

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.:
	)	
LANIER POINTE, LLC;	)	
LANIER POINTE PHASE II, LLC;	)	
AZALEA GARDENS, LLC;	)	
COTTAGES AT AZALEA, LLC;	)	
MANOR RIDGE L.P.; MILLERS RIDGE	)	
APARTMENTS, L.P.; PENDERGRAPH COMPANIES,	)	
LLC; PENDERGRAPH DEVELOPMENT, LLC;	)	
PENDERGRANT, LLC; and CALIBER BUILDERS, LLC;	)	
	)	
Defendants.	)	
	)	

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**CONSENT ORDER**

**I. INTRODUCTION**

1. This Consent Order ("Order") resolves the allegations in the United States' Complaint, filed on September 30, 2021, to enforce provisions of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601-3619, and the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12213. Specifically, the United States alleges that Defendants Lanier Pointe, LLC; Lanier Pointe Phase II, LLC; Azalea Gardens, LLC; Cottages at Azalea, LLC; Manor Ridge Limited Partnership; Millers Ridge Apartments, L.P.; The Pendergraph Companies, LLC; Pendergraph Development, LLC; Pendergrant, LLC; and Caliber Builders, LLC; ("Defendants"), have 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 one or more of the following covered multifamily dwellings (the "Surveyed Properties") in compliance with the FHA and the ADA:

1. Manor Ridge Apartments, in Wingate, NC
2. Lanier Pointe I, in Shelby, NC
3. Lanier Pointe II, in Shelby, NC
4. Millers Ridge Apartments, in Lancaster, SC
5. Cottages at Azalea, in Lancaster, SC
6. Azalea Gardens, in Lancaster, SC

For purposes of this Order, the United States and Defendants agree that the Surveyed Properties,

listed here and in Appendix A, are subject to the accessible design and construction requirements of the FHA, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C), and the ADA, 42 U.S.C. § 12183(a)(1).

2. This Order further resolves any and all allegations by the United States that Defendants discriminated against persons with disabilities by failing to design and construct the other covered multifamily apartment complexes (collectively the "Unsurveyed Properties") listed in Appendix B in compliance with the FHA and the ADA.

3. Defendants deny the allegations asserted in the Complaint, including but not limited to the allegation in the Complaint that any of the Surveyed and Unsurveyed Properties (collectively, "Subject Properties") are not in compliance with the FHA, ADA, or any other applicable local, state, or federal code, rule, or regulation pertaining to accessibility (the "Accessibility Requirements"), and Defendants further deny any assertion that they intentionally or otherwise failed to comply with such Accessibility Requirements in their ownership, design, development, and/or construction of such Subject Properties.

4. This Consent Order is not an adverse fair housing settlement, an adverse civil rights settlement, or an adverse federal or state government proceeding and settlement. The resolution of the allegations in the United States' complaint eliminates the existence of actual or potential violations of the FHA or ADA at the Subject Properties. This Consent Order makes no finding of liability or discrimination on the part of defendants, and there has been no adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment by a federal court that would result in the defendants losing or being eligible for low-income housing tax credits.

5. Defendants represent and warrant that they have the legal authority and financial capacity to perform and complete all the retrofits that are required at the Subject Properties in accordance with the terms and timetables in this Order.

**A. Relevant Requirements of the Fair Housing Act**

6. The FHA provides that, for residential buildings with an elevator consisting of four or more dwelling units, all 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)(A).

7. 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).

8. 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 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; (iii) all premises within such dwellings contain the following features of adaptive design: (I) an accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C). These features are referred to herein as the "Accessible Design Requirements."

9. For the purposes of this Order, the parties agree that the Subject Properties were designed and constructed for first occupancy after March 13, 1991, and therefore all the units in buildings containing four or more units with elevators and the ground-floor units in non-elevator buildings containing four or more units at the Subject Properties are "covered multifamily dwellings" within the meaning of the FHA, 42 U.S.C. § 3604 (f)(7)(A) and (B). As such, those units and the public and common use areas at the Subject Properties must comply with the Accessible Design Requirements.

#### **B. Relevant Requirements of the Americans with Disabilities Act**

10. The ADA, and the ADA Standards for Accessible Design, ADA Accessibility Guidelines for Buildings and Facilities, 28 C.F.R. pt. 36, app. A ("ADA Standards"), that have been issued by the U.S. Department of Justice to implement the design and construction requirements of Title III of the ADA, also require that all "public accommodations" designed and constructed for first occupancy after January 26, 1993, and the goods, services, facilities, privileges, advantages, or accommodations of those public accommodations, be readily accessible to and usable by persons with disabilities in accordance with certain accessibility standards promulgated under that Act. 42 U.S.C. §§ 12182(a) and 12183(a)(1). A rental or sales office for an apartment, condominium, or patio home complex is a "public accommodation" under the ADA. 42 U.S.C. § 12181(7)(E).

11. For the purposes of this Order, the parties agree that the rental offices for the Subject Properties were designed and constructed for first occupancy after January 26, 1993, and therefore the rental offices and the facilities and privileges provided at those offices such as public parking serving the rental offices are required to be designed and constructed in accordance with the standards promulgated under the ADA.

