

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GERARD JOYCE, KATIE JOYCE,	)	
DANIEL JOYCE, NORMANDY	)	
HOLDINGS, LLC, LOFTS AT THE MILL,	)	
LP, and LOFTS GP, LLC,	)	
	)	
Defendants.	)	
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Case No.: 3:08-CV-1189

(Caputo, J.)

**CONSENT ORDER**

**I. Factual and Procedural Background**

1. The United States initiated this action to enforce the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.* The United States alleges that Defendants Gerard Joyce, Katie Joyce, Daniel Joyce, Normandy Holdings, LLC, Lofts at the Mill, LP, and Lofts GP, LLC, (collectively “the Defendants”), have unlawfully discriminated on the basis of familial status in the rental and advertising of dwelling units at The Mill, a housing complex in Scranton, PA, owned and/or operated by Defendants.

2. Specifically, the United States alleges that the Defendants have engaged in housing practices that discriminate on the basis of familial status by:

- a. Publishing discriminatory advertisements and statements on the basis of familial status in newspapers, the internet, and on brochures and placards;
  - b. Refusing to negotiate with and denying housing to prospective tenants with children; and,
  - c. Discouraging families with children from applying for dwellings while encouraging persons without children to apply.
3. The United States alleges that, through this conduct, Defendants have:
  - a. Violated 42 U.S.C. § 3604(a) by refusing to rent, negotiate for the rental of, or otherwise making unavailable or denying dwellings to persons because of familial status;
  - b. Violated 42 U.S.C. § 3604(c) by making, or causing to be made, statements with respect to the rental of a dwelling that indicate a preference, limitation, or discrimination based on familial status; and,
  - c. The United States further alleges that through the conduct described above, Defendants engaged in a pattern or practice of resistance to the full enjoyment of the rights granted by the Fair Housing Act, and denied to a group of persons rights granted by the Act.
4. The parties have agreed to the entry of this Consent Order, as indicated by the

signatures below.

**Therefore, it is ORDERED that:**

## **II. Injunction**

5. Defendants, their agents, employees, successors,<sup>1</sup> and all persons in active concert or participation with them are hereby enjoined, with respect to the rental of dwellings, from:

- a. Refusing to rent a dwelling, refusing to negotiate for the rental of a dwelling, or otherwise making unavailable or denying a dwelling to any person because of familial status;
- b. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status;
- c. Making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or

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<sup>1</sup> For purposes of this Consent Order, “successors” shall not include successors in interest in a covered dwelling unit (as defined in Paragraph 6 hereof) who acquired such interest as a result of court appointment or by way of an arms-length transaction, where “arms-length transaction” is defined as a transaction, such as a contract or agreement, that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding that contract.

discrimination because of familial status;

- d. Representing to persons, because of familial status, that any dwelling is not available for inspection or rent when such dwelling is in fact available; and
- e. Discouraging families with children from applying for dwellings while encouraging persons without children to apply.

### **III. Nondiscrimination Policies and Procedures**

6. Defendants' responsibilities under this Consent Order shall apply to each and every dwelling unit rented, available for rental, or intended for rental, in which any Defendant has an ownership, management, or other financial interest, excluding financial interests that are wholly passive such as non-active investment in a limited partnership with real estate holdings or minority ownership in a REIT. Such dwelling units are subject to this Order and are hereinafter referred to as "covered dwelling units," and include, but are not limited to, all rental units of "The Mill" at 800 James Avenue, Scranton, PA 18510, and of "The Apartments at 317 Linden" at 317 Linden St., Scranton, PA 18503, provided Defendants are involved in the actual rental of units at such location(s).

7. Defendants shall adopt and implement the Nondiscrimination Policy set forth in Exhibit A regarding the rental of covered dwelling units that shall be applied

equally to all applicants, actual and prospective, regardless of their familial status (having children under 18).

8. Within 30 days of the entry of this Consent Order, Defendants shall notify the public of its Nondiscrimination Policy by:

- a. Prominently posting at all of Defendants' rental offices that Defendants may currently or subsequently use for the rental of dwellings, a fair housing sign no smaller than ten inches by fourteen inches that clearly indicates that all apartments are available for rent on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.
- b. Prominently posting an easily readable "For Rent," "Apartment(s) for Rent," "Apartment(s) Available," or "Vacancy" sign or notice at every apartment building where at least one dwelling unit is vacant. The sign or notice shall include the slogan "Equal Housing Opportunity" and/or the fair housing logo. Such slogan and logo shall be prominently displayed and easily readable.
- c. Including the words "Equal Housing Opportunity" and/or the fair housing logo in all rental advertising conducted by Defendants, their agents or employees, in newspapers, flyers, handouts, telephone

directories and other written materials; on radio, television, the Internet or other media broadcasts; and on all billboards, signs, pamphlets, brochures and other promotional literature, provided that this requirement does not compel Defendants to advertise in any of these media, but does require compliance with this provision whenever Defendants so advertise. The words and/or logo shall be prominently placed and easily readable.

