

FILED

OCT 07 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

Clerk, U.S. District Court
District Of Montana
Helena

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UNITED STATES OF AMERICA,	:
Plaintiff,	:
	: Case No.:
	: 6:13-cv-00053-SEH
	:
and	:
	: CONSENT ORDER AND
MONTANA FAIR HOUSING, INC.	: JUDGMENT
	:
Intervening Plaintiff,	:
	:
v.	:
	:
GABRIEL NISTLER, SOMMER	:
NISTLER, NISTLER ELECTRIC, LLC,	:
DEREK BROWN, AND DEREK	:
BROWN CONSULTING, INC.	:
	:
Defendants.	:
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I. INTRODUCTION

A. Background

1. This Consent Order is entered into between Plaintiff United States of America and Plaintiff-Intervener Montana Fair Housing, Inc. ("Plaintiffs") and Defendants Gabriel Nistler, Sommer Nistler, Nistler Electric, LLC, Derek Brown, and Derek Brown Consulting, Inc. ("Defendants").

2. This Consent Order is intended to resolve claims regarding accessibility barriers at 175 and 195 Silsbee Avenue, Helena, Montana (“the Silsbee Avenue Property”), 109 and 111 Reed Avenue, Helena, Montana (“the Reed Avenue Property”), and 1220 and 1240 Laurel Street, Helena, MT (“the Laurel Street Property”) (together “the Subject Properties”). The Subject Properties were designed and constructed by Defendants and are currently owned by Defendants Gabriel Nistler and Sommer Nistler. This Consent Order is not intended to resolve claims regarding the possible accessibility barriers designed and constructed by Defendants at any other multifamily properties not identified and addressed herein.

3. Each of the Subject Properties is comprised of two (2) two-story, non-elevator, multifamily properties. Each of the buildings contains two (2) single-story ground floor rental units and two (2) single-story upper floor rental units for a total of eight units. The public and common use areas of the Subject Properties include pedestrian walkways, mailboxes, trash bins, parking spaces and two (2) detached garage structures each containing individual garage units.

4. Defendants Gabriel and Sommer Nistler (“the Nistler Defendants”) were the owners of the Subject Properties at the time they were designed and constructed.

5. Defendants Gabriel Nistler and Nistler Electric LLC were the developers, general contractors and/or builders of the Subject Properties at the time they were designed and constructed.

6. Defendants Derek Brown and Derek Brown Consulting, Inc. were responsible for and prepared the site engineering plans and construction documents for the Subject Properties.

7. On or about November 30, 2012, Montana Fair Housing, Inc. ("MFH") filed an administrative complaint with the United States Department of Housing and Urban Development ("HUD") alleging that Defendants had failed to design and construct the Silsbee Avenue Property with the accessibility features required by the federal Fair Housing Act ("FHA" or "the Act"), 42 U.S.C. §§ 3601 - 3619. As constructed, the north-facing entry doors to each of the four (4) ground floor apartments at the Silsbee Avenue Property could only be reached by traversing one or more steps.

8. The Secretary of HUD ("the Secretary") completed an investigation of MFH's complaint which included completing an accessibility survey that identified the accessibility barriers at the Silsbee Avenue Property. Following the investigation, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination charging the Defendants with engaging in discriminatory housing practices in violation of the Act.

9. On or about July 14, 2013, MFH elected to have the Charge of Discrimination resolved in a civil action filed in federal district court. The Secretary therefore authorized the Attorney General to commence this civil action, pursuant to 42 U.S.C. § 3612(o) of the Act.

10. On September 12, 2013, the United States filed this action to enforce provisions of the FHA. Specifically, the United States' Complaint alleged that Defendants engaged in a pattern or practice of discrimination against persons with disabilities and denied rights to a group of persons because of disability by failing to design and construct the Silsbee Avenue Property with the features of accessible and adaptive design and construction required by subsections 804(f)(1), 804(f)(2) and 804(f)(3)(C) of the FHA, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C).

11. On October 17, 2013, Montana Fair Housing, Inc. ("MFH") filed a Motion to Intervene in this action. The Court granted the Motion to Intervene on December 31, 2013 and the Complaint in Intervention was filed that same day.

12. In its Complaint in Intervention, MFH alleges, with respect to the Silsbee Avenue Property: violations by Defendants of the accessibility design and construction requirements set forth in the FHA, 42 U.S.C. § 3604(f); and violations by Defendants of state fair housing laws, Section 49-2-305 of the Montana Human Rights Act ("HRA"), Title 49 of the Montana Codes Annotated.

13. In their Answers to the Complaint and Complaint in Intervention, Defendants generally denied the allegations against them and, among other things, specifically denied that they knowingly or purposely engaged in discrimination on the basis of disability, or a pattern or practice of knowing discrimination.

B. Relevant Requirements of the Fair Housing Act and Montana Human Rights Act

14. The FHA provides that, for non-elevator residential buildings with four or more dwelling units, all ground-floor units that are designed and constructed for first occupancy after March 13, 1991, are “covered multifamily dwellings” and must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by a person who has or develops a disability. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B). The HRA is substantially equivalent to 42 U.S.C. § 3604(f)(3)(C) in requiring that “covered multifamily housing accommodations” must include the same basic features of accessible and adaptive design for use by persons with disabilities. §49-2-305(5)(c) and 49-2-305(6), M.C.A. The terms “covered multifamily dwellings” and “covered multifamily housing accommodations” shall have the same meaning as used herein.

15. The accessible and adaptive design provisions of the FHA 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 of 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). The HRA requires the same features for covered multifamily housing accommodations. These features are referred to herein as the “Accessible Design Requirements.”

16. The United States, MFH, and Defendants (collectively “the parties”) agree that the Subject Properties are subject to the Accessible Design Requirements.

C. Defendants’ Corrective Actions to Date

17. As originally designed and constructed, the Silsbee Avenue Property did not fully comply with the Accessible Design Requirements of the FHA or HRA. After the United States’ Complaint was filed, Defendants voluntarily

corrected most of the barriers¹ at the Silsbee Avenue Property identified by the Secretary and alleged in the Plaintiffs' complaints. These corrective actions entailed:

- (a) Constructing new sidewalks without steps leading from the parking areas to the landings at the four ground floor north unit entrances;
- (b) Retrofitting the garage building at 195 Silsbee Avenue to combine two garage units into one, larger garage unit that is wide enough to accommodate a standard accessible parking space and access aisle;
- (c) Providing an additional mailbox at the right side of the paved areas at 195 Silsbee Avenue located on an accessible route from all covered units;
- (d) Creating an accessible route from all the covered units to the outside trash dumpsters;
- (e) Modifying the heights and/or location of electrical outlets throughout the covered units to place them in accessible locations;
- (f) Lowering the four thermostats in each covered unit so that they are no higher than 48 inches above the floor; and
- (g) Extending the pantry shelving in each covered unit so that it is within the reach range of a person using a wheelchair.

D. Consent of the Parties to Entry of this Order

18. 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. §

¹ With respect to the lack of clear floor space in the kitchens of the ground floor units, Defendants will address this by installing a smaller refrigerator on request, as set forth in Paragraph 20 of this Order.

3614(a). The parties further agree that this controversy should be resolved without further proceedings and without an evidentiary hearing or a trial.

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

It is hereby ORDERED, ADJUDGED, and DECREED:

II. GENERAL INJUNCTION

20. 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 FHA, 42 U.S.C. §§ 3604(f)(1) - (3), or as prohibited by § 49-2-305(5)(c) of the HRA.

III. CORRECTIVE ACTIONS/RETROFITS

A. Silsbee Avenue Property

21. As described in Paragraph 17 of this Order, Defendants have corrected the barriers identified in the Plaintiffs' complaints, except for the lack of clear floor space in the kitchens of all four covered units at the Silsbee Avenue Property, which is addressed in paragraph 22, below.