#### **C. Surveyed Properties**

**The following are the Surveyed Properties:**

##### **a. Azalea Gardens**

12. Azalea Gardens Apartments is located at 200 Monroe Highway, Lancaster, S.C. Azalea Gardens is a housing development for elderly persons that was designed and constructed



for first occupancy in 2006. Azalea Gardens is owned by Azalea Gardens, LLC, with Pendergraph Properties and Development, LLC as the managing member. The property was built by Caliber Builders, LLC using Low-Income Housing Tax Credits ("LIHTCs"). The Azalea Gardens property is a single, two-story building with an elevator. There are thirty-six total units, all of which are covered dwelling units required to comply with the FHA. Azalea Gardens has common-area community spaces, including a mail center, parking, trash facilities, a grill, picnic tables, and a covered pavilion.

**b. Cottages at Azalea**

13. Cottages at Azalea Apartments is located at 100 Pond Ridge Lane, Lancaster, S.C. Cottages at Azalea was designed and constructed for first occupancy in 2014. The property is owned by Cottages at Azalea, LLC, with FWP Cottages at Azalea, LLC as the managing member. Cottages at Azalea has twelve one-story buildings with forty-eight total units, all of which are covered dwellings required to comply with the FHA. The property was built by Caliber Builders, LLC with LIHTC funding. Cottages at Azalea has a leasing office and management office, in addition to the parking and restrooms serving the leasing space, all of which are open to the public. In addition, the property has common areas that include a tenant lounge area, an exercise room, a computer room, a mail center, parking, grills, benches, covered pavilions, trash facilities, and a playground.

**c. Millers Ridge**

14. Millers Ridge Apartments is located at 1000 Millers Ridge Lane, Lancaster, S.C. The property was designed and constructed for first occupancy in 2000. Until July 2019, Miller's Ridge Apartments, L.P. was the owner, with Pendergrant, LLC as the managing member. Since July 2019, the property has been owned by Millers Ridge Harmony Housing, LLC. Millers Ridge has nine buildings with seventy-two total units, thirty-six of which are covered dwelling units required to comply with the FHA. The property was built by Grant, Inc. with LIHTC funding and funds from the Affordable Housing Program. The leasing office, associated amenities, and parking spaces are all available to the public. Tenant common areas include community spaces within the leasing office, the mail center, parking, trash facilities, and a playground.

**d. Manor Ridge**

15. Manor Ridge Apartments is located at 209 S. Main Street, Wingate, N.C. It was designed and constructed for first occupancy in 1998. Until July 2019, Manor Ridge Limited Partnership was the owner, with Pendergrant, LLC. Since July 2019, the property has been owned by Manor Ridge Harmony Housing. The property has eight two-story buildings with thirty-two total units, sixteen of which are covered by the FHA. The property was built by Grant, Inc. with LIHTC funding. The leasing office and associated parking spaces are open to the public. Tenant common areas include the mail center, parking, trash facilities, and a playground.

**e. Lanier Pointe I**



16. Lanier Pointe I is located at 1030 Sue Lane, Shelby, N.C. It was designed and constructed for first occupancy in 2010. The property is owned by Lanier Pointe, LLC, with FWP Lanier Pointe, LLC as the managing member. Lanier Pointe I has three buildings with forty-eight total units, twenty-four of which are on the ground floor and are therefore covered dwelling units required to comply with the FHA. The property was built by Caliber Builders, LLC, with LIHTC funding. The property has a leasing office, including parking spaces and restrooms, all of which are open to the public. The property also provides common areas to tenants, including community spaces in the leasing office, a mail center, on-site parking, trash facilities, benches throughout the property, picnic tables, pavilions, grills, and a playground.

**f. Lanier Pointe II**

17. Lanier Pointe II is located at 1020 Sue Lane, Shelby, N.C. It was designed and constructed for first occupancy in 2011. The property is owned by Lanier Pointe Phase II, LLC, with FWP Lanier Pointe Phase II, LLC as the managing member. Lanier Pointe II has four buildings with forty total units, twenty of which are ground-floor units and covered by the FHA. The property was built by Caliber Builders, LLC with LIHTC funding. The property has a leasing office, leasing office parking, and restrooms, all of which are open to the public. Tenant common areas include the community spaces provided in the leasing office, the mail center, on-site parking, trash facilities, benches, picnic tables, pavilions, grills, and a playground.

**D. Unsurveyed Properties**

18. The properties listed in Appendix B are the Unsurveyed Properties.

**E. Consent of the Parties to this Order**

19. Defendants agree to address the elements that the United States alleges are not in compliance with the Accessible Design Requirements of the FHA and, where applicable, the ADA, in accordance with the terms set forth in this Order and as required by the separately agreed upon remediation protocols described herein.

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

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

**It is hereby ORDERED, ADJUDGED, 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 Americans with Disabilities Act, 42 U.S.C. §§ 12182(a) and 12183(a)(1).

23. Defendants and each of their officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them are enjoined from interfering or preventing the retrofitting ordered herein or the implementation or completion of this Order. Defendants agree to allow access to the public and common use areas of the Subject Properties, and, to the extent possible, access to unit interiors at the Subject Properties, for the purpose of planning, evaluating, and performing any action required under this Order to perform retrofits to the public and common use areas and the unit interiors as set forth in the separately agreed upon Remediation Protocol, and for the purpose of interviewing or meeting with residents or tenants to aid in the implementation or completion of this Order.

### **III. RETROFITS AT SURVEYED PROPERTIES**

24. The United States, as set forth herein and in its Complaint, alleges that the Surveyed Properties do not meet the accessibility requirements of the FHA, the Fair Housing Accessibility Guidelines ("FHA Guidelines") (56 Fed. Reg. 9472 et seq. (1991)), the ADA, and the ADA Standards. To address the United States' allegations, Defendants shall complete the actions and retrofits described in this section and in Appendices C-H, in accordance with the Remediation Protocol separately agreed to by the United States and Defendants and described in Section IX, infra.