- d. Including the following phrase in the standard rental application and the standard rental agreement used for covered dwelling units, using letters of equal or greater size to those of the text in the body of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability or familial status (having children under age 18).

#### **IV. Mandatory Training**

9. Within 30 days of the entry of this Consent Order, Defendants shall provide a copy of this Order and the Nondiscrimination Policies and Procedures to all agents and employees of the Defendants involved in showing, renting, or managing any and all covered dwelling units and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order and the Nondiscrimination Policies and Procedures, has had the opportunity to have questions

answered about the Order and Nondiscrimination Policies and Procedures, and agrees to abide by the relevant provisions of the Order and said policies and procedures. This statement shall be in the form set forth in Exhibit B.

10. During the term of this Order, within five days after each new agent or employee of the Defendants becomes involved in showing, renting, or managing any covered dwelling units, Defendants shall provide a copy of this Order and the Nondiscrimination Policies and Procedures to all such new agents or employees and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order, had the opportunity to have questions about the Order answered, and that he or she has also received and read the Nondiscrimination Policies Procedures, and agrees to abide by them and the relevant provisions of the Order. This statement shall be in the form set forth in Exhibit B.

11. Within 180 days from the date of entry of this Order, Gerard Joyce and Daniel Joyce, and all agents and employees of Defendants involved in showing, renting, or managing any covered dwelling units shall undergo in-person training on the Fair Housing Act, with specific emphasis on discrimination on the basis of familial status. The training shall be conducted by an independent, qualified third party, approved in advance by the United States, and any expenses associated with this training shall be borne by Defendants. Defendants shall obtain from the trainer certifications of

attendance, executed by each individual who received the training, confirming their attendance, in a form acceptable to the United States. This confirmation shall include the name of the course, the date the course was taken, and the length of the course and/or time within which the course was completed.

## **V. Processing Rental Applications, Record Keeping, and Compliance Testing**

### **12. Processing Rental Applications**

Within 90 days from the date of entry of this Order, Defendants shall develop and implement, with respect to all covered dwelling units, objective, uniform, non-discriminatory standards and procedures for the processing of applications, the establishment and maintenance of an Availability List, the establishment and maintenance of a Waiting List, and a procedure for notifying people who are on the Waiting List about an available unit, and deciding in a non-discriminatory manner which applicants shall be permitted to rent available dwellings. Such standards and procedures shall be submitted to the United States for approval in advance of their implementation and shall be consistent with the provisions of this Section. The standards and procedures shall be posted and prominently displayed in covered dwelling units' rental office(s) and in any office where there is rental activity and/or personal contact with applicants, and a copy of these standards and procedures shall be made available upon request to any applicant for the rental of a dwelling. For the

duration of this Order, these rental standards and procedures may be modified only if written notice is given to counsel for the United States 30 days before modifications are to take effect.

13. Record Keeping

With respect to the rental of covered dwelling units, within 30 days from the date of this Order, Defendants shall ensure that each of the following are maintained and updated as new information becomes available:

- a. *Availability List*: Defendants shall maintain an up to date Availability List that includes the address and apartment number of each unit known to be available or reasonably expected to be available for rental within 30 days; monthly rent for each such unit; and the first date it would be available for rental or occupancy by a new tenant. Upon request, Defendants and their agents/employees shall share any and all information on the Availability List with each person who visits or calls the rental office to inquire about rental dwellings;
- b. *Guest Cards*: Provided that Defendants are involved in the rental of such units, Defendants shall request that all persons who visit or inquire about rental of any covered dwelling fill out a Guest Card providing the date of the visit, the visitor's name, address, daytime and evening telephone

numbers, the date by which they wish to move, and must include the following text: “Are any children under 18 expected to occupy the dwelling? Yes / No (please circle one).” Defendants shall note on the Guest Card the dwelling units the person was shown and whether the person was given an application. The bottom portion of the Guest Card shall contain the following disclaimer: “Information concerning familial status is requested to assist in complying with the federal Fair Housing Act and will be kept confidential. This information is not required in order to rent an apartment.”;