22. The Nistler Defendants agree that the width of the kitchens in all four ground floor units is less than 40 inches. This is due to the depth of the refrigerators installed in all four units. Consequently, the Nistler Defendants agree to explain to all prospective renters of the ground floor units at the Silsbee Avenue

Property when showing any of the units that: (a) the width of the kitchens is less than 40 inches at the refrigerator; and (b) should the prospective renter want a smaller refrigerator in order to increase the clearance between the refrigerator and the opposing cabinet, the Nistler Defendants will pay for the cost and installation of one and such installation will not delay or otherwise affect the processing of this person's application or move-in date. The Nistler Defendants will revise their application and promotional materials for the Silsbee Avenue properties to contain the offer to install a smaller refrigerator free of cost as set forth above and shall send to the United States² a copy of the materials that reflect this revision.

23. The obligations of the Nistler Defendants described in Paragraph 22 shall exist as long as they have an ownership interest in the Silsbee Avenue Property.

B. The Reed Avenue and Laurel Street Properties

24. By no later than June 1, 2015, Defendants shall complete the retrofits to the ground floor units and public and common use areas of the Reed Avenue Property as set forth in Appendix A.

² For purposes of this Order, all submissions to the United States or its counsel should be submitted to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W. – NWB, Washington D.C. 20530, Attn: DJ # 175-44-43, or as otherwise directed by the United States. All reports mentioned in this Order shall be sent to that address via overnight courier.

25. By no later than June 1, 2015, Defendants shall complete the retrofits to the ground floor units and public and common use areas of the Laurel Street Property as set for in Appendix B.

26. The Nistler Defendants agree that the depth of the refrigerators directly next to the kitchen ranges in the kitchens in each of the ground floor units at the Reed Avenue and Laurel Street Properties extends at least 5 inches beyond the face of the kitchen range. Consequently, the Nistler Defendants agree to explain to all prospective renters of the ground floor units when showing any of the units that: (a) the depth of the refrigerators extend at least 5 inches beyond the face of the kitchen ranges; and (b) should the prospective renter want a smaller refrigerator so that there is 48 inches parallel clear floor space in front of the range, the Nistler Defendants will pay for the cost and installation of one and such installation will not delay or otherwise affect the processing of this person's application or move-in date. The Nistler Defendants will revise their application and promotional materials for the Reed Avenue and Laurel Street Properties to contain the offer to install a smaller refrigerator free of cost as set forth above and shall send to the United States a copy of the materials that reflect this revision.

27. The obligations of the Nistler Defendants described in Paragraph 26 shall exist as long as they have an ownership interest in the Reed Avenue and Laurel Street Properties.

28. Defendants shall enter into a contract with a qualified, neutral inspector approved by the Plaintiffs to conduct on-site inspections of the retrofits that have been performed to determine if they have been completed in accord with specifications set forth in Appendices A and B. The inspection shall take place within 30 days of the completion of all of the retrofits to units and common use areas, or as soon thereafter as practicable. Defendants shall give the Plaintiffs at least three weeks' notice of the inspection in order to give Plaintiffs an opportunity to have, at their own expense, their representatives present for the inspection.

29. The inspector shall set out the results of the inspection, including deficits if any, in writing and shall send that report to the Plaintiffs and Defendants. If the inspection indicates that not all of the required retrofits have been made as specified in Appendices A and B, 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. Defendants shall pay all of the inspector's costs associated with these inspections, and such payment shall be made without regard to the inspector's findings. Upon reasonable notice to Defendants, Plaintiffs' representatives shall be permitted to inspect the modifications made by Defendants in accordance with Appendices A and B or the

inspection report of the inspector to ensure compliance; provided, however, that the Plaintiffs shall endeavor to minimize any inconvenience caused by such inspections.

