

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MEMPHIS CENTER FOR)
INDEPENDENT LIVING,)
)
Plaintiff, and)
)
UNITED STATES OF AMERICA,)
)
Plaintiff-Intervenor,)
v.)
)
MAKOWSKY CONSTRUCTION COMPANY,)
INC., ARCHEON, INC., REAVES SWEENEY)
MARCOM, INC., W. H. PORTER & CO., INC.,)
PENN INVESTORS, INC., JAN REALTY, INC.,)
BELZ/SOUTH BLUFFS, INC., MRB-WINDYKE, L.P.,)
MRB-STONEBRIDGE, L.P., and)
MAKOWSKY RINGEL GREENBERG, LLC,)
)
Defendants.)
_____)

No.: 01-2069 D/Pha

SUPPLEMENTAL CONSENT ORDER AS TO PLAINTIFF UNITED STATES OF AMERICA and DEFENDANTS PENN INVESTORS, INC., JAN REALTY, INC., and BELZ/SOUTH BLUFFS, INC.

I. INTRODUCTION

A. Background

On March 21, 2005, the Court entered a Consent Order as Docket Entry No. 468 in this case resolving allegations that Defendants Makowsky Construction Company, Inc., Archeon, Inc., Reaves Sweeney Marcom, Inc., W.H. Porter & Co. Inc., Penn Investors, Inc., JAN Realty, Inc., Belz/South Bluffs, Inc., MRB-Windyke, L.P., MRB-Stonebridge, L.P., and Makowsky

Ringel Greenberg, LLC., had designed and constructed multifamily dwellings at Champion Hills at Windyke (“Windyke”), Champion Hills at Stonebridge (“Stonebridge”), and Eton Square Apartments (“Eton”), without the features required by subsection 804(f)(3)(C) of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C) (“the FHA”) and the Americans with Disabilities Act, 42 U.S.C. §12183(a)(1) (“the ADA”).

Paragraph 19 of the Consent Order states that “at all other covered multifamily dwellings designed and/or built by the Defendants ... for first occupancy after March 13, 1991 and in which a Defendant has an ownership interest at the time of the entry of this Consent Order, Defendants agree to take the additional steps which are also set forth herein.” There are two other covered multifamily dwelling properties covered by the Consent Order: the Magnolia Hills Apartments at Hernando (“Magnolia Hills”) and Cypress Lakes Apartments in Tunica (“Cypress Lakes”) (“other covered properties”).

This Supplemental Consent Order is entered between the Plaintiff United States and Defendants Penn Investors, Inc., JAN Realty, Inc., and Belz/South Bluffs, Inc., collectively, the “Owner Defendants” of the other covered properties, to resolve issues related to these Defendants’ obligations under the Consent Order to make modifications at the other covered properties. The United States and the Owner Defendants (collectively “the Parties”) agree that Defendant JAN Realty, Inc. is the owner defendant responsible for ensuring that the modifications outlined in this Supplemental Consent Order are made at Cypress Lakes. The Parties agree that the Owner Defendants are responsible for ensuring that the modifications

outlined in this Supplemental Consent Order are made at Magnolia Hills.¹ The Parties agree that the other covered properties are subject to the accessible design and construction requirements of 42 U.S.C. §3604(f)(3)(C) and to 42 U.S.C. §12183(a)(1).

In January 2007, during the term of the Consent Order, Defendant JAN Realty, Inc., transferred its ownership interest in Cypress Lakes to Hayden Properties, LLC, the current owner of Cypress Lakes. The Parties agree that Defendant JAN Realty, Inc.'s obligations under the Consent Order with regard to that property were not extinguished by that transfer. Defendant JAN Realty agrees that it will immediately seek the cooperation of the current owners of Cypress Lakes so that it may fulfill its obligations under the Consent Order and this Supplemental Consent Order.

