

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND GOOD NEIGHBOR HOMES, INC.
U.S. DEPARTMENT OF JUSTICE DJ # 202-79-369**

BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and Good Neighbor Homes, Inc. (“GNHI”), a company that operates more than 50 group homes for individuals with intellectual and developmental disabilities (“I/DD”), throughout Virginia, including a residence known as Three Chopt Road.
2. This matter was initiated by a complaint filed with the United States against GNHI, alleging violations of title III of the Americans with Disabilities Act of 1990, as amended (the “ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36. LZ¹, the complainant is the sister and Power of Attorney (“POA”) for MZ, an individual who is deaf and uses American Sign Language (“ASL”) as her primary means of communication.
3. LZ alleges that GNHI failed to provide MZ sign language interpreting services when necessary to ensure effective communication. Specifically, LZ alleges that MZ resided at a GNHI group home between September 18, 2014, through April 14, 2017. As part of GNHI’s application process, LZ provided GNHI with a speech language pathologist (“SLP”) evaluation of MZ. The SLP evaluation explained that MZ’s most effective method of communication is sign language, she has serious difficulties reading basic instructions/directions, she does not have reliable lip reading skills, and verbal speech should not be used as a means to communicate with her. LZ further alleges that GNHI staff had many consequential and complex interactions with MZ, however, GNHI failed to furnish sign language interpreting services for those interactions, including:
 - a. Multiple assessments that GNHI was required to perform, including annual functional needs assessments that are used to establish a service plan.
 - b. Meetings in which various intake and orientation topics were discussed, including explanations of program services, policies, and rules.
 - c. Multiple care planning meetings about a variety of subjects, including MZ’s legally required quarterly and annual Individual Support Plans (“ISPs”) and Person-Centered Plans (“PCP”).
 - d. Multiple incident investigation related to serious bodily injuries that MZ experienced at Three Chopt Road and required medical attention at a hospital emergency department and in which the leadership at GNHI was required to interview MZ.

¹ In order to protect the privacy of the complainant and her sister, we are using two letter identifiers for each.

- e. Multiple medical appointments with GNHI medical providers.
 - f. When providing legal documents, such as a discharge notice.
4. As a result of GNHI's failure to ensure effective communication, LZ alleges that MZ did not understand what GNHI was trying to communicate to her.
 5. LZ also alleges that as a result of GNHI's failure to furnish ASL interpreting services, GNHI frequently enlisted her to facilitate communication with MZ.

TITLE III COVERAGE

6. The United States Attorney for the Eastern District of Virginia ("U.S. Attorney's Office") is authorized to investigate alleged violations of Title III of the ADA, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that raises issues of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.
7. MZ has multiple disabilities, including athetoid cerebral palsy, an intellectual disability, and she is deaf, and as such, is an individual with a "disability" within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.104.
8. LZ, as MZ's family member and POA, has a known relationship or association with an individual with a disability. 42 U.S.C. 12182(b)(1)(E); 28 C.F.R. § 36.205.
9. GNHI is a public accommodation because its facility is a place of public accommodation and it owns, operates, leases or leases to the GNHI facility, a place that provides healthcare and social services to its Residents. 42 U.S.C. § 12181(7)(F) & (K); 28 C.F.R. § 36.104.
10. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Discrimination includes failing to take such steps as necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than any other individual because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.
11. On the basis of its investigation, the U.S. Attorney's Office has determined that:
 - a. MZ resided at a GNHI group home called Three Chopt Road from September 18, 2014 through April 14, 2017, where she received services. GN provided MZ with a variety of communication intensive services, including, assessing

her skills and abilities, development of Individual Support Plans and Person-Centered-Plans, providing orientation to its group home and its rules, holding care-planning meetings, conducting incident investigation, provision of medical care, and medication management and administration.

- b. GNHI had an obligation to provide appropriate auxiliary aids and services to ensure effective communication with MZ while she resided at Three Chopt Road. 28 C.F.R. § 36.303.
- c. LZ provided GNHI with a speech language pathologist (“SLP”) evaluation of MZ as a part of GNHI’s application process. The SLP evaluation explained that MZ’s “most effective mode of communication” is sign language, that she has serious difficulties reading basic instructions/directions, she does not have reliable lip reading skills, and that verbal speech should not be used as a means to communicate with her.
- d. GNHI failed to furnish a qualified sign language interpreter or otherwise provide an effective method of communicating with MZ during numerous consequential and complex interactions during her 939-day residency at Three Chopt Road, including:
 - 1) Multiple legally-required meetings in which GNHI assessed MZ’s skills and abilities on an annual basis. Federal and Virginia regulations require these to be “face to face assessment[s]” and to “actively involve the individual” who is receiving services. *See* 42 C.F.R. § 441.720(a)(1) & 12VAC35-105-650.B. Further, the assessments are required to consider a wide variety of topics that require complex communication to assess, including the “individual’s needs, strengths, goals, preferences, and abilities within the individual’s cultural context.” *Id.* Due to the nature, length and complexity of the communication involved in these meetings, a sign language interpreter was required for these meetings. 28 C.F.R. § 36.303(c)(1)(ii).
 - 2) Multiple legally required annual and quarterly meetings in which MZ’s Individual Support Plans and Person-Centered-Plans were discussed and developed. Federal and Virginia regulations dictate that service providers, such as GNHI, ensure that Residents, such as MZ, be able to participate, in a meaningful way, in the development of the Individual Support Plans and Person-Centered-Plans and have access to information in those documents in a format that is understandable to them. *See* 42 C.F.R. § 441.725; 12VAC35-115-50.B.5; 12VAC35-105-660 & 665.H.; 12VAC35-115-70. Due to the nature, length and complexity of the communication involved in these meetings, a sign language interpreter was required for these meetings. 28 C.F.R. § 36.303(c)(1)(ii).
 - 3) Multiple complex interactions to discuss a variety of issues that had arisen regarding the services that were being provided to MZ, including: case management meetings and changes in services, such as, a highly significant meeting in which GNHI attempted to present MZ with notice that it would

be discharging her from its Residential services in 30 days. *See* 12VAC35-115-50.B.5. Due to the nature, length and complexity of the communication involved in these interactions, a sign language interpreter was required for these meetings. 28 C.F.R. § 36.303(c)(1)(ii).

