



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FORT NORFOLK RETIREMENT COMMUNITY,)
 INC., d/b/a/ HARBOR'S EDGE)
)
 Defendant.)

Case No. 2:15 cv 200

CONSENT ORDER

I. INTRODUCTION

1. The United States' Complaint alleges that Defendant Fort Norfolk Retirement Community, Inc., d/b/a Harbor's Edge ("Fort Norfolk" or "Defendant") discriminated against residents and prospective residents of the Harbor's Edge continuing care retirement community on the basis of disability in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3619 ("FHA" or "Act"). Fort Norfolk denies that it discriminated against any person. Fort Norfolk agrees to the terms of this Consent Order resolving this action filed by Plaintiff United States in order to resolve this matter without the time and expense of litigation.

II. BACKGROUND

2. Fort Norfolk is a Virginia not-for-profit corporation that owns and operates Harbor's Edge, a continuing care retirement community, and leases or sells dwelling units there. Harbor's Edge is located in Norfolk, Virginia. It has 163-independent living units ("IL" or "Independent Living" also termed "Residential Living") located in the building called "the Residential Tower." Harbor's Edge also has a 33-unit assisted living ("AL") unit, a 33-bed nursing ("Nursing" or "SN" for skilled nursing) unit and a 17-bed memory support ("MS") unit,

all located in the building known as “the Healthcare Building.” Although the Residential Tower and Healthcare Building are physically connected, residents of each building at each level of care have access to defined common use areas, including dining rooms, dedicated to that specific level of care. “Independent Living” residents participate in a “Life Care” program that provides certain benefits and assurances of care as these residents age in place. Some, but not all, of the residents of the Healthcare buildings also participate in the Life Care program.

3. Harbor’s Edge is a “dwelling” within the meaning of the Act, 42 U.S.C. § 3602(b). The Healthcare building houses residents who have disabilities¹ within the meaning of the Act, 42 U.S.C. § 3602(h). In addition, residents of the Healthcare building and the Residential Tower who require the use of mobility aids, including canes, walkers, manual wheelchairs, and motorized wheelchairs and scooters, have disabilities within the meaning of the Act, 42 U.S.C. § 3602(h).

4. The Complaint alleges that Fort Norfolk employed or employs several policies that discriminate against persons with disabilities, including: 1) prohibiting and limiting residents living in the Healthcare building from eating at the dining rooms located in the Residential Tower building; 2) prohibiting and limiting residents living in the Healthcare building from attending Residential Tower and marketing events held outside of the Healthcare building with residents of the Residential Tower and prospective residents; and 3) having a written policy requiring residents who use a motorized mobility aid to pay a \$300 non-refundable deposit, purchase liability insurance and obtain Harbor’s Edge permission to use the motorized mobility aid in the facility.

¹ Although the Act refers to the protected class as persons with “handicap[s],” the term “disabilities” is synonymous and generally preferred, *see Bragdon v. Abbott*, 524 U.S. 624, 631 (1998), and will be used in this Consent Order.

5. The Complaint also alleges that, through these policies and practices, Fort Norfolk has discriminated in violation of the Fair Housing Act and that this conduct constitutes a pattern or practice of discrimination in violation of the Act and a denial to a group of persons of rights granted by the Act, which raises an issue of general public importance.

6. The Complaint further alleges that when residents and family members complained about the policies limiting their use of the dining rooms in the Residential Tower Building and attendance at events, Fort Norfolk retaliated against them in violation of the FHA.

7. Fort Norfolk denies that it discriminated or retaliated against anyone, or that it otherwise violated the Fair Housing Act. Fort Norfolk contends that it adopted the challenged procedures only after medical incidents involving Assisted Living and Nursing residents in the unregulated dining room, located in the Residential (or Independent Living) Tower, and only after obtaining the advice of counsel, the facility's Resident Advisory Council, and officials of the Virginia Department of Health and the Virginia Department of Social Services. Defendant contends that it liberalized its policy within 24 hours of being advised by a state official that a more inclusive policy would not violate state law, and accordingly that it has acted in good faith throughout. Nothing in this Consent Order should be taken as an admission of liability on the part of Fort Norfolk or any of its officers, employees, or agents, but merely as recognition of Fort Norfolk's effort to avoid the expense and distraction of litigation.

8. 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). The parties further agree that this controversy should be resolved without further proceedings and without an evidentiary hearing or a trial.

