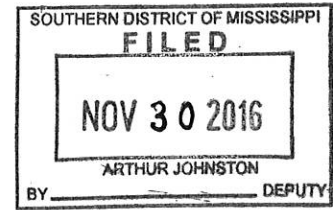


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



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

**CONSENT ORDER BETWEEN THE UNITED STATES AND
RULE 19 DEFENDANT LEXINGTON MILL MISSISSIPPI OWNER, LLC**

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 Apartments, 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 rights to a group of persons because of disability by failing to design and construct six multi-family dwellings, including The Lexington apartment complex in Ridgeland, Mississippi, 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). In addition, the United States alleges that each property contains public accommodations that were not designed and constructed to be accessible as required by the ADA, 42 U.S.C. § 12183(a)(1).

2. Among other things, the United States seeks an order from the Court requiring the Defendants to retrofit each of the properties to bring them into compliance with the FHA and the ADA.

3. Rule 19 Defendant Lexington Mill Mississippi Owner, LLC is a Delaware limited liability company, registered to do business in Mississippi, whose principal place of business is Two Logan Square, 100 N. 18th Street, 23rd Floor, in Philadelphia, Pennsylvania. Lexington is the current owner of The Lexington apartment complex. The complex was completed in 2001 and consists of 27 apartment buildings (with no elevators), 220 total units, and 108 ground floor

units. Lexington did not acquire an interest in the property until 2010 and was not involved to any extent in the design and construction of the complex. Lexington was added as a necessary party in whose absence complete relief could not be afforded regarding The Lexington.

4. For purposes of this Consent Order, the United States and Lexington agree The Lexington is 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 to the ADA, 42 U.S.C. § 12183(a)(1).

5. The FHA provides that all ground floor units in non-elevator residential buildings with four or more dwelling units 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).

6. 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.”

7. 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).

8. The parties dispute the number and/or extent of ground floor units, accessible routes, and public and common use areas at The Lexington that are subject to the Accessible Design Requirements of the FHA and also dispute which of these features should be retrofitted in response to the United States’ claims against the Defendants. However, 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 by Lexington.

9. 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).

10. As indicated by the signatures appearing below, the United States and Lexington agree to the entry of this Consent Order. The parties further agree that the United States’ claims involving The Lexington should be resolved without further proceedings and without an evidentiary hearing or a trial. This Order is final and binding as to Lexington, and it sets forth all

of the obligations incumbent on, and all of the relief sought from, Lexington and its successors and assigns arising out of or resulting in any way from the subject matter of the claims the United States has brought or may have brought against Lexington. This Order is not intended to affect any separate claims which Lexington may have as against the Defendants and does not resolve or affect any such claims.

Accordingly, it is hereby ORDERED, ADJUDGED AND AGREED as follows:

11. Lexington agrees not to object to or to contest entry of the specific version of the Consent Order signed by the United States and the Defendants and submitted to the Court for entry on November 29, 2016 and includes negotiated terms applicable to the scope of, manner of, and further proceedings applicable to retrofits at The Lexington, including inspection of completed retrofits as set forth therein. Lexington also agrees to allow Defendants access to The Lexington in order to complete retrofits as specified in the Access Agreement attached as Exhibit A hereto.

12. Lexington, its agents and affiliated companies, may not raise rents or impose fees on any dwelling unit at The Lexington because of anticipated or actual retrofits or because of other costs in connection with this litigation. Lexington shall otherwise retain an unimpeded right to raise rents and/or impose fees on its dwelling units for any and all other lawful reasons, and shall not be subject to special scrutiny or oversight in this regard.

13. Should Lexington decide to sell or transfer ownership of the The Lexington, in whole or in part, or any portion thereof, prior to the final resolution of this lawsuit or any retrofits ordered by the Court, Lexington agrees to: (a) prior to completion of sale or transfer, provide to each prospective buyer a copy of this Consent Order; and (b) upon completion of the sale, within

fourteen (14) days provide the United States written notice of the sale or transfer of ownership, including the buyer's name and address.

