of KSG's request for licensure pursuant to SB 8-A;

WHEREAS, KSG filed a second challenge with the Division of Administrative Hearings (“DOAH”) on September 14, 2017 (DOAH Case No. 2017-5011RU) (“Unadopted Rule Challenge”);

WHEREAS, on September 29, 2017, KSG filed another Petition for Formal Administrative Proceeding (DOAH Case No. 2017-5447RE) with DOAH (“Emergency Rule Challenge”) challenging the Department’s emergency rule 64-ER17-3;

WHEREAS, on October, 11, 2017 KSG filed a Public Records lawsuit against the Department in the Second Judicial Circuit (Leon County Circuit Court Case No. 17-2117) (“Public Records Suit”);

WHEREAS, the Parties desire to resolve the disputes between them and therefore intend to enter into this Agreement to approve KSG to serve as a medical marijuana treatment center under applicable laws, and agree for the Department to license and register KSG as a medical marijuana treatment center.

NOW THEREFORE, in consideration of the mutual promises of the Parties, the Parties agree as follows:

1. The Premises, above, are hereby incorporated into this Agreement, as if fully set forth herein;
2. The Parties intend and do hereby agree as follows:
 - (a) KSG certifies to the Department that it:
 - i. Meets the requirements under current law to be licensed as a medical marijuana treatment center; and
 - ii. Has the existing infrastructure and technical and technological ability to begin cultivating marijuana within thirty (30) days after registration as a medical marijuana treatment center;
 - (b) Upon execution of this Agreement, KSG will dismiss the the Unadopted Rule Challenge and the Emergency Rule Challenge cases pending before DOAH, and the Public Records Suit pending before the Second Judicial Circuit, the;
 - (c) Immediately upon dismissal of cases, the Department will enter the Final Order, attached hereto as Exhibit A, in the instant case: (1) adopting and incorporating this Agreement; and (2) licensing and registering KSG as a medical marijuana treatment center;
 - (d) Within ten (10) calendar days after the Department licenses and registers KSG as a medical marijuana treatment center, KSG will:



- i. post a \$5 million performance bond issued by an authorized surety insurance company rated in one of the three highest rating categories by a nationally recognized rating service;
- ii. provide an irrevocable letter of credit of \$5 million payable to the Department; or
- iii. provide \$5 million cash to the Department. The Parties agree that the failure to timely post the bond or provide a letter of credit will result in the revocation of KSG's license.

3. The parties shall each bear their own costs and attorneys' fees associated with the License Challenge, the Unadopted Rule Challenge, the Emergency Rule Challenge, the Public Records Suit and this Agreement.

4. Thirty (30) days after licensing and registering or earlier, KSG shall, in accordance with rule 64-4.005(2) Fla. Admin. Code, notify the Department that it is ready to begin cultivation. KSG will comply with rule 64-4.005(3), (4), and (5) Fla. Admin. Code, section 381.986, F.S and any other applicable laws or rules promulgated by the Department.

5. This Agreement and the attached Final Order constitutes the entire Agreement between the parties with regard to the License Challenge, the Unadopted Rule Challenge, and the Emergency Rule Challenge and the grant or award of a license and registration to KSG to become a medical marijuana treatment center. The Parties intend that this agreement be binding and enforceable.

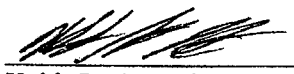
6. This Agreement shall be construed in accordance with the Laws of the State of Florida. The Parties agree that the proper forum to enforce provisions of this Agreement shall be in Circuit Court, Leon County, Florida. The prevailing party in any such action shall be entitled to recover its attorneys' fees and costs.

7. This Agreement shall inure to the benefit of and be binding upon each Party, including each Party's successors, assigns, Agency head, and administrators, and shall be enforceable against them.

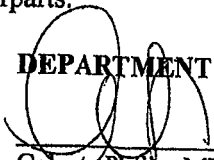
8. This Agreement shall be in full force and effect upon execution by each of the respective Parties' authorized signatories, and effective on the date of the last or final signature.

9. This Agreement may be executed in counterparts.

KEITH ST. GERMAIN NURSERY

By: 
 Keith St. Germain
 Title: OWNER
 Date: October 26, 2017

DEPARTMENT OF HEALTH

By: 
 Celeste Philip, MD, MPH
 Title: State Surgeon General
 Date: October 26, 2017



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

KEITH ST. GERMAIN NURSERY FARMS,
a sole proprietorship,

Petitioner,

Case No. 2017-0232

vs.

FLORIDA DEPARTMENT OF HEALTH,
an executive branch agency of
the State of Florida,

Respondent.

FINAL ORDER ADOPTING SETTLEMENT AGREEMENT

THIS MATTER is before the Department upon execution of a settlement agreement between Keith St. Germain Nursery Farms ("KSG"), and the Department of Health ("Department").

BACKGROUND

On August 17, 2017 KSG filed a Petition for Formal Administrative Proceedings and on September 14, 2017, KSG filed an Amended Petition for Formal Administrative Proceedings requesting approval of KSG's application to operate as a Medical Marijuana Treatment Facility ("MMTC") pursuant to section 381.968(8)(a)2.a., Florida Statutes (2017).

On _____, 2017, the Department and KSG entered into a settlement agreement, attached as Exhibit A, granting KSG a license to operate as an MMTC in accordance with section 381.986(8)(a)2.a., Florida Statutes (2017). The settlement agreement resolves the controversy in this matter.


EXHIBIT A

ORDER

Based upon the foregoing it is ORDERED that the settlement agreement, attached as Exhibit A, is approved, adopted and incorporated by reference in this Final Order.

KSG is granted a license to operate as a medical marijuana treatment center in accordance with section 381.986(8)(a)2.a., Florida Statutes (2017).

DONE and ORDERED this _____ day of _____, 2017, in Tallahassee, Leon County, Florida.

Celeste Philip, M.D., M.P.H.
State Surgeon General and Secretary
Florida Department of Health

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to each of the following persons this _____ day of _____, 2017:

Agency Clerk
Florida Department of Health
4025 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399-1703

Nichole Geary, Esq.
General Counsel
Florida Department of Health
2585 Merchants Row Blvd., Suite 110
Tallahassee, FL 32399
nichole.geary@flhealth.gov

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS ORDER.