- 4) Multiple incident investigations that involved necessary communications with MZ, including three regarding serious physical injuries that MZ sustained at Three Chopt Road for which she needed treatment at a hospital emergency room, including a fractured finger and another incident involving a crush injury in which MZ alleged that she had been physically abused by a GNHI staff member. Due to the nature, length and complexity of the communication necessitated by these incident investigation, a sign language interpreter was required. 28 C.F.R. § 36.303(c)(1)(ii).
 - 5) Interactions in which Virginia regulations and/or provider manuals required GN to provide information to Residents in a “language easily understood by the individual” or “written in the words of the individual receiving the services” or otherwise indicates that the provider is required to ensure that a Resident can understand the information being conveyed. *See* 12VAC35-115- 50.B.5; 12VAC35-105-665.H. Due to the nature, length and complexity of the communication required when conveying such information, a sign language interpreter was required when GNHI provided such information. 28 C.F.R. § 36.303(c)(1)(ii).
 - 6) During MZ’s medical appointments with GN medical staff. Due to the nature, length and complexity of the communication required during medical appointments, a sign language interpreter was required for these medical appointments. 28 C.F.R. § 36.303(c)(1)(ii).
 - 7) When providing a variety of documents to MZ for her review and signature. Due to the nature, length and complexity of the communication required when GNHI showed MZ these documents and sought her signature, a sign language interpreter was required. 28 C.F.R. § 36.303(c)(1)(ii).
- e. Because GNHI failed to provide a qualified sign language interpreter, GNHI’s staff frequently relied upon LZ to facilitate communication with MZ.
 - f. GNHI’s failure to provide appropriate auxiliary aids and services to ensure effective communication with MZ violates 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.
 - g. GNHI’s reliance upon LZ to facilitate communication with MZ violates 42 U.S.C. § 12182(b)(1)(E) and 28 C.F.R. § 36.303(c)(3), and as such, she is an aggrieved individual. 42 U.S.C. § 12188(2)(B); 28 C.F.R. § 36.504(a)(2).
 - h. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in litigation. The parties have therefore voluntarily agreed to the terms of this

Agreement.

DEFINITIONS

12. The term “auxiliary aids and services” includes qualified interpreters on-site or through video remote interpreting (“VRI”) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (“TTYs”), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing. 28 C.F.R. § 36.303(b)(1).
13. The term “GNHI Personnel” means all employees, both full and part-time, and employees of independent contractors with contracts to work for or with GNHI, including, without limitation, direct service providers, group home managers, nurses, physicians, social workers, activities department employees, administrative staff, technicians, admitting personnel, billing staff, security staff, therapists, and volunteers, who have or are likely to have direct contact with Residents or Companions as defined herein.
14. The term “qualified interpreter” means an interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. 28 C.F.R. § 36.104.
15. The term “Resident” shall be broadly construed to include any individual who is seeking or receiving the goods, services, facilities, privileges, advantages, or accommodations of GNHI.
16. The term “Companion” means a person who is deaf or hard of hearing and is a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate. 28 C.F.R. § 36.303(c)(1)(i).
17. “Resident files or records” means the files and related records for an individual Resident, including both the paper and electronic records.

EQUITABLE RELIEF

A. Prohibition of Discrimination

18. Nondiscrimination. GNHI shall provide appropriate auxiliary aids and services, including qualified interpreters, where such auxiliary aids and services are necessary to ensure effective communication with Residents and Companions who are deaf or hard of hearing, unless GNHI can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. Pursuant to 42 U.S.C. § 12182(a), GNHI shall also provide Residents and Companions, who are deaf or hard of hearing, with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of the company as required by this Agreement and the ADA.
19. Discrimination by Association. GNHI shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of that person with someone who is deaf or hard of hearing. See 42 U.S.C. § 12182(b)(1)(E).
20. Retaliation and Coercion. GNHI shall not retaliate against or coerce in any way any person who made, or is making, a complaint according to the provisions of this Agreement or exercised, or is exercising, his or her rights under this Agreement or the ADA. See 42 U.S.C. § 12203.

B. Effective Communication

21. Appropriate Auxiliary Aids and Services. Pursuant to 42 U.S.C. § 12182(b)(2)(A)(iii), GNHI will provide to Residents and Companions, who are deaf or hard of hearing, any appropriate auxiliary aids and services that are necessary for effective communication after making the assessment described in paragraph 22 of this Agreement. Appropriate auxiliary aids and services will be provided as soon as practicable (without compromising Resident care), except that the provision of on-site interpreters must be within the time frame described in paragraph 32 of this Agreement. GNHI will advise Residents and Companions who require auxiliary aids or services, in writing, that these are available throughout the time period that GNHI is providing services.
22. General Assessment Criteria. The determination of appropriate auxiliary aids or services, and the timing, duration, and frequency with which they will be provided, will be made by GNHI in consultation with the person with a disability. The assessment made by GNHI Personnel will take into account all relevant facts and circumstances, including, but not limited to the following:
 - a. The method of communication used by the individual and the individual's communication skills, which may, but is not required to, include a professional

assessment of the individual's communication skills conducted by a clinician, who is qualified to perform such an assessment;

- b. The nature, length, complexity, and importance of the communication at issue, and the context in which the communication is taking place;
- c. The Resident's health status or changes thereto;
- d. The Resident's and Companion's request for, or statement of need for, an interpreter; and
- e. The Resident's and Companion's preference with respect to the type of aids or services that will be provided.