25. If any architectural or engineering drawings are prepared as part of the retrofitting of any Surveyed Property, Defendants shall provide those drawings to the United States for comment and approval within fourteen (14) days of their preparation. The United States shall provide comments within thirty (30) days. Defendants shall incorporate those comments into any relevant architectural or engineering plans and resubmit those to the United States for approval. This process shall continue until the United States has no further comments on any retrofit architectural or engineering plans. If the United States fails to provide comment within thirty (30) days, the drawings shall be deemed acceptable to the United States.

#### **A. Retrofits to Accessible Routes and Public and Common Use Areas at the Surveyed Properties**

26. As soon as reasonably possible but by no later than three (3) years from the entry of this order, Defendants will complete the retrofits at the Surveyed Properties to make the Accessible Routes and public and common use areas identified in Appendices C-H compliant with the Remediation Protocol separately agreed to by the United States and Defendants and described in Section IX, infra.

#### **B. Retrofits to Covered Multifamily Dwelling Unit Interiors at the Surveyed Properties**

27. As soon as reasonably possible, but by no later than three (3) years from the entry of this Order, Defendants will complete all retrofits at the Surveyed Properties as described in



Appendices C-H and in the Remediation Protocol separately agreed to by the United States and Defendants, and described in Section IX, infra, to the interiors of the covered multifamily dwellings at the Surveyed Properties. Defendants will retrofit the interior of a covered multifamily dwelling no later than the first time that unit becomes vacant following the entry of this Order and before that unit is occupied by a new tenant or resident. Regardless of whether or not a vacancy arises for such retrofitting, however, Defendants will complete retrofitting within 36 months from entry of this Order.

28. Within forty-five (45) days from the date of the entry of this Order, Defendants will provide a notice that is substantially equivalent to Appendix I to residents at the Surveyed Properties. The notice will be posted on the unit doors of the covered units in the Subject Properties and will inform residents that (1) the United States alleges that the unit and public and common use areas do not meet the requirements of the FHA and the FHA Guidelines, and that to settle this lawsuit, Defendants denied the allegations in the Complaint but have agreed to perform certain retrofits to the dwelling units; (2) the unit must be retrofitted within thirty six (36) months of the date of the entry of the Order; (3) the resident can schedule the retrofits; (4) the retrofits will be performed at no cost to the resident; and (5) temporary relocation will be provided to the resident, if necessary, while retrofits are completed, or if temporary relocation is unavailable, a payment equivalent to the U.S. General Services Administration rate will be provided to the resident for temporary relocation expenses incurred by the tenant, as required by Section IV of this Order, infra.

29. Residents may request the retrofits in writing, and the requests will be granted by Defendants on a first-come, first-served basis. Defendants must complete the retrofits as promptly as practical, but no later than forty-five (45) days from the date on which the retrofits were requested by a resident on a first-come, first-served basis, with such deadline being subject to Paragraph 77, below, of this Order.

#### **IV. INCONVENIENCE AND OVERNIGHT STAYS FOR RETROFITTING UNIT INTERIORS AT SUBJECT PROPERTIES**

30. Defendants will endeavor to minimize inconvenience to residents in scheduling and performing retrofits required by this Order at the Subject Properties.

31. If a resident scheduled to undergo a retrofit will be dislocated from the unit for more than twenty-four (24) hours consecutively, Defendants will pay the resident the applicable government per diem rate for food and lodging for the local area (as available at [www.gsa.gov](http://www.gsa.gov) – click on “per diem rates” under travel) for each day of undue inconvenience or hardship for the resident(s). Such payment will 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 and food while dislocated.

#### **V. NOTICE OF RETROFITS TO PUBLIC AND COMMON USE AREAS AT SURVEYED PROPERTIES**

32. Within 120 days of the entry of this Order, Defendants will provide written notice



to all residents at the Surveyed Properties stating that the retrofits required by this Order will be performed to the public and common use areas of the Surveyed Properties, which include unit entrances and accessible routes. Such notice will conform to Appendix N. Defendants will certify to the United States in writing that the notices have been distributed and the manner in which they were distributed within ten (10) days after such distribution.

## VI. SURVEYING OF UNSURVEYED PROPERTIES

33. Defendants agree to take the actions described below with regard to surveying the Unsurveyed Properties. To the extent that a portion of the required survey was completed as part of the original investigation, those measurements may be reused and additional property surveys may be limited to site evaluation of any portions of routes, common areas, or units that were not surveyed or lack sufficient documentation of the survey results. Defendants agree to take the following actions:

a. Within sixty (60) days of the entry of the Order, Defendants shall contract with one or more qualified professionals, hereinafter the "Properties Surveyors," approved by the United States, to conduct an on-site survey in accordance with this Section, and specifically the next paragraph, at each of the Unsurveyed Properties to identify alleged violations, if any, of the Fair Housing Act, the ADA and the Uniform Federal Accessibility Standards ("UFAS"), where applicable.<sup>1</sup> The Properties Surveyors will have expertise in the Accessible Design Requirements of the FHA and the accessibility requirements of the Guidelines, the ADA, the ADA Standards, ANSI A117.1-1986, and UFAS.

b. All surveys are to be completed within one (1) year of the date of the entry of this Order.<sup>2</sup>

c. The surveys are to be conducted in accord with Remediation Protocol separately agreed to by Defendants and the United States, which shall be provided to the Properties Surveyor(s).

d. The surveys of the Unsurveyed Properties shall include all exterior and interior public and common areas, and units as required to determine the full extent of project compliance with FHA and relevant ADA requirements, and UFAS, where applicable, including:

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<sup>1</sup> The Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, requires that minimal guidelines for accessibility be met at federally owned and federally assisted properties. UFAS establishes the technical requirements of the Rehabilitation Act. Under UFAS, five percent of the total number of units at newly constructed and substantially altered federally assisted multifamily housing projects must comply with UFAS. The Unsurveyed Properties that received HOME funding shall be surveyed to identify violations of UFAS, in addition to the FHA and ADA.

