

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 WESTERN DIVISION
 Case No.: 5:21-cv-00395-M

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MILLS CONSTRUCTION COMPANY, INC.,)
 MILBURNIE APARTMENTS LIMITED)
 PARTNERSHIP, PINE KNOLL LIMITED)
 PARTNERSHIP, ROLLINWOOD MANOR, LLC,)
 KITTRELL PLACE, LLC, HODGES CREEK)
 APARTMENTS, LLC, and ENFIELD POINTE,)
 LLC,)
)
 Defendants.)
 _____)

CONSENT ORDER

I. INTRODUCTION

1. This Consent Order (this “Order”) resolves the allegations in the United States’ Complaint that Defendant Mills Construction Company, Inc. (“Defendant Mills”), along with Milburnie Apartments Limited Partnership, Pine Knoll Limited Partnership, Rollinwood Manor, LLC, Kittrell Place, LLC, Hodges Creek Apartments, LLC, and Enfield Pointe, LLC (collectively the “Owner Defendants”), discriminated against persons with disabilities by failing to design and construct North Carolina multifamily apartment complexes that are accessible to persons with disabilities. Specifically, the United States’ complaint alleges that Defendant Mills and/or the Owner Defendants designed and constructed the following covered multifamily dwellings (collectively the “Surveyed Properties”) in North Carolina without the features of accessible and adaptive design and construction required by subsections 804(f)(1), 804(f)(2), and 804(f)(3)(C) of

the Fair Housing Act (hereinafter “FHA” or the “Act”), 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C), and the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181 – 12189:

1. Milburnie Road Apartments, Raleigh, Wake County;
2. Marsh Creek Apartments, Raleigh, Wake County;
3. Hodges Creek Apartments, Raleigh, Wake County;
4. Rollinwood Manor Apartments, Rocky Mount, Edgecombe County;
5. Kittrell Place Apartments, Greenville, Pitt County;
6. Enfield Pointe Apartments, Enfield, Halifax County;
7. Lovett Square Apartments, Durham, Durham County;
8. Sherwood Park Apartments, Durham, Durham County; and
9. West Oaks Apartments, Raleigh, Wake County.

2. This Order further resolves any and all allegations by the United States that Defendant Mills discriminated against persons with disabilities by failing to design and construct the following other covered North Carolina multifamily apartment communities (collectively the “Unsurveyed Properties”) with the features of accessible and adaptive design and construction required by subsections 804(f)(1), 804(f)(2), and 804(f)(3)(C) of the FHA, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C), and the ADA, 42 U.S.C. §§ 12181 – 12189:

10. Best Village I Apartments, Kinston, Lenoir County;
11. Best Village II Apartments, Kinston, Lenoir County;
12. Chapel Ridge Apartments, Roanoke Rapids, Halifax County;
13. Chapel Ridge Manor Apartments, Roanoke Rapids, Halifax County;
14. Chestnut Hills Apartments, Raleigh, Wake County;
15. Dunbar Place Apartments, Asheville, Buncombe County;
16. Emerald Forest Apartments, Biscoe, Montgomery County;
17. Fairview Pointe Apartments, Lillington, Harnett County;
18. Fairview Manor Apartments, Lillington, Harnett County;
19. Filbert’s Creek Apartments, Edenton, Chowan County;
20. Firetower Crossing Apartments, Sanford, Lee County;
21. Forest Hill Apartments, Lexington, Davidson County;
22. Lakeside Apartments, Elizabeth City, Pasquotank County;
23. Long Creek Apartments, Dallas, Gaston County;
24. Long Creek II, Dallas, Gaston County;

25. Mocksville Pointe Apartments, Mocksville, Davie County;
26. Myrtle Place Apartments, Goldsboro, Wayne County;
27. Northeast Pointe Apartments, Lumberton, Robeson County;
28. Perry Lane Apartments, Arden, Columbus County;

29. River Run Apartments, Chocowinity, Beaufort County;
30. Sampson Square Apartments, Clinton, Sampson County;
31. Sandhill Manor Apartments, Sanford, Lee County;
32. Sandy Ridge Apartments, Raeford, Hoke County;
33. Savannah Place Apartments, Durham, Durham County;
34. Smith Creek Apartments, Bermuda Run, Davie County;
35. Soco Creek Village Apartments, Cherokee, Swain/Jackson Counties.
36. Tabor Landing Apartments, Tabor City, Columbus County;
37. Willow Oak Run Apartments, Charlotte, Mecklenburg County; and
38. Woodlane Street Apartments, Granite Falls, Caldwell County.

3. The Parties to this Order agree that it is in all Parties' best interests, and the United States believes it is in the public interest, to fully and finally resolve this disputed matter on mutually agreeable terms. The United States and Defendants hereby agree and stipulate to the Court's entry of this Order finally resolving the United States' complaint against Defendants.

4. This Order is not to be considered an adverse finding or ruling for purposes of any fair housing or civil rights settlement, or an adverse finding or ruling for purposes of any federal government proceeding and settlement. There has been no finding of liability or disability discrimination by Defendants, no adverse final decision by a substantially equivalent state or local fair housing agency, and no adverse judgment by a federal court that would result in Defendants losing Low Income Housing Tax Credits ("LIHTCs").