B. Defendants

1 Defendant JAN Realty, Inc., of 1010 June Road, Suite 201, Memphis, Tennessee 38119, was an owner of Cypress Lakes from the time of its construction until it transferred ownership of that property to Hayden Properties, LLC in January 2007. JAN Realty, Inc. is also a general partner in MRB-Hernando, L.P., the owner of Magnolia Hills.

2. Defendant Belz/South Bluffs, Inc., of 100 Peabody Place, Suite 1300, Memphis, Tennessee 38103, is a general partner in MRB-Hernando, L.P.

¹ The term "relevant owner defendant(s)" will be used herein to denote the Owner Defendant(s) who is/are responsible for modifications at each of the other covered properties.

3. Defendant Penn Investors, Inc., of 1010 June Road, Suite 101, Memphis, Tennessee 38119, is the successor in interest to Makowsky & Ringel, Inc., which developed Magnolia Hills, and is responsible for its debts, liabilities and duties.

C. Relevant Requirements of the Fair Housing Act

4. 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. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B).

5. The accessible and adaptable design provisions of the Fair Housing Act require that for covered multifamily dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with a disability using wheelchairs; 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 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. Relevant Requirements of the ADA

6. The Americans with Disabilities Act of 1990 (“ADA”), and the “Standards of Accessible Design,” 28 C.F.R. pt. 36, app. A, that have been issued by the U.S. Department of Justice to implement the design and construction requirements of Title III of the ADA, also require that all “public accommodations” designed and constructed for first occupancy after January 26, 1993, and the goods, services, facilities, privileges, advantages, or accommodations of those public accommodations, be readily accessible to and usable by persons with disabilities in accordance with certain accessibility standards promulgated under that Act. 42 U.S.C. § 12183(a)(1); 42 U.S.C. § 12182(a). A rental office for an apartment complex is a “public accommodation” under the ADA. 42 U.S.C. § 12181(7)(E). The rental offices at the Cypress Lakes and Magnolia Hills complexes were designed and constructed for first occupancy after January 26, 1993, and therefore the rental offices and the facilities and privileges provided at those offices such as public parking are required to be designed and constructed in accordance with the standards promulgated under the ADA.

E. The Properties Covered by this Supplemental Consent Decree

7. Cypress Lakes is comprised of ten (10) 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 eighty (80) ground floor dwellings at Cypress Lakes that are “covered multifamily dwellings” within the meaning of 42 U.S.C. §3604(f)(7)(B). The apartments and the common areas of Cypress Lakes, including the clubhouse, are subject to the requirements of 42 U.S.C. §3604(f)(3)(C); and the clubhouse rental offices of Cypress Lakes are public accommodations within the meaning of Section 301(7)(E) of the Americans with Disabilities Act, 42 U.S.C. §12181(7)(E).

8. Magnolia Hills has fifteen (15) 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 one-hundred and twenty (120) ground floor dwellings at Magnolia Hills that are “covered multifamily dwellings.” The apartments and the common areas of Magnolia Hills, including the clubhouse, are subject to the requirements of 42 U.S.C. §3604(f)(3)(C); and the clubhouse rental offices of Magnolia Hills are public accommodations within the meaning of Section 301(7)(E) of the Americans with Disabilities Act, 42 U.S.C. §12181(7)(E).

9. A neutral inspector selected by the Owner Defendants and approved by the United States has inspected Cypress Lakes and Magnolia Hills and has specifically identified failures to meet the Accessible Design Requirements and Standards of Accessible Design at this complex.

F. Consent of the Parties to Entry of this Supplemental Consent Order

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

11. The Owner Defendants deny that they have violated the law, and this Supplemental Consent Order does not constitute any admission of liability on the part of any of the Owner Defendants.

