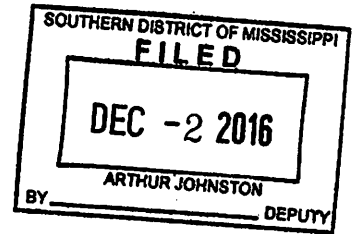


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



UNITED STATES OF AMERICA,)
Plaintiff,)

v.)

Case No. 1:14-cv-224-LG-JCG

DAWN PROPERTIES, INC.,)
SOUTHERN CROSS CONSTRUCTION)
COMPANY, INC.,)
RIDGELAND CONSTRUCTION ONE, LLC,)
THE BEACH CLUB, LLC,)
THE BELMONT OF LAMAR, LLC,)
GRAND BISCAYNE APTS., LLC,)
SEAINN, LLC, and)
IKE W. THRASH,)
Defendants,)

and)

SUMMER MISS, LLC,)
14510 LEMOYNE BOULEVARD, LLC,)
LEXINGTON MILL MISSISSIPPI OWNER, LLC,)
INN BY THE SEA HOME OWNERS)
ASSOCIATION, INC., and)
RS BELMONT APARTMENTS, LLC,)
Rule 19 Defendants,)

and)

14510 LEMOYNE BOULEVARD, LLC,)
Cross-claimant,)

v.)

GRAND BISCAYNE APTS., LLC and)
IKE W. THRASH,)
Cross-defendant and)
Rule 19/20 Defendant to)
Crossclaim.)

CONSENT ORDER

I. INTRODUCTION

A. Background

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (“FHA”), 42 U.S.C. § 3601 *et seq.* and Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12181 *et seq.* The United States’ Complaint alleges that Defendants Ike W. Thrash, Southern Cross Construction Company, Inc., Dawn Properties, Inc., The Beach Club, LLC, The Belmont of Lamar, LLC, Grand Biscayne Apts., LLC, Ridgeland Construction One, LLC, and Seainn, LLC (collectively, “Defendants”) have engaged in a pattern or practice of discrimination against persons with disabilities and/or denied of rights to a group of persons because of disability by failing to design and construct the following multi-family dwellings (the “Subject Properties”) with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3)(C):

- a. The Beach Club Apartments in Long Beach, Mississippi (“Beach Club”);
- b. The Belmont Apartments in Biloxi, Mississippi (“Belmont (Biloxi)”);
- c. The Belmont Apartments in Hattiesburg, Mississippi (“Belmont (Hattiesburg)”);
- d. The Grand Biscayne Apartments in Biloxi, Mississippi (“Grand Biscayne”);
- e. The Lexington Apartments in Ridgeland, Mississippi (“Lexington”); and
- f. Inn by the Sea Condominiums in Pass Christian, Mississippi (“Inn by the Sea”).

2. In addition, the United States alleges that the Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, and Lexington contain public accommodations that were not designed and constructed to be accessible as required by the ADA, 42 U.S.C. § 12183(a)(1).

3. For purposes of this Consent Order, the United States and Defendants agree that the Subject Properties 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 that the Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, and Lexington are subject to the requirements of the ADA, 42 U.S.C. § 12183(a)(1).

B. Defendants

4. Defendant Dawn Properties, Inc. is a corporation organized under the laws of Mississippi, with its principal place of business located at 59 at 98 Place Boulevard, in Hattiesburg, Mississippi. The United States' suit alleges that Dawn Properties, Inc. participated in the design and/or construction of the Lexington.

5. Defendant Southern Cross Construction Company, Inc. is a corporation organized under the laws of Mississippi, with its principal place of business located at 59 at 98 Place Boulevard, in Hattiesburg, Mississippi. The United States' suit alleges that Southern Cross Construction Company, Inc. participated in the design and/or construction of the Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, Inn by the Sea, and Lexington.

6. Defendant The Beach Club, LLC is a limited liability company organized under the laws of Mississippi, with its principal place of business located at 59 at 98 Place Boulevard, in Hattiesburg, Mississippi. The United States' suit alleges that The Beach Club, LLC participated in the design and/or construction of the Beach Club.

7. Defendant The Belmont of Lamar, LLC is a limited liability company organized under the laws of Mississippi, with its principal place of business located at 59 at 98 Place Boulevard, in Hattiesburg, Mississippi. The United States' suit alleges that The Belmont of Lamar, LLC participated in the design and/or construction of the Belmont (Hattiesburg).

