

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Case No.  
)  
MAX R. JOYNER, SR.; )  
A/K/A MAX R. JOYNER; )  
JHJ PARTNERSHIP; )  
MAX R. JOYNER, JR.; )  
FARRIOR & SONS, INC.; )  
TOZER BUILDERS, INC.; )  
STEVE JANOWSKI D/B/A )  
J.S. JANOWSKI & ASSOCIATES; )  
MICHAEL W. BALDWIN & )  
ASSOCIATES, P.A.; )  
EDWIN CLARK; TIMOTHY CLARK; )  
JULIAN VAINRIGHT, JR.; and )  
HENRYK KOWALSKI and )  
ELIZABETH FIGUEROA A/K/A )  
ELIZABETH KOWALSKI D/B/A )  
LMH ASSOCIATES, )  
)  
Defendants. )  
\_\_\_\_\_ )

**CONSENT ORDER**

**I. INTRODUCTION**

**A. Background**

1. The United States of America and the defendants Max R. Joyner, Sr. a/k/a Max R. Joyner, JHJ Partnership, Max R. Joyner, Jr., Tozer Builders, Inc., Steve Janowski d/b/a J.S. Janowski & Associates, Michael W. Baldwin & Associates, P.A., Edwin Clark, Timothy Clark, Julian Vainright, Jr., and Henryk Kowalski and Elizabeth Figueroa a/k/a Elizabeth Kowalski d/b/a LMH Associates, (hereinafter collectively referred to as the “Joyner-Tozer-Janowski

Defendants”), and the defendant Farrior & Sons, Inc. (hereinafter referred to as "Farrior Defendant"), agree to the terms of this Consent Order resolving the Complaint of the United States filed simultaneously with this Consent Order against these same defendants.

2. This action is brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968 ("Fair Housing Act" or "Act"), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619. Specifically, the United States' Complaint alleges that the defendants discriminated against persons with disabilities by failing to design and construct covered multifamily dwellings at Meridian Park Apartments ("Meridian Park"), which is located near the intersection of West Arlington Boulevard and South Memorial Drive at 2707 Meridian Drive in Greenville, North Carolina, 27834 in accordance with the features of accessible and adaptable design and construction required by subsection 804(f)(3)(C) of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C). The United States and the defendants agree that Meridian Park is subject to the accessible design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).

**B. The defendants**

3. The defendants Max R. Joyner, Sr. (a/k/a Max R. Joyner) and Max R. Joyner, Jr. are owners and developers for all phases of Meridian Park.

4. The defendant JHJ Partnership was an owner and developer of phase one of Meridian Park.

5. The defendant Farrior & Sons, Inc., a North Carolina corporation, is the general contractor for phase one of Meridian Park.

6. The defendant Steve Janowski doing business as J.S. Janowski & Associates is the civil engineer for phase one of Meridian Park.

7. The defendant Tozer Builders, Inc., a North Carolina corporation, is the general contractor for phases two, three, four, five and six of Meridian Park. The defendant Tozer constructed the common use areas of Meridian Park after phase one was built, including the clubhouse.

8. The defendant Michael W. Baldwin & Associates, P.A., a North Carolina professional corporation, is the civil engineer for phases two, three, four, five and six of Meridian Park.

9. The defendants Edwin Clark, Timothy Clark, Julian Vainright, Jr., and Henryk Kowalski and Elizabeth Figueroa a/k/a Elizabeth Kowalski d/b/a LMH Associates are other owners and developers, in addition to Max R. Joyner, Sr. and Max R. Joyner, Jr., of phase two, three and four units in Meridian Park. The defendants Edwin Clark, Timothy Clark, Julian Vainright, Jr. and Henryk Kowalski and Elizabeth Figueroa a/k/a Elizabeth Kowalski d/b/a LMH Associates did not develop phase one of Meridian Park, but subsequently purchased ownership in phase one units.

### **C. Relevant Requirements of the Fair Housing Act**

10. The Fair Housing Act provides that, for non-elevator residential buildings with four or more dwelling units, all ground-floor units that were designed and constructed for first occupancy after March 13, 1991, are "covered multifamily dwellings" and must include certain basic features of accessible and adaptable design to make such units accessible to or adaptable for use by a person who has or who develops a disability. See 42 U.S.C. § 3604 (f)(3)(C) and (f)(7)(B).

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

#### **D. Meridian Park Apartments**

12. Meridian Park is currently comprised of twenty-nine multi-story, non-elevator apartment buildings each having four or more apartment dwellings which were designed and constructed for first occupancy after March 13, 1991. There are 119 ground floor dwellings (of the 238 total) at Meridian Park that are "covered multifamily dwellings" within the meaning of 42 U.S.C. § 3604(f)(7)(B). The apartments and common areas of Meridian Park are subject to the requirements of 42 U.S.C. § 3604(f)(3)(C).

13. Phases one through five of Meridian Park have been fully constructed. Phase six is under construction. The first certificate of occupancy ("CO") for phase one of Meridian Park was issued on August 16, 1995, and the last CO was issued on September 15, 1997. The first CO for the buildings in phase two was issued on May 13, 1998 and the last CO was issued on

October 23, 1998. The first CO for the buildings in phase three was issued no earlier than April 19, 1999 and the last CO for phase three was issued no earlier than September 9, 1999. The COs for phase four were issued on August 29, 2001. The first temporary certificate of occupancy for a building in phase five was issued no earlier than September 27, 2004 and the last temporary COs for buildings in phase five were issued no earlier than November 18, 2004. The construction in phase six is not complete. Additional future phases of multifamily dwelling unit buildings are planned at Meridian Park, but have not been built at this time. The future phases will consist of approximately 17 additional multi-story, non-elevator apartment buildings each having four or more apartment dwellings.

14. The United States' investigation showed that the design and construction of Meridian Park fails to meet the public use and common use area accessibility requirements of the Act. First, there are no compliant resident and visitor accessible parking spaces serving phase one, two or three units, since the designated spaces are too narrow and lack access aisles. Second, there are no compliant curb cuts or ramps connecting parking to the sidewalks to allow an individual who uses a wheelchair to reach the ground floor units in phases one, two, three and four because ramps are absent or if existing are improperly constructed. Third, the mailboxes in phases one, two and three are on curbs that lack an accessible approach route and the top row of mailboxes in phase four, serving some covered units, is too high to be accessible. Fourth, many of the sidewalks comprising what should be accessible routes between the covered units and parking, the mailboxes and other site amenities, including the clubhouse, pool, tennis court and putting green, have excessive slopes greater than 8.33% and/or excessive cross slopes greater than 2% or, in many places, do not connect to the amenity. Finally, the tennis court does not

have an accessible parking space, 18" of clear maneuvering space on the pull-side of the gate, or a level landing in front of the gate.

15. The United States' investigation also shows that the design and construction of Meridian Park fails to meet the accessibility and adaptability requirements of the Act at the covered dwelling units in phases one, two and three. First, the primary entrance doors have round door knobs which require tight grasping and twisting rather than compliant lever door handles. Second, the bedroom doors, some walk-in closet doors, and the bathroom doors are not sufficiently wide for passage by a person using a wheelchair or other mobility aid. Third, the thresholds at the primary entrance and rear exterior doors are too high. Fourth, the thermostat controls and some ceiling fan switches are mounted above the maximum reach of wheelchair users. Fifth, there are no reinforcements in the bathroom walls to support the later installation of grab bars in covered units in phases one, two and three. Sixth, the kitchens in phases one, two and three do not provide sufficient clear floor space to allow a wheelchair user to maneuver. Additionally, some of the bathrooms do not provide sufficient clear floor space to allow a person using a wheelchair to maneuver and use the facilities and many of the toilets therein are too close to the adjacent side wall to allow the toilet to be transferred onto and used.