12. As indicated by the signatures appearing below, the Parties agree to entry of this Supplemental Consent Order.

It is hereby ADJUDGED, ORDERED and DECREED that:

II. MODIFICATION OF CYPRESS LAKES AND MAGNOLIA HILLS

13. The relevant owner defendants agree to complete the actions described in this section and Appendices A and B and other actions described in this Order.²

14. The Funding of Modifications at Cypress Lakes: Defendant JAN Realty, Inc. will immediately upon entry of this Supplemental Consent Order, and in consultation with the current owners of Cypress Lakes, select a third party contractor who will, within 45 days of the entry of this Consent Order, provide Defendant JAN Realty, Inc. and the current owners of Cypress Lakes with an estimate of the cost of making the retrofits outlined in Appendix A, including the potential modifications designated in Appendix A as “on request,” and the cost of the potential modifications outlined in paragraphs 24 of this Supplemental Consent Order. Within 75 days of the entry of this Supplemental Consent Order, Defendant JAN Realty, Inc. shall endeavor to negotiate with the current owners of Cypress Lakes regarding the estimated cost of the modifications required herein, and, should an agreement be reached as to the estimated cost, deposit such sum into an interest bearing escrow account used solely to fund the modifications. Should Defendant JAN Realty, Inc. and the current owners of Cypress Lakes be unable to agree as to an amount to be deposited in such escrow account to cover Defendant JAN Realty, Inc.’s obligations under this Supplemental Consent Order, Defendant JAN Realty, Inc., within 75 days of the entry of this Supplemental Consent Order, shall deposit into the escrow account the amount estimated by the third party contractor for the retrofits outlined in Appendix A. The amount to be deposited for the potential modifications designated in Appendix A as “on request”

² 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 disabilities] access essentially equivalent to or greater than that required by ANSI A117.1.” See 54 Fed. Reg. 3243 (Jan 23, 1989).

shall be limited to 10% of the estimated cost of the “on request” potential modifications.

Defendant JAN Realty, Inc. agrees that it will replenish the money in the escrow account if more money is necessary to complete the modifications required herein during the term of this Supplemental Consent Order. Defendant JAN Realty, Inc. will administer the escrow account. Upon the request of either the United States or the current owners of Cypress Lakes, Defendant JAN Realty, Inc., will provide an accounting of the escrow account, including documentation of all deposits and withdrawals, and any documentation necessary to show that all money withdrawn from the escrow account has been used for the purposes outlined in this Supplemental Consent Order. At the expiration of this Supplemental Consent Order, and completion of the required modifications, any funds remaining in the escrow account shall revert to JAN Realty, Inc., without limitation to the continuing obligation to provide the potential modifications designated in Appendix A as “on request”, or the potential modifications outlined in paragraph 24 of the Supplemental Consent Order.

15. Accessible Building Entrances on Accessible Routes and Accessible and Usable Public and Common Use Areas:

a. JAN Realty, Inc. shall actively seek the involvement and approval of the current owners of Cypress Lakes to allow it, or a third-party contractor selected in consultation with the current owners of Cypress Lakes (“designated agent”), to make modifications to the building entrances, accessible routes and the public and common use areas of Cypress Lakes that are set forth in Appendix A. JAN Realty, Inc. or its designated agent shall commence and finish modification to the building entrances, accessible routes and the public and common use areas of Cypress Lakes that are set forth in Appendix A as soon as reasonably possible after obtaining the approval of the current owners to make these modifications, but not more than twenty-one

months from the date on which this Supplemental Consent Order is entered. Through the money deposited in the escrow account, as set out in Paragraph 14, Defendant JAN Realty, Inc., shall pay all expenses associated with the modifications and shall attempt, in good faith, to minimize any inconvenience to the residents of the apartments.

b. The Owner Defendants shall commence and finish the modifications to the building entrances, accessible routes and the public and common use areas of Magnolia Hills that are set forth in Appendix B as soon as reasonably possible after entry of this Supplemental Consent Order but not more than eighteen months from the date on which this Supplemental Consent Order is entered. The Owner Defendants shall pay all expenses associated with the modifications and shall attempt, in good faith, to minimize any inconvenience to the residents of the apartments.