- c. *Waiting List:* Defendants shall maintain an up to date waiting list tracking all persons who have inquired by telephone, email, or in person about renting a dwelling from Defendants and have been informed that there are no vacancies or available apartments to rent. This Waiting List shall indicate the date of the visit or contact, the visitor’s or caller’s name, address, daytime and evening telephone numbers, the date on which the person wishes to move and any other relevant information (such as a preference regarding the number of bedrooms). With regard to those who inquire in-person, Defendants shall indicate, based on a good-faith observation, whether the individuals have any children. The

Defendants shall also note on the waiting list the date, time, and employee or other person who contacted any individual to inform him or her of any vacancies or available apartments, and the manner of each attempt to contact persons on the list;

- d. *Rental Application Log*: Defendants shall maintain an up to date Rental Application Log that sets forth the name of all rental applicants, the number of children under 18, if any, who would reside with the applicant, whether the application for tenancy was approved or rejected, the building and unit number occupied for all approved applicants, and a detailed explanation of the basis for each rejected application.

14. Compliance Testing

The United States may take steps to monitor Defendants' compliance with this Order including, but not limited to, conducting fair housing tests at any covered dwelling unit in which any Defendant, now or in the future, has a direct or indirect ownership, management, or financial interest, excluding financial interests that are wholly passive such as non-active investment in a limited partnership with real estate holdings or minority ownership in a REIT.

## VI. Reporting Requirements

15. Within 90 days of the date of entry of this Consent Order, every six months thereafter for the duration of this Order, and 60 days before the expiration of this Order, Defendants shall deliver to counsel for the United States<sup>2</sup> a report containing information about Defendants' compliance efforts during the preceding reporting period, including, but not limited to:

- a. Copies of all mandatory education acknowledgments signed by Defendants, their agents and employees, and all certifications of attendance of each participant in such educational program, pursuant to Section IV of this Order;
- b. Copies of all Availability Lists, Guest Cards and other information recorded by any means related to any inquiries regarding the availability of rental dwellings, including Rental Application Logs, and Waiting Lists maintained pursuant to Section V of this Order;

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<sup>2</sup> All documents or other communications required by this Consent Order to be sent to counsel for the United States shall be sent by commercial (non-USPS) express delivery service addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street N.W., Suite 7002, Washington, D.C. 20006, Attn: DJ 175-63-106, or as otherwise directed by the United States. Faxes shall be sent to (202) 514-1116.

- c. Copies of lists setting forth the occupancy of each covered dwelling unit by address  
and apartment number, including the name and familial status of each tenant in that dwelling unit during the reporting period; and
- d. Photographs of each office in which rental activity is conducted, showing the fair housing signs required by Section III of this Order;

16. During the period in which this Order is in effect, Defendants shall preserve all records that are the source of, contain, or relate to any of the information pertinent to the obligations under this Order, including all rental applications, leases, and rental roll ledgers, and occupancy lists for all covered dwelling units as well as records relating to the transfer of interest in dwelling units as set out in Section X below. Upon reasonable notice to counsel for Defendants, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times or, upon request by the United States, Defendants shall provide copies of such documents.

17. During the period in which this Order is in effect, Defendants shall notify counsel for the United States in writing within 20 days of receipt of any written or oral complaint against Defendants, or Defendants' agents or employees, regarding familial status discrimination in housing. If the complaint is written, Defendants

shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. Defendants shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States within 15 days of any resolution of such complaint.

### **VII. Compensation of Aggrieved Persons**

18. Within 90 days after entry of this Consent Order, the Defendants shall deliver to counsel for the United States, by overnight mail,<sup>3</sup> checks payable to Bryan Berkoski, in the sum of seven thousand, five hundred dollars (\$7,500), and to Victoria Angeli, in the sum of seven thousand, five hundred dollars (\$7,500), as aggrieved persons within the meaning of the Fair Housing Act, provided that the United States shall not deliver the Defendants' check to Mr. Berkoski before he has executed a written release (in the form of Exhibit C) of all claims, legal or equitable, that he might have against Defendants relating to claims asserted in this lawsuit, and the United States shall not deliver the Defendants' check to Ms. Angeli before she has executed a written release (in the form of Exhibit C) of all

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<sup>3</sup> The overnight mail enclosing the checks shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ 175-63-106, United States Department of Justice, 1800 G Street, NW, Washington, D.C. 20006.

claims, legal or equitable, that she might have against Defendants relating to claims asserted in this lawsuit.