<sup>2</sup> Defendants shall give the United States written notice of the survey at least twenty-one (21) days prior to each survey and shall give the United States an opportunity to have its representatives present for each survey.



- i. All portions of exterior and interior routes and circulation paths as required to determine existing conditions at all accessible route(s) and any potential alternate routes that may provide access to common areas or units;
- ii. All interior and exterior public and common use areas; and
- iii. At least two of each unit type.

34. The Properties Surveyor(s) will prepare a written Property Survey Report for each Unsurveyed Property which complies with the specifications below and the Remediation Protocol, separately agreed to by the United States and Defendants. Each Property Survey Report will comply with the following provisions:

- a. The Property Survey Report will specify the scope and methodology of the survey. The Property Survey Report will set forth each alleged violation observed, including measurements and photographs documenting the findings, during the on-site survey of the Accessible Design Requirements of the FHA, and of the accessibility requirements of the Guidelines, the ADA, the ADA Standards, ANSI A117.1-1986, and UFAS, where applicable.
- b. The Properties Surveyor(s) will take digital photographs of the measurements taken to determine compliance with the accessibility and adaptability standards of the FHA, the Guidelines, the ADA, the ADA Standards, ANSI A117.1-1986, and UFAS, where applicable. Digital photographs shall include at least one context photo and at least one detail photo of the reading for each measurement. All photographs and field notes shall be made a part of each Property Survey Report and made available as separate electronic files as appendices to each Property Survey Report.
- c. The Property Survey Report will include a proposed Accessible Route Diagram with all common areas labeled; a Parking Chart that identifies all available types of parking and parking space counts, and a Building Unit Chart that identifies the total number of all types of units in the Unsurveyed Property and the number of units that are covered by the FHA.
- d. The Property Survey Report will set forth whether the design or construction of any and all alleged violations observed during the on-site survey at the Unsurveyed Property is compliant with the Accessible Design Requirements of the FHA and the accessibility requirements of the Guidelines, the ADA, the ADA Standards, ANSI A117.1-1986 or another HUD-recognized safe harbor used in its entirety, based on the Properties Surveyors' review of the planning documents, and where applicable, UFAS.



- e. The Property Survey Report will set forth whether the design or construction of any and all alleged violations observed during the on-site survey at the Unsurveyed Property is compliant with the Accessible Design Requirements of the FHA and the accessibility requirements of the Guidelines, the ADA, the ADA Standards, ANSI A117.1-1986 or another HUD-recognized safe harbor used in its entirety, based on the Properties Surveyors' review of the planning documents, and where applicable, UFAS.

The Properties Surveyor(s) will send the Property Survey Report of each Unsurveyed Property to counsel for the United States and Defendants as soon as practicable following each survey, but in any event no later than sixty (60) days after the date of the survey.

## **VII. RETROFITS AT UNSURVEYED PROPERTIES**

35. For each Unsurveyed Property that has identified one or more alleged violations of the FHA, ADA and/or UFAS, above, the provisions in Sections IV, VII, VIII, IX, X and XI shall apply.

### **A. Access to Unsurveyed Properties**

36. Where an Unsurveyed Property is owned by a Defendant or an entity related to or affiliated with a Defendant, Defendants agree to allow access to the public and common use areas of the Unsurveyed Property and access to the Unsurveyed Property covered multifamily dwelling unit interiors for the purpose of performing any retrofitting required under this Order, and for the purpose of interviewing or meeting with residents at an Unsurveyed Property to aid in the implementation or completion of this Order.

37. Where an Unsurveyed Property is not owned by a Defendant or an entity related to or affiliated with a Defendant, Defendants shall use good faith efforts to obtain consent and access to the public and common use areas of the Unsurveyed Property and access to the Unsurveyed Property covered multifamily dwelling unit interiors for the purpose of performing any retrofitting required under this Order, and for the purpose of interviewing or meeting with residents at an Unsurveyed Property to aid in the implementation or completion of this Order.

### **B. Agreement on Retrofits at Unsurveyed Properties**

38. For each alleged violation set forth in a Property Survey Report, the United States and Defendants shall have ninety (90) days from receipt of the Survey Report to reach agreement on the retrofits to be made by Defendants. The retrofits shall be made in accordance with the Remediation Protocol and made at locations identified in the Property Survey Report.

39. If any architectural or engineering drawings are prepared as part of the retrofitting of any Unsurveyed Property, Defendants shall provide those drawings to the United States for comment and approval within fourteen (14) days of their preparation. The United States shall provide comments within thirty (30) days. Defendants shall incorporate those comments into any relevant architectural or engineering plans and resubmit those to the United States for



approval. This process shall continue until the United States has no further comments on any retrofit architectural or engineering plans.

**C. Retrofits to Public and Common Use Areas of Unsurveyed Properties**

40. As soon as reasonably possible, but by no later than three (3) years, whichever is sooner, from date of the agreement or order on retrofits to public and common use areas at each Unsurveyed Property, Defendants shall finish the agreed or ordered retrofits of the public and common use area of that Unsurveyed Property.