16. Interior of Ground Floor Dwellings:

a. Defendant JAN Realty, Inc. shall actively seek the involvement and approval of the current owners of Cypress Lakes to allow it or its designated agent to make modifications to the interior of the ground floor dwellings at Cypress Lakes that are set forth in Appendix A. Defendant JAN Realty, Inc. or its designated agent shall then commence and finish those modifications.

b. The Owner Defendants shall commence and finish the modifications to the interior of the ground floor dwellings at Magnolia Hills that are set forth in Appendix B.

c. Schedule for the Performance of Modifications to Interiors of Ground Floor Dwellings: For each unit for which the tenant does not request an immediate retrofit as provided in paragraph 17, the modification shall be performed in accord with the following:

1. Retrofits Done “As Turned”: The relevant owner defendants or their designated agents, shall commence and finish the modifications in these appendices where specified “done as turned” no later than the first time the unit becomes vacant following entry of this Supplemental Consent Order and before the unit is occupied by a new tenant. Regardless of whether or not a vacancy arises for such modification, however, Defendant JAN Realty, Inc. or its designated agent shall perform such modifications at Cypress Lakes within 15 months of the entry of this Supplemental Consent Order, and the Owner Defendants shall perform such modifications at Magnolia Hills within one year of the entry of this Supplemental Order. These deadlines are subject to the provisions of Paragraph 23 regarding the sale or transfer of an ownership interest.

2. Retrofits Done “On Request”: Defendant JAN Realty, Inc. or its designated agent at Cypress Lakes, and the Owner Defendants at Magnolia Hills, shall commence and finish the modifications in these appendices where specified “done on request” within 21 days from the date on which the retrofit is requested in writing by a tenant or prospective tenant of a ground floor dwelling entitled to the modification specified in these appendices. Future prospective tenants of the affected units will be informed of the availability of the modifications “done on request” in the same manner as the accessible enhancements specified in Paragraph 25. The availability of modifications to be “done on request” are not limited by the term of the Supplemental Consent Order.

d. The relevant owner defendants shall pay all expenses associated with these modifications and shall attempt, in good faith, to minimize any inconvenience to the residents of the apartments.

17. Within 30 days from the date of the entry of this Supplemental Consent Order, the Owner Defendants shall provide each and every tenant who resides in a ground floor dwelling of Magnolia Hills with the notice, informing the tenant that: (a) the United States has filed a lawsuit alleging that unit does not meet the accessible and adaptive design requirements of the Act, which the defendants have denied; (b) that accessibility modifications can be installed in the unit upon request for use by a person with a disability; (c) the accessibility modifications offered will be at no cost to the tenant; and (d) the scheduling of the modifications will take into account the preferences and convenience of the tenant. Defendant JAN Realty, Inc., shall have ninety (90) days to ensure that similar notice is provided at Cypress Lakes. The notice provided at both properties shall be substantially equivalent to the form of Appendix C. If any of the relevant owner defendants receives a request from a tenant of a ground floor dwelling to perform the modifications, the relevant owner defendants or their designated agent shall complete the modifications within 21 days from the date on which the modifications were requested, with the exception of those accessibility enhancements described below in Paragraphs 24(a), (b) and (c), which shall be installed in within 30 days of the written request.

18. Inspections: The relevant owner defendants shall enter into a contract with a neutral inspector approved by the United States (hereinafter “Inspector”) to conduct on-site inspections of the modifications that have been performed under this Order to determine if they have been completed in accord with the specifications for that apartment complex set out in Appendices A and B. As a part of that contract, the neutral inspector will take digital photographs of the measurements that he/she has taken to determine compliance with this Supplemental Order and will make those photos available as part of his/her report.