9. As indicated by the signatures appearing below, the parties agree to the entry of this Consent Order.

It is hereby ORDERED, ADJUDGED, and DECREED:

III. GENERAL INJUNCTION

10. Defendant and each of its officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with them are enjoined from:

- (a) discriminating on the basis of disability as prohibited by the FHA, 42 U.S.C. § 3604(f), and
- (b) coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of his/her having exercised or enjoyed, or on account of his/her having aided and encouraged any other person in the exercise or enjoyment of, any right granted by the Act, including anyone who participated in any way in the United States' investigation that resulted in this action.

IV. NON-DISCRIMINATION POLICIES

11. Within ten (10) days after the entry of this Consent Order, Defendant shall post and prominently display in the Harbor's Edge main office in an area accessible to, or frequented by, the public and residents a poster no smaller than 10 by 14 inches indicating that all units are available for lease or sale on a non-discriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

12. Dining Room and Events Policy: Within ten (10) days after the entry of this Consent Order, Defendant shall implement the Harbor's Edge Dining Room and Events Policy attached as Appendix A for ensuring non-discriminatory access to dining rooms and events for

persons with disabilities. Within thirty (30) days after the entry of this Consent Order, Defendant shall submit to counsel for the United States for review and approval a proposed internal assessment tool for use in evaluating an individual resident's request to dine in the residential dining rooms or attend events consistent with the Dining Room and Events Policy.

13. Motorized Wheelchair and Scooter Policy: Within ten (10) days after the entry of this Consent Order, Defendant shall implement the Harbor's Edge Motorized Wheelchair and Scooter Policy attached as Appendix B for ensuring non-discrimination against persons with disabilities who use motorized mobility aids.

14. Reasonable Accommodations Policy: Within ten (10) days after the entry of this Consent Order, Defendant shall implement the Harbor's Edge Reasonable Accommodation Policy attached as Appendix C for receiving and handling requests made by people with disabilities for reasonable accommodations. Within thirty (30) days after the entry of this Consent Order, Defendant shall provide to all residents the Harbor's Edge Dining Room and Events Policy, the Harbor's Edge Motorized Wheelchair and Scooter Policy and the Harbor's Edge Reasonable Accommodations Policy (collectively "the Non-Discrimination Policies"). To the extent that a resident is incapacitated, Defendant shall provide the Non-Discrimination Policies to the resident's next of kin or other responsible party as identified in the resident's file. The Defendant shall also provide the Non-Discrimination Policies upon request to prospective residents, and shall ensure that the Non-Discrimination Policies are provided to any individual contemplating entry not later than the time fixed by state law for the provision of the required Disclosure Packet under Virginia Code Section 38.2-4903.

V. FAIR HOUSING ACT COMPLIANCE OFFICER

15. Within thirty (30) days after the entry of this Consent Order, Defendant shall designate an employee as the “Fair Housing Act Compliance Officer.” The Fair Housing Act Compliance Officer serves as a resident advocate by ensuring a full review of the pertinent criteria resulting in fair access and accommodation to facilities and services available to residents. The Fair Housing Act Compliance Officer shall have the responsibility to receive complaints of alleged housing discrimination by Defendant and coordinate Defendant’s compliance with this Consent Order. The Fair Housing Act Compliance Officer shall have the additional responsibility of providing consultation to the healthcare professionals regarding access to dining rooms and events and requests for reasonable accommodations. The Fair Housing Act Compliance Officer shall maintain copies of this Consent Order, the Non-Discrimination Policies, the HUD Complaint Form, the HUD pamphlet entitled “Are you a victim of housing discrimination” (HUD official forms 903 and 903.1, respectively), the Joint Statement of HUD and the Department of Justice On Reasonable Accommodations Under the Fair Housing Act, and the Joint Statement of HUD and the Department of Justice On Reasonable Modifications Under the Fair Housing Act, and shall make these materials available free of charge to residents and family members upon request, including all persons making housing discrimination complaints to Defendant. The Fair Housing Act Compliance Officer shall have qualifications consistent with that of a licensed social worker, and shall be knowledgeable regarding the rights of residents of nursing and assisted living facilities. The Fair Housing Act Compliance Officer shall designate a Deputy Compliance Officer, who shall perform the function of the Fair Housing Act Compliance Officer in the absence or other unavailability of the Fair Housing Act Compliance Officer.

