

WHEREAS, the United States of America (the “United States”) initiated this action by filing a Complaint on November 7, 2014, on behalf of Edward Tirrell, his wife, Michaela Tirrell, and his minor son, BT (collectively, “complainants”), pursuant to the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, et seq. (the “Act”), alleging that the defendants, Avatar Properties, Inc. (“Avatar”), Midridge Condominium Association (“Midridge”), Richard Morway (“Morway”), and Stacey Diodati (“Diodati”) (collectively, “defendants”), engaged in discrimination against the complainants in the provision of services or facilities in connection with a dwelling because of Edward Tirrell’s disability;

WHEREAS, in the Complaint, the United States alleges that because of his disability, and because of defendants' refusal to provide him with a parking space near the front entrance to his

residence, Mr. Tirrell's physical condition deteriorated, and he experienced substantial difficulty accessing his vehicle and, on April 24, 2014, the Tirrells moved out of the Midridge Condominium;

WHEREAS, in the Complaint, the United States seeks both injunctive relief against the defendants and monetary damages on behalf of complainants;

WHEREAS, the defendants do not admit to the allegations in the Complaint, do not admit any wrongdoing, liability, or statutory violation, or that any person suffered any injury as a result of the events alleged in the Complaint;

WHEREAS, the United States and the defendants agree that the entry of this Consent Decree without further litigation is in the public interest; and

WHEREAS, the defendants and the United States wish to avoid costly and protracted litigation and agree to resolve this action without further litigation;

IT IS THEREFORE STIPULATED and agreed, by and between the United States and the defendants, Avatar, Midridge, Morway, and Diodati, and ORDERED by the Court as follows:

I. GENERAL PROVISION

1. The defendants shall comply with the provisions of the Act in the management and operation of the Midridge Condominium Association.
2. The defendants represent that they are not now and never have been in the business of selling and renting dwelling units within Midridge Condominium, and that Midridge is a condominium association comprised of individual unit owners who do not require the defendants' permission to sell or rent their condominium units. The defendants further represent that the defendants' operation and management of the Midridge Condominium does not include,

and never has included, marketing condominium units for sale or rental to anyone. With regard to the operation and management of the Midridge Condominium, the defendants agree to refrain from:

(a) Discriminating against any person in the terms, conditions, or privileges of residing in a Midridge Condominium unit or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin;

(b) Discriminating against any person in the terms, conditions, or privileges of residing in a Midridge Condominium unit, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that person;

(c) Refusing to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; and

(d) Refusing to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

II. MANDATORY TRAINING

1. The National Center for Housing Management (“NCHM”) is a 501(c) (3) non-profit organization created by the Secretary of the U.S. Department of Housing and Urban

Development (“HUD”) pursuant to an Executive Order of the President of the United States in 1972. NCHM was established for the purposes of professionalizing the field of housing management, establishing industry standards, and strengthening the effectiveness of existing management entities.

2. NCHM is offering a “Fair Housing Essentials” (“FHE”) course in Boston on April 14, 2016. Richard Morway, Stacey Diodati, and Debbie Anderson, another employee of Avatar Properties, Inc. who is not a defendant in this case, have registered to attend and shall attend the April 14, 2016 FHE course. Likewise, the following Board members of the Midridge Condominium have registered and shall attend the April 14, 2016 FHE course: Jacqueline McDonough, Christopher Reynolds, Donna Gyorda, and James Duffield.

3. Any new employee hired to work with or for Avatar, who will perform management or administrative duties with respect to the Midridge Condominium, shall study the materials provided through the Program within thirty (30) days of the start of his or her employment.

4. Any new Board Member of Midridge shall study the materials provided through the Program within thirty (30) days of the start of his or her election to the Board.

5. Within thirty (30) days of completing the fair housing training, the defendants, and any newly hired employees or new Board Members as specified in the preceding paragraphs, shall, through counsel for the defendants, provide a certification to the U.S. Attorney’s Office that they have completed the Program.

III. ADOPTION OF NON-DISCRIMINATION POLICY

1. Within ninety (90) days of the date of entry of this Consent Decree, Midridge shall adopt a written policy of non-discrimination whereby it shall not deny or limit the use of or the privileges, services or facilities associated with any condominium unit within the Midridge

Condominium because of disability, race, color, religion, sex, familial status, or national origin of any prospective buyer, owner, or lawful occupant of any Midridge residential unit.