16. On February 24, 2003, the Court entered a Consent Order in United States v. Quality Built Construction f/k/a Dawn Construction, Civil Action Number: 4:00-CV-194-BO(3) (E.D. N.C., February 24, 2003). Part of that Consent Order provides for funds to be applied to retrofitting Meridian Park. Id. at page 11. The specific Meridian Park provisions are set out in

the footnote below.<sup>1</sup> A copy of the Hite/MSM, P.C. Consent Order is attached hereto as Appendix A, and incorporated herein by reference.

---

1

### **VIII. MERIDIAN PARK APARTMENTS**

*A. Meridian Park, like Hyde Park, is an apartment complex in which the tenants of the covered ground-floor units hold only a lease and have no authority to modify the individual units and over which Hite has no ownership or control. Therefore, there are significant practical impediments to Hite's bringing these units and the public and common use areas into compliance with the Act. To address these violations, Hite has agreed to take the actions set forth below. These actions are reasonable and practicable and will increase the number of housing units on the market with features of accessible and adaptable design.*

*B. Within forty-five (45) days of the date of entry of this Consent Order, Hite shall pay the total sum of **ONE HUNDRED THOUSAND AND NO/100 DOLLARS** (\$100,000.00) into an escrow fund ("Meridian Park Retrofit Fund") which shall be used to pay, at least in part, the costs of retrofitting the covered ground-floor units and the public and common use areas at Meridian Park. The Administrative Entity shall administer and distribute the Meridian Park Retrofit Fund in the following manner:*

- 1. The United States may seek an agreement with the owner(s) of Meridian Park, or an order from the Court requiring the owner(s) of Meridian Park, to retrofit or permit retrofitting of the covered ground-floor units and the public and common use areas at Meridian Park.*
- 2. If the United States receives such an agreement or order, the United States shall notify the Administrative Entity in writing of the order or agreement and direct the Administrative Entity to make a payment(s) from the Meridian Park Retrofit Fund to the entity which is responsible for making retrofits at Meridian Park to offset, at least in part, the total cost of retrofitting Meridian Park. Within thirty (30) days after receiving this written notification, the Administrative Entity shall deliver to counsel for the United States a check(s), from the escrow fund, payable as directed in the written notification. Any costs incurred in connection with the administration of the Meridian Park Retrofit Fund shall be paid from the Meridian Park Retrofit Fund.*
- 3. If at the end of the five (5) year term of this Consent Order any balance remains in the Meridian Park Retrofit Fund, the Administrative Entity shall notify the United States in writing that a balance remains and the amount of any such balance. Within thirty (30) days of notifying the United States, the Administrative Entity shall deposit the remaining balance into the Residual Fund to be used as directed in Section VI.B.3 above.*

## **E. Consent of the Parties to Entry of this Order**

17. The defendants have agreed to bring Meridian Park, including all future phases, into compliance with the Fair Housing Act, as set forth herein. At all other covered multifamily dwellings designed and/or built by any of the defendants for first occupancy after March 13, 1991 and in which that defendant has an ownership interest at the time of the entry of this Consent Order, except South Haven Apartments<sup>2</sup> located on South Square Drive near the intersection of South Memorial Drive in Greenville, North Carolina, such defendant agrees to take the additional steps which are also set forth herein.

18. The United States and the defendant agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3614(a). The defendants admit that they failed to design and/or construct Meridian Park in compliance with the Act. The parties further agree that the controversy should be resolved without further proceedings and without an evidentiary hearing or trial.

19. As indicated by the signatures appearing below, the United States and the defendants agree to entry of this Consent Order.

**It is hereby ORDERED, ADJUDGED and DECREED:**

## **II. GENERAL INJUNCTION**

20. The defendants and each of their officers, employees, agents, successors and assigns and all other persons in active concert or participation with them are enjoined from

---

<sup>2</sup> This Consent Order has no effect on the status of South Haven Apartments regarding compliance with the Fair Housing Act's accessibility requirements. Nothing in this Consent Order impairs or impedes the United States from undertaking any enforcement action against any person concerning South Haven Apartments.



discriminating on the basis of disability, as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(f)(1) - (3).

### **III. RETROFIT OF MERIDIAN PARK**

21. Meridian Park does not meet the accessibility and adaptability standards of the Fair Housing Act and the Fair Housing Accessibility Guidelines, Design Guidelines for Accessible/Adaptable Dwelling, 56 Fed. Reg. 9472 (1991) ("Guidelines"). To address these violations, the Joyner-Tozer-Janowski Defendants agree to take the corrective actions necessary to bring Meridian Park into compliance with the Act and the Guidelines by completing the actions described in this section and by remedying the violations listed in Appendices B and C.<sup>3</sup>

22. Accessible Building Entrances on Accessible Routes and Accessible and Usable Public and Common Use Areas: As soon as reasonably possible after entry of the Consent Order, but in any event not more than 12 months from the date of the entry of this Consent Order, the Joyner-Tozer-Janowski Defendants shall commence and finish the retrofits to the covered dwelling unit entrances, the accessible routes and the public and common use areas of Meridian Park that are set forth herein and remedy the violations in Appendix B. The Joyner-Tozer-Janowski Defendants shall pay all expenses associated with these retrofits and shall attempt, in good faith, to minimize any inconvenience to the residents of Meridian Park.

---

<sup>3</sup> HUD regulations provide that “[a] public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is accessible.” See 24 C.F.R. 100.201 (2002). HUD interprets “comparable standard” to mean a “standard that affords [persons with a disability] access essentially equivalent to or greater than that required by ANSI A117.1.” See 54 Fed. Reg. 3243 (Jan 23, 1989). Should the defendants elect to follow a standard other than ANSI for making the public and common-use areas accessible, they will inform the United States in writing of the standard. Such standard must provide access that is “essentially equivalent” to or “greater” than ANSI A117.1 (1986).

23. Interior of Ground Floor Dwellings: As soon as reasonably possible after entry of the Consent Order, but in any event not more than 42 months from the date of the entry of this Consent Order, the Joyner-Tozer-Janowski Defendants shall commence and finish the retrofits to the interior of the ground floor dwellings in phases two<sup>4</sup> and three<sup>5</sup> at Meridian Park that are set forth herein and remedy the violations in Appendix C. Also, as soon as reasonably possible after entry of the Consent Order, but in any event not more than 42 months from the date of the entry of this Consent Order, the Joyner-Tozer-Janowski Defendants shall commence and finish the retrofits to the interior of all of the end/exterior ground floor dwellings in phase one<sup>6</sup> and to the interior of four (4) center/interior ground floor dwellings in phase one at Meridian Park that are set forth herein and remedy the violations in Appendix C. The Joyner-Tozer-Janowski Defendants shall pay all expenses associated with these modifications and shall attempt, in good faith, to minimize any inconvenience to the residents of Meridian Park.

24. The Joyner-Tozer-Janowski Defendants shall finish the retrofits to the interior of 21 units within 14 months after entry of this Consent Order. The Joyner-Tozer-Janowski Defendants shall finish the retrofits to the interior of 47 units within 28 months after entry of this Consent Order. The Joyner-Tozer-Janowski Defendants shall finish the retrofits to the interior of 73 units within 42 months after entry of this Consent Order.

---

<sup>4</sup> Phase two buildings to be retrofitted are located at 2700, 2702, 2704 and 2706 Meridian Park Drive.

<sup>5</sup> Phase three buildings to be retrofitted are located at 2740, 2742, 2744, 2746, 2748 and 2750 Meridian Park Drive.

<sup>6</sup> Phase one buildings to be retrofitted are located at 2708, 2710, 2712, 2714, 2716, 2718, 2720, 2722, 2724, 2726, 2728 and 2730 Meridian Park Drive.