VI. NO RAISING OF RENTS OR FEES

16. Defendant, its agents and affiliated companies, may not raise the rent or fees of any dwelling unit, or demand a deposit or other fee for a dwelling unit at Harbor's Edge because of this litigation. This provision does not restrict Defendant from any increase in fees not associated with the cost of this litigation or the adoption of policies not specified in this Consent Order, or from adopting procedures whereby individuals admitted directly to Assisted Living may purchase a modified Life Care program, or such other new or different programs as will not violate the provisions of this Consent Order.

VII. MONETARY DAMAGES TO AGGRIEVED PERSONS

17. Within fifteen (15) days after the entry of this Consent Order, Defendant shall deposit three hundred fifty thousand dollars (\$350,000) in an interest-bearing escrow account for the purpose of paying monetary damages to persons deemed by the United States to be aggrieved persons. This money shall be referred to as the "Settlement Fund." Any interest accruing to the fund shall become a part of the fund and be utilized as set forth herein. All expenses related to the establishment of the account shall be borne by the Defendant.

18. Within 45 days after the entry of this Consent Order, Defendant shall pay to each person, if any, who paid a deposit or, to Defendant's knowledge, who obtained liability insurance in order to be permitted to use their motorized wheelchair or scooter, three hundred dollars (\$300). Payment shall be made from the Settlement Fund described in paragraph 17 without regard to whether or not such person makes a claim for the \$300 payment. A person receiving the \$300 payment may still be an otherwise-aggrieved person entitled to damages exceeding this amount. The \$300 payments shall be made without the Court order required for distribution of other claims, as described in Paragraph 23 of this Consent Order.

19. Within fifteen (15) days after the entry of this Consent Order, Defendant shall provide a copy of the Notice set forth in Appendix D to current and former residents at Harbor's Edge as described in this Paragraph. To the extent that a former resident is deceased, or a current resident is incapacitated, Defendant shall send a copy of the Notice set forth in Appendix D to the last known next of kin or other responsible party identified in Defendant's records. For purposes of this Paragraph regarding provision of the Notice set forth in Appendix D, notification shall be made only with respect to those who were, at any time on or after January 1, 2011, (a) Life Care residents or (b) any "Direct Admit" resident (i.e., a Healthcare building resident who does not participate in the Life Care program) in Assisted Living, Memory Support, or Skilled Nursing, who was actually in residence for 100 or more consecutive days on or before September 1, 2014. Within forty-five (45) days after the entry of this Consent Order, Defendants shall provide to counsel for the United States proof that the Notice has been sent.

20. Within twenty (20) days after the entry of this Consent Order, Defendants shall make available to the United States for inspection and copying any resident records not previously produced for the United States' use in identifying potential aggrieved persons, as requested by the United States, pursuant to the provision permitting disclosures authorized by law under HIPAA. Such records shall include, but not be limited to, records relating to resident complaints, records relating to requests for reasonable accommodations, and records relating to any charges or other conditions imposed on residents who used, or wanted to use, a motorized wheelchair or scooter.

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

22. Within one hundred and eighty (180) days after the entry of this Consent Order, the United States shall make a preliminary determination of which persons are aggrieved and an appropriate amount of damages that should be paid to each person. The United States will inform the Defendant in writing of its preliminary determinations, together with a copy of a sworn declaration from each allegedly aggrieved person, or if an allegedly aggrieved person is deceased or incapacitated, a copy of a sworn declaration from that person's estate or other responsible party, setting forth the factual basis of the claim. The Defendant shall have fourteen (14) days to review the declarations and provide to the United States any documents or information that they believe may refute the claim. The parties shall have thirty (30) days to endeavor, in good faith, to resolve any differences regarding the list of persons entitled to monetary relief and regarding the appropriate amount of damages to be awarded to each person, prior to submitting their recommendations to the Court for resolution or approval.

23. After completion of the process described in Paragraph 22, the parties shall submit their joint final recommendation to the Court for approval, if they agree, or separate recommendations, if they do not agree. When the Court issues an Order providing for the distribution of funds to aggrieved persons, the Defendant shall, within ten (10) days of the Court's order, deliver to the United States checks payable to the aggrieved persons in the amounts approved by the Court provided the aggrieved person has executed a release in the form of Appendix E. In no event shall the aggregate of all such checks exceed the amount of the Settlement Fund, including any accrued interest.