2. It shall be the policy of Midridge and Avatar that all residents with disabilities of the Midridge Condominium shall be entitled to reasonable accommodations or modifications to the Midridge Condominium property and to the rules and policies of the Midridge Condominium Association that will permit such residents an equal opportunity to use and enjoy the Midridge Condominium property.

3. As part of this non-discrimination policy, Avatar and Midridge shall install a sign made of durable material in a prominent location on the Midridge property indicating that parking is available to all Midridge residents on a non-discriminatory basis. The sign also shall indicate that all requests for reasonable parking accommodations must be directed initially to the property manager, Avatar. The sign shall provide Avatar's telephone number.

IV. ADOPTION OF REASONABLE ACCOMMODATION POLICY

1. Within ninety (90) days of the date of entry of this Consent Decree, Avatar and Midridge shall adopt a reasonable accommodation policy to implement standards and procedures for handling requests for reasonable accommodations at the Midridge Condominium.

2. As part of the reasonable accommodation policy, all unit owners of the Midridge Condominium shall be notified in writing that all requests for reasonable accommodations must be communicated initially to Avatar.

3. Upon receiving a request for an accommodation, Avatar shall review the request immediately, communicate the request to members of the Midridge Board of Directors and provide the requestor with a response as soon as is practical but in any event no later than thirty (30) days following receipt of the request. Whether or not the request for a reasonable

accommodation is in writing, Avatar shall document the date, time and nature of it and respond to it.

4. Under the reasonable accommodation policy, in the event that the initial request for accommodation is not granted, Avatar and Midridge and the requestor shall enter into an interactive dialogue about the requestor's need for the requested accommodation and/or modification in order to reach a mutually acceptable solution.

5. Under the reasonable accommodation policy, whenever the need for an accommodation is not obvious, Avatar or Midridge may ask the requestor to provide written verification from his or her healthcare or mental health provider that the requestor has a disability and needs the accommodation or modification.

6. In the event that a disability is not obvious, Avatar and Midridge may also require proof that the requestor is disabled, but shall not require the requestor to provide specific information about the nature of his or her disability.

7. In the event that the need for the requested accommodation is not obvious, Avatar and Midridge may also ask the requestor how the requested accommodation or modification is necessary to accommodate his or her disability in order to assist that person in using or enjoying the Midridge premises.

8. The Midridge Board's final decision on the request and the reasons for it shall be delivered to the requestor in writing.

9. Midridge shall grant a request for a reasonable accommodation unless it would impose an undue financial and administrative burden on Midridge or it would fundamentally alter the nature of Midridge's operations.

10. Midridge shall keep written records of each request for reasonable accommodation it receives during the duration of this Consent Decree. The records shall include the following:

- a. the name, address, and telephone number of the person making the request;
- b. the date on which the request was received;
- c. the nature of the request;
- d. whether the request was granted or denied; and
- e. if the request was denied, the reason(s) for the denial.

11. Within ninety (90) days of entry of this Consent Decree, and thereafter on the anniversary of the date of entry of this Decree, Midridge shall submit to the United States a compliance report as provided in this section, except that Midridge shall submit the final report sixty (60) days prior to the expiration of this Decree. The compliance reports shall contain copies of the records regarding reasonable accommodation requests referred to in paragraph 10 above.

12. For the duration of this Consent Decree, Midridge shall preserve all records related to this Decree and any other documents related to the management or rental of units at its property. Such documents include, but are not limited to, applications, leases, resident files, policies and procedures. Upon reasonable notice to Midridge, representatives of the United States shall be permitted to inspect and copy any of Midridge's records and inspect Midridge's offices at any and all reasonable times so as to determine compliance with this Consent Decree; provided, however, that the United States shall endeavor to minimize any inconvenience to Midridge from such inspections.

13. For the duration of this Consent Decree, Midridge shall notify counsel for the United States, in writing, within fifteen (15) days of receipt of any complaint of housing discrimination against Midridge, Avatar, or any of Midridge or Avatar's agents or employees. Such notification

shall include the date of the complaint, a copy of any written complaint or a description of the verbal complaint, and contact information (including mailing addresses and daytime and evening telephone numbers) for the complaining party. Within fifteen (15) days of the resolution of any such complaint, Midridge shall notify counsel for the United States, in writing, of the details of the resolution.

V. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION

1. This Consent Decree shall remain in full force and effect for a period of two (2) years after the approval and adoption of the Decree by the United States District Court for the District of New Hampshire.
2. The parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Consent Decree prior to bringing an action arising out of a breach of this Decree. However, in the event of a failure by any defendant to perform in a timely manner any act required by this Decree or otherwise to act in violation of any provision thereof, the United States may file an action seeking 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 that may have been occasioned by the violation or failure to perform.

VI. RELIEF FOR THE COMPLAINANTS

1. The defendants shall pay the complainants a total sum of Twenty-Five Thousand Dollars (\$25,000.00) in settlement of the case. Within thirty (30) days following the entry of this Consent Decree on the Court's docket, the defendants shall deliver a check to the U.S. Attorney's Office payable to "Michaela Tirrell and Edward Tirrell" in the amount of Twenty-Five Thousand Dollars (\$25,000.00).

2. Upon receipt of an executed Release (attached as **Appendix A**) from the Tirrells, the U.S. Attorney's Office will forward the Twenty-Five Thousand Dollar (\$25,000.00) settlement check to them. The U.S. Attorney's Office shall promptly deliver the executed release to defendants' counsel, Nicholas S. Guerrero, by first class mail and by email at nguerrera@sgolaw.com.

VII. MISCELLANEOUS PROVISIONS

1. This Consent Decree has been prepared by the joint efforts of the respective attorneys for the United States and the defendants. The United States and the defendants agree that this Decree shall not be construed against any party as the drafter, but rather shall be construed as if drafted jointly by all parties.

2. This Consent Decree cannot be amended, modified, or terminated orally, but may be changed or modified only in a writing signed by all of the parties and filed with the Court.

3. It is understood and the parties expressly agree that this Consent Decree does not constitute an admission by the defendants of any violation of any statute or regulation, and that no finding of liability is made under this Decree.

4. The parties acknowledge this Consent Decree is a voluntary and full settlement of a disputed Complaint.

5. If this Consent Decree does not become effective for any reason, it shall be deemed to be a negotiation for settlement purposes only and will not be admissible in evidence or usable for any purpose whatsoever in this lawsuit or otherwise.

6. All parties shall be responsible for their own attorneys' fees and costs associated with this action.

RESPECTFULLY SUBMITTED,

The Plaintiff,

United States of America,

EMILY GRAY RICE
United States Attorney

/s/ Michael McCormack
Michael McCormack
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Concord, New Hampshire 03301
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Dated: May 3, 2016

The Defendants,


AVATAR PROPERTIES, INC., et al.,

By their Attorneys,

/s/ Nicholas S. Guerrero
Nicholas S. Guerrero, NH Bar ID No. 6520
Shaheen Guerrero & O'Leary, LLC
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820A Turnpike Street
North Andover, Massachusetts 01845
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nguerrera@sgolaw.com

Dated: May 3, 2016

ADOPTED AND APPROVED BY:



United States District Court Judge

Dated: 5/3/2016

[APPENDIX A]

RELEASE

IN CONSIDERATION of the total sum of Twenty-Five Thousand Dollars (\$25,000.00) in payment to Michaela Tirrell, Edward Tirrell, individually, and in his capacity as father and next friend of BT, a minor, (hereinafter collectively referred to as "RELEASORS"), and for other good and valuable consideration, the receipt of which is hereby acknowledged, the RELEASORS hereby release and forever discharge Avatar Properties, Inc., Richard Morway, Stacey Diodati, and Midridge Condominium Association and any and all of their past, present and future direct and indirect subsidiaries, parents, affiliates, successors and predecessors, and each of their respective officers, directors, agents, employees, assigns, partners, heirs, principals, divisions, representatives, affiliates, attorneys, insurers, re-insurers and excess insurers (hereinafter collectively referred to as "RELEASEES"), of and from all liability, actions, causes of action, suits, controversies, proceedings, claims, rights, damages, judgments, executions and demands of every kind arising from the circumstances giving rise to the action, *United States of America v. Avatar Properties, et al.*, United States District Court for the District of New Hampshire, Civil Docket No. 1:14-cv-00502-LM (the "Lawsuit").

In executing this RELEASE the RELEASORS represent that they have had an opportunity to seek independent legal and financial advice regarding this RELEASE and any income tax consequences and that the terms of this RELEASE are fully understood and voluntarily accepted by the RELEASORS.

Michaela Tirrell

Dated:

Edward Tirrell, Individually, and as Father and
Next Friend of BT, his Minor Son

Dated: