

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

Case No.: 3:11-cv-302-CWR-LRA

THE BRYAN COMPANY,)
BRYAN CONSTRUCTION COMPANY, INC.,)
STEVE BRYAN,)
MID-SOUTH HOUSTON PARTNERS,)
MID-SOUTH DEVELOPMENT, LLC A/K/A)
MSD, LLC,)
THE VINEYARDS APARTMENTS, LLC,)
EQUITY PROPERTIES, LLC F/K/A)
WINDSOR LAKE APARTMENT, LP, and)
CYPRESS LAKE DEVELOPMENT, LLC,)

Defendants,)

and)

USA HOUSTON LEVEE, DST, THE)
VINEYARDS AT CASTLEWOODS, LLC,)
SEC ACCOMMODATOR-WINDSOR LAKE,)
LLC, MID-AMERICA CAPITAL PARTNERS,)
MID-AMERICA APARTMENTS, L.P.,)
SEC ACCOMMODATOR-TWIN OAKS, LLC,)
OAK HOLLOW-NE LP,)
SEC ACCOMMODATOR-SPRING LAKE, LLC,)
CYPRESS LAKE RS, LLC,)
CYPRESS LAKE GARG, LLC, and)
PELICAN POINTE-NE LP,)

Rule 19 Defendants.)

SUPPLEMENTAL CONSENT ORDER

Plaintiff United States of America, Defendants The Bryan Company, Bryan Construction Company, Inc., Steve Bryan, Mid-South Houston Partners, Mid-South Development, LLC a/k/a MSD, LLC, The Vineyards Apartments, LLC, Windsor Lake Apartment, LP, and Cypress Lake Development, LLC (collectively referred to as the “Bryan Defendants”), and Rule 19 Necessary or Indispensable Parties SEC Accommodator-Twin Oaks, LLC (“Rule 19 Defendant Twin Oaks”) and Pelican Pointe-NE LP (“Rule 19 Defendant Pelican Pointe”), hereby agree to the terms of this Supplemental Consent Order. This agreement incorporates the provisions of the Consent Order (Doc. No. 400), which was entered by the Court on February 24, 2014, and modifies those provisions contained in Paragraphs 32, 34, 48, 50-51, 63-66, 71-74, 91-92, 93-96, and 109 of the Consent Order as follows with respect to who is responsible for performing retrofits and related obligations at two of the properties covered by the Consent Order: (1) Twin Oaks Apartments (“Twin Oaks”), located at 100 Twin Oaks Lane, Hattiesburg, Mississippi 39402, and (2) Pelican Pointe Apartments (“Pelican Pointe”), located at 3400 Pelican Pointe Boulevard, Slidell, Louisiana 70458. Unless specifically addressed below, the original provisions of the Consent Order remain in effect.

I. RETROFITS

A. Twin Oaks

1. Rule 19 Defendant Twin Oaks agrees to make retrofits to increase compliance with the Fair Housing Act, 42 U.S.C. § §§ 3601-3619 (“FHA”), and Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181-12189 (“ADA”), at Twin Oaks as set forth in this Supplemental Consent Order.

2. Within thirty (30) days of the date of entry of this Supplemental Consent Order, Rule 19 Defendant Twin Oaks shall establish a trust account in the name of Twin Oaks. After being notified by Rule 19 Defendant Twin Oaks, in writing, that the trust account has been created, the Bryan Defendants shall transfer the full balance of the Twin Oaks Trust Account created pursuant to Paragraph 46 of the Consent Order (\$49,615 plus any accrued interest) into Rule 19 Defendant Twin Oaks' trust account within fourteen (14) days. Once this transfer is complete, the Bryan Defendants shall provide written notice to counsel for the United States.¹

3. Rule 19 Defendant Twin Oaks shall use the trust account created pursuant to Paragraph 2 to perform all retrofits at Twin Oaks as set forth in Appendices N.1 through N.3 of the Consent Order. The trust account may not be used for any other purpose unless the provisions of Paragraph 9, below, apply.