### **VIII. Civil Penalty**

19. The Defendants shall pay a total of twenty thousand dollars (\$20,000) to the United States as a civil penalty, pursuant to 42 U.S.C. § 3614(d)(1)(c). Within 90 days after entry of this Order, Defendants shall deliver to counsel for the United States, by overnight mail, a cashier's check payable to the "United States' Treasury" in the amount of five thousand dollars (\$5,000). Within 180 days after the entry of this Consent Order, the Defendants shall deliver to counsel for the United States, by overnight mail, a second cashier's check payable to the "United States' Treasury" in the amount of fifteen thousand dollars (\$15,000).

### **IX. Acquisition of Dwelling Units**

20. If, at any time during the term of this Consent Order, any Defendant acquires a direct or indirect ownership, management, or other financial interest in any other dwelling unit that is rented, available for rental, or intended for rental, such unit shall become a "covered dwelling unit" subject to all relevant provisions of this Order, except where Defendants' financial interest in such units are wholly passive, such as through non-active investment in a limited partnership with real estate holdings or minority ownership in a REIT. Defendant shall notify counsel

for the United States within 30 days of acquiring such an interest. The notice shall include identification of the nature of Defendants' interest in the property; the address; the number of individual dwelling units; the number of bedrooms in each unit; the names of any existing tenants; and the number of children under 18 residing with each such tenant. Defendants shall also include in their notice to counsel for the United States a copy of the documents memorializing the transfer in interest and a copy of the lease for any existing tenant(s).

**X. Transfer of Interest in Covered Dwelling Units**

21. If at any time while this Order remains in effect, a Defendant decides to transfer the entirety of his, her or its direct or indirect ownership, management, or other financial interest, excluding financial interests that are wholly passive such as non-active investment in a limited partnership with real estate holdings or minority ownership in a REIT, in a covered dwelling unit to an unrelated party ("purchaser" or "transferee") in an arms-length transaction,<sup>4</sup> the transferring Defendant shall take the following steps:

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<sup>4</sup> For purposes of this Consent Order, "arms-length transaction" is defined as a transaction such as a contract or agreement that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding that contract.

- a. At least 20 days prior to completion of the sale or transfer, provide to each prospective purchaser or other transferee a copy of this Order;
- b. At least 20 days prior to completion of the sale or transfer, provide to the United States, by facsimile and first-class mail, written notice of its intent to sell or otherwise transfer Defendant's interest in the dwelling unit(s);
- c. Within 30 days following completion of the sale or other transfer, the transferring Defendant shall provide to the United States by first-class mail a copy of the documents memorializing the transfer in interest of the dwelling unit(s);
- d. If the transferring Defendant complies with parts a, b, c, and d, above, and thereby transfers all of Defendant's ownership, management, or other financial interest in the dwelling unit(s) to the purchaser or other transferee, such Defendant will thereafter be relieved of his, her or its obligations under Sections II - VI and XI - XII of this Order, but only with respect to the dwelling units in which all interest was so transferred. Defendant shall otherwise remain liable for compliance with all sections of the Order and with respect to all other covered dwelling units.

22. If the proposed transfer of interest is not an arms-length transaction, the transferring Defendant must still comply with each requirement set out in the preceding subparagraph a, b, c, and d, above. In addition, the transferring Defendant shall remain jointly and severally liable, along with the purchaser or other transferee, for any violations of Sections II - VI and XI - XII of this Order with respect to the relevant dwelling unit(s) for the duration of the Order. In addition, the transferring Defendant shall otherwise remain liable for compliance with the Consent Order and with respect to all other covered dwelling units.

#### **XI. Scope and Duration of Consent Order**

23. The provisions of this Consent Order shall apply to all Defendants, their employees, agents, successors, and all persons acting in active concert or participation with them.

24. This Consent Order is effective immediately upon its entry by the Court and shall remain in effect for three years.

25. The Court shall retain jurisdiction for the duration of this Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice.

26. All parties shall be responsible for their own attorney's fees and court costs, except as provided for in Section XII below.

27. Nothing in this Consent Order shall preclude Defendants from seeking or petitioning for federal funding or financing related to the development or improvement of covered dwelling units.

**XII. Remedies for Non-Compliance, Time for Performance, and Modifications**

28. The United States may move the Court to extend the period in which this Order is in effect if Defendants materially violate one or more terms of the Order.

29. Any time limits for performance imposed by this Order may be extended by mutual written agreement of the parties.

30. The parties to this Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by any Defendant to perform in a timely manner any act required by this Order or otherwise to comply with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and attorney's fees which may have been occasioned by the Defendant's or Defendants' violation or failure to perform.

31. The parties agree that in the event that any Defendant engages in any future violation of the Fair Housing Act, such violation shall constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d).

**IT IS SO ORDERED:**

This 25<sup>th</sup> day of March 2010.