IV. TRANSFER OF INTEREST IN PROPERTIES

30. The sale or transfer of ownership, in whole or in part, of the Subject Properties during the term of this Consent Order shall not affect Defendants' continuing obligations to retrofit the properties as specified in this Consent Order. Should either or both of the Nistler Defendants decide to sell or transfer ownership, in whole or in part, of any of the Subject Properties or any portion thereof prior to the completion of the retrofits specified in Appendices A and B, they will, at least thirty (30) days prior to completion of the sale or transfer, (a) provide to the prospective buyer(s) written notice that the Subject Properties are subject to this Consent Order, including specifically the Defendants' obligations to complete required retrofit work and to allow inspections, along with a copy of this Consent Order, and (b) provide to the United States by electronic and first class mail, written notice of their intent to sell or transfer ownership, along with a copy of the notice sent to the buyer(s), and the buyer's name, address, and telephone number.

31. If any transfer of their interest in all or any portion of the Subject Properties is not a bona fide transfer to an independent third party whereby the Nistler Defendants no longer have control over the Subject Properties, the

Defendants and the new owner(s) shall remain jointly and severally liable for any violations of this Order for its duration.

V. NO RAISING OF RENTS OR FEES

32. During the term of this Consent Order, the Nistler Defendants, their agents and affiliated companies, may not raise the rent or fees of any dwelling unit, or demand any deposit or other fee for a dwelling unit at the Subject Properties because of contemplated or completed retrofits performed as a result of this litigation.

VI. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

33. To the extent Defendants participate in the design or construction of covered multifamily dwellings in the future, Defendants shall design and construct such dwellings in accordance with the accessibility requirements set forth in 42 U.S.C. § 3604(f)(3)(C)(i)-(iii) and § 49-2-305(5)(c), M.C.A. Defendants shall not seek any approval, waiver or variance from a permitting authority to design or construct a covered multifamily dwelling without one or more of the accessibility features required by 42 U.S.C. §3604(f)(3)(C)(i)-(iii) and §49-2-305(5)(c), M.C.A.

34. For a period of five (5) years after the entry of this Order, the Nistler Defendants shall maintain, and provide to the Plaintiffs, the following information and statements regarding any other 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 ten-percent (10%) or larger ownership share, provided, however, that such information and statements need to be maintained and/or provided only on projects in which any of them is actually involved, not on those projects in which any of them bids or expresses an interest, but does not become finally involved:

- (a) the name and address of the project;
- (b) a description of the project and the individual units;
- (c) the name, address, and telephone number of the civil engineer(s) involved with the project, if any;
- (d) a statement from the civil engineer(s) involved with the project acknowledging that he/she has reviewed the engineering documents for the project and that, to the best of his/her knowledge, the design specifications therein fully comply with the accessibility requirements of the Fair Housing Act;
- (e) the name, address and telephone number of the architect(s) involved with the project, if any;
- (f) a statement from all architect(s) involved with the project, if any, acknowledging that he/she has reviewed the architectural plans for the project and that, to the best of his/her knowledge, the design specifications therein fully comply with the accessibility requirements of the Fair Housing Act; and
- (g) if the engineering documents or architectural plans are revised, and the revisions could have any impact on the accessibility of the dwellings or project, each of the Defendants listed above in this paragraph shall obtain, maintain, and provide to the United States upon request, a statement from the site engineer(s) or architect(s), who are employed or retained by any Defendant and are involved

with the project, as applicable, that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the requirements of the Fair Housing Act.

35. For a period of five (5) years after the entry of this Order, Defendants Derek Brown and Derek Brown Consulting, Inc. shall maintain, and provide to the United States, the following information and statements regarding any other 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 ten-percent (10%) or larger ownership share, provided, however, that such information and statements need to be maintained and/or provided only on projects in which any of them is actually involved, not on those projects in which any of them bids or expresses an interest, but does not become finally involved:

- (a) the name and address of the project;
- (b) a description of the project and the individual units;
- (c) a statement acknowledging that they have reviewed the plans they have prepared for the project and that the design specifications therein fully comply with the accessibility requirements of the Fair Housing Act; and
- (d) if the plans are revised, and the revisions could have any impact on the accessibility of the dwellings or project, the Defendants listed above in this paragraph will obtain, maintain, and provide to the United States upon request, a statement that all specifications in the

revised plans, as pertinent, comply with the requirement of the Fair Housing Act.

VII. EDUCATIONAL PROGRAM

36. Within thirty (30) days of the entry of this Order, each Defendant shall provide a copy of this Order or a statement concerning FHA or HRA compliance (“Compliance Statement”), a copy of which is attached as Appendix C, to all his or her employees and agents who have management authority over the design, construction, rental or sale of covered multifamily dwellings, if any. A signed acknowledgment from each such agent or employee stating that he or she has received and read the Order or Compliance Statement, and has had an opportunity to have questions about the Order or Compliance Statement answered must be secured by Defendants. This acknowledgment shall be substantially similar to the form of Appendix D.

37. Within thirty (30) days after the date he or she commences an agency or employment relationship with a Defendant, each new employee or agent who has management authority over the design and/or construction of multifamily dwellings of the type at issue in this case will be given a copy of this Order or Compliance Statement and be required to sign the acknowledgment that he or she has received and read the Order or Compliance Statement, and has had an opportunity to have questions about the Order or Compliance Statement answered. This acknowledgment shall be substantially similar to the form of Appendix D.

38. Defendants shall also obtain and provide their employees and agents who have management authority over the design and/or construction of covered multifamily dwellings with a copy of, 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) (“the FHA Design Manual”) and shall instruct such employees and agents to review the FHA Design Manual and refer to it in connection with the design and construction of any covered multifamily dwelling being designed and built. Defendants shall obtain and provide to all employees and agents whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case copies of the Joint Statements of the Department of Housing and Urban Development and the Department of Justice regarding “Reasonable Accommodations under the Fair Housing Act” (issued May 14, 2004) and “Reasonable Modifications Under the Fair Housing Act” (issued March 5, 2008) and shall instruct them to read and, as necessary, refer to the Joint Statements.

39. Within sixty (60) days of the entry of this Consent Order, and only if they have not done so by the date of the entry of this Consent Order, Defendants and all employees and agents whose duties, in whole or in part, involve or will

involve management authority over the development, design and/or construction of multifamily dwellings of the type at issue in this case shall undergo training on the design and construction requirements of the FHA and HRA.³ The training shall be conducted by a qualified individual who has been previously approved by counsel for the United States, 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 E.

VIII. MONETARY DAMAGES AND ATTORNEYS FEES TO MFH

40. Defendants shall pay Montana Fair Housing, Inc. the sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17, 500.00) as an alleged aggrieved person within the meaning of the Fair Housing Act, provided Montana Fair Housing, Inc. has executed a release in the form of Appendix F.

³ The educational program provided to employees not engaged in design, construction or maintenance, such as sales and rental employees, may focus on the portions of the law that relate generally to accessibility requirements as opposed to technical design and construction requirements.

Defendants shall send a check for this amount to Montana Fair Housing, Inc. within thirty (30) days after the date of entry of this Consent Order.

IX. CIVIL PENALTIES

41. Within fifteen (15) days of the date of entry of this Consent Order, the Defendant shall pay a total of EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$8,500.00) to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(c). The payment shall be in the form of an electronic funds transfer pursuant to written instructions by the United States.

X. NOTICE OF DEFENDANTS' NON-DISCRIMINATION POLICY

42. Within ten (10) days of entry of this Consent Order, the Nistler Defendants shall post and prominently display in the sales or rental offices of the Subject Properties and/or in their places of business a poster 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.

43. All advertising in newspapers and all pamphlets, brochures and other promotional literature regarding the Subject Properties or any new complexes that Defendants may develop or construct, shall contain, in a conspicuous location, a statement that the dwelling units comply with the accessibility requirements of the federal Fair Housing Act and the Montana Human Rights Act.

XI. ADDITIONAL MONITORING REQUIREMENTS

44. Within ninety (90) days of the entry of this Consent Order, Defendants shall submit to the Plaintiffs an initial report containing (a) the signed certifications of attendance for persons who have completed the education program specified in Paragraph 39; and (b) confirmation that the Nistler Defendants have displayed the poster described in Paragraph 42.

45. Thereafter, for a period of five (5) years after the date of this Consent Order, Defendants shall, on or before the anniversary of this Consent Order, submit to the United States a report containing: (a) the signed acknowledgments of new employees involved in the design and/or construction of covered multifamily dwellings verifying that, in accordance with Paragraph 37, they have received and read this Consent Order and had an opportunity to have questions about the Order or Compliance Statement answered; and (b) the information referred to in Paragraphs 34 and 35 regarding other covered multifamily dwellings intended to be purchased, developed, built, designed, and/or engineered by Defendants. The final report required by this paragraph shall be submitted sixty (60) days prior to the expiration of this Order.

46. Defendants shall advise the United States in writing within fifteen (15) days of receipt of any new written or verbal complaints against them and, if known their employees or agents, regarding alleged disability discrimination in

housing under the FHA. Defendants shall also promptly provide the United States all non-privileged information it may request concerning any such complaint.

Within fifteen (15) days of the resolution of any such complaints, Defendants shall advise the United States, in writing, of such resolution.

47. Defendants are required to preserve all non-privileged records related to this Consent Order regarding the Subject Properties and all future covered multifamily dwellings to be designed and constructed by them for a period of five (5) years after the entry of this Consent Order. Within that time, and upon reasonable notice to Defendants, representatives of the United States may be permitted to inspect and copy any non-confidential records related to the design and construction of covered multi-family dwellings or inspect future covered multifamily dwellings designed and constructed by them, provided, however, that the United States shall endeavor to minimize any inconvenience to Defendants and Defendants' tenants from such inspections.

XII. DURATION AND SCOPE OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION

48. This Consent Order shall remain in effect for five (5) years after the date of its entry. By consenting to entry of this Order, the parties agree that in the event that a Defendant engages in any future conduct occurring after entry of this Order that leads to a determination of a violation of the Fair Housing Act or Montana Human Rights Act, such conduct shall constitute a "subsequent violation"

pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii) and for purposes of § 49-2-510(6),
M.C.A

49. This case is dismissed with prejudice except that the Court shall retain jurisdiction to enforce the terms of the Order. Upon good cause shown, the Plaintiffs may move the Court to extend the term of this Order in the interests of justice.

50. The Parties agree that this Consent Order applies only to the Subject Properties and, as specified, to the Defendants' current and future design and construction (see Section VI). The Parties agree that this Consent Order does not release the Defendants from any claims that the United States may have concerning any other covered multifamily dwellings not identified and addressed herein.

51. The parties 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 a party to perform, in a timely manner, any act required by this Order or otherwise for their failure to act in conformance with any provision, any party 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 by the failure to perform.

XIII. TIME FOR PERFORMANCE

52. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the Plaintiffs and the relevant Defendant or Defendants.

XIV. COSTS OF LITIGATION

53. The United States and Defendants will bear their own costs and attorney's fees associated with this litigation. MFH's costs and attorney's fees associated with this litigation shall be satisfied out of the monies paid to it under Section VIII paragraph 40 of this Agreement.

XV. TERMINATION OF LITIGATION HOLD

54. The parties agree that, as of the date of the entry of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described above or in the Complaint and Complaint in Intervention. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Consent Order.

SO ORDERED this 7th day of October, 2014.


UNITED STATES DISTRICT COURT JUDGE

The undersigned apply for and consent to the entry of this Consent Order:

FOR PLAINTIFF UNITED STATES:

MOLLY J. MORAN
Acting Assistant Attorney General
Civil Rights Division

/s/ Jennifer C. Cass

STEVEN H. ROSENBAUM
Chief

TIMOTHY J. MORAN
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