25. The Joyner-Tozer-Janowski Defendants have designed and constructed five ground floor dwellings in phases four and five that have accessibility enhancements beyond the requirements of the Fair Housing Act. The enhanced accessibility units are referred to as "Type A" units.<sup>7</sup> Currently, there are two Type A units on the ground floor in phase four, one end/exterior unit and one center/interior unit.<sup>8</sup> In addition, currently, there are three Type A units on the ground floor in phase five, one end/exterior unit and two center/interior units.<sup>9</sup>

26. The Joyner-Tozer-Janowski Defendants shall design and construct four two-bedroom center/interior units and two one-bedroom units on the ground floor in phase six<sup>10</sup> as Type A units containing accessibility enhancements beyond the requirements of the Fair Housing Act. Phase six is currently under construction. Defendants shall complete the construction of the phase six Type A units within 6 months after the entry of this consent order. Within 42 months after entry of this consent order, the Joyner-Tozer-Janowski Defendants shall design and construct five (5) two-bedroom center/interior units on the ground floor in the next phases of apartment construction at Meridian Park as Type A units containing accessibility enhancements beyond the requirements of the Fair Housing Act. All ground floor dwelling units in all non-

---

<sup>7</sup> "Type A" dwelling units shall comply with the requirements for Type A Dwelling Units found in the *North Carolina Accessibility Code* (formerly *Volume I-C, North Carolina State Building Code, Accessibility Code*), citing to requirements for Type A units in ICC/ANSI A117.1-1998 (Standard on Accessible and Usable Buildings and Facilities), The International Code Council, Incorporated.

<sup>8</sup> Phase four buildings are located at 2752, 2754, 2756 and 2758 Meridian Park Drive.

<sup>9</sup> Phase five buildings are located at 2760, 2762 and 2764 Meridian Park Drive.

<sup>10</sup> Phase six buildings are located at 2766, 2768, 2770 and 2772 Meridian Park Drive.

elevator buildings with four or more units in all future phases at Meridian Park Apartments shall comply with the design and construction requirements of the Fair Housing Act.

27. Within 30 days from the date of the entry of this Consent Order, the Joyner-Tozer-Janowski Defendants shall inform each tenant who resides in a ground floor dwelling in phases one, two and three, in writing, that: (1) the unit does not meet the accessible and adaptive design requirements of the Act; (2) the features of accessible and adaptive design can be retrofitted in the unit upon request; (3) the retrofits offered will be at no cost to the tenant; and (4) the scheduling of the retrofits will take into account the preferences and convenience of the tenant. This notice shall be substantially equivalent to the form of Appendix D. If the Joyner-Tozer-Janowski Defendants receive a request from a tenant of a ground floor dwelling to perform the retrofits, the Joyner-Tozer-Janowski Defendants shall complete the retrofits within 21 days from the date on which the retrofits were requested, with such deadline being subject to the provisions of Paragraph 56. In addition, the Joyner-Tozer-Janowski Defendants shall offer to move any current or future tenant living or intending to reside in a two-bedroom center/interior unit in phase one that has not been retrofitted to the first available accessible two-bedroom center/interior unit that has been retrofitted in phase one or that will be built as a Type A or Fair Housing Act compliant unit in the sixth or later phase at Meridian Park. The Joyner-Tozer-Janowski Defendants' obligation to move phase one two-bedroom center/interior unit residents will continue indefinitely unless and until all of the phase one two-bedroom center/interior units are retrofitted in compliance with Appendix C. A request to move a phase one two-bedroom center/interior unit resident shall be granted for any accessibility reason and shall not be restricted based on the disability status of the requesting resident(s).

28. Inspections: The Joyner-Tozer-Janowski Defendants shall enter into a contract with a neutral inspector approved by the United States (hereinafter “Inspector”) to conduct on-site inspections of the retrofits that have been performed under this Order to determine if the retrofits have been completed in accord with the specifications in Appendices B and C. Such inspector shall have expertise in the design and construction requirements of the Fair Housing Act and its implementing regulations, the Fair Housing Accessibility Guidelines (“Guidelines”), and ANSI A117.1 (1986).

29. The inspection shall take place within 30 days of the completion of all of the retrofits to units and common use areas, or as soon thereafter as practicable. The Joyner-Tozer-Janowski Defendants shall give the United States at least three weeks notice of the inspection and shall give the United States an opportunity to have its representative present for the inspection.

30. The Inspector shall set out the results of each inspection, including deficits if any, in writing and shall send that report to Counsel for the United States<sup>11</sup> and the Joyner-Tozer-Janowski Defendants. If the inspection indicates that not all of the required retrofits have been made in accordance with the Act, Guidelines, ANSI A117.1 (1986), and/or Appendices B and C, as applicable, the Joyner-Tozer-Janowski Defendants shall correct any deficiencies within a reasonable period of time as determined by the Inspector, and shall pay for another inspection by the same Inspector to certify the deficiencies have been corrected. This process shall continue

---

<sup>11</sup> All required submissions to the United States and Counsel thereof pursuant to this Order shall be sent via facsimile and overnight delivery to Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, NW Building – G St., Washington, D.C. 20530, Attn: DJ# 175-54-130, Facsimile: 202-514-1116, or as otherwise directed by the United States.

until the Inspector certifies that all of the necessary modifications have been made. The Joyner-Tozer-Janowski Defendants shall pay all of the Inspector's costs associated with these inspections, and such payments shall be made without regard to the Inspector's findings. Upon reasonable notice to the Joyner-Tozer-Janowski Defendants, representatives of the United States shall be permitted to inspect the modifications made by the Joyner-Tozer-Janowski Defendants in accordance with this Consent Order or the third-party inspection reports provided for in this Order, to ensure compliance; provided, however, that the United States shall endeavor to minimize any inconvenience caused by such inspections.

31. In the event a resident of a unit scheduled to undergo a modification incurs undue inconvenience or hardship (defined as a required dislocation from the unit for more than 24 hours consecutively), the Joyner-Tozer-Janowski Defendants will pay such resident the applicable government per diem rate for food and lodging for the local area for each day of undue inconvenience or hardship. Such payment shall be made prior to the commencement of any retrofit work on the resident's unit, so that the resident can use the money to obtain alternative living accommodations while dislocated.

32. The Joyner-Tozer-Janowski Defendants may not charge any additional rent, deposit or other fees for the units in which retrofits are implemented solely because of the contemplated or completed retrofits.

33. Sale or Transfer of an Ownership Interest in Meridian Park: The sale or transfer of ownership, in whole or in part, of the Meridian Park complex shall not affect the Joyner-Tozer-Janowski Defendants' continuing obligations to retrofit the properties as specified in this Consent Order, unless the Joyner-Tozer-Janowski Defendants have obtained, in writing, as a

condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of the Consent Order to complete all required retrofits as specified in the Consent Order and Appendices B and C. Should the Joyner-Tozer-Janowski Defendants decide to sell or transfer any ownership of Meridian Park, in whole or in part, or any portion thereof, including individual units, prior to the completion of the retrofits to remedy the violations specified in Appendices B and C, they shall, at least 30 days prior to completion of the sale or transfer, do the following:

a. Provide to each prospective buyer, purchaser or transferee a copy of this Consent Order, along with written notice that the Meridian Park is subject to this Consent Order, including specifically the Joyner-Tozer-Janowski Defendants' obligations to complete the required retrofit work and to allow inspections, or to obtain the buyer, purchaser or transferee's commitment to be bound by this Consent Order and complete the required retrofit work and allow inspections, in writing; and

b. Provide to the United States, by facsimile and first class mail, written notice of its intent to sell or transfer ownership, along with a copy of the notice sent to each buyer, purchaser or transferee and each buyer, purchaser or transferee's name, address and telephone number.