8. Defendant Grand Biscayne Apts., LLC is a limited liability company organized under the laws of Mississippi, with its principal place of business located at 59 at 98 Place Boulevard, in Hattiesburg, Mississippi. The United States' suit alleges that Grand Biscayne Apts., LLC participated in the design and/or construction of the Grand Biscayne.

9. Defendant Ridgeland Construction One, LLC is a limited liability company organized under the laws of Delaware and registered to do business in Mississippi, with its principal place of business 1 S. Ocean Blvd., Suite 308 in Boca Raton, Florida. The United States' suit alleges that Ridgeland Construction One, LLC participated in the design and/or construction of the Lexington.

10. Defendant Seainn, LLC is a limited liability company organized under the laws of Mississippi, with its principal place of business located at 59 at 98 Place Boulevard, in Hattiesburg, Mississippi. The United States' suit alleges that Seainn, LLC participated in the design and/or construction of Inn by the Sea.

11. Defendant Ike W. Thrash is an individual who resides in Hattiesburg, Mississippi. Ike W. Thrash is or was an owner, principal, manager, and/or member of Defendants The Beach Club, LLC, The Belmont of Lamar, LLC, Grand Biscayne Apts., LLC, Ridgeland Construction One, LLC, Seainn, LLC, Dawn Properties, Inc., and Southern Cross Construction Company, Inc. The United States' suit alleges that Thrash participated in the design and/or construction of Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, Inn by the Sea, and Lexington.

12. The Parties have entered into this settlement agreement ("Consent Order") to resolve the issues in dispute and to avoid the uncertainties and costs of further litigation, and neither the Consent Order nor any of the provisions hereof shall be construed as an admission of

liability. Defendants deny violating the Fair Housing Act and the Americans with Disabilities Act.

C. Relevant Requirements of the Fair Housing Act

13. The FHA provides that all ground floor units in non-elevator residential buildings with four or more dwelling units, and all dwelling units in residential buildings with one or more elevators, that are designed and constructed for first occupancy after March 13, 1991, are “covered multifamily dwellings” and are required, at the time of design and construction, to include certain accessible and adaptive-design features. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A)-(B).

14. 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.”

15. For the purposes of this Consent Order, the parties agree that each Subject Property was designed and constructed for first occupancy after March 13, 1991, and therefore all the ground-floor units at the Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand

Biscayne, and Lexington, and all the units at Inn by the Sea, 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 their associated public and common use areas, including the accessible pedestrian routes, at the Subject Properties were required to be designed and constructed to comply with the Accessible Design Requirements of 42 U.S.C. § 3604(f)(3)(C).

D. Relevant Requirements of the Americans with Disabilities Act

16. The ADA, as well as, the ADA Standards for Accessible Design (2010) and ADA Accessibility Guidelines for Buildings and Facilities (1991), 28 C.F.R. pt. 36, app. A (“ADA Standards”), issued by the United States 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 the ADA. 42 U.S.C. §§ 12182(a) and 12183(a)(1). A rental or leasing office for an apartment complex is a “public accommodation” under the ADA. 42 U.S.C. § 12181(7)(E).

17. For the purposes of this Consent Order, the parties agree that the leasing offices for the Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, and Lexington were designed and constructed for first occupancy after January 26, 1993, and therefore the leasing offices and the facilities and privileges provided at those offices, such as public parking and public restrooms, were required to be designed and constructed in accordance with the ADA Standards.

E. The Beach Club

18. The Beach Club is an apartment complex located at 2012 W. 2nd St. in Long Beach, MS. It consists of 15 three-story buildings and 5 two-story buildings with no elevators. In total, there are 220 units at the Beach Club, 80 of which are ground-floor units that are “covered multifamily dwellings.” These 80 ground-floor units, and the public and common use areas of the Beach Club – which include a clubhouse/leasing office, a mail facility, dumpsters, a picnic area, a swimming pool, and a playground – are subject to the Accessible Design Requirements of the FHA.

F. The Belmont (Biloxi)

19. The Belmont (Biloxi) is an apartment complex located at 14801 Lemoyne Blvd. in Biloxi, MS. The apartment complex consists of 15 three-story buildings with no elevators. In total, there are 180 units at the Belmont (Biloxi), 60 of which are ground-floor units that are “covered multifamily dwellings.” These 60 ground-floor units, and the public and common use areas of the Belmont (Biloxi) – which include a clubhouse/leasing office, a mail facility, dumpsters, a fitness center, a swimming pool, and a dog park – are subject to the Accessible Design Requirements of the FHA.