GNHI recognizes that some individuals that it serves may have a disability that interferes with his/her ability to articulate a request for a sign language interpreter and will provide interpreting services when appropriate to these individuals. GNHI will use the attached Communication Assessment Form or an electronic version thereof as a part of this assessment process. Exhibit A. GNHI shall ensure that a completed Form is obtained from each individual Resident or Companion who agrees to complete the Form. GNHI shall provide assistance in completing the Form at the Resident's or Companion's request. After being completed, the Form(s) shall be maintained in the Resident's file, whether kept in paper or electronic form. If a Resident identifies a Companion who is not presently at GNHI but is expected at GNHI during the time when the Resident will be receiving services, GNHI Personnel shall provide the Resident with the contact information of GNHI Personnel who can assist the Companion in completing the Form. As part of this Agreement, GNHI agrees that if at any point during a Resident's stay, a Companion identifies themselves as deaf or hard of hearing, GNHI shall promptly provide them with the Form, if it has not done so already.

- 23. Time for Assessment. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided, must be made at the time GNHI learns that a Resident or Companion who is deaf or hard of hearing will be using its services or on the arrival of the Resident or Companion who is deaf or hard of hearing at GNHI, whichever is earlier. GNHI Personnel will perform an assessment (see paragraph 22) as part of each initial assessment and document the results in the Resident's file (including the results of the assessments of companion's need for auxiliary aids and services). GNHI Personnel will reassess, as appropriate, which appropriate auxiliary aids and services are necessary, in consultation with the person with a disability, where possible, and provide such aid or service based on the reassessment.
- 24. Subsequent Interactions. GNHI will continue to provide the appropriate auxiliary aids or services to its Resident or Companion without requiring another request for auxiliary aids or services to be made for each interaction. In addition, GNHI will continue to address the needs of the Resident or Companion and will ask the Resident and/or Companion questions related to auxiliary aids or services needs in order to ensure that the means of

communication provided in past interactions continue to be effective means of communication. GNHI will keep appropriate records that reflect the ongoing provision of auxiliary aids and services to Residents and Companions, such as notations in a Resident's record, and its ongoing assessment of the auxiliary aids and services that are being provided.

25. ADA Administrators. GNHI will designate at least one employee as an ADA Administrator and will have someone designated to act in their absence such that someone will always be on duty and available twenty-four (24) hours a day, seven (7) days a week, to answer questions and provide appropriate assistance regarding prompt access to, and proper use of, the appropriate auxiliary aids and services, including qualified interpreters. The ADA Administrator or their designee will know where the appropriate auxiliary aids are stored and how to operate them and will be responsible for their maintenance, repair, replacement, and distribution. GNHI will circulate and post broadly within GNHI the name, telephone number, function, and office location of the Administrator(s), including a TTY telephone number, through which the ADA Administrator or designee on duty can be contacted twenty-four (24) hours a day seven days a week by Residents and Companions who are deaf or hard of hearing. GNHI's ADA Administrator will be responsible for the complaint resolution mechanism described in paragraph 27 of this Agreement. The ADA Administrator will be designated by GNHI no later than 30 days following execution of this Agreement and will be subject to approval by the U.S. Attorney's Office.
26. Auxiliary Aid and Service Log. GNHI will maintain a log in which requests for an auxiliary aids or services will be documented. The log will indicate:
 - a. The name of the Resident or Companion who is deaf or hard of hearing, who made the request;
 - b. The time and date the request was made;
 - c. The time and date the request was made for, i.e., for immediate use (emergent need) or for a scheduled meeting (stating the date and time of the meeting);
 - d. The identity of the GNHI personnel who conducted the assessment and made the determination of which auxiliary aid or service to provide;
 - e. The name of the staff member making the request and time and date the request was made by staff;
 - f. The auxiliary aid or service provided; and
 - g. All times and dates the auxiliary aid or service was provided.

If the requested Auxiliary Aid or Service was not provided, was not provided in the type requested, or was provided outside of the timeliness provisions contained in paragraph 32 of this agreement, the log shall contain a statement explaining why. Such logs will be maintained by the ADA Administrator or designee for the entire duration of the Agreement, and will be incorporated into the semi-annual Compliance Reports as

described in paragraph 55 of this Agreement.

27. Complaint Resolution. GNHI will establish a grievance resolution mechanism for the investigation of disputes regarding effective communication with Residents and Companions who are deaf or hard of hearing. GNHI will maintain records of all grievances regarding effective communication, whether oral or written, made to GNHI and actions taken with respect thereto. At the time GNHI completes its assessment described in paragraph 22 and advises the Resident and/or Companion of its determination of which appropriate auxiliary aids and services are necessary, GNHI will notify deaf and hard of hearing persons of its grievance resolution mechanism, to whom complaints should be made, and of the right to receive a written response to the grievance. A written response to any grievance filed shall be completed promptly, but no later than within seven (7) days of receipt of the complaint. Copies of all grievances related to provision of services for Residents or Companions who are deaf or hard of hearing and the responses thereto will be maintained by the ADA Administrator or designee for the entire duration of the Agreement, and will be incorporated into the semi-annual Compliance Reports as described in paragraph 55 of this Agreement.
28. Prohibition of Surcharges. All appropriate auxiliary aids and services provided by GNHI will be provided free of charge to the Resident or Companion who is deaf or hard of hearing.
29. Record of Need for Auxiliary Aid or Service. GNHI will take appropriate steps to ensure that all GNHI Personnel are made aware of a Resident's or Companion's disability and auxiliary aid and services needed so that effective communication with such person will be achieved. These steps will include designating this information in the Resident's record. The Resident's record shall be conspicuously labeled (such as with a sticker, indicator, or label on the cover) to alert GNHI Personnel to the fact that the Resident and/or Companion is deaf or hard of hearing. The Resident's record shall indicate the mode of communication requested by and provided to the Resident or Companion.