24. In the event that less than the total amount in the Settlement Fund including accrued interest is distributed to persons deemed aggrieved by the United States, the Court shall order the remainder of the Settlement Fund to be distributed to a qualified organization(s) for the

purpose of conducting fair housing enforcement, assistance to seniors, or educational activities in the Hampton Roads area. Before selecting the qualified organization(s), the Defendant will obtain a proposal from the organization(s) on how the funds will be used consistent with the above-stated purpose, submit such proposal to the United States, and consult with and obtain the non-objection of the United States. The United States and the Defendant may request modification of the proposal before approving the organization(s). The parties shall thereafter seek approval from the Court to distribute the remaining funds to the qualified organization(s). The qualified organization(s) receiving the funds shall submit to the United States and Defendant a detailed report on how the funds are utilized within one year of receipt of funds, and every year thereafter until the funds are exhausted.

VIII. CIVIL PENALTY

25. Within thirty (30) days after the entry of this Consent Order, Defendant shall pay a total of \$40,000 (forty thousand dollars) to the United States as a civil penalty, pursuant to 42 U.S.C. § 3614(d)(1)(C). This payment shall be in the form of an electronic funds transfer pursuant to written instructions provided by the United States.

IX. EDUCATIONAL PROGRAM

26. Within thirty (30) days after the entry of this Consent Order, Defendant shall provide a copy of this Consent Order and the Non-Discrimination Policies to (i) all their agents and employees with direct or supervisory authority for selling or renting dwelling units at Harbor's Edge, and (ii) to all their agents and employees with managerial or supervisory authority at Harbor's Edge, and shall secure a signed statement from each such person acknowledging that he or she has received and read the Consent Order and the Non-Discrimination Policies, and has had an opportunity to have questions about the Consent Order

and the Non-Discrimination Policies answered. This statement shall be substantially similar to the form of Appendix F.

27. During the time this Consent Order remains in effect, within thirty (30) days after the date he or she commences an agency or employment relationship with Defendant, each (i) new agent or employee with direct or supervisory authority for selling or renting dwelling units at Harbor's Edge, and (ii) new agent or employee with managerial or supervisory authority at Harbor's Edge will be given a copy of this Consent Order and the Non-Discrimination Policies and be required to sign a statement acknowledging that he or she has received and read the Consent Order and the Non-Discrimination Policies, and has had an opportunity to have questions about the Consent Order and the Non-Discrimination Policies answered. This statement shall be substantially similar to the form of Appendix F.

28. Within ninety (90) days after the entry of this Consent Order, Defendant's (i) employees and agents with direct or supervisory authority for selling or renting dwelling units at Harbor's Edge and (ii) employees and agents with managerial or supervisory authority at Harbor's Edge shall undergo training on the requirements of the FHA, including the requirement to provide reasonable accommodations to persons with disabilities. The training shall be conducted by a qualified individual who has been previously approved by Counsel for the United States, and any expenses associated with this training shall be borne by Defendant. Defendant shall provide to the United States, within thirty (30) days after the training, the name(s), address(es) and telephone number(s) of the trainer(s); copies of the training outlines and any materials distributed by the trainer(s); and certifications executed by covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix G.

X. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

29. Every six months during the duration of this Consent Order, Defendant shall submit to the United States² a report containing the signed statements of new employees and agents that, in accordance with Paragraphs 26 and 27 of this Consent Order, they have received and read the Consent Order and the Non-Discrimination Policies, and had an opportunity to have questions about the Consent Order and the Non-Discrimination Policies answered, except that the last report shall be due sixty (60) days prior to the anniversary.

30. Every six months during the duration of this Consent Order, Defendant shall submit to the United States a copy of each Dining Room and Event Assessment, any request for reasonable accommodations under this Consent Order and the procedures set forth in it, and all documents relating thereto.

31. During the time this Consent Order remains in effect, Defendant shall advise the United States in writing within fifteen (15) days of receipt of any written fair housing complaint (whether filed with a court or administrative agency) against Fort Norfolk, or against any employee or agent of Fort Norfolk working at or for Harbor's Edge, regarding discrimination on the basis of disability. Upon reasonable notice, Defendant shall also provide the United States all information it may request concerning any such complaint. Defendant shall also advise counsel for the United States, in writing, within fifteen (15) days of the resolution of any such complaint.

32. During the time this Consent Order remains in effect, Defendant is required to preserve all records related to this Consent Order. Upon reasonable notice to Defendant during

² For purposes of this Consent Order, any notices, documents or written materials that are required to be provided to the United States shall be sent by commercial (non-USPS) overnight delivery to: United States Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, 1800 G Street, N.W., Suite 7002, Washington, D.C. 20006, Attn. D.J. # 175-79-460.

such time, representatives of the United States shall be permitted to inspect and copy any records of Defendant, pursuant to the provision permitting disclosures authorized by law under HIPAA, provided however, that the United States shall endeavor to minimize any inconvenience to Defendant.

XI. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION

33. This Consent Order shall remain in effect for three (3) years after the date of its entry. By consenting to entry of this Consent Order, the parties agree that in the event that Defendant engages in any future conduct occurring after entry of this Consent Order that leads to a determination of a violation of the Fair Housing Act based on the same or similar type of conduct alleged in the Complaint (i.e., involving access to dining facilities and events, or restrictions on motorized mobility devices as described in this Consent Order), such conduct shall be treated as a subsequent violation pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

34. The Court shall retain jurisdiction for three (3) years from the date of entry of this Consent Order to enforce the terms of the Consent Order, at which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Consent Order in the interests of justice.

35. The United States and Defendant shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. If the U.S. Department of Housing and Urban Development shall promulgate any final regulation on the issues addressed by Appendix A during the time this Consent Decree is in force, the United States and the Defendant shall meet and confer to modify the Dining Room and Events Policy so as to conform to those final regulations. However, in the event Defendant fails to perform, in a timely manner, any act

required by this Consent Order, or otherwise fails 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 by the failure to perform.

XII. TIME FOR PERFORMANCE

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

XIII. COSTS OF LITIGATION

37. All parties will bear their own costs and attorney's fees associated with this litigation.

XIV. TERMINATION OF LITIGATION HOLD

38. The parties agree that, as of the date of the entry of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described above. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Consent Order.

SO ORDERED this 19th day of May, 2015.

/s/
Henry Coke Morgan, Jr.
Senior United States District Judge
UNITED STATES DISTRICT COURT JUDGE

ACM

The undersigned apply for and consent to the entry of this Consent Order:

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APPENDIX A

HARBOR'S EDGE DINING ROOM AND EVENTS POLICY

PRINCIPLES:

The nature of our operations and the varied health conditions of our Residents means Harbor's Edge must be particularly sensitive to ensuring full and fair participation by all in the dining program, consistent with the varying health status of its Residents, the health and well-being of all Residents, and our regulatory obligations as a health care provider. We have established guidelines for use of the Residential Tower dining areas, including the River Terrace, Harbor Room, the Bistro and the Horizons Lounge (collectively, the "Residential Dining Rooms") in an effort to provide Residents and guests with a safe and enjoyable dining experience and to promote equal access to services and amenities regardless of the existence of actual or potential impairments.

As a Life Care Community offering multiple levels of care, including independent residential living, memory support, assisted living and skilled nursing (collectively, "Levels of Care") within an interconnected set of buildings, Harbor's Edge has multiple dining options for Residents which are based on the specific Levels of Care and which are staffed and operated consistent with the respective regulations associated with each Level of Care. The Residential Dining Rooms are not staffed or monitored in the manner required by regulations applicable to dining and living areas in the assisted living, skilled nursing, or memory support units (collectively, the "Healthcare Units" and individually a "Healthcare Unit").

Accordingly, they are considered "unregulated" dining rooms. Medical supervision and assistance by licensed personnel is only available in the Healthcare Units or at events that are specifically designated for those populations. Physician ordered special diets are not provided

in the Residential Dining Rooms and dietary restrictions and food intake cannot be properly monitored and recorded in the Residential Dining Rooms. Residents whose health status requires the Level of Care provided in one of the Healthcare Units are welcome in the Residential Dining Rooms and events under the terms of this Policy. However, if specific medical concerns are present with respect to an individual Resident, they may be addressed through a reasonable accommodation process by our Level of Care Committee in consultation with the Fair Housing Act Compliance Officer.

Participation by Healthcare Residents in Residential Tower events and Residential Dining Rooms will be assessed on an individualized basis, consistent with medical necessity and the recommendations and directions of the Level of Care Committee in consultation with the Fair Housing Act Compliance Officer.

POLICY AND PROCEDURE:

- A. Dress Code: All Residents must follow the reservation policy and dress code, if any is in effect, for Residential Dining Rooms, including the River Terrace and the Harbor Room.
- B. Guests: All Residents are permitted to invite a reasonable number of guests to dine with them in the Residential Dining Rooms, space permitting, on an equal basis with other Residents, and in accordance with the established guest policies in force. Guests of Healthcare Residents must follow the established guest policies in force for Residential Dining Rooms. Any guest who resides in a Healthcare Unit, but who is not a Resident within the meaning of this Policy, must also comply with all aspects of this Policy applicable to Residents of the Healthcare Units. Charges for guests and Aides will be placed on the Resident's account at menu prices. Healthcare Residents will be assessed a meal replacement charge for dining in the Residential Dining Rooms.