G. The Belmont (Hattiesburg)

20. The Belmont (Hattiesburg) is an apartment complex located at 147 98th Place Boulevard in Hattiesburg, Mississippi. It consists of 11 three-story buildings and 4 two-story buildings with no elevators. In total, there are 164 units at the Belmont (Hattiesburg), 60 of which are ground-floor units that are “covered multifamily dwellings.” These 60 ground-floor units, and the public and common use areas of the Belmont (Hattiesburg) – which include a

clubhouse/leasing office, a mail facility, dumpsters, a gazebo, a swimming pool, and a pet play area – are subject to the Accessible Design Requirements of the FHA.

H. The Grand Biscayne

21. The Grand Biscayne is an apartment complex located at 14510 Lemoyne Boulevard in Biloxi, Mississippi. It consists of 21 three-story buildings and 8 two-story buildings with no elevators. In total, there are 316 units at the Grand Biscayne, 116 of which are ground-floor units that are “covered multifamily dwellings.” These 116 ground-floor units, and the public and common use areas of the Grand Biscayne – which include a clubhouse/leasing office, a mail facility, dumpsters, a playground, and a swimming pool – are subject to the Accessible Design Requirements of the FHA.

I. Inn by the Sea

22. Inn by the Sea is a condominium complex located at 900 Village Lane in Pass Christian, Mississippi. It consists of a single five-story building with at least one elevator serving all floors. It consists of approximately 75 condominium units, which are “covered multifamily dwellings.” These units, and the public and common use areas of Inn by the Sea – which include a swimming pool, a meeting facility, a fitness center, and a mail facility – are subject to the Accessible Design Requirements of the FHA.

J. The Lexington

23. The Lexington is an apartment complex located at 879 William Boulevard in Ridgeland, Mississippi. It consists of 27 buildings with no elevators. In total, there are 220 units at the Lexington, 108 of which are ground-floor units that are “covered multifamily dwellings.” These 108 ground-floor units, and the public and common use areas of the Lexington – which include a clubhouse/leasing office, a mail facility, dumpsters, a picnic area, a swimming pool,

and an open space that includes a pet litter area – are subject to the Accessible Design Requirements of the FHA.

K. Statement of Agreement by the Parties

24. The parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a) and 12188(b)(1)(B). The parties further agree that the United States' claims against Defendants should be resolved without further proceedings and without an evidentiary hearing or a trial.

25. This Consent Order constitutes the entire agreement between the United States and Defendants¹ on the matters herein and, the terms of this Order shall not be modified, revised, or altered unless mutually agreed upon in writing by the parties and approved by the Court, except as provided in Paragraph 60.

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

It is hereby ORDERED, ADJUDGED, and DECREED:

II. GENERAL INJUNCTION

27. Defendants and each of their officers, employees, successors, and assigns 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).

¹ Rule 19 Defendants 14510 Lemoyne Blvd., LLC, Summer Miss, LLC, and RS Belmont Apartments, LLC have entered into consent orders with the United States. *See* ECF Nos. 169, 305, and 536. Those agreements are not affected by this Consent Order, and remain in force and effect. The United States and Rule 19 Defendant Lexington Mill Mississippi Owner, LLC are separately submitting a consent order to the Court for approval. Upon entry, that consent order shall also remain in full force and effect.

28. Defendants and each of their officers, employees, successors, and assigns are enjoined from interfering with or preventing the retrofitting ordered herein or the implementation or completion of this Consent Order.

III. CORRECTIVE ACTIONS/RETROFITS

29. All retrofits required by this Order shall be reasonably consistent with and reasonably equivalent to that which is replaced. All retrofits shall be performed by duly licensed and bonded contractors acting in conformity with applicable state and local regulations regarding building construction, repairs and improvements, with Defendants being responsible for obtaining all necessary building permits, inspections and otherwise complying with all related state and local regulatory requirements (including payment of all permit and/or inspection fees). All retrofits shall be performed in a professional and workmanlike manner consistent with good and generally accepted construction standards for multifamily dwellings substantially similar to the subject properties. It is understood and agreed that the Rule 19 Defendants are not responsible under this Consent Order for the retrofitting of any aspect of its property, as the retrofits are the sole and exclusive responsibility of Defendants.