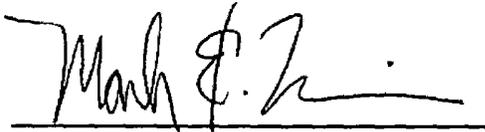
A handwritten signature in black ink, appearing to read "A. Richard Caputo", written over a horizontal line.

A. RICHARD CAPUTO  
United States District Judge

By their signatures below, the parties consent to the entry of this Consent Order.

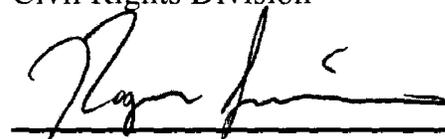
**For the United States:**

DENNIS C. PFANNENSCHMIDT  
United States Attorney



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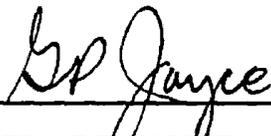


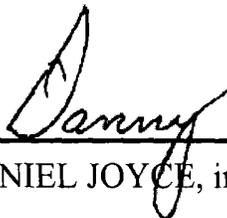
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Chief  
REBECCA B. BOND  
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**For Defendants Gerard Joyce, Katie Joyce, Daniel Joyce, Normandy Holdings, LLC, Lofts at the Mill, LP, and Lofts GP, LLC:**



KAROLINE MEHALCHICK, Esq.  
Oliver, Price & Rhodes  
P.O. Box 240  
Clarks Summit, PA 18411

  
GERARD JOYCE, individually

  
DANIEL JOYCE, individually

  
KATIE JOYCE, individually

**EXHIBIT A**

**Nondiscrimination Policy**

It is the policy of The Mill Apartments and of The Apartments at 317 Linden Street to comply with the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.*, by ensuring that apartments are available to all persons without regard to familial status (having children under age 18). This policy means that, among other things, The Mill Apartments and The Apartments at 317 Linden Street and all their agents or employees with the responsibility for renting or managing any dwelling units must not discriminate in any aspect of the rental of dwellings against qualified applicants or tenants because of familial status. Such agents and employees may not:

- a. Refuse to rent a dwelling, refuse to negotiate for the rental of a dwelling, or otherwise make unavailable or deny a dwelling to any person because of familial status;
- b. Discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status;
- c. Make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status; or
- d. Represent to any person because of familial status that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

e. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act.

Any agent or employee who fails to comply with this non-discrimination policy will be subject to appropriate disciplinary action, which may include termination. Any action taken by an agent or employee that results in the unequal service, treatment or behavior to tenants on the basis of familial status may constitute a violation of state and federal fair housing laws.

**EXHIBIT B**

**Employee/Agent Acknowledgment of Receiving and Reviewing  
Order and Nondiscrimination Policies and Procedures**

I have received a copy of the Consent Order entered in *United States v. Gerard Joyce, et al.*, Civil Action No. 3:08-CV-01189 (M.D. Pa.). I have also received a copy of my employer's Nondiscrimination Policies and Procedures. The Consent Order and the Nondiscrimination Policies and Procedures were explained to me by my employer, and all questions concerning these documents were answered. I have read and understood the Consent Order and the Nondiscrimination Policies and Procedures.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
EMPLOYEE/AGENT NAME (PRINT)

\_\_\_\_\_  
EMPLOYEE/AGENT SIGNATURE

**EXHIBIT C**

**Release**

In consideration for the parties' agreement to the terms of the Consent Order entered in United States v. Gerard Joyce, et al., Civil Action No. 3:08-CV-01189 (M.D. Pa.), and Defendants' payment to me of \$7,500, pursuant to the Consent Order, I hereby release and forever discharge all claims related to the facts at issue in the litigation referenced above, or in any way related to that litigation, and any other claims arising from the housing discrimination alleged in that litigation up to and including the date of execution of this release, that I may have against any of the Defendants, all related entities, parents, predecessors, subsidiaries and affiliates, and all of their past and present directors, officers, agents, managers, supervisors, shareholders and employees and their heirs, executors, administrators, successors or assigns.

I acknowledge and understand that, by signing this Release and accepting this payment, I am waiving any right to pursue my own legal action based on the discrimination alleged by the United States in this case.

I also acknowledge that I have been informed that I may review the terms of this Release with an attorney of my choosing, and to the extent that I have not obtained legal advice, I voluntarily and knowingly waive my right to do so.

I waive any claims I may have against the United States, the Department of Justice or its employees, arising out of this action.

This General Release constitutes the entire agreement between Defendants and me, without exception or exclusion.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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[Print Name]

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[Signature]