**D. Retrofits to Covered Multifamily Dwelling Unit Interiors at Unsurveyed Properties**

41. As soon as reasonably possible, but by no later than three (3) years, whichever is sooner, from the date of the agreement or order on retrofits to covered multifamily dwelling unit interiors of an Unsurveyed Property, Defendants shall finish all agreed or ordered retrofits to the covered multifamily dwelling unit interiors at the Unsurveyed Property. Defendants will retrofit the interior of a covered multifamily dwelling at the Unsurveyed Properties no later than the first time that unit becomes vacant following the beginning of this three-year-period and before that unit is occupied by a new tenant or resident. Regardless of whether a vacancy arises for such retrofitting, however, Defendants will complete such retrofitting no later than the three-year-period.

42. Within thirty (30) days from the date of the agreement or order on retrofits to covered multifamily dwelling unit interiors at the Unsurveyed Property, Defendants shall provide a notice that is substantially equivalent to Appendix I to the residents in covered multifamily dwelling units at the Unsurveyed Property. The notice shall inform Unsurveyed Property residents that (1) to settle this lawsuit, Defendants have agreed to perform certain retrofits to the ground-floor covered units; (2) the unit must be retrofitted within 24 months; (3) the resident can schedule the retrofits; (4) the retrofits will be performed at no cost to the resident; and (5) temporary relocation expenses, or if temporary relocation is unavailable, a payment equivalent to the U.S. General Services Administration rate will be provided to the resident for temporary relocation expenses incurred by the resident, as required by Section IV of this Order, supra.

43. Unsurveyed Property residents may request retrofits in writing, and the requests shall be granted by Defendants on a first-come, first-served basis. Defendants shall complete the retrofits as promptly as practical, but not later than forty-five (45) days from the date on which the retrofits were requested by a resident, with such deadline being subject to Paragraph 77, below, of this Order.

**VIII. NOTICE OF RETROFITS TO PUBLIC AND COMMON USE AREAS AT UNSURVEYED PROPERTIES**

44. Within thirty (30) days from date of the agreement or order on retrofits to public and common use areas at each Unsurveyed Property, the Defendants shall provide written notice to all residents at each Unsurveyed Property stating that the retrofits required by this Order will be performed to the public and common use areas of the Unsurveyed Properties, which include



unit entrances and accessible routes. Such notice shall conform to Appendix N. Defendants shall certify to the United States in writing that the notices have been distributed and the manner in which they were distributed within ten (10) days after such distribution.

## **IX. NEUTRAL INSPECTOR**

### **A. Neutral Inspector for Surveyed Properties**

45. Defendants will enter into a contract with one or more neutral inspector(s) approved by the United States ("Surveyed Properties Inspector") to conduct on-site inspections of the retrofits that have been performed under this Order to determine whether the retrofits have been completed in accord with the specifications in this Order's Appendices C-H and the Remediation Protocol that describe the retrofits for the properties. The Surveyed Properties Inspector(s) will have expertise in the Accessible Design Requirements of the FHA, and the requirements of the FHA Guidelines, ADA, ADA Standards, and ANSI A117.1-1986. The neutral inspector(s) shall be unrelated to any individual involved in the creation of retrofit plans for the Subject Properties.

46. An inspection of a Surveyed Property will take place within thirty (30) days of the completion of all of the retrofits to all of the Accessible Pedestrian Routes as set forth in the relevant Appendix, within thirty (30) days of the completion of all of the retrofits to the public and common use areas as set forth in the relevant Appendix, and within thirty (30) days of completion of all of the retrofits to the covered multifamily dwelling units as set forth in the relevant Appendix, or as soon thereafter as practicable for each. Defendants will give the United States at least three (3) weeks' notice of the inspection and will give the United States an opportunity to have its representative present for the inspection.

47. The inspections of Accessible Pedestrian Routes, Public and Common Use Areas, and dwelling units will be conducted by the Surveyed Properties Inspector in accordance with this order and the relevant Appendices. The inspections of the Accessible Pedestrian Routes will also be conducted by the Surveyed Properties Inspector in accordance with Appendices C-H and the Remediation Protocol which will be provided to the Inspector.

48. The Surveyed Properties Inspector will set out the results of each inspection of the Surveyed Property, including deficits if any, in writing and will send that report to counsel for Defendants and for the United States. The Surveyed Properties Inspector will take digital photographs of any deficiencies identified at each Subject Property. If the inspection indicates that not all the required retrofits have been made as specified in Appendices C-H and the Remediation Protocol that apply to the Surveyed Property, Defendants involved in that specific Surveyed Property, as set forth above, will correct any deficiencies within 60 days and will pay for another inspection by the same Surveyed Properties Inspector to certify the deficiencies have been corrected. This process will continue until the Surveyed Properties Inspector certifies that all the necessary retrofits have been made. Defendants involved in that specific property will pay all of the Surveyed Properties Inspector's reasonable costs associated with these inspections of the Surveyed Property, and such payments will be made without regard to the Surveyed Properties Inspector's findings. Upon reasonable notice to Defendants, representatives of the United States will be permitted to inspect the retrofits made by Defendants in accordance with



this Order and the Surveyed Properties Inspector's reports provided for in this Order, to ensure compliance; provided, however, that the United States will endeavor to minimize any inconvenience caused by such inspections.

**B. Neutral Inspector For Unsurveyed Properties**

49. Defendants involved in the design and construction of an Unsurveyed Property shall enter into a contract with one or more neutral inspector(s) approved by the United States ("Unsurveyed Properties Inspector") to conduct on-site inspections of the retrofits at the Unsurveyed Properties that have been performed under this Order to determine whether the retrofits have been completed in accord with the specifications in this Order. The Unsurveyed Properties Inspector shall have expertise in the Accessible Design Requirements of the FHA and the accessibility and adaptability requirements of the Guidelines, the ADA, the ADA Standards, and ANSI A117.1-1986. The neutral inspector(s) shall be unaffiliated in any way with the Properties Surveyors discussed above.

50. An inspection of an Unsurveyed Property shall take place within thirty (30) days of the completion of all of the retrofits to covered multifamily dwelling unit interiors and the public and common use areas at that Unsurveyed Property. Defendants involved in the design and construction of that Unsurveyed Property shall give the United States at least three (3) weeks' notice of the inspection and shall give the United States an opportunity to have its representatives present for the inspection.

51. The Unsurveyed Properties Inspector shall set out the results of each inspection of the Unsurveyed Property, including deficits if any, in writing and shall send that report to counsel for Defendants and counsel for the United States. If the inspection indicates that not all of the required retrofits agreed upon by the parties or ordered by the Court have been made at the Unsurveyed Property, Defendants shall correct any deficiencies within 60 days and Defendants shall pay for another inspection by the same Unsurveyed Properties Inspector to certify that the deficiencies have been corrected. This process shall continue until the Unsurveyed Properties Inspector certifies that all the necessary retrofits have been made at each Unsurveyed Property. Defendants shall pay all the Unsurveyed Properties Inspector's reasonable costs associated with these inspections of the Unsurveyed Properties, and such payments shall be made without regard to the Unsurveyed Properties Inspector's findings. Upon reasonable notice to Defendants, representatives of the United States shall be permitted to inspect the retrofits made by Defendants in accordance with this Order and the Unsurveyed Properties Inspector's 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.

**X. TRANSFER OF INTEREST IN SUBJECT PROPERTIES**

52. The sale, foreclosure, or any other transfer of ownership, in whole or in part, whether voluntary or involuntary, of any of the Subject Properties shall not affect Defendants' continuing obligation to retrofit any Subject Property as specified in this Order. Should a Defendant sell or transfer ownership of any Subject Property, in whole or in part, or any portion thereof, prior to the completion of the retrofits specified in Sections III and VII of this Order, the Defendant will at least thirty (30) days prior to completion of the sale or transfer: (a) provide to



each prospective buyer written notice that the Subject Property is subject to this Order, including specifically the Defendant's obligations to complete required retrofit work and to allow inspections, along with a copy of this Order; and (b) provide to the United States, by e-mail and first-class mail, written notice of the intent to sell or transfer ownership, along with a copy of the notice sent to each buyer or transferee, and each buyer's or transferee's name, address, and telephone number.

#### **XI. NO RAISING RENT PRICES**

53. Defendants with an ownership or management interest in a Subject Property, and/or their agents and affiliated companies, may not raise the rent price of any dwelling unit, or demand any deposit or other fee for a dwelling unit at any Subject Property solely because of contemplated or completed retrofits in a dwelling unit.

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

54. Defendants will maintain, and provide to the United States, the following information and statements regarding properties under construction and any other covered multifamily dwellings intended to be, or which actually are, purchased, developed, built, designed, constructed, 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 properties in which a Defendant is actually involved, not on those properties in which a Defendant bids or expresses an interest, but does not become finally involved:

- a. the name and address of the property;
- b. a description of the property and the individual units;
- c. the name, address, and telephone number of the civil engineer(s) involved with the project;
- d. to the extent in Defendants' possession or reasonably able to be obtained, a statement from the civil engineer(s) involved with the property 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 the design specifications therein fully comply with the requirements of the Fair Housing Act, the FHA Guidelines, the ADA, the ADA Standards, and ANSI A117.1-1986;
- e. to the extent in Defendants' possession or reasonably able to be obtained, the name, address, and telephone number of the architect(s) involved with the property;



- f. to the extent in Defendants' possession or reasonably able to be obtained, a statement from all architect(s) involved with the property, acknowledging and describing his/her knowledge of and training in the Accessible Design Requirements of the FHA, 42 U.S.C. § 3406(f)(1), (f)(2), and (f)(3)(C), the requirements of the FHA Guidelines, the ADA, 42 U.S.C. § 12183(a)(1), the ADA Standards, and in the field of accessible site design and certifying that he/she has reviewed the architectural plans for the property and that the design specifications therein fully comply with the requirements of the Act, the FHA Guidelines, the ADA, the ADA Standards, and ANSI A117.1-1986; 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 property, each of Defendants will obtain, maintain, and provide to the United States upon request, a statement from the civil engineer(s) or architect(s) involved with the property that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the Accessible Design Requirements of the Fair Housing Act and the FHA Guidelines, and the ADA, the ADA Standards, and ANSI A117.1-1986.

55. Defendants will take all actions to make all multi-family, residential properties that Defendants have ownership or control over and that were under construction as of the effective date of this Order or any future multi-family, residential construction within the meaning of Paragraph 54, above, fully compliant with the Accessible Design Requirements of the FHA, the FHA Guidelines, the ADA, and the ADA Standards. During the term of this Order, upon reasonable notice, the United States will be permitted full access to such properties to inspect for compliance with the FHA, FHA Guidelines, ADA, and ADA Standards.

