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For Plaintiff United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. CIV 02-068-C-EJL
v.)	
)	
THOMAS DEVELOPMENT CO.; LINKS)	
PROPERTIES, LLC; TURNBERRY L.P.;)	CONSENT ORDER
CENTURION PROPERTIES, LLC;)	
THOMAS C. MANNSCHRECK;)	
WILSON ARCHITECTURAL;)	
ZIEGLER-TAMURA LTD. CO.;)	

RALPH R. "ROCKY" TOWLE, f/d/b/a)
 DESIGN RESOURCES;)
 ERIC HASENOEHRL, f/d/b/a)
 E.F. ENGINEERING;)
 HUBBLE ENGINEERING, INC.;)
 EHM ENGINEERS, INC.;)
 ASPEN HILLS L.P.;)
 BALTRAY L.P.; BRITTAS BAY L.P.;)
 CARNOUSTIE L.P.; DONEGAL L.P.;)
 MALLARD COVE ASSOCIATES, L.P.;)
 PARKWOOD ASSOCIATES, L.P.;)
 PRESTWICK L.P.; TRALEE L.P.;)
 WESTRIDGE ASSOCIATES, L.P.;)
 WESTERN GAILES L.P.;)
)
 Defendants.)
 _____)

I. INTRODUCTION

A. Background

1. This Consent Order is entered between the United States of America and Defendants Thomas Development Co.; Links Properties, LLC; Turnberry Limited Partnership; Centurion Properties, LLC; Thomas C. Mannschreck; Wilson Architectural; Ziegler-Tamura Ltd. Co.; Ralph R. "Rocky" Towle, f/d/b/a Design Resources; Eric Hasenoehrl, f/d/b/a E.F. Engineering; Hubble Engineering, Inc.; EHM Engineers, Inc.; Aspen Hills Limited Partnership; Baltray Limited Partnership; Brittas Bay Limited Partnership; Carnoustie Limited Partnership; Donegal Limited Partnership; Mallard Cove Associates Limited Partnership; Parkwood Associates Limited Partnership; Prestwick Limited Partnership; Tralee Limited Partnership; Westridge Associates Limited Partnership; and Western Gailes Limited Partnership (referred to herein as "Defendants"). The Consent Order does not resolve any cross claims by the Defendants, which have been resolved by separate agreement.

2. This action is brought by the United States 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 United States’ Complaint alleges that disability discrimination occurred in this case through the following actions: (a) failing to design and construct at least seventeen (17) apartment complexes in Idaho (“the complexes”) with the features of accessible and adaptable design and construction required by 42 U.S.C. § 3604(f)(3)(C) and 42 U.S.C. § 12183(a)(1);¹ and (b) retaliating against persons with disabilities who have requested reasonable modifications or accommodations pursuant to 42 U.S.C. §§ 3604(f)(3)(A)-(B). The United States and Defendants (hereinafter, “the Parties”) agree that the complexes are subject to the accessible design and construction requirements of 42 U.S.C. § 3604(f)(3)(C) and 42 U.S.C. § 12183(a)(1).

B. Defendants

3. Defendant Thomas Development Company is a corporation organized under the laws of Idaho, that conducts business in Idaho.

4. Defendant Links Properties, LLC, is a limited liability company organized under the laws of Idaho, that conducts business in Idaho. Defendant Centurion Properties, LLC, is a

¹The complexes at issue are Aspen Hills Apartments, located in Meridian, Idaho; Baltray Apartments, located in Jerome, Idaho; Brentwood Apartments, located in Boise, Idaho; Brittas Bay Apartments, located in Weiser, Idaho; Carnoustie Apartments, located in Shelley, Idaho; Country Club Apartments, located in Nampa, Idaho; Donegal Bay Apartments, located in Rexburg, Idaho; Mallard Cove Apartments, located in Caldwell, Idaho; Park Hill Apartments, located in Boise, Idaho; Parkwood Apartments, located in Nampa, Idaho; Pierce Park Village Apartments, located in Boise, Idaho; Prestwick Apartments, located in Jerome, Idaho; Shaw Mountain Apartments, located in Boise, Idaho; Tralee Apartments, located in Rigby, Idaho; Turnberry at Village Green Apartments, located in Lewiston, Idaho; Western Gables Apartments, located in Jerome, Idaho; and Westridge Apartments, located in Boise, Idaho.

limited liability company organized under the laws of Idaho, that conducts business in Idaho.

5. Defendant Thomas Mannschreck is and, at all relevant times, has been the co-general manager of Defendants Links Properties, LLC and Centurion Properties, LLC. The managing partner of Turnberry L.P. is Affordable Housing of Idaho, LLC. Defendant Mannschreck resides and does business in the District of Idaho.

6. The Defendants were responsible for the design, and/or construction, and/or development of all or part of one or more of the following apartment complexes, as well as others, in the State of Idaho:

<u>Apartment Complexes</u>	<u>Location</u>
(1) Aspen Hills Apartments	Meridian, Idaho
(2) Baltray Apartments	Jerome, Idaho
(3) Brentwood Apartments	Boise, Idaho
(4) Brittas Bay Apartments	Weiser, Idaho
(5) Carnoustie Apartments	Shelley, Idaho
(6) Country Club Apartments	Nampa, Idaho
(7) Donegal Bay Apartments	Rexburg, Idaho
(8) Mallard Cove Apartments	Caldwell, Idaho
(9) Park Hill Apartments	Boise, Idaho
(10) Parkwood Apartments	Nampa, Idaho
(11) Pierce Park Village Apartments	Boise, Idaho
(12) Prestwick Apartments	Jerome, Idaho
(13) Shaw Mountain Apartments	Boise, Idaho
(14) Tralee Apartments	Rigby, Idaho
(15) Turnberry at Village Green Apartments	Lewiston, Idaho

(16) Western Gailes Apartments	Jerome, Idaho
(17) Westridge Apartments	Boise, Idaho

7. In developing each of the above mentioned complexes, defendants Thomas Mannschreck, Links Properties, LLC, and Centurion Properties, LLC, established or worked in conjunction with the following entities in developing the properties: defendant Aspen Hills L.P. participated in the development of Aspen Hills Apartments; defendant Baltray L.P. participated in the development of Baltray Apartments; defendant Brittas Bay L.P. participated in the development of Brittas Bay Apartments; defendant Carnoustie L.P. participated in the development of Carnoustie Apartments; defendant Donegal L.P. participated in the development of Donegal Bay Apartments; defendant Mallard Cove Associates, L.P. participated in the development of Mallard Cove Apartments; defendant Parkwood Associates, L.P., participated in the development of Parkwood Apartments; defendant Prestwick L.P., participated in the development of Prestwick Apartments; defendant Tralee L.P., participated in the development of Tralee Apartments; defendant Turnberry L.P., participated in the development of Turnberry at Village Green Apartments; defendant Western Gailes L.P., participated in the development of Western Gailes Apartments; defendant Westridge Associates, L.P., participated in the development of Westridge Apartments. Each of the entities named above is a business entity organized under the laws of the State of Idaho that does business in the District of Idaho.

8. Defendant Ralph R. "Rocky" Towle, formerly doing business as Design Resources, is the architect who designed the buildings, apartment units, rental office, and common use clubhouse and laundry room at Turnberry at Village Green Apartments.

9. Defendant Ziegler-Tamura Ltd. Co. is the architectural firm that designed Brentwood Apartments, Country Club Apartments, Park Hill Apartments, Pierce Park Apartments, Shaw Mountain Apartments, and West Ridge Apartments.

10. Defendant Wilson Architectural is the architectural firm that designed Baltray Apartments, Brittas Bay Apartments, Carnoustie Apartments, Donegal Bay Apartments, Prestwick Apartments, Tralee Apartments, and Western Gailes Apartments.

11. Defendant Eric Hasenoehrl, formerly doing business as E.F. Engineering, is the engineer who designed certain parking and sidewalks at Turnberry at Village Green Apartments.

12. Defendant Hubble Engineering, Inc. is the engineering firm that designed certain public and common use areas of Mallard Cove Apartments, Aspen Hills Apartments, Brentwood Apartments, Parkwood Apartments, and Pierce Park Apartments.

13. Defendant EHM Engineering, Inc. is the engineering firm that designed the public and common use areas of Baltray Apartments, Carnoustie Apartments, Prestwick Apartments, Tralee Apartments, and Western Gailes Apartments.

C. Relevant Requirements of the Fair Housing Act

14. The Fair Housing Act 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 units” and must include certain basic features of accessible and adaptable design to make such units usable by a person who is or who becomes disabled. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B). The ground-floor units at the complexes were designed and constructed for first occupancy after March 13, 1991, and are located in non-elevator buildings containing four or more units. Thus, the ground floor units at the developments are “covered multifamily dwellings” within the meaning of the Fair Housing Act.

15. The features of accessible and adaptable design required by the Fair Housing Act include: (a) public use and common use areas that are readily accessible to and usable by persons with disabilities; (b) doors designed to allow passage into and within all premises that are sufficiently wide to allow passage by persons in wheelchairs; (c) an accessible route into and through the dwelling; (d) light switches, electrical outlets, thermostats, and environmental controls in accessible locations; (e) reinforcements in the bathroom walls to allow the later installation of grab bars; and (f) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C). The United States alleges in its First Amended Complaint that, as designed and constructed, the “covered units” as well as the public and common use areas at the complexes do not include all of the features of accessible and adaptable design required by the Fair Housing Act.

D. Relevant Requirements of the ADA

16. The ADA provides 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, must be readily accessible to and useable by individuals 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). All rental offices and the facilities and privileges provided at those offices are required to comply with the ADA. The United States alleges in its Complaint that the public accommodations provided at the complexes are not in compliance with the ADA.

E. Relevant Requirements of Section 504

17. Section 504 of the Rehabilitation Act provides that “[n]o otherwise qualified

individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .,” and requires each federal agency providing financial assistance to promulgate regulations to effectuate this provision. 29 U.S.C. § 794. In developing Baltray Apartments, Brittas Bay Apartments, Carnoustie Apartments, Donegal Apartments, Prestwick Apartments, Tralee Apartments, Turnberry at Village Green Apartments, and Western Gailes Apartments as housing affordable for low-income persons. These properties received federal funding and are subject to the provisions of Section 504 of the Rehabilitation Act.

18. The regulations HUD has promulgated to effectuate Section 504 require, e.g., that, effective July 11, 1988, new multifamily housing projects receiving federal financial assistance shall be designed and constructed with: (a) public and common use areas readily accessible to and useable by individuals with handicaps, and (b) a minimum of five percent of total dwelling units accessible for persons with mobility impairments, and an additional two percent of units accessible for persons with hearing or vision impairments, all of which must be distributed throughout the complex and among unit types so that a person with disabilities’ choice of living arrangements is comparable to that of others. 24 C.F.R. §§ 8.22 & 8.26. “Accessible” is further defined as providing accessibility equal to or greater than that required by the Uniform Federal Accessibility Standards (UFAS). 24 C.F.R. § 8.32. The Parties have agreed that certain of the properties identified above are subject to the requirements of Section 504 and must comply with the requirements of Section 504 and UFAS.

F. Consent of the Parties to Entry of this Order

19. The Parties agree that this Court has jurisdiction over the subject matter of this case

pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 3614(a). The Parties further agree that the controversy should be resolved without further proceedings and without an evidentiary hearing.

20. 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.

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

It is hereby ADJUDGED, ORDERED and DECREED:

II. GENERAL INJUNCTION

22. 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 ADA, 42 U.S.C. §§ 12182(a) & 12183(a)(1).

III. RETROFIT OF GROUND FLOOR UNITS AND PUBLIC AND COMMON USE AREAS AT THE COMPLEXES

A. Retrofits for Complexes Named Above

23. The Parties agree that the complexes are required to meet the accessibility and adaptability standards of the Fair Housing Act, the ADA, ADAAG, and, where applicable, Section 504 and the UFAS standards. Defendants have committed to ensure that the complexes comply with these laws and standards as provided in Appendices A - Q. These Appendices delineate which defendants shall be responsible for the retrofits at each complex.

24. As soon as reasonably possible after entry of the Consent Order, but in any event not more than twelve (12) months from the date of the entry of this Consent Order, Defendants shall commence and finish the retrofits to the ground floor units and public and common use areas of

the complexes that are set forth in Appendices A - Q. The retrofit work is to be performed as specified in the appendices. The Defendants shall pay all expenses associated with these modifications and both they and their contractors shall attempt, in good faith, to minimize any inconvenience to the residents of the complexes.

25. Defendants shall enter into a contract with a qualified, neutral inspector approved by the United States to conduct on-site inspections of the retrofits that have been performed under this Order to determine if they have been completed in accord with specifications in Appendices A - Q. 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 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.

26. The inspector shall set out the results of each inspection, including deficits if any, in writing and shall send that report to the United States and Defendants. If the inspection indicates that not all of the required retrofits have been made as specified in Appendices A - Q, 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 payments shall be made without regard to the inspector's findings. Upon reasonable notice to Defendants, representatives of the United States shall be permitted to inspect the modifications made by 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 and the United States shall pay all of its inspector's costs associated with any or all of its inspections.

27. The sale or transfer of ownership, in whole or in part, of any of the complexes shall not affect Defendants' continuing obligations to retrofit the properties as specified in this Consent Order. Should any Defendant decide to sell or transfer ownership, in whole or in part, of any of the complexes or any portion thereof prior to the completion of the retrofits specified in Appendices A - Q, 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, including specifically the Defendant's 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 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.

28. The parties do not anticipate that the retrofits planned for the individual dwelling units at the complexes will cause any undue inconvenience or hardship to residents. However, in the event a resident of a unit scheduled to undergo such retrofit does incur undue inconvenience or hardship (defined as a required dislocation from the unit for more than 24 hours consecutively), the 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 retrofit work on the resident's unit, so that the resident can use the money to obtain alternative living accommodations while dislocated.

29. Defendants may not charge any additional rent, deposit or other fee for the units in which retrofits are implemented solely because of the contemplated or completed retrofits.

B. Retrofits for Other Complexes of Defendant Thomas Development Co. Not Named Above and Not Inspected By the United States

30. With respect to other apartment complexes designed and/or constructed by Defendant Thomas Development Co. not specifically named above, the United States and Defendant Thomas Development Co., with regard to the properties set forth in Appendix R, agree as follows:

a) Within sixty (60) days of the date of entry of this Consent Order, Defendant Thomas Development Co. shall enter into a contract with a qualified, neutral inspector approved by the United States to conduct on-site surveys at each property set forth in Appendix R to determine each property's compliance with the Fair Housing Act, the Americans with Disabilities Act, and, where applicable, Section 504 of the Rehabilitation Act. Each inspector shall be specifically instructed to note any and all instances in which each property does not meet the accessibility and adaptability standards of the Fair Housing Act, the ADA, ADAAG, and, where applicable, Section 504 and the UFAS standards.

b) Within one hundred fifty (150) days of the date of entry of this Consent Order, the inspector shall prepare reports specifying the scope, methodology and results of the surveys, as well as a description of any modifications deemed necessary for compliance with the accessibility provisions of the Fair Housing Act, the Americans with Disabilities Act, and, where applicable, Section 504 of the Rehabilitation Act.

c) Each report shall be furnished to the United States by Defendant Thomas Development Co. within ten (10) days of receipt of the report by Defendant Thomas Development Co.

d) Within thirty (30) days of submitting a report to the United States,

Defendant Thomas Development Co. shall submit to the United States a marked-up version that indicates, for each item noted in the inspector's report, what specific modification(s) will be made. In determining what modifications may be necessary and appropriate as well as the type of modifications, Defendant Thomas Development Co. shall be guided by Appendices A - Q, which set forth the modifications previously negotiated and agreed upon by the parties regarding the properties identified in Paragraph 6 of this Consent Order.

e) Within sixty (60) days of receipt of a marked-up version, the United States shall notify Defendant Thomas Development Co. in writing of any comments or objections to the proposals. If there are no written comments or objections from the United States within that time-frame, Defendant Thomas Development Co. shall proceed with the modifications it specified. If the United States provides comments or objections, the parties shall endeavor to expeditiously and in good faith resolve them, after which Defendant Thomas Development Co. shall promptly submit a revised marked-up version, to which the United States shall have ten (10) days after receipt within which to provide written objections; if there are no objections, then Defendant Thomas Development Co. shall proceed with the modifications it specified in the revised version. If after expeditious and good faith negotiations the parties are unable to resolve any differences concerning appropriate modifications, either party may raise the matter(s) with the Court for resolution.

f) Defendant Thomas Development Co. shall make the modifications at each property within one year of the date on which the modifications are agreed upon in accordance with the procedures set forth in the immediately preceding paragraph.

g) Upon completion of the agreed upon modifications for each property, the inspector shall re-inspect the property and certify, in writing, that the agreed upon modifications

have been made properly. The post-modification inspection shall take place within thirty (30) days of the completion of retrofits to units and common use areas on any given property, or as soon thereafter as practicable. Defendant Thomas Development Co. shall give the United States at least three weeks' notice of the inspection of each property, and shall give the United States an opportunity to have its representative present for the inspection of each property. Upon reasonable notice to Defendant Thomas Development Co., representatives of the United States shall be permitted to inspect the modifications to ensure compliance; provided, however, that the United States shall endeavor to minimize any inconvenience caused by such inspections. Copies of the inspector's certifications shall be provided to the United States within ten (10) days of receipt by Defendant Thomas Development Co. Should the inspector withhold certification on any items, Defendant Thomas Development Co. shall notify the United States in writing and promptly make the appropriate modification(s); afterwards, the inspector shall re-inspect the property to certify that the items have been addressed, and such certification shall be provided to the United States within ten (10) days of receipt by Defendant Thomas Development Co.

h) Defendant Thomas Development Co. shall pay all costs associated with the surveys, inspections, and modifications/retrofits to each property identified in Appendix R, without prejudice to its ability to seek contribution or indemnification from other sources for such modifications/retrofits.

i) Defendant Thomas Development Co. does not anticipate that any of the modifications planned for the individual dwelling units at any of the properties identified in Appendix R will cause any undue inconvenience or hardship to residents. However, in the event a resident of a unit scheduled to undergo such modification does incur undue inconvenience or hardship (defined as a required dislocation from the unit for more than 24 hours consecutively),

Defendant Thomas Development Co. 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 retrofit work on the resident's unit, so that the resident can use the money to obtain alternative living accommodations while dislocated.

j) For those properties identified in Appendix R in which Defendant Thomas Development Co. has any ownership or management interest at the time modifications are made, they may not charge any additional rent, deposit or other fee for the units in which retrofits are implemented solely because of the contemplated or completed retrofits.

k) The sale or transfer of ownership, in whole or in part, of any of the complexes shall not affect Defendant Thomas Development Co.'s continuing obligations to retrofit the properties as specified in this Consent Order. Should Defendant Thomas Development Co. decide to sell or transfer ownership, in whole or in part, of any of the complexes or any portion thereof prior to the completion of the retrofits specified in Appendix R, 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, including specifically the Defendant's 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 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.

IV. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

31. 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 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:

- (1) the name and address of the project;
- (2) a description of the project and the individual units;
- (3) the name, address, and telephone number of the site engineer involved with the project;
- (4) a statement from the site engineer 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 engineering documents for the project and that to the best of his/her knowledge, the design specifications therein comply with the requirements of the Fair Housing Act, the ADA, ADAAG, and, where applicable, Section 504 and the UFAS standards.
- (5) the name, address and telephone number of the architect involved with the project; and
- (6) a statement from the architect 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 building and housing design and certifying that he/she has reviewed the architectural plans for the project and that to the best of his/her knowledge, the design specifications therein comply with the requirements of the Fair Housing Act, the ADA, ADAAG, and, where applicable, Section 504 and the UFAS standards.

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 site engineer or architect, as applicable, that all specifications in the revised engineering documents or architectural plans, as pertinent, to the best of his/her knowledge, comply with the requirements of the Fair Housing Act, the ADA, ADAAG, and, where applicable, Section 504 and the UFAS standards.

V. COMPENSATION OF AGGRIEVED PERSONS

32. Defendants shall jointly pay² the total sum of FIFTEEN THOUSAND DOLLARS (\$15,000) in monetary damages to the Intermountain Fair Housing Council for its damages as a result of Defendants' alleged failure to design and construct the complexes in compliance with the Fair Housing Act, 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 Intermountain Fair Housing Council, care of the United States, provided that no amount shall be paid pursuant to this paragraph before the Intermountain Fair Housing Council has executed a written release, substantially similar to Appendix T, of all claims, legal or equitable, that it might have against Defendants relating to the claims asserted in this lawsuit.

33. Within thirty (30) days after the date of this Order, Defendants shall deposit in an interest-bearing escrow account the total sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for the purpose of compensating any aggrieved persons who may have suffered as a result of Defendants' discriminatory housing practices. This money shall be referred to as "the Settlement Fund."

²If any of the payments required under this Order are made after the prescribed time, for whatever reason, such payments shall include interest from the prescribed time of payment, 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.

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

35. Within 15 days of the entry of this Order, Defendants shall publish the Notice to Potential Victims of Housing Discrimination ("Notice") at Appendix S, informing readers of the availability of compensatory funds. The Notice shall be no smaller than three columns by six inches and shall be published on three occasions in the *Idaho Statesman*. The publication dates shall be separated from one another by at least 21 days, and at least two of the publication dates shall be a Sunday. Within 10 days of each publication date, Defendant shall provide the newspaper containing the Notice to counsel for the United States. Within 15 days of the entry of this Order, Defendants shall send a copy of the Notice to each of the following organizations: (1) Intermountain Fair Housing Council, 310 North 5th Street, Boise, ID, 83701; (2) Living Independence Network Corp. (LINC), 2500 Kootenai Street, Boise, ID, 83705; (3) Co-Ad, Inc., 4477 Emerald Street, Suite B-100, Boise, ID, 83706; (4) Disability Action Center, 124 East Third Street, Moscow, ID, 83843; and (5) Living Independently for Everyone (LIFE), P.O. Box 4185, 640 Pershing Avenue, Suite 7, Pocatello, ID, 83201.

36. Within 30 days of the entry of this Order, Defendants shall send by first-class mail, postage prepaid, a copy of the Notice to each tenant who currently resides or who resided at any time on or after January 1, 2001, at any of the complexes listed in Paragraph 6, above. Within 45 days of entry of this Order, Defendants shall provide to counsel for the United States proof that the Notice has been sent. Nothing in this section shall preclude the United States from making its own efforts to locate and provide notice to potential aggrieved persons.

37. Allegedly aggrieved persons shall have 120 days from the date of the entry of this Order to contact the United States in response to the Notice. 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 persons. 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. Defendants 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.

38. 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. When the Court issues an order approving or changing the United States's 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 T.

39. In the event that less than the total amount in the fund including accrued interest is distributed to aggrieved persons, Defendants shall make a proposal to the Court regarding distribution of the remainder of the fund for either (a) the purpose of making accessibility enhancements to one or more of the apartment complexes at issue in this case, or (b) the purpose of retrofitting other housing in Idaho to increase its accessibility. "Accessibility enhancements" shall be understood to mean additions or renovations to any property at issue in this case, beyond those required by the terms of this Consent Order and the Appendices hereto, that will increase

the accessibility of the common areas or particular dwelling units. When the Court issues an order concerning the proposed distribution of funds, Defendants shall undertake and complete the additions or renovations as soon as reasonably possible thereafter.

40. 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.

VI. PAYMENT TO THE UNITED STATES TO VINDICATE THE PUBLIC INTEREST

41. Defendants shall pay the total sum of TEN THOUSAND DOLLARS (\$10,000) to the United States to vindicate the public interest pursuant to 42 U.S.C. § 3614(d)(1)(C). 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 the United States.

VII. EDUCATIONAL PROGRAM

42. Within sixty (60) days of the entry of this Order, Defendants shall provide a summary of this Order, approved by the United States and set forth in Appendix U (hereinafter “the Summary”), to all their agents and employees involved in 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 Summary and had an opportunity to have questions about the Summary answered. This statement shall be substantially in the form of Appendix V.

43. During the term of this Order, within sixty (60) days after the date he or she commences an agency or employment with Defendants, each new agent or employee involved in the design, construction, rental, or sale of covered multifamily dwellings shall be given a copy of the Summary and be required to sign the statement acknowledging that he or she has received and read the Summary, and had an opportunity to have questions about the Summary answered.

This statement shall be substantially in the form of Appendix V.

44. 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 HUD Guidelines and the HUD Design Manual. Defendants and 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 shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

45. Within ninety (90) days of the date of entry of this Consent Order, Defendants and all employees and agents whose duties, in whole or in part, involved supervisory authority over the development, design and/or construction of the multifamily dwellings at issue in this case 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 W.

VIII. NOTICE OF DEFENDANTS' NON-DISCRIMINATION POLICY

46. Within ten (10) days of the date of entry of this Consent Order, Defendants shall post and prominently display in the sales or rental offices of any covered multifamily dwellings owned or operated by him/her/it/them a sign no smaller than 10" by 14" indicating that all

dwellings are available for sale or rental on a nondiscriminatory basis. The Defendants shall also post such a sign in the sales or rental office of any other covered multifamily housing developed or acquired by him/her/it/them during the term of this Consent Order within ten (10) days of the date on which that defendant commences construction or purchases the property. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

IX. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

47. 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 VII of this Consent Order. Thereafter during the term of this Order, Defendants shall, on the anniversary of the entry of this Order, submit to the United States a report containing the signed statements of new employees and agents that, in accordance with Section VII of this Consent Order, they have received and read the Summary and had an opportunity to have questions about the Summary answered.

48. 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, or regarding retaliation, in housing. Upon reasonable notice, Defendants shall also provide the United States all non-privileged information discoverable under the Federal Rules of Civil Procedure that it may request concerning any such complaint.

49. For the term of this Consent Order, Defendants are required to preserve all records related to this Consent Order, for all properties designed, constructed, owned, operated, or

acquired by them. Upon reasonable notice to Defendants, representatives of the United States shall be permitted to inspect and copy at the reasonable cost of the United States 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.

X. DURATION OF ORDER AND TERMINATION OF LEGAL ACTION

50. This Consent Order shall remain in effect for three (3) years after the date of its entry. By consenting to entry of this Order, the United States and Defendants agree that in the event that any Defendant is found in the future, by a court of competent jurisdiction, in violation of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" by such defendant pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

51. The complaint in this action shall be dismissed with prejudice. Upon Defendant Mannschreck's full payment of his apportioned amounts set forth in Sections V and VI of this Consent Order and upon receipt by the United States of the signed certification of Defendant Mannschreck's personal completion of the education program set forth in Section VII of this Consent Order, Defendant Mannschreck shall be dismissed personally from this lawsuit with prejudice. The Court, however, shall retain jurisdiction for the term of this Consent Order to enforce the terms of the Order. The United States may move the Court to extend the duration of the Order in the interests of justice.

52. The United States and Defendants shall endeavor through direct negotiation and, failing resolution through direct negotiation, then through the formal mediation process, 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 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 attorneys' fees which may have been occasioned by the violation or failure to perform.

53. This Consent Order does not constitute an adverse judgment enforcing the terms of a settlement agreement or consent decree.

XI. TIME FOR PERFORMANCE

54. 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.

XII. COSTS OF LITIGATION

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



DATED: March 11, 2005

A handwritten signature in black ink, appearing to read "Edward J. Lodge".

**Honorable Edward J. Lodge
U. S. District Judge**

Agreed to by the parties as indicated by the signatures appearing on the following pages:

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