

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRISBEN CHIMNEY HILLS LIMITED
PARTNERSHIP; MBS GP 5, LLC; JRK
RESIDENTIAL AMERICA, LLC; CASEY
MCGOWAN; LAURA BALL; MEREDITH
HINKLIN,

Defendants.

Case No.

CONSENT ORDER

I. INTRODUCTION

1. The United States initiated this action on March 24, 2015, on behalf of Sheryl A. Ghilardi and her minor son (“Complainants”) under 42 U.S.C. §§ 3612(o) and 3614. Defendants are Casey McGowan, Laura Ball, Meredith Hinklin, JRK Residential America, LLC (“JRK Residential”), Brisben Chimney Hills Limited Partnership (“Brisben”), and MBS GP 5, LLC (collectively “Defendants”). Defendants are or were owners, operators and/or managers of the Reserve apartment complex (“Subject Property”), a 256-unit multi-family property in Lenexa, Kansas. The United States’ complaint alleges that the named Defendants violated the Fair Housing Act (“FHA”), as amended, 42 U.S.C. §§ 3601 *et seq.*, by discriminating on the basis of familial status in the rental of dwellings at the Subject Property and at other properties managed by Defendant JRK Residential in Kansas and Missouri and by retaliating against persons exercising rights protected by the FHA.

2. Defendant JRK Residential managed at least eight (8) multifamily properties in Missouri and Kansas from 2009 to December 30, 2014, including the Subject Property. The

other seven (7) properties, excluding the Subject Property, were Fieldstone Apartments in Olathe, Kansas; Brookstone Village in Independence, Missouri; Crossroads of Lee's Summit in Lee's Summit, Missouri; Lakewood Apartments in Imperial, Missouri; North Oak Crossing in Kansas City, Missouri; Truman Farm in Grandview, Missouri; and Walden Pond in High Ridge, Missouri ("Additional Properties"). One of those properties, Truman Farm in Grandview, Missouri, was sold at the end of 2011. Defendant JRK Residential represents through counsel that as of January 1, 2015 it no longer owns, manages, or operates any properties in the United States. Defendants McGowan, Ball and Hinklin ("Individual Defendants") were employed by JRK Residential at the time of the events alleged in the complaint and provided management services at the Subject Property.¹ Defendant Brisben Chimney Hills Limited Partnership is the owner of the Subject Property and MBS GP 5, LLC is the general partner for Brisben. Defendants Brisben and MBS GP 5, LLC do not own, operate, or manage any properties other than the Subject Property.

3. The United States alleges that Defendant JRK Residential, as managing agent for Defendant Brisben, by and through the Individual Defendants, have engaged in housing practices that discriminate on the basis of familial status and that retaliate against persons exercising their rights under the FHA by:

- a. adopting rules and policies that require adult supervision of children under the age of 16 at all times;
- b. adopting rules and policies that prohibit or restrict the activities of children in the common areas of the property. These include prohibitions on the

¹ Through counsel, JRK Residential has represented that none of the Individual Defendants are currently employed by JRK Residential and that JRK Residential ceased to manage the Subject Property and the Additional Properties effective December 30, 2014.

playing of team sports by children; prohibitions on the unsupervised use of the pool by children under the age of 16; limitations on the number of children under the age of 16 at the pool supervised by one adult; prohibitions against the use of bicycles and other sports equipment on the property;

- c. adopting rules and policies that threaten tenants with adverse consequences, including that defendants will initiate eviction proceedings, confiscate property, call “911” and report tenants to social services or to the housing authority if these rules are violated; and
- d. declining to renew Complainant’s lease after she expressed concern to the property management about these discriminatory rules.

4. On December 5, 2012, Complainants filed an administrative complaint with the United States Department of Housing and Urban Development (“HUD”), alleging that Defendants discriminated against them based on familial status, in violation of the FHA.

5. The Secretary of HUD (“the Secretary”) completed an investigation of the complaint, which included extensive interviews of the Complainants, witnesses, and property management staff of the Subject Property. Following the investigation, on September 24, 2014, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination, charging the Defendants with discriminatory housing practices in violation of the FHA (the “Determination”). The Determination does not constitute an adverse final decision by the Secretary of HUD.

6. On September 30, 2014, the Complainant elected to have the Charge of Discrimination resolved in a civil action filed in federal district court. The Secretary therefore

authorized the Attorney General to commence this civil action, pursuant to 42 U.S.C. § 3612(o) of the FHA.

7. On March 24, 2015 the United States filed this action to enforce the provisions of the FHA.

8. The United States alleges that, through this conduct, the Defendants have:

- a. Violated 42 U.S.C. § 3604(a) by making unavailable and/or denying housing because of familial status;
- b. Violated 42 U.S.C. § 3604(b) by discriminating in the terms, conditions, or privileges of rental of a dwelling, and/or in the provision of services or facilities in connection therewith, because of familial status;
- c. Violated 42 U.S.C. § 3604(c) by making, printing, or publishing, and/or causing to be made, printed or published, any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination;
- d. Violated 42 U.S.C. § 3617 by coercing, intimidating, threatening and/or interfering with persons exercising or enjoying, and/or because persons exercised or enjoyed, rights protected under the FHA; and
- e. Violated 42 U.S.C. § 3614(a) by engaging in a pattern or practice of resistance to the full enjoyment of rights granted by the FHA, and/or denying fair housing rights to a group of persons, raising an issue of general public importance.

9. Defendants deny violating any law or engaging in any wrongful conduct of any

type or nature as alleged by Complainants and the United States; in particular, and without limiting the foregoing, Defendants deny that any discriminatory policies were instituted at the Additional Properties and deny that Defendants retaliated against Complainant Ghilardi and her minor son. This Consent Order is a compromise of disputed claims and is not an admission by Defendants, each of which expressly denies liability.

10. In order to avoid costly and protracted litigation, the parties have chosen to resolve this matter through a negotiated settlement. By their signatures below, the parties hereby consent to the entry of this Consent Order and the attached Judgment.

11. Through counsel, Defendant JRK Residential represents that it no longer owns, manages, or operates the Additional Properties, and that it does not intend to own, manage, or operate the Additional Properties during the term of this Consent Order. In addition to its obligations under this Consent Order at the time it is entered, should Defendant JRK Residential, its agents, successors or assigns own, manage, or operate any of the Additional Properties during the term of this Consent Order as set forth in Paragraph 55, Defendant JRK Residential must: (1) notify counsel for the United States within 15 days; and (2) to the extent not already provided by the Consent Order, comply with the full extent of the provisions set forth in Sections III-VI, IX, and XI of this Consent Order, including those that apply to Defendant Brisben and/or the Subject Property, which will apply in the same manner to Defendant JRK Residential and/or the Additional Properties. Additionally, should Defendant JRK Residential re-enter the property management business in any capacity, by owning, operating or managing properties during the term of this Consent Order as set forth in Paragraph 55, Defendant JRK Residential must: (1) notify counsel for the United States within 15 days; and (2) comply with the full extent of the provisions set forth in Section III of this Consent Order, including those that apply to Defendant

Brisben and/or the Subject Property, which will apply in the same manner to Defendant JRK Residential and/or the properties with which it is affiliated. The time period set forth for compliance with these Sections shall run from the date upon which Defendant JRK Residential begins owning, managing, or operating the Additional Properties and/or other properties. Within 10 days of this trigger date, Defendant JRK Residential must notify the property owner of the Additional Property(ies) and/or other properties on which it is employed or otherwise affiliated of this lawsuit and its resolution by providing the property owner with a copy of this Consent Order. Within 20 days of this notification, Defendant JRK Residential must provide written notice to counsel for the United States of the address and telephone number of the property owner and a sworn certification that it has informed the property owner of this lawsuit by providing it with a copy of this Consent Order.

12. Through counsel, Individual Defendants represent that they are no longer employed by Defendant JRK Residential. In addition to their obligations under this Consent Order at the time it is entered, should any of the Individual Defendants be employed at any property owned, managed, or operated by Defendant JRK Residential during the term of this Consent Order as set forth in Paragraph 55, Defendant JRK Residential must: (1) notify counsel for the United States within 15 days; and (2) to the extent not already provided by the Consent Order, comply with the full extent of the provisions set forth in Sections III-VI, IX, and XI of this Consent Order, including those that apply to Defendant Brisben and/or the Subject Property, which will apply in the same manner to Defendant JRK Residential and/or the properties on which Individual Defendant(s) are employed and/or the properties over which Individual Defendant(s) have managerial responsibilities. The time period set forth for compliance with these Sections shall run from the date upon which Individual Defendant(s) begins employment.

Within 10 days of this trigger date, Defendant JRK Residential must notify the property owner of the property(ies) with which the Individual Defendant(s) are affiliated of this lawsuit and its resolution by providing the property owner with a copy of this Consent Order. Within 20 days of this notification, Defendant JRK Residential must provide written notice to counsel for the United States of the address and telephone number of the property owner and a sworn certification that it has informed the property owner of this lawsuit by providing it with a copy of this Consent Order.

Therefore, it is **ADJUDGED, ORDERED and DECREED** as follows:

II. GENERAL INJUNCTION

13. The Defendants, their agents, employees, successors and assigns are hereby enjoined, with respect to the rental of dwellings,² from:

- a. Making unavailable or denying a dwelling to any person because of familial status;
- b. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status;
- c. Making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination; and

² The term “dwellings” has the meaning set out in the Fair Housing Act, 42 U.S.C. § 3602(b).

- d. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, any right granted or protected by section 804 of the FHA.

III. SPECIFIC INJUNCTIVE RELIEF WITH RESPECT TO DEFENDANTS' POLICIES AND RULES

14. Upon entry of this Consent Order, Defendant Brisben shall cause its managing agent to implement the Nondiscrimination Policy appearing at **Appendix A** at the Subject Property.

15. Defendant Brisben shall, within 45 days of the entry of the Consent Order, provide the United States with a letter acknowledging that any past policies, community rules, leases, rental documents, newsletters, and any other statements approving of, endorsing, adopting, or otherwise citing the validity of policies discriminating on the basis of familial status have been rescinded. This includes those policies or other documents issued at the Subject Property that:

- a. require the supervision of children under the age of 16 inside and outside the apartment units;
- b. require adult supervision of all children under the age of 16 at a swimming pool or that require that one adult may not supervise more than two children under the age of 16 at a swimming pool;
- c. bar or limit children from using the common areas, including grassy areas, except for those rules that are generally applicable to all persons regardless of familial status or age (“generally applicable”);
- d. ban or limit the possession of recreational equipment primarily used by children, including bicycles, tricycles, skateboards, scooters, and other

recreational equipment. Defendant Brisben may impose reasonable limits on the location of the use of such equipment, so long as those limits are generally applicable;

- e. ban or limit recreational activities primarily engaged in by children, such as playing of soccer or team sports. Defendant Brisben may impose reasonable limits on the location of such activities, so long as those limits are generally applicable; or
- f. threaten to confiscate property, initiate eviction proceedings, call “911,” social services or the housing authority for breach of policies regarding children.

16. Subject to the procedures set out in Paragraph 17 *infra*, Defendant Brisben, through its managing agent, may adopt new policies or practices that do not discriminate on the basis of familial status. Defendant Brisben may not impose, maintain, ratify, implement, or enforce any policy or practice that replicates the prohibitions set out in Paragraph 15 (a) – (f) *supra*. Defendant Brisben may require children to be accompanied by an adult when using the pool if the requirement applies to children under a reasonable age.

17. If Defendant Brisben through its managing agent, or through any officer, director, or assign, elects to adopt new policies or rules with respect to children, it must submit these proposed policies and rules to the United States for review and approval at least 45 days prior to their proposed effective date. The United States shall have 30 days following receipt of these policies to communicate any objections to counsel for Defendants. The parties shall, in good faith, attempt to resolve any disagreements over the terms of the proposed policies. If the parties cannot agree, any party may move the Court for relief. The provisions of the proposed policies

to which there are disputes shall not be placed into effect until such time that the parties or the Court resolves the disputes. To the extent that Defendant Brisben seeks to implement rules that require children to be accompanied by an adult when using the pool, it must specify the sources on which it relies to determine the age under which it will require adult supervision at the pool.

IV. NOTICE OF NON-DISCRIMINATORY POLICIES

18. Within 60 days of the entry of the Consent Order, Defendant Brisben, through its managing agent, shall distribute to all current tenants at the Subject Property the Nondiscrimination Policy at **Appendix A**, a copy of this Consent Order, and a written notice that the policies set forth in Paragraph 15 *supra* have been rescinded. Defendants may distribute new policies, approved by the United States pursuant to Paragraph 17 *supra*, at this time or at any time following their approval.

19. Within 60 days of the entry of this Consent Order, Defendant Brisben, through its managing agent, shall distribute the Nondiscrimination Policy at **Appendix A**, a copy of this Consent Order, and a written notice that the policies set forth in Paragraph 15 *supra* have been rescinded to all of its current employees, agents, and anyone acting under the direction of Defendant Brisben responsible for showing, renting, managing, or operating any and all dwelling units, including units at the Subject Property.

20. Within 60 days of the entry of the Consent Order, Defendants Brisben or its designee(s) must post the Nondiscrimination Policy and a notice in each property's rental and/or management office for a minimum of 90 consecutive days that the policies set forth in Paragraph 15 *supra* have been rescinded at the Subject Property. Defendants may post any new policies after they have been approved by the United States pursuant to Paragraph 17 *supra*.

21. Within 60 days of the entry of the Consent Order, Defendant Brisben must

provide written notice to and conference with The Yarco Company, Inc., including all employees or agents assigned to the Subject Property, explaining the changes in the Subject Property's policies and practices. This notice shall include a copy of this Consent Order and a statement that the policies set out in Paragraph 15 *supra* have been rescinded.

22. Within 90 days of the entry of this Consent Order, Defendant Brisben or its designee(s) shall secure a signed statement from each agent and employee who has responsibility for showing, renting, managing, or operating any and all dwelling units at the Subject Property, acknowledging that he or she has received, read, and understands the Consent Order and the Nondiscrimination Policy. The statement must include a provision that the employee has had an opportunity to have questions about these documents answered and agrees to abide by the relevant provisions of the Consent Order and the Nondiscrimination Policy. This statement shall be in the form of **Appendix B**.

23. During the term of this Consent Order, within 30 days after each new agent or employee becomes involved in showing, renting, or managing units at the Subject Property, Defendant Brisben, through its managing agent, shall provide a copy of this Consent Order and the Nondiscrimination Policy to each such agent or employee and secure his or her signed acknowledgment in the form of **Appendix B**.

24. Within 30 days of the entry of this Consent Order, Defendant Brisben or its designees shall take the following steps to notify the public of the Nondiscrimination Policy:

- a. Prominently post at all rental offices that Defendant Brisben currently or subsequently uses for the rental of dwellings a fair housing sign no smaller than 10 inches by 14 inches that indicates that all units are available for

rent on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement;

- b. Include the words “Equal Housing Opportunity” and/or the fair housing logo in all rental advertising conducted by Defendant Brisben, or its agents or employees, in newspapers, flyers, handouts, telephone directories and other written materials; on radio, television, internet or other media broadcasts; and on all billboards, signs, pamphlets, brochures and other promotional literature, provided that this requirement does not compel Defendant Brisben to advertise in any of these media, but does require compliance with this provision whenever Defendant Brisben so advertises. The words and/or logo shall be prominently placed and easily readable;
- c. Include the following phrase in the rental application(s) and the rental agreement(s) used for rental dwelling units from the date of this Consent Order going forward in boldface type, using letters of equal or greater size to those of the text in the body of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability or familial status (having children under age 18).

V. TRAINING

25. Within 90 days from the date of entry of this Consent Order, all managers, agents and employees at the Subject Property shall undergo in-person training on the FHA, with specific emphasis on discrimination on the basis of familial status and retaliation for exercising or enjoying rights protected by the FHA. The training shall be conducted by an independent, qualified third party identified by Defendant Brisben and approved by the United States. Any

expenses associated with this training shall be borne by Defendant Brisben. Each individual who receives the training shall execute the Certification of Completion of Training, appearing at

Appendix C.

26. Within 90 days from the date of entry of this Consent Order, Individual Defendants shall undergo in-person training on the FHA, with specific emphasis on discrimination on the basis of familial status and retaliation for exercising or enjoying rights protected by the FHA. The training shall be conducted by an independent, qualified third party identified by Defendant JRK Residential and approved by the United States. Any expenses associated with this training shall be borne by Defendant JRK Residential. Each individual who receives the training shall execute the Certification of Completion of Training, appearing at

Appendix C.

**VI. ENFORCEMENT PROCEDURES FOR RULE VIOLATIONS
AT THE SUBJECT PROPERTY**

27. Within 30 days from the date of entry of this Consent Order, Defendant Brisben or its designee(s) shall establish enforcement procedures that will govern the handling of any violations of the Subject Property's rules of conduct by tenants and/or guests, or of any violations of the rules of conduct by tenants and/or guests on the Subject Property.

28. The enforcement procedures discussed in Paragraph 27 *supra* shall include:

- a. A procedure for notifying tenants, in writing, of rule violations through a process of escalating written warnings and penalties;
- b. A requirement that all rule violations be documented contemporaneously in a Rule-Violation Log for the Subject Property. This Rule-Violation Log must show the date and nature of the violation and any action taken in

response by the Defendant Brisben or its employees or agents, including, but not limited to, warnings and penalties charged;

- c. A prohibition on any adverse action being taken against any tenant, including, but not limited to, penalties, eviction, or failure to renew the tenant's lease, based on a violation of a rule unless that violation is contemporaneously documented in the Subject Property's Rule-Violation Log.

29. Within 30 days of entry of this Consent Order, Defendant Brisben shall implement and prominently display the enforcement procedures described in this Section in any office where there is rental activity and/or personal contact with tenants at the Subject Property and shall distribute the enforcement procedures to all households at the Subject Property. Defendant Brisben shall also provide a copy of the enforcement procedures to any resident upon request.

30. The enforcement procedures established by Defendant Brisben pursuant to this Section shall not preclude Defendant Brisben, or other employees or agents at the Subject Property, from taking immediate action to address any violations that pose a significant risk to the health, safety, and welfare of the properties' residents or guests.

VII. FACILITIES AT THE SUBJECT PROPERTY

31. The grassy areas are used by adults at the Subject Property for recreation. Within 30 days of entry of this Consent Order, Defendant Brisben shall make the grassy areas available for the use of all residents, including children, and their guests, regardless of their age. Defendant Brisben shall take all reasonable steps to ensure the areas are usable by all residents regardless of age. Nothing in this provision shall prohibit Defendant Brisben from adopting

reasonable rules on the use of the grassy areas by residents and their guests so long as they are generally applicable.

VIII. MONETARY PAYMENTS

32. Within 15 days after the entry of this Consent Order, the Defendants shall pay damages of \$60,000 for the claims brought by Complainants, by sending to counsel for the United States a check payable to Sheryl Ghilardi. Counsel for the United States will distribute the check described in this paragraph once the payee has executed and returned to the United States a written release (in the form of **Appendix D**) of all claims, legal or equitable, that the payee might have against the Defendants. Thereafter, the United States shall deliver to counsel for the Defendants the original, executed release.

33. Within 30 days after the entry of this Consent Order, Defendants shall deposit in an interest-bearing escrow account the total sum of \$100,000 for the purpose of compensating the aggrieved persons whom the Court determines may have been harmed by the Defendants' discriminatory practices (hereinafter "aggrieved persons"). This money shall be referred to as the "Settlement Fund."

34. Any interest accruing to the fund shall become a part of the Settlement Fund and be utilized as set forth herein.

35. All expenses related to the establishment of the account referenced in Paragraph 33 *supra* shall be borne by the Defendants.

36. Within 30 days after the entry of this Consent Order, Defendants shall publish the Notice set forth in **Appendix E** in three (3) editions of three (3) separate newspapers that are widely circulated in the locations of the Subject Property and the Additional Properties. These newspapers are The Kansas City Star, the St. Louis Post Dispatch, and the Olathe Daily News.

This Notice shall be no smaller than 3 columns by 6 inches and shall be published on 3 occasions in the news section. The publication dates shall be separated from one another by at least 21 days, and at least 2 of the publication dates for The Kansas City Star and the St. Louis Post Dispatch shall be Sunday. All of the costs associated with this Notice, its publication, and distribution shall be borne by Defendants.

37. Within 45 days after the entry of this Consent Order, Defendant Brisben shall provide a copy of the Notice set forth in **Appendix E** (the “Notice”) to all of its current residents at the Subject Property, and will provide a copy of the Notice to all of its former residents at the Subject Property since September 3, 2009, to the extent that forwarding information is available in the resident records.

38. Within 30 days after the entry of this Consent Order, Defendant Brisben shall make available to the United States for inspection and copying all resident records for the Subject Property since September 3, 2009 for the sole purpose of compliance with this Consent Order. Such records shall include, but not be limited to, records relating to resident complaints and records relating to lease violations involving children.

39. Nothing in this Consent Order shall preclude the United States from making its own efforts to locate and provide notice to potential aggrieved persons (such as conducting door-to-door interviews of current residents).

40. Within 180 days of the entry of this Consent Order, the United States shall make a preliminary determination as to which additional persons are aggrieved and an appropriate amount of damages that should be paid to each aggrieved person. Defendants shall permit the United States, upon reasonable notice, to review and copy any records that may facilitate its determinations regarding the claims of allegedly aggrieved persons. The United States will

inform Defendants in writing of its preliminary determinations, together with a copy of a sworn declaration from each aggrieved person setting forth the factual basis of the claim. With respect to any identified aggrieved persons, Defendants shall have 14 days to review the declarations and provide to the United States any documents or information that they believe may refute the claims. After completion of the process described in this Section, the parties shall submit their joint final recommendations to the Court for approval if they agree, or separate recommendations if they do not agree. When the Court issues an order providing for the distribution of funds to aggrieved persons, the Defendants shall, within 10 days of the Court's order, deliver to the United States checks payable to the aggrieved persons in the amount approved by the Court provided the aggrieved person has executed a release in the form of **Appendix D**.

41. In no event shall the aggregate of all such checks exceed the amount of the Settlement Fund, including any accrued interest.

42. In the event that less than the total amount in the Settlement Fund including accrued interest is distributed to persons deemed aggrieved by the United States, the Court shall order the remainder of the Settlement Fund to be distributed to a qualified organization(s) for the purpose of conducting fair housing enforcement or educational activities in the areas of the Subject Property and the Additional Properties. Before selecting the qualified organization(s), the 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 the 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). The qualified organization(s) receiving the funds shall submit to the United

States and Defendants 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.

IX. REPORTING AND RECORD-KEEPING

43. The Defendants, as designated below, shall, no later than 15 days after occurrence, provide to the United States notification and documentation of the following events:³

- a. A list of all rental properties in Missouri and/or Kansas in which any of the named Defendants acquire an ownership, management, or other financial interest after the date of entry of this Consent Order, including the nature of each Defendant's interest in the property; the address; the name of the property, if any; the number of rental units; the names and phone number(s) of any existing tenants; and the document memorializing the transfer in interest of the property;
- b. Implementation and distribution of the Consent Order and the Nondiscrimination Policy and the enforcement procedures described in Sections IV and VI, respectively, by Defendant Brisben;
- c. Implementation and distribution of the notice rescinding discriminatory rental policies and documents, described in Section III, by Defendant Brisben;
- d. Implementation and distribution of any new rental policies implemented pursuant to Section III, by Defendant Brisben;

³ Defendants will send all reports described in Section IX and all checks described in Section VIII by commercial, overnight mail to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ 175-11-355, United States Department of Justice, 1800 G Street, NW, Washington, D.C. 20006.

- e. Implementation of the facilities improvements, described in Section VII, by Defendant Brisben;
- f. Distribution of the Notice, **Appendix E**, for identification of aggrieved persons, described in Section VIII;
- g. Any changes to the rules governing the conduct of residents or guests that Defendant Brisben, or its employees or agents, may adopt;
- h. Implementation and distribution of the notice of this Consent Order and a meeting with employees and agents explaining the changes in policies and practices, described in Section IV, by Defendant Brisben;
- i. Any written complaint against Defendants Brisben, MBS GP 5, LLC, or JRK Residential, or their agents or employees, regarding discrimination in housing that occurs at the Subject Property or at the Additional Properties, and any written complaint against Individual Defendants, or any of the Individual Defendants' agents or employees, regarding discrimination in housing at any property located in Missouri and/or Kansas. The Defendants shall provide a copy of the complaint with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. The Defendants shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States within 15 days of the substance of any resolution of such complaint; and

- j. Individual Defendants shall report any change in their employment in the management or operation of a residential rental property, including the identity, address, and telephone number of the employer.

44. Defendant Brisben shall, no later than 10 days after each publication date of the Notice, **Appendix E**, provide to the United States a copy of each newspaper containing the Notice, described in Section VIII.

45. Within 90 days of the date of entry of this Consent Order, and every 6 months thereafter for the duration of this Consent Order, Defendant Brisben shall deliver to counsel for the United States a report containing information about their compliance efforts during the preceding reporting period, including but not limited to:

- a. Copies of **Appendices B** and **C** executed pursuant to Paragraphs 22, 23 and 25;
- b. Photographs of each office in which rental activity is conducted showing the fair housing signs and enforcement procedures posted pursuant to Sections IV and VI;
- c. A complete list of all tenants at the Subject Property, including the number of children under age 18 in each household;
- d. Copies of the Rule-Violation Log for the Subject Property which should include documentation of all warnings and penalties issued to tenants as a result of violations of the rules of conduct in effect at the Subject Property, maintained pursuant to Section VI;
- e. Photographs of facilities at the Subject Property made available for residents' use, including any signs posted pursuant to Section VII;

- f. Any rental advertisements published in local newspapers pursuant to Paragraph 24(b);
- g. The applicable rules governing the conduct of residents and guests; and
- h. Confirmation that Individual Defendants have not been employed in the management or operation at the Subject Property. If any Individual Defendant has been so employed, the identity, address, and telephone number of her employer(s).

46. Within 15 days of the date of entry of this Consent Order, Individual Defendants shall inform their employer(s) of this lawsuit by providing it with a copy of this Consent Order.

47. Within 90 days of the date of entry of this Consent Order, and every 6 months thereafter for the duration of this Consent Order, the Individual Defendants shall deliver to counsel for the United States a report containing information about their compliance efforts during the preceding reporting period, including but not limited to:

- a. Copies of **Appendix C** executed pursuant to Paragraph 26;
- b. Information regarding the employment of Individual Defendants in the management or operation of a residential rental property, including the identity, address, and telephone number of the employer;
- c. Sworn certification that Individual Defendants have informed their employer(s) of this lawsuit by providing it with a copy of this Consent Order pursuant to Paragraph 46.

48. The final report required by Paragraph 45 *supra* shall be submitted to the United States no later than 60 days before the expiration of this Consent Order.

49. During the period in which this Consent Order is in effect, all named Defendants

shall preserve all records that are the source of, contain, or relate to any of the information pertinent to their obligations under this Consent Order, including, but not limited to, all Rule-Violation Logs and tenant files. Upon reasonable notice to counsel for the Defendants, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times or, upon request by the United States, all named Defendants shall provide copies of such documents.

X. CIVIL PENALTY

50. Within 30 days after the entry of this Consent Order, the Defendants shall make a payment of \$10,000 to the United States pursuant to 42 U.S.C. § 3614(d)(1)(C). This payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States. The civil penalty is a debt for a fine, penalty, or forfeiture payable to and for the benefit of the United States within the meaning of 11 U.S.C. § 523(a)(7), and is not compensation for actual pecuniary loss. No Defendant shall seek to discharge any part of this debt in bankruptcy.

XI. ACQUISITION OR TRANSFER OF INTEREST IN DWELLINGS

51. If at any time while this Consent Order remains in effect, Defendant Brisben decides to sell or otherwise transfer the entirety of their interest in the Subject Property to a bona fide third party purchaser in an arm's length transaction, Defendant Brisben shall take the following steps:

- a. At least thirty (30) days prior to completion of the sale or transfer, provide the United States written notice of Brisben's intent to sell or otherwise transfer interest in the property or management services thereof, including the prospective transferee's name, address and telephone number;

- b. Within thirty (30) days following completion of the sale or other transfer, Brisben shall provide the United States a copy of the documents memorializing the transfer in interest of the property;
- c. If Brisben complies with Paragraph 51 a-b, and transfers all ownership, management, or other financial interest to one or more properties covered by this Order to an arms-length purchaser or other transferee, then Brisben shall thereafter be relieved of obligations under this Consent Order with respect to the those dwelling units or property in which all interest was so transferred. Defendants shall remain bound by Sections II (General Injunction), VIII (Monetary Payment), and X (Civil Penalty).
- d. For purposes of this Order, “arms-length transaction” is defined as a transaction that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding that transaction. If the proposed transfer of interest is not an arms-length transaction, Defendant Brisben shall remain jointly and severally liable, along with the purchaser or other transferee, for the obligations or violations of this Order for its duration.

XII. SCOPE, DURATION AND COMPLIANCE WITH CONSENT ORDER

52. The provisions of this Order shall apply to all Defendants in their roles as officers, agents, successors and/or assigns of the Defendant entities. The provisions of the Order apply to the Subject Property; all Additional Properties in which Defendants JRK Residential, Brisben or MBS GP 5, LLC subsequently acquire an ownership, management, or other financial interest; and to any JRK Residential-managed property(ies) on which the Individual Defendants are

employed and/or have managerial responsibility during the period set out in Paragraph 55 of this Consent Order.

53. Through counsel, Defendant Brisben has represented that JRK Residential is no longer the property manager of the Subject Property and that The Yarco Company, Inc. is managing the property on the date of this Order. As an agent of Defendant Brisben, The Yarco Company, Inc. is bound by this Order with respect to the Subject Property.

54. By agreeing to entry of this Consent Order, the United States and the Defendants agree that in the event any Defendant engages in any future violation(s) of the FHA, such violation(s) shall constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii). This provision applies to any future violation, whether resolved voluntarily or through judicial proceedings. Each Defendant is jointly and severally liable for the monetary damages outlined in this Consent Order. With regard to the other provisions of this Consent Order, each Defendant is solely responsible for complying with its obligations under this Consent Order. With the exception of the monetary damages, for which liability is joint and several, the failure of any Defendant to comply with their obligations herein shall not be imputed to any other Defendant.

55. The Court shall retain jurisdiction for the duration of this Consent Order to enforce its terms, after which time the case shall be dismissed with prejudice. This Consent Order shall be in effect for a period of three years from the date of its entry. The United States may move the Court to extend the duration of the Consent Order in the event of noncompliance, whether intentional or not, with any of its terms, or if it believes the interests of justice so require.

56. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such

matters to the Court for resolution. However, in the event the United States contends that there has been a failure by a Defendant, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise 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 attorneys' fees which may have been occasioned by the violation or failure to perform.

57. Any time limits for performance imposed by this Consent Order may be extended by mutual written agreement of the parties. The other provision of this Consent Order may be modified by written agreement of the parties or by motion to the Court. If the modification is by written agreement of the parties, then such modification will be effective upon filing of the written agreement with the Court, and shall remain in effect for the duration of the Consent Order or until such time as the Court indicates through written order that it has not approved the modification.

XIII. EFFECT ON LITIGATION HOLDS

58. The parties agree that, as of the date of entry of this Consent Order, litigation is not reasonably foreseeable concerning the matters described herein. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in this Consent Order, the party is no longer required to maintain such a litigation hold.

59. The preceding paragraph does not relieve the Defendants of any record keeping responsibilities imposed by the terms of this Consent Order.

XIV. COSTS OF LITIGATION

57. Each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

IT IS SO ORDERED, this 27th day of March, 2015.

s/ Julie A. Robinson

United States District Judge

For the United States

ERIC H. HOLDER, JR.
Attorney General

BARRY R. GRISSOM
United States Attorney
District of Kansas

/s/ Vanita Gupta
VANITA GUPTA
Acting Assistant Attorney General
Civil Rights Division

/s/ Steven H. Rosenbaum
STEVEN H. ROSENBAUM
Chief, Housing and Civil
Enforcement Section

/s/ Jon Fleenor
JON FLEENOR
Assistant United States Attorney
District of Kansas
500 State Ave., Ste. 360
Kansas City, KS 66101

/s/ Katharine F. Towl
SHINA MAJEED
Deputy Chief
KATHARINE F. TOWT (MA SBN 690461)
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Penn. Ave., NW -- NWB
Washington, DC 20530
Tel: 202-353-4140
Fax: 202-514-1116
E-mail: katie.towl@usdoj.gov

For the Defendants

/s/ Joshua M. Schindler

Joshua M. Schindler
The Schindler Law Firm, P.C.
141 N. Meramec, Suite 201
St. Louis, MO 63105
Counsel for the Defendants Brisben
Chimney Hills Limited Partnership
and MBS GP 5, LLC

/s/ John McKee

John McKee
Chief Operations Officer
JRK Residential America, LLC.
11766 Wilshire Blvd., 15th Floor
Los Angeles, CA 90025

/s/ Casey McGowan

Casey McGowan

/s/ Laura Ball

Laura Ball

/s/ Meredith Hinklin

Meredith Hinklin

APPENDIX A

Nondiscrimination Policy

It is the policy of the Reserve Apartments to comply with Title VIII of the Civil Rights Act of 1968, as amended, commonly known as the Fair Housing Act, by ensuring that apartments are available to all persons without regard to race, color, religion, national origin, disability, familial status (having children under age 18), or sex. This policy means that, among other things, the owners of this property and all their agents and employees with the responsibility for renting, managing, or administering any apartments must not discriminate in any aspect of the rental of dwellings against qualified applicants or tenants. Specifically, they may not:

- A. Refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, disability, familial status, or sex;
- B. Discriminate against any person in the terms, conditions or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, national origin, disability, familial status, or sex;
- C. Make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, disability, familial status, or sex;
- D. Represent to persons because of race, color, religion, national origin, disability, familial status, or sex that any dwelling is not available for inspection or rental when such dwelling is in fact so available; or
- E. Coerce intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his/her having exercised or enjoyed, or on account of his/her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act.