A. Defendants

5. Defendant Mills is a North Carolina corporation with a principal place of business at 5608 Spring Court in Raleigh. For each of the Surveyed Properties, other than West Oaks Apartments and Lovett Square Apartments, which were constructed by unrelated third parties, and for all of the Unsurveyed Properties, Defendant Mills or its successor, Mills Construction Company of S.C., Inc., was the general contractor and/or builder. For each of the Surveyed Properties and the Unsurveyed Properties, Defendant Mills or its successor, Mills Construction Company of S.C., Inc., was involved in the design and/or construction.

6. The financial responsibility for: 1) effecting any and all retrofits required under this Order to the Surveyed Properties and the Unsurveyed Properties; 2) all costs for surveys and inspections associated with all retrofits required under this Order; and 3) paying all sums due for a settlement fund and to the United States under this Order, shall be solely that of Defendant Mills. Defendant Mills represents and warrants that it has the financial capacity to complete all of the retrofits at all of the Surveyed Properties and the Unsurveyed Properties, as well as the financial capacity to pay all sums due for a settlement fund and to the United States under this Order.

7. Defendants Milburnie Apartments Limited Partnership and Pine Knoll Limited Partnership are North Carolina limited partnerships with a principal place of business at 5608 Spring Court in Raleigh. Defendants Hodges Creek Apartments, LLC, Kittrell Place, LLC, Enfield Pointe, LLC, and Rollinwood Manor, LLC are North Carolina limited liability companies with a principal place of business at 5608 Spring Court in Raleigh. Each of these Defendants was involved in the development of one of the Surveyed Properties.

B. Relevant Requirements of the Fair Housing Act

8. 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).

9. The FHA further 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).

10. 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 are designed to allow passage into and within all premises within such dwellings and 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 “FHA’s Accessible Design Requirements.”

11. The Parties agree that the Surveyed Properties and the Unsurveyed Properties were designed and constructed for first occupancy after March 13, 1991, and therefore all the units at these Properties in the buildings with elevators, and the ground-floor units in non-elevator buildings at these 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, the routes, and the public and common use areas are subject to the FHA’s Accessible Design Requirements.

C. Relevant Requirements of the Americans with Disabilities Act

12. The ADA, 42 U.S.C. §§ 12181–12189, 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).

13. For the purposes of this Order, the Parties agree that the rental offices for the Surveyed Properties and Unsurveyed 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, are required to be designed and constructed in accordance with the standards promulgated under the ADA.

D. Surveyed Properties

14. Milburnie Road Apartments (“Milburnie Road”) is a multifamily residential apartment complex, located at 901 Sawpit Drive in Raleigh, NC, that was built using LIHTCs and completed in 1998. It consists of six two-story, non-elevator buildings, and one one-story, non-elevator building. Milburnie Road has a total of 50 dwelling units, of which 26 are ground-floor dwelling units covered under the FHA’s Accessible Design Requirements. It contains public and common-use areas, including a leasing office, a meeting room, a laundry facility, two restrooms, a kitchen, and parking.

15. Marsh Creek Apartments (“Marsh Creek”) is a multifamily residential apartment complex, located at 2400 Brentwood Road in Raleigh, NC, that was built using LIHTCs and completed in 1997. It consists of a single three-story, non-elevator apartment building, and a one-story, non-elevator building. Marsh Creek has a total of 24 dwelling units, of which eight are

ground-floor units covered under the FHA's Accessible Design Requirements. It contains public and common-use areas, including a leasing office, a laundry facility, a mail area, and parking.

16. Hodges Creek Apartments ("Hodges Creek") is a multifamily residential apartment complex, located at 2020 Hodges Creek Drive in Raleigh, NC, that was built using LIHTCs and completed in 2004. It consists of three three-story, non-elevator buildings. Hodges Creek has a total of 50 dwelling units, of which 18 are ground-floor dwelling units covered under the FHA's Accessible Design Requirements. It contains public and common-use areas, including a leasing office, a community room, two restrooms, and parking.

17. Rollinwood Manor Apartments ("Rollinwood Manor") is a multifamily residential apartment complex, located at 144 Rollinwood Drive in Rocky Mount, NC, that was built using LIHTCs and completed in 2008. It consists of a single, three-story apartment building with an elevator. Rollinwood Manor has a total of 64 units, all of which are covered under the FHA's Accessible Design Requirements. It contains public and common-use areas, including a leasing office, a community room, a mail center, a library, restrooms, and parking.

18. Kittrell Place Apartments ("Kittrell Place") is a multifamily residential apartment complex, located at 4117 Kittrell Farms Drive in Greenville, NC, that was built using LIHTCs and completed in 2015. It consists of six three-story, non-elevator buildings, and one one-story building. Kittrell Place has a total of 64 dwelling units, of which 24 are ground-floor units covered under the FHA's Accessible Design Requirements. It contains public and common-use areas, including a leasing office, a laundry facility, a computer center, restrooms, playgrounds, pavilions, trash facilities, and parking.

19. Enfield Pointe Apartments (“Enfield Pointe”)¹ is a multifamily residential apartment complex, located at 191 Daniels Bridge Road in Enfield, NC, that was built using LIHTCs and completed in 2018. It consists of five two-story, non-elevator buildings, and one one-story building. Enfield Pointe has a total of 48 dwelling units, of which 24 are ground-floor units covered under the FHA’s Accessible Design Requirements. It contains public and common-use areas, including a leasing office, a clubhouse, restrooms, pavilions, grills, a playground, and parking.