30. No later than thirty (30) days following the entry of this Consent Order, the Defendants shall enter into access agreements with the Rule 19 Defendants consistent with the preceding paragraph which agreements must also fully protect the Rule 19 Defendants from both the risk of, and actual, loss, damages or injuries arising from or in any way related to the performance of work required by this Consent Order.

A. Retrofits to Pedestrian Routes and Other Public and Common Use Areas

31. Except as modified by Paragraph 33 below, Defendants agree to complete the retrofits described in Appendix A to ensure that the Subject Properties have more accessible

pedestrian routes and to bring the other public and common use areas into greater compliance with the FHA and the Fair Housing Accessibility Guidelines, and where applicable, the ADA and ADA Standards.

32. As soon as reasonably practicable, but by no later than thirty-six (36) months from the entry of this Order, Defendants shall finish all the retrofits required by this Consent Order at all of the subject properties. Defendants shall finish all the retrofits listed in Appendix A at a minimum of one of the subject properties such that the Neutral Inspection provided for by Section IV occurs within twelve (12) months from the entry of this Order, and shall finish all the retrofits listed in Appendix A at a minimum of three additional subject properties such that the Neutral Inspection provided for by Section IV occurs within twenty-four (24) months from the entry of this Order.

33. Defendants shall, subject to the limitations contained in this paragraph, perform the retrofits to the Lexington contained in Appendix A to accessible routes and public and common use areas in conformance with the provisions of this Consent Order and the access agreement contemplated by Paragraph 30. Defendants must also retain an engineer and an architect at their cost to prepare design and construction plans for the retrofitting set forth in Appendix A. The engineer and architect must also evaluate whether the retrofits set forth in Appendix A can reasonably be accomplished without (i) compromising the stability, integrity, and functionality of building systems and other infrastructure and improvements or (ii) compromising drainage. The parties shall consider the findings of the engineer and architect as part of the scope of the retrofits at the Lexington. If the parties cannot reach agreement as to any changes to the retrofits on review of the plans and findings of the engineer and architect, they shall submit the dispute to the Court for resolution. Once the parties have agreed as to retrofits

or the Court has resolved the parties' dispute, Defendants shall follow the process listed in this Consent Order for providing notice and timely completing such retrofits at the Lexington.

B. Notice of Retrofits to the Pedestrian Routes and to the Public and Common Use Areas

34. Within thirty (30) days of the entry of this Order, Defendants shall provide written notice to all residents/tenants at the Subject Properties, except for the Lexington, stating that the retrofits required by this Order will be performed to the pedestrian routes and to the public and common use areas. Written notice shall be provided to all tenants of the Lexington within thirty (30) days of the parties reaching agreement as to the retrofits, or the Court resolving the Parties' disputes, as contemplated by Paragraph 33. All required such notices shall conform to Appendix

C. Defendants shall certify to the United States in writing that the notices have been distributed and shall describe the manner in which they were distributed within ten (10) days after such distribution.²

C. Retrofits to Ground-Floor Dwelling Unit Interiors at Apartments

35. Defendants agree to complete the retrofits at Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, and Lexington described in Appendix B, and shall pay all associated expenses to ensure that these identified units are in greater compliance with the FHA.

² All correspondence required to be sent to the United States under the provisions of this Order shall be sent to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, Attn: DJ 175-41-223, at the following address:

Regular U.S. Mail: 950 Pennsylvania Avenue, NW – NWB
Washington, D.C. 20530
Overnight Mail: 1800 G Street, NW
Suite 7002
Washington, D.C. 20006

36. As soon as reasonably practicable, but by no later than thirty-six (36) months from the entry of this Order, Defendants shall finish all the retrofits listed in Appendix B. Defendants shall finish all the retrofits listed in Appendix B at a minimum of one of the subject properties such that the Neutral Inspection provided for by Section IV occurs within twelve (12) months from the entry of this Order, and shall finish all the retrofits listed in Appendix B at a minimum of three additional subject properties such that the Neutral Inspection provided for by Section IV occurs within twenty-four (24) months from the entry of this Order.

37. Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, and Lexington residents may request in writing that the retrofits be performed earlier than thirty-six (36) months from the date of entry of the consent order, and Defendants shall grant requests on a first-come, first-served basis. Defendants shall complete the requested retrofits within forty five (45) days from the date on which the retrofits were requested by a resident.

D. Notice of Retrofits to Ground-Floor Dwelling Unit Interiors at Apartments

38. Within thirty (30) days from the date of the entry of this Order, Defendants shall provide a notice that is substantially equivalent to Appendix D to units to be retrofit at Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, and Lexington residents in ground-floor apartment units. The notice shall inform the residents that (1) the developer(s) have agreed, as part of a settlement in an accessibility case brought by the United States, to retrofit unit interiors; (2) the unit must be retrofitted within thirty-six (36) months; (3) the resident can schedule the retrofits; (4) the retrofits will be performed at no cost to the resident; and (5) if the retrofits require the resident to be displaced, the resident will be accommodated at no cost to the resident.

E. Inconvenience and Overnight Stays for Retrofits to Unit Interiors

39. Defendants shall endeavor to minimize inconvenience to residents, owners, and management in scheduling and performing retrofits required by this Order to unit interiors at Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, Lexington, and Inn by the Sea.

40. Defendants shall accommodate any resident of a unit scheduled to undergo a retrofit who will be or who is actually dislocated from the unit for over twelve (12) hours consecutively, or for three (3) hours consecutively when the public and common use area restrooms at the property are closed, due to (1) no usable toilet in the unit, (2) no running water in the unit, or (3) inability to access the unit due to wet concrete. To accommodate Beach Club tenants, Defendants may offer the resident a similarly sized, furnished apartment at the Beach Club at no cost to the tenant. To accommodate Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, and Lexington tenants, Defendants may seek to rent a similarly sized, furnished apartment from the Rule 19 owner of the respective property, at the discretion of the Rule 19 owner, and provide it at no cost to the tenant. For tenants of Beach Club, Belmont (Biloxi), Belmont (Hattiesburg), Grand Biscayne, and Lexington who are not accommodated at units at the property, Defendants shall pay the resident 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 the resident is dislocated from the unit under the terms of this paragraph, in lieu of providing a similarly sized, furnished unit at the property. To accommodate Inn by the Sea residents for whom their condominium unit is their primary residence, Defendants shall pay the resident the applicable government per diem rate for food and lodging for the local area for each day the resident is dislocated from the unit under the terms of this paragraph.

F. Retrofits to Condominium Units at Inn by the Sea

41. Within thirty (30) days from the date of the entry of this Order, Defendants shall provide a notice to owners of condominium units at Inn by the Sea. Additionally, on each anniversary of the entry of this Order for the term of the Order as set forth in Paragraph 57, Defendants shall provide a notice to owners of condominium units at Inn by the Sea who are new unit owners who have not previously received notice and whose units have not already been retrofitted under this Order. The notice shall inform the owners that certain features of the unit may not meet the accessible and adaptive design requirements of the FHA and that to settle this lawsuit, Defendants have offered to make certain retrofits at no cost to the unit owner upon written response by the unit owner. The notice under this paragraph shall conform to Appendix E. Defendants shall certify to the United States in writing that the notices have been distributed and shall detail the manner in which they were distributed within ten (10) days after such distribution. Defendants shall complete the requested retrofits within forty five (45) days from the date on which the retrofits were requested by a unit owner.

IV. NEUTRAL INSPECTOR

42. Defendants shall enter into a contract with a neutral inspector (“Inspector”), after having been approved by the United States, to conduct on-site inspections of the retrofits that have been performed under this Order to determine if they have been completed in accordance with the specifications in this Order’s Appendices A and B, subject to any agreement reached or orders entered pursuant to Paragraph 33. The Inspector shall have expertise in the design and construction requirements of the FHA and ADA.

43. An inspection of each property shall take place within thirty (30) days of the completion of all the retrofits to the accessible pedestrian routes, and the public and common use

areas, and all the units (except at Inn by the Sea) at that property, or as soon thereafter as practicable. Defendants shall give the United States and the relevant Rule 19 Defendant at least twenty-one (21) days' notice of each inspection and shall give the United States and the relevant Rule 19 Defendant an opportunity to have its representative(s) present for each inspection.

44. The Inspector shall set out the results of each inspection, including deficits if any, in writing and shall send that report to counsel for Defendants, for the United States, and for the relevant Rule 19 Defendant. If the inspection indicates that not all the required retrofits have been made as specified by this Consent Order, Defendants shall correct any deficiencies within sixty (60) days and shall pay for another inspection by the same Inspector to certify that the deficiencies have been corrected. Defendants shall give notice of any subsequent inspection to the United States and the relevant Rule 19 Defendant, and give the United States and the relevant Rule 19 Defendant an opportunity to have its representative(s) present for each subsequent inspection as set forth in Paragraph 43. This process shall continue until the Inspector certifies that all the necessary retrofits have been made. Defendants shall pay all the Inspector's reasonable costs associated with these inspections, and such payments shall be made without regard to the Inspector's findings. Upon reasonable notice to Defendants and the relevant Rule 19 Defendant, representatives of the United States shall be permitted to inspect the retrofits made by Defendants in accordance with this Consent Order or the third-party inspection reports provided for in this Order, to ensure compliance; provided, however, that the United States shall endeavor to minimize any inconvenience caused by such inspections.

V. TRANSFER OF INTEREST IN PROPERTY

45. 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 the properties as specified in this Order.

46. Should a Defendant or Defendants decide to sell or transfer ownership of the Beach Club Apartments, in whole or in part, or any portion thereof, prior to the completion of the retrofits specified in Appendices A and B of this Order, Defendants shall at least thirty (30) days prior to completion of the sale or transfer: (a) provide to each prospective buyer written notice that the Beach Club is subject to this Order, including specifically the owner'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 written notice of the owner's intent to sell or transfer ownership, along with a copy of the notice sent to each buyer, and each buyer's name, address and telephone number.

VI. NO RAISING RENTS OR FEES

47. Defendants and any Defendant's successor entity in which Ike Thrash has a majority interest may not raise the rent or fees of any dwelling unit, or demand any deposit or other fee for a dwelling unit at the Beach Club solely because of contemplated or completed retrofits in a dwelling unit. Nothing contained in this Order, however, shall prevent any Defendant or its successor(s) from raising rents or fees in the ordinary course of business or as the real estate market may warrant.

VII. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

48. Defendants shall maintain, and provide to the United States, the following information and statements regarding any covered multifamily dwellings intended to be

developed, built, designed, and/or engineered for first occupancy, in whole or in part, by any Defendant or any entity in which a Defendant has a position of control as an officer, director, or manager, or in which a Defendant has a 10% or greater ownership interest and participates in the design or construction, including but not limited to selection of design professionals, selection, review or modifications of plans, submission of documents to obtain permits, or other involvement in construction operations:

- a. the name and address of the project;
- b. a description of the project and the individual units;
- c. the name, address, and telephone number of the civil engineer(s) involved with the project;
- d. a statement from the civil engineer(s) involved with the project acknowledging and describing his/her knowledge of and training in the requirements of the FHA 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 FHA and the ADA, where applicable;
- e. a copy of the engineering documents for the project, upon request from the United States;
- f. the name, address and telephone number of the architect(s) who are involved with the project;
- g. a statement from all architect(s) who are involved with the project, acknowledging and describing his/her knowledge of and training in the requirements of the FHA and the ADA in the field of accessible site design and

certifying that he/she has reviewed the architectural plans for the project and that the design specifications therein fully comply with the requirements of the FHA and the ADA, where applicable; and

- h. a copy of the architectural plans for the project, upon request from the United States.

49. If the engineering documents or architectural plans are revised, and the revisions could have any impact on the accessibility of the dwellings or complex, each of the Defendants shall obtain, maintain, and provide to the United States upon request, a statement from the site engineer(s) or architect(s), who are employed or retained by any Defendant and are involved with the project, as applicable, that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the requirements of the FHA and the ADA, where applicable.

VIII. MONETARY DAMAGES TO AGGRIEVED PERSONS

50. Defendants shall pay the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) to the individuals identified as aggrieved persons by the United States, within the meaning of the Fair Housing Act, as set forth in Appendix F. Within thirty (30) days of the entry of this Consent Order, Defendants shall send to counsel for the United States checks payable to each of the identified aggrieved persons in the amounts listed in Appendix F, via overnight delivery.

51. The United States will retain in its possession the check for each identified aggrieved person until that person has executed a written release of all claims, legal or equitable, in the form of Appendix G that he or she might have against any and all Defendant(s) relating to

the claims asserted in this lawsuit. The United States will transmit the written releases to Defendants prior to sending the checks to the aggrieved persons.

IX. CIVIL PENALTY

52. Within thirty (30) days of the date of the entry of this Order, Defendants shall pay a civil penalty of ONE HUNDRED THOUSAND DOLLARS (\$100,000) pursuant to 42 U.S.C. § 3614(d)(1)(C) and 42 U.S.C. § 12188(b)(2)(C)(I) to vindicate the public interest by electronic funds transfer pursuant to written instructions provided by counsel for the United States.

X. EDUCATIONAL PROGRAM

53. Within ninety (90) days of the entry of this Consent Order, Defendants and any entity in which Ike Thrash has a controlling interest, and all employees and contractors whose duties, in whole or in part, involve or will involve primary management authority over the development, design and/or construction of multifamily dwellings of the type at issue in this case shall undergo training on the design and construction requirements of the FHA. The training shall be conducted by a qualified individual unaffiliated with any Defendant or any Defendant's counsel, subject to non-objection by counsel for the United States, and any expenses associated with this training shall be borne by Defendants. Defendants shall provide to the United States, within thirty (30) days after the training, the name(s), address(es) and telephone number(s) of the trainer(s); copies of the training outlines and any materials distributed by the trainers; and certifications executed by all Defendants and covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix H.

XI. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

54. Defendants are required to preserve all records required by this Consent Order. Upon reasonable written notice of at least fourteen (14) days to Defendants, representatives of

the United States shall be permitted to inspect and copy any records of Defendants or inspect Beach Club and any residential dwelling units at Beach Club bearing on compliance with this Consent Order at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to Defendants from such inspections.

55. Defendants shall, every six (6) months, beginning six (6) months after the date of the entry of this Order, submit to counsel for the United States a report containing: (i) a summary of the progress of the completion of retrofits described in Appendices A and B; (ii) a summary of the retrofits made to unit interiors at Inn by the Sea, if any; and (iii) the signed statements of new employees and agents that, in accordance with Paragraph 53 of this Consent Order, they have received and read the Order, and had an opportunity to have questions about the Order answered, except that the last report shall be due sixty (60) days prior to the anniversary.

56. Defendants shall advise counsel for the United States in writing within fifteen (15) days of receipt of any written administrative or legal fair housing complaint against any Defendant or any Defendant's successor, or against any employee or agent of any Defendant or any Defendant's successor regarding discrimination on the basis of disability in housing. Upon reasonable written notice of at least fourteen (14) days, Defendants shall also provide the United States all information it may request concerning any such complaint. Defendants shall also advise counsel for the United States, in writing, within fifteen (15) days of the resolution of any complaint.

XII. DURATION OF CONSENT ORDER

57. This Consent Order shall remain in effect for four (4) years after the date of its entry, or until six (6) months after the Neutral Inspector has certified that all of the retrofits required by Appendices A and B have been completed, whichever date is later, and the Court

will retain jurisdiction to enforce the Order. The responsibilities and obligations conferred upon the parties by this Consent Order will remain in effect for the term of the Order, except as otherwise specified herein.

58. 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 shall constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

59. The United States and Defendants 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 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 seek assistance from this Court, 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 by the failure to perform. The United States may move the Court to extend the duration of the Order in the interests of justice.

60. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and the relevant Defendant or Defendants, with notice to all other parties.

XIII. COSTS OF LITIGATION

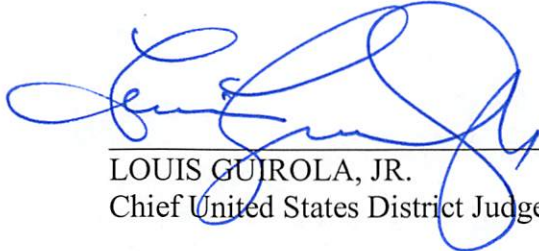
61. The United States and Defendants will bear their own costs and attorney’s fees associated with this litigation except as provided in Paragraph 59.

XIV. TERMINATION OF LITIGATION HOLD

62. The parties agree that, as of the date of the entry of this Consent Order, litigation is not “reasonably foreseeable” concerning the matters described above. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Consent Order.

SO ORDERED.

This the 2nd day of DECEMBER, 2016.



LOUIS GUIROLA, JR.
Chief United States District Judge

The undersigned apply for and consent to the entry of this Consent Order:

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