14. This Consent Order shall remain in effect until the end date of the Consent Order between the United States and the Defendants submitted to the Court for entry on November 29, 2016.

15. The United States and Lexington shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. In the event of a failure by Lexington to perform in a timely manner any act required by this Consent Order, or to otherwise 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.

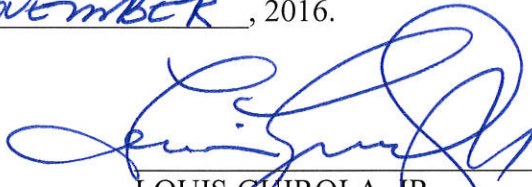
16. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and Lexington.

17. The United States will bear its own costs and attorneys' fees associated with this litigation, and Lexington agrees not to seek payment of their costs and attorneys' fees from the United States.

18. 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 30TH day of November, 2016.

A handwritten signature in blue ink, appearing to read "Louis Guirola, Jr.", written over a horizontal line.

LOUIS GUIROLA, JR.
Chief United States District Judge

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

FOR THE UNITED STATES:

GREGORY K. DAVIS
United States Attorney
Southern District of Mississippi

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Pshon Barrett
PSHON BARRETT
Assistant United States Attorney
Office of the United States Attorney
for the Southern District of Mississippi
501 E. Court Street, Suite 4.430
Jackson, MS 39201
601-973-2842
pshon.barrett@usdoj.gov

/s/ Julie J. Allen
SAMEENA SHINA MAJEED
Chief
MICHAEL S. MAURER
Deputy Chief
JULIE J. ALLEN
KINARA A. FLAGG
AURORA R. BRYANT
Trial Attorneys
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W.
Northwestern Building
Washington, D.C. 20530
202-307-6275
202-514-1116 (fax)
julie.allen@usdoj.gov
kinara.flagg@usdoj.gov
aurora.bryant@usdoj.gov

FOR RULE 19 DEFENDANT LEXINGTON MILL
MISSISSIPPI OWNER, LLC:

/s/ Robert B. Ireland, III
Robert B. Ireland, III (MSB No. 100708)
W. Abram Orlansky (MSB No. 104172)
WATKINS & EAGER PLLC
400 East Capitol Street (39201)
P.O. Box 650
Jackson, Mississippi 39205
Telephone: (601) 965-1900
Facsimile: (601) 965-1901
Email: rireland@watkinseager.com
aorlansky@watkinseager.com

CONTRACT

THIS AGREEMENT, made this ____ day of _____, by and between Lexington Mill Mississippi Owner, LLC, a Delaware limited liability company (hereinafter the "Owner"); and the "Dawn Defendants" (a collective term encompassing: Ike Thrash, a resident of Mississippi; Dawn Properties, Inc., a Mississippi corporation; Southern Cross Construction Company, a Mississippi corporation; and Ridgeland Construction One, LLC, a Delaware limited liability company). The Owner may act through one or more agents, hereinafter called the "Agent."

PREMISES

Owner owns an apartment community known as The Lexington located at 879 William Boulevard in Ridgeland, Mississippi (the "Property").

WITNESSETH

IN CONSIDERATION of the mutual promises contained in this Agreement, the parties agree as follows:

ARTICLE I

SCOPE OF WORK: The Specifications and Scope of Work to be performed for the Property by Dawn Defendants are set forth in the Consent Order agreed to by the United States and Dawn Defendants and entered by the Court in the Dawn Litigation (Civil Action Number 1:14-cv-224 in the United States District Court for the Southern District of Mississippi), including the sections of Appendices A and B of the Consent Order specific to the Property and other sections of the Consent Order allowing modifications of the same upon completion of design and construction plans and further evaluation by an engineer and architect consistent with the Consent Order.

