

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

MEMPHIS CENTER FOR )  
INDEPENDENT LIVING, )  
 )  
Plaintiff, and )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Plaintiff-Intervenor, )  
v. )  
 )  
MAKOWSKY CONSTRUCTION COMPANY, )  
INC., ARCHEON, INC., REAVES SWEENEY )  
MARCOM, INC., W. H. PORTER & CO., INC., )  
PENN INVESTORS, INC., JAN REALTY, INC., )  
BELZ/SOUTH BLUFFS, INC., MRB-WINDYKE, L.P., )  
MRB-STONEBRIDGE, L.P., and )  
MAKOWSKY RINGEL GREENBERG, LLC, )  
 )  
Defendants. )  
\_\_\_\_\_ )

No.: 01-2069 D/Pha

**CONSENT ORDER AS TO PLAINTIFFS MEMPHIS CENTER FOR INDEPENDENT LIVING and UNITED STATES OF AMERICA and DEFENDANTS MAKOWSKY CONSTRUCTION COMPANY, INC., ARCHEON, INC., REAVES SWEENEY MARCOM, INC., W. H. PORTER & CO., INC., PENN INVESTORS, INC., JAN REALTY, INC., BELZ/SOUTH BLUFFS, INC., MRB-WINDYKE, L.P., MRB-STONEBRIDGE, L.P., and MAKOWSKY RINGEL GREENBERG, LLC.**

**I. INTRODUCTION**

**A. Background**

1. Plaintiffs Memphis Center for Independent Living (“MCIL”) and the United States of America and Defendants Makowsky Construction Company, Inc., Archeon, Inc., Reaves Sweeney Marcom, Inc., W.H. Porter & Co. Inc., Penn Investors, Inc., JAN Realty, Inc., Belz/South Bluffs, Inc., MRB-Windyke, L.P., MRB-Stonebridge, L.P., and Makowsky Ringel

Greenberg, LLC. (hereinafter collectively, with the exception of Makowsky Ringel Greenberg, LLC, referred to as the “Defendants”) agree to the terms of this Consent Order resolving that portion of the Complaint, as amended, filed by MCIL and the Complaint-In-Intervention , as amended, of the United States against these same defendants (sometimes styled *MCIL and United States v. Makowsky Construction Co., Inc. et al.*).<sup>1</sup>

2. This action is brought by the United States and MCIL to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (“the Fair Housing Act”), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619, and Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.* (the “ADA”). Specifically, the Complaint in *MCIL and United States v. Makowsky Construction Co., Inc., et al.* alleges that the Defendants discriminated against persons with disabilities by failing to design and construct covered multifamily dwellings at Champion Hills at Windyke (“Windyke”), which is located at 3788 Links Drive South, Memphis, Tennessee 38125, Champion Hills at Stonebridge (“Stonebridge”), which is located at 2918 Champions Drive, Arlington, Tennessee 38002, and Eton Square Apartments (“Eton”), which is located at 3315 Ridgeway Road, Memphis, Tennessee in accordance with the features of accessible and adaptable design and construction required by subsection 804(f)(3)(C) of the Fair Housing Act (“the Act”), 42 U.S.C. §3604(f)(3)(C), and the Americans with Disabilities Act, 42 U.S.C. §12183(a)(1). The Plaintiffs and Defendants agree that the complexes are subject to the accessible design and construction requirements of 42 U.S.C. §3604(f)(3)(C) and to 42 U.S.C. §12183(a)(1).

---

<sup>1</sup> This Consent Order does not resolve claims brought by MCIL and the United States against Defendants Richard and Milton Grant Company, J. Richard Grant, Milton Grant, John R. Gillentine, Henry Hart, Henry Hart Engineering, P.C., and Parker, Estes & Associates, Inc.

3. The defendants have answered the complaint in this action denying any and all alleged violations of either the Fair Housing Act, 42 U.S.C. §3601 *et seq.* of the Americans With Disabilities Act, 42 U.S.C. §1218 *et seq.*

**B. Defendants**

4. Defendant Makowsky Construction Co., Inc. of 1010 June Road, Suite 101, Memphis, Tennessee 38119 is the general contractor for Windyke, Stonebridge and Eton.

5. Defendant Archeon, Inc. of 3071 Directors Row, Memphis, Tennessee 38131 is the architectural firm for Windyke, Stonebridge and Eton.

6. Defendant the Reaves Firm (formerly Reaves Sweeney Marcom, Inc.) of 5118 Park Avenue, Suite 400, Memphis, Tennessee, 38117 is the civil engineering firm for Windyke, and Stonebridge.

7. Defendant W. H. Porter & Co., Inc. of 4821 American Way, Memphis, Tennessee is the civil engineering firm for Eton.

8. Defendant MRB-Windyke, LP of 1010 June Road, Suite 201, Memphis, Tennessee 38119 has been the owner of Windyke since its construction; and Defendant MRB-Stonebridge, LP of 1010 June Road, Suite 201, Memphis, Tennessee 38119 has been the owner of Stonebridge since its construction. Eton Square, LP has been the owner of Eton Square since its construction.

9. Defendant JAN Realty, Inc. of 1010 June Road, Suite 201, Memphis, Tennessee 38119 and Defendant Belz/South Bluffs, Inc. of 100 Peabody Place, Suite 1300, Memphis, Tennessee 38103 are the general partners in both MRB-Windyke, LP and MRB-Stonebridge, LP.

10. Windyke and Stonebridge were developed through a joint venture entered into by Makowsky & Ringel, Inc. and Belz Enterprises. Makowsky and Ringel, Inc. was also a

developer of Eton Square. Subsequent to the development of the subject properties, Makowsky & Ringel, Inc. merged into Defendant Penn Investors, Inc. of 1010 June Road, Suite 101, Memphis, Tennessee 38119 who is the successor in interest to Makowsky & Ringel, Inc. and is responsible for its debts, liabilities and duties.

11. Defendant Makowsky Ringel Greenberg, LLC of 1010 June Road, Suite 101, Memphis, Tennessee 38119 is engaged in the business of apartment management and is responsible for the management and rental of dwellings at the subject properties. Makowsky Ringel Greenberg, LLC is a necessary party to this Consent Order in whose absence complete relief can not be afforded to the Plaintiffs.

### **C. Relevant Requirements of the Fair Housing Act**

12. The Fair Housing Act provides that, for non-elevator residential buildings with four or more dwelling units, all ground-floor units that were designed and constructed for first occupancy after March 13, 1991, are “covered multifamily dwellings” and must include certain basic features of accessible and adaptable design to make such units accessible to or adaptable for use by a person who has or who develops a disability. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B).