**IV. RETROFIT FUND FOR PHASE ONE OF MERIDIAN PARK FUNDED BY HITE/MSM, P.C. AND THE FARRIOR DEFENDANT**

34. As referenced above in paragraph 16, pursuant to the Hite/MSM, P.C. Consent Order entered in United States v. Quality Built Construction f/k/a Dawn Construction, Civil Action Number: 4:00-CV-194-BO(3) (E.D.N.C., February 24, 2003), attached hereto as Appendix A, an

escrow fund, entitled the "Meridian Park Retrofit Fund" was established to pay a portion of the costs of retrofitting the covered ground floor units in Phase 1 of Meridian Park.

35. The Joyner-Tozer-Janowski Defendants have committed to retrofit Phase 1 of Meridian Park in accordance with this Consent Order; therefore, the Joyner-Tozer-Janowski Defendants are hereby identified as the recipient of the Meridian Park Retrofit Fund established pursuant to the Hite/MSM, P.C. Consent Decree. The Joyner-Tozer-Janowski Defendants shall establish an interest-bearing escrow account ("Phase 1 Retrofit Fund") and deposit the check from the Administrative Entity administering the Meridian Park Retrofit Fund in the full amount of the Meridian Park Retrofit Fund, less any bank administrative fees, into the newly opened Phase 1 Retrofit Fund.

36. The Farior Defendant shall pay the total sum of **NINETY-FIVE THOUSAND DOLLARS (\$95,000.00)** in two payments into the Phase 1 Retrofit Fund which shall be used to pay a portion of the costs of retrofitting the covered ground floor units and the public and common use areas in Phase 1 at Meridian Park. The Farior Defendant shall make the first payment of **FORTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$47,500.00)** into the Phase 1 Retrofit Fund on October 30, 2005 and shall make the second payment of **FORTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$47,500.00)** into the Phase 1 Retrofit Fund on October 30, 2006.

37. The Joyner-Tozer-Janowski Defendants shall administer and distribute the Phase 1 Retrofit Fund by making payments from the fund to the entity performing the retrofits based on the Phase 1 retrofits that have been completed. However, at least two weeks before a payment is made, the Joyner-Tozer-Janowski Defendants shall notify the United States in writing of their



intent to make a payment by listing the amount of the payment, the payee, and the retrofits completed. No payment shall be made until the United States approves such payment. In addition to the notice, the Joyner-Tozer-Janowski Defendants shall send digital photographs of the interiors and/or exteriors before and after the retrofitting. If any balance remains in the Phase 1 Retrofit Fund after Phase 1 is completely retrofitted, it may be used to pay for retrofits in phases 2, 3, and 4.

#### **V. SURVEYING OF COMPLEXES NOT INSPECTED BY THE UNITED STATES**

38. Each of the defendants agrees to take the following actions with regard to any other covered multifamily dwellings (other than Meridian Park and South Haven Apartments<sup>12</sup>) which that defendant has designed and/or constructed for first occupancy after March 13, 1991, and in which that defendant has an ownership interest at the time of the entry of this Consent Order ("other covered multifamily dwellings"):

a. That defendant shall contract with one or more qualified architectural firms (hereinafter the "Surveyor(s)"), approved by the United States prior to such contraction, to conduct on-site surveys at each of the other covered multifamily dwellings to determine those properties' compliance with the Fair Housing Act.

b. The Surveyor(s) shall prepare a report specifying the scope, methodology and results of the surveys, as well as a description of any modifications deemed necessary for compliance with the accessibility provisions of the Fair Housing Act (hereinafter the "Report(s)").

---

<sup>12</sup> See paragraph 17.

c. The Report(s) shall be furnished to the United States by that defendant within six (6) months of the entry of this Consent Order.

d. The United States and that defendant shall have 90 days following receipt of a Surveyor's Report to reach agreement on the retrofits to be performed at the property and the time periods for the performance of such retrofits. If the United States and that defendant cannot reach agreement on the retrofits to be performed and the time periods for their performance, the matter shall be determined by the Court.

e. Upon completion of the retrofits specified in the Surveyor's Report for any given property, the Surveyor shall certify by on-site inspection that the retrofits performed have been completed in accord with the specifications in the report. The post-retrofit on-site inspection shall take place within 30 days of the completion of retrofits to units and common use areas on any given property, or as soon thereafter as practicable. That defendant shall give the United States at least three weeks notice of the inspection of each other covered multifamily dwellings, and shall give the United States an opportunity to have its representative present for the inspection of each property. Upon reasonable notice to that defendant, representatives of the United States shall be permitted to inspect the retrofits made by that defendant in accordance with this Consent Order or the third-party Surveyor Report(s) provided for in this Order, to ensure compliance; provided, however, that the United States shall endeavor to minimize any inconvenience caused by such inspections.

f. That defendant shall pay all costs associated with the surveys, inspections, and retrofits to each other covered multifamily dwellings, without prejudice to their ability to seek contribution or indemnification from other sources.

g. In the event a resident of a unit scheduled to undergo such retrofitting as required herein incurs undue inconvenience or hardship (defined as a required dislocation from the unit for more than 24 hours consecutively), that defendant will pay such resident the applicable government per diem rate for food and lodging for the local area for each day of undue inconvenience or hardship. Such payment shall be made prior to the commencement of any retrofit work on the resident's unit, so that the resident can use the money to obtain alternative living accommodations while dislocated.

h. For those other covered multifamily dwellings in which that defendant have any ownership or management interest at the time modifications are made, they may not charge any additional rent, deposit or other fees for the units in which retrofits are implemented solely because of the contemplated or completed retrofits.

i. The sale or transfer of ownership, in whole or in part, of any of the other covered multifamily dwellings complexes shall not affect that defendant's continuing obligations to survey and retrofit the properties as specified in this Section of this Consent Order. Should that defendant decide to sell or transfer ownership, in whole or in part, of any of the other covered multifamily dwelling complexes or any portion thereof prior to the completion of the Surveyor's Report or the retrofits specified in the Surveyors' Report, it will, at least 30 days prior to completion of the sale or transfer, do the following:

i. Provide to each prospective buyer written notice that the complexes are subject to this Consent Order, including specifically that defendant's obligations to complete required surveying and retrofit work and to allow inspections, along with a copy of this Consent Order; and

ii. Provide to the United States, by facsimile and first class mail, written notice of its intent to sell or transfer ownership, along with a copy of the notice sent to each buyer, and each buyer's name, address and telephone number.

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

39. For the duration of this Consent Order, the defendants shall maintain, and provide to the United States the following information and statements regarding any covered, multifamily dwellings intended to be purchased, developed, built, designed, and/or engineered in whole or in part, by any of them or by any entities in which they have a position of control as an officer, director, member, or manager, or have a fifty-percent (50%) or larger ownership share, including but not limited to future additional phases to be designed and/or constructed at Meridian Park:

a. The name and address of the project;

b. A description of the project and the individual units;

c. The name, address, and telephone number of the civil engineer(s) involved with the project;

d. A statement from the civil engineer(s) involved with the project acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and in the field of accessible site design and certifying that he/she

has reviewed the engineering documents for the project and that the design specifications therein fully comply with the requirements of the Fair Housing Act and the Guidelines;

e. The name, address and telephone number of the architect(s) involved with the project; and

f. A statement from the architect(s) acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and in the field of accessible building and housing design and certifying that he/she has reviewed the architectural plans for the project and that design specifications therein fully comply with the requirements of the Fair Housing Act and the Guidelines.