- C. Rules and Regulations: All Residents and guests must comply with all policies and procedures in effect for the regulation of the enjoyment of the Residential Dining Rooms, including without limitation, rules regarding personal conduct such as smoking policies, limitations on cell phone usage, rules prohibiting loud or inappropriate language and prohibitions against offensive or disruptive conduct.
- D. Notification: Healthcare Residents must notify their assigned dining room in the Healthcare Units not later than during breakfast if that Resident intends to eat lunch in a Residential Dining Room. Healthcare Residents must notify their assigned dining room in the Healthcare Unit not later than during lunch if that Resident intends to eat dinner in a Residential Dining Room.
- E. Personal Aides: Any Resident may have an Aide accompany them to the Residential Dining Rooms or to events to assist the Resident with transportation and feeding. All Residents must make arrangements to get to and from the Residential Dining Rooms and/or events on their own or with private assistance. As with all guests, Aides must follow the specific dress policy for the applicable dining room and the general rules of conduct.
- F. Acknowledgement: Residents from the Healthcare Units must execute and have on file with Harbor's Edge an appropriate Release of Responsibility for Leave of Absence form (attached as Exhibit 1) for that Resident's use of the Residential Dining Rooms or attendance at Residential Tower events. Additionally, Residents from the Healthcare Units must execute an Against Medical Advice (AMA) Form and Liability Release (attached as Exhibit 2) if a Resident wants to eat in the Residential Dining Rooms or attend events against medical advice.

- G. Level of Care Committee: The “Level of Care Committee” is composed of Health Care professionals who are responsible for the assessment of the functional ability of Residents and who are tasked with the responsibility of providing guidance and support in level of care determinations.
- H. Prohibited Conditions: There are medical conditions that may impact a Resident’s ability to dine in the Residential Dining Rooms or to attend Residential Tower events. These conditions include a contagious infection, communicable disease or infected open wound. Residents with these conditions may be prohibited from dining or attending events in the Residential Dining Rooms by the Nurse, Physician or the Level of Care Committee, until the Resident’s condition is resolved or no longer poses a direct threat to self or others. In such event, the Resident shall be promptly referred to the Fair Housing Act Compliance Officer who shall assist the Resident and family in evaluating whether any reasonable accommodations may be proposed on behalf of the Resident and coordinate a further review with the Nurse, Physician and/or the Level of Care Committee. In conducting its determinations, the Nurse, Physician and/or the Level of Care Committee will make an individualized determination in consultation with the Fair Housing Act Compliance Officer as to whether the Resident should be permitted to continue to eat in the Residential Dining Rooms or to attend a specified event.
- I. Certain Medical Conditions: Any Resident who has a medical condition other than a contagious infection, communicable disease or infected open wound as described in Paragraph H above, which may limit their ability to safely or in a non-disruptive manner eat in the Residential Dining Rooms or to attend Residential Tower events may be refused access to the Residential Dining Rooms by the Nurse, Physician or the Level of

Care Committee. In such event, the Resident shall be promptly referred to the Fair Housing Act Compliance Officer who shall assist the Resident and family in evaluating whether any reasonable accommodations may be proposed on behalf of the Resident and coordinate a further review with the Nurse, Physician and/or the Level of Care Committee. In conducting its determinations, the Nurse, Physician and/or the Level of Care Committee will make an individualized determination in consultation with the Fair Housing Act Compliance Officer as to whether the Resident should be permitted to continue to eat in the Residential Dining Rooms or to attend a specified event.

- J. All evaluations of a Resident's ability to dine in the Residential Dining Rooms or to attend events, and any reasonable accommodations requested, granted or denied shall be documented in writing and maintained in a confidential file by the Fair Housing Act Compliance Officer. A copy shall also be placed in the Resident's medical file, if required by regulation.
- K. For purposes of this Policy, a "Resident" is defined as (a) any Resident of Harbor's Edge who is a party to a Life Care contract with Harbor's Edge regardless of the Level of Care to which the Resident has been assigned and (b) any Resident of the Healthcare Units who is not a party to a Life Care Contract who has resided at Harbor's Edge for more than 100 consecutive days as of May 11, 2015.
- L. An individual who is not a party to a Life Care Contract with Harbor's Edge who resides in a Healthcare Unit but who does not otherwise meet the definition of a Resident set forth above shall be referred to herein as a "Direct Admit".
- M. A "Healthcare Resident" shall mean an individual who is a Resident assigned to one of the Healthcare Units.

