

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

Case No. 2:21-cv-01187-SGC

DOMINION MANAGEMENT, LLC;)
DOMINION SENIOR LIVING OF)
PEACHTREE CITY (ILF), LLC n/k/a)
PEACHTREE CITY GA I SENIOR)
PROPERTY LLC;)
DOMINION SENIOR LIVING OF)
PEACHTREE CITY (ALF), LLC n/k/a)
PEACHTREE CITY GA II SENIOR)
PROPERTY LLC;)
DOMINION SENIOR LIVING OF)
SANDY SPRINGS, LLC n/k/a)
ATLANTA GA SENIOR PROPERTY LLC;))
DOMINION SENIOR LIVING OF)
FRANKLIN, LLC n/k/a FRANKLIN TN)
SENIOR II PROPERTY LLC;)
DOMINION SENIOR LIVING OF MT.)
PLEASANT, LLC;)
DOMINION SENIOR LIVING OF)
SANTA ROSA BEACH, LLC n/k/a)
SANTA ROSA FL SENIOR)
PROPERTY LLC; and)
STV ONE NINETEEN SENIOR)
LIVING, LLC n/k/a BIRMINGHAM)
AL SENIOR PROPERTY LLC,)
)
Defendants.)

CONSENT ORDER ¹

¹ The parties have consented to magistrate judge jurisdiction under 28 U.S.C. § 636(c). (Doc. 7).

I. INTRODUCTION

1. This action is brought by the United States to enforce provisions of the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601-3619, and the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. Specifically, the United States’ Complaint alleges that Defendant, Dominion Management, LLC (“Developer Defendant”), a developer through certain owner affiliates, and some of those affiliates² (collectively, “Owner Defendants”), have engaged in a pattern or practice of discrimination against persons with disabilities and denied rights to a group of persons because of disability by failing to design and construct covered multifamily dwellings with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3), and as required by the ADA, 42 U.S.C. § 12183(a)(1). References to “Defendants” in this Consent Order include both the Developer Defendant and the Owner Defendants, collectively.

2. The United States and Defendants agree that it is in their best interests, and the United States believes it is in the public interest, to fully and finally resolve this matter on mutually agreeable terms without resort to protracted

² The affiliates involved in the original design and construction of the properties that are the subject of this Consent Order are Dominion Senior Living of Peachtree City (ILF), LLC; Dominion Senior Living of Peachtree City (ALF), LLC; Dominion Senior Living of Sandy Springs, LLC; Dominion Senior Living of Franklin, LLC; Dominion Senior Living of Mt. Pleasant, LLC; Dominion Senior Living of Santa Rosa Beach, LLC; and STV One Nineteen Senior Living, LLC.

litigation. The United States and Defendants hereby agree and stipulate to the Court's entry of this Consent Order ("Order") resolving the United States' complaint against Defendants.

II. COVERED PROPERTIES AND DEFENDANTS

3. The Developer Defendant, directly or through subsidiaries or affiliates, participated in the design and construction of all the covered multifamily senior living properties as set forth in Table I below (collectively "Covered Properties").

TABLE I:

Covered Properties	Owner Defendants
Sommerby Peachtree City (GA) – AL and IL	Dominion Senior Living of Peachtree City (ILF), LLC and Dominion Senior Living of Peachtree City (ALF), LLC, n/k/a Peachtree City GA I Senior Property LLC and Peachtree City GA II Senior Property LLC, respectively (individually and together, as the context requires, "Peachtree Owners").
Sommerby Sandy Springs (GA)	Dominion Senior Living of Sandy Springs, LLC which merged into Atlanta GA Senior Property LLC as the surviving entity ("Sandy Springs Owner").
Sommerby Franklin (TN)	Dominion Senior Living of Franklin, LLC n/k/a Franklin TN Senior II Property LLC ("Franklin Owner").

Somerby Mount Pleasant (SC)	Dominion Senior Living of Mt. Pleasant, LLC (“Mt. Pleasant Owner”).
Somerby Santa Rosa Beach (FL)	Dominion Senior Living of Santa Rosa Beach, LLC n/k/a Santa Rosa FL Senior Property LLC (“Santa Rosa Owner”).
Westside (Alpharetta) (GA)	No Owner Defendant named for this property.
Somerby St. Vincent’s (AL)	STV One Nineteen Senior Living, LLC n/k/a Birmingham AL Senior Property LLC (“St. Vincent’s Owner”).
Fleming Farms (AL)	No Owner Defendant named for this property. ³

4. The Owner Defendants shall each only be responsible for (1) the requirements in this Order assigned to them relating to their respective Covered Properties, and (2) the requirements applicable to all Defendants jointly as stated in this Order.

5. The United States, the Developer Defendant, and the Owner Defendants shall be referred to collectively as the “Parties.”

6. The Developer Defendant represents and warrants that it has the legal authority and financial capacity to perform and complete all the retrofits that are

³ The Developer Defendant represents that its affiliate, Dominion Senior Living of Fleming Farms, LLC, was the owner during design and construction and is the current owner of the Fleming Farms Covered Property. As such, the Developer Defendant represents that it will cause to be performed all actions required by this Consent Order with respect to the Fleming Farms Covered Property as set forth below.

required at the Covered Properties in accordance with the terms and timetables in this Order.

7. For purposes of this Order, the United States and the Defendants agree that the Covered Properties are subject to the accessible design and construction requirements of the FHA, 42 U.S.C. §§ 3604(f)(1), (2), and (3)(C) and the ADA, 42 U.S.C. § 12183(a)(1).

III. RELEVANT REQUIREMENTS OF THE FAIR HOUSING ACT

8. 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 persons with disabilities. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A).

9. 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 persons with disabilities. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B).

10. The accessible and adaptive design provisions of the FHA require that for covered multifamily dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with a disability using wheelchairs; (iii) all premises within such dwellings contain the following features of adaptive design: (I) an accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C). These features are referred to herein as the “Accessible Design Requirements.”

11. For the purposes of this Order, the United States and Defendants agree that the Covered Properties were designed and constructed for first occupancy after March 13, 1991, and therefore all the units in buildings with elevators and the ground-floor units in non-elevator buildings at the Covered 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 Covered Properties, must comply with the Accessible Design Requirements of 42 U.S.C. § 3604(f)(3)(C).

IV. RELEVANT REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT

12. 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).

13. For the purposes of this Order, the United States and Defendants agree that the rental offices for the Covered Properties 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.

V. CONSENT OF THE PARTIES

14. The Parties agree that this Court has jurisdiction over the subject matter of this case under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a) and 12188(b)(1)(B). The Parties further agree that this controversy should be resolved without further proceedings and without an evidentiary hearing or a trial.

15. As indicated by the signatures appearing below, the Parties agree to the entry of this Order as the resolution of a disputed claim and without any admission of liability from any Defendant.

VI. GENERAL INJUNCTION

16. The Developer Defendant and the Owner 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 FHA and the ADA.

17. The Developer Defendant and the Owner Defendants and each of their respective 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 Order. The Owner Defendants agree to allow access to the public and common use areas of their respective Covered Properties as set forth

herein, and, to the extent possible, access to unit interiors at their respective Covered 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 ADA, and for the purpose of interviewing or meeting with residents or tenants to aid in the implementation or completion of this Order. Any access required for any purpose under this paragraph is subject to any currently applicable state or local restrictions due to the COVID-19 pandemic, and the Parties agree that any related time periods and deadlines can be adjusted accordingly without approval from the Court.

VII. RETROFITS AT SURVEYED COVERED PROPERTIES

18. The United States, as set forth herein and in its Complaint, alleges that the Covered Properties do not meet the accessibility requirements of the FHA, the ADA, and the ADA Standards. Defendants deny these allegations; however, to address the United States' allegations, Defendants have agreed to complete the actions and retrofits described in this Section at their respective Covered Properties, as set forth in Paragraphs 19-27 and Appendices A through F.

A. Retrofits at Surveyed Covered Properties

19. The United States and the Developer Defendant have jointly inspected Somerby Peachtree City and Somerby Sandy Springs.

20. The inspector and the Developer Defendant have provided the United States with accessibility inspection reports identifying the accessibility barriers at these two properties, constituting the “Surveyed Covered Properties.”

i. Somerby Peachtree City Covered Property

21. As soon as reasonably possible, but not later than twelve (12) months from the entry of this Order, the Developer Defendant, with access provided by the Peachtree Owners, will complete the retrofits to Somerby Peachtree City identified in Appendix B relating to public and common use areas.

22. Not later than twelve (12) months from the entry of this Order, the Developer Defendant, with access provided by the Peachtree Owners, will complete the retrofits to Somerby Peachtree City identified in Appendix C relating to unit interiors. These interior unit retrofits are subject to the provisions of Paragraph 49 below regarding infeasibility of necessary resident dislocation.

ii. Somerby Sandy Springs Covered Property

23. As soon as reasonably possible, but not later than twelve (12) months from the entry of this Order, the Developer Defendant will complete the retrofits to Somerby Sandy Springs identified in Appendix E relating to public and common use areas.

24. Not later than twelve (12) months from the entry of this Order, the Developer Defendant will complete the retrofits to Somerby Sandy Springs

identified in Appendix F relating to unit interiors. These unit interior retrofits are subject to the provisions of Paragraph 49 below regarding infeasibility of necessary resident dislocation.

B. Notice of Retrofits at Surveyed Covered Properties

25. Within thirty (30) days from the entry of this Order, the Developer Defendant, or its designated representative, will cause a notice that is substantially equivalent to Appendix G to be provided to all current residents of the Surveyed Covered Properties. The notice will inform residents that retrofits required by this Order will be performed to the public and common use areas of the Surveyed Covered Properties, which include unit entrances and accessible routes. The Developer Defendant or its designated representative shall certify to the United States in writing that the notices have been distributed and the manner in which they were distributed within fourteen (14) days after such distribution.

26. Within thirty (30) days from the entry of this Order, the Developer Defendant, or its designated representative, will cause a notice that is substantially equivalent to Appendix H to be provided to current residents of the covered dwelling units at the Surveyed Covered Properties. The notice will inform residents in covered dwelling units that (1) certain retrofits will be made to the covered dwelling units; (2) the covered dwelling unit must be retrofitted within twelve (12) months; (3) the resident will receive a schedule of when the retrofits

will be performed; (4) the resident may request in writing that his or her unit be retrofitted earlier; (5) the retrofits will be performed at no cost to the resident; and (6) if temporary relocation for more than twelve (12) hours consecutively is required, the resident will receive the equivalent to the U.S. General Services Administration rate for temporary relocation expenses incurred by the resident, as required by Section IX of this Order, *infra*.

27. If a resident desires to have the retrofits completed to the interior of his/her covered dwelling unit before the retrofits are scheduled to be performed, the resident may request the retrofits in writing, and the requests will be granted on a first-come, first-served basis. The Developer Defendant must complete, or cause to be completed, these requested retrofits no later than sixty (60) days from the date on which the retrofits were requested by a resident on a first-come, first-served basis, subject to reasonable modification of the time period in the event of a number of requests infeasible to address within any given sixty (60) day period.

VIII. PROPERTY SURVEYS AND RETROFITS AT NON-SURVEYED COVERED PROPERTIES

28. The United States, as set forth herein and in its Complaint, alleges that the Covered Properties do not meet the accessibility requirements of the FHA, the ADA, and the ADA Standards. Defendants deny these allegations; however, to address the United States' allegations, Defendants have agreed to complete the

actions and retrofits described in this Section at their respective Covered Properties as set forth in Paragraphs 29-45 and in Appendices G through J.

A. Surveys at Non-Surveyed Covered Properties

29. The Developer Defendant agrees to take the following actions with regard to surveying the following Covered Properties: Somerby Franklin, Somerby Mount Pleasant, Somerby Santa Rosa Beach, Westside (Alpharetta), Somerby St. Vincent's, and Fleming Farms (the "Non-Surveyed Covered Properties."):

30. Within fifteen (15) days from the entry of this Order, the Developer Defendant shall submit the names of one or more qualified professionals to serve as the Property Surveyor to the United States for approval. The United States shall approve or reject the proposed Property Surveyor within thirty (30) days from receiving the Developer Defendant's submission. The Property Surveyor will have expertise in the Accessible Design Requirements of the FHA, the ADA, the ADA Standards, ANSI A117.1-1986, and the Department of Housing and Urban Development's ("HUD") recognized safe harbors as set forth in Appendix I. The Property Surveyor's resume and statement of experience shall be included in the submission.

31. Within thirty (30) days after approval by the United States, the Developer Defendant with permission from the applicable Owner Defendant for each of their respective properties shall enter into a contract with the Property

Surveyor to conduct an on-site survey in accordance with this Section and Appendices I and J, at each of the Non-Surveyed Covered Properties to identify alleged violations, if any, of the FHA and the ADA, where applicable.

32. The Developer Defendant shall give the United States written notice of the survey date at least twenty-one (21) days prior to each survey. The United States may have its representatives present for each survey. The United States and the Developer Defendant will work together and with the relevant Owner Defendant to schedule a mutually agreeable date to conduct the surveys.

33. All Property Surveys are to be completed within twelve (12) months from the entry of this Order, with surveys for at least four of the Non-Surveyed Covered Properties completed within six (6) months from the entry of this Order. Properties shall not be surveyed simultaneously.

34. The Property Surveys are to be conducted in accordance with Appendix I through J, which shall be provided to the Property Surveyor.

35. The Property Surveyor will prepare a written Initial Property Survey Report based on the Property Survey for each Non-Surveyed Covered Property. Each Initial Property Survey Report will comply with Appendices I and J.

36. The Property Surveyor will send the Initial Property Survey Report for each Non-Surveyed Covered Property to counsel for the United States, the Developer Defendant, and any applicable Owner Defendant as soon as practicable

following each Property Survey, but in any event no later than sixty (60) days after the date of the Property Survey.

37. The United States and the Developer Defendant shall, within sixty (60) days of receiving an Initial Property Survey Report, provide a list of objections to the Initial Property Survey Report to the Property Surveyor. If both the United States and the Developer Defendant fail to provide notice of objections to the Property Survey Report, the Property Survey Report will be deemed accepted and will become the Final Property Survey Report. If either the United States or the Developer Defendant or both the United States and the Developer Defendant provide notice of objections, the Property Surveyor shall respond with an Amended Property Survey Report within thirty (30) days. The United States and the Developer Defendant shall provide any objections to the Amended Property Survey Report within thirty (30) days. This process will continue until all objections are addressed.

B. Retrofits at Non-Surveyed Properties

38. For each Non-Surveyed Covered Property at which a Property Surveyor has identified inaccessible features in the Final Property Survey Report in light of Appendices I and J, the provisions in Section VIII.B shall apply.

i. Agreement on Retrofits at Non-Surveyed Covered Properties

39. The Developer Defendant in consultation with any applicable Owner Defendant, shall for each property, within sixty (60) days of receiving the Final

Property Survey Report, prepare and provide an Initial Retrofit Plan to the United States identifying all public and common use areas and unit interiors that must be retrofitted. The Initial Retrofit Plan shall comply with the Retrofit Plan Protocol that has been separately negotiated and agreed to by all Parties.

40. The United States shall provide any objections to the Initial Retrofit Plan within thirty (30) days. The Developer Defendant shall revise the Initial Retrofit Plan in accordance with those objections and submit an Amended Retrofit Plan to the United States for approval within thirty (30) days. This process will continue until the United States' objections are addressed at which time the Developer Defendant will prepare and submit a Final Retrofit Plan to the United States. The Final Retrofit Plan shall comply with the Retrofit Plan Protocol, subject to such modifications as may be approved by the United States in its sole discretion.

ii. Retrofits to Accessible Routes and Public and Common Use Areas at Non-Surveyed Covered Properties

41. No later than twelve (12) months from the date of the applicable Final Retrofit Plan, the Developer Defendant, with access provided by the applicable Owner Defendant or obtained pursuant to Paragraph 59 of this Order, will complete the agreed retrofits of the accessible routes and public and common use areas at each Non-Surveyed Covered Property.

iii. Retrofits to Covered Multifamily Dwelling Unit Interiors at Non-Surveyed Covered Properties

42. Not later than twelve (12) months from the date of the applicable Final Retrofit Plan, the Developer Defendant, with access provided by the applicable Owner Defendant or obtained pursuant to Paragraph 59 of this Order, will complete all agreed retrofits to the covered multifamily dwelling unit interiors at the Non-Surveyed Covered Property. These unit interior retrofits are subject to the provisions of Paragraph 49 below regarding infeasibility of necessary resident dislocation.

iv. Notice of Retrofits at Non-Surveyed Covered Properties

43. Within thirty (30) days from the date of the applicable Final Retrofit Plan, the applicable Owner Defendant or the designated representative of the Developer Defendant, will provide a notice that is substantially equivalent to Appendix G to all current residents of their respective Non-Surveyed Covered Property. The notice will inform residents that retrofits required by this Order will be performed to the public and common use areas of the Non-Surveyed Covered Property, which include unit entrances and accessible routes. The applicable Owner Defendant or designated representative of the Developer Defendant, shall certify to the United States in writing that the notices have been distributed at their respective Non-Surveyed Covered Properties and the manner in which they were distributed within fourteen (14) days after such distribution.

44. Within thirty (30) days from the date of the applicable Final Retrofit Plan, the applicable Owner Defendant or the designated representative of the Developer Defendant will provide a notice that is substantially equivalent to Appendix H to current residents of the covered dwelling units at their respective Non-Surveyed Covered Property. The notice will inform residents in covered dwelling units that (1) certain retrofits will be made to the covered dwelling units; (2) the covered dwelling unit must be retrofitted within twelve (12) months; (3) the resident will receive a schedule of when the retrofits will be performed; (4) the resident may request in writing that his or her unit be retrofitted earlier; (5) the retrofits will be performed at no cost to the resident; and (6) if temporary relocation for more than twelve (12) hours consecutively is required, the resident will receive the equivalent to the U.S. General Services Administration rate for temporary relocation expenses incurred by the resident, as required by Section IX of this Order, *infra*.

45. If a resident desires to have the retrofits completed to the interior of his/her covered dwelling unit before the retrofits are scheduled to be performed, he or she may request the retrofits in writing, and the requests will be granted on a first-come, first-served basis. The Developer Defendant must complete the requested retrofits no later than sixty days (60) from the date on which the retrofits were requested by a resident on a first-come, first-served basis, subject to

reasonable modification of the time period in the event of a number of requests infeasible to address within any given sixty (60) day period.

IX. INCONVENIENCE AND OVERNIGHT STAYS FOR RETROFITTING AT COVERED PROPERTIES

46. The Developer Defendant will endeavor to minimize inconvenience to residents and homeowners in scheduling and performing retrofits required by this Order at the Covered Properties.

47. The responsible Owner Defendant will offer any resident of a unit scheduled to undergo a retrofit who will be dislocated from the unit for more than twelve (12) hours consecutively by that retrofit the use of a furnished unit at that Covered Property at no cost, to the extent then available.

48. In the event that a furnished unit at that Covered Property is not available, the Developer Defendant will pay the resident the applicable government per diem rate for food and lodging for the local area (as available at www.gsa.gov— click on “per diem rates” under travel) for each 24 hour period (or fraction thereof) of required relocation 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 can use the money to obtain alternative living accommodations and food while dislocated. The Developer Defendant will make all reasonable efforts to obtain compliance with this paragraph from the current owners of Westside (Alpharetta) and Somerby Mt. Pleasant in accord with Paragraph 59 below.

49. In the event that relocation of a resident under the terms of Paragraphs 47-48 above is either not agreed to by the resident or not feasible given the circumstances of the resident, the Developer Defendant will be relieved of the time limitation in which to complete the retrofits for that particular unit, and the retrofit inspection procedures described in Paragraphs 50-57 below can proceed without completion of the retrofits to that particular unit. The required retrofits must be completed to the unit when turned for a new resident, or three months prior to the end of the current term of this Consent Order, whichever is sooner. Photographic evidence in compliance with the requirements of Appendices I and J of the retrofits performed at those specific units at any Covered Property pursuant to this paragraph shall be sufficient evidence of the retrofit absent inspection by the neutral inspector.

X. NEUTRAL INSPECTOR AT COVERED PROPERTIES

A. Neutral Inspector for Surveyed Covered Properties

50. The Developer Defendant, with permission from the applicable Owner Defendant or obtained pursuant to Paragraph 59 of this Order, will enter into a contract with one or more neutral inspector(s) (“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 accord with the specifications in this Order’s Appendices A through F, that describe the required retrofits for the properties. Prior to entering into the contract with the Inspector(s),

the Developer Defendant shall submit the name(s) and resumes to the United States for approval. The United States shall approve or reject the Inspector(s) within thirty (30) days from receiving the Developer Defendant's submission. The Inspector(s) will have expertise in the Accessible Design Requirements of the FHA, ADA, ADA Standards, ANSI A117.1-1986 and the HUD-recognized safe harbors, and such expertise will be included in the submittal to the United States. The Parties agree that the Property Surveyor(s) described in Section VIII.A above and the Neutral Inspector may be the same entity or individuals so long as neither the Property Surveyor nor the Neutral Inspector is involved in the design elements of the Final Retrofit Plan for any of the Covered Properties.

51. An inspection of a Surveyed Covered Property will take place within forty-five (45) days of the completion of all of the retrofits to the covered multifamily dwelling unit interiors and the public and common use areas as set forth in the relevant Appendix, or as soon thereafter as practicable for each. The Developer Defendant shall give the United States at least twenty-one (21) days prior written notice of any inspection, including any subsequent inspections as set forth in Paragraph 53. The United States may have its representatives present for each inspection. The Parties will work together to schedule a mutually agreeable date to conduct the inspections.

52. The inspections of accessible pedestrian 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 will also be conducted by the Inspector in accordance with Appendix I which will be provided to the Inspector.

53. The Inspector shall set out the results of each inspection of the Surveyed Covered Property, including deficits if any, in writing and will send that report to the Developer Defendant, the responsible Owner Defendant, and counsel for the United States (“Inspection Report”). The Inspector will take digital photographs of any deficiencies identified at each Surveyed Covered Property and will include those photographs in the Inspection Report. If the inspection indicates that not all the required retrofits have been made as specified in the Appendices that apply to the Surveyed Covered Property, with the exception of interior unit retrofits subject to the provisions of Paragraph 49 above, the Developer Defendant will correct any deficiencies at the subject Surveyed Covered Property within sixty (60) days and the Developer Defendant will pay for another inspection by the same Inspector to certify such deficiencies have been corrected. This process, including prior written notice to the United States of any inspections, will continue until the

Inspector certifies that all the retrofits required under this Order have been made.⁴

The Developer Defendant will pay all the Inspector's reasonable costs associated with these inspections of their respective Surveyed Covered Properties, and such payments will be made without regard to the Inspector's findings. Upon reasonable notice to the Developer Defendant and the applicable Owner Defendant, representatives of the United States will be permitted to inspect the retrofits made by the Developer Defendant in accordance with this Order, to ensure compliance; provided, however, that the United States will endeavor to minimize any inconvenience caused by such inspections.

B. Neutral Inspector at Non-Surveyed Covered Properties

54. The Developer Defendant, with permission from the applicable Owner Defendant, or obtained pursuant to Paragraph 59 of this Order will enter into a contract with one or more neutral inspector(s) ("Non-Surveyed Property Inspector") to conduct on-site inspections of the retrofits at the Non-Surveyed Covered Properties that have been performed under this Order at their respective properties to determine whether the retrofits have been completed in accord with the specifications in this Order. Prior to entering into the contract with the Non-

⁴ As indicated in Paragraph 49, above, any interior unit retrofits unable to be completed because of the refusal of the resident to relocate or infeasibility of relocation of the resident need not be the subject of ongoing inspection by the Neutral Inspector. The completion of these retrofits in accordance with Paragraphs 50-53 may be certified to the United States through photographic evidence compliant with Appendices I and J provided by the Developer Defendant or the applicable Owner Defendant.

Surveyed Property Inspector, the Developer Defendant shall submit the name(s) and resumes to the United States for approval. The United States shall approve or reject the Inspector(s) within thirty (30) days. The Non-Surveyed Property Inspector will have expertise in the Accessible Design Requirements of the FHA, the ADA, the ADA Standards, ANSI A117.1-1986, and the HUD-recognized safe harbors, and such expertise will be included in the submittal to the United States. The Parties agree that the Property Surveyor(s) described in Section VIII.A above and the Neutral Inspector may be the same entity or individuals so long as neither the Property Surveyor nor the Neutral Inspector is involved in the design elements of the Final Retrofit Plan for any of the Covered Properties.

55. An inspection of a Non-Surveyed Covered Property will take place within forty-five (45) days of the completion of all of the retrofits to covered multifamily dwelling unit interiors and the public and common use areas at that Non-Surveyed Covered Properties, or as soon thereafter as practicable for each. The Developer Defendant shall give the United States at least twenty-one (21) days prior written notice of any inspection, including any subsequent inspections as set forth in Paragraph 57. The United States may have its representatives present for each inspection. The Parties will work together to schedule a mutually agreeable date to conduct the inspections.

56. The inspections of accessible pedestrian routes, public and common use areas, and dwelling units will be conducted by the Inspector in accordance this Order and the relevant Appendices. The inspections will also be conducted by the Inspector in accordance with Appendix I, which will be provided to the Inspector.

57. The Non-Surveyed Property Inspector shall provide an Inspection Report setting out the results of each inspection of the Non-Surveyed Covered Property, including deficits if any, in writing and shall send that report to the Developer Defendant, the responsible Owner Defendant, and counsel for the United States. The Inspector will take digital photographs of any deficiencies identified at each Non-Surveyed Covered Property and will include those photographs in the Inspection Report. If the inspection indicates that not all of the required retrofits agreed upon by the Parties have been made at the Non-Surveyed Covered Property, with the exception of interior unit retrofits subject to the provisions of Paragraph 49, above, the Developer Defendant will correct any deficiencies within 60 days and the Developer Defendant will pay for another inspection by the same Non-Surveyed Property Inspector to certify such deficiencies have been corrected. This process, including prior written notice to the United States of any inspections, will continue until the Inspector certifies that

all the retrofits required under this Order have been made.⁵ The Developer Defendant will pay all the Non-Surveyed Property Inspector's reasonable costs associated with these inspections of the Non-Surveyed Covered Property, and such payments shall be made without regard to the Non-Surveyed Property Inspector's findings. Upon reasonable notice to the Developer Defendant and the applicable Owner Defendant, representatives of the United States will be permitted to inspect the retrofits made by the Developer Defendant in accordance with this Order to ensure compliance; provided, however, that the United States will endeavor to minimize any inconvenience caused by such inspections.

XI. ACCESS TO COVERED PROPERTIES

58. The Owner Defendants and the Developer Defendant, through its affiliate Dominion Senior Living of Fleming Farms, LLC, agree to allow access to the public and common use areas and covered multifamily dwelling unit interiors at their respective properties for the purpose of performing any surveying, retrofitting, or inspection required under this Order, and for the purpose of interviewing or meeting with residents at a Covered Property to aid in the implementation or completion of this Order.

⁵ As indicated in Paragraph 49, above, any interior unit retrofits unable to be completed because of the refusal of the resident to relocate or infeasibility of relocation of the resident need not be the subject of ongoing inspection by the Neutral Inspector. The completion of these retrofits in accordance with Paragraphs 54-57 may be certified to the United States through photographic evidence provided by the Developer Defendant.

59. The Developer Defendant represents that the Westside (Alpharetta) and Somerby Mount Pleasant Covered Properties (each a “Non-Owned Covered Property”) are not currently owned by the Developer Defendant or any entity that is affiliated with the Developer Defendant. Accordingly, the Developer Defendant shall use good faith efforts to obtain consent to access the public and common use areas of each of the Non-Owned Covered Properties and access to the Non-Owned Covered Property covered multifamily dwelling unit interiors, for the purpose of performing any surveying, retrofitting, or inspection required under this Order, and for the purpose of interviewing or meeting with residents at a Non-Owned Covered Property to aid in the implementation or completion of this Order. If the Developer Defendant, within three months from the date of this Order, is unable to obtain access to a Non-Owned Covered Property for any of the purposes stated in this Paragraph, despite having undertaken good faith efforts, the Developer Defendant shall provide a report to the United States detailing its efforts and the specific reasons why the Developer Defendant has been unable to obtain access. If such notification is provided, the Parties shall confer, and to the extent the parties are unable to reach a resolution, the United States may move the Court for appropriate relief. Nothing in this Order shall preclude the United States from making its own efforts to obtain access to any Non-Owned Covered Property or any Non-Owned Covered Property covered dwelling unit interiors, for the purpose

of enabling the Developer Defendant to perform any retrofitting required under this Order or for the purpose of interviewing or meeting with residents at a Covered Property to aid in the implementation or completion of this Order.

60. The Developer Defendant shall have no obligations under this Order with regard to any of the Non-Owned Covered Properties unless or until cooperation from the current owner of that property is secured, including as described in Paragraph 59, above. All time periods for any action by the Developer Defendant with regard to the Non-Owned Covered Properties shall run from the date cooperation of the current owner of the property is secured either by the Developer Defendant or through any efforts of the United States, whichever is sooner.

XII. TRANSFER OF INTEREST IN COVERED PROPERTIES

61. The sale, foreclosure, or any other transfer of ownership, in whole or in part, whether voluntary or involuntary, of any of the Covered Properties shall not affect the Developer Defendant's continuing obligation to retrofit the Covered Properties as specified in this Order. Should the Developer Defendant or any Owner Defendant sell or transfer ownership of any Covered Property for which it has responsibility, in whole or in part, or any portion thereof, prior to the completion of the retrofits specified in Sections VII and VIII of this Order, the seller or transferor will, at least thirty (30) days prior to completion of the sale or

transfer, provide to each prospective buyer written notice that their respective Covered Property is subject to this Order, including specifically the responsible the Developer Defendant's and the responsible Owner Defendant's obligations with regard to required retrofit work and inspections, along with a copy of this Order. In addition, within fourteen (14) days of the conclusion of the sale or transfer, the seller or transferor shall provide to the United States, by e-mail and first-class mail, written notice of the sale or transfer of 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 OF RENT PRICES OR FEES

62. Defendants may not raise the rent price of any dwelling unit, or demand any deposit or other fee for a dwelling unit at any Covered Property solely because of contemplated or completed retrofits in a dwelling unit.

XIV. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

63. The Developer Defendant will maintain, and provide to the United States, the following information and statements regarding properties under construction and any other covered multifamily dwellings intended to be, or which actually are, developed, built, designed, constructed, or engineered in whole or in part, by any of them or by any entities in which they 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 the Developer Defendant is actually involved, not on those properties in which the Developer 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 Accessible Design Requirements of the FHA and the ADA and in the field of accessible site design and certifying that he/she has reviewed the engineering documents for the project and that the design specifications therein fully comply with the requirements of the FHA the ADA, the ADA Standards, and ANSI A117.1-1986 or a HUD recognized safe harbor or equivalent standard as defined in Appendices I and J used in its entirety for all interior unit elements and all exterior and common area elements.
- e. the name, address and telephone number of the architect(s) involved with the property; and

- f. 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 and the ADA 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 FHA, the ADA, the ADA Standards, and ANSI A117.1-1986 or a HUD recognized safe harbor or equivalent standard as defined in Appendices I and J used in its entirety for all interior unit elements and all exterior and common area elements.
- g. 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 the Developer Defendant 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 FHA, ADA, the ADA Standards, and ANSI A117.1-1986 or a HUD recognized safe harbor or equivalent standard as defined in Appendices I and J used in its entirety for all interior unit elements and all exterior and common area elements.

64. The Developer Defendant will provide to the United States a copy of any architectural or engineering plans and related construction documents for any newly designed or constructed property identified as described in Paragraph 63 upon request.

XV. SETTLEMENT FUND AND PAYMENTS TO AGGRIEVED PERSONS

65. Within thirty (30) days from the entry of this Order, the Developer Defendant shall deposit in an interest-bearing escrow account the total sum of FOUR HUNDRED THOUSAND (\$400,000) for the purpose of compensating any aggrieved persons whom the United States determines were harmed by the Developer Defendant's alleged discriminatory housing practices (hereinafter "aggrieved persons"). This money shall be referred to as the "Settlement Fund." Within fifteen (15) days of the establishment of the Settlement Fund, the Developer Defendant shall submit proof to the United States that the account has been established and the funds deposited.

66. Any interest accruing to the Settlement Fund shall become a part of the Settlement Fund and be used as set forth herein.

67. The Developer Defendant shall be solely responsible for any taxes assessed or owed on money deposited pursuant to Paragraph 65, above.

68. Within one hundred fifty (150) days from the entry of this Order, the Developer Defendant shall send, by first-class mail, postage pre-paid, a copy of the

Notice set forth in Appendix K to each past or present tenant at each Covered Property within the ten (10) years preceding the entry of this Order. For past tenants, the Developer Defendant will have complied with the requirements of this paragraph by mailing such notice to the forwarding address provided to the owners or managers of the Covered Property or their agents by the former tenant at the time the former tenant moved out. If a former resident is deceased, or a current resident is legally unable to make decisions for him or herself, the Developer Defendant shall send a copy of the Notice set forth in Appendix K to the last known next of kin or other responsible party identified in the Covered Property's records. Within 180 days from the entry of this Order, the Developer Defendant shall provide to counsel for the United States a declaration affirming that the Notice has been sent and a spreadsheet showing each recipient's name, address, and date the Notice was sent.⁶

69. Defendants shall permit the United States, upon reasonable notice, to review any records, including but not limited to, complete tenant files, tenant lists, reasonable accommodation requests, and reasonable modification requests, that

⁶ The Developer Defendant shall have no obligations under Paragraph 68 with regard to any of the Non-Owned Covered Properties unless or until cooperation from the current owner of that property is secured, either through the efforts of the Developer Defendant or the United States as described in Paragraph 59, above. All time periods for any action by the Developer Defendant or the United States with regard to the Non-Owned Covered Properties shall run from the date cooperation of the current owner of the property is secured either by the Developer Defendant or through any efforts of the United States, whichever is sooner.

may reasonably facilitate its determinations regarding the claims of alleged aggrieved persons.

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

71. Potential aggrieved persons shall have fifteen (15) months from the entry of this Order to contact the United States. The United States shall investigate the claims of allegedly aggrieved persons and shall inform the Developer Defendant as to its determination as to which persons are aggrieved and an appropriate amount of damages that should be paid to each aggrieved person. The Developer Defendant agrees that the determinations of the United States shall be final, and the Developer Defendant hereby waives the right to contest the United States' determination in this or any other proceeding.

72. The United States shall submit its final recommendations for distribution of settlement funds to the Court for approval in the form of a Stipulated Order. Within twenty (20) days from the entry of a Court order providing for the distribution of funds, the Developer Defendant shall deliver to counsel for the United States, by overnight delivery, a separate check payable to each aggrieved person in the amounts stated in the Stipulated Order.

73. In no event shall the aggregate of all such checks exceed the sum of the Settlement Fund plus accrued interest.

74. When counsel for the United States has received a check from the Developer Defendant payable to an aggrieved person and a signed release in the form of Appendix L and a completed IRS Form W9 from the aggrieved person, counsel for the United States shall deliver the check to the aggrieved person and the original, signed release and a copy of the IRS Form W9 to counsel for the Developer Defendant. No aggrieved person shall be paid until he or she has executed and delivered to counsel for the United States the release at Appendix L and a completed IRS Form W9.

75. If any money remains in the Settlement Fund after all aggrieved persons identified by the United States have been compensated, the remainder shall be paid to the United States Treasury in the form of an electronic funds transfer in accordance with written instructions to be provided by the United States.

XVI. CIVIL PENALTY

76. Within fifteen (15) days from the entry of this order, the Developer Defendant will pay a civil penalty of FIFTY THOUSAND DOLLARS (\$50,000) under 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. This payment shall be in the form of an electronic funds transfer in accordance with written instructions to be provided by the United States.

XVII. EDUCATIONAL PROGRAM

77. Within thirty (30) days from the entry of this Order, the Developer Defendant will provide a copy of this Order to all of its agents and employees involved in the design or construction of the Covered Properties or other covered multifamily dwellings and secure the signed statement from each agent or employee acknowledging that the individual 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 M.

78. During the term of this Order, within thirty (30) days after the date of commencing an agency or employment relationship with the Developer Defendant, each new agent or employee involved in the design and construction of any Covered Property or other covered multifamily dwelling will be given a copy of this Order and be required to sign the statement acknowledging that the individual 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 M.

79. The Developer Defendant will also ensure that its employees and agents who have supervisory 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). The Developer Defendant will also ensure that its 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.

80. Within ninety (90) days of the entry of this Order, the Developer Defendant and all its employees and agents whose duties, in whole or in part, involve or will involve management authority over the development, design and/or construction of multifamily dwellings will undergo training on the design and construction requirements of the FHA and the ADA. The training will be conducted by a qualified individual unconnected to the Developer Defendant or its attorneys and who has been previously approved by the Department of Justice. Any expenses associated with this training will be borne by the Developer Defendant. The Developer Defendant 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 the Developer Defendant

and covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix N.

XVIII. NOTICE OF DEFENDANTS' NON-DISCRIMINATION POLICY

81. Within ten (10) days from the entry of this Order, the Developer Defendant and the Owner Defendants with an ownership or management interest, directly or through subsidiaries or affiliates, in a Covered Property will post and prominently display in the sales or rental offices of their respective Covered Property a sign no smaller than 10 by 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.

82. For the duration of this Order, in all its future advertising in newspapers, electronic media, pamphlets, brochures and other promotional literature regarding any Covered Property or any new covered multifamily dwelling that the Developer Defendant may develop or construct, the Developer Defendant will place the International Symbol of Accessibility in a conspicuous location.

XIX. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

83. In addition to the other requirements set forth in this Consent Order, commencing six (6) months from the entry of this Order and every four (4) months thereafter for as long as this Order remains in effect per Section XX, the Developer

Defendant will submit to the United States a report concerning Defendants' compliance with all the requirements of this Order. The report shall include any documents that the Developer Defendant is required to submit pursuant to this Order as well as the status of property surveys, retrofits, and inspections of the retrofits at each of their respective Covered Properties. This report shall also include an estimated date of completion of retrofits at each of their respective Covered Properties, if known.

84. For the duration of this Order as to each of them and while they still own their respective Covered Property, the Owner Defendants will report to the United States a description of any fair housing complaint filed with an agency or court against their respective Covered Properties regarding discrimination on the basis of disability in housing. Such report shall be made within 30 days of the Owner Defendant's receipt of the complaint. Upon reasonable notice, the Owner Defendants will also provide the United States all information it may request concerning any such complaint. For the duration of this Order as to each of them and while they still own the applicable Covered Property, the Owner Defendants will also advise counsel for the United States of the resolution of any complaint in the next report as set forth in Paragraph 83.

85. For the term of this Order as to each of them, Defendants are required to preserve all records related to this Order related to their respective Covered

Properties. The Developer Defendant shall also be required to preserve all records related to any other covered multifamily dwellings designed, or constructed by it in whole or in part, during the duration of this Order. Upon reasonable notice to the Developer Defendant and the appropriate Owner Defendant, representatives of the United States will be permitted to inspect and copy any records of the Developer Defendant or inspect any properties or dwelling units under the control of the Developer Defendant or the Owner Defendants bearing on compliance with this Order at any and all reasonable times, provided, however, that the United States will endeavor to minimize any inconvenience to the Developer Defendant, the Owner Defendants, and residents from such inspections.

XX. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION

86. This Order will remain in effect for five (5) years from the its entry or six (6) months after the Inspector(s) and Non-Surveyed Property Inspector(s) have certified that all the retrofits required by this Order have been completed, whichever date is later.

87. 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.

88. 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 the Developer Defendant, an Owner Defendant, or the United States 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, any Party 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.

XXI. TIME FOR PERFORMANCE

89. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the United States, the Developer Defendant, and the responsible Owner Defendant (if any) and shall not require approval by the Court. This process for extending time limits for performance specifically includes but is not limited to any access required to the Covered Properties for any purpose under this Order that may be subject to any currently applicable state or local restrictions due to the COVID-19 pandemic.

XXII. RELEASE OF LITIGATION HOLDS

90. The Parties agree that, as of the date of entry of this Order, litigation is not "reasonably foreseeable" concerning the subject matter of 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 herein, the Party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves the Parties of any other obligation imposed by this Order.

DONE this 16th day of September, 2021.



STACI G. CORNELIUS
U.S. MAGISTRATE JUDGE