40. If the engineering documents or architectural plans are revised, and the revisions could have any impact on the accessibility of the dwellings or complex, the defendants shall obtain and maintain, and provide to the United States upon request, a statement from the civil engineer(s) or architect(s), as applicable, that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the requirements of the Fair Housing Act and the Guidelines.

## **VII. COMPENSATION OF IDENTIFIED AGGRIEVED PERSONS**

41. The Joyner-Tozer-Janowski Defendants shall pay<sup>13</sup> monetary damages in the amounts designated herein to each of the aggrieved persons who are current or past tenants or guests with a disability, or associated with a person with a disability, for damages suffered as a

---

<sup>13</sup> If any of the payments required under this Decree are made after the prescribed time, for whatever reason, such payments shall include interest from the prescribed time of payment, calculated by the formula set forth in 28 U.S.C. § 1961. Payment of such interest shall be in addition to any other remedies available to the United States for delays in payment.

result of the defendants' failure to design and construct Meridian Park Apartments in compliance with the Fair Housing Act and the Fair Housing Accessibility Guidelines: Lucille Chrestensen - **ELEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS** (\$11,250.00); Victoria Bitar - **EIGHT THOUSAND DOLLARS** (\$8,000.00); Monika West - **TWO THOUSAND SEVEN HUNDRED FIFTY DOLLARS** (\$2,750.00); Christopher M. West - **ONE THOUSAND DOLLARS** (\$1,000.00); and Michelle Romack - **THREE THOUSAND DOLLARS** (\$3,000.00). The payments to aggrieved persons total **\$26,000.00**.

42. The Joyner-Tozer-Janowski Defendants shall send a check payable to each of the aggrieved persons in the amounts listed above within thirty (30) days of the date of entry of this Consent Order to counsel for the United States. No amount shall be paid pursuant to this paragraph before the aggrieved person to whom it is paid has executed the written release of all claims, legal or equitable, that he or she might have against Defendants relating to the claims asserted in this lawsuit as set out in Appendix E.

### **VIII. CIVIL PENALTY**

43. The Joyner-Tozer-Janowski Defendants shall pay the total sum of **TEN THOUSAND DOLLARS (\$10,000.00)** to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C). Said sum shall be paid within 30 days of the date of entry of this Order by submitting a check made payable to the United States of America to Counsel for the United States.

### **IX. EDUCATIONAL PROGRAM**

44. Within 30 days of the entry of this Order, the defendants shall provide a copy of this Order to all their agents and employees involved in the design, construction, rental, or sale of

covered multifamily dwellings and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order, and has had an opportunity to have questions about the Order answered. This statement shall be substantially similar to the form of Appendix F.

45. During the term of this Order, within 30 days after the date he or she commences an agency or employment relationship with the defendants, each new agent or employee involved in the design, construction, rental, or sale of covered multifamily dwellings shall be given a copy of this Order and be required to sign the statement acknowledging that he or she has received and read the Order, and has had an opportunity to have questions about the Order answered. This statement shall be substantially similar to the form of Appendix F.

46. The defendants shall also ensure that they and any other employees and agents who have supervisory authority over the design and/or construction of covered multifamily dwellings have a copy of, are familiar with, and personally review, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, *A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act*, (August 1996, Rev. April 1998). The defendants and all of their employees and agents whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

47. Within 90 days of the date of entry of this Consent Order, the defendants and all employees and agents whose duties, in whole or in part, involved supervisory authority over the

development, design and/or construction of the multifamily dwellings at issue in this case shall undergo training on the design and construction requirements of the Fair Housing Act, except that based upon their affirmation, as evidenced by their signatures to this consent order, of not being involved in the design or construction of Meridian Park or any other covered multifamily dwellings, the defendants Edwin Clark, Timothy Clark, Julian Vainright, Jr., and Henryk Kowalski and Elizabeth Figueroa a/k/a Elizabeth Kowalski d/b/a LMH Associates are not required to attend this training, unless they are involved in the design or construction of multifamily dwellings during the term of this Consent Order. The training shall be conducted by a qualified third-party, who is unconnected to the defendants or their employees, agents or counsel, and is approved by the United States. All expenses associated with this training shall be borne by the defendants. The defendants shall provide to the United States, within 30 days after the training, the name(s), addresses(es) and telephone number(s) of the trainer(s); copies of the training outlines and any materials distributed by the trainers; and certifications executed by all the defendants and covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix G.

#### **X. NOTICE OF THE DEFENDANTS' NON-DISCRIMINATION POLICY**

48. Within 10 days of the date of entry of this Consent Order, the defendants shall post and prominently display in the sales or rental offices of all covered multifamily dwellings owned or operated by them, including Meridian Park, a sign no smaller than 10 by 14 inches indicating that all dwellings are available for rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.



49. For the duration of this Consent Order, in all future advertising in newspapers, and on pamphlets, brochures and other promotional literature regarding Meridian Park or any new covered multifamily complexes that any of the defendants may develop or construct, that defendant, as applicable, shall place, in a conspicuous location, a statement that the dwelling units include features for persons with disabilities required by the federal Fair Housing Act.

#### **XI. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS**

50. Within 100 days after the date of entry of this Consent Order, the defendants shall submit to the United States an initial report regarding the signed statements of the defendants, their employees and their agents who have completed the education and training program specified in Section IX of this Consent Order. Thereafter, during the term of this Order, the defendants shall, on the anniversary of the entry of this Order, submit to the United States a report containing the signed statements of new employees and agents that, in accordance with Section IX of this Consent Order, they have received and read the Order, and had an opportunity to have questions about the Order answered.

51. The defendants shall advise the United States in writing within fifteen days of receipt of any written administrative or legal fair housing complaint against any property owned or managed by any of the defendants, or against any employees or agents of the defendants working at or for any such property, regarding discrimination on the basis of disability in housing. Upon reasonable notice, the defendants shall also provide the United States all information it may request concerning any such complaint. The defendants shall also advise counsel for the United States, in writing, within fifteen (15) days of the resolution of any complaint.

52. For the term of this Consent Order, the defendants are required to preserve all records related to this Consent Order, for Meridian Park and all covered multifamily dwellings designed, constructed, owned, operated, or acquired by them. Upon reasonable notice to the defendants, representatives of the United States shall be permitted to inspect and copy any records of the defendants or inspect any developments or residential units under the defendants' control bearing on compliance with this Consent Order at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to the defendants from such inspections.

## **XII. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION**

53. This Consent Order shall remain in effect for five (5) years after the date of its entry. By consenting to entry of this Order, the United States and the defendants agree that in the event that the defendants engage in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

54. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Decree in the interests of justice.

55. The United States and the defendants shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by the defendants to perform, in a timely manner, any act required by this Order or otherwise for the defendants to fail to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an

order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

**XIII. TIME FOR PERFORMANCE**

56. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and the relevant defendants.

**XIV. COSTS OF LITIGATION**

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

So ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2005.

---

United States District Court Judge

Agreed to by the parties as indicated by the signatures appearing below:

*For Plaintiff United States of America:*

Bradley J. Schlozman  
Acting Assistant Attorney General  
Civil Rights Division

Frank D. Whitney  
United States Attorney

Steven H. Rosenbaum  
Chief, Housing and Civil  
Enforcement Section

---

R.A. Renfer, Jr.  
Assistant U.S. Attorney  
Civil Chief  
Civil Division  
310 New Bern Avenue  
Suite 800  
Raleigh, NC 87601-1461  
Telephone: (919)856-4530  
Fax: (919) 856-4821

---

Donna M. Murphy  
Deputy Chief  
Kevin J. Kijewski  
Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Housing and Civil  
Enforcement Section  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
(202) 305-2913  
Fax: (202) 514-1116

*For Defendants:*

For Max R. Joyner, Sr. a/k/a Max R. Joyner  
and JHJ Partnership:

---

Max R. Joyner, Sr.  
P.O. Box 30868  
Greenville, NC 27833-0868

For Max R. Joyner, Jr.,

---

Max R. Joyner, Jr.  
P.O. Box 30868  
Greenville, NC 27833-0868

For Fariior & Sons, Inc.,

---

Ken Wooten, Esq.  
Ward & Smith  
P.O. Box 867  
New Bern, NC 28563

For Tozer Builders, Inc.,

---

Leonard "Len" Tozer  
150 E Firetower Rd, #A  
Winterville, NC 28590

For Steve Janowski d/b/a Steve Janowski &  
Associates,

---

Jeffery B. Foster, Esq.  
Dixon, Daub, Conner & Foster  
315 South Evans Street, Suite 1  
Greenville, NC 27835-0019

For Michael W. Baldwin & Associates, P.A.