19. After completion of the modifications described in Paragraph 16(c)(1) but not more than

sixteen months after the entry of this Supplemental Consent Order, the first inspection shall take place of the modifications to the interiors of ground floor dwellings described in the Appendices A and B. After completion of the modifications described in Paragraph 15 but not more than twenty-two months after entry of the Consent Order, the second inspection shall take place of the modifications to the public and common use areas described in the Appendices A and B. Subsequent inspections will occur if required by Paragraph 20. The relevant owner 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. Defendant JAN Realty, Inc. will solicit the consent of the current owners of Cypress Lakes to allow for the inspections of Cypress Lakes required under this Supplemental Consent Order.

20. 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 States³ and the relevant owner defendants. If the inspection indicates that not all of the required modifications have been made as specified in Appendices A or B, Defendant JAN Realty, Inc., or its designated agent at Cypress Lakes, and/or the Owner Defendants at Magnolia Hills 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 until the Inspector certifies that all of the necessary modifications have been made. Defendant JAN Realty, Inc. at Cypress Lakes, and the Owner Defendants at Magnolia Hills shall pay all of the Inspector's costs associated with these inspections, and such payments

³ For purposes of this Order, counsel for the United States is 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# 175-72-122, or as otherwise directed by the United States.

shall be made without regard to the Inspector's findings. Upon reasonable notice to Defendant JAN Realty, Inc., who will solicit the consent of the current owners at Cypress Lakes, and/or the Owner Defendants at Magnolia Hills, representatives of the United States shall be permitted to inspect the modifications made in accordance with this Supplemental Consent Order or the third-party inspection reports provided for in this Supplemental Order, to ensure compliance; provided, however, that the United States shall endeavor to minimize any inconvenience caused by such inspections. Any disputes between the parties as to the Inspector's findings shall be subject to the Court's continuing jurisdiction as set forth in Paragraph 32 below.

21. 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 relevant owner 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 modification work on the resident's unit, so that the resident can use the money to obtain alternative living accommodations while dislocated.

22. Owner Defendants may not charge any additional rent, deposit or other fee for the units solely because the modifications in Appendices A and B or the accessibility enhancements specified in Paragraph 24 are contemplated or completed.

23. Sale or Transfer of an Ownership Interest the Covered Properties:

a. Magnolia Hills: The sale or transfer of ownership, in whole or in part, of this property shall not affect the Owner Defendants' continuing obligations to modify that property as specified in Paragraphs 15-22 and to provide accessibility enhancements as specified in Paragraph 24 of this Consent Order. Should the Owner Defendants decide to sell or transfer any

ownership of Magnolia Hills, the Owner Defendants agree: (a) if prior to the completion of the retrofits specified in Appendix B, at least thirty (30) days prior to completion of the sale or transfer, to provide to each prospective buyer written notice that Magnolia Hills is subject to this Supplemental Consent Order, including specifically the Owner Defendants' obligations to complete required retrofit work and to allow inspections, along with a copy of this Consent Order; and (b) at least thirty (30) days prior to completion of the sale or transfer, regardless of whether that sale or transfer occurs during or after the term of this Supplemental Consent Order, to provide to each prospective buyer written notice of Defendants' obligations to install accessibility enhancements as provided in Paragraphs 24 and 27 along with a copy of this Supplemental Consent Order. If the sale or transfer occurs during the term of this Supplemental Consent Order, no later than one week after such sale or transfer, the Owner Defendants will notify the United States in writing, by facsimile and first class mail, of its action, along with a copy of the notice sent to each buyer, and each buyer's name, address and telephone number.

b. Cypress Lakes: Defendant JAN Realty, Inc.'s obligations under this Supplemental Consent Order are not extinguished by the current owners' sale or transfer of their interest in Cypress Lakes to a third party. If Defendant JAN Realty, Inc. becomes aware that the current owners of Cypress Lakes have decided to sell or transfer any ownership of Cypress Lakes, Defendant JAN Realty, Inc. agrees: (a) if prior to the completion of the retrofits specified in Appendix B, within thirty (30) days of becoming aware of the sale or transfer, or pending sale or transfer, to provide to each prospective buyer written notice that Cypress Lakes is subject to this Supplemental Consent Order, including specifically Defendant JAN Realty, Inc.'s obligation to complete required retrofit work and to allow inspections, along with a copy of this Consent Order; and (b) within thirty (30) days of becoming aware of the sale or transfer, or pending sale

or transfer, regardless of whether that sale or transfer occurs during or after the term of this Supplemental Consent Order, to provide to each prospective buyer written notice of Defendant JAN Realty, Inc.'s obligations to install accessibility enhancements as provided in Paragraphs 24 and 27 along with a copy of this Supplemental Consent Order. If Defendant JAN Realty, Inc. becomes aware that such a sale or transfer occurs during the term of this Supplemental Consent Order, no later than one week after becoming aware of such sale or transfer, Defendant Jan Realty, Inc. will notify the United States in writing, by facsimile and first class mail, of such sale or transfer, along with a copy of the notice sent to each buyer, and each buyer's name, address and telephone number.

III. ACCESSIBILITY ENHANCEMENTS AT MAGNOLIA HILLS AND CYPRESS LAKES

24. Accessibility Enhancements: The relevant owner defendants shall make the following accessibility enhancements available to all current and prospective tenants with disabilities at Magnolia Hills and Cypress Lakes:

- a. the removal of cabinetry under the kitchen sink and/or bathroom lavatory such that a person using a wheelchair can make a full forward approach to the sink in accordance with ANSI 4.32.5.5 and, where bathroom cabinetry is removed, install wall mounted cabinets to make up for loss of storage under the lavatory;
- b. either the removal of the oven unit such that a person using a wheelchair can make a full forward approach to the cook top in accordance with ANSI 4.32.5.6 plus the provision of a separate oven appliance (*i.e.* convection oven) or the alternative removal of the necessary cabinetry to allow a full parrallel approach to the oven in accordance with ANSI 4.32.5.7;

- c. accessible bathrooms with roll-in showers in accordance with ANSI 4.21;
- d. taller accessible toilets through the provision of toilet seat extenders;
- e. the installation of grab bars surrounding the bathing and toilet areas in accordance with ANSI 4.21.4;
- f. lever door hardware throughout the unit;
- g. a security system with panic button(s) option at the control pad;
- h. lever controls on faucets, tubs, kitchens baths and all other fixtures;
- i. wand shower head on flexible tube or shower head on height adjustable rod;
- j. U-shaped pulls near hinges on exterior of front door;
- k. Ramp over the level drop on the exterior side of the patio door;
- l. Install strobe light alarms for fire;
- m. Relocate hanging rods and shelves in the closet to be within ANSI reach ranges.

25. Information for Current and Prospective Tenants About Accessibility Enhancements:

Within 60 days after the entry of the Order, the relevant owner defendants shall prepare and submit in draft for approval by the United States, a brochure containing descriptions and pictures of retrofits to be provided upon request set out in Paragraph 16(c)(2) above and the accessibility enhancements set out in Paragraphs 24 and 27. The brochure shall explain that current and prospective tenants with disabilities may elect to have any or all of these features installed in their units or provided at no cost to the current or prospective tenant. The brochure shall provide the applicable dimensions of each accessible feature and include floor plans and other illustrations showing how the accessibility enhancements will be incorporated into each unit

type. A copy of the brochure shall be provided to each current and prospective tenant at Magnolia Hills and Cypress Lakes.