C. Qualified Interpreters

30. Circumstances Under Which Interpreters Will Be Provided. Depending on the complexity and nature of the communication, a qualified interpreter may be necessary to ensure effective means of communication for Residents and Companions. When an interpreter is needed, GNHI shall provide qualified sign language interpreters to Residents and Companions who are deaf or hard-of- hearing and whose primary means of communication is sign language, and qualified oral interpreters to such Residents and Companions who rely primarily on lip reading as necessary for effective communication. Examples of circumstances when the communication may be sufficiently lengthy or complex so as to require an interpreter include the following:
 - a. When federal and/or state regulations and/or state manuals and/or GNHI's policies require Residents to have a meaningful opportunity to participate in discussions regarding services that affect them;

- b. When federal and/or state regulations and/or state manuals and/or GNHI's policies require Residents to have access to information that is in a language that is understandable to the Resident;
- c. Tours of a group home to potential Residents and companions;
- d. Transition visits;
- e. Initial assessments;
- f. Initial orientation discussions including explanations of program services, policies, rules, and the Resident handbook;
- g. Notices and explanations of legal, civil and human rights at admission and annually;
- h. Meetings in which care and service planning is discussed, including for periodic meetings for discussions of Individual Support Plans and Person Centered Plans;
- i. Interviews of Residents as a part of incident investigations, including but not limited to those that involve injury of a Resident;
- j. Execution of legal documents, including but not limited to: authorizations, leases, and annual forms;
- k. Medical appointments, including telemedicine, with group home medical professionals;
- l. Mental health services whether in person or using telecommunication services, including group or individual counseling for Residents and family members;
- m. Obtaining informed consent, including but not limited to services and medical decisions;
- n. Discussions of a Resident's symptoms, pain, injuries, and medication side effects that require complex and/or lengthy communication;
- o. Discussions of a Resident's medical appointments and follow-up instructions that require complex and/or lengthy communication;
- p. Discussions that facilitate non-routine medication administration;
- q. Soliciting Resident feedback;
- r. Educational presentations;
- s. Resident stress/crisis intervention and mitigation;

- t. Explanations of changes to a Resident's routine, schedule, or environment that require complex and/or lengthy communication; and
- u. Discharge and discharge planning.

In the above circumstances, GNHI will presume that a qualified interpreter is necessary for effective communication with a Resident or Companion who relies upon such Auxiliary Aids and Services.

31. Method for Obtaining Interpreters.

Within thirty (30) days after execution of this Agreement, GNHI agrees:

- a. To have written agreements with five or more interpreter services to ensure that interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week.
- b. To select interpreters or interpreter services that have been screened for the quality and skill of its interpreters to work with the population that GNHI serves, including individuals with intellectual and developmental disabilities and any other disabilities that a particular Resident has, its reliability, and other reasonable factors. GNHI will review and update this list annually.
- c. To establish internal procedures for its personnel to order interpreting services that is consistent with the interpreter or interpreter agencies' procedures. At a minimum, all of GNHI's requests for interpreters, including the time, date and location, will be confirmed in writing at the time of the request. If GNHI receives verbal confirmation or speaks with the vendor regarding the GNHI's request for an interpreter, GNHI will confirm such conversations in writing and this information will be documented in the Interpreter's Log. GNHI will retain a copy of all written correspondence with interpreting services. Additionally, for the duration of this Agreement, GNHI will file a copy of its written correspondence with interpreters and interpreting agencies in the Auxiliary Aid and Service Log discussed in paragraph 29.

GNHI may also hire qualified sign language interpreter(s) to be staff interpreter(s) that have been screened for the quality and skill of its interpreters to work with the population that GNHI serves, including individuals with intellectual and developmental disabilities and any other disabilities that a particular Resident has, who will provide sign language services to its service recipient.

32. Provision of Interpreters in a Timely Manner.

- a. Non-scheduled Interpreter Requests: A "non-scheduled interpreter request" means a request for an interpreter made by a Resident or Companion who is deaf or hard of hearing with less than two (2) hours advance notice. The interpreter shall be provided no more than (a) two hours from the time GNHI receives the request for an interpreter if the service is provided through a contract interpreting

service or a staff interpreter who is located off-site or (b) 15 minutes from the time GNHI completes the assessment if the service is provided through a Video Remote Interpreting service as described in paragraph 33 below. Deviations from this response time will be addressed with the interpreting service provider, and performance goals will be reviewed with the U.S. Attorney's Office. If no interpreter can be located, GNHI Personnel will take the following additional steps:

- i. GNHI Personnel will exert reasonable efforts (which shall be deemed to require no fewer than five (5) telephone inquiries and/or emails and/or text messages unless exceptional circumstances intervene) to contact any interpreters or interpreting agencies already contracted with GNHI and request their services;
 - ii. Inform GNHI's ADA Administrator of the efforts made to locate an interpreter and solicit assistance in locating an interpreter;
 - iii. Inform the Resident or Companion of the efforts taken to secure a qualified interpreter and that the efforts have failed, and follow up on reasonable suggestions for alternate sources of qualified interpreters; and
 - iv. Document all of the above efforts.
 - b. Scheduled Interpreter Requests. A "scheduled interpreter request" is a request for an interpreter made two (2) or more hours before the services of the interpreter are required. For scheduled interpreter requests, GNHI will make a qualified interpreter available at the time of the scheduled appointment. If an interpreter fails to arrive for the scheduled appointment, upon notice that the interpreter failed to arrive, GNHI will immediately call an interpreter service for another qualified interpreter.
 - c. Data Collection on Interpreter Response Time and Effectiveness. GNHI will monitor the performance of each qualified interpreter it uses to provide communication to Residents or Companions who are deaf or hard of hearing by monitoring their response time and seeking feedback from the individual who requires the services of the interpreter. As part of the Auxiliary Aid and Service Log, described in paragraph 29, GNHI shall collect and maintain information regarding response times and effectiveness for requests for interpreters.
33. Video Remote Interpreting (VRI). VRI can provide immediate, effective access to interpreting services in a variety of situations including emergencies and unplanned incidents. When using VRI services, GNHI shall ensure that it provides: (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers,

regardless of his or her body position; (3) A clear, audible transmission of voices; and (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI. 28 C.F.R. § 36.303(f). VRI shall not be used when it is not effective due, for example, to a Resident's limited ability to move his or her head, hands or arms; vision or cognitive issues; significant pain; or due to space limitations in the room. If, based on the circumstances, VRI is not providing effective communication after it has been provided or is not available due to circumstances outside of GNHI's control, VRI shall not be used as a substitute for an on-site interpreter, and an on-site interpreter shall be provided in accordance with the timetable set forth above in which case the determination that VRI is not effective shall count as the completion of assessment for timing purposes. Further, if the VRI device is not functioning properly and GNHI's staff is unable to get the VRI device to function properly within 30 minutes of when it started to malfunction, it will call for an on-site interpreter.

34. Notice to Residents and Companions, Who are Deaf or Hard of Hearing. As soon as GNHI Personnel have determined that a qualified interpreter is necessary for effective communication with a Resident or Companion who is deaf or hard of hearing, GNHI will inform the Resident (and his or her authorized representative) or Companion of the current status of efforts being taken to secure a qualified interpreter on his or her behalf. GNHI will provide additional updates to the Resident (and his or her authorized representative) or Companion as necessary until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not lessen GNHI's obligation to provide qualified interpreters in a timely manner as required by paragraph 32 of this Agreement.
35. Other Means of Communication. GNHI agrees that between the time an interpreter is requested and the interpreter is provided, GNHI Personnel will continue to try to communicate with the Resident or Companion who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication, including using sign language pictographs. This provision in no way lessens GNHI's obligation to provide qualified interpreters in a timely manner as required by paragraph 32 of this Agreement.
36. Restricted Use of Certain Persons to Facilitate Communication.
 - a. GNHI shall not require an individual who is deaf or hard of hearing to bring another individual to interpret for him or her. 28 C.F.R. § 36.303(c)(2).
 - b. GNHI shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except –
 - 1) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
 - 2) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such

assistance is appropriate under the circumstances. 28 C.F.R. § 36.303(c)(3). Consent of, and for, the accompanying adult to facilitate communication must be provided freely and voluntarily both by the individual with a disability and the accompanying adult. GNHI may not coerce or attempt to persuade another adult to provide effective communication for the individual with a disability. See 28 C.F.R. Part 36, App. A.

- c. GNHI will not rely on a minor child or another Resident to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available. 28 C.F.R. § 36.303(c)(4).
- d. The imminent threat exception in this paragraph and its subparts is not intended to apply to the typical and foreseeable emergency situations that are a part of the normal operations of the GNHI's programs, services, and activities. Personnel may rely on an accompanying individual to interpret or facilitate communication under this paragraph only in truly emergency circumstances, i.e., where any delay in providing immediate services to the individual could have life-altering or life-ending consequences. See 28 C.F.R. Part 36, App. A (discussion of 28 C.F.R. § 36.303(c)(3)-(4)). Once the emergency has lifted, personnel should revisit the decision of what auxiliary aids and services are appropriate.
- e. GNHI will not use its personnel as sign language interpreters unless the employee's sign language interpreting skills have been evaluated and GNHI can document that the individual is a "qualified interpreter" pursuant to 28 C.F.R. § 36.104. Further, GNHI will not use its personnel as sign language interpreters or oral transliterators if the employee's presence poses a conflict of interest or raises confidentiality and privacy concerns. 28 C.F.R. § 36.303(c)(1)(ii).

37. Individuals May Revise Their Communication Requests. If a Resident or Companion indicates to GNHI Personnel that he or she wants an interpreter after failing to request one on the Deaf or Hard of Hearing Communication Request Form, GNHI Personnel shall conduct a new assessment as required by paragraph 22.

D. Telephones and Related Equipment

38. **Videophones, TTYs, Hearing-Aid Compatible Telephones, and Volume Control Telephones.** Within sixty (60) days of the effective date of this Agreement, GNHI agrees to provide appropriate accessible telecommunication equipment in each group home in which a Resident who is deaf or hard of hearing resides, including devices capable of video telephone calls, hearing aid compatible telephones, volume control telephones, and/or Video Relay Services for use by Residents and members of the public at the GNHI's group homes.

- a. Where telephones are available to a customer, client, patient, or participant, devices that enable video telephone calls, hearing aid compatible telephones, TTYs, and volume control telephones will be made available upon request. 28 C.F.R. §

- 36.303(d). Signage will be displayed at all telephone areas indicating the availability of the device for video telephone calls, the hearing aid compatible telephone, TTYs, and the volume control telephone and the procedure for obtaining them.
- b. Where Resident telephone calls are time-limited, GNHI will provide Residents who are deaf or hard of hearing who use TTYs three times the normal length of time to make those calls, due to the slower nature of TTY communications compared with voice communications.
 - c. GNHI shall maintain all Auxiliary Aids in working condition at all times. GNHI shall attempt to resolve complaints about any malfunctioning equipment within a reasonable time of receiving that complaint, but no later than 24 hours of receiving the complaint.
 - d. GNHI shall ensure that sufficient staff members, including the ADA Administrator and group home managers, are adequately trained in the operation of the technology used as auxiliary aids for telecommunication.
 - e. GNHI will ensure that the privacy of telephone calls by Residents using a device capable of video telephone calls, hearing aid compatible telephones, or volume control telephones is equal to that of other Residents' telephone calls.
39. Televisions and Caption Decoders. Within sixty (60) days of the Effective Date of this Settlement Agreement, GNHI will ensure that Residents and Companions with who are deaf or hard of hearing have use of televisions with closed captioning capabilities. 28 C.F.R. § 36.303(e).
40. Visual Alert Notifications.
- a. GNHI Residents who are deaf or hard of hearing should not miss announcements, alarms, or any other auditory information from GNHI staff because of their disability.
 - b. GNHI shall provide an effective visual notification system that will notify Residents who are deaf or hard of hearing, of group home events.
 - c. GNHI will provide Residents who are deaf or hard of hearing with an effective visual notification system, which will advise them of an emergency evacuation or other emergency. GNHI personnel shall be responsible for the evacuation of Residents who are deaf or hard of hearing, during an emergency.
41. Hearing Aid and Cochlear Processor Batteries. Whenever a Resident who lives in a GNHI home, who use hearing aids, cochlear implants, or other such personal devices, GNHI will purchase and keep appropriate types of hearing aid and cochlear processor batteries in stock. Replacement batteries for these devices will be provided to those requesting them as soon as possible, but no later than 24 hours after such request.
42. Repair of Hearing Aids and Other Such Personal Devices. GNHI will send Resident

hearing aids, cochlear processors, and other such devices to appropriate repair companies as soon as possible, but no later than 24 hours a request for the repair of such a personal device. GNHI shall inform the Resident when the device was sent for repair and when it is expected to be returned by the repair company. The Resident will be provided with written documentation of all such repairs, including detailed information regarding the vendor used, the date of the repair, and the specific repairs performed. Should a Resident be unable to read this written documentation, then the GNHI will use appropriate auxiliary aids and services to convey the information in this documentation.

E. Notice to Community

43. Policy Statement. Within thirty (30) days of the entry of this Agreement, GNHI shall inform all Residents, potential Residents, and authorized representatives for Residents in a language that they can understand of the statement below. Further, GNHI will post signs wherever Resident's rights are posted that shall include language to the following effect (and shall include the appropriate contact information):

Sign language and oral interpreters, TTYs, and other auxiliary aids and services are available free of charge to people who are deaf or hard of hearing. For assistance, please contact any GNHI Personnel or the Information Office at _____(voice/TTY), room_____.

The posted signs will include the International Symbol for Hearing Loss, the International Symbol for TTYs, and a symbol to indicate the availability of sign language interpreters:



44. Website. GNHI will include on the front page of its website in a prominent location the policy statement described in paragraph 43 above.
45. Resident Handbook. Within 30 days of signing this agreement, GNHI will include in its Resident Handbook (or equivalent) and all similar publications a statement to the following effect:

To ensure effective communication with Residents and their Companions who are deaf or hard of hearing, we provide appropriate auxiliary aids and services free of charge, such as:

sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with caption capability or closed caption decoders, and open and closed captioning of most GNHI programs.

Please ask your house manager or other GNHI Personnel for assistance, or contact the Information Office at _____ (voice or TTY), room _____.

The Resident Handbook (or equivalent) will include the International Symbol for Hearing Loss, the International Symbol for TTYs, and a symbol to indicate the availability of sign language interpreters:



GNHI will also include in its Resident Handbook (or equivalent) a description of its complaint resolution mechanism.

F. Effective Communication Policies and Procedures.

46. Within thirty (30) days of the effective date of this Agreement, GNHI will submit for review and approval to the United States its policies and procedures to implement fully the Settlement Agreement. Upon receipt of the United States' comments, GNHI will address all of the United States' concerns, if any, and will resubmit a draft for final approval, if any changes are needed. The adoption of the final policies and procedures will occur within 30 days of the GNHI's receipt of approval by the United States.

G. Notice to GNHI Personnel

47. Policy Statement. GNHI shall publish a policy statement regarding the GNHI's policy for effective communication with persons who are deaf or hard of hearing. This policy statement shall include, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a Resident or a relative, close friend, or Companion of a Resident is deaf or hard of hearing, you must advise the person that appropriate auxiliary aids and services, such as sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and

systems, telephones compatible with hearing aids, televisions with captioning or closed caption decoders, and open and closed captioning of most hospital programs, will be provided free of charge when appropriate. If you are the responsible care provider, you must ensure that such aids and services are provided when appropriate. All other personnel should direct that person to the appropriate ADA Administrator at _____ and reachable at _____ [relevant information will be furnished in the policy statement].

GNHI will circulate this policy within thirty (30) days of the Effective Date of this Agreement to all GNHI Personnel.

H. Training

48. Training of ADA Administrator. GNHI will provide mandatory training for the ADA Administrator(s) within thirty (30) days of designation as provided in this Agreement. Such training will be sufficient in duration and content to train the ADA Administrator(s) in the following areas:

- a. Ensuring that GNHI is in compliance with all aspects of this settlement agreement;
- b. to promptly identify communication needs of Residents and Companions who are deaf or hard of hearing, which auxiliary aids are effective in different circumstances, and how to identify sign language interpreters who are skilled in communication with individuals with other disabilities, such as intellectual and developmental disabilities and physical disabilities;
- c. the mandatory use of the Communication Assessment Form in paragraph 22;
- d. to secure qualified interpreter services as quickly as practicable when necessary;
- e. the need to document all communications with sign language interpreting services, including the order and confirmation that the service will be sending an interpreter at the time, date and location requested;
- f. to encourage GNHI staff members to comply with this settlement agreement with regard to Residents and Companions who are deaf or hard of hearing;
- g. to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication);
- h. if GNHI decides to use VRI, how and when to use this service and the limitations of VRI;
- i. making and receiving calls through TTYs, other accessible telecommunication

equipment, and the relay service; and

- j. GNHI's complaint resolution procedure described in paragraph 27 of this Agreement.

49. Training of GNHI Personnel. GNHI will provide mandatory annual in-service training to all GNHI Personnel.

- a. The training will address the needs of Residents and Companions who are deaf or hard of hearing and will include the following objectives:
 - i. Ensuring GNHI personnel are complying with the terms of this Settlement Agreement;
 - ii. To identify, promptly, communication needs of Residents and Companions who are deaf or hard of hearing;
 - iii. The mandatory use of the Communication Assessment form referenced in paragraph 22;
 - iv. To secure qualified interpreter services or video remote interpreting services as quickly as possible when necessary;
 - v. The need to document all communications with sign language interpreting services, including the order and confirmation that the service will be sending an interpreter at the time, date and location requested; and to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication).
- b. Such training must be provided within one-hundred and twenty (120) days of the Effective Date of this Agreement.
- c. New employees must be trained within thirty (30) days of their hire. A screening of a video of the original training will suffice to meet this obligation.

50. Training of Telephone Operators. All GNHI Personnel who receive incoming telephone calls from the public will receive instructions by GNHI on using TTYs or relay services to make, receive, and transfer telephone calls and will receive training generally on the existence in GNHI of an ADA Administrator, as detailed in paragraph 25 of this Agreement, and the complaint resolution process, as described in paragraph 27 of this Agreement. Such training must be provided within 120 days of the Effective Date of this Agreement and will be conducted annually thereafter.

51. Training Attendance Sheets. GNHI will maintain in electronic form for the duration of this Agreement, confirmation of training conducted pursuant to paragraphs 48, 49 & 50

of this Agreement, which will include the names, signature, and respective job titles of the attendees, as well as the date and time of the training session.

52. Notice to Active Medical Providers In addition to providing the training in paragraph 49 above, GNHI will create and send an email blast advising active medical staff of its policy on the communication needs of Residents or Companions who are deaf or hard of hearing and will invite physicians with active medical staff privileges at GNHI to complete ADA specific training. This email will direct active medical staff to GNHI's web page which will include: (1) GNHI's Policy Statement for persons working at GNHI as described in paragraph 47 and any relevant forms; and (2) a direction that active medical staff comply with GNHI's policy.
53. Use of Outside Trainer. GNHI will hire an independent agency or group to conduct the initial trainings described in this Agreement. The independent agency used to train GNHI shall be subject to the approval of the U.S. Attorney's Office. For the required annual trainings thereafter, GNHI may conduct trainings without the assistance of an independent group, but must sufficiently update and/or create training materials in order to ensure the trainings include any new developments to the ADA and its requirements. GNHI may also videotape the initial trainings for annual trainings as long as GNHI also ensures that it supplements such training with any new developments to the ADA and its requirements.

I. Reporting, Monitoring, and Violations

54. Training Materials. Within ninety (90) days of the effective date of this Agreement, GNHI will provide the United States with a copy of all training materials used to train its staff, training attendance sheets required in Paragraph 48, 49 & 50 above, and photographs of the notices posted in its offices pursuant to this Agreement.
55. Compliance Reports. Beginning six months after the Effective Date of this Agreement and every six months thereafter for the entire duration of the Agreement, GNHI will provide a written report ("Compliance Report") to the U.S. Attorney's Office regarding the status of its compliance with this Agreement with the exception of the last report, which will be due sixty days prior to the final day of this Agreement. The Compliance Report will include data relevant to the Agreement, including but not limited to:
 - a. the Auxiliary Aid and Service Log described in paragraph 29;
 - b. records that reflect the ADA training that GNHI has conducted, including training materials and the attendance sheets described in paragraph 54; and
 - c. complaints received by GNHI from Residents and Companions who are deaf or hard of hearing regarding auxiliary aids and services and/or effective communication, and the resolution of such complaints including any supporting documents, as described in paragraph 27.

GNHI will maintain records to document the information contained in the Compliance

Reports and will make them available, upon request, to the U.S. Attorney's Office.

56. **Complaints.** During the term of this Agreement, GNHI will notify the U.S. Attorney's Office if any person files a lawsuit, complaint or formal charge with a state or federal agency, alleging that GNHI failed to provide auxiliary aids and services to Residents or Companions who are deaf or hard of hearing, or otherwise failed to provide effective communication with such Residents or Companions. Such notification must be provided in writing via certified mail within twenty (20) days of the date GNHI received notice of the allegation and will include, at a minimum, the nature of the allegation, the name and contact information for the person making the allegation, and any documentation possessed by GNHI relevant to the allegation. GNHI will reference this provision of the Agreement in the notification to the U.S. Attorney's Office.

J. Compensatory Relief for Complainants and Release

57. Within thirty (30) days after receiving MZ's signed release (a blank release form is at Exhibit B), GNHI will send a check to the United States Attorney's Office in the amount of two-hundred and twenty-five thousand dollars (\$225,000.00) made out to a special needs trust set up for the benefit of MZ.

Within ten (10) days of receiving LZ's signed release, GHNI will send a check to the United States Attorney's Office in the amount of forty-thousand dollars (\$40,000) made out to LZ (with her full name in the check).

Both checks shall be mailed to:

Financial Litigation Unit
United States Attorney's Office for
Eastern District of Virginia
101 W. Main Street #8000
Norfolk, VA 23510

A copy of the checks shall be sent to:

Steven Gordon
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, VA 22314

K. Payment of Civil Penalty to the United States

58. Within ten (10) days of the Effective Date of this Agreement, the GNHI will pay to the United States of America the sum of fifty thousand (\$50,000.00) dollars pursuant to 42 U.S.C. §12188(b)(2)(C). The check shall be mailed to:

Financial Litigation Unit
United States Attorney's Office for

Eastern District of Virginia
101 W. Main Street #8000
Norfolk, VA 23510

A copy of the check shall be sent to:

Steven Gordon
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, VA 22314

L. Enforcement and Miscellaneous

59. This Agreement will be in effect for three (3) years from the Effective Date.
60. In consideration of the terms of this Agreement as set forth above, the Attorney General agrees to refrain from undertaking further investigation or from filing a civil suit under title III of the ADA related to the allegations in paragraphs 3-5, except as provided in paragraph 61. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against GNHI for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA.
61. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or the requirements thereof has been materially violated by instituting a civil action in the U.S. District Court. If the United States believes that this Agreement or the requirements thereof have been materially violated, it will raise its claim(s) in writing with GNHI, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow GNHI thirty (30) days from the date it notifies GNHI of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.
62. This Agreement and the attachments hereto constitute the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other federal law.
63. This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs and legal representatives thereof. GNHI has a duty to so inform any such successor in interest of this Agreement.
64. Failure by the United States to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

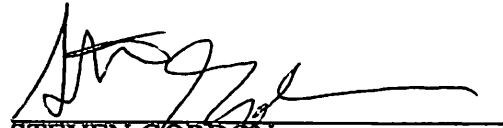
65. The effective date of this Settlement Agreement is the date of the last signature below.
66. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES:

G. ZACHARY TERWILLIGER


United States Attorney
Eastern District of Virginia

By:



STEVEN GORDON
Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
Justin W. Williams U.S. Attorney's Bldg.
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: 703-299-3817
steve.gordon@usdoj.gov

DATED: 10/19/20
For GNHI

By: 
MATTHEW MAREK, Chief Executive Officer

DATED: 10/19/20

APPROVED AS TO FORM

Exhibit A

Deaf or Hard of Hearing Communication Request Form

We ask this information so that we can communicate effectively with patients and/or companions who are deaf or hard of hearing. All communication aids and services are provided FREE OF CHARGE. Each person requesting communication aids should complete a separate form. If you need further assistance, or help in filling out this Form please contact_____.

Patient's Name

Medical Record #

Name of Person with Disability (if different than patient)

Nature of Disability:

☐ ☐ Hard of Hearing ☐ Speech ☐ Other: _____

Deaf

Impairment

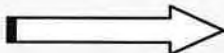
Relationship to Patient:

☐ Self ☐ Family member ☐ Friend ☐ Other: _____

Please select the communication aid(s) you would like to assist you in communicating with GNHI staff.

Your requests will be carefully addressed by GNHI staff.

☐ Interpreter on-site

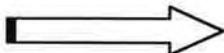


☐ American
Sign
Language
(ASL)

☐ Signed
English

☐ Oral
interpreter

☐ Video Remote Interpreter
(NexTalk)



☐ American
Sign
Language
(ASL)

☐ TTY/TDD (text telephone)

- ☐ Assistive listening device (sound amplifier)
 - ☐ Telephone handset amplifier
 - ☐ Telephone compatible with hearing aid
 - ☐ Flasher for incoming calls (in patient's room)
 - ☐ Other. Explain: _____
-

☐ **No.** I do not use sign language and/or do not use interpreters.

☐ **No.** I prefer to have only family members/friends help with communication.

Name of family member/friend: _____

☐ **No.** Please state other reason: _____.

If you requested both an interpreter on-site and a video remote interpreter above, do you have a preference between the two?

☐ Yes, I prefer an interpreter on-site

☐ Yes, I prefer video remote interpreter

☐ No, I do not have a preference between the two

If you have any questions, please call _____ (voice), _____ (TTY).

Completed by: _____
(Please print name)

Signature: _____

Date: _____

Time: _____

**** If at any point during your stay, you wish to change any of the answers to the questions on this form, please notify _____.**

Exhibit B

RELEASE OF ADA CLAIMS

For and in consideration of the acceptance of relief offered to me by Good Neighbor Homes, Inc. ("GNHI") pursuant to a Settlement Agreement between the United States and GNHI: I, _____, release and discharge GNHI from all legal and equitable claims under, arising out of, or related to the complaints described in paragraphs 3-5 of the Settlement Agreement between the United States and GNHI concerning GNHI's failure to provide appropriate auxiliary aids and services in violation of the Americans with Disabilities Act.

This Release will be considered null and void in the event that GNHI fails to send a check in the amount specified in the Settlement Agreement within ten (10) days of receipt of this signed Release.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF
AND I EXECUTE THIS RELEASE OF MY OWN FREE WILL.

Signed this _____ day of _____, 2020.