---

Michael W. Baldwin  
1015 Conference Drive  
Greenville, NC 27858

For Edwin Clark,

---

Edwin Clark  
426 Longmeadow Road  
Greenville, NC 27858

For Timothy Clark,

---

Timothy Clark  
324 Dupont Circle  
Greenville, NC 27858

*For Defendants:*

For Julian Vainright, Jr.,

---

Julian Vainright  
579 Lexington Drive  
Greenville, NC 27834

For Henryk Kowalski d/b/a LMH  
Associates,

---

Henryk Kowalski  
512 Chesapeake Place  
Greenville, NC 27858

For Elizabeth Figueroa a/k/a Elizabeth  
Kowalski d/b/a LMH Associates,

---

Elizabeth Figueroa  
512 Chesapeake Place  
Greenville, NC 27858

## APPENDIX A

## APPENDIX B

### ACCESSIBILITY RETROFITS TO PUBLIC AND COMMON USE AREAS AT MERIDIAN PARK

Defendants Max R. Joyner, Sr., a/k/a Max R. Joyner, JHJ Partnership, Max R. Joyner, Jr., Tozer Builders, Inc., Steve Janowski d/b/a J.S Janowski & Associates, Michael W. Baldwin & Associates, P.A., Edwin Clark, Timothy Clark, Julian Vainright, Jr., and Henryk Kowalski and Elizabeth Figueroa a/k/a Elizabeth Kowalski d/b/a LMH Associates, shall be jointly and severally responsible for taking corrective actions to eliminate the following Fair Housing Act accessibility violations pertinent to the exterior areas at Meridian Park Apartments:

**I. Accessible Building Entrance on an Accessible Route (Fair Housing Accessibility Guidelines, Requirement 1)** All routes to the covered dwelling unit entrances and among the covered dwelling units and the clubhouse, swimming pool, mailboxes, tennis court, putting green and dumpsters at Meridian Park shall be retrofitted to comply with the Fair Housing Act, Fair Housing Accessibility Guidelines (“Guidelines”), and ANSI A117.1 (1986).<sup>14</sup> Such retrofits shall correct the following violations:

#### **A. Accessible Routes**

1. There are no accessible routes to the ground floor unit entrances from parking areas at Meridian Park. [ANSI 4.6; FHAG Req. 1]

2. In phases one, two and three, one of the barriers on the routes to the ground floor units from parking is a 4" to 6" step that occurs from the parking areas to the sidewalks. [ANSI 4.3.8, 4.5.2]

3. The routes from the parking areas to building entrances have cross slopes exceeding ¼" per foot (2%) [ANSI 4.3.7] in the following locations (ranging between ¾" per foot (6.25%) and 1" per foot (8.33%)):

- a. Building 2702
- b. Building 2704
- c. Building 2716
- d. Building 2722

---

<sup>14</sup> The numbers in brackets that appear in Appendices B and C denote section references to the *American National Standards Institute (ANSI) for Buildings and Facilities — Providing Accessibility and Usability for Physically Handicapped People*, ANSI A117.1 (1986) [e.g., ANSI 4.4.2] or HUD’s Fair Housing Accessibility Guidelines [e.g., Req’t. #4] that are published at 56 Fed. Reg. 9472-9515 (March 6, 1991), 24 C.F.R. Ch. I, Subch. A, App. II (1991), including the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, 59 Fed. Reg. 33362-33368 (June 28, 1994).



- e. Building 2726
- f. Building 2740
- g. Building 2742

4. The route from the parking spaces to the building entrances have running slopes exceeding 1:20 (5.0%) [ANSI 4.3.7] without required ramp features, in the following locations (ranging between 1.5 in 20 (7.5%) and 4 in 20 (20%)) [ANSI 4.8]:

- a. Building 2702
- b. Building 2704
- c. Building 2726
- d. Building 2740
- e. Building 2742

5. In phase four, the curb ramps from the parking areas are positioned within the width of the sidewalk serving as the route to the ground floor units, thus the cross-slopes on the accessible route to every phase four covered dwelling exceeds 2% (at 8.33%). [ANSI 4.3.7, 4.3.8, 4.7, 4.8]

**B. Entrance Door Hardware** The entrance door hardware for covered dwelling units shall be retrofitted to comply with the Fair Housing Act, Guidelines, and ANSI A117.1(1986) by correcting the following violation:

Door hardware on the entrance door to ground floor units in phases one, two and three is inaccessible round knob type instead of acceptable lever type. [ANSI 4.13.9]

**II. Accessible Parking (Fair Housing Accessibility Guidelines, Requirements 1 & 2)**

Resident and visitor parking areas shall be retrofitted to comply with the Fair Housing Act, Guidelines, and ANSI A117.1 (1986) by correcting the following violations:

A. There is no accessible resident or visitor parking in phases one, two or three. [ANSI 4.6] There are no compliant curb ramps and no access aisles serving resident or visitor parking in phases one, two and three. [ANSI 4.6.2, 4.7]

B. In phase four, the cross slope in the access aisle to the curb ramp from the parking area in front of and between buildings 2756 and 2754 exceeds the 2% maximum allowed at 8.33%. [ANSI 4.3.7, 4.6.2]

C. In phase four, the slope of the curb ramp side flare (building 2754 side) exceeds the 10% maximum allowed at 15%. [ANSI 4.7.5]

**III. Accessible and Usable Public and Common Use Facilities (Fair Housing Accessibility Guidelines, Requirement 2)** The public and common use facilities shall be

retrofitted to comply with the Fair Housing Act, FHA Accessibility Guidelines, ANSI A117.1 (1986), by correcting the following violations.

### **A. Accessible Parking and Accessible Routes**

1. There are no accessible pedestrian routes from the entrances of ground floor dwelling units to the public streets or sidewalks. [*FHAG Req. 2 Chart at 1*].
2. There are no accessible pedestrian routes from the entrances of ground floor dwelling units to the clubhouse/office, swimming pool, putting green, tennis court, mailboxes, parking or dumpsters. [*FHAG Req. 2 Chart at 1*].
3. There is no designated accessible parking space to serve the tennis court. [ANSI 4.6.1 and 4.6.2 and *FHAG Req. 2 Chart at 4*].

### **B. Other Common and Public Use Areas**

#### **1. Mailboxes**

- a. The mailboxes in phases one, two and three are located on inaccessible curbed areas within the parking area, each having a 6" curb.
- b. The highest row of each of the mailboxes in phase four, which serve some ground floor units, have an operable key mechanism (at 55" to 59") higher than the 54" high maximum side reach range of wheelchair users. [ANSI 4.25.3, 4.2.5, 4.2.6].

