

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND CARE REALTY, LLC**

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Care Realty, LLC.

2. This matter is based upon complaints filed with the United States Department of Justice that alleged a skilled nursing facility owned by Care Realty, LLC discriminated against a patient on the basis of disability in violation of Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181-12189. The complaints alleged that a Care Realty, LLC facility refused to accept a patient for treatment because that patient was being treated with medication used to treat Opioid Use Disorder (OUD). As a result of these complaints, the United States opened an investigation and initiated a compliance review of all skilled nursing facilities in Massachusetts owned by Care Realty, LLC (the “Care Realty Facilities”) to determine whether a violation of the ADA existed.

3. Following an investigation and review, the United States made certain determinations, as set forth below, which Care Realty, LLC expressly denies. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute. This Settlement Agreement is neither an admission of liability by Care Realty, LLC, nor a concession by the United States that the allegations of the complaints are not well-founded. The parties have voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND DETERMINATIONS

4. The Attorney General of the United States is responsible for administering and enforcing the ADA, 42 U.S.C. §§ 12101-12213, and the relevant regulations implementing Title III, 28 C.F.R. Part 36.

5. The Care Realty Facilities operate skilled nursing facilities in Massachusetts; each provides skilled nursing services, and rehabilitation services. These facilities are places of public accommodation; they are owned by Care Realty, LLC—a private entity—and are facilities that are health care providers, hospitals, or other service establishments, as well as social service center establishments. 42 U.S.C. §§ 12181(7)(F),(K); 28 C.F.R. §§ 36.104(6),(11) (definition of place of public accommodation).

6. The Care Realty Facilities are places of public accommodation within the meaning of 42 U.S.C. § 12182(a), and are thus subject to the requirements of Title III of the ADA.

7. Under Title III of the ADA, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Specifically, discrimination includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any good, services, facilities,

privileges, advantages, or accommodations, unless such criteria can be shown to be necessary. 42 U.S.C. § 12182(b)(2)(A)(i). A public accommodation may impose legitimate safety requirements that are necessary for safe operation, but safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities. 28 C.F.R. 36.301(b).

8. Title III of the ADA further specifies that a public accommodation shall not subject an individual or a class of individuals on the basis of a disability to a denial of the opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages, or accommodations. 28 C.F.R. § 36.202(a).

9. OUD is a physical or mental impairment that substantially limits one or more major life activities, which include the operation of major bodily functions. 28 C.F.R. § 36.105(b)(2) (defining physical or mental impairment to include “drug addiction”). OUD substantially limits major life activities, including caring for oneself, learning, concentrating, thinking, and communicating. 42 U.S.C. § 12102(A). OUD also limits the operation of major bodily functions, such as neurological and brain functions. 42 U.S.C. § 12102(B). The determination whether an impairment substantially limits a major life activity is made without regard to the effect that ameliorating measures—including medication—may have on the impairment. 42 U.S.C. § 12102(4)(E)(i). Accordingly, persons with OUD are individuals with a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104, and covered by the ADA’s protections, except as described in paragraph 10, below.

10. Under the ADA, the term “individual with a disability” does not include an individual who is “currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.” 42 U.S.C. § 12210(a).¹ This exclusion does not apply to individuals who are no longer using illegal drugs and who (1) have successfully completed drug rehabilitation, (2) are participating in a supervised rehabilitation program, or (3) are erroneously regarded as using illegal drugs. 42 U.S.C. § 12210(b). However, a public accommodation may not deny health services to an individual on the basis of that individual’s current use of drugs, if the individual is otherwise entitled to such services. 28 C.F.R. §§ 36.209(b)(1).

11. In December 2016, the Massachusetts Department of Public Health issued a Circular clarifying that Massachusetts’ regulations state that when individuals on Medication for Opioid Use Disorder (MOUD)² seek admission to long-term care facilities, such as skilled nursing facilities, and are otherwise qualified for admission, “the facility is expected to admit the resident and provide for the administration of MOUD as directed by the prescribing or ordering physician at the resident’s opioid treatment program (OTP) or Office Based Opioid Treatment with buprenorphine program (OBOT).

¹ An individual’s use of controlled substance is not an “illegal use of drugs” if the person takes those substances “under supervision by a licensed health care professional.” 42 U.S.C. § 12210(d)(1).

² MOUD involves using FDA approved medications along with counseling and behavioral therapies for the treatment of OUD. The medications typically include Opioid Agonist Therapies (OAT) such as methadone or buprenorphine, or naltrexone, which is an opioid antagonist.

12. Ensuring that rehabilitation centers, hospitals, and other service and social service establishments do not discriminate on the basis of disability is an issue of general public importance. Additionally, ensuring that individuals in treatment for OUD do not face discrimination is also an issue of general public importance. The United States is authorized to investigate alleged violations of Title III of the ADA and initiate compliance reviews, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that raises issues of general public importance, as well as in cases where the United States has reasonable cause to believe that a group of persons is engaged in a pattern or practice of discrimination in violation of the ADA. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.

13. As a result of its investigation, the United States has determined the following: since January 2018, a Care Realty Facility denied admission to a patient based on his or her prescription for MOUD and/or on the basis of their OUD.

14. The United States further has determined the following: in refusing to admit this patient, the Care Realty Facilities engaged in discrimination by:

- a. Imposing eligibility criteria that screened out individuals with disabilities, specifically individuals with OUD, without assessing actual risks (rather than using mere speculation, stereotypes, or generalizations about individuals with disabilities) in violation of 42 U.S.C. § 12182(b)(2)(A)(i) and 28 C.F.R. § 36.301, and
- b. Denying them the opportunity to equally participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations being offered, on the basis of disability, in violation of 42 U.S.C. § 12182(b)(1)(A)(i) and 28 C.F.R. § 36.201.

ACTIONS TO BE TAKEN BY CARE REALTY, LLC

15. Care Realty Facilities will not discriminate against any individual with a disability on the basis of OUD by denying such individual the opportunity to participate in or benefit from services at the Care Realty Facilities on the basis of disability or by imposing eligibility criteria that screen out individuals with disabilities on the basis of OUD in violation of Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.

16. Within 30 days of the effective date of this Agreement, Care Realty, LLC will submit a draft non-discrimination policy to the United States for its review and approval. The non-discrimination policy to be adopted by the Care Realty Facilities will state that no Care Realty Facility discriminates in the provision of services to persons with disabilities on the basis of OUD and who have been prescribed MOUD. This policy will also describe how Care Realty Facilities will make individualized assessments as to whether an individual's current use of drugs poses a direct threat to the health or safety of others. The non-discrimination policy will also direct those with questions, concerns, or complaints on how to make contact to discuss their issues. Within 21 days of approval by the United States, the Care Realty Facilities will adopt and implement the non-discrimination policy, and Care Realty Facilities will maintain and enforce

the non-discrimination policy for the duration of this Agreement. The non-discrimination policy will be conspicuously posted in the reception area of Care Realty Facilities, as well as on the homepage of any current or future Care Realty Facilities' website, for the duration of this Agreement.

17. After Care Realty, LLC receives written approval by counsel for the United States under paragraph 16 of this Agreement, it will within 30 days of receiving that approval, confirm that it has provided training on Title III of the ADA to employees and any contractors of Care Realty Facilities who are involved with admissions, including training about OUD, medications used to treat OUD, and disability discrimination in general. Care Realty, LLC shall notify the United States in writing when this training is completed.

18. All new employees of Care Realty Facilities and any contractors who are involved with admissions will receive the training referenced in paragraph 17 as a component of new employee training and orientation through the duration of this Agreement within 30 days of their start date as a part of their standard training for new employees and any contractors who are involved with admissions. Notification of the Care Realty Facilities' completion of this training will be provided to the United States every six months following the effective date of this Agreement and shall include the names and dates of the new employees and contractors trained.

19. All training manuals or written or electronic materials that address the Care Realty Facilities' policies and practices used in the trainings required in paragraphs 17 and 18 or created or substantively revised after the effective date of this Agreement shall be consistent with the provisions of this Agreement and approved in advance by counsel for the United States.

20. Care Realty Facilities shall create and maintain logs that document the name of each individual who participates in the trainings required in paragraphs 17 and 18, his or her title, and the date he or she participated in the training(s). This log may be kept in electronic format. Copies of such log shall be provided to the United States within 21 days of any written request for it.

21. Care Realty Facilities shall create and maintain admissions intake logs that documents each prospective patient who has OUD. The log shall include whether the prospective patient was prescribed MOUD, and if so, the name of the medication, the names of the entity and individual making the request for admission on behalf of the patient, whether the prospective patient was denied admission, and if so a description of the reason for denial. This log should not include the name of the patient, and should be maintained in accordance with privacy requirements afforded to individuals in treatment for OUD. 42 C.F.R. Part 2. These logs may be kept in electronic format. Copies of such logs shall be provided to the United States every six months following the effective date of this Agreement.

22. For the duration of this Agreement, Care Realty, LLC will send a copy to the United States of any complaint received that related to admission or care of a person with OUD to the Care Realty Facilities within 21 days of receiving the complaint. For oral complaints made to an officer or director, Care Realty, LLC will send a written description. Care Realty, LLC will also submit to the United States a copy of the Care Realty Facilities' response to each complainant if the response was made in writing.

23. Care Realty, LLC shall pay a civil penalty to the United States in the amount of \$10,000 as authorized by 42 U.S.C. § 12188(b)(2)(C), 28 C.F.R. § 36.504(a)(3), and 28 C.F.R. § 85.5 as amended. The payment shall be made as follows:

- a. Care Realty, LLC shall pay \$5,000 to the United States within 30 days of the effective date of this agreement.
- b. Payment of \$5,000 (the “Suspended Payment”) shall be suspended and forgiven if Care Realty, LLC materially complies with the terms of this Agreement for the duration of this Agreement.
- c. If at any time, the United States determines that Care Realty, LLC has failed to materially comply with the terms of this Agreement, it shall provide written notice reasonably describing the noncompliance and demanding payment of the Suspended Payment, or of some portion of the Suspended Payment. Care Realty, LLC will then have 30 days to make the payment or cure the non-compliance if it is possible to do so. Alternatively, within the 30-day time period, Care Realty, LLC may contest or explain the alleged non-compliance or assert that the non-compliance has already been cured or does not need to be cured. If, after the 30-day period, and after fully considering Care Realty, LLC’s explanations, proposals, and attempts to cure, the United States determines there has been material non-compliance that has not or cannot be cured and notifies Care Realty, LLC of such determination, and Care Realty, LLC fails to make the Suspended Payment within five (5) business days of being so notified, the United States may file a civil action in federal court to enforce the payment obligation and take any other action it determines is necessary and appropriate.

24. If any issues arise that affect the anticipated completion dates set forth in paragraphs 15-23, Care Realty, LLC will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

OTHER PROVISIONS

25. In consideration for this Agreement, the United States will close its investigation and will not institute a civil action alleging discrimination based on the findings set forth in paragraph 13-14. The United States, however, may review Care Realty, LLC’s compliance with this Agreement and/or Title III of the ADA at any time. If the United States believes that Care Realty, LLC is in violation of Title III of the ADA in ways not addressed by this Agreement, the United States may institute a civil action in the appropriate U.S. District Court to enforce timely violations of Title III of the ADA.

26. Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce any provision of this Agreement.

27. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Care Realty, LLC shall engage in good faith negotiations to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

28. This Agreement is binding on Care Realty, LLC, including all principals, agents, executors, administrators, representatives, employees, and beneficiaries. In the event that Care Realty, LLC seeks to sell, transfer, or assign substantially all of its assets or a controlling membership position in Care Realty, LLC during the term of this Agreement, then, as a condition of such sale, transfer, or assignment, Care Realty, LLC will obtain the written Agreement of the successor, buyer, transferee, or assignee to all obligations remaining under this Agreement for the remaining term of this Agreement.

29. The signatory for Care Realty, LLC represents that he or she is authorized to bind Care Realty, LLC to this Agreement.

30. This Agreement constitutes the entire agreement between the United States and Care Realty, LLC on the matters raised herein, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.

31. This Agreement does not constitute a finding by the United States that Care Realty, LLC is in full compliance with the ADA. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of disability. Nothing in this Agreement relieves Care Realty, LLC of its obligation to fully comply with the requirements of the ADA.

32. Care Realty, LLC shall not discriminate or retaliate against any person because of his or her participation in this matter.

EFFECTIVE DATE/TERMINATION DATE

33. The effective date of this Agreement is the date of the last signature below.

34. The duration of this Agreement will be two years from the effective date.

NATHANIEL R. MENDELL
Acting United States Attorney
District of Massachusetts

/s/_____

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Date: 9/27/2021

/s/ _____

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By: A. Alberto Lugo, Executive Vice President and General Counsel

Date: 8/11/2021