

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CASE NO. 1:14-CV-165 (Keeley)
v.	)	
	)	
BIAFORA’S INCORPORATED, d/b/a	)	
METRO PROPERTY MANAGEMENT;	)	
FALCONCREST LLC; FIVE STAR	)	
HOLDINGS, LLC; METRO RENTALS	)	
LLC; METRO RENTALS II LLC; RDR	)	
PROPERTIES, LLC; RDR PROPERTIES	)	
II LLC; THE GABLES LLC; THE	)	
WOODLANDS LLC; 3BT LLC; and CMC	)	
COMPANY LLC,	)	
	)	
Defendants.	)	
_____	)	

**CONSENT ORDER**

**I. INTRODUCTION**

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 (“Fair Housing Act”), 42 U.S.C. §§ 3601-3631, and Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12189. The United States’ Complaint alleges that Defendants Biafora’s Incorporated (d/b/a Metro Property Management); Falconcrest LLC; Five Star Holdings, LLC; Metro Rentals LLC; Metro Rentals II LLC; RDR Properties, LLC; RDR Properties II LLC; The Gables LLC; The Woodlands LLC; 3BT LLC; and CMC Company LLC, (collectively, the “Biafora Companies” or “Defendants”), have unlawfully discriminated against individuals with disabilities under the FHA and ADA 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 section 804(f) of the FHA, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C):

- a. Ashley Oaks, located in Morgantown, West Virginia
- b. Burrough’s Place, located in Morgantown, West Virginia
- c. Cedar Ridge, located in Waynesburg, Pennsylvania
- d. City Gardens, located in Morgantown, West Virginia
- e. Courtyard West, located in Morgantown, West Virginia
- f. Crestview Apartment Homes, located in Bridgeport, West Virginia
- g. Crosswinds, located in Fairmont, West Virginia
- h. Falconcrest, located in Fairmont, West Virginia
- i. Glenlock, located in Morgantown, West Virginia
- j. Glenlock South, located in Morgantown, West Virginia
- k. Grapevine Village, located in Morgantown, West Virginia
- l. Metro Towers, located in Morgantown, West Virginia; specifically the covered dwelling units are located in Metro Towers Northeast, Metro Towers East, and Metro Towers West
- m. Mountainview, located in Morgantown, West Virginia
- n. Orchard Crossing, located in Morgantown, West Virginia
- o. Parkview Apartment Homes at Charles Pointe, located in Bridgeport, West Virginia
- p. Pinecrest Office Plaza and Apartments, located in Morgantown, West Virginia
- q. Skyline, located in Morgantown, West Virginia
- r. Stonewood, located in Morgantown, West Virginia
- s. The Gables, located in Bridgeport, West Virginia
- t. The Woodlands, located in Fairmont, West Virginia
- u. Valley View Woods, located in Morgantown, West Virginia; specifically the covered dwelling units are located in Building 1100 and Building 1300
- v. The Villages at West Run, located in Morgantown, West Virginia
- w. Vista del Rio, located in Morgantown, West Virginia

2. In addition, the United States alleges that Orchard Crossing, The Villages at West Run, Cedar Ridge, The Woodlands, Parkview Apartment Homes at Charles Pointe, and Metro Towers contain public accommodations that were not designed and constructed in a manner required by the ADA, 42 U.S.C. § 12183(a)(1).

3. 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 Orchard Crossing, The Villages at West Run, Cedar Ridge, The Woodlands, Parkview Apartment Homes at Charles Pointe, and Metro Towers are subject to the requirements of the ADA, 42 U.S.C. § 12183(a)(1).

4. Defendants stipulate and agree that one or more Biafora Companies took part in the design and construction of each of the Subject Properties.

5. 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).

6. The parties agree that, to avoid costly and protracted litigation, the United States' claims against Defendants should be resolved without further proceedings or a trial, and agree that this Consent Order will resolve the claims and allegations in the United States' Complaint. Therefore, the parties consent to the entry of this Consent Decree (hereafter "Decree").

## **II. DEFENDANTS**

7. Defendant Biafora's Incorporated (doing business as Metro Property Management) is a corporation organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Biafora's Incorporated has the purpose of, inter alia, the management, operation, construction, sale, and acquisition of real estate. Biafora's Incorporated is a member or manager of several other Biafora Companies and works with each of the Biafora Companies engaged in the development of multi-family residential housing. Defendants directed and controlled the design and construction of properties by the other Biafora Companies, including the Subject Properties. Biafora's Incorporated currently manages the leasing of each of the Subject Properties under its trade name, Metro Property Management.

8. Defendant Falconcrest LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Falconcrest LLC was created with the purpose of owning and leasing residential apartments. Falconcrest LLC owns and participated in the design and construction of Falconcrest.

9. Defendant Five Star Holdings, LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Five Star Holdings, LLC has the purpose of developing real estate. Five Star Holdings, LLC owns and participated in the design and construction of City Gardens, Glenlock, and Stonewood.

10. Defendant Metro Rentals LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Metro Rentals LLC has the purpose of developing and leasing real estate. Metro Rentals LLC owns and participated in the design and construction of Orchard Crossing and Metro Towers. Metro Rentals LLC also participated in the design and construction of other properties developed by other Biafora Companies, including City Gardens and Glenlock.

11. Defendant Metro Rentals II LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Metro Rentals II LLC was created for the purpose of, inter alia, purchasing and developing several properties, including Courtyard West and Grapevine Village, and owns and participated in the design and construction of those properties.

12. Defendant RDR Properties, LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. RDR Properties, LLC owns and participated in the design and construction of Ashley Oaks, Cedar Ridge, Crosswinds, Mountainview, Pinecrest Office Plaza and Apartments, Skyline, and The Villages at West Run. RDR Properties, LLC merged with BTB LLC, which owned and participated in the design and construction of Glenlock South.

13. Defendant RDR Properties II LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. RDR Properties II LLC was created with the purpose of developing several properties, including Valley View Woods and Crestview Apartment Homes, and RDR Properties II LLC owns and participated in the design and construction of those properties.

14. Defendant The Gables LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. The Gables LLC owns and participated in the design and construction of The Gables.

15. Defendant The Woodlands LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. The Woodlands LLC owns and participated in the design and construction of The Woodlands.

16. Defendant 3BT LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive,

Morgantown, West Virginia 26508. The purpose of 3BT LLC is to purchase and develop real estate. 3BT LLC owns and participated in the design and construction of Burrough's Place and Vista Del Rio.

17. Defendant CMC Company LLC (converted from Construction, Management, and Consulting Company) is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. One or more of the defendants was either a general contractor or a developer for all of the Subject Properties designed and constructed by the Biafora Companies.

### **III. RELEVANT LEGAL REQUIREMENTS**

#### **A. The Fair Housing Act**

18. The FHA provides that, for residential buildings with an elevator consisting of four or more dwelling units, all units that are designed and constructed for first occupancy after March 13, 1991, are "covered multifamily dwellings" and must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by a person who has or develops a disability. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A).

19. The FHA provides that, for non-elevator residential buildings with four or more dwelling units, all ground-floor units that are designed and constructed for first occupancy after March 13, 1991, are "covered multifamily dwellings" and must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by a person who has or develops a disability. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B). Under the Fair Housing Act, ground-floor units may or may not be at grade. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route and that floor will be considered to be a ground floor. See Dep't

of Hous. and Urban Dev., Fair Hous. Accessibility Guidelines, 56 Fed. Reg. 9499, 9500 (Mar. 6, 1991) (hereinafter “FHAG”).

20. 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 (“Requirements 1 and 2”); (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 (“Requirement 3”); (iii) all premises within such dwellings contain the following features of adaptive design: (I) an accessible route into and through the dwelling (“Requirement 4”); (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations (“Requirement 5”); (III) reinforcements in bathroom walls to allow later installation of grab bars (“Requirement 6”); and (IV) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space (“Requirement 7”). 42U.S.C. § 3604(f)(3)(C). These features are collectively referred to herein as the “Accessible Design Requirements.”

21. For the purposes of this Decree, the parties agree that the Subject Properties were designed and constructed for first occupancy after March 13, 1991 and contain buildings with four or more residential apartment units that are “dwellings” as defined by the Fair Housing Act. 42 U.S.C. § 3602(b). Therefore all of the units in buildings with elevators and the ground-floor units in non-elevator buildings at the Subject Properties 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 the public and common use areas including the accessible pedestrian routes at the Subject Properties must comply with the Accessible Design Requirements of 42 U.S.C. § 3604(f)(3)(C).

**B. The Americans with Disabilities Act**

22. The ADA, and the ADA Standards for Accessible Design, ADA Accessibility Guidelines for Buildings and Facilities, 28 C.F.R. pt. 36, app. A (“ADA Standards”), that have been issued by the U.S. 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 that Act. 42 U.S.C. §§ 12182(a) and 12183(a)(1). A rental or sales office for an apartment, condominium, or patio home complex is a “public accommodation” under the ADA. 42 U.S.C. § 12181(7)(E).

23. For the purposes of this Decree, the parties agree that the rental offices for the Subject Properties, which are located at Orchard Crossing, The Villages at West Run, Cedar Ridge, The Woodlands, Parkview Apartment Homes at Charles Pointe, and Metro Towers, were designed and constructed for first occupancy after January 26, 1993, and therefore the rental offices and the facilities and privileges provided at those offices such as public parking are required to be designed and constructed in accordance with the standards promulgated under the ADA.

#### **IV. SUBJECT PROPERTIES**

##### **A. Ashley Oaks**

24. Ashley Oaks is a residential apartment complex located on McCullough Street in Morgantown, West Virginia 26505. Ashley Oaks was constructed for first occupancy in 2007 and consists of four two-story non-elevator buildings and one three-story non-elevator building.



Each building at Ashley Oaks contains four ground-floor units, for a total of twenty covered units.

25. The United States surveyed Ashley Oaks and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: walkways leading to units that are inaccessible because, inter alia, they contain steps, running slopes greater than 5%, and/or cross slopes greater than 2%, as well as abrupt level changes of more than 1/2." All entrances to covered units have thresholds that are higher than 3/4" and are not beveled 1:2 on the exterior or interior sides, and the doors lack compliant entry door hardware. Light fixtures on walkways are mounted below 80" above floor level and protrude more than 4" from the wall. There is a lack of a pedestrian walkway connecting covered units to the public street, mailboxes, and dumpster, and the only means to access those common use areas travels through a parking lot with running slopes greater than 5% and cross slopes of more than 2%. Ashley Oaks lacks any accessible parking with an access aisle. The mail kiosk has two rows of mailboxes located higher than 54" above the ground. All doors within the units were measured as having 28.5" clear width, which is several inches narrower than the required 32" nominal clear width. The doors leading to patios have thresholds that are higher than 3/4" and not beveled 1:2 on the interior side. Thermostats in Ashley Oaks are mounted higher than 48" the floor. The kitchens lack a 30" x 48" clear floor space centered on the sinks.

**B. Burrough's Place**

26. Burrough's Place is a mixed commercial and residential apartment development located at 503, 507, and 511 Burroughs Street, Morgantown, West Virginia 26505. Burrough's Place was designed and constructed for first occupancy in 2008. Burrough's Place has a total of

sixty-three ground floor units. The buildings located at 503 and 511 Burroughs Street are non-elevator two-story buildings, and each contains six apartments on the ground floor. The building located at 507 Burroughs Street is a five-story apartment building containing an elevator, with fifty-one units.

27. The United States surveyed Burrough's Place and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: the approach and entrance to each of the covered units in the two-story buildings are not accessible because, inter alia, all covered units in the two-story buildings can only be accessed by a flight of stairs; there is an abrupt level change of 5" below the exterior side of thresholds at the primary entry doors, and thresholds are more than 3/4" high on the exterior side and not beveled. The maneuvering space at the primary entry door for units at the five-story building lacks a 12" clearance on the push side. There are no pedestrian walkways connecting units to public and common use areas, and the routes to those areas contain running slopes over 5%, cross slopes over 2%, and/or steps. The doors leading to the gym and to the recreation room lack 12" clearance on the push side and require more than 5 lbs. of force to open. The men's and women's bathrooms located in the community room are not usable because, inter alia, the toilet stalls are less than 60" wide, the grab bars are too short, and the maneuvering space at the doors is too narrow. Doors within some of the units are not usable because they have less than 32" nominal clear width. Wall outlets in some of the units are located below 15" above the floor. Some units have U-shaped kitchens, and those kitchens contain less than 60" clearances between opposing countertops, with some clearances measured as narrow as 51". Bathrooms in the covered units lack a 30" x 48" clear floor space in front of sinks, contain less than 18" between

the centerline of toilets to the wall, and/or lack a 30" x 48" clear floor space beyond the door swing.

**C. Cedar Ridge**

28. Cedar Ridge is a residential apartment complex located on Cedar Ridge Road, Waynesburg, Pennsylvania. Cedar Ridge was designed and constructed for first occupancy in 2001. Cedar Ridge has eight two-story non-elevator buildings, and each building has six ground-floor units for a total of forty-eight covered units. Cedar Ridge has an onsite leasing office located at 100 Cedar Ridge, Waynesburg, Pennsylvania 15370.

29. The United States surveyed Cedar Ridge and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: walkways leading to covered units are not accessible because, inter alia, they contain steps, abrupt level changes of more than 1/2", curbs without curb ramps, and/or ramps without handrails. Cedar Ridge lacks an accessible pedestrian route connecting covered units to public use and common use areas, including but not limited to the fitness center, leasing office, mailboxes, garages, playground, dumpsters, and community room; instead, the routes from units to such areas require travel on the vehicular route. Some of the mailboxes are located higher than 54" above the ground, and the clear floor space in front of the mail kiosks is obstructed by a 6" to 7" high curb. The individual parking garages are less than 14'-2" wide and have an overhead door that is less than 10' wide. The door to the community room uses noncompliant hardware. The kitchen in the community room has no knee and toe clearance at the sink for a forward approach, and the microwave oven and towel dispenser are mounted higher than 54" above the floor. The bathrooms in the community room lack toe and knee clearances at the sinks for a forward approach, lack grab bars to the side and rear of the toilets, and have toilets that are

located more than 18” from the side wall. The thresholds at the door to the community room and the door to the fitness center are more than 1/2” high and not beveled. All primary unit entry doors use noncompliant door hardware, have less than 42” maneuvering space perpendicular to the doors, have level changes of more than 1/2” at the threshold, and have thresholds that are more than 3/4” high on the exterior sides. The bedroom and bathroom doors in some of units have less than 32” nominal clear width. Patio door thresholds are more than 3/4” high and are not beveled, and, in some units, there is a level change from the unit interior to the patio deck that is greater than 1/2” (the level change was measured at 6”). Thermostats are mounted over 48” above the floor, and electrical outlets are in inaccessible locations. Kitchens have less than a 30” x 48” clear floor space centered at the sinks. Bathrooms have insufficient maneuvering space because they contain insufficient clearances at lavatories, toilets, and/or beyond the door swing.

30. The United States alleges that the leasing office at Cedar Ridge violates the ADA. These violations include but are not limited to the following: there is no van accessible parking at the leasing office. The interior and exterior sides of the threshold at the leasing office entrance door are more than 1/2” high and not beveled. The door to the leasing office uses noncompliant knob hardware. The bathroom in the leasing office is too small to provide the required clear floor space and clearances by any of the bathroom features, and the door to the bathroom in the leasing office has less than 32” nominal clear width.

**D. City Gardens**

31. City Gardens is a residential complex located at 1503, 1505, and 1507 North Willey Street, Morgantown, West Virginia 26505. City Gardens was designed and constructed for first occupancy in 2007. City Gardens has two three-story non-elevator buildings, each

containing four ground-floor units, and one two-story non-elevator building containing four ground-floor units. City Gardens also has two four-story non-elevator buildings, with a total of sixteen ground floor units. Each of the four-story buildings contains two ground floors, with four ground floor units per floor. In total, City Gardens has twenty-eight covered units.

32. The United States surveyed City Gardens and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: walkways leading to units are not accessible because, inter alia, they contain steps and cross slopes over 2%, and some locations where the wooden walkway meets the asphalt parking surface contain abrupt level changes greater than 1/2". Light fixtures along walkways leading to units are mounted lower than 80" and protrude more than 4" from the wall. City Gardens lacks a pedestrian walkway connecting units to the public street and common use areas; instead the route to the street and common use areas requires travel through the parking lot. No accessible parking spaces are provided at City Gardens. Mailboxes are located above 54" above the ground, and the roof over the mailbox kiosk is located lower than 80" above the ground. Thresholds at primary unit entry doors are not beveled and are higher than 3/4" on the exterior sides and the interior sides. Doors within units have less than 32" nominal clear width. Sliding glass doors within certain unit types had high, unbeveled sliding door tracks, and there are abrupt changes in level from the unit to the wooden deck of more than 1/2". In certain units, the route in the laundry rooms is less than 36" wide. In some kitchens, the outlets mounted above the countertops are over 46" above the floor, and thermostats in some units are mounted higher than 48" above the floor. Kitchens in some units contain less than a 30" x 48" clear floor space centered in front of sinks. Bathrooms contain insufficient maneuvering space, including

insufficient clearances by the toilets and/or less than 30” x 48” clear floor space centered on lavatories or beyond the swing of the door.

**E. Courtyard West**

33. Courtyard West is a mixed use building located at 327 Willey Street, Morgantown, West Virginia 26505. Courtyard West was designed and constructed for first occupancy in 2005. Courtyard West consists of one five-story non-elevator building, with six ground floor units. The only laundry facilities available to Courtyard West residents are located in an adjacent property, Courtyard East.

34. The United States surveyed Courtyard West and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: there are steps obstructing the walkways leading to units and the routes connecting covered units and common use areas, such as the laundry rooms, dumpsters, and mailboxes. No accessible parking is provided at Courtyard West. Mailboxes are located higher than 54” above the floor. All entry doors use knob, instead of lever, hardware. The thresholds at the entry door are too high and lack a compliant bevel on both sides. Thermostats and electrical outlets are mounted at inaccessible locations. The kitchens contain less than 30” x 48” clear floor space centered at the sinks. The bathrooms have insufficient clearances at the toilets in most units, and there is less than 30” x 48” clear floor space centered on the bathroom sinks and/or beyond the swing of the door.

**F. Crestview Apartment Homes**

35. Crestview Apartment Homes (“Crestview”) is a residential complex located on Crestview Terrace in Bridgeport, West Virginia 26330. Crestview was designed and constructed for first occupancy in 2005. Crestview has sixteen two-story non-elevator buildings. Twelve

buildings at Crestview each contain two ground floor units, and four buildings each contain four ground floor units, for a total of forty ground floor units.

36. The United States surveyed Crestview and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: steps obstruct the accessible route on walkways leading to covered units at three buildings. There is no pedestrian walkway leading to common use areas, and the route to such areas requires travel along the vehicular route. The community building, which contains the gym and a unisex bathroom, lacks an accessible parking space, and the community building door lacks 32" nominal clear width, closes too fast, uses noncompliant hardware, and has an unbeveled threshold that is more than 3/4" high. The bathroom in the community center lacks compliant signage, has insufficient space for a person with a wheelchair to turn, lacks grab bars, and lacks knee and toe clearance for a forward approach to the sink. The route to the mailboxes is obstructed by a 4-inch curb. Mailboxes for incoming mail and slots for outgoing mail are located higher than 54" above the floor. There are abrupt level changes of more than 1/2" (measured as high as 3") at primary unit entry doors. Doors within units have less than 32" nominal clear width. The interior sides of thresholds at primary unit entry doors and at patio doors are higher than 3/4" and lack beveling. Abrupt level changes from the interior of units to patio decks are more than 1/2" (such level changes were measured at 4-5"). Thermostats and electrical outlets are located in inaccessible positions. In certain units, there is less than a 30" x 48" clear floor space centered in front of kitchen sinks. Bathrooms lack insufficient clearances and clear floor space by the lavatories and beyond the swing of the door.

#### **G. Crosswinds**

37. Crosswinds is a residential apartment complex located on Crosswinds Drive in Fairmont, West Virginia 26554. Crosswinds was designed and constructed for first occupancy in 2007. Crosswinds consists of five two-story non-elevator buildings. Each building at Crosswinds has four ground floor units, for a total of twenty ground floor units.

38. The United States surveyed Crosswinds and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: steps on the walkway obstruct the route leading to one building. There is no pedestrian walkway connecting units to common use areas. Mailboxes for incoming mail and the outgoing mail box are located higher than 54" above the floor. There are no accessible parking spaces in either the carport or uncovered parking. The maneuvering clearances at each of the covered primary unit entry doors are less than 42". The primary unit entry doors have thresholds are more than 3/4" high on the exterior side and are not beveled. Patio door thresholds are too high on the interior side and are not beveled. Electrical outlets and thermostats are mounted in inaccessible locations. The kitchen sinks are located in the corner of the countertop, and there is less than 24" from the centerline of the kitchen sink to the adjacent base cabinet. Bathrooms lack sufficient clear floor space in front of the lavatories and beyond the swing of the door, and the toilets are located more than 18" from the side walls.

#### **H. Falconcrest**

39. Falconcrest consists of two residential apartment buildings located at 617 and 801 Locust Avenue, Fairmont, West Virginia 26554. Falconcrest was designed and constructed for first occupancy in 2009. Falconcrest has a total of eighteen ground floor units. The building at 617 Locust Avenue is a three-story non-elevator building with six ground floor units. The



building at 801 Locust Avenue is a three-story non-elevator building with twelve ground floor units.

40. The United States surveyed Falconcrest and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: there are multiple steps from the street and parking spaces to covered units at 617 Locust Avenue. There is no continuous pedestrian walkway to the dumpsters at either property; instead the route to the dumpsters at both buildings contains steps and requires travel along the vehicular drive. Mailboxes are located higher than 54" above the floor. Noncompliant knob hardware is used on unit entry doors. There are no accessible parking spaces at either location. Unit entry doors contain abrupt level changes without compliant bevels and have thresholds that lack compliant bevels on the exterior side and are more than 3/4" on the interior side and are not beveled. Outlets and thermostats are located in inaccessible positions. The kitchens lack a 30" x 48" clear floor space centered in front of the kitchen sink. Bathrooms lack sufficient clear floor space and clearances to maneuver in front of the lavatories, by the toilets, and/or beyond the swing of the door.

#### **I. The Gables**

41. The Gables is a residential apartment complex located on Gables Place in Bridgeport, West Virginia. The Gables was designed and constructed for first occupancy in 1997. The Gables consists of nine buildings and has a total of thirty-eight ground floor units. Seven of the buildings are two-story non-elevator buildings, each with four ground floor units. One building is a two-story non-elevator building with six ground floor units. One building is a one-story non-elevator building with four ground floor units.

42. The United States surveyed The Gables and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: steps obstruct the routes leading to units in eight of nine buildings at The Gables. There is no pedestrian route connecting covered units to common use areas, including but not limited to the dumpsters, picnic area, garages, and mailboxes. The parking garages have overhead doors that are less than 10 feet wide. Doors within units have less than 32” nominal clear width. Primary unit entry doors have noncompliant knob door hardware, abrupt level changes that are not beveled at the threshold, and thresholds that lack bevels on the interior sides. Patio doors are too high and not beveled, and some patio decks are more than 1/2” below the unit interior. Level changes from certain units to the patios exceed 1/2.” Electrical outlets, light switches, and thermostats are mounted in inaccessible locations. Kitchens lack sufficient maneuvering space, including but not limited to less than 30” x 48” clear floor space centered on kitchen sinks and some of the oven ranges. Bathrooms have toilets in inaccessible locations, and some bathrooms have insufficient maneuvering space by the lavatories, toilets, and/or beyond the swing of the door.

**J. Glenlock**

43. Glenlock is a residential apartment building located at 2118 University Avenue, Morgantown, West Virginia 26505. Glenlock was designed and constructed for first occupancy in 2009. This building is a non-elevator building with eight ground floor units.

44. The United States surveyed Glenlock and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: steps obstruct the routes leading from units to common use areas, such as the mail kiosk and dumpsters. There are no accessible parking spots at Glenlock. Doors within

units have less than 32” clear width; bedroom and bathroom doors are as narrow as 28”.

Thresholds at unit entry doors are more than 1/4” and are not beveled on the interior sides.

Electrical outlets and thermostats that are mounted in inaccessible locations. The kitchens have less than 30” x 48” clear floor space centered on the range. The hallway and bedroom bathrooms have insufficient maneuvering space, including less than 18” from the centerline of the toilets to the bathtubs and less than 30” x 48” clear floor space beyond the swing of the doors and less than 30” x 48” clear floor space centered on the lavatories.

**K. Glenlock South**

45. Glenlock South is a residential apartment building located at 2040 University Avenue, Morgantown, West Virginia 26505. Glenlock was designed and constructed for first occupancy in 2002. This building is a non-elevator building with eight ground floor units. The only laundry facilities available to Glenlock South residents are located in an adjacent property, Glenlock North.

46. The United States surveyed Glenlock South and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: there is no continuous pedestrian route from covered units to common use areas, such as the dumpsters, mailboxes, and the laundry facility, and there are steps along the route leading from units to the laundry facility. Unit entry doors use noncompliant knob door hardware, and the doors within units and doors leading to the laundry facility have less than 32” nominal clear width. Electrical outlets, light switches, and thermostats are mounted at inaccessible locations. The kitchens have less than 40” clearances between appliances and the opposing cabinets and wall. The bathrooms contain insufficient maneuvering space, including

less than 30" x 48" clear floor space beyond the door swing (measured at 30" x 21") and insufficient clearances at the bathroom lavatories and toilets.

**L. Grapevine Village**

47. Grapevine Village is a residential apartment complex located on Airport Boulevard in Morgantown, West Virginia 26505. Grapevine Village was designed and constructed for first occupancy in 1992. Grapevine Village has a total of twenty-five ground floor units. Grapevine Village has two two-story non-elevator buildings, each of which contains six ground floor units; one two-story non-elevator building with five ground floor units; and one three-story non-elevator building with eight ground floor units.

48. The United States surveyed Grapevine Village and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: walkways leading to units are not accessible because, inter alia, they contain one or more steps, abrupt level changes, and/or ramps with non-compliant features. Unit entry doors have thresholds that are more than 3/4" high (measured at 2") and not beveled on the exterior side. There is no pedestrian walkway connecting all covered units to common use areas, and the routes to the common use areas require traversing steps or traveling through a parking lot with running slopes over 5% and cross slopes over 3% and/or through a lawn. The parking designated as accessible lacks an access aisle. Some mailboxes are over 54" above the floor. Curb ramps have unstable surfaces, with cross slopes over 2% and running slopes over 5%. All doors inside units have less than a 32" nominal clear width (most interior doors measured 28.5" clear width). Sliding glass doors leading to patios have tracks that are 1" high and not beveled 1:2. The interior side of thresholds at all primary entry doors are higher than 1/4" and not beveled 1:2. The change in level from unit interiors to wooden decks is more than 1/2." Wall

outlets are located at less than 15” above the floor; lights switches and some thermostats are located higher than 48” above the floor. The kitchens contain insufficient maneuvering space at appliances; some units contain less than 30” x 48” clear floor space centered on sinks and other kitchens contain less than 30” x 48” clear floor space centered on dishwashers.

**M. Metro Towers**

49. Metro Towers is a residential apartment complex located on University Avenue, Morgantown, West Virginia 26505. Metro Towers has 5 buildings on the site, three of which are covered by the Fair Housing Act’s accessibility provisions because they were designed and constructed for first occupancy between 2012 and 2014. There are a total of twenty-four ground floor units at Metro Towers. Metro Towers Northeast is a five-story non-elevator mixed use building with eight ground floor units. Metro Towers Northeast contains the leasing office, mailboxes for residents living in Metro Towers Northeast, and the fitness center. Metro Towers East and Metro Towers West are four-story non-elevator residential buildings, each with eight ground floor units. The mailboxes for Metro Towers East and West are located in another building in the complex, Metro Towers North. Metro Towers has an onsite leasing office located at 2577 University Avenue, Morgantown, West Virginia 26505.

50. The United States surveyed Metro Towers and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: there is no pedestrian walkway from units to certain public use and common use areas, including the leasing office, fitness center, and mailboxes. The rent drop box and certain mailboxes are located more than 54” above the ground. The bathroom in the fitness center lacks grab bars at the toilet, has a toilet seat that is lower than 17” from the floor, and lacks knee and toe clearance at the sink. Some of the electrical outlets and thermostats are

mounted in inaccessible locations. Some of the bathrooms have insufficient clear floor space beyond the door swing, insufficient clearances at the lavatories and toilets, and/or more than 18” between the toilet centerline and the side wall.

51. The United States alleges that the leasing office at Metro Towers violates the ADA. These violations include but are not limited to the following: the bathroom in the leasing office lacks toe and knee clearance at the lavatory for a forward approach, lacks grab bars at the toilet, has a toilet located more than 18” from the side wall, and has a toilet dispenser and mirror placed in inaccessible locations.

**N. Mountainview**

52. Mountainview is a residential apartment complex located on Mt. Golf Drive in Morgantown, West Virginia 26505. Mountainview was designed and constructed for first occupancy in 2001. Mountainview consists of six two-story non-elevator buildings. Each building has two ground floor units, for a total of twelve ground floor units.

53. The United States surveyed Mountainview and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: an abrupt level change of 4” on the exterior side of all primary unit entry doors. The exterior and interior sides of thresholds at the unit entry doors are higher than 3/4” and are not beveled 1:2. The primary unit entry doors use non-compliant knob hardware. There is no pedestrian route leading from covered units to the public street and mailboxes; the route to these areas goes through the parking lot and has running slopes of more than 5% and cross slopes of more than 2%. Routes from vehicular arrival points to covered units contain running slopes of more than 5% and/or cross slopes of more than 2%. Some mailboxes are located above 54” from the ground, and the maneuvering space in front of the mailboxes has slopes of more than 2%.

Doors within units have less than 32” nominal clear width. The change in level from the unit to concrete patios is more than 4” (measured at 15”). The hall bathroom contains less than 30” x 48” clear floor space beyond the swing of the door, and the clear floor space at the lavatory is off center by several inches.

**O. Orchard Crossing**

54. Orchard Crossing is a residential apartment complex located on Orchard Crossing in Morgantown, West Virginia 26505. Orchard Crossing was designed and constructed for first occupancy in 1998. There are a total of fifty ground floor units at Orchard Crossing. Seven buildings are two-story non-elevator buildings, each with two ground floor units. Seven buildings are four-story non-elevator buildings, four with six ground floor units and three with four ground floor units. Orchard Crossing has an onsite leasing office located at 300 Orchard Crossing, Morgantown, West Virginia 26505.

55. The United States surveyed Orchard Crossing and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: walkways leading to units have multiple steps and/or running slopes greater than 5%. There is no pedestrian walkway connecting covered units with the public street, entry gate, the leasing office, mailboxes, the dumpster, and other common use and public use areas. There are no accessible parking spaces or detached garages provided at Orchard Crossing. Certain mailboxes are located higher than 54” above the floor. The route leading to the pool is obstructed by steps. Doors within units have less than 32” nominal clear width. Thresholds at the primary entry doors for certain units are more than 3/4” high and not beveled 1:2 on the interior sides, and the thresholds at all patio doors are too high and/or lack compliant beveling. Thermostats in some units are mounted over 48” above the floor, and electrical outlets in some

units are located lower than 15” above the floor. In certain units, there is less than 30” x 48” clear floor space centered on the refrigerator in the kitchen. Some bathrooms contain insufficient maneuvering space, including less than 30” x 48” clear floor space beyond the swing of the door and insufficient clear floor space by showers, toilet, and/or sinks.

56. The United States alleges that the leasing office at Orchard Crossing violates the ADA. These violations include but are not limited to the following: the vehicular and pedestrian route are inaccessible from the site arrival point, and no van accessible parking space is provided at the leasing office. The maneuvering space at the entry door has more than 2% surface slope, and the thresholds are higher than 1/2” and not beveled 1:2. The door to the leasing office has non-compliant knob hardware. The doors from the vestibule to the leasing office lack 12” maneuvering space on the push side. The leasing office contains a unisex toilet room that is open to the public. The sign for the bathroom is not mounted in the compliant location and does not have raised and Braille characters. The bathroom in the leasing office lacks a 60” diameter turning space; has insufficient knee clearance under the sink to allow a forward approach; has a toilet that is less than 18” from the adjacent wall and lavatory (measured at 15”); and no grab bars installed on the rear and side walls by the toilet.

**P. Parkview Apartment Homes at Charles Pointe**

57. Parkview Apartment Homes at Charles Pointe (“Parkview”) is a residential apartment complex located on Parkview Drive, Bridgeport, West Virginia. Parkview was designed and constructed for first occupancy in 2011. There are a total of forty-eight ground floor units at Parkview. Parkview has twelve two-story non-elevator buildings, each of which has four ground floor units. Parkview has a leasing office located at 315 Parkview Drive, Bridgeport, West Virginia.



58. The United States surveyed Parkview and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: there is no pedestrian walkway connecting units to public use and common use areas, including but not limited to the leasing office, community room, fitness center, mailboxes, swimming pool, and dumpsters. Certain mailboxes and parcel boxes are located higher than 54" above the ground. In the breezeways of each building, there is less than 80" of headroom under the stairways leading to the upper floors and no cane detectable barrier below the stairway. No accessible parking spots are provided in the carport, and parking garages are too narrow. The door leading to the fitness center and the door leading to the pool from the fitness center have unbeveled thresholds that are more than 1/2" on the exterior and interior sides. There is less than 18" of maneuvering space at pull side of the door leading from the fitness center to the pool. All primary unit entry doors contain abrupt level changes of more than 1/4" at the threshold, and the primary unit entry door thresholds are more than 3/4" high and no bevel on the interior side. The patio door thresholds are not beveled and are more than 3/4" high on the interior sides. Electrical outlets in the kitchens and patios are mounted in inaccessible locations. The master bathroom lacks sufficient maneuvering space, including less than 30" x 48" clear floor space beyond the door swing, less than 30" x 48" clear floor space centered on the lavatory, and less than 18" from the centerline of the toilet to the bathtub.

59. The United States alleges that portions of the leasing office building at Parkview violate the ADA. The leasing office building at Parkview contains several rooms that are open to members of the public, including a community room, one bathroom, and a smaller office. The alleged violations at the leasing office building include but are not limited to the following: no van accessible parking spot with an access aisle is provided at the leasing office. The entrance of

the leasing office building has a threshold that is more than 1/2” and not beveled on the exterior side, and is more than 1/2” high with a non-compliant bevel on the interior side. The door leading from the community room to the smaller office has less than 32” nominal clear width. The public bathroom lacks knee and toe clearance at the lavatory and lacks grab bars on the side and rear walls by the toilet. The toilet is located more than 18” from the side wall, and the toilet seat is lower than 17” above the floor.

**Q. Pinecrest Office Plaza and Apartments**

60. Pinecrest Office Plaza and Apartments (“Pinecrest”) is a mixed use building located on Pinecrest Plaza, Route 857 (Point Marion Road) in Morgantown, West Virginia 26505. Pinecrest consists of one non-elevator building with eighteen ground floor units.

61. The United States surveyed Pinecrest and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: each of the covered units is located on the second floor of the building and can be accessed only by climbing twenty or more stairs from every building entrance. All of the common use areas, such as dumpsters, parking, and mailboxes, are located downstairs. The clear floor space in front of certain mailboxes is obstructed by the staircase. Unit entry doors use noncompliant knob door hardware. Doors within the units have less than 32” nominal clear width. Thermostats in all units and the electrical outlets in some kitchens are mounted in inaccessible locations. Some kitchens lack a 30” x 48” clear floor space centered on the sinks and/or oven ranges, and some galley kitchens have less than 40” clearances between opposing features. The toilets in the bathrooms are located more than 18” from the bathtub, and some bathrooms lack a 30” x 48” clear floor space beyond the swing of the door.

**R. Skyline**

62. Skyline is a residential apartment complex located at the intersection of Van Gilder Street and Protzman Street in Morgantown, West Virginia 26505. Skyline was designed and constructed for first occupancy in 2006. There are a total of twenty-eight ground floor units at Skyline. Skyline has one three-story non-elevator building and two four-story non-elevator buildings. The three-story building contains four ground-floor units. Each of the four-story buildings has two ground floors with six units on each floor, for a total of twelve ground floor units in each of the four-story buildings.

63. The United States surveyed Skyline and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: walkways leading to units have steps and/or cross slopes exceeding 2%. Thresholds at primary unit entry doors are more than 3/4" and are not beveled 1:2 on either the interior or exterior sides. The maneuvering spaces in front of primary unit entry doors in the three-story building are not level, with surface slopes of more than 2%. Doors lack compliant lever hardware. Light fixtures on walkways leading to units protrude more than 4" from the wall and are mounted lower than 80" above the walkway. There is no accessible pedestrian walkway connecting covered units to the street, mailboxes, and the dumpster; the routes leading to these areas go through the parking lot and have stairs, running slopes of more than 5%, and/or cross slopes of more than 2%. There are no accessible parking spaces at Skyline. Some mailboxes are located higher than 54" above the ground and lack level maneuvering space in front of them. Doors within some of the units do not have 32" nominal clear width. The doors leading to some patios have a sliding door track that is more than 3/4" high and is not beveled, and the wooden deck is more than 1/2" below the floor of the unit interior. Outlets over kitchen counters are

mounted over 46” above the floor, and light switches in certain units are mounted over 48” above the floor. Kitchens in some units lack a centered 30” x 48” clear floor space in front of the sink. The bathrooms contain insufficient maneuvering space, including less than 30” x 48” clear floor space in front of the sinks and beyond the door swing, and some bathrooms contain less than 15” from the centerline of the toilets to the sinks.

**S. Stonewood**

64. Stonewood is a residential apartment complex located on Valley View Avenue in Morgantown, West Virginia 26505. Stonewood was designed and constructed for first occupancy in 2008. Stonewood has a total of forty-four ground floor units. Stonewood has three three-story buildings, each of which has four ground floor units. Stonewood has four four-story buildings. Each of the four-story buildings has two ground floors each with four covered units, for a total of eight covered units in each of these buildings.

65. The United States surveyed Stonewood and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to the following: there is no pedestrian walkway connecting covered units with the public street, mailboxes, dumpster, gym, and pool house, and the routes to these areas have abrupt level changes, running slopes over 5%, and/or cross slopes over 2%. The buildings have less than 80” of headroom under the stairways and lack cane detection on the routes leading to primary unit entrances. Walkways leading to units at the three-story buildings have one or more steps. No accessible parking spaces are provided at Stonewood. Some mailboxes are located over 54” above the ground. The entry door to the pool house and gym has less than 42” clear width of maneuvering space and has a threshold that is more than 1/2” high and is not beveled. The route to the pool has less than 12” maneuvering space on the push side and less than 18” on

the pull side. The emergency phone by the pool is mounted too high and lacks a stable surface in front of it. The men's and women's bathrooms in the common areas have several alleged violations, including less than 60" turning diameter space, insufficient knee clearance under the sinks for a forward approach, no grab bars on the rear and side walls by the toilet, and signs lacking raised characters. Doors within some units lack 32" nominal clear width. The threshold of the some primary entry doors is 3/4" and not beveled at the interior side. Some units have change in level from the unit interior to the wooden deck that is greater than 1/2". Some kitchens lack a 30" x 48" clear floor space centered in front of the sink. The bathrooms lack sufficient maneuvering space, including but not limited to less than 30" x 48" clear floor space at the sinks and beyond the door swing.

**T. Valley View Woods**

66. Valley View Woods is a residential apartment complex located on Valley View Avenue in Morgantown, West Virginia 26505. Two out of the five buildings at Valley View, Building 1100 and Building 1300, contain covered dwelling units. These buildings were designed and constructed for first occupancy in 2002. Both buildings are two-story non-elevator buildings. Building 1100 has six ground floor units, and Building 1300 has twelve ground floor units.

67. The United States surveyed Valley View Woods and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to the following: the routes leading to all of the covered units are obstructed by steps. There is no accessible pedestrian route connecting units and common use areas, including mailboxes and dumpsters. Some mailboxes are higher than 54" above the ground. The unit entry doors have noncompliant knob door hardware, abrupt level changes of

more than 1/2" at the exterior side of the doors, and unbeveled thresholds over 3/4" high on the interior sides. Thresholds at patio doors are unbeveled and are higher than 3/4" on the interior side, and the level changes from the unit interiors to the patio decks are more than 1/2". Doors within units have less than nominal 32" clear width. Electrical outlets are mounted in inaccessible locations, and thermostats are mounted more than 48" above the floor. The kitchens have less than a 30" x 48" clear floor space centered on the kitchen sink. Bathrooms contain insufficient maneuvering spaces, including less than 30" x 48" clear floor space beyond the door swing and at the sinks, and insufficient maneuvering space at the toilet (less than 33" clearance between the bathtub to the sink cabinet and less than 18" from the centerline of the toilet to the bathtub).

**U. The Villages at West Run**

68. The Villages at West Run is a residential apartment complex on Eagle Run in Morgantown, West Virginia 26505. The Villages at West Run was designed and constructed for first occupancy in 2010. The Villages at West Run consists of twelve non-elevator buildings and a total of sixty ground floor units. Six two-story buildings contain four ground floor units each, and six two-story buildings contain six ground floor units each. The Villages at West Run has an onsite leasing office located at 100 Eagle Run, Morgantown, West Virginia 26505.

69. The United States surveyed The Villages at West Run and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: walkways leading to covered units contain one or more steps; ramps that lack guard rails, have abrupt level changes of more than 1/2", and/or less than 60" landings in length; have running slopes of more than 5%; and/or have abrupt level changes of more than 1/2". No accessible pedestrian walkway connects covered units to the public street

or to the common use or public use areas, such as the leasing office, clubhouse, mailboxes, dumpsters, and the pool; the routes to these areas travel through the parking lot or in the vehicular route and have severe running slope and/or cross slopes. No accessible parking spaces are provided for residents. The maneuvering space by the mail kiosk, dumpsters, or pool gate is not level, with surface slopes of more than 2%. Some mailboxes are located higher than 54". The pool gate has noncompliant knob hardware and insufficient maneuvering space on the push and pull sides of the gate. The clubhouse lacks accessible parking, has a threshold at the main entry door with a threshold that is higher than 1/2" and not beveled, and the tracks for the sliding glass door leading to the rear porch and pool are more than 1/2" high and not beveled. The entry door to the gym has less than 18" of maneuvering space on the pull side and has a threshold that is more than 1/2" high and not beveled. The primary unit entry doors have abrupt level changes of more than 1/2" below the threshold on the exterior side, and the thresholds are more than 3/4" high and are not beveled on the exterior and interior sides. There is less than 42" clear width of maneuvering space at the primary unit entry doors. Doors inside the units or doors leading to patios have less than 32" clear width. The sliding glass doors to the patio have tracks that are more than 3/4" high and not beveled, and there is an abrupt level change of more than 1/2" from the units to the patios. The thermostats are located over 48" above the floor. The kitchens lack 30" x 48" clear floor space in front of the sinks. Some of the bathrooms have insufficient maneuvering space, including less than 30" x 48" clear floor space in front of the sinks and/or adjacent to the showers.

70. The United States alleges that Villages of West Run also violates the ADA. These violations include but are not limited to the following: there is no accessible vehicular or pedestrian route from the site arrival point to the leasing office. The entry door to the leasing

office lacks 18” maneuvering space on the pull side from the exterior, and the door threshold is more than 1/2” high and not beveled. The door from the leasing office to the clubroom lacks a 12” maneuvering space clearance on the push side. The leasing office at The Villages of West Run also contains a men’s restroom and a women’s restroom open to the public. Neither restroom is compliant. For example, both restrooms contain insufficient wheelchair clear floor space for a 60” diameter turning circle, lack sufficient knee clearance under the sink for a forward approach, and lack grab bars installed on the rear and side walls by the toilets. The signage, toilet tissue holders, flush control, and paper towel dispensers in both bathrooms are installed in inaccessible locations.

**V. Vista Del Rio**

71. Vista Del Rio is a residential apartment complex located on Scott Avenue in Morgantown, West Virginia 26508. Vista Del Rio has four non-elevator buildings and a total of twenty-four ground floor units. Vista Del Rio has two two-story buildings and two three-story buildings, and each building has six ground floor units.

72. The United States surveyed Vista Del Rio and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: the routes leading to covered units in the three-story building contain steps. There is no accessible pedestrian route connecting covered units with common use areas, such as the mailboxes, dumpsters, and parking. Thresholds at primary unit entry doors are more than 3/4” high and not beveled on the interior and exterior sides. Light fixtures on the walkways to covered units are mounted lower than 80” and protrude more than 4” from the wall. Some mailboxes are located higher than 54” above the ground and require traversing a 4” abrupt level change or reaching over a 24” obstruction to open them. The sliding glass doors from the units



to the patios have less than 32" nominal clear width and have tracks that are more than 3/4" and not beveled. The change in level from the unit interiors to the patios are more than 1/2".

Thermostats are located higher than 48" above the floor. Kitchens contain less than 30" x 48" clear floor space at the sinks. Some of the bathrooms contain less than 30" x 48" clear floor space beyond the swing of the bathroom door.

**W. The Woodlands**

73. The Woodlands is a residential apartment complex located on Airport Road in Fairmont, West Virginia 26554. The Woodlands has twelve non-elevator buildings and a total of fifty ground floor units. Eleven of the twelve buildings building are two-story buildings, each with four ground floor units. One building is a two-story building with six ground floor units. The Woodlands has an onsite leasing office located at 1301 Airport Road, Fairmont, West Virginia 26554.

74. The United States surveyed The Woodlands and identified specific features that it alleges fail to meet the Accessible Design Requirements of the FHA. These features include, but are not limited to: the walkways leading to most of the covered units contain steps. There is no accessible pedestrian walkway connecting units with street or the public use and common use areas, including the leasing office, fitness center, mail kiosks, garages, playground, picnic area, and dumpsters. The tenants' mailboxes are located on a platform that is 4.5" high and lacks ramps, and the outgoing mailbox lacks clear floor space on the accessible route. The individual parking garages lack sufficient clear width. The route leading to the fitness center contains five steps, and there is an abrupt level change of more than 1/2" at the entrance door to the fitness center. The lock on the entrance door to the fitness center is mounted higher than 54" above the ground. The primary unit entry doors have abrupt level changes of more than 1/2" on the

exterior sides and thresholds that are more than 3/4" high and not beveled on the interior sides. Doors within units have less than 32" nominal clear width. The patios have doors with less than 32" nominal clear width and thresholds that are more than 3/4" high and not beveled. Electrical outlets, light switches, and thermostats are located at inaccessible locations. The kitchens lack insufficient maneuvering space, including insufficient clearances and clear floor space at oven ranges, dishwashers, and/or sinks. The bathrooms have insufficient maneuvering spaces, including insufficient clearances and clear floor space at the toilets, lavatories, and/or beyond the door swing.

75. The United States alleges that the leasing office at The Woodlands also violates the ADA. These violations include but are not limited to the following: the leasing office can only be accessed by climbing up steps. There is no van accessible parking spot at the leasing office. There is less than 54" of maneuvering space at the leasing office entrance door, and the door uses noncompliant knob hardware. The threshold at the entrance door that is more than 1/2" high and is not beveled on the interior and exterior sides. The leasing office bathroom has several deficiencies, including a door with less than 32" clear width, a lack of grab bars at the toilet, insufficient space for a 60" diameter turning space, insufficient knee clearance at the sink for a forward approach, and less than 30" x 48" clear floor space at the toilet and the sink.

76. In addition to the alleged violations of the ADA and the FHA Accessible Design Requirements described above, the presence or absence of reinforcements in unit bathroom walls for the later installation of grab bars, i.e., Requirement 6, could not be determined without removing or damaging wall surfaces at any of the Subject Properties. However, none of the designs provided by the Biafora Companies to the United States had markings to indicate that such reinforcements are present in the bathroom walls.

It is hereby ORDERED, ADJUDGED, and DECREED:

**V. SCOPE AND TERM OF THE CONSENT DECREE**

77. This Decree is effective immediately upon its entry by the Court. For purposes of this Decree, the phrases “date of this Decree” and “effective date” shall refer to the date on which the Court enters the Decree.

78. The provisions of this Decree shall apply to Defendants and their employees, agents, and successors-in-interest, and all persons in active concert or participation with them.

**VI. GENERAL INJUNCTION**

79. Defendants and each of their officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them are enjoined from discriminating on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. §§ 3604 (f)(1)-(3), and the Americans with Disabilities Act, 42 U.S.C. §§ 12182(a) and 12183(a)(1).

80. Defendants and each of their officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them are enjoined from interfering with or preventing the retrofitting ordered herein or the implementation or completion of this Consent Order. Defendants agree to allow access to the public and common use areas of the Subject Properties, and, to the extent possible, access to unit interiors at the Subject Properties, for the purpose of planning, evaluating, and performing any action required under this Order to bring the public and common use areas and the unit interiors into compliance with the FHA and the FHA Guidelines, and, where applicable, the ADA, and for the purpose of interviewing or meeting with residents or tenants to aid in the implementation or completion of this Order.

Defendants agree to bring the Subject Properties into compliance with the FHA and, where applicable, the ADA, as set forth herein.

## **VII. RETROFITS AT SUBJECT PROPERTIES**

81. The United States, as set forth herein and in its Complaint, alleges that the Subject Properties do not meet the accessibility requirements of the FHA, the Fair Housing Accessibility Guidelines (“FHA Guidelines”) (56 Fed. Reg. 9472 et seq. (1991)), the ADA, and the ADA Standards. To address the United States’ allegations, Defendants, in accordance with the FHA, the FHA Guidelines, the ADA, and the ADA Standards, shall complete the actions and retrofits described in this section and in Appendices A.1 - W.1, Appendices A.2 - W.2, Appendices A.3 - W.3, and in accordance with the Route and Inspection General Protocol and the Interior Retrofit Inspection Protocol separately agreed to by the United States and Defendants and described in Section XI, infra.

### **A. General Retrofits to Accessible Routes**

82. As soon as reasonably possible, but by no later than twenty-four (24) months from the entry of this Order, Defendants will complete the retrofits to make the Accessible Routes identified in Appendices A.1 - W.1 compliant with the FHA and the FHA Guidelines, and where applicable, the ADA and ADA Standards, in accordance with the Route and Inspection General Protocol.

### **B. Specific Retrofits to Accessible Routes and Retrofits to the Public and Common Use Areas**

83. As soon as reasonably possible, but by no later than twenty-four (24) months from the entry of this Order, Defendants will complete retrofits to accessible routes and to the public and common use areas listed in Appendices A.2 - W.2 to bring the accessible routes and

the public and common use areas into compliance with the FHA and the FHA Guidelines, and where applicable, the ADA and ADA Standards.

**C. Retrofits to Covered Multifamily Dwelling Unit Interiors**

84. As soon as reasonably possible, but by no later than twenty-four (24) months from the entry of this Order, Defendants will complete all retrofits as described in Appendices A.3 - W.3 and in the Interior Retrofit Inspection Protocol (“Interior Inspection Protocol”) separately agreed to by the United States and Defendants, and described in Section XI, infra, to the interiors of the covered multifamily dwellings to bring unit interiors into compliance with the FHA and the FHA Guidelines. Defendants will retrofit the interior of a covered multifamily dwelling no later than the first time that unit becomes vacant following the entry of this Consent Order and before that unit is occupied by a new tenant or resident. Regardless of whether or not a vacancy arises for such retrofitting, however, Defendants will complete retrofitting within twenty-four (24) months from entry of this Order.

85. Within forty-five (45) days from the date of the entry of this Order, Defendants will provide a notice that is substantially equivalent to Appendix X to residents at the Subject Properties. The notice will inform residents that (1) the United States alleges that the unit and public and common use areas do not meet the requirements of the FHA and the FHA Guidelines, and that to settle this lawsuit, Defendants have agreed to perform certain retrofits to the dwelling units; (2) the unit must be retrofitted within two (2) years of the date of the entry of the Consent Order; (3) the resident can schedule the retrofits; (4) the retrofits will be performed at no cost to the resident; and (5) temporary relocation, or if temporary relocation is unavailable, a payment equivalent to the U.S. General Services Administration rate will be provided to the resident for

temporary relocation expenses incurred by the tenant, as required by Section VIII of this Order, infra.

86. Residents may request the retrofits in writing, and the requests will be granted by Defendants on a first come, first served basis. Defendants must complete the retrofits as promptly as practical, but no later than forty-five (45) days from the date on which the retrofits were requested by a resident on a first come, first served basis, with such deadline being subject to paragraph 126 of this Consent Order.

### **VIII. CONSTRUCTION OF NEW PROPERTY IN MORGANTOWN**

87. By December 1, 2017, Defendants shall take all actions to complete the construction of a 5-level, 100-unit property (the “New Property”) in Morgantown, WV. All 100 units shall be serviced by an elevator, and Defendants shall make the construction of the Property fully compliant with ANSI 117.1 (2003), the Fair Housing Accessibility Guidelines of the Fair Housing Act (“FHAG”), the Americans with Disabilities Act, the Americans with Disabilities Act Accessibility Standards, and with the additional requirements set forth below:

- The New Property shall have a diversity of unit-types, including but not limited to 1-bedroom unit types and 2-bedroom unit types.
- The property shall have an on-site laundry center, fitness center, gathering space, and on-site accessible parking.
- The property shall have accessible pedestrian routes to all site amenities and to the public street.
- The unit interiors of all 100 units shall be constructed to conform with ANSI 117.1, §§ 1003.1 – 1003.14 (2003) Type A units or an equivalent standard approved by the United States.

- All common use areas at the New Property shall be constructed in conformance with ANSI 117.1 (2003) or an equivalent standard approved by the United States.
- Ten of the 100 units shall have a bathroom with a roll-in shower that is compliant with requirements for an ANSI 117.1, §§ 1003.1 – 1003.14 (2003) Type A unit.

88. During the term of this Order, upon reasonable notice, the United States will be permitted full access to the New Property to inspect for compliance with the FHA, the FHAG, the ADA, the ADA Standards, ANSI 117.1 (2003), and the additional accessibility features required by this Order, and it shall also be permitted full access to all construction drawings for the New Property.

89. By March 1, 2018, Defendants shall provide a certification from a neutral architectural firm not associated with the design or construction of the New Property and approved by the United States that the New Property is fully compliant with ANSI 117.1 (2003), the FHA, the FHAG, the ADA, the ADA Standards, and the additional accessibility features required by this Order. Defendants shall bear all costs associated with providing such inspection(s) and certifications.

90. If Defendants fail to comply with all of the requirements of paragraphs 87-89, then they shall take the actions outlined in Appendix EE within 12-months of the date of non-compliance with the requirements of paragraphs 87-89. Defendants' failure to comply with paragraphs 87-89 shall cause them to take the outlined in Appendix EE regardless of the reason or reasons for the failure to comply, regardless of whether the causes for the failure to comply were within the control of Defendants, and regardless of whether events leading to the failure to comply were foreseen or unforeseen.

**IX. INCONVENIENCE AND OVERNIGHT STAYS  
FOR RETROFITTING UNIT INTERIORS**

91. Defendants will endeavor to minimize inconvenience to residents in scheduling and performing retrofits required by this Consent Order at the Subject Properties.

92. Defendants with an ownership or control interest in a specific Subject Property will offer any resident of a unit scheduled to undergo a retrofit who will be dislocated from the unit for more than twenty-four (24) hours consecutively a similarly-sized furnished unit at one of the Subject Properties at no cost. In the event that a similarly-sized furnished unit at one of the Subject Properties is not available, Defendants will pay the resident the applicable government per diem rate for food and lodging for the local area (as available at [www.gsa.gov](http://www.gsa.gov) – click on “per diem rates” under travel) for each day of undue inconvenience or hardship for the resident(s). Such payment will be made prior to the commencement of any retrofit work on the resident’s unit, so that the resident or homeowner can use the money to obtain alternative living accommodations and food while dislocated.

**X. NOTICE OF RETROFITS TO PUBLIC AND COMMON USE AREAS**

93. Within sixty (60) days of the entry of this Order, Defendants will provide written notice to all residents and homeowners at the Subject Properties stating that the retrofits required by this Order will be performed to the public and common use areas of the Subject Properties, which include unit entrances and accessible routes. Such notice will conform to Appendix Y. Defendants will 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.



## **XI. NEUTRAL INSPECTOR**

94. Defendants will enter into a contract with a neutral inspector approved by the United States (“Inspector”) to conduct on-site inspections of the retrofits that have been performed under this Order to determine whether the retrofits have been completed in accordance with the specifications in this Order’s Appendices A.1 – W.1, Appendices A.2 – W.2, Appendices A.3 – W.3, the Route and Inspection General Protocol, the Interior Retrofit Protocol that describe the retrofits for the properties, and the retrofits performed in accordance with Section IX. The Inspector will have expertise in the Accessible Design Requirements of the FHA, and the requirements of the FHA Guidelines, ADA, ADA Standards, and ANSI A117.1-1986.

95. Inspections of the Subject Properties will take place every six (6) months for thirty (30) months. Each Subject Property will be inspected after the completion of all of the retrofits to all of the Accessible Routes as set forth in the relevant Appendix, all of the retrofits to the public and common use areas as set forth in the relevant Appendix, and of all of the retrofits to the covered multifamily dwelling units as set forth in the relevant Appendix. Defendants will give the United States at least three (3) weeks’ notice of the inspection and will give the United States an opportunity to have its representative present for the inspection.

96. The inspections of Accessible Routes, Public and Common Use Areas, and dwelling units will be conducted by the Inspector in accordance with this Order and the relevant Appendices. The inspections of the Accessible Routes will also be conducted by the Inspector in accordance with the written Route and Inspection General Protocol separately agreed to by Defendants and the United States which will be provided to the Inspector. The inspections of the dwelling units will also be conducted by the Inspector in accordance with the written Interior

Inspection Protocol separately agreed to by Defendants and the United States which will be provided to the Inspector.

97. The Inspector will set out the results of each inspection of the Subject Property, including deficits if any, in writing and will send that report to counsel for Defendants and for the United States. The Inspector will take digital photographs of any deficiencies identified at each Subject Property. If the inspection indicates that not all of the required retrofits have been made as specified in the Appendices, Interior Inspection Protocol, or the Route and Inspection General Protocol that apply to the Subject Property, Defendants involved in that specific Subject Property as set forth above, will correct any deficiencies within a reasonable period of time and will pay for another inspection by the same Inspector to certify the deficiencies have been corrected. This process will continue until the Inspector certifies that all of the necessary retrofits have been made. Defendants involved in that specific property will pay all of the Inspector's reasonable costs associated with these inspections of the Subject Property, and such payments will be made without regard to the Inspector's findings. Upon reasonable notice to Defendants, representatives of the United States will 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 will endeavor to minimize any inconvenience caused by such inspections.

## **XII. TRANSFER OF INTEREST IN PROPERTIES**

98. 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 any Subject Property as specified in this Order. Should a Defendant sell or transfer ownership of any Subject Property, in whole or in part, or any portion

thereof, prior to the completion of the retrofits specified in this Order, its appendices, or its protocols, the Defendant will at least thirty (30) days prior to completion of the sale or transfer: (a) provide to each prospective buyer written notice that the Subject Property is subject to this Order, including specifically the Defendant'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, by facsimile and first-class mail, written notice of the intent to sell or transfer ownership, along with a copy of the notice sent to each buyer or transferee, and each buyer's or transferee's name, address and telephone number.

### **XIII. NO RAISING RENTS PRICES**

99. Defendants with an ownership or management interest in a Subject Property, their agents, and their affiliated companies, may not raise the rent price of any dwelling unit, or demand any deposit or other fee for a dwelling unit at any Subject Property solely because of contemplated or completed retrofits in a dwelling unit. This paragraph does not preclude any increases in rent, or any deposit or other fee for a dwelling, implemented for reasons other than the contemplated or completed retrofits in a dwelling.

### **XIV. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION**

100. For the duration of this Order, Defendants will maintain, and provide to the United States, the following information and statements regarding any other multifamily dwellings that are covered by the Fair Housing Act and that are intended to be, or which actually are, purchased, developed, built, designed, constructed, or engineered in whole or in part, by any of them or by any entities in which they or David or Richard Biafora have a position of control as an officer, director, member, or manager, or have a ten-percent (10%) or larger ownership share, provided, however, that such information and statements need to be maintained and/or

provided only on properties in which a Defendant is actually involved, not on those properties in which a Defendant bids or expresses an interest, but does not become finally involved:

- a. the name and address of the property;
- b. a description of the property 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 property acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act 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 Fair Housing Act, the FHA Guidelines, the ADA, and the ADA Standards;
- e. to the extent that Defendants believe that the vehicular route or site impracticality exemptions apply to a property in whole or in part, a statement from a certified civil engineer describing his/her knowledge of and training in the requirements of the Fair Housing Act and identifying the tests used to determine the applicability of the exemption and describing the data and results of such tests;
- f. the name, address and telephone number of the architect(s) involved with the property;
- g. a statement from all architect(s) involved with the property, acknowledging and describing his/her knowledge of and training in the Accessible Design Requirements of the FHA, 42 U.S.C. § 3406(f)(1), (f)(2), and (f)(3)(C), the requirements of the FHA Guidelines, the ADA, 42 U.S.C. § 12183(a)(1), the ADA Standards, and in the field of accessible site design and certifying that he/she has reviewed the architectural plans for the property and that the design specifications therein fully comply with the requirements of the Act, the FHA Guidelines, the ADA, and the ADA Standards.
- h. If the engineering documents or architectural plans are revised, and the revisions could have any impact on the accessibility of the dwellings or property, each of Defendants will obtain, maintain, and provide to the United States upon request, a statement from the civil engineer(s) or architect(s) involved with the property that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the Accessible Design Requirements of the Fair Housing Act and the FHA Guidelines, and the Americans with Disabilities Act, and the ADA Standards, where applicable.

101. Defendants will take all actions to make the new construction at any existing Subject Property, or any future construction of multifamily buildings consisting of four or more dwelling units, fully compliant with the Accessible Design Requirements of the Fair Housing Act, the FHA Guidelines, the Americans with Disabilities Act, and the Americans with

Disabilities Act Accessibility Standards. During the term of this Order, upon reasonable notice, the United States will be permitted full access to such properties to inspect for compliance with the FHA, the FHA Guidelines, ADA, and ADA Standards.

**XV. SETTLEMENT FUND AND PAYMENTS TO AGGRIEVED PERSONS**

102. Within sixty (60) days after the date of this Consent Order, Defendants shall deposit in an interest-bearing account the total sum of ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000.00) for the purpose of compensating any aggrieved persons who may have suffered as a result of the alleged discriminatory housing practices by Defendants. This money shall be referred to as the “Settlement Fund,” and shall be for the purpose of compensating any aggrieved persons who may have suffered as a result of the alleged discriminatory housing practices by Defendants.

103. Within sixty (60) days of the entry of this Order, Defendants shall publish the Notice to Potential Victims of Alleged Housing Discrimination (“Notice”) at Appendix Z informing readers of the availability of compensatory funds. The Notice shall be no smaller than three columns by six inches and shall be published in the Dominion Post (Morgantown) and Exponent Telegram (Clarksburg). The publication dates shall be separated from one another by twenty-one (21) days, and at least two of the publication dates shall be on a Sunday. Within ten (10) days of each publication date, Defendants shall provide a copy of the newspaper containing the Notice to counsel for the United States.

104. Within sixty (60) days of the entry of this Order, Defendants shall send a copy of the Notice to each of the following organizations:

- a. Appalachian Center for Independent Living, Inc., Elk Office Center, Suite C, 4710 Chimney Drive, Charleston, WV 25302

- b. Appalachian Research and Defense Fund, Inc., 922 Quarrier Street, Suite 500, Charleston, WV 25301
- c. Legal Aid Society of Charleston, 922 Quarrier Street, 4<sup>th</sup> Floor, Charleston, WV 25301
- d. Mountain State Center for Independent Living, 821 Fourth Avenue, Huntington, WV 25701
- e. Mountain State Center for Independent Living, 329 Prince Street, Beckley, WV 25801
- f. Mountain State Center for Independent Living, P.O. Box 31, Sistersville, WV 26155
- g. Northern West Virginia Center for Independent Living, 601-3 East Brockway Avenue, Suites A & B, Morgantown, WV 26501
- h. West Virginia Fair Housing Action Network, 601-3 East Brockway Avenue, Suites A & B, Morgantown, WV 26501
- i. West Virginia Human Rights Commission, 1321 Plaza East, Room 108A, Charleston, WV 26501
- j. West Virginia Legal Services Plan, Inc., 922 Quarrier Street, Suite 550, Charleston, WV 25301.

105. Within six (6) months of the entry of this Order, Defendants shall send, by first-class mail, postage pre-paid, a copy of the Notice to each present tenant at the Subject Properties, and to each past tenant of the Subject Properties identified by the United States. The United States will provide a list of past tenants to the Defendants, along with their address. Within seven (7) months of entry of this Order, Defendants shall provide to counsel for the United States proof that the Notices have been sent.

106. Allegedly aggrieved persons shall have twelve (12) months from the date of the entry of this Order to contact the United States. The United States shall investigate the claims of allegedly aggrieved persons and, within eighteen (18) months from the entry of this Order, shall make a preliminary determination of which persons are aggrieved and whether any amount of damages should be paid to each such person. The preliminary determinations of the appropriate

amount of damages shall total no more than ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000.00), and shall not include any interest that has accrued in the account. The United States will inform Defendants, in writing, of its preliminary determinations, together with a copy of a sworn declaration from each allegedly aggrieved person setting forth the factual basis of the claim. Defendants shall have ninety (90) days to review the declarations and provide to the United States any comments, documents or information that they believe may refute the claim.

107. Not later than ninety (90) days after receiving the comments, documents and information from Defendants, the United States shall submit its final recommendations to the Court for approval, together with a copy of the declarations and any additional information submitted by Defendants. The final recommendations by the United States shall not total more than ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000.00), and shall not include any interest that has accrued in the account. When the Court issues an order approving or changing the United States' proposed distribution of funds for allegedly aggrieved persons, Defendants, within ten (10) days of the Court's order, shall deliver to the United States checks payable to the allegedly aggrieved persons in the amounts approved by the Court, plus a proportionate share of the interest that has accrued in the Settlement Fund as of the day before the checks are sent to the United States. In no event shall the aggregate of all such checks exceed the sum of the Settlement Fund, including accrued interest. No allegedly aggrieved person shall be paid until he/she has executed and delivered to counsel for the United States the release at Appendix AA.

108. Defendants shall permit the United States, upon reasonable notice, to review any records that may reasonably facilitate its determinations regarding the claims of alleged aggrieved persons.

109. Nothing in this Consent Order shall preclude the United States from making its own efforts to locate and provide notice to potential aggrieved persons.

110. After the satisfaction of paragraphs 102-109, above, and the expiration of the corresponding time periods, any money remaining in the Settlement Fund, including interest, shall be distributed to a qualified organization(s) for the purpose of conducting enforcement or educational activities related to the Fair Housing Act in West Virginia, with an emphasis on the protection of the rights of persons of with disabilities. Before selecting the qualified organization(s), Defendants will obtain a proposal from the organization(s) on how the funds will be used consistent with the above-stated purpose, submit such proposal to the United States, and consult with and obtain the non-objection of the United States. The United States and Defendants may request modification of the proposal before approving the organization(s). The parties shall thereafter seek approval from the Court to distribute the remaining funds to the qualified organization(s).

111. Defendants shall also require that the qualified organization(s) receiving funds submit to Defendants and the United States a detailed report on how the funds are utilized within one year of receipt of funds, and every year thereafter until the funds are exhausted.

#### **XVI. CIVIL PENALTY**

112. Within fifteen (15) days of the date of this order, Defendants will pay a civil penalty of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) 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 submitting a check made payable to the “United States of America” to counsel for the United States.



**XVII. EDUCATIONAL PROGRAM**

113. Within thirty (30) days of the entry of this Order, Defendants will provide a copy of this Order to all their agents and employees involved in the design or construction of the Subject Properties and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order, and has had an opportunity to have questions about the Order answered. This statement will be substantially similar to the form of Appendix BB.

114. During the term of this Order, within thirty (30) days after the date he or she commences an agency or employment relationship with a Defendant, each new agent or employee involved in the design and construction of any Subject Property or other covered multifamily dwelling property will be given a copy of this Order and be required to sign the statement acknowledging that he or she has received and read the Order, and has had an opportunity to have questions about the Order answered. This statement will be substantially similar to the form of Appendix BB.

115. Defendants will also ensure that they and their employees and agents who have primary management authority over the design and/or construction of covered multifamily dwellings have a copy of, are familiar with, and personally review, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998). Defendants and all employees and agents whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case will be informed

of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

116. Within ninety (90) days of the date of entry of this Consent Order, David Biafora, Steve Barnum, Tim Hastings, and Scott Copen, as employees and/or agents of Defendants, involved in primary management authority over the development, design and/or construction of multifamily dwellings will undergo training on the design and construction requirements of the Fair Housing Act and the ADA, unless they have already had similar training within the last four years. The training will be conducted by a qualified individual who has been previously approved by the Department of Justice, and any expenses associated with this training will be borne by Defendants. Defendants will 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 CC.

**XVIII. NOTICE OF DEFENDANTS' NON-DISCRIMINATION POLICY**

117. Within ten (10) days of the date of entry of this Consent Order, Defendants with an ownership or management interest in a covered multifamily dwelling property will post and prominently display in the sales or rental offices of all covered multifamily dwellings owned or operated by them a sign no smaller than 10 x 14 inches indicating that all dwellings are available for rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

118. For the duration of this Consent Order, in all future advertising in newspapers, electronic media, pamphlets, brochures and other promotional literature regarding the Subject

Properties or any new covered multifamily dwelling properties that any Defendant may develop or construct, such Defendant will place, in a conspicuous location, a statement that the dwelling units include features for persons with disabilities required by the federal Fair Housing Act.

**XIX. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS**

119. In addition to all other reporting required herein, within one hundred eighty (180) days after the date of entry of this Consent Order, Defendants will submit to the United States an initial report containing the reporting required by paragraphs 93, 113-114, 116, and containing the signed statements of Defendants and their employees and agents who have completed the training program specified in Section XVII of this Consent Order. Thereafter during the term of this Order, Defendants will, on the anniversary of the entry of this Order, submit to the United States a compliance report detailing their compliance with this Order, including details on the retrofitting and inspections of the retrofits at the Subject Properties, the reporting required by paragraphs 100-101 on the current and future design and construction, and containing the signed statements of new employees and agents that, in accordance with paragraph 114 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 compliance report will be due sixty (60) days prior to the anniversary.

120. For the duration of this Consent Order, Defendants will advise the United States in writing within fifteen (15) days of notice and receipt of any written fair housing complaint filed with an administrative governmental agency or judicial body that requests a written response against any property owned or managed by them, or against any employees or agents of Defendants working at or for any such property, regarding discrimination on the basis of disability in housing. Upon reasonable notice, Defendants will also provide the United States all

information it may request concerning any such complaint. Defendants will also advise counsel for the United States, in writing, within fifteen (15) days of the resolution of any complaint.

121. For the term of this Consent Order, Defendants are required to preserve all records related to this Consent Order, related to the Subject Properties and related to any other covered multifamily dwellings designed, constructed, owned, operated, or acquired by them during the duration of this Consent Order. Upon reasonable notice to Defendants, representatives of the United States will be permitted to inspect and copy any records of Defendants or inspect any properties or dwelling units under the control of Defendants bearing on compliance with this Consent Order at any and all reasonable times, provided, however, that the United States will endeavor to minimize any inconvenience to Defendants and residents from such inspections.

**XX. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION**

122. This Consent Order will remain in effect for three (3) years after the date of its entry, or until six (6) months after the completion and inspection of all retrofits required by the Appendices, Interior Inspection Protocol, and the Route and Inspection General Protocol. 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 will constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii). By consenting to entry of this Consent Order, the United States and Defendants agree that in the event that a Defendant engages in any future violation(s) of the ADA, such violation(s) will constitute a “subsequent violation” pursuant to 42 U.S.C. § 12188(b)(2)(C)(ii). Any violations of the accessible design and construction requirements of the FHA, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C), and the ADA, 42 U.S.C. § 12183(a)(1) that

exist at the Subject Properties on the date of entry of this Order shall not be considered a “subsequent violation.”

123. The Court will retain jurisdiction for the duration of this Order to enforce the terms of the Order, at which time the case will be dismissed with prejudice. The United States may move the Court to extend the duration of the Order in the interests of justice.

124. All parties will 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 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. Importantly, any motion filed must include a certification by the moving party detailing the good faith efforts utilized in attempting to resolve any differences informally. These efforts must be attempted by telephone and via writing attempts giving the responding party five (5) business days to reply and state its position on the issue.

125. The parties agree that, as of the effective date of this Order, litigation is not “reasonably foreseeable” concerning the matters described in the United States’ Complaint. To the extent that any of the parties previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Complaint, they are no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any of the parties of any other obligations imposed by this Consent Order.

126. 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 Defendants.

127. Several of the provisions of this Consent Order require Defendants to build new, construct, retrofit, and/or modify existing properties. The performance of these tasks are undertaken pursuant to the order of this Court and shall not be unreasonably interfered with, delayed by any individual or entity of any type.

128. All parties shall be responsible for their own attorney's fees and costs, except as otherwise provided in this Consent Order.

Dated: \_\_\_\_\_

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United States District Judge Irene M. Keeley

FOR THE UNITED STATES OF AMERICA:

LORETTA LYNCH  
Attorney General

WILLIAM J. IHLENFELD, II  
United States Attorney  
Northern District of West Virginia  
U. S. Courthouse & Federal Building  
Suite 3000  
1125 Chapline Street  
Wheeling, WV 26003  
Phone: (304) 234-0100

VANITA GUPTA  
Principal Deputy Attorney General  
Civil Rights Division

/s/ Helen Altmeyer  
HELEN ALTMAYER  
Assistant United States Attorney  
Northern District of West Virginia  
U. S. Courthouse & Federal Building  
Suite 3000  
1125 Chapline Street  
Wheeling, WV 26003  
Phone: (304) 234-7763



STEVEN H. ROSENBAUM  
Chief  
SHINA MAJEED  
Deputy Chief  
RYAN G. LEE  
SAMUEL G. HALL  
Trial Attorneys  
Housing and Civil Enforcement Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Northwestern Building, 7th Floor  
Washington, DC 20530  
Phone: (202) 305-0921  
Fax: (202) 514-1116

*Attorneys for Plaintiff  
United States of America*

FOR DEFENDANTS:

/s/ Mark Kepple

Thomas E. Buck, Esq.

WV Bar Id. 6167

tbuck@baileywyant.com

Mark A. Kepple, Esq.

WV Bar Id. 7470

mkepple@baileywyant.com

Bailey & Wyant, P.L.L.C.

1219 Chapline Street

Wheeling, WV 26003

Phone: (304) 233-3100

Fax: (304) 233-0201

*Counsel for Biafora's Inc. (d/b/a Metro Property Management);*

*Falconcrest LLC; Five Star Holdings, LLC;*

*Metro Rentals LLC; Metro Rentals II LLC;*

*RDR Properties, LLC; RDR Properties II LLC;*

*The Gables LLC; The Woodlands LLC;*

*3BT LLC; and CMC Company LLC*