13. The accessible and adaptable design provisions of the Fair Housing Act require that for covered multifamily dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with a disability using wheelchairs; and (iii) all premises within such dwellings contain the following features of adaptive design: (I) an accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats, and other environmental

controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C). These features are referred to herein as the "Accessible Design Requirements."

#### **D. Relevant Requirements of the ADA**

14. The Americans with Disabilities Act of 1990 ("ADA"), and the "Standards of Accessible Design," 28 C.F.R. pt. 36, app. A, that have been issued by the U.S. Department of Justice to implement the design and construction requirements of Title III of the ADA, also require that all "public accommodations" designed and constructed for first occupancy after January 26, 1993, and the goods, services, facilities, privileges, advantages, or accommodations of those public accommodations, be readily accessible to and usable by persons with disabilities in accordance with certain accessibility standards promulgated under that Act. 42 U.S.C. § 12183(a)(1); 42 U.S.C. § 12182(a). A rental office for an apartment complex is a "public accommodation" under the ADA. 42 U.S.C. § 12181(7)(E). The rental offices at the Windyke and Stonebridge complexes were designed and constructed for first occupancy after January 26, 1993, and therefore the rental offices and the facilities and privileges provided at those offices such as public parking are required to be designed and constructed in accordance with the standards promulgated under the ADA.

#### **E. Properties Surveyed by the United States**

15. Windyke is comprised of fifteen (15) multi-story, non-elevator apartment buildings each having four or more apartment dwellings, which were designed and constructed for first occupancy after March 13, 1991. There are 120 ground floor dwellings at Windyke that are "covered multifamily dwellings" within the meaning of 42 U.S.C. §3604(f)(7)(B). The

apartments and the common areas of Windyke, including the clubhouse, are subject to the requirements of 42 U.S.C. §3604(f)(3)(C); and the clubhouse rental offices of Windyke are public accommodations within the meaning of Section 301(7)(E) of the Americans with Disabilities Act, 42 U.S.C. §12181(7)(E).

16. Stonebridge has twenty-two (22) multi-story, non-elevator apartment buildings each having four or more apartment dwellings, which were designed and constructed for first occupancy after March 13, 1991. There are 176 ground floor dwellings at Stonebridge that are “covered multifamily dwellings.” The apartments and the common areas of Stonebridge, including the clubhouse, are subject to the requirements of 42 U.S.C. §3604(f)(3)(C); and the clubhouse rental offices of Stonebridge are public accommodations within the meaning of Section 301(7)(E) of the Americans with Disabilities Act, 42 U.S.C. §12181(7)(E).

17. Eton has thirteen (13) multi-story, non-elevator apartment buildings each having four or more apartment dwellings, which were designed and constructed for first occupancy after March 13, 1991. There are 104 ground floor dwellings at Eton that are “covered multifamily dwellings.” The apartments and the common areas of Eton, including the clubhouse, are subject to the requirements of 42 U.S.C. §3604(f)(3)(C); and the clubhouse rental offices of Eton are public accommodations within the meaning of Section 301(7)(E) of the Americans with Disabilities Act, 42 U.S.C. §12181(7)(E).

18. The United States has inspected Windyke, Stonebridge and Eton and has specifically identified failures to meet the Accessible Design Requirements and Standards of Accessible Design at this complex. The investigation showed, in part, that at these properties there are routes from the parking area to numerous building entrances with abrupt level changes in excess of 1/4 inch (such as steps and barrier curbs), running slopes greater than 8.33% and cross slopes

greater than 2%. Many curb ramps on these routes have running slopes in excess of 8.33%, widths less than 36" and lack detectable warning textures. There are buildings without accessible resident or visitor parking on an accessible route to the building entrance. The door hardware on entrances to ground floor units are round knobs which require a tight grasping and twisting of the wrist to operate. The head height on routes is reduced to less than 80" by the unprotected undersides of stairs and protruding wall mounted porch lights in each building entrance area. Public and common use areas such as the central tenant refuse facility lack accessible features for persons who use wheelchairs such as a passenger loading zones with an access aisle and an accessible route without excessive slopes and steps. Doors to some bathrooms, bedrooms and walk-in-closets of apartments are not sufficiently wide for passage by a person using a wheelchair or other mobility aid. Passageways into some bathrooms utility rooms and pantries do not provide the requisite 36" clearance for a person using a wheelchair. The thresholds at patio doors are not beveled at the interior to allow for the passage of a person in a wheelchair. Thermostat controls are mounted above the maximum reach of a wheelchair user and wall mounted electrical outlets are below the side reach of a person in a wheelchair.

19. Defendants have agreed to make modifications to Windyke, Stonebridge and Eton pursuant to the Fair Housing Act and the ADA, as set forth herein. Further, at all other covered multifamily dwellings designed and/or built by the Defendants (other than Defendant Makowsky Ringel Greenberg, LLC), for first occupancy after March 13, 1991 and in which a Defendant has an ownership interest at the time of the entry of this Consent Order, Defendants agree to take the additional steps which are also set forth herein.

## **F. Consent of the Parties to Entry of this Order**

20. The Parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§1331 and 1345, and 42 U.S.C. §§3614(a) and 12188(b)(1)(B). The Parties further agree that the controversy should be resolved without further proceedings and without a trial.

21. The Defendants deny that they have violated the law, and this Consent Order does not constitute any admission of liability on the part of any of the Defendants.

22. As indicated by the signatures appearing below, the Parties agree to entry of this Consent Order.

**It is hereby ADJUDGED, ORDERED and DECREED that:**

## **II. GENERAL INJUNCTION**

23. Defendants, and each of their officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them are enjoined from discriminating on the basis of disability, as prohibited by the Fair Housing Act, 42 U.S.C. §3604(f)(1)-(3), and the Americans with Disabilities Act, 42 U.S.C. §§12182(a) and 12183(a)(1).

## **III. MODIFICATION OF WINDYKE, STONEBRIDGE AND ETON**

24. Plaintiffs, as set forth herein and in their Complaints allege that the Windyke, Stonebridge and Eton complexes do not meet the accessibility and adaptability standards of the Fair Housing Act; the Fair Housing Accessibility Guidelines, Design Guidelines for Accessible/Adaptable Dwelling, 56 Fed. Reg. 9472 (1991) (“Guidelines”); the ADA; and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (“ADA Standards” or “ADAAG”). To address this, Defendants Penn Investors, Inc., JAN Realty, Inc., Belz/South Bluffs, Inc., MRB-Windyke, LP and MRB-Stonebridge, LP (hereinafter the “Owner



Defendants”) acting on their own behalf and on behalf of the other Defendants agree to complete the actions described in this section and Appendices A through F and other actions described in this Order.<sup>2</sup>

25. Accessible Building Entrances on Accessible Routes and Accessible and Usable Public and Common Use Areas: The Owner Defendants shall commence and finish the modifications to the building entrances, accessible routes and the public and common use areas of Windyke, Stonebridge and Eton that are set forth in Appendices A, C and E as soon as reasonably possible after entry of the Consent Order but not more than eighteen months from the end of the month in which this Consent Order is entered. The Owner Defendants shall pay all expenses associated with the modifications and shall attempt, in good faith, to minimize any inconvenience to the residents of the apartments.

26. Interior of Ground Floor Dwellings: The Owner Defendants shall commence and finish the modifications to the interior of the ground floor dwellings at Windyke, Stonebridge and Eton that are set forth in Appendices B, D and F. For each unit for which the tenant does not request an immediate retrofit as provided in paragraph 27, the modification shall be performed in accord with the following:

- a. The Owner Defendants shall commence and finish the modifications in these appendices where specified “done as turned” no later than the first time the unit becomes vacant following entry of this Consent Order and before the unit is re-

---

<sup>2</sup> HUD regulations provide that “[a] public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is accessible.” See 24 C.F.R. 100.201 (2002). HUD interprets “comparable standard” to mean a “standard that affords [persons with disabilities] access essentially equivalent to or greater than that required by ANSI A117.1.” See 54 Fed. Reg. 3243 (Jan 23, 1989).

occupied by a new tenant. Regardless of whether or not a vacancy arises for such modification, however, the Owner Defendants shall perform such modifications within one year of the entry of this Order. These deadlines are subject to the provisions of Paragraph 33 regarding the sale or transfer of an ownership interest.

- b. The Owner Defendants shall commence and finish the modifications in these appendices where specified “done on request” within 21 days from the date on which the retrofit is requested in writing by a tenant or prospective tenant of a ground floor dwelling entitled to the modification specified in these appendices. Future prospective tenants of the affected units will be informed of the availability of the modifications “done on request” in the same manner as the accessible enhancements specified in Paragraph 35. The availability of modifications to be “done on request” are not limited by the term of the Consent Order.

The Owner Defendants shall pay all expenses associated with these modifications and shall attempt, in good faith, to minimize any inconvenience to the residents of the apartments.

27. Within 30 days from the date of the entry of this Consent Order, Defendant Makowsky Ringel and Greenberg LLC shall provide each and every tenant who resides in a ground floor dwelling of the subject properties with the notice, informing the tenant that: (a) the United States has filed a lawsuit alleging that unit does not meet the accessible and adaptive design requirements of the Act, which the defendants have denied; (b) that accessibility modifications can be installed in the unit upon request for use by a person with a disability; (c) the accessibility modifications offered will be at no cost to the tenant; (d) the scheduling of the modifications will take into account the preferences and convenience of the tenant; and (e) if requested and there is a need for increased accessibility, a resident at the time of the entry of the

Consent Order of Stonebridge ground floor units at 9251 Three Iron Drive , 9239 Three Iron Drive, 9236 Three Iron Drive, 2989 Champions Drive or 9226 Three Iron Drive, will be moved, at Defendants' expense, to another ground floor unit at Stonebridge. This notice shall be substantially equivalent to the form of Appendix G . If Defendant Makowsky Ringel Greenberg LLC receives a request from a tenant of a ground floor dwelling to perform the modifications, the Owner Defendants shall complete the modifications within 21 days from the date on which the modifications were requested, with the exception of those accessibility enhancements described below in Paragraphs 34(a), (b) and (c), which shall be installed in within 30 days of the written request.

28. Inspections: The Owner Defendants shall enter into a contract with a neutral inspector approved by the United States (hereinafter "Inspector") to conduct on-site inspections of the modifications that have been performed under this Order to determine if they have been completed in accord with the specifications for that apartment complex set out in Appendices A through F. As a part of that contract, the neutral inspector will take digital photographs of the measurements that he/she has taken to determine compliance with this Order and will make those photos available as part of his/her report.

29. After completion of the modifications described in Paragraph 26 a. but not more than thirteen months after the entry of this Consent Order, the first inspection shall take place of the modifications to the interiors of ground floor dwellings described in the Appendices B, D and F. After completion of the modifications described in Paragraph 25 but not more than nineteen months after entry of the Consent Order, the second inspection shall take place of the modifications to the public and common use areas described in the Appendices A, C and E. Subsequent inspections will occur if required by Paragraph 30. Owner Defendants shall give the

United States at least three weeks notice of the inspection and shall give the United States an opportunity to have its representative present for the inspection.

30. The Inspector shall set out the results of each inspection, including deficits if any, in writing and shall send that report to Counsel for the United States<sup>3</sup> and the Owner Defendants. If the inspection indicates that not all of the required modifications have been made as specified in Appendices A through F, the Owner Defendants shall correct any deficiencies within a reasonable period of time as determined by the Inspector, and shall pay for another inspection by the same Inspector to certify the deficiencies have been corrected. This process shall continue until the Inspector certifies that all of the necessary modifications have been made. The Owner Defendants shall pay all of the Inspector's costs associated with these inspections, and such payments shall be made without regard to the Inspector's findings. Upon reasonable notice to the Owner Defendants, representatives of the United States shall be permitted to inspect the modifications made by the Owner Defendants in accordance with this Consent Order or the third-party inspection reports provided for in this Order, to ensure compliance; provided, however, that the United States shall endeavor to minimize any inconvenience caused by such inspections. Any disputes between the parties as to the Inspector's findings shall be subject to the Court's continuing jurisdiction as set forth in Paragraph 65 below.

31. In the event a resident of a unit scheduled to undergo a modification incurs undue inconvenience or hardship (defined as a required dislocation from the unit for more than 24

---

<sup>3</sup> For purposes of this Order, counsel for the United States is Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, NW Building – G St., Washington, D.C. 20530, Attn: DJ# 175-72-122, or as otherwise directed by the United States.

hours consecutively), the Owner Defendants will pay such resident the applicable government per diem rate for food and lodging for the local area for each day of undue inconvenience or hardship. Such payment shall be made prior to the commencement of any modification work on the resident's unit, so that the resident can use the money to obtain alternative living accommodations while dislocated.

32. Owner Defendants may not charge any additional rent, deposit or other fee for the units solely because the modifications in Appendices A-F or the accessibility enhancements specified in Paragraph 34 are contemplated or completed.

33. Sale or Transfer of an Ownership Interest in Windyke, Stonebridge or Eton: The sale or transfer of ownership, in whole or in part, of these properties shall not affect Defendants' continuing obligations to modify the properties as specified in Paragraphs 24-32 and to provide accessibility enhancements as specified in Paragraph 34 of this Consent Order. Should the Owner Defendants decide to sell or transfer any ownership of Windyke, Stonebridge or Eton, (a) if prior to the completion of the retrofits specified in Appendices A-F, Owner Defendants agree, at least thirty (30) days prior to completion of the sale or transfer, to provide to each prospective buyer written notice that the Windyke, Stonebridge and/or Eton are subject to this Consent Order, including specifically the Owner Defendants' obligations to complete required retrofit work and to allow inspections, along with a copy of this Consent Order; and (b) at least thirty (30) days prior to completion of the sale or transfer, regardless of whether that sale or transfer occurs during or after the term of this Consent Order, to provide to each prospective buyer written notice of Defendants' obligations to install accessibility enhancements as provided in Paragraphs 34 and 37 along with a copy of this Consent Order. If the sale or transfer occurs during the term of this Consent Order, no later than one week after such sale or transfer, such

Owner Defendants will notify the United States in writing, by facsimile and first class mail, of its action, along with a copy of the notice sent to each buyer, and each buyer's name, address and telephone number.

#### **IV. ACCESSIBILITY ENHANCEMENTS AT WINDYKE, STONEBRIDGE, AND ETON**

34. Accessibility Enhancements: The Owner Defendants shall make the following accessibility enhancements available to all current and prospective tenants with disabilities at Windyke, Stonebridge and Eton:

- a. the removal of cabinetry under the kitchen sink and/or bathroom lavatory such that a person using a wheelchair can make a full forward approach to the sink in accordance with ANSI 4.32.5.5 and, where bathroom cabinetry is removed, install wall mounted cabinets to make up for loss of storage under the lavatory;
- b. either the removal of the oven unit such that a person using a wheelchair can make a full forward approach to the cook top in accordance with ANSI 4.32.5.6 plus the provision of a separate oven appliance (*i.e.* convection oven) or the alternative removal of the necessary cabinetry to allow a full parallel approach to the oven in accordance with ANSI 4.32.5.7;
- c. accessible bathrooms with roll-in showers in accordance with ANSI 4.21;
- d. taller accessible toilets through the provision of toilet seat extenders;
- e. the installation of grab bars surrounding the bathing and toilet areas in accordance with ANSI 4.21.4;
- f. lever door hardware throughout the unit;
- g. a security system with panic button(s) options at the control pad;

- h. lever controls on faucets, tubs, kitchens, baths, and all other fixtures;
- i. wand shower head on flexible tube or shower head on height adjustable rod;
- j. U-shaped pulls near hinges on exterior of front door;
- k. Ramp over the level drop on the exterior side of the patio door;
- l. Install strobe light alarms for fire;
- m. Relocate hanging rods and shelves in the closet to be within ANSI reach ranges.

### 35. Information for Current and Prospective Tenants About Accessibility

Enhancements: Within 60 days after the entry of the Order, the Owner Defendants shall prepare and submit in draft for approval by the United States, a brochure containing descriptions and pictures of retrofits to be provided upon request set out in Paragraph 26 b. above and the accessibility enhancements set out in Paragraph 34 and 37. The brochure shall explain that current and prospective tenants with disabilities may elect to have any or all of these features installed in their units or provided at no cost to the current or prospective tenant. The brochure shall provide the applicable dimensions of each accessible feature and include floor plans and other illustrations showing how the accessibility enhancements will be incorporated into each unit type. A copy of the brochure shall be provided to each current and prospective tenant at Windyke, Stonebridge and Eton.

36. Installation of Accessibility Enhancements: Upon written request, any current or prospective tenant with disabilities will be entitled to have a ground floor apartment retrofitted to include any retrofit specified in Paragraph 26 b. above and the accessibility enhancements set out in Paragraph 34 above of his or her choice. If the request is for a roll-in shower, as specified in Paragraph 34 c above, the Owner Defendants shall have the option of offering a unit with the same number of bedrooms at the same property that has already been modified to include a roll-

in shower in lieu of an additional roll-in shower in another unit. Any accessibility enhancement shall be installed by Owner Defendants within 21 days of the written request, with the exception of enhancements described in 34(a), (b) and (c) above, which shall be installed within 30 days of the written request. The rent for these units shall be the same as for equivalent units that are not retrofitted to contain accessibility enhancements.

37. Accessibility Enhancements to Windyke, Stonebridge and Eton Common Areas: Owner Defendants shall provide the following features and services at Windyke, Stonebridge and Eton to enhance accessibility:

- a. mail pick-up and delivery for tenants with disabilities upon request.
- b. trash pick-up near the unit entrance for tenants with disabilities upon request

38. Waiver of Fair Housing Claims: For purposes of resolving this lawsuit, the United States accepts compliance with Section IV, paragraphs 34 through 37 of this Consent Order, as a substitute for retrofits to achieve substantial compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C) of the Act. The United States waives any claims it may have to pursue relief against Defendants for the failure to design and construct Windyke, Stonebridge and Eton in compliance with the requirements of 42 U.S.C. 3604(f)(3)(C), except for claims pursuant to 42 U.S.C. § 3612(o), so long as the enhancements listed in Section IV, paragraphs 34 through 37 of this Consent Order, which are not limited by the term of the Consent Order, are provided as requested at Windyke, Stonebridge and Eton.

## **V. SURVEYING OF COMPLEXES NOT INSPECTED BY THE UNITED STATES**

39. Each Owner Defendant agrees to take the following actions with regard to any other covered multifamily dwellings (other than Windyke, Stonebridge and Eton) which that Owner



Defendant has designed and/or constructed for first occupancy after March 13, 1991 and in which that Owner Defendant has an ownership interest at the time of the entry of this Consent Order ("other covered multifamily dwellings"):

- a. Such Defendant shall contract with one or more qualified architectural firms (hereinafter the "Surveyor(s)"), approved by the United States prior to such contract, to conduct on-site surveys at each of the other covered multifamily dwellings to determine those properties' compliance with the Fair Housing Act and the Americans with Disabilities Act. As a part of that contract, the Surveyor will take digital photographs of the measurement that he/she has taken to determine compliance with the Fair Housing Act and the Americans with Disabilities Act and will make those photos available as part of his/her report.
- b. The Surveyor(s) shall prepare a report specifying the scope, methodology and results of the surveys, as well as recommended modifications deemed necessary by the Surveyor for compliance with the accessibility provisions of the Fair Housing Act and the Americans with Disabilities Act (hereinafter the "Report(s)").
- c. The Report(s) shall be furnished to the United States by such Defendant within ninety (90) days of the entry of this Consent Order.
- d. The United States and such Owner Defendants shall have 90 days following receipt of a Surveyor's Report to reach agreement on the modifications to be performed at each surveyed property, if any, the time periods for the performance of such modifications, if any, a procedure for inspection and certification of the modifications performed, if any, a procedure for notifying tenants of the option of

having the agreed upon modifications performed on their units and a procedure for compensating residents dislocated by such modifications to their units. If they cannot reach agreement on the retrofits to be performed and or these terms, the matter shall be determined by the Court, without prejudice to the Owner Defendants right to seek contribution from other sources.

- e. For those other covered multifamily dwellings in which Defendants have any ownership or management interest at the time any agreed upon modifications are made, they may not charge any additional rent, deposit or other fee for the units in which modifications are implemented solely because of the contemplated or completed modifications.
- f. The sale or transfer of ownership, in whole or in part, of any of the other covered multifamily dwellings complexes shall not affect Defendants' continuing obligations as specified in this Section of this Consent Order. Should any Defendant decide to sell or transfer ownership, in whole or in part, of any of the other covered multifamily dwellings complexes or any portion thereof prior to the completion of the violations specified in the Surveyors' Report and retrofits agreed upon by the parties, it will, at least thirty (30) days prior to completion of the sale or transfer, (a) provide to each prospective buyer written notice that the complexes are subject to this Consent Order, along with a copy of this Consent Order; and (b) provide to the United States, by facsimile and first class mail, written notice of its intent to sell or transfer ownership, along with a copy of the notice sent to each buyer, and each buyer's name, address and telephone number.

- g. The provisions of this part shall not apply to the property described in Part VI below (the Highlands).

## **VI. REVIEW AND COMMENT ON THE HIGHLANDS**

40. Defendant Belz/South Bluffs, Inc. is participating in the development of the Highlands or The Westbury (hereinafter the “Highlands”) and it has requested and the United States has provided by letters dated March 26, 2004, June 25, 2004 and September 15, 2004 technical assistance regarding compliance with the Fair Housing Act, as amended, and the Americans With Disabilities Act in the design of the Highlands. The technical assistance was provided based upon the plans and civil engineering and landscape drawings that were provided by Defendant and as specified in those letters from the United States. This Defendant has agreed to design and construct the Highlands in accord with the Fair Housing Act and the Americans with Disabilities Act. In complying with the design and construction requirements of the Fair Housing Act, this Defendant has agreed to follow and to instruct its architects, engineers and contractors to follow ICC/ANSI A117.1-1998, used in conjunction with the Fair Housing Act, HUD’s regulations and the Guidelines, or the *Code Requirements for Housing Accessibility 2000* (CRHA), approved and published by the International Code Council (ICC), October 2000.

## **VII. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION**

41. For the duration of this Consent Order, Defendants shall maintain, and provide to the United States, upon request, the following information and statements regarding any covered, multifamily dwellings intended to be purchased, developed, built, designed, and/or engineered in whole or in part, by any of them or by any entities in

which they have a position of control as an officer, director, member, or manager, or have a fifty-percent (50%) or larger ownership share:

- a. the name and address of the project and a description of the project and the individual units;
- b. the name, address, and telephone number of the civil engineer(s) and the architect(s) involved with the project;
- c. where the Defendant or an entity, as described above, has developed, built, designed, and/or engineered in whole or in part the covered property, a statement from the civil engineer(s) and a statement from the architect(s) involved with the project acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and the ADA and in the field of accessible site design and certifying that he/she has reviewed the design documents for the project and having made reasonable inquiry into all related facts and circumstances that to the best of his/her knowledge the design specifications therein comply with the requirements of the Fair Housing Act, the Guidelines, the ADA, and ADAAG,
- d. where the Defendant or an entity, as described above, intends to purchase covered property, a statement from the seller of that property or a statement from the architect(s) of that property that he/she has reviewed the design documents for the project and has made reasonable inquiry into all related facts and circumstances that to the best of his/her knowledge the design specifications therein comply or do not comply with the

requirements of the Fair Housing Act, the Guidelines, the ADA, and ADAAG.

42. If the engineering documents or architectural plans are revised, and the revisions could have any impact on the accessibility of the dwellings or complex, Defendants shall obtain and maintain, and provide to the United States upon request, a statement from the civil engineer(s) or architect(s), as applicable, that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the requirements of the Fair Housing Act, the Guidelines, the ADA, and ADAAG.

42 a. The provisions of Paragraphs 41 and 42 shall not apply to the Highlands.

#### **VIII. PAYMENTS TO THE MEMPHIS CENTER FOR INDEPENDENT LIVING**

43. Defendants shall pay the total sum of twenty thousand dollars (\$20,000.00) in monetary damages to Plaintiff Memphis Center for Independent Living ("MCIL") for its damages as a result of Defendants' failure to design and construct the covered apartments at issue in this case in compliance with the Fair Housing Act, the Guidelines, the ADA and ADAAG. Defendants shall pay said money within thirty (30) days of the date of entry of this Order, by sending a check payable in that amount to Memphis Center for Independent Living, 163 Angelus Street, Memphis Tennessee 38104, provided that no amount shall be paid pursuant to this paragraph before MCIL has executed a written release of all claims (Appendix H), legal or equitable, that it might have against Defendants relating to the claims asserted in this lawsuit, including claims for damages related to design or construction of covered housing identified in response to Part IV of

the Order.<sup>4</sup> In addition, if any of the payments required under this Consent Order are made after the prescribed time, for whatever reason other than MCIL's failure to timely provide the release, such payments shall include interest calculated by the formula set forth in 28 U.S.C. § 1961. Payment of such interest shall be in addition to any other remedies available to the United States for delays in payment.

#### **IX. PAYMENTS TO ADDITIONAL AGGRIEVED PERSONS**

44. Within thirty (30) days after the date of this Order, the Defendants shall deposit in an interest-bearing escrow account the total sum of two hundred sixty thousand dollars (\$260,000.00) for the purpose of compensating any aggrieved persons who may have suffered as a result of the Defendants' alleged discriminatory housing practices. This money shall be referred to as the "Settlement Fund," and, with any accrued interest, shall be available to the United States to compensate any alleged aggrieved person who may have claims regarding Windyke, Stonebridge, Eton and any covered dwelling identified by the Defendants in response to Part IV of the Order.

45. Any interest accruing to the settlement fund shall become a part of that fund and be utilized as set forth herein.

46. Within 30 days of the entry of this Order, Defendants shall send, by first-class mail, postage pre-paid, a copy of the Notice set forth in Appendix I to each present tenant and to each past tenant who have lived within the five years prior to the date of the entry of this Consent Order at Windyke, Stonebridge and Eton and at each property surveyed under the provisions of Paragraph 39 above. The mailing to former tenants shall be

---

4. Defendants shall fax photocopies of the transmittal letter and the check to counsel for the United States at 202-514-1116.

limited to those former tenants for whom the Defendants have a forwarding address (other than the address at the Owner Defendants' property). Within 45 days of entry of this Order, Defendants shall also provide to counsel for the United States proof that the Notice has been sent.

47. Nothing in this section shall preclude the United States from making its own efforts to locate and provide notice to potential aggrieved persons.

48. The United States shall investigate the claims of allegedly aggrieved persons and, within 180 days from the entry of this Order shall make a preliminary determination of which persons are aggrieved and an appropriate amount of damages that should be paid to the each such person. The United States will inform Defendants, in writing, of its preliminary determinations, together with a copy of a sworn declaration from each aggrieved person setting forth the factual basis of the claim. Defendant shall have fourteen (14) days to review the declaration and provide to the United States any documents or information that they believe may refute the claim.

49. After receiving Defendants' comments, the United States shall submit its final recommendations to the Court for approval, together with a copy of the declarations and any additional information submitted by Defendants. Defendants may make their own submission to the Court within ten (10) days of the United States filing under this paragraph. When the Court issues an order approving or changing the United States' proposed distribution of funds for aggrieved persons, Defendants shall, within ten (10) days of the Court's order, deliver to the United States checks payable to the aggrieved persons in the amounts approved by the Court. In no event shall the aggregate of all such checks exceed the sum of the Settlement Fund, including accrued interest. No aggrieved

person shall be paid until he/she has executed and delivered to counsel for the United States the release at Appendix H.

50. In the event that less than the total amount in settlement fund including accrued interest is distributed to aggrieved persons, the remainder shall be distributed to the Defendants to be used to provide accessibility enhancement features pursuant to Paragraph 34 for the term of the Consent Order. Following the expiration of the Consent Order, any remainder in that settlement fund shall revert back to the Defendants in compliance with their own agreement (which is not a part of this Consent Order) since the Defendants have a continuing obligation to provide accessibility enhancements that is not limited by the term of this Consent Order.

51. Defendants shall permit the United States, upon reasonable notice, to review any records that may facilitate its determinations regarding the claims of alleged aggrieved persons.

#### **X. CIVIL PENALTY**

52. Defendants shall pay the total sum of twenty thousand dollars (\$20,000.00) to the United States as a civil penalty pursuant to 42 U.S.C. §3614(d)(1)(C) and 42 U.S.C. §12188(b)(2)(C)(i). Said sum shall be paid within thirty (30) days of the date of entry of this Order by submitting a check made payable to the United States of America to counsel for the United States.

#### **XI. EDUCATIONAL PROGRAM**

53. Within thirty (30) days of the entry of this Order, Defendants shall provide a copy of this Order to all their agents and employees with supervisory responsibility for the design, construction, rental, or sale of covered multifamily dwellings and secure the



signed statement from each agent or employee acknowledging that he or she has received and read the Order, and has had an opportunity to have questions about the Order answered. This statement shall be substantially similar in the form of Appendix J.

54. During the term of this Order, within thirty (30) days after the date he or she commences an agency or employment relationship with Defendants, each new agent or employee with supervisory responsibility for the design, construction, rental, or sale of covered multifamily dwellings shall be given a copy of this Order and be required to sign the statement acknowledging that he or she has received and read the Order, and has had an opportunity to have questions about the Order answered. This statement shall be substantially similar to the form of Appendix J.

55. Defendants shall also ensure that they and any other employees and agents who have supervisory authority over the design and/or construction of covered multifamily dwellings have a copy of, are familiar with, and personally review, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, *Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act*, (August 1996, Rev. April 1998). Defendants and all employees and agents whose duties, in whole or in part include supervisory responsibility for the management, sale and/or rental of multifamily dwellings at issue in this case shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

56. Within ninety (90) days of the date of entry of this Consent Order, the individuals specified in Appendix L to this Consent Order shall undergo training on the

design and construction requirements of the Fair Housing Act and the ADA. The training shall be conducted by a qualified third-party, unconnected to Defendants or their employees, agents or counsel, and any expenses associated with this training shall be borne by Defendants. Defendants shall provide to the United States, within thirty (30) days after the training, the name(s), address(es) and telephone number(s) of the trainer(s); copies of the training outlines and any materials distributed by the trainers; and certifications executed by all Defendants and covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix K.

## **XII. NOTICE OF DEFENDANTS' NON-DISCRIMINATION POLICY**

57. Within 10 days of the date of entry of this Consent Order, the Defendants shall post and prominently display in the sales or rental offices of all covered multifamily dwellings owned or operated by them, including Windyke, Stonebridge and Eton a sign no smaller than 10 by 14 inches indicating that all dwellings are available for rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

58. For the duration of this Consent Order, in all future advertising in newspapers and on pamphlets, brochures and other promotional literature regarding any existing or any new covered multifamily dwellings that any Defendant may develop or construct, that Defendant shall place, in a conspicuous location, a statement that the dwelling units include features for persons with disabilities required by the federal Fair Housing Act or if appropriate to the size of the advertising the universal symbol of accessibility.

### **XIII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS**

59. One hundred (100) days after the date of entry of this Consent Order, Defendants shall submit to the United States an initial report regarding the signed statements of Defendants, employees and agents who have completed the training program specified in Section IX of this Consent Order. Thereafter, Defendants shall, on the first and second anniversary of the entry of this Order and 30 days prior to the third anniversary, submit to the United States a report containing the signed statements of new employees and agents that, in accordance with Section IX of this Consent Order, they have received and read the Order, and had an opportunity to have questions about the Order answered.

60. For the term of this Consent Order, Defendants shall advise the United States in writing within fifteen (15) days of receipt of any written administrative or legal fair housing complaint against any property owned, managed, or against any employees or agents of Defendants working at or for any such property, regarding discrimination on the basis of disability in housing. Upon reasonable notice, Defendants shall also provide the United States all information it may request concerning any such complaint. The Defendants shall also advise counsel for the United States, in writing, within fifteen (15) days of the resolution of any complaint.

61. For the term of this Consent Order, Defendants are required to preserve all records related to this Consent Order, for Windyke, Stonebridge, and Eton and all covered multifamily dwellings designed, constructed, owned, operated, or acquired by them. Upon reasonable notice to Defendants and their attorneys, representatives of the United States shall be permitted to inspect and copy any records of Defendants or inspect

any developments or residential units under Defendants' control bearing on compliance with this Consent Order at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to Defendants from such inspections.

#### **XIV. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION**

62. This Consent Order shall remain in effect for three (3) years after the date of its entry.

63. The Court shall retain jurisdiction, including for distribution of the settlement funds, for the duration of this Consent Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice. Plaintiffs may move the Court to extend the duration of the Order in the interests of justice.

64. The Defendants obligation to provide modifications to the interior of covered dwellings as set forth in Paragraphs 26(b) and 34-38, are not limited by the term of the consent order. They may contract with others to provide such modifications, but such contract will not relieve them of their responsibilities under this Consent Order.

65. Plaintiffs and Defendants 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 of a failure by Defendants to perform, in a timely manner, any act required by this Order or otherwise for Defendants to fail to act in conformance 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 reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

**XV. TIME FOR PERFORMANCE**

66. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and the relevant Defendants.

**XVI. COSTS OF LITIGATION**

67. Each party to this litigation will bear its own costs and attorney's fees.

associated with this litigation.

SO ORDERED this, \_\_\_\_ day of \_\_\_\_\_, 2004.

---

UNITED STATES DISTRICT COURT JUDGE

Agreed to by the Parties as indicated by the signatures appearing below:

*For United States of America*

Steven H. Rosenbaum  
Chief

Michael S. Maurer  
Deputy Chief

---

Thomas J. Keary  
Kevin Kijewski  
Susan Buckingham Reilly  
Trial Attorneys  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Ave., N.W.-NWB  
Washington, D.C. 20530

Gary A. Vanasek  
Harriet Miller Halmon  
Assistant United States Attorneys  
Office of the United States Attorney for  
Western District of Tennessee  
800 Federal Building  
167 North Main Street  
Memphis, Tennessee 38103

*For Memphis Center for Independent Living:*

---

Webb Brewer  
Margaret Barr-Myers  
Memphis Area. Legal Services  
109 N. Main Street, Suite 201  
Memphis, TN 38103-5013



*For Penn Investors, Inc., JAN Realty, Inc., Belz/South Bluffs, Inc., MRB-Windyke, L.P., MRB-Stonebridge, L.P. and Makowsky Ringel Greenberg, LLC:*

---

Theresa L. Kitay  
Coughlin & Kitay, PC  
3091 Holcomb Bridge Road, Suite A-1  
Norcross, GA 30071

*For Makowsky Construction Company, Inc.*

---

Dawn Davis Carson  
Heaton and Moore, P.C.  
100 N. Main Building, Suite 3400  
Memphis, TN 38103-0534

*For Archeon, Inc.*

---

John S. Richbourg  
5400 Poplar Ave., Suite 300  
Memphis, TN 38157

*For The Reaves Firm, formerly known as Reaves Sweeney Marcom, Inc.*

---

William M. Jeter  
Law Offices of William Jeter, PLLC  
35 Union Ave., Suite 300  
Memphis TN 38103

*For W. H. Porter & Co., Inc.*

---

William M. Jeter  
Law Offices of William Jeter, PLLC  
35 Union Ave., Suite 300  
Memphis TN 38103

**APPENDIX A**  
**ACCESSIBILITY MODIFICATIONS TO UNIT EXTERIORS**  
**AND TO PUBLIC COMMON USE AREAS AT WINDYKE**

**APPENDIX B**  
**ACCESSIBILITY MODIFICATIONS TO UNIT INTERIORS AT WINDYKE**

**APPENDIX C**  
**ACCESSIBILITY MODIFICATIONS TO UNIT EXTERIORS**  
**AND TO PUBLIC COMMON USE AREAS AT STONEBRIDGE**

**APPENDIX D**  
**ACCESSIBILITY MODIFICATIONS TO UNIT INTERIORS AT**  
**STONEBRIDGE**



**APPENDIX E**  
**ACCESSIBILITY MODIFICATIONS TO UNIT EXTERIORS**  
**AND TO PUBLIC COMMON USE AREAS AT ETON**

**APPENDIX F**  
**ACCESSIBILITY MODIFICATIONS TO UNIT INTERIORS AT ETON**

**APPENDIX G -1**

**TENANT NOTICE OF RETROFITS FOR \_\_\_\_\_ APARTMENTS**

\_\_\_\_\_ Apartments is dedicated to the principle of equal housing opportunity. The federal Fair Housing Act requires that ground-floor apartments in newer apartment communities have certain features of physical accessibility for people with disabilities.

As a result of a lawsuit filed by the Memphis Center for Independent Living and the United States Department of Justice, the allegations of which were denied by the Defendants to that action, inaccessible aspects of the complex have been brought to our attention and we are currently in the process of correcting them. This lawsuit has been resolved. We welcome people with disabilities as residents and guests at \_\_\_\_\_ Apartments, and would like to make them as comfortable as possible. If you would like to make your apartment more accessible, \_\_\_\_\_ Apartments may be able to assist you by altering certain features of your apartment home at no cost to you. Should any of the modifications require your temporary relocation, \_\_\_\_\_ Apartments will pay all reasonable relocation and housing expenses while the modifications are being made. The alterations include:

**[ITEMIZE]**

It is not necessary that you or any member of your household be disabled in order to request these modifications although, the modifications must be intended for use by a person with disabilities. If you would like to request any of these modifications please contact us at: \_\_\_\_\_.

[STONEBRIDGE ONLY] These accessibility modifications will not be made to apartments at 9251 Three Iron Drive, 9239 Three Iron Drive, 9236 Three Iron Drive, 2989 Champions Drive and 9226 Three Iron Drive, however. If you are a resident of one of these units and in need of an apartment with accessible features because of your disability or that of your guest, we will move you, at our expense, to a comparable sized unit at Stonebridge with accessible features as soon as such apartment is available. Please contact us at \_\_\_\_\_ to make your request.

**APPENDIX G-2**

**Sample Modification Election Form  
[APARTMENT NAME]  
MODIFICATION SELECTION FORM**

Name of Resident: \_\_\_\_\_

Address: \_\_\_\_\_

I am aware that the following modifications are available for my unit, at no cost to me, and am hereby requesting that my unit be modified to include these features:\*

List of Modifications

1)	
2)	
3)	
4)	
5)	
6)	
7)	
8)	

\_\_\_\_\_  
Signature

Date:

\* The measurements provided in the these modifications are those set forth according to the Department of Housing and Urban Development Fair Housing Accessibility Guidelines and the 1986 American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people.

**APPENDIX H**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

MEMPHIS CENTER FOR	)	
INDEPENDENT LIVING,	)	
	)	
Plaintiff, and	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	No.: 01-2069 D/Pha
	)	
MAKOWSKY CONSTRUCTION COMPANY,	)	
INC., ARCHEON, INC., REAVES SWEENEY	)	
MARCOM, INC., W. H. PORTER & CO., INC.,	)	
PENN INVESTORS, INC., JAN REALTY, INC.,	)	
BELZ/SOUTH BLUFFS, INC., MRB-WINDYKE, L.P.,	)	
MRB-STONEBRIDGE, L.P., and	)	
MAKOWSKY RINGEL GREENBERG, LLC,	)	
	)	
Defendants.	)	
<hr/>		

**Release**

In consideration for the parties' agreement to the terms of the Consent Order entered in this case, and the defendants' payment to \_\_\_\_\_ in the amount of \_\_\_\_\_, \_\_\_\_\_ hereby agrees, effective upon receipt of payment, to remise, release and forever discharge all claims of any kind, nature or description whatsoever, related to the facts at issue in this litigation, and any other claims arising from alleged housing discrimination based on disability up to and including the date of execution of this release, that \_\_\_\_\_, its agents, employees, successors, assigns and subsidiaries may have against Defendants Makowsky Construction Co., Inc., Archeon, Inc., the Reaves Firm formerly known as Reaves Sweeney Marcom, Inc., W. H.

Porter & Co., Inc., Penn Investors Inc., Jan Realty, Inc., Belz/South Bluffs, Inc., MRB-Windyke, L.P., MRB-Stonebridge, L.P., and Makowsky Ringel Greenberg, LLC, or their agents, employees, successors, assigns and subsidiaries.

\_\_\_\_\_ acknowledges and understands that, by signing this Release and accepting this payment, it is waiving any right to pursue its own legal action based on the discrimination alleged by the United States in this case.

\_\_\_\_\_ also acknowledges that it has been informed that it may review the terms of this Release with an attorney of its choosing, and to the extent that it have not obtained that legal advice, it voluntarily and knowingly waives my right to do so.

\_\_\_\_\_ waives any claims it may have against the United States arising out of this action.

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

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(signature)

Executed this \_\_\_\_ day of \_\_\_\_\_, 200\_.

## APPENDIX I

### Notice to Potential Victims of Housing Discrimination

On \_\_\_\_\_, 2004, the United States District Court for the Western District of Tennessee entered a consent order resolving a lawsuit brought by the United States Department of Justice against certain builders and developers alleging that they failed to include certain accessible features for persons with disabilities required by the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C), at \_\_\_\_\_ Apartments at \_\_\_\_\_ in \_\_\_\_\_.

In that lawsuit, the Department of Justice alleges that \_\_\_\_\_ Apartments does not comply with the law because:

#### [ITEMIZE]

Under this consent order, you may be entitled to receive monetary relief if you or anyone you know

- **WAS DISCOURAGED FROM LIVING AT \_\_\_\_\_ APARTMENTS BECAUSE OF THE LACK OF ACCESSIBILITY FEATURES;**
- **HAS BEEN HURT IN ANY WAY BY THE LACK OF HANDICAP ACCESSIBILITY FEATURES AT \_\_\_\_\_ APARTMENTS;**
- **PAID TO HAVE YOUR APARTMENT AT \_\_\_\_\_ APARTMENTS MADE MORE ACCESSIBLE TO PERSONS WITH DISABILITIES; OR**
- **WAS OTHERWISE DISCRIMINATED AGAINST ON THE BASIS OF DISABILITY AT \_\_\_\_\_ APARTMENTS.**

If you wish to make a claim for discrimination on the basis of disability, or if you have any information about persons who may have such a claim, please contact the **United States Department of Justice at 1-800-896-7743**. You may also write to:

United States Department of Justice  
Civil Rights Division  
Housing and Civil Enforcement Section  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

**APPENDIX J**

**ACKNOWLEDGMENT OF RECEIPT OF CONSENT ORDER**

On \_\_\_\_\_, I received copies of and have read the Consent Order entered by the federal district court in *Memphis Center for Independent Living and United States v. Makowsky Construction Co., et al.*, C.A. No. 01-2069 (W.D. Tenn.), and the federal Fair Housing Act. I have had all of my questions concerning the Consent Order and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Date)



**APPENDIX K**

**CERTIFICATION OF FAIR HOUSING TRAINING**

On \_\_\_\_\_, I attended training on the federal Fair Housing Act. I have had all of my questions concerning the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

## **APPENDIX L**

For Defendants Penn Investors, Inc., JAN Realty, Inc., Belz/South Bluffs, Inc., MRB-Windyke, L.P., MRB-Stonebridge, L.P, the following persons shall undergo training on the design and construction requirements of the Fair Housing Act and the ADA as specified in paragraph 56: Mr. Jerome Makowsky, Mr. Nick Ringel and Mr. Jerome Hanover. For Defendant Makowsky Construction Company, Inc. and its successor, Makowsky Ringel Greenberg, LLC, the following persons shall undergo this training: Mr. Gary Makowsky, Mr. Michael Greenberg, Mr. Jimmy Ringel, Mr. Raymond Evans, Mr. Robert Gladney, and Mr. Steve Jones. For Defendant Archeon, Inc., Messrs. Jack Schaffer and William Eades will be trained. For Defendant the Reaves Firm, formerly known as Reaves Sweeney Marcom, Inc., and Defendant W. H. Porter & Co., Inc. all partners as well as all employees and agents whose duties, in whole or in part, involve supervisory authority over the development, design and/or construction of the multifamily dwellings shall undergo training on the design and construction requirements of the Fair Housing Act and the ADA.