**2. Putting Green** is not on an accessible route since the sidewalk does not extend to the green.

#### **3. Tennis Court**

- a. The gate into the court does not have 18" of clear maneuvering space on the pull side. [ANSI 4.13.6]
- b. The landing in front of the gate is not level as required, it slopes down towards the parking area at 9%. [ANSI 4.13.6]

## APPENDIX C

### ACCESSIBILITY RETROFITS TO GROUND FLOOR UNITS AT MERIDIAN PARK

Defendants Max R. Joyner, Sr., a/k/a Max R. Joyner, JHJ Partnership, Max R. Joyner, Jr., Tozer Builders, Inc., Steve Janowski d/b/a J.S Janowski & Associates, Michael W. Baldwin & Associates, P.A., Edwin Clark, Timothy Clark, Julian Vainright, Jr., and Henryk Kowalski and Elizabeth Figueroa a/k/a Elizabeth Kowalski d/b/a LMH Associates, shall be jointly and severally responsible for taking corrective actions to eliminate the following Fair Housing Act accessibility violations pertinent to the ground floor units at Meridian Park Apartments:

**I. Usable Doors (Fair Housing Accessibility Guidelines, Requirement 3)** All doors designed to allow passage into and within the ground floor dwellings in phases one, two and three at Meridian Park shall be retrofitted to be “sufficiently wide to allow passage by [persons with a disability] in wheelchairs.” 42 U.S.C. § 3604(f)(3)(C)(ii). [Req’t. #3, guideline (2)]. Such retrofits shall correct the following violations:

A. The interior doors in phase one, 2-bedroom interior units do not provide 32" clear opening width, with bedroom doors providing only 30", bathroom doors providing only 22½" and 29½", and the walk-in closet door providing only 22". [Req’t. #3, guide (2)].

B. The interior doors in phase one, 2-bedroom end units do not provide 32" clear opening width; with bedroom doors providing only 30", bathroom doors providing only 22½" and 29½", and the walk-in closet door providing only 22". [Req’t. #3, guide (2)].

C. The interior doors in phase two, 1-bedroom interior units do not provide 32" clear opening width; with bedroom doors providing only 28" and bathroom doors providing only 22" and 26". [Req’t. #3, guide (2)].

D. The interior doors in phase two, 1-bedroom end units do not provide 32" clear opening width, with bedroom doors providing only 28" and bathroom doors providing only 22" and 26". [Req’t. #3, guide (2)].

E. The interior doors in phase three, 1-bedroom interior units do not provide 32" clear opening width; with bedroom doors providing only 28" and bathroom doors providing only 22" and 26". [Req’t. #3, guide (2)].

F. The interior doors in phase three, 1-bedroom end units do not provide 32" clear opening width; with bedroom doors providing only 28" and bathroom doors providing only 22" and 26". [Req’t. #3, guide (2)].

**II. Accessible Route into and through the Covered Units (Fair Housing Accessibility Guidelines, Requirement 4.)** All ground floor dwelling units at Meridian Park in phases one, two and three shall be retrofitted to contain “an accessible route into and through the dwelling.”

42 U.S.C. § 3604(f)(3)(C)(iii)(I). [Req't. #4]. Such retrofits shall correct the following violations:

A. In phase one, 2-bedroom interior units there is a vertical level change of  $1\frac{1}{4}$ " to  $1\frac{1}{2}$ " on the inside of the primary entrance door threshold, exceeding the  $\frac{3}{4}$ " maximum allowed and exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

B. In phase one, 2-bedroom interior units there is a vertical level change of  $\frac{3}{4}$ " to 1" on the secondary or rear entrance door threshold, exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

C. In phase one, 2-bedroom end units there is a vertical level change of  $1\frac{1}{4}$ " to  $1\frac{1}{2}$ " on the inside of the primary entrance door threshold, exceeding the  $\frac{3}{4}$ " maximum allowed and exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

D. In phase one, 2-bedroom end units there is a vertical level change of  $\frac{3}{4}$ " to 1" on the secondary or rear entrance door threshold, exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

E. In phase two, 1-bedroom interior units there is a vertical level change of  $1\frac{1}{4}$ " to  $1\frac{1}{2}$ " on the inside of the primary entrance door threshold, exceeding the  $\frac{3}{4}$ " maximum allowed and exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

F. In phase two, 1-bedroom interior units there is a vertical level change of  $\frac{3}{4}$ " to 1" on the secondary or rear entrance door threshold, exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

G. In phase two, 1-bedroom end units there is a vertical level change of  $1\frac{1}{4}$ " to  $1\frac{1}{2}$ " on the inside of the primary entrance door threshold, exceeding the  $\frac{3}{4}$ " maximum allowed and exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

H. In phase two, 1-bedroom end units there is a vertical level change of  $\frac{3}{4}$ " to 1" on the secondary or rear entrance door threshold, exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

I. In phase three, 1-bedroom interior units there is a vertical level change of  $1\frac{1}{4}$ " to  $1\frac{1}{2}$ " on the inside of the primary entrance door threshold, exceeding the  $\frac{3}{4}$ " maximum allowed and exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

J. In phase three, 1-bedroom interior units there is a vertical level change of  $\frac{3}{4}$ " to 1" on the secondary or rear entrance door threshold, exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

K. In phase three, 1-bedroom end units there is a vertical level change of  $1\frac{1}{4}$ " to  $1\frac{1}{2}$ " on the inside of the primary entrance door threshold, exceeding the  $\frac{3}{4}$ " maximum allowed and exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

L. In phase three, 1-bedroom end units there is a vertical level change of  $\frac{3}{4}$ " to 1" on the secondary or rear entrance door threshold, exceeding the  $\frac{1}{4}$ " maximum not beveled or unsloped level change allowed [Req't. #4, guide (2) and (4)].

M. In phases one, two and three, of the six units inspected, three have a vertical level change that is not beveled or sloped at the outside of the primary entrance threshold, exceeding the  $\frac{1}{4}$ " allowed [Req't. #4, guide (2) and (4)].:

1. Unit #4, Building 2728 has a  $\frac{3}{4}$ " vertical drop
2. Unit #3, Building 2742 has a  $\frac{3}{4}$ " vertical drop
3. Unit #1, Building 2746 has a  $\frac{1}{2}$ " vertical drop

**III. Outlets, Switches and Other Environmental Controls in Accessible Locations – Fair Housing Accessibility Guidelines, Requirement 5.** All ground floor units in phases one, two and three at Meridian Park shall be retrofitted to place all light switches, thermostats, and other environmental controls in “accessible locations.” 42 U.S.C. § 3604(f)(3)(C)(iii)(II), including correction of the following violations:

A. In phase one, 2-bedroom interior units, the thermostat is mounted 55" above the floor (54" maximum per ANSI 4.25.3 and 48" maximum per Fair Housing Accessibility Guidelines). [Req't. #5]

B. In phase one, 2-bedroom end units, the thermostat is mounted 55" above the floor (54" side reach maximum per ANSI 4.25.3 and 48" maximum per Fair Housing Accessibility Guidelines). [Req't. #5]

C. In phase two, 1-bedroom interior units, the thermostat is mounted 61" above the floor (54" maximum per ANSI 4.25.3 and 48" maximum per Fair Housing Accessibility Guidelines). [Req't. #5]

D. In phase two, 1-bedroom interior units, the ceiling fan switch in the living room is 51" above the floor (48" maximum per Fair Housing Accessibility Guidelines). [Req't. #5]

E. In phase two, 1-bedroom end units, the thermostat is mounted 61" above the floor (54" maximum per ANSI 4.25.3 and 48" maximum per Fair Housing Accessibility Guidelines). [Req't. #5]

F. In phase three, 1-bedroom interior units, the thermostat is mounted 61" above the floor (54" maximum per ANSI 4.25.3 and 48" maximum per Fair Housing Accessibility Guidelines). [Req't. #5]

G. In phase three, 1-bedroom interior units, the ceiling fan switch in the living room is 51" above the floor (48" maximum per Fair Housing Accessibility Guidelines). [Req't. #5]

H. In phase three, 1-bedroom end units, the thermostat is mounted 61" above the floor (54" maximum per ANSI 4.25.3 and 48" maximum per Fair Housing Accessibility Guidelines). [Req't. #5]

#### **IV. Reinforced Walls for Grab Bars – Fair Housing Accessibility Guidelines,**

**Requirement 6** The Joyner-Tozer-Janowski defendants shall provide and install grab bars in the bathrooms of any ground floor unit at Meridian Park, upon request by the tenant, indefinitely, to remedy the following violations: 42 U.S.C. § 3604(f)(3)(C)(iii)(III).