26. Installation of Accessibility Enhancements: Upon written request, any current or prospective tenant with disabilities will be entitled to have a ground floor apartment retrofitted to include any retrofit specified in Paragraph 16(c)(2) above and the accessibility enhancements set out in Paragraph 24 above of his or her choice. If the request is for a roll-in shower, as specified in Paragraph 24(c) above, Defendant JAN Realty, Inc. at Cypress Lakes, with the approval and cooperation of the current owners of Cypress Lakes, or the Owner Defendants at Magnolia Hills, shall have the option of offering a unit with the same number of bedrooms at the same property that has already been modified to include a roll-in shower in lieu of an additional roll-in shower in another unit. Any accessibility enhancement shall be installed by Defendant JAN Realty, Inc. or its designated agent at Cypress Lakes, or the Owner Defendants at Magnolia Hills, within 21 days of the written request, with the exception of enhancements described in 24(a), (b) and (c) above, which shall be installed within 30 days of the written request. The rent for these units shall be the same as for equivalent units that are not retrofitted to contain accessibility enhancements.

27. Accessibility Enhancements to Magnolia Hills and Cypress Lakes Common Areas: The Owner Defendants shall provide the following features and services at Magnolia Hills to enhance accessibility:

- a. mail pick-up and delivery for tenants with disabilities upon request.
- b. trash pick-up near the unit entrances for tenants with disabilities upon request.

Defendant JAN Realty, Inc., shall work with the current owners of Cypress Lakes to ensure that similar features and services are provided at Cypress Lakes to enhance accessibility. Defendant

JAN Realty, Inc., shall be responsible for any costs to the current owners of Cypress Lakes associated with providing these features and services.

28. Waiver of Fair Housing Claims: For purposes of resolving this lawsuit, the United States accepts compliance with Section III, paragraphs 24 through 27 of this Consent Order, as a substitute for retrofits to achieve substantial compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C) of the Act. The United States waives any claims it may have to pursue relief against the Owner Defendants for the failure to design and construct Magnolia Hills and Cypress Lakes in compliance with the requirements of 42 U.S.C. 3604(f)(3)(C), except for claims pursuant to 42 U.S.C. § 3612(o), so long as the enhancements listed in Section IV, paragraphs 24 through 27 of this Consent Order, which are not limited by the term of the Consent Order, are provided as requested at Magnolia Hills and Cypress Lakes.

IV. DURATION OF SUPPLEMENTAL CONSENT ORDER AND TERMINATION OF LEGAL ACTION

29. This Supplemental Consent Order shall remain in effect for two (2) years after the date of its entry.

30. The Court shall retain jurisdiction for the duration of this Supplemental Consent Order to enforce the terms of the Supplemental Consent Order, after which time the case shall be dismissed with prejudice. Plaintiffs may move the Court to extend the duration of the Order in the interests of justice.

31. The relevant owner defendants' obligations to provide modifications to the interior of covered dwellings as set forth in Paragraphs 16(c)(2) and 24-28, are not limited by the term of the Supplemental Consent Order. They may contract with others to provide such modifications,

but such contract will not relieve them of their responsibilities under this Supplemental Consent Order.

32. The Parties shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Supplemental Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by any of the owner defendants to perform, in a timely manner, any act required by this Supplemental Order or otherwise for any owner defendant 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.

V. TIME FOR PERFORMANCE

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

VI. COSTS OF LITIGATION

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

IT IS SO ORDERED this, 7th day of October, 2008.

s/Bernice B. Donald
BERNICE BOUIE DONALD
UNITED STATES DISTRICT COURT JUDGE

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

For United States of America

GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

/s/ Sara L. Niles
STEVEN H. ROSENBAUM
Chief
MICHAEL S. MAURER
Deputy Chief
SARA L. NILES
Attorney
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Housing & Civil Enforcement Section - G. St.
Washington, D.C. 20530
(202) 514-2168

Gary A. Vanasek
Assistant United States Attorney
Office of the United States Attorney for
Western District of Tennessee
800 Federal Building
167 North Main Street
Memphis, Tennessee 38103

For Penn Investors, Inc., JAN Realty, Inc., and Belz/South Bluffs, Inc.:

/s/ Teresa L. Kitay
Theresa L. Kitay
Attorney at Law
578 Washington Boulevard, Suite 836
Marina del Rey, CA 90292