- N. "Aides" are personal aides to Residents, such as a family member, volunteer or personal caregiver engaged to accompany the Resident to assist with transportation and feeding.
- O. A Direct Admit shall only be entitled to use the Residential Dining Rooms or attend events open to Residents of the Residential Tower to the extent permitted by the terms of their individual contract with Harbor's Edge and in compliance with the terms of this Consent Order. To the extent that a Direct Admit contracts for access to the dining room and/or attendance at events, they shall be treated as a Resident for purposes of this Policy. Notwithstanding the foregoing, a Direct Admit may dine in a Residential Dining Room or attend events open to Residents of the Residential Tower as a guest of a Resident subject to compliance with all aspects of this Policy applicable to guests.
- P. A Direct Admit spouse of a Resident shall be treated as a Resident for purposes of this Policy.

APPENDIX A – EXHIBIT 1

ASSISTED LIVING/SKILLED NURSING/MEMORY SUPPORT CENTER

RELEASE OF RESPONSIBILITY FOR LEAVE OF ABSENCE

I/We, the undersigned, hereby accept complete responsibility for the [resident/patient], while away from the portion of the Harbor's Edge/Ft. Norfolk Retirement Community regulated as the ["Assisted Living"/"Skilled Nursing"] area. On behalf of myself (or if signing for resident/patient, for the resident/patient) and any heir, executor, administrator or personal representative, absolve and release the facility, the management of said facility, its personnel, and all physicians from responsibility and liability for any deterioration in medical (including psychological or emotional) condition related to the facility's treatment or care of the patient/resident's medical condition that may happen while the resident/patient is outside the resident/patient's regulated area, and accept the risk of such events. Specifically but not exclusively, I/We understand and accept the risk of, and release the above from liability for, any injury to the resident/patient that may arise from FNRC's responsibility to treat and care for the resident/patient as a health care provider (including any duty as a licensed assisted living or nursing facility, or for malpractice), as well as for any injury caused in whole or in part by the medical (including psychological) condition of the resident/patient, while outside the ["Skilled Nursing" / "Assisted Living"] regulated area.

I understand that a bed will be reserved for the above-named resident/patient when he/she returns on or before the appointed date and time.

SIGNING "OUT"				SIGNING "IN"		
DATE	TIME	SIGNATURE OF PERSON ACCEPTING RESPONSIBILITY	ADDRESS/PHONE OF DESTINATION	DATE	TIME	SIGNATURE OF FACILITY REPRESENTATIVE

APPENDIX A – EXHIBIT 2

HARBOR’S EDGE

AGAINST MEDICAL ADVICE (AMA) FORM & LIABILITY RELEASE

Purpose: Residents have the right to refuse medical care. This form is to be fully completed when Resident wishes to refuse medical care, or leave a medical care unit, against the advice or approval of their treating Physician and/or Charge Nurse.

REASON FOR AMA: Refusal of Medical Care _____ Leave Medical Unit _____

Resident Name: _____ Date Received: _____

AL: _____ MS: _____ HC: _____ Unit Number: _____

Resident Telephone: _____

If request is being made by Responsible Party or Family Member:

Requesting Person: _____ Relationship: _____

Telephone: _____ Email: _____

Address: _____

Staff Member Completing Form:

(Print Name and Title)

CRITERIA WHICH MUST BE MET:

____ Resident or his or her representative is deemed capable of exercising his or her right to refuse or leave medical care.

____ Potential risks and consequences for leaving care must be disclosed and discussed.

____ The Resident or his or her representative has confirmed his or her understanding of the risk discussion.

____ Treating physician has been notified of AMA leave.

____ Resident or his or her representative has released Harbor’s Edge from liability from consequences.

____ AMA Consent must be properly documented in the Individual Service Plan (ISP) or Medical Care Plan

I, _____ am refusing/removing myself from (*circle one*)
medical care at my own insistence without the approval or against the advice of my physician.

I have been advised and understand the nature of my medical condition, as well as the risks and consequences of refusing care or removing myself from care.

I acknowledge that the Residential Tower dining rooms and event facilities are not capable of monitoring my food consumption and my dietary restrictions and will not be staffed by the same level of trained personnel present in my assigned healthcare unit. Accordingly, I am assuming the risks associated with foregoing my recommended level of care.

I hereby accept complete responsibility for the [resident/patient], while away from the portion of the Harbor's Edge/Ft. Norfolk Retirement Community regulated as the ["Assisted Living"/"Skilled Nursing"] area. On behalf of myself (or if signing for resident/patient, for the resident/patient) and any heir, executor, administrator or personal representative, absolve and release the facility, the management of said facility, its personnel, and all physicians from responsibility and liability for any deterioration in medical (including psychological or emotional) condition related to the facility's treatment or care of the patient/resident's medical condition that may happen while the resident/patient is outside the resident/patient's regulated area, and accept the risk of such events. Specifically but not exclusively, I/We understand and accept the risk of, and release the above from liability for, any injury to the resident/patient that may arise from FNRC's responsibility to treat and care for the resident/patient as a health care provider (including any duty as a licensed assisted living or nursing facility, or for malpractice), as well as for any injury caused in whole or in part by the medical (including psychological) condition of the resident/patient, while outside the ["Skilled Nursing" / "Assisted Living"] regulated area.

Resident/Responsible Party

Date

Staff Member

Date

Witness

Date

APPENDIX B

MOTORIZED WHEELCHAIR AND SCOOTER POLICY

This policy is meant to enable residents and visitors who use motorized assistive devices for mobility due to a disability to have full access to community facilities and residential units, and to promote a safe environment for all residents and visitors, including establishing appropriate guidelines for use of motorized mobility aids. A motorized mobility aid or device is defined as a wheelchair, cart, or scooter that serves as an assistive device to allow an individual to move within and around Harbor's Edge as necessary to have equal access to its facilities and services.

A resident who requires a motorized mobility device is not required to prove that he or she needs such an aid. However, it is expected that residents using a motorized mobility device shall be fully familiar with its operation, and be able to safely operate the mobility device without impacting the health or safety of others, or causing physical damage to the property of others, including Harbor's Edge. Residents and visitors must comply with the community's safety rules.

Residents will be offered and encouraged to avail themselves of a specialized consultation with therapy staff, in order to select the proper equipment and to receive training in the safe use, maintenance and operation of the motorized mobility aid. Therapy staff may be required to assess a resident's ability and right to use a mobility device at the community if: 1) the resident has failed to safely operate the device, resulting in injury to self, others or property, 2) the resident has a medical condition that would reasonably be expected to interfere with the resident's ability to operate a motorized mobility aid in a safe manner, or 3) the resident demonstrates that continued use of the mobility device could reasonably be expected to pose a

significant threat to self, others or property. Residents may request a reasonable accommodation to include additional assessment under this policy. Physical injury to another or property damage as the result of improper operation of the motorized device will be the responsibility of the owner.

PROCEDURE:

I. Resident Orientation:

A. Residents shall be oriented to the common areas of the community and the safe use of their motorized mobility aid by therapy staff prior to use at Harbor's Edge. This includes orientation to the community layout and environment to familiarize them with any hazards that may be encountered while using their motorized device. In addition, the resident will be oriented to processes that promote the operation of a motorized mobility device with the utmost courtesy, care, and consideration for the safety and convenience of other residents, employees, and visitors.

II. Safety Rules:

A. Motorized mobility aids are permitted in any area of the community unless they pose a direct threat to either the safety of the individual or others or would result in physical damage to the property of others, including Harbor's Edge.

B. Motorized devices shall not be operated at a speed that is faster than ambulatory residents walking in the immediate area. This is considered the "safe speed" for the community.

C. Ambulating residents shall be afforded the right-of-way at all times.

D. Residents who are using motorized mobility aids shall stop prior to entering a corridor or public walkway and stop at the corridor or sidewalk intersections where ambulating residents and others may not be readily observed.

E. Motorized mobility aids shall be operated in such a manner that they do not impede or interfere with normal resident flow, including any other resident or guest's ability to freely access the common area of the room.

F. When common area activities are in progress and crowded, Harbor's Edge may request that those using motorized devices enter or exit prior to or after other residents to ensure safe resident traffic flow.

G. Operators must reduce speed on common walkways and maintain a safe distance from pedestrians and other motorized carts.

H. Motorized mobility aids shall be parked near common areas in a manner that they will not pose a safety hazard for flow of residents or emergency exits.

I. Motorized aids may not block entrances to buildings, doorways, stairways, walkways, ramps, corridors, or sidewalks. They shall