### **XIII. MONETARY DAMAGES FOR AGGRIEVED PERSONS**

56. Within sixty (60) days of the entry of this Order, Defendants shall deposit in an interest-bearing escrow account the total sum of TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000.00) for the purpose of compensating any aggrieved persons who may have suffered harm as a result of the alleged discriminatory housing practices by Defendants. This money shall be referred to as the "Settlement Fund," and shall be for the purpose of compensating any aggrieved persons who may have suffered harm as a result of the alleged discriminatory housing practices by Defendants. All expenses related to the establishment of the account shall be borne by Defendants. Within fifteen (15) days of the establishment of the account, Defendants shall submit proof to the United States that the account has been established and the funds deposited.

57. Any interest accruing to the Initial Settlement Fund shall become a part of the Fund and be utilized as set forth herein.

58. Defendants shall be solely responsible for any taxes assessed or owed on any interest earned on money deposited in accordance with Paragraph 56, above.

59. Within sixty (60) days of the entry of this Order, Defendants shall publish the



Notice to Potential Victims of Alleged Housing Discrimination ("Notice") at Appendix J 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 Charlotte Observer and three other online sources agreed to by the parties. The Charlotte Observer publication dates shall be separated from one another by twenty-one (21) days, and at least two of the publication dates shall be on a Sunday. Within ten (10) days of each publication date, Defendants shall provide the newspaper containing the Notice, or a copy of the publication in the online source to counsel for the United States.

60. Within sixty (60) days of the entry of this Order, Defendants shall send a copy of the Notice to each of the following organizations listed in Appendix O.

61. Within three (3) months of the entry of this Order, Defendants shall send, by first-class mail, postage pre-paid, a copy of the Notice set forth in Appendix J to each past or present tenant who resided at a Subject Property in the five (5) years preceding the execution date of this Order for which they have records. Defendants will have complied with the requirements of this paragraph by mailing such notice to the last known forwarding address provided to the owners or managers of the Subject Properties or their agents by the former tenant at the time the former tenant moved out. Within four (4) months of entry of this Order, Defendants shall provide to counsel for the United States proof that the Notices have been sent.

62. The United States shall investigate the claims of allegedly aggrieved persons and make a preliminary determination of which persons are aggrieved and whether any amount of damages should be paid to each such person. The preliminary determinations of the appropriate amount of damages shall total no more than TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000.00), and the interest accrued on that amount after deposit into an account as set forth in Paragraph 56, above. The United States will inform Defendants within 18 months of entry of this Order, in writing, of its preliminary determinations, and provide Defendants with a list of names of allegedly aggrieved persons. Defendants shall have thirty (30) days to review the list and provide to the United States any comments, documents or information that they believe may refute any individual's claim.

63. The United States shall submit its final determinations to the Court for approval, together with a copy of sworn declarations setting forth the factual basis for the claims. The final determinations by the United States shall not total more than TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000.00), and shall not include any interest that has accrued in the account. When the Court issues an order approving or changing the United States' proposed distribution of funds for allegedly aggrieved persons, Defendants, within ten (10) days of the Court's order, shall deliver to the United States checks payable to the allegedly aggrieved persons, estates, or heir(s) of their estates if the aggrieved person died intestate or with a will that did not go through the probate process, in the amounts approved by the Court, plus a proportionate share of the interest that has accrued in the Settlement Fund as of the day before the checks are sent to the United States. In no event shall the aggregate of all such checks exceed the sum of the Settlement Fund, including accrued interest. No allegedly aggrieved person shall be paid until he/she has executed and delivered to counsel for the United States the release at Appendix K.



64. After the satisfaction of Paragraphs 56-63, above, and the expiration of the corresponding time periods and subject to any extensions as provided by Paragraph 80, any money remaining in the Settlement Fund, including interest, shall be distributed to the United States Treasury in the form of an electronic funds transfer based on written instructions to be provided by the United States.

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

66. Nothing in this Order shall preclude the United States from making its own efforts to locate, interview and provide notice to potential aggrieved persons.

#### **XIV. CIVIL PENALTY**

67. Within fifteen (15) days of the date of this Order, Defendants will pay a civil penalty of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) under 42 U.S.C. § 3614(d)(1)(C) and 42 U.S.C. § 12188(b)(2)(C)(i) to vindicate the public interest. This payment shall be in the form of an electronic funds transfer in accordance with written instructions to be provided by the United States. The civil penalty is a debt for a fine, penalty, or forfeiture payable to and for the benefit of the United States within the meaning of 11 U.S.C. § 523(a)(7), and is not compensation for actual pecuniary loss. No Defendant shall seek to discharge any part of this debt in bankruptcy.

#### **XV. EDUCATIONAL PROGRAM**

68. Within thirty (30) days of the entry of this Order, Defendants will provide a copy of this Order to all their agents and employees involved in the design or construction of the Subject Properties and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order, and has had an opportunity to have questions about the Order answered. This statement will be substantially similar to the form of Appendix L.

69. During the term of this Order, within thirty (30) days after the date he or she commences an agency or employment relationship with a Defendant, each new agent or employee involved in the design and construction of any Subject Property or other covered multifamily dwelling property will be given a copy of this Order and be required to sign the statement acknowledging that he or she has received and read the Order, and has had an opportunity to have questions about the Order answered. This statement will be substantially similar to the form of Appendix L.

70. Defendants will also ensure that they and their employees and agents who have primary management authority over the design and/or construction of covered multifamily dwellings have a copy of, are familiar with, and personally review, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist



Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998). Defendants and all employees and agents whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case will be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations, and reasonable modifications.