A. In phases one, two and three there is no reinforcing for later installation of grab bars in the bathrooms.

B. In phase four, the molded fiberglass bathtub and shower modules are not flat which prevents the installation of standard grab bars along the entire length of the minimum area specified in the Guidelines for bath and shower grab bar reinforcing.

#### **V. Usable Kitchens and Bathrooms – Fair Housing Accessibility Guidelines,**

**Requirement 7.** The kitchens and bathrooms of all phase one, two and three ground floor units at Meridian Park shall be retrofitted to be usable by persons with mobility impairments and “such that an individual in a wheelchair can maneuver about the space.” 42 U.S.C. § 3604(f)(3)(C)(iii)(IV). Such retrofits shall correct the following violations:

##### **A. Kitchens** [Req't. #7, guide (1)(a)--30"x48" clear floor space]

1. In phase one, 2-bedroom interior units, there is not a 30" by 48" clear floor area parallel to and centered on the sink.

2. In phase one, 2-bedroom end units, there is not a 60" diameter maneuvering space in the U-shaped kitchen because there is only 46" between cabinets and 44½" between the range and opposing cabinets.

3. In phase one, 2-bedroom end units, there is not a 30" by 48" clear floor area parallel to and centered on the sink.

4. In phase two, 1-bedroom interior units, there is not a 60" diameter maneuvering space in the U-shaped kitchen because there is only 53" between cabinets and 45" between the face of the refrigerator and the opposing cabinets.

5. In phase two, 1-bedroom end units, there is not a 60" diameter maneuvering space in the U-shaped kitchen because there is only 53" between cabinets and 45" between the face of the refrigerator and the opposing cabinets.

6. In phase three, 1-bedroom interior units, there is not a 60" diameter maneuvering space in the U-shaped kitchen because there is only 53" between cabinets and 45" between the face of the refrigerator and the opposing cabinets.

7. In phase three, 1-bedroom end units, there is not a 60" diameter maneuvering space in the U-shaped kitchen because there is only 53" between cabinets and 45" between the face of the refrigerator and the opposing cabinets.

**B. Bathrooms** [Req't. #7, guide (2)(a)(ii)]; [Req't. #7, guide (2)(a)(ii) and fig. 7c-30 by 48 on sink]

1. In phase one, 2-bedroom interior units, at the rear bathroom there is not a 30" by 48" clear floor area outside the swing of the door.
2. In phase one, 2-bedroom interior units, at the rear bathroom there is not a 30" by 48" clear floor area beginning at the control wall at the shower.
3. In phase one, 2-bedroom interior units, at the rear bathroom there is not a 48" by 66" maneuvering space at the toilet for a front approach.
4. In phase one, 2-bedroom interior units, at the rear bathroom the toilet is located too close to the adjacent side wall at 15½".
5. In phase one, 2-bedroom interior units, at the front bathroom there is not a 30" by 48" clear floor area outside the swing of the door.
6. In phase one, 2-bedroom interior units, at the front bathroom there is not a 30" by 48" clear floor area parallel to and centered on the sink.
7. In phase one, 2-bedroom end units, at the front bathroom there would not be a 30" by 48" clear floor area outside the swing of a compliant sized door (e.g. a usable door providing a nominal 32" clear width).
8. In phase one, 2-bedroom end units, at the front bathroom there is not a 48" by 56" maneuvering space at the toilet for a side approach.
9. In phase one, 2-bedroom end units, at the front bathroom the toilet is located too close to the adjacent side wall at 15½".
10. In phase one, 2-bedroom end units, at the rear bathroom there is not a 30" by 48" clear floor area parallel to and centered on the sink.
11. In phase one, 2-bedroom end units, at the rear bathroom there is not a 30" by 48" clear floor area beginning at the control wall at the shower.
12. In phase one, 2-bedroom end units, at the rear bathroom there is not a 48" by 66" maneuvering space at the toilet for a front approach.
13. In phase two, 1-bedroom interior units, the toilet does not have an adequate clear floor area of a minimum of 33" between obstructions, it is only 27".
14. In phase two, 1-bedroom interior units, the centerline of the toilet is located too close to the adjacent side wall at 14".
15. In phase two, 1-bedroom end units, the toilet does not have an adequate clear floor area of a minimum of 33" between obstructions, it is only 27".
16. In phase two, 1-bedroom end units, the centerline of the toilet is located too close to the adjacent side wall at 14".
17. In phase three, 1-bedroom interior units, the toilet does not have an adequate clear floor area of a minimum of 33" between obstructions, it is only 27".
18. In phase three, 1-bedroom interior units, the centerline of the toilet is located too close to the adjacent side wall at 14".

19. In phase three, 1-bedroom end units, the toilet does not have an adequate clear floor area of a minimum of 33" between obstructions, it is only 27".

20. In phase three, 1-bedroom end units, the centerline of the toilet is located too close to the adjacent side wall at 14".



---

## **APPENDIX D**

### **TENANT NOTICE OF RETROFITS FOR MERIDIAN PARK APARTMENTS**

Meridian Park Apartments is dedicated to the principle of equal housing opportunity. The federal Fair Housing Act requires that ground-floor apartments in newer apartment communities have certain features of physical accessibility for people with disabilities.

Due to a lawsuit filed by the United States Department of Justice, inaccessible aspects of the complex have been brought to our attention and we are currently in the process of correcting those violations. We welcome people with disabilities as residents and guests at Meridian Park Apartments, and would like to make them as comfortable as possible. If you would like to make your apartment more accessible right away, Meridian Park Apartments may be able to assist you by altering certain features of your apartment home at no cost to you. Should any of the modifications require your temporary relocation, Meridian Park Apartments will pay certain housing and meal expenses while the modifications are being made. The alterations include:

**[ITEMIZE]**

It is not necessary that you or any member of your household be disabled in order to request these modifications. If you would like to request any of these modifications please contact us at: \_\_\_\_\_.

APPENDIX E

**RELEASE OF CLAIMS**

In consideration of the payment of the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), pursuant to the Consent Decree entered in United States v. Joyner, et al., Civil Action No. \_\_\_\_\_ (E.D. N.C.), I hereby release the defendants named in this action from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in the above-styled action.

I fully acknowledge and agree that this release of the defendants shall be binding on my heirs, representatives, executors, successors, administrators, and assigns.

I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**APPENDIX F**

**ACKNOWLEDGMENT OF RECEIPT OF CONSENT ORDER**

On \_\_\_\_\_, I received copies of and have read the Consent Order entered by the federal district court in *United States v. Max R. Joyner, Sr., et al.*, Case Number: \_\_\_\_\_ (E.D.N.C.), and the federal Fair Housing Act. I have had all of my questions concerning the Consent Order and the Fair Housing Act answered to my satisfaction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Date)

**APPENDIX G**

**CERTIFICATION OF FAIR HOUSING TRAINING**

On \_\_\_\_\_, I attended training on the federal Fair Housing Act. I have had all of my questions concerning the Fair Housing Act answered to my satisfaction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Date)