

the four covered multifamily dwellings at Building 14 at the “Windham Bridge Condominiums” or “Windham Bridge” in Hartville, Ohio (hereinafter “Building 14”), with the features of accessible and adaptable design and construction required by 42 U.S.C. § 3604(f)(3)(C) (the “Allegations”).

3. The Hershberger Defendants have denied the Allegations.
4. The parties wish to fully resolve all of the United States’ claims against the Hershberger Defendants.
5. This Consent Order only resolves the United States’ Claims against the Hershberger Defendants. It does not resolve or otherwise affect the United States’ claims against any other Defendant in this action.
6. The parties to this Consent Order agree that the Court has jurisdiction over this action, that the Hershberger Defendants participated in the design and construction of the dwellings at Building 14, and that the dwellings at Building 14 are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(3)(c) and 3604(f)(7).

Accordingly, it is hereby ADJUDGED, ORDERED and DECREED, as follows:

I. GENERAL INJUNCTION

7. The Hershberger 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).

II. RETROFIT FUND

8. Within ten (10) ten days from the date of the entry of this consent order, the Hershberger Defendants shall deposit with an appropriate entity selected by the Hershberger Defendants and approved by the United States,¹ FIVE THOUSAND DOLLARS (\$5,000) into an interest-bearing escrow account (“the Retrofit Fund”). The Retrofit Fund shall be made available for improving accessibility at Building 14 and/or in other housing within Stark County, Ohio, as set forth below.
9. Within sixty (60) days from the date of entry of this consent order, the Windham Bridge Condominium Association (“the Association”), and any owner or resident of Building 14, may submit to the United States a proposal for using proceeds from the Retrofit Fund for the purposes of improving accessibility of the dwelling units in Building 14. Such proposed improvements may include modifications to the premises within these dwellings, modifications to the public and common use portions of the dwellings, or both. The United States shall notify the owners and residents of Building 14 that they may make such requests by: (a) sending a copy of this Consent Order to the mailing address for each dwelling in Building 14; or (b) obtaining the commitment of the Association to provide such notice.

¹ The Hershberger Defendants have selected, and the United States has approved, Cornerstone Real Estate Title Co., Ltd., 825 South Main Street, North Canton, Ohio 44720, to be the entity to hold the Retrofit Fund.

10. Within one hundred twenty (120) days from the date of entry of this Consent Order, the Hershberger Defendants, the United States and the Association shall submit a proposed Order to the Court providing for the distribution of the proceeds of the Retrofit Fund for the purposes of improving accessibility at Building 14. If the United States and the Hershberger Defendants are not able to obtain the concurrence of the Association in that proposal, the Association may submit its own proposal.
11. In the event that less than the total amount in the Retrofit Fund, including accrued interest, is distributed to complete retrofits at Building 14, the Court shall order the remainder of the Retrofit Fund to be distributed to a qualified organization for the purpose of improving the accessibility of housing in Stark County, Ohio. The qualified organization shall be selected by the Hershberger Defendants, subject to the approval of the United States. The Hershberger Defendants and the United States shall require the qualified organization to submit a proposal to the Hershberger Defendants and the United States detailing how the funds will be used consistent with the above-stated purpose. The United States and the Hershberger Defendants may require modification of the proposal before approving the organization. The parties shall thereafter seek approval from the Court to distribute the remaining funds to the qualified organization. The qualified organization receiving the funds shall be required to submit to the United States and the Hershberger Defendants a detailed report on how the funds are utilized within one year of receipt of funds, and every year thereafter until the funds are exhausted.
12. In the event that neither the Association nor any resident or owner of a dwelling in Building 14 submits a proposal for the use of the Retrofit Fund, then the entire Retrofit Fund shall be distributed pursuant to the process set forth above.

III. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

13. All future covered multifamily housing designed or constructed by the Hershberger Defendants after the date of this Consent Order shall comply with the accessibility requirements of the Fair Housing Act.
14. For the duration of this Consent Order, the Hershberger Defendants shall maintain, and provide to the United States upon request, the following information and statements regarding any covered multifamily dwellings that are intended to be developed, built, and/or designed 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, or as a member or shareholder having a ten-percent (10%) or larger ownership share:
 - 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 any architect or civil engineer(s) involved with the project;
 - d. a statement from the site engineer or architect, as applicable, that all specifications in any engineering documents or architectural plans prepared by such person comply with the requirements of the Fair Housing Act and the Fair Housing Accessibility Guidelines. Such statement shall be substantially in the form of Appendix A.

IV. EDUCATIONAL PROGRAM

15. Within thirty (30) days of the entry of this Consent Order, the Hershberger Defendants shall provide a copy of this Consent Order to all their agents (if any) and employees (if any) involved in the design, construction, management, or sale of covered multifamily dwellings and shall secure a signed statement from any such agent or employee (if and as applicable)

acknowledging that he or she has received and read the Order, and had an opportunity to have questions about the Order answered. This statement shall be substantially in the form of Appendix B.

16. During the term of this Consent Order, within thirty (30) days after the date he or she commences an agency or employment with one of the Hershberger Defendants, each new agent or employee involved in the design, construction, management, or sale of covered multifamily dwellings shall be given a copy of this Partial Consent Order and be required to sign the statement substantially in the form of Appendix B.
17. The Hershberger 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). The Hershberger Defendants and any employees and agents whose duties, in whole or in part, involve the 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.
18. Within ninety (90) days of the date of entry of this Consent Order, the Hershberger Defendants and 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 at issue in this case shall undergo training on the design and construction requirements of the Fair Housing Act. A qualified third party, unconnected to Defendants or their employees, agents or counsel,

shall conduct the training, and any expenses associated with this training shall be borne by the Hershberger Defendants. The Hershberger 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 Hershberger Defendants and covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix B.

19. If the Hershberger Defendants are not currently in the process of designing and constructing any covered multifamily dwellings, and have no intention to do so, the provisions of paragraphs 14-18 shall not apply until such time as they decide to participate in the design or construction of any such dwellings.

V. PUBLIC NOTICE OF DEFENDANTS' NON-DISCRIMINATION POLICY

20. Within ten (10) days of the date of entry of this Consent Order, and for the duration of this Consent Order, the Hershberger Defendants shall post and prominently display in any sales or rental offices of all covered multifamily dwellings owned or operated by them (if any), a sign no smaller than 10 by 14 inches indicating that all dwellings are available for sale or rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.
21. For the duration of this Consent Order, in all future advertising in newspapers, and on pamphlets, brochures and other promotional literature regarding an covered multifamily housing any Hershberger Defendants may develop, design, or construct, such Hershberger Defendant(s) shall place, in a conspicuous location, a statement that the dwelling units include the features for persons with disabilities required by the federal Fair Housing Act.

VI. CIVIL PENALTY

22. Within thirty (30) days of the entry of this Consent Order, the Hershberger Defendants shall pay to the United States a civil penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C). This payment shall be in the form of an electronic funds transfer pursuant to written instructions by the United States.

VII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

23. Within one hundred twenty (120) days after the date of entry of this Consent Order, the Hershberger Defendants shall submit to the United States an initial report containing any signed statements required by paragraphs 14-16 or 18 (if any and if and as applicable).
24. Thereafter during the term of this Consent Order, the Hershberger Defendants shall, on the anniversary of the entry of this Consent Order, submit to the United States a report containing any additional signed statements required by paragraphs 14-16 or 18 (if any and if and as applicable). Except that the last of any such requisite report shall be submitted no later than one month before the expiration of the Order.
25. The Hershberger Defendants shall advise the United States in writing within fifteen (15) days of receipt of any written or oral administrative or legal fair housing complaint against any property owned, managed, or against any employees or agents of the Hershberger Defendants working at or for any such property, regarding discrimination on the basis of disability, or regarding retaliation, in housing. Upon reasonable notice, the Hershberger Defendants shall also provide the United States all information it may request concerning any such complaint. The Hershberger Defendants shall also notify the United States in writing within fifteen (15) days of the resolution of any such complaint.

26. For the term of this Consent Order, the Hershberger Defendants shall preserve all records related to compliance with this Consent Order for all covered multifamily dwellings designed, constructed, or owned by them (if any and if and as applicable). Upon reasonable notice to the Hershberger Defendants, representatives of the United States shall be permitted to inspect and copy any records of the Hershberger Defendants or inspect any developments or residential units under the Hershberger 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 the Hershberger Defendants from such inspections.

XIII. DURATION OF ORDER AND TERMINATION OF LEGAL ACTION

27. 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 the Hershberger Defendants agree that in the event that the Hershberger Defendants commit any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).
28. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of the Consent Order. The United States may move the Court to extend the duration of the Consent Order in the interests of justice.
29. The United States and the Hershberger Defendants shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event the Hershberger Defendants fail to perform any act required by this Order in a timely manner, or, in the event the Hershberger Defendants fail to comply with any provision herein, 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, and an award of any damages, costs, and attorneys' fees which may have been occasioned by Hershberger Defendants' non-compliance or failure to perform.

XIV. TIME FOR PERFORMANCE

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

XV. COSTS OF LITIGATION

31. The United States and the Hershberger Defendants shall bear their own costs and attorneys' fees associated with this litigation.

XVI. FINAL JUDGMENT

32. Entry of this Consent Order constitutes a Final Judgment under Rule 54 of the Federal Rules of Civil Procedure with respect to the United States' claims against the Hershberger Defendants.

SO ORDERED this 12th day of November, 2014:

/s/ John R. Adams
THE HONORABLE JOHN R. ADAMS
United States District Judge

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

For the United States:

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Northern District of Ohio

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APPENDIX A

ARCHITECT AND CIVIL ENGINEER'S CERTIFICATE

I hereby certify that I have read and am familiar with the accessibility requirements and provisions of the Fair Housing Act, 42 U.S.C. § 3604 (f) (1)-(3), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (the "Act"), the Fair Housing Accessibility Guidelines, 24 C.F.R. Chapter I, Subchapter A, Appendix II and III, ANSI A117.1-1986, and Sections 302 and 303 of the Americans with Disabilities Act, 42 U.S.C. §§ 12182 and 12183 ("ADA"), implemented by 28 C.F.R. pt. 36, including the ADA Standards, 28 C.F.R. pt. 36, Appendix A, and that the plans that I am submitting are, to the best of my knowledge and belief, consistent with these requirements and provisions.

APPENDIX B
Employee Statement

I _____, am an employee of [Name of Defendant],
_____ at [Where duties are performed] _____ and my duties
include [supervisory employee, sales or rental agent, and site manager involved in the design,
construction, sale or rental of covered dwellings] _____. I
have received and read a copy of the Consent Order in *United States v. Noble Homes, Inc., et al.*,
and have been given instruction on (1) the terms of this Consent Order, (2) the requirements of the
Fair Housing Act, particularly related to the Act's design and construction requirements; and (3) my
responsibilities and obligations under the Consent Order, the Fair Housing Act.

Date

[Employee Signature]

APPENDIX C.

CERTIFICATION OF FAIR HOUSING TRAINING

On _____, I attended training on the federal Fair Housing Act, including its requirements concerning physical accessibility for persons with disabilities. I have had all of my questions concerning the Fair Housing Act answered to my satisfaction.

(Signature)

(Print Name)

Date