71. Within ninety (90) days of the date of entry of this Order, Defendants and all their employees and agents whose duties, in whole or in part, involve or will involve primary management authority over the development, design and/or construction of multifamily dwellings will undergo training on the design and construction requirements of the Fair Housing Act and the ADA. The training will be conducted by a qualified individual who has been previously approved by the Department of Justice, and any expenses associated with this training will be borne by Defendants. Defendants will 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 M.

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

72. Within ten (10) days of the date of entry of this Order, Defendants with an ownership or management interest in a covered multifamily dwelling property will post and prominently display in the sales or rental offices of all covered multifamily dwellings owned or operated by them a sign no smaller than 10 by 14 inches indicating that all dwellings are available for rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

73. In all future advertising in newspapers, electronic media, pamphlets, brochures and other promotional literature regarding the Subject Properties or any new covered multifamily dwelling properties that any Defendant may develop or construct, such Defendant will place, in a conspicuous location, the universal symbol of accessibility

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

74. In addition to all other reporting required herein, within one hundred eighty (180) days after the date of entry of this Order, Defendants will submit to the United States an initial report containing the reporting required by Sections XII, XIII, XV, and XVI, and containing the signed statements of Defendants and their employees and agents who have completed the training program specified in Paragraph 71 of this Order. Thereafter during the term of this Order, Defendants will, on a quarterly basis, submit to the United States a compliance report detailing the retrofitting and inspections of the retrofits at the Subject Properties. In addition, on the anniversary of the entry of this Order, Defendants will submit to the United States a report for the reporting required by Paragraphs 54-55 on the current and future design and construction, and containing the signed statements of new employees and agents that, in accordance with Paragraph 69 of this Order, they have received and read the Order, and had an opportunity to



have questions about the Order answered, except that the last compliance report will be due sixty (60) days prior to the anniversary.

75. Defendants will 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 or managed by them, or against any employees or agents of Defendants working at or for any such property, regarding discrimination on the basis of disability in housing. Upon reasonable notice, Defendants will also provide the United States all information it may request concerning any such complaint. Defendants will also advise counsel for the United States, in writing, within fifteen (15) days of the resolution of any complaint.

76. Defendants are required to preserve all records related to this Order, related to the Subject Properties and related to any other covered multifamily dwellings designed, constructed, owned, operated, or acquired by them during the duration of this Order. Upon reasonable notice to Defendants, representatives of the United States will be permitted to inspect and copy any records of Defendants or inspect any properties or dwelling units under the control of Defendants bearing on compliance with this Order at any and all reasonable times, provided, however, that the United States will endeavor to minimize any inconvenience to Defendants and residents from such inspections.

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

77. This Order will remain in effect for five (5) years after the date of its entry, or until six (6) months after the Inspector has certified that all the retrofits required by the relevant Appendices have been completed, whichever date is later, and the Court will retain jurisdiction to enforce the Order. 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, such conduct will constitute a "subsequent violation" under 42 U.S.C. § 3614(d)(1)(C)(ii).

78. The Court will retain jurisdiction for the duration of this Order to enforce the terms of the Order, at which time the case will be dismissed with prejudice. The United States may move the Court to extend the duration of the Order in the interests of justice.

79. All parties will 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 Defendant to perform, in a timely manner, any act required by this Order or otherwise for their failure to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

#### **XIX. TIME FOR PERFORMANCE**



80. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and the Defendants, or with regard to an issue impacting only an individual Defendant with such individual Defendant.

81. The parties further acknowledge that the COVID-19 pandemic may impact performance of the parties as contemplated in this Consent Order. Specifically, COVID-19 Proclamations and COVID-19 Conditions, as defined herein, may unduly delay performance by Defendants. The United States specifically acknowledges and agrees to extend any time limits for performance imposed by this Consent Order upon notice by the Defendants or an individual Defendant of any delay caused by COVID-19 Proclamations or COVID-19 Conditions. "COVID-19 Proclamations" mean any and all directives, proclamations, and guidelines that have been issued and may be issued in the future by public bodies having jurisdiction over the Subject Properties. "COVID-19 Conditions" mean conditions attributable to COVID-19 not caused by Defendants and beyond Defendants' control.

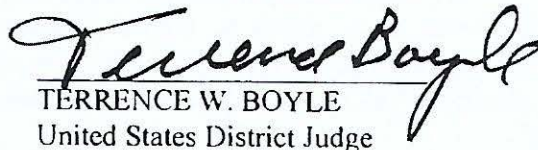
## **XX. RELEASE OF LITIGATION HOLDS**

82. The parties agree that, as of the date of entry of this Order, litigation is not "reasonably foreseeable" concerning the subject matter of the United States' complaint. To the extent that any of the parties previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves the parties of any other obligation imposed by this Order.

## **XXI. RELEASE OF CLAIMS**

83. The United States hereby releases and forever discharges Defendants and any person or entity involved in the design and construction of the Subject Properties and their parent entities, subsidiaries, franchisees and affiliates, as well as the officers, directors, members, partners, managers, trustees, employees of those entities, including in their individual capacity named in this action ("Defendant Entities") from any and all liability for any claims, legal or equitable, the United States may have against them arising from or related to the FHA and ADA allegations in the United States' Complaint as of the date of the entry of this Consent Order, except that nothing in this paragraph shall prevent or limit the United States from fulfilling its obligations under 42 U.S.C. § 3612(o).

SO ORDERED. This 18 day of October, 2021.

  
TERRENCE W. BOYLE  
United States District Judge



FOR THE UNITED STATES:

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