Any action taken by an agent or employee that results in unequal service to, treatment of, or behavior toward tenants or actual or potential applicants on the basis of race, color, religion, national origin, disability, familial status, or sex may constitute a violation of state and federal fair housing laws.

Any tenant or applicant who believes that any of the above policies have been violated by any owner, agent, or employee may contact the U.S. Department of Housing and Urban Development at 1-888-799-2085, or the U.S. Department of Justice at 1-800-896-7743 or 202-514-4713.

APPENDIX B

Acknowledgment of Receipt of Consent Order and Nondiscrimination Policy

I have received a copy of the Consent Order entered in *United States v. Brisben, et al.*, including a copy of the Nondiscrimination Policy. I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title/Position

Date

APPENDIX C

Certification of Completion of Training

On _____, I completed an in-person training on the requirements of the federal Fair Housing Act, 42 U.S.C. §§ 3601-3631, as well as state and local fair housing laws, including the prohibition against discrimination based on familial status, in compliance with the Consent Order entered by the United States District Court for the District of Kansas in *United States v. Brisben, et al.*

Signature

Print name

Job Title/Position

Date

APPENDIX D

Full and Final Release of Claims

In consideration for the parties' agreement to the terms of the Consent Order entered in *United States v. Brisben, et al.*, as approved by the United States District Court for the District of Kansas, and in consideration for the payment of \$_____, I, _____ [print name], do hereby agree, to remise, release, and forever discharge any and all claims of any kind, nature or description whatsoever, related to the facts at issue in the litigation referenced above, or in any way related to that litigation, up to and including the date of the entry of the Consent Order, that I may have against Defendants Casey McGowan; Laura Ball; Meredith Hinklin; JRK Residential America, LLC; the owner of the apartment complex in which I resided; Brisben Chimney Hills Limited Partnership; and MBS GP 5, LLC; and their agents, employees, officers, owners, members, heirs, executors, spouses, administrators, successors, insurers, and assigns.

I acknowledge and understand that, by signing this Release, I am waiving any right to pursue my own legal action against Defendants Casey McGowan; Laura Ball; Meredith Hinklin; JRK Residential America, LLC; Brisben Chimney Hills Limited Partnership; and MBS GP 5, LLC based on the discrimination alleged by the United States in this case.

I also acknowledge that I have been informed that I may review the terms of this Release with an attorney of my choosing, and to the extent that I have not obtained legal advice, I voluntarily and knowingly waive my right to do so.

I waive any claims I may have against the United States, the Department of Justice, or its agents or employees, arising out of this action. This Release constitutes the entire agreement between Defendants Casey McGowan; Laura Ball; Meredith Hinklin; JRK Residential America, LLC; Brisben Chimney Hills Limited Partnership; MBS GP 5, LLC; and me, without exception or exclusion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of _____, 20__.

Signature

Print Name

APPENDIX E

NOTICE TO PUBLIC

On _____, 2015, the United States District Court for the District of Kansas entered a consent order resolving litigation brought by the United States Department of Justice involving Brisben Chimney Hills Limited Partnership; MBS GP 5, LLC; JRK Residential America, LLC; and several individually named Defendants relating to: **the Reserve Apartments in Lenexa, Kansas; Fieldstone Apartments in Olathe, Kansas; Brookstone Village in Independence, Missouri; Crossroads of Lee's Summit in Lee's Summit, Missouri; Lakewood Apartments in Imperial, Missouri; North Oak Crossing in Kansas City, Missouri; Truman Farm in Grandview, Missouri; and Walden Pond in High Ridge, Missouri.** The litigation alleged that the Defendants discriminated against residents of these properties on the basis of familial status by implementing policies at these properties that required the supervision of children up to the age of 16 and that restricted the activities of children in other ways between September 3, 2009 and May 14, 2012. The litigation also alleged that the Defendants issued lease violations to families who did not follow these policies during the same period. The Parties have agreed to this Consent Order to avoid costly and protracted litigation.

Under this Consent Order, you or an estate may be entitled to receive monetary relief if you or a family member:

- Were required to constantly supervise your child(ren) while living at one of the above-named properties during the relevant time period; or
- Had child(ren) who were limited in the activities in which they could participate while living in an above-named property during the relevant time period; or

- Received a lease violation, notice of lease non-renewal, or notice of eviction related to the legal activities of your children while living in an above-named property during the relevant time period.

If you believe that you or a family member has been discriminated against in any way described above, please contact the United States Department of Justice at: 1-800-896-7743, mailbox number __, or write or send an e-mail to:

United States Department of Justice
Attn: DJ# 175-23-820
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave., NW – G Street
Washington, DC 20530
E-mail address: fairhousing@usdoj.gov

You must call or write by _____, 2015, and your message or letter must include your name, address and at least one telephone number where you may be reached.