a. Retrofits to Public and Common Use Areas

As soon as reasonably possible, but by no later than eighteen (18) months from entry of this Supplemental Consent Order, Rule 19 Defendant Twin Oaks agrees to take the corrective actions necessary to increase the accessibility of the public and common use areas of Twin Oaks, including the Accessible Pedestrian Routes identified in Appendix N.1 of the Consent Order, by completing the retrofits described in Appendix N.2 of the Consent Order, and by taking the actions

¹ For purposes of this Supplemental Consent Order, counsel for the United States is: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Attn: *United States v. The Bryan Co.*, DJ# 175-41-215. Any written notice or report required by this Supplemental Consent Order shall be sent: (1) to the above address; (2) via electronic mail as specified by the United States; (3) via facsimile to (202) 514-1116; or (4) as otherwise directed by the United States.

described below.

b. Retrofits to Covered Multifamily Dwelling Unit Interiors

As soon as reasonably possible, but by no later than the first time the unit becomes vacant following entry of this Supplemental Consent Order, and before the unit is re-occupied by a new tenant (“as-turned”) or by no later than eighteen (18) months from entry of this Supplemental Consent Order regardless of whether or not a unit is vacated, Rule 19 Defendant Twin Oaks agrees to take the corrective actions necessary to increase the accessibility of the covered multifamily dwelling unit interiors of Twin Oaks by completing the retrofits described in Appendix N.3 of the Consent Order, and by taking the actions described below. Rule 19 Defendant Twin Oaks will endeavor to minimize inconvenience to residents and the total time spent retrofitting units pursuant to this Supplemental Consent Order.

c. Notices to Residents

Within thirty (30) days from the date of entry of this Supplemental Consent Order, Rule 19 Defendant Twin Oaks shall provide a notice that is substantially equivalent to Appendix A of this Supplemental Consent Order to Twin Oaks residents in covered multifamily dwelling units. In addition, within sixty (60) days from the date of the entry of this Supplemental Consent Order, Rule 19 Defendant Twin Oaks shall provide written notice to all Twin Oaks residents stating that the retrofits required by the Consent Order will be performed to the public and common use areas at that property, which include unit entrances and accessible routes. Such notice shall be substantially equivalent to Appendix B of

this Supplemental Consent Order. Rule 19 Defendant Twin Oaks shall certify to the United States in writing that the notices have been distributed and the manner in which they were distributed within ten (10) days after such distribution.

d. Retrofits by Request

Twin Oaks residents may request retrofits, in writing, and the requests shall be granted by Rule 19 Defendant Twin Oaks on a first-come, first-served basis.

4. Any and all expenses associated with completing the retrofits at Twin Oaks that is above and beyond the sums deposited in Rule 19 Defendant Twin Oaks' trust account (or that is available from the Pelican Pointe trust account, should the provisions of Paragraph 9, below, apply) shall be borne by Rule 19 Defendant Twin Oaks.

B. Pelican Pointe

5. Rule 19 Defendant Pelican Pointe agrees to make retrofits to increase compliance with the FHA and the ADA at Pelican Pointe as set forth in this Supplemental Consent Order.

6. Within thirty (30) days of the date of entry of this Supplemental Consent Order, Rule 19 Defendant Pelican Pointe shall establish a trust account in the name of Pelican Pointe. After being notified by Rule 19 Defendant Pelican Pointe, in writing, that the trust account has been created, the Bryan Defendants shall transfer the full balance of the Pelican Pointe Trust Account created pursuant to Paragraph 48 of the Consent Order (\$229,586 plus any accrued interest) into the Rule 19 Defendant Pelican Pointe's trust account within fourteen (14) days. Once this transfer is complete, the Bryan Defendants shall provide written notice to counsel for the United States.

7. Rule 19 Defendant Pelican Pointe shall use the trust account created pursuant to Paragraph 6 to perform all retrofits at Pelican Pointe as set forth in Appendices L.1 through L.3

of the Consent Order. The trust account may not be used for any other purpose unless the provisions of Paragraph 9, below, apply.

a. Retrofits to Public and Common Use Areas

As soon as reasonably possible, but by no later than eighteen (18) months from entry of this Supplemental Consent Order, Rule 19 Defendant Pelican Pointe agrees to take the corrective actions necessary to increase the accessibility of the public and common use areas of Pelican Pointe, including the Accessible Pedestrian Routes identified in Appendix L.1 of the Consent Order, by completing the retrofits described in Appendix L.2 of the Consent Order, and by taking the actions described below.

b. Retrofits to Covered Multifamily Dwelling Unit Interiors

As soon as reasonably possible, but by no later than the first time the unit becomes vacant following entry of this Supplemental Consent Order, and before the unit is re-occupied by a new tenant (“as-turned”) or by no later than eighteen (18) months from entry of this Supplemental Consent Order regardless of whether or not a unit is vacated, Rule 19 Defendant Pelican Pointe agrees to take the corrective actions necessary to increase the accessibility of the covered multifamily dwelling unit interiors of Pelican Pointe by completing the retrofits described in Appendix L.3 of the Consent Order, and by taking the actions described below. Rule 19 Defendant Twin Oaks will endeavor to minimize inconvenience to residents and the total time spent retrofitting units pursuant to this Supplemental Consent Order.

c. Notices to Residents

Within thirty (30) days from the date of entry of this Supplemental Consent Order, Rule 19 Defendant Pelican Pointe shall provide a notice that is substantially equivalent to Appendix A of this Supplemental Consent Order to Pelican Pointe residents in covered multifamily dwelling units. In addition, within sixty (60) days from the date of entry of this Supplemental Consent Order, Rule 19 Defendant Pelican Pointe shall provide written notice to all Pelican Pointe residents stating that the retrofits required by the Consent Order will be performed to the public and common use areas at that property, which include unit entrances and accessible routes. Such notice shall be substantially equivalent to Appendix B of this Supplemental Consent Order. Rule 19 Defendant Pelican Pointe shall certify to the United States in writing that the notices have been distributed and the manner in which they were distributed within ten (10) days after such distribution.

d. Retrofits by Request

Pelican Pointe residents may request retrofits, in writing, and the requests shall be granted by Rule 19 Defendant Pelican Pointe on a first-come, first-served basis.

8. Any and all expenses associated with completing the retrofits at Pelican Pointe that is above and beyond the sums deposited in Rule 19 Defendant Pelican Pointe's trust account (or that is available from the Twin Oaks trust account, should the provisions of Paragraph 9, below, apply) shall be borne by Rule 19 Defendant Pelican Pointe.

C. Transferability of Trust Accounts

9. The United States may allow Rule 19 Defendants Twin Oaks and Pelican Pointe to use funds deposited into the trust accounts described in Paragraphs 2 and 6 of this Supplemental Consent Order for retrofits at either Twin Oaks or Pelican Pointe, upon joint request by Rule 19 Defendants Twin Oaks and Pelican Pointe.

II. INCONVENIENCE AND OVERNIGHT STAYS FOR RETROFITTING COVERED MULTIFAMILY DWELLING UNIT INTERIORS AT TWIN OAKS AND PELICAN POINTE

10. Rule 19 Defendants Twin Oaks and Pelican Pointe shall minimize inconvenience to residents in scheduling and performing retrofits required by this Consent Order to covered multifamily dwelling unit interiors at Twin Oaks and Pelican Pointe.