ARTICLE II

APPLICABILITY OF OBLIGATIONS: Dawn Defendants agree to ensure that any general contractor engaged by the Dawn Defendants to perform, oversee, and/or supervise the Scope of Work at the Property shall be bound by each and every obligation to which Dawn Defendants agree in this Agreement. Prior to allowing any such general contractor to begin work at the Property, and subject to the provisions of Article X, Paragraph F, the Dawn Defendants shall provide proof to Owner of a valid contract between Dawn Defendants and such general contractor requiring adherence to the terms of this Agreement by the general contractor.

Regardless of the entity performing the Scope of Work, be it one or more Dawn Defendants or an unrelated general contractor they engage, Dawn Defendants agree that any failure to conform to the requirements of this Agreement shall give rise to a cause of action by Owner for breach of contract against Dawn Defendants. Dawn Defendants shall be jointly responsible for all obligations contained herein.

ARTICLE III

PROVISION OF LABOR AND MATERIALS: Dawn Defendants agree to furnish and pay for all labor and supervision, tools, apparatus, supplies, equipment and services, and also to furnish, deliver and pay for all work described under Scope of Work, free from any claims that might otherwise be made by laborers, material suppliers, general contractors, sub-tier contractors, and others.

ARTICLE IV

Unless specific exemption is given in writing by the Owner or Agent, prior to commencement of any aspect of the Scope of Work, lien waivers will be required from all material suppliers, and from any general contractors or sub-tier contractors performing work for which Dawn Defendants have not previously paid in full. Any and all warranties provided by any contractors or sub-tier contractors shall be assigned to Owner immediately upon completion of the Scope of Work.

Dawn Defendants agree to the completion of the Scope of Work, regardless whether done by Dawn Defendants or unrelated entities they engage, shall be reasonably consistent with and reasonably equivalent to that which is replaced; shall be performed by duly licensed and bonded contractors acting in conformity with applicable state and local regulations; and shall be performed in a professional and workmanlike manner consistent with generally accepted construction standards for multifamily dwellings substantially similar to the Property.

ARTICLE V

The provisions of this Agreement regarding construction/retrofitting obligations shall remain in force until such time as all of the retrofits set forth on Appendices A and B attached to the Consent Order are completed, inspected, and certified by an independent third party approved by the Plaintiff United States of America.

ARTICLE VI

COMPLIANCE WITH LAWS: Dawn Defendants, at their sole cost and expense, shall employ and direct such personnel as required to perform the Scope of Work, shall secure any and all permits that may be required to perform the services herein contemplated, shall exercise full and complete authority over their personnel, and shall comply with all Workers' Compensation, Employer's Liability, safety and other Federal, State, District, County and Municipal laws, ordinances, rules and regulations required of an employer performing services as herein contemplated. Dawn Defendants shall comply with, and ensure all personnel performing any aspect of the Scope of Work complies with, all Federal, State, District, County and Municipal laws, ordinances, rules and regulations which are applicable to the specific aspect of the Scope of Work then being undertaken. To the extent Dawn Defendants engage a general contractor to perform, oversee, and/or supervise the Scope of Work, Dawn Defendants shall ensure such general contractor's compliance with this Article, as set forth in Article II.

ARTICLE VII

INSURANCE: Dawn Defendants affirm that they carry Commercial General Liability Insurance coverage applicable to the Scope of Work hereunder, including Broad Form endorsement or its equivalent in the limit of One Million Dollars (\$1,000,000) Bodily Injury, Property Damage, Each Occurrence, and Two Million Dollars (\$2,000,000) General Aggregate. Dawn Defendants affirm that they carry Excess/Umbrella Liability Insurance coverage in the limit of Five Million Dollars (\$5,000,000) Each Occurrence and Aggregate. Dawn Defendants agree to notify the Owner or Agent in the event of any occurrence or accident harming life, limb, or property caused by its actions.

All insurance policies required by this contract that provide Bodily Injury or Property Damage Liability shall include Owner, Agent, Owner's property manager, and any lender of Owner as additional insureds with respect to operations under this contract.

If motor vehicles or mechanized equipment are to be used in the operations or to enter onto the Property, then Dawn Defendants shall, before commencing work at the Property, provide proof of Bodily Injury insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000) for each person and One Million Dollars (\$1,000,000) for each accident and Property Damage insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000) for each accident.

Dawn Defendants shall secure such Workers' Compensation and Employer's Liability insurance as may be required by local, State, or Federal regulations and statutory requirements which are applicable to the specific aspect of the Scope of Work then being undertaken, but in any event no less than One Million Dollars (\$1,000,000) each accident, each employee.

No policies of insurance shall be subject to cancellation during the term of the work hereunder without thirty (30) days' prior written notice to Owner or Agent of the cancellation by certified mail, with the 30 days to begin running on the date of delivery of the certified mail. Dawn Defendants will not change or terminate said policies without prior written notice to the Owner or Agent.

Dawn Defendants, upon the signing of this contract, shall provide the Owner or Agent with a copy of all pertinent certificates of insurance and policy endorsements showing the additional insureds referenced in this Article. Such insurance should include coverage for personal injury, independent contractors, premises operations, underground explosion and collapse (if Dawn Defendants' operation warrants), and contractual liability insurance.

To the extent Dawn Defendants engage a general contractor to perform, oversee, and/or supervise the Scope of Work, Dawn Defendants shall ensure such general contractor's compliance with this Article, including all requirements for obtaining, maintaining, and providing notice of sufficient insurance, as set forth in Article II.

ARTICLE VIII

INDEMNIFICATION: Dawn Defendants agree to assume all risks of loss and to defend, indemnify, and hold harmless Owner, its officers, agents and employees, from and against any and all liabilities,

demands, claims, suits, losses, damages, causes of action, fines or judgments, including reasonable costs, attorney's and witnesses' fees, and expenses incident thereto, for injuries to persons (including death), for loss of, damage to, or destruction of property (including property of the Owner), or for any other liability whatsoever arising out of or in connection with any work called for or performed under this Agreement, or any other action taken by Dawn Defendants at the Property at any time. This shall not include attorney's fees which Owner may incur in the supervision of or performance of the work called for or performed under this Agreement. Any such claims of the Owner are not covered by this agreement and are expressly reserved by the Owner.

ARTICLE IX

NO RELEASE OF CLAIMS: Owner and Dawn Defendants agree that this Agreement is not intended to be and shall not be construed as a release of any claims whatsoever the Owner has against Dawn Defendants, whether related to the fees, costs, expenses, damages or injuries incurred or to be incurred by Owner on account of the Dawn Litigation and the retrofits to be made at The Lexington or not. The parties agree Owner does not release any claims against Dawn Defendants. Dawn specifically denies that any such claims exist, but this Agreement shall not constitute a release of any claims by the Owner.

ARTICLE X

MISCELLANEOUS:

- A. Dawn Defendants shall not sublet, assign or transfer this Agreement or any part thereof without the prior written consent of the Owner or Agent; and any assignment or transfer without such prior written consent shall be void.
- B. It is further agreed and understood that all work performed under this Agreement shall be in conformance with applicable laws, codes, ordinances, rules, regulations and requirements of Federal, State, County and Municipal authorities, which are applicable to the specific aspect of the Scope of Work then being undertaken, and shall be completed within the time required by the Consent Order. If Dawn Defendants perform any work contrary to such laws, codes, ordinances, rules, regulations or requirements, they shall bear all costs arising or resulting therefrom, including but not limited to costs associated with bringing such work into conformance with the relevant requirement(s).
- C. Except for tenant-requested changes provided for in the Consent Order, Dawn Defendants agree that any required unit interior repairs made within the first thirty (30) months after entry of the Consent Order must be made while units are vacant and unoccupied. Owner will provide timely notice of the expected vacancy of such units to Dawn Defendants. For any required unit interior repairs that have not been made within the first thirty (30) months after entry of the Consent Order, Dawn Defendants shall complete them consistent with the notice and other applicable provisions of the Consent Order. Dawn Defendants shall perform all services during the normal business hours of the Property's management and leasing office and shall, in any event, exercise best efforts to perform the said services so as to avoid inconvenience to Owner, the residents of the Property and its personnel,

and to avoid interference with Owner's operations. Reasonable requests for access beyond normal business hours shall not be withheld.

- D. Dawn Defendants agree to pay Owner for the time during which unit interior repairs are being made and a given unit is not rentable as a result of the work performed or required to be performed to such units by the Dawn Defendants if such time exceeds seven (7) calendar days.
- E. Dawn Defendants shall maintain regular, systematic inspections of the Property necessary to assure that the services enumerated herein shall be performed in a good and workmanlike manner at all times.
- F. Dawn Defendants hereby agree and covenant that:
 - a. all services performed under this Agreement will be done in harmony with the necessities attendant to the continued management and business operations of the Property;
 - b. they will provide management and supervisory personnel;
 - c. they will promptly clean up and remove from the property any debris created by, accumulated during, or resulting from any and all phases of performing services hereunder;
 - d. they will promptly repair all damage to public and private property caused by their agents, employees or equipment;
 - e. they will cover the cost of any replacements of landscape materials damaged as a result of performing services at the property unless such landscape materials are necessarily removed as a part of the Specifications and Scope of Work required to be performed by the Dawn Defendants pursuant to the Consent Decree;
 - f. they will submit to Owner satisfactory evidence of completion of the corrective measures required under the Scope of Work, in the form of approval by the neutral inspector contemplated by the Consent Order; and
 - g. they will submit to Owner evidence of full and final payment of all material suppliers, general contractors, sub-tier contractors, and any other entity involved in the corrective measures required under the Scope of Work, in the form of receipts or similar documentation.
- G. To the extent Dawn Defendants intend to engage the services of any general contractor or sub-tier contractor to perform or assist in any aspect of the Scope of Work, Dawn Defendants shall submit the name, contact information, and proof of insurance prior to the general contractor or sub-tier contractor's planned first day of work.

- H. Should any provision of this Agreement be declared by a court of law or any relevant authority to be invalid for any reason, or to have ceased to be binding on the parties hereto, such provision shall be severed, and all other provisions shall continue to be effective and binding.
- I. All notices provided by this Agreement shall be made in writing either by actual delivery into the hands of the parties thereunto entitled, or by mailing of the notice in the United States Mail to the last known address of the party entitled thereunto, by Certified or Registered Mail, Return Receipt requested. All notices to Dawn Defendants are to be mailed to Byrd & Wiser, Attorneys at Law, Attention Nicholas Van Wiser, 145 Main Street, Biloxi, MS 39533.
- J. Dawn Defendants hereby declare and acknowledge that before signing this Agreement, they have carefully read the same and have examined the documents referenced herein and the Property site, and made such investigation of the work required to be done and the equipment required to be furnished as to thoroughly understand the same.
- K. Either party will be entitled to attorneys' fees if it prevails in subsequent legal proceedings asserting a breach of this agreement.

ARTICLE XI

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall be, and constitute this Agreement.

ARTICLE XII

The principals of this contract mutually agree that it shall be binding upon them, their respective heirs, executors, administrators and successors; that this contract contains the final and entire agreement between the parties hereto; and, neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

ARTICLE XIII

All correspondence from Owner or Agent to Dawn Defendants will be sent to the following address:

Nicholas Wiser
Byrd & Wiser
Attorneys at Law
145 Main Street
Biloxi, MS 39533

All correspondence from Dawn Defendants to Owner or Agent will be sent to the following address:

c/o RAIT Financial Trust
Attn: Jamie Reyle
Two Logan Square
100 N. 18th Street, 23rd Floor
Philadelphia, Pennsylvania 19103

IN WITNESS WHEREOF, the Owner or Agent and Dawn Defendants have executed this Agreement as of the date set forth in the first page of this Agreement.

[Appropriate signature blocks for Lexington & Dawn Defendants to be inserted]