20. Lovett Square Apartments (“Lovett Square”) is a multifamily residential apartment complex, located at 211 Stokes Street in Durham, NC, that was built using LIHTCs and completed in 1994. It consists of four three-story, non-elevator apartment buildings. Lovett Square has 10 ground floor units covered under both the FHA’s Accessible Design Requirements and this Consent Order. It contains public and common-use areas, including a leasing office, restrooms, and parking.

21. Sherwood Park Apartments (“Sherwood Park”) is a multifamily residential apartment complex, located at 500 McCallie Avenue in Durham, NC, that was built using LIHTCs and completed in 1992. It consists of five two-story, non-elevator apartment buildings, and one three-story, non-elevator building. Sherwood Park has a total of 24 ground floor dwelling units covered under the FHA’s Accessible Design Requirements. It contains public and common-use areas, including a leasing office, a community room, restrooms, and parking.

¹ Only the exterior areas of Enfield Pointe have been surveyed. For purposes of this Consent Order, the relevant portions of Paragraphs 27, 35-40, and 42-46, shall apply to surveying and retrofits to unit interiors at Enfield Pointe. For purposes of this Consent Order, Enfield Pointe shall be treated as a Surveyed Property for everything other than surveying and retrofits to unit interiors. Exhibit 11 shall be the Notice to Residents used for Enfield Pointe.

22. West Oaks Apartments (“West Oaks”) is a multifamily residential apartment complex, located at 705 Flavion Drive in Raleigh, NC, that was built using LIHTCs and completed after March 13, 1991. It consists of five two-story, non-elevator buildings. West Oaks has 10 ground floor units covered under both the FHA’s Accessible Design Requirements and this Consent Order. It contains public and common-use areas, including a leasing office, laundry facility, picnic area, playground, and parking.

E. Consent of the Parties to this Order

23. Defendant Mills agrees to bring the Surveyed Properties into compliance with the FHA and the ADA as set forth in this Order. The Owner Defendants agree to permit the retrofitting and inspecting of the Surveyed Properties as set forth in this Order. Defendant Mills agrees to address the elements that the United States alleges are not in compliance with the FHA and the ADA at the Unsurveyed Properties as set forth in this Order.

24. 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).

It is hereby ORDERED, ADJUDGED, and DECREED:

II. GENERAL INJUNCTION

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

26. Defendant Mills, the Owner 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 with, or preventing, the retrofitting of the Surveyed Properties

ordered herein or the implementation or completion of this Order. Defendant Mills, the Owner Defendants, and each of their officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them agree to allow access to the public and common use areas of the Surveyed Properties, and, to the extent practical, access to unit interiors at the Surveyed Properties that they own and operate for the purpose of planning, evaluating, and performing any action required under this Order to retrofit elements in the public and common use areas and the unit interiors as required herein.

27. Defendant Mills shall work with the current owners and operators of the Unsurveyed Properties to secure access to the public and common use areas and unit interiors of the Unsurveyed Properties for the purpose of planning, evaluating, and performing any action required under this Order to retrofit elements in the public and common use areas and the unit interiors as required herein. If an owner of an Unsurveyed Property refuses to allow Defendant Mills access to an Unsurveyed Property, the United States may seek an order from the Court requiring that owner to allow such access. Defendant Mills agrees to fully cooperate with the United States in this process.

III. RETROFITS AT THE SURVEYED PROPERTIES

28. 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. To address the United States' allegations, and in accordance with the FHA, the Fair Housing Accessibility Guidelines ("FHA Guidelines" or "FHAG") (56 Fed. Reg. 9472 *et seq.* (1991)), and American National Standard, Accessible and Usable Buildings and Facilities ("ANSI A117.1-1986"), the ADA, and the ADA

Standards, Defendant Mills and the Owner Defendants agree to complete the actions and retrofits described in this section.²

A. Retrofits to the Surveyed Properties' Accessible Routes and Public and Common Use Areas

29. As soon as reasonably possible, but by no later than twenty-four (24) months from the date of entry of this Order, Defendant Mills and the Owner Defendants will complete the retrofits as described in Exhibits 1.1, 1.2, 2.1, 2.2, 3.1, 3.2, 4.1, 4.2, 5.1, 5.2, 6.1, 6.2, 7.1, 7.2, 8.1, 8.2, 9.1, and 9.2 to bring the accessible routes and the public and common use areas into compliance with the FHA, the FHAG, ANSI A117.1-1986, the ADA, and the ADA Standards.

B. Retrofits to the Surveyed Properties' Covered Units

30. As soon as reasonably possible, but by no later than twenty-four (24) months from the date of entry of this Order, Defendant Mills and the Owner Defendants will complete the retrofits as described in Exhibits 1.3, 2.3, 3.3, 4.3, 5.3, 7.3, 8.3, and 9.3 to bring the covered unit interiors into compliance with the FHA, the FHAG, and ANSI A117.1-1986.

C. Notice of Retrofits to Unit Owners and Residents

31. Within thirty (30) days from the date of entry of this Order, Defendant Mills and the Owner Defendants shall provide a notice that is substantially equivalent to Exhibit 10 to all residents at the Surveyed Properties. The notice shall inform residents that: 1) the United States alleges that the covered dwelling units do not meet the requirements of the FHA and the FHA Guidelines, that the public and common use areas do not meet the requirements of the FHA and the FHA Guidelines, and, in certain instances, the ADA, and that to resolve these allegations,

² Defendant Mills has represented that none of the Surveyed or Unsurveyed Properties are federally-owned or federally-assisted, which would trigger the accessibility requirements of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

Defendant Mills and the Owner Defendants have agreed to perform certain retrofits to the covered dwelling units, the routes, and the public and common use areas; 2) the covered dwelling units must be retrofitted within twenty-four (24) months of the date of the entry of the Order; 3) the resident will receive a schedule of when the retrofits will be performed; 4) the retrofits will be performed at no cost to the residents; and 5) if temporary relocation for more than twenty-four (24) consecutive hours is required as deemed by Defendant Mills and the Owner Defendants, Defendant Mills and the Owner Defendants will pay the residents the equivalent of the United States General Services Administration (“GSA”) rate for temporary relocation expenses incurred by the residents, as required by Section IV of this Order. Defendant Mills and the Owner 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.