11. If a resident of a unit scheduled to undergo a retrofit at Twin Oaks or Pelican Pointe will be dislocated from the unit for more than twenty-four (24) hours consecutively, Rule 19 Defendants Twin Oaks or Pelican Pointe shall house the resident in the property's model unit until such time as the retrofits to the resident's unit are complete. Under no circumstances shall the duration of any one stay in a model unit exceed seventy-two (72) hours. In the event that the model unit is unavailable, the Rule 19 Defendant responsible for completing the retrofits agrees to 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 of undue inconvenience or hardship for the resident(s). Such payment shall not be made from the trust accounts described in Paragraphs 2 and 6 of this Supplemental Consent Order, but shall be made prior to the commencement of any retrofit work on the resident's unit, so that the resident may use the money to obtain alternative living accommodations and obtain food while

dislocated. Nothing in this provision of the Supplemental Consent Order absolves any tenant of his or her obligation to pay rent.

III. NEUTRAL INSPECTOR AT SUBJECT PROPERTIES

12. Rule 19 Defendants Twin Oaks and Pelican Pointe shall enter into a contract with a neutral inspector approved by the United States (“Properties Inspector”) to conduct on-site inspections of the retrofits at the relevant property that have been performed under this Supplemental Consent Order to determine whether the retrofits have been completed in accord with the specifications in the Consent Order’s Appendices L.1-L.3 (Pelican Pointe) and N.1-N.3 (Twin Oaks). The Properties Inspector shall have expertise in the accessible design requirements in accordance with the terms of paragraph 94 of the Consent Order.

13. An inspection of a property shall take place within thirty (30) days of the completion of all of the retrofits to units and common use areas at that property, or as soon thereafter as practicable. The Rule 19 Defendant responsible for the retrofitting at that property shall give the United States at least three (3) weeks written notice of the inspection and shall give the United States an opportunity to have their representatives present for the inspection.

14. The Properties Inspector shall set out the results of each inspection of a property, including deficits, if any, in writing and shall send that report to counsel for the Rule 19 Defendant responsible for the retrofitting at that property and to counsel for the United States. If the inspection indicates that not all of the required retrofits have been made as specified in the Consent Order appendices that apply to the property, the Rule 19 Defendant responsible for the retrofitting at that property shall correct any deficiencies within a reasonable period of time and shall pay for another inspection by the same Properties Inspector to certify the deficiencies have been corrected. This process shall continue until the Properties Inspector certifies that all of the

necessary retrofits have been made. The Rule 19 Defendant responsible for retrofitting each property shall pay all of the Properties Inspector's reasonable costs associated with the inspections of that property, and such payments shall be made without regard to the Properties Inspector's findings. Payments to the Properties Inspector shall not be made from any of the trust accounts described in Paragraphs 2 and 6 of this Supplemental Consent Order. Upon reasonable notice to the relevant Rule 19 Defendant, representatives of the United States shall be permitted to inspect the retrofits in accordance with this Consent Order, as well as the Properties Inspector's inspection reports provided for in this Consent Order, to ensure compliance. The United States shall endeavor to minimize any inconvenience caused by such inspections.

IV. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

15. On the first anniversary of the entry of this Supplemental Consent Order, Rule 19 Defendants Twin Oaks and Pelican Pointe shall submit to the United States a compliance report detailing the Rule 19 Defendants' compliance with this Supplemental Consent Order including, as applicable, details on the retrofitting and inspections of retrofits at Twin Oaks and Pelican Pointe. If the Properties Inspector has not certified that the retrofits at a property have been completed and performed in accordance with the terms of the Consent Order by the second anniversary of the entry of this Supplemental Consent Order, the responsible Rule 19 Defendant must submit annual compliance reports to the United States until such certification is complete.

16. Rule 19 Defendants Twin Oaks and Pelican Pointe shall include in their compliance reports (described in Paragraph 15, above): (1) a certification that the Rule 19 Defendants have sent notices of available retrofits that shall be made upon request to all residents; (2) a report of whether any request(s) for retrofits have been made; and (3) a statement of what action, if any, the Rule 19 Defendants took in response to the request(s).

V. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION

17. This Supplemental Consent Order shall remain in effect until six (6) months after all the retrofits at Twin Oaks and Pelican Pointe are completed and certified by the Properties Inspector as set forth in Paragraphs 12-14, above. The United States may move the Court to extend the duration of this Supplemental Consent Order in the interests of justice.

18. The Court shall retain jurisdiction for the duration of this Supplemental Consent Order to enforce its terms. In accordance with Paragraph 110 of the Consent Order, the Court shall dismiss this action with prejudice upon expiration of both the Consent Order and the Supplemental Consent Order.

19. The United States, the Bryan Defendants, and the Rule 19 Defendants Twin Oaks and Pelican Pointe, as applicable, shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Supplemental Consent Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Bryan Defendants and/or the Rule 19 Defendants Twin Oaks and Pelican Pointe to perform, in a timely manner, any act required by this Supplemental Consent Order, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

SO ORDERED this 19th day of April, 2016.

s/Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

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

For Plaintiff United States of America:

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For Defendants The Bryan Company, Bryan Construction Company, Inc., Steve Bryan, Mid-South Houston Partners, Mid-South Development, LLC a/k/a MSD, LLC, The Vineyards Apartments, LLC, Equity Properties, LLC f/k/a Windsor Lake Apartment, LP, and Cypress Lake Development, LLC, and Rule 19 Defendant The Vineyards at Castlewoods, LLC:

/s/ Steven H. Smith
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For SEC Accommodator-Twin Oaks, LLC, and Pelican Pointe-NE Limited Partnership, Fed. R. Civ. P. 19 Necessary Parties:

/s/ Edderek Linnel Cole

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APPENDIX A
Notice to Residents

Dear Resident(s):

This letter is to advise you that, as a result of a settlement in a case brought by the United States against the developers, designers and constructors of the complex, retrofits to ground floor units at _____ [name of property] will be made to provide greater accessibility for persons with disabilities. Your home is one of those that the United States alleges does not meet the Accessible Design Requirements of the Fair Housing Act. There is no cost to you for these retrofits.

Although your apartment unit will be retrofitted by _____ [deadline for completing retrofits], you may request to have your unit retrofitted sooner on a first-come, first-served basis. In the event that any retrofitting work may cause you to be displaced from your home for more than twenty-four (24) hours at a time, we will let you know as soon as we are made aware. If we determine that the retrofitting work will require you to be displaced from your home for more than twenty-four (24) hours at a time, we will provide you with comparable alternative living arrangements during the time period we determine necessary to complete that retrofitting work at the applicable government per diem rate for food and lodging for the local area.

You should be aware that this work must be completed in a timely manner regardless of your intention to stay in your home for a longer duration. In scheduling when the repairs will take place, we will try to take into account your preferences and convenience. Some of these repairs will be completed by our maintenance team in hopes of limiting any potential inconvenience.

We thank you for your cooperation and understanding. We will notify you at such time your home is specifically scheduled for repairs.

Sincerely,
Management

APPENDIX B
Notice to Residents

Dear Resident(s):

The federal Fair Housing Act requires that the public and common use areas at _____ [name of property] have certain features of physical accessibility for person with disabilities.

This letter is to advise you that, as a result of a settlement in a case brought by the United States against the developers, designers and constructors of the complex, retrofits will be made to the public and common use areas.

We expect the process to last approximately _____ weeks. Generally, the workers will retrofit certain sidewalks, curb cuts and ramps. They will also be making some retrofits to the common area amenities, as well as other areas, to make them more accessible to persons with disabilities.

We will notify you of the specific repairs within your area as they are scheduled. We understand that this will cause an inconvenience but thank you for your cooperation. We will do our part to keep everyone abreast of our progress in hopes of expediting this work.

If you have any questions regarding these retrofits, please contact us at _____. We thank you for your cooperation and understanding.

Sincerely,
Management