32. If a resident desires to have the retrofits completed to the interior of his or her covered dwelling unit before the retrofits are scheduled to be performed by Defendant Mills and the Owner Defendants, he or she may request retrofits in writing, and the requests shall be granted by Defendant Mills and the Owner Defendants on a first-come, first-served basis. Defendant Mills and the Owner Defendants must complete the retrofits as promptly as practical, but no later than the earlier of sixty (60) days from the date on which the retrofits were requested, or within twenty-four (24) months from the date of entry of this Order.

IV. INCONVENIENCE AND OVERNIGHT STAYS FOR RETROFITTING UNIT INTERIORS AT THE SURVEYED PROPERTIES

33. Defendant Mills and the Owner Defendants shall endeavor to minimize inconvenience to residents of covered units in scheduling and performing the retrofits required by this Order at the Surveyed Properties.

34. In the event that (a) resident(s) of a covered unit scheduled to undergo retrofits incurs undue inconvenience or hardship (defined as a dislocation from the unit for more than twenty-four (24) consecutive hours, as deemed necessary by the Defendants), Defendant Mills and the Owner Defendants will pay the resident(s) the applicable government per diem rate for food and lodging for the local area (as available at 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 unit, so that the resident(s) can use the money to obtain alternative living accommodations and food while dislocated.

V. SURVEYING OF THE UNSURVEYED PROPERTIES

35. Defendant Mills agrees to take the following actions with regard to the surveying of the Unsurveyed Properties identified in Paragraph 2, above.

a. Within ninety (90) days from the date of entry of this Order, Defendant Mills shall contract with one or more qualified professionals (“Surveyor(s)”), 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 FHA and the ADA. The Surveyor(s) will have expertise in the FHA’s Accessible Design Requirements, and the accessibility requirements of the FHAG, the ADA, the ADA Standards, and ANSI A117.1-1986.

b. All surveys are to be completed within one and a half years (1.5) years from the date of entry of this Order.³

³ Defendant Mills shall give the United States written notice of any survey at least twenty-one (21) days prior to that survey and shall give the United States an opportunity to have its representatives present for that and each survey.

c. The surveys are to be conducted in accordance with a written protocol (“Remediation Protocol”) separately agreed to by Mills Defendants and the United States, which shall be provided to the Surveyor(s).

36. The Surveyor(s) shall prepare a written report (“Survey Report”) for each Unsurveyed Property. Each Survey Report shall comply with the following provisions:

a. Each Survey Report shall specify the scope and methodology of the survey.

b. Each Survey Report shall set forth the elements which the Surveyor(s) identify(ies), based upon the separately agreed upon Remediation Protocol that are not in compliance with the FHA, ANSI A117.1-1986, or another HUD-recognized safe harbor used in its entirety, and the ADA and ADA Standards.

c. The Surveyor(s) shall take digital photographs of the measurements taken of the elements the Surveyor(s) identify(ies), based upon the Remediation Protocol, that are not in compliance with the FHA, ANSI A117.1-1986, or another HUD-recognized safe harbor used in its entirety, and the ADA and ADA Standards. These photographs shall be included and made a part of each Survey Report and shall also be made available in electronic digital form.

d. Each Survey Report shall set forth the elements the Surveyor(s) identify(ies), if any, based upon the Remediation Protocol, that do not satisfy the requirements of the FHA, ANSI A117.1-1986, or another HUD-recognized safe harbor used in its entirety and the ADA and ADA Standards.

e. The Surveyor(s) shall send the Survey Report for each Unsurveyed Property to counsel for the United States and Defendant Mills as soon as practicable

following each survey, but in any event not later than sixty (60) days after the date of the survey. Neither the United States, nor Defendant Mills shall disclose the Survey Report to any other person, except that Defendant Mills may disclose the Survey Report to lenders, owners, tax-credit equity providers, the North Carolina Housing Finance Agency, state and local permit offices and inspection departments, contractors and sub-contractors who make retrofits, or as specifically required by the Court, and that the United States may disclose the Survey Report to any agent of, and consultant or expert retained by, the United States.

VI. RETROFITS AT UNSURVEYED PROPERTIES

37. For each Unsurveyed Property at which the Surveyor(s) has/have identified one or more alleged violations pursuant to Section V, above, the provisions in Sections VI through X shall apply.

A. Access to Unsurveyed Properties

38. Where an Unsurveyed Property is owned by Defendant Mills, or an entity related to, or affiliated with, Defendant Mills, Defendant Mills agrees to allow access to the public and common use areas and the unit interiors of the Unsurveyed Property for the purpose of performing any retrofits required under this Order, and for the purpose of interviewing or meeting with residents of an Unsurveyed Property to aid in the implementation or completion of this Order.

39. Where an Unsurveyed Property is not owned by Defendant Mills or an entity related to, or affiliated with, Defendant Mills, Defendant Mills shall use good faith efforts to obtain consent to access to the public and common use areas and the unit interiors of the Unsurveyed Property 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

40. For each alleged violation set forth in a Survey Report, the United States and Defendant Mills shall have ninety (90) days from the date of receipt of the Survey Report to provide a list of objections to the Survey Report to the Surveyor(s). If both the United States and Defendant Mills fail to provide a list of objections to the Survey Report to the Surveyor(s), the Survey Report shall be deemed accepted and the final Survey Report. If the United States and/or Defendant Mills provide the Surveyor(s) with a list of objections, the Surveyor(s) shall review the objections and respond with a final Survey Report within thirty (30) days. The United States and Defendant Mills agree to abide by the final Survey Report. The retrofits at the Unsurveyed Properties shall be made in accordance with the Remediation Protocol and made at locations identified in the Surveyor's(s') Survey Reports.

C. Retrofits to the Unsurveyed Properties' Accessible Routes and Public and Common Use Areas

41. As soon as reasonably possible, but by no later than two and a half (2.5) years from date of the final Survey Report on retrofits to the public and common use areas at each Unsurveyed Property, Defendant Mills shall finish the retrofits to the public and common use areas of that Unsurveyed Property.

D. Retrofits to the Unsurveyed Properties' Covered Units

42. As soon as reasonably possible, but by no later than two and a half (2.5) years from date of the final Survey Report on retrofits to covered unit interiors at each Unsurveyed Property, whichever is sooner, Defendant Mills shall finish the retrofits to the covered unit interiors at the Unsurveyed Property. Regardless of whether a covered unit vacancy arises for such retrofitting, Defendant Mills will complete the retrofitting as soon as reasonably possible, but by no later than

two and a half (2.5) years from the date of the final Survey Report for each Unsurveyed Property.

43. Within sixty (60) days from the date of the final Survey Report for an unsurveyed Property, Defendant Mills shall provide a notice that is substantially equivalent to Exhibit 11 to all residents at the Unsurveyed Property. The notice shall inform residents that: 1) to settle this lawsuit, Defendant Mills has agreed to perform certain accessibility-related retrofits to the covered dwelling units, the routes, and the public and common use areas at the Unsurveyed Property; 2) the units must be retrofitted within two and a half (2.5) years; 3) the resident can ask for the retrofits to their unit to be completed on an individual “as requested” basis sooner than the scheduled time; 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(s) for temporary relocation expenses incurred by the resident(s), as required by Paragraph 45 of this Order if relocation for more than twenty-four (24) consecutive hours is necessary. Defendant Mills 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.

44. Unsurveyed Property residents may request retrofits in writing, and the requests shall be granted by Defendant Mills on a first-come, first-served basis within the otherwise applicable retrofit schedule for each Unsurveyed Property. Defendant Mills shall complete the retrofits as promptly as practical, but not later than sixty (60) days from the later of: (a) the date on which the retrofits were requested by a resident; or (b) the date on which Defendant Mills has begun any interior retrofits on any covered units at the applicable Unsurveyed Property, with such deadline being subject to Paragraph 75 of this Order.

VII. INCONVENIENCE AND OVERNIGHT STAYS FOR RETROFITTING UNIT INTERIORS AT THE UNSURVEYED PROPERTIES

45. Defendant Mills shall endeavor to minimize inconvenience to residents of covered units in scheduling and performing the retrofits required by this Order at the Unsurveyed Properties.

46. In the event that (a) resident(s) of a covered unit scheduled to undergo retrofits incur(s) undue inconvenience or hardship (defined as a dislocation from the unit for more than twenty-four (24) consecutive hours), Defendant Mills will pay the resident(s) the applicable government per diem rate for food and lodging for the local area (as available at 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 unit, so that the resident(s) can use the money to obtain alternative living accommodations and food while dislocated.

VIII. NEUTRAL INSPECTOR FOR THE SURVEYED AND UNSURVEYED PROPERTIES

47. Defendants will enter into a contract with one or more neutral inspector(s) approved by the United States (“Inspector(s)”) to conduct on-site inspections of the retrofits that have been performed under this Order to determine whether the retrofits have been completed in accordance with the specifications in, as applicable, this Order’s Exhibits 1.1-9.3, the final Survey Reports, and the Remediation Protocol that describe the retrofits for the properties. The Inspector(s) shall have expertise in the FHA’s Accessible Design Requirements, and the requirements of the FHA Guidelines, the ADA, and the ADA Standards. The Inspector(s) may be, but does/do not have to be, the same party who served as the initial Surveyor(s) to prepare the Survey Reports.

48. An inspection of a Surveyed or Unsurveyed Property shall take place within ninety

(90) days of the completion of all of the exterior and interior retrofits as set forth in the relevant Exhibits, or as soon thereafter as practicable for each. Defendant Mills shall give the United States at least fifteen (15) business days' notice of the inspection and shall give the United States an opportunity to have its representative present for the inspection.

49. The Inspector(s) shall set out the results of each inspection of a Surveyed or Unsurveyed Property, including deficits if any, in writing and shall send that report to counsel for Defendant Mills and for the United States. The Inspector(s) shall take digital photographs of any deficiencies identified at each Surveyed and Unsurveyed Property. If the inspection indicates that not all the required retrofits have been made as specified in the Exhibits and Remediation Protocol that apply to the surveyed Surveyed or Unsurveyed Property, Defendant Mills shall correct any deficiencies within ninety (90) days and shall pay for another inspection by the same Inspector(s) to certify such deficiencies have been corrected. This process shall continue until the Inspector(s) certifies/certify that all the retrofits required under this Order have been made. Defendant Mills shall pay all of the Inspector's(s') reasonable costs associated with the inspections, and such payments will be made without regard to the Inspector's(s') findings. Upon reasonable notice to Defendant Mills, representatives of the United States shall be permitted to inspect the retrofits made by Defendant Mills in accordance with this Order. The United States shall endeavor to minimize any inconvenience caused by such inspections.

IX. TRANSFER OF INTEREST IN SURVEYED AND UNSURVEYED PROPERTIES

50. The sale, foreclosure, or any other transfer of ownership, in whole or in part, whether voluntary or involuntary, of any of the Surveyed or Unsurveyed Properties shall not affect Defendant Mills's and the Owner Defendants' continuing obligation to retrofit Surveyed and/or Unsurveyed Properties as specified in this Order. Should Defendant Mills and/or the Owner

Defendants sell or transfer ownership of any the Surveyed or Unsurveyed Properties, in whole or in part, prior to the completion of the retrofits specified in this Order, Defendant Mills and/or the Owner Defendants, as applicable, shall:1) at least thirty (30) days prior to completion of the sale or transfer, provide to each prospective buyer written notice that the Surveyed or Unsurveyed Property is subject to this Order, including specifically Defendants Mills's and/or the Owner Defendants' obligations to complete required retrofit work and to allow inspections, along with a copy of this Order; and 2) within fourteen (14) days of the conclusion of the sale or transfer, the applicable Defendant(s) shall provide to the United States, by electronic and first-class mail, written notice of the sale or transfer of ownership, along with each buyer's or transferee's name, address and telephone number.

X. PROHIBITION ON RAISING RENT PRICES

51. Defendant Mills and the Owner Defendants with an ownership or management interest in a Surveyed or Unsurveyed Property, and/or their agents and affiliated companies, may not raise the rental price of any dwelling unit, or demand any deposit or other fee for a dwelling unit inconsistent with past practices and solely because of contemplated or completed retrofits to a Surveyed or Unsurveyed Property.

XI. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

52. Defendant Mills shall maintain, and provide to the United States upon request, the following information and statements regarding covered multifamily dwellings under construction and any other covered multifamily dwellings intended to be, or which actually are, developed, built, designed, constructed, or engineered in whole or in part, by Defendant Mills or by any entities in which Defendant Mills has a position of control by virtue of being an officer, director, member, manager, general partner, limited liability company manager, trustee,

executive officer, or by virtue of having a ten (10) percent or greater ownership share:

- a. the name and address of the property; and a description of the property and the individual units;
- b. the name, address, and telephone number of the civil engineer(s) involved with the project;
- c. upon the consent of said civil engineer, a statement from the civil engineer(s) involved with the property acknowledging and describing his/her/their knowledge of, and training in, the requirements of the FHA and the ADA, and certifying that he/she/they has/have reviewed the engineering documents for the property, and that the design specifications therein fully comply with the requirements of the FHA, the FHAG the ADA, and ANSI A117.1-1986;
- d. The name, address and telephone number of the architect(s) involved with the property;
- e. upon the consent of said architect, a statement from the architect(s) involved with the property acknowledging and describing his/her/their knowledge of, and training in, the requirements of the FHA and the ADA, and certifying that he/she/they has/have reviewed the engineering documents for the property, and that the design specifications therein fully comply with the requirements of the FHA, the FHAG the ADA, the ADA Standards, and ANSI A117.1-1986; and
- f. If the engineering documents or architectural plans are revised, and the revisions are likely to have a material impact on the accessibility of property, Defendant Mills will obtain, maintain, and provide to the United States upon

request, an updated statement from the civil engineer(s) or architect(s) involved with the property that all specifications in the revised engineering documents or architectural plans comply with the FHA, the FHAG, the ADA, the ADA Standards, and ANSI A117.1-1986.

53. Upon reasonable notice, the United States shall be permitted full access, to the extent within the control of Defendant Mills, to such properties to inspect for compliance with applicable requirements of the FHA, the FHAG, the ADA, the ADA Standards, and ANSI A117.1-1986.

XII. SETTLEMENT FUND

54. Within fifteen (15) days from the date of entry of this Order, Defendant Mills shall deposit in an interest-bearing escrow account the sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000) for the purpose of paying monetary damages to prospective, current, and former residents of the Surveyed and Unsurveyed Properties deemed by the United States to be aggrieved persons (hereinafter “aggrieved persons”). This deposited money shall be referred to as the “Settlement Fund.” All expenses related to the establishment of the account shall be borne by Defendant Mills. Within fifteen (15) days of the establishment of the Settlement Fund, Defendant Mills shall submit proof to the United States that the account has been established and the funds deposited. The Parties agree that Defendant Mills shall have no obligation to pay more than a total of Two Hundred Twenty-Five Thousand Dollars (\$225,000) into the Settlement Fund. The Parties further agree that the obligation of Defendant Mills to pay the Two Hundred Twenty-Five Thousand Dollars (\$225,000) is absolute and shall not change.

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

56. Defendants shall be solely responsible for any taxes assessed or owed on any money deposited pursuant to Paragraph 54, above.

57. Within sixty (60) days from the date of entry of this Consent Order, the Mills Defendants shall send, by first-class mail, postage pre-paid, a copy of the Notice at Exhibit 12 to each past and present resident of the Surveyed Properties for which the Owner Defendants have records. For past residents, the Mills Defendants will have complied with the requirements of this Paragraph by mailing such notice to the forwarding address provided to the Owner Defendants by the former resident; notwithstanding the foregoing, the Mills Defendants shall not be required to send any Notice to any past resident whose last known address is the address of the applicable unit of the Surveyed Property where they resided and who has moved out more than two years prior to the date of entry of this Consent Order, such that any applicable forwarding order with the United States Postal Service from such address would have expired. Within sixty (60) days from the date of entry of this Order, the Mills Defendants shall send, by first-class mail, postage pre-paid, a copy of the Notice at Exhibit 12 to each present resident of the Unsurveyed Properties addressed to "Resident(s)." Within ninety (90) days from the date of entry of this Consent Order, the Mills Defendants shall provide to the United States proof that the Notices have been sent, which proof may be an affidavit signed by the individual(s) who mailed such Notices testifying to such action.

58. To the extent not already provided, within forty-five (45) days from the date of entry of this Consent Order, for the Surveyed and Unsurveyed Properties, the Mills Defendants shall produce to the United States any records in their possession, custody or control, that relate to: resident complaints about accessibility issues at a Surveyed or Unsurveyed Property; resident requests for reasonable accommodations; and any resident's use of a mobility aid including, but not limited to, a wheelchair or motorized scooter.

59. Defendants shall permit the United States, upon reasonable notice, to review any records, including but not limited to, complete tenant files, tenant lists, reasonable accommodation requests, and reasonable modification requests, that may reasonably facilitate its determinations regarding the claims of alleged aggrieved persons.⁴

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

61. Within fifteen (15) months from the date of entry of this Order, the United States shall determine which persons it believes are aggrieved and an appropriate amount of damages that should be paid to each person, and shall inform Defendant Mills in writing of its determination. The United States' determination to Defendant Mills shall include the full legal name of each aggrieved person, the amount of damages to be paid to each such person, and each such person's current address and taxpayer identification number.

62. Defendant Mills agrees that the determinations of the United States shall be final, and Defendant Mills hereby waives the right to contest the United States' determination. Defendant Mills agrees as part of this Order that it will not seek to interfere with or oppose the United States' determinations regarding the aggrieved persons and the appropriate amount of damages to be paid to each.

63. Within thirty (30) days after receipt of the United States' determination under Paragraph 61, Defendant Mills shall deliver to the United States checks payable to each of the aggrieved persons. In no event shall: 1) Defendant Mills be required to fund any amount in excess of the amount set forth in Paragraph 54 for purposes of this Order; and 2) the aggregate of all

⁴ All materials and notices required by this Order to be sent to the United States shall be sent by commercial overnight, commercial two-day, or commercial three-day delivery addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 4 Constitution Square, 150 M Street, Northeast, Washington, DC 20002, Attn: DJ 175-54-166.

checks to the aggrieved person(s) exceed the amount of the Settlement Fund, including all accrued interest.

64. The United States shall not deliver payment to an aggrieved person until the aggrieved person has executed and provided to counsel for the United States a written release of all claims, legal or equitable, that he or she may have against Defendant Mills relating to the claims asserted in this case. Such release shall take the form of Exhibit 13. Once counsel for the United States has received an original signed release form from an aggrieved person and a check for that aggrieved person from Defendant Mills, counsel for the United States shall deliver, via overnight mail, the original signed release to counsel for Defendant Mills, and the check to the aggrieved person. If any aggrieved person to whom a check has been made payable declines to execute a release in the form of Exhibit 13, or fails to execute a release by the expiration date of this Consent Order, counsel for the United States shall return the undelivered check to Defendant Mills, and that amount shall revert to the United States Treasury.

XIII. PAYMENT TO THE UNITED STATES

65. Within fifteen (15) days from the date of entry of this Order, the Mills Defendant shall cause to be paid a total of Fifty Thousand Dollars (\$50,000) to the United States Treasury pursuant to 42 U.S.C. § 3614(d)(1)(C) and 42 U.S.C. § 12188(b)(2)(C)(i). This amount shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States. Defendant Mills shall not seek to discharge any part of the amount paid under this Paragraph in bankruptcy.

XIV. EDUCATIONAL PROGRAM

66. Within thirty (30) days from the date of entry of this Order, the Mills Defendants shall provide a copy of this Order to all its agents and employees with management authority over

the design or construction of the Surveyed and Unsurveyed Properties, and shall secure a 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 Exhibit 14.

67. Defendant Mills shall also ensure that it and its employees and agents who have management authority over the design and/or construction of covered multifamily dwellings have a copy of, are familiar with, and personally review, the FHA's Accessible Design Requirements, the FHAG, 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).

68. Within one hundred twenty (120) days from the date of entry of this Order, Defendant Mills and all its employees and agents whose duties, in whole or in part, involve or will involve the development, design and/or construction of covered multifamily dwellings will undergo training on the accessibility requirements of the FHA and the ADA. The training shall be conducted by a qualified individual, unconnected to Defendant Mills or their attorneys, and be approved by the United States. Such training may be virtual due to the COVID-19 pandemic. Any expenses associated with this training shall be borne by Defendant Mills. Defendant Mills 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 Exhibit 15.

XV. NOTICE OF DEFENDANTS' NON-DISCRIMINATION POLICY

69. In all advertising in newspapers, electronic media, pamphlets, brochures and other promotional literature regarding any new covered multifamily dwelling that Defendant Mills may design, develop, or construct, Defendant Mills will place the International Symbol of Accessibility in a conspicuous location.

XVI. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

70. In addition to all other reporting required herein, within one hundred eighty (180) days from the date of entry of this Order, Defendant Mills shall submit to the United States a report containing the signed statements of Defendant Mills and their employees and agents who have completed the training program specified in Paragraph 68 of this Order.

71. Defendant Mills shall, on a quarterly basis for so long as the retrofits contemplated hereunder continue, submit to the United States a compliance report detailing the status of retrofitting and inspections of the retrofits at the Surveyed and Unsurveyed Properties.

72. Defendant Mills shall advise the United States in writing within fifteen (15) days of receipt of any written administrative or legal fair housing complaint alleging accessibility-related discrimination on the basis of disability against any multifamily residential property owned and operated by them. Upon reasonable notice, Defendant Mills shall also provide the United States all information it may request concerning any such complaint. Defendant Mills shall also advise the United States, in writing, within fifteen (15) days of the resolution of any such complaint.

73. Defendant Mills is required to preserve all records related to this Order, to the Surveyed and Unsurveyed Properties, and to any other multifamily dwellings designed and/or constructed by them. Upon reasonable notice to Defendant Mills, the United States shall be

permitted to inspect and copy any records of Defendant Mills or to inspect any properties or units under the control of Defendant Mills bearing on compliance with this Order. Nothing herein shall require Defendant Mills to retain tenant files longer than is otherwise required for LIHTC properties by the Internal Revenue Service and/or the North Carolina Housing Finance Agency.

XVII. DURATION OF ORDER AND TERMINATION OF LEGAL ACTION

74. The Court shall retain jurisdiction over all disputes between and among the parties arising out of this Order, including, but not limited to, the interpretation and enforcement of the terms of this Order.

75. Upon the Court's approval of this Order, this case shall be dismissed without prejudice. The Court shall retain jurisdiction for the duration of this Order, five (5) years, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of this Order in the interests of justice including, but not limited to, if at the end of five (5) years the Inspector has not certified that all the retrofits required under this Order have been completed.

76. All Parties shall endeavor, in good faith, to resolve informally any differences regarding interpretation of, and compliance with, this Order prior to bringing such matters to the Court for resolution. However, in the event of a material failure by Defendant Mills and/or the Owner Defendants to perform, in a timely manner, any act required by this Order or 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.

XVIII. TIME FOR PERFORMANCE

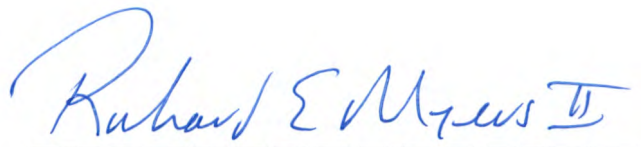
77. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the United States, Defendant Mills, and the Owner Defendants. Notwithstanding the foregoing, no such written agreement shall be required for any extension of time reasonably and in good faith necessitated due to circumstances arising from the COVID-19 pandemic, including but not limited to inability of the Defendants or any inspectors or agents thereof to enter any covered units for any purpose or any refusal by any tenant to accommodate otherwise scheduled retrofits inside their respective unit at any Surveyed or Unsurveyed Property.

XIX. RELEASE OF LITIGATION HOLDS AND CLASSIFICATION OF SETTLEMENT

78. 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, and the United States acknowledges that the Defendants do not intend to report this matter as “litigation” on future litigation reports. 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.

The Clerk of Court is DIRECTED to administratively close this case subject to the same being reopened by motion of a party and further order of the court.

SO ORDERED this 26th day of October, 2021.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

Dated: October 12, 2021

For Plaintiff United States of America:

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Acting United States Attorney
Eastern District of North Carolina

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Assistant Attorney General
Civil Rights Division

JOSHUA ROYSTER
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Civil Division
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/s/ Tanya Ilona Kirwan
SAMEENA SHINA MAJEED
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MICHAEL S. MAURER
Deputy Chief
TANYA ILONA KIRWAN, MD Bar
ORLY MAY
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
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Washington, D.C. 20530
Tel: 202-305-4973
Fax: 202-514-1116
Email: tanya.kirwan@usdoj.gov

Dated: 10-8-21

For Defendants Mills Construction Company, Inc., Milburnie Apartments Limited Partnership, Pine Knoll Limited Partnership, Rollinwood Manor, LLC, Kittrell Place, LLC, Hodges Creek Apartments, LLC, and Enfield Pointe, LLC:

Mills Construction Company, Inc.

By: 
Fred G. Mills, President

Milburnie Apartments Limited Partnership
By: United Equities VI, General Partner

By: 
Fred G. Mills, Managing General Partner

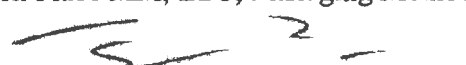
Pine Knoll Limited Partnership
By: United Equities V, General Partner

By: 
Fred G. Mills, Managing General Partner

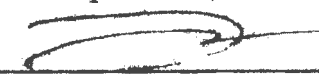
Rollinwood Manor, LLC

By: 
Fred G. Mills, Managing Member

Kittrell Place, LLC
By: Kittrell Place MM, LLC, Managing Member

By: 
Fred G. Mills, Manager

Hodges Creek Apartments, LLC

By: 
Fred G. Mills, Managing Member

Enfield Pointe, LLC
By: Enfield Pointe MM, LLC, Managing Member

By: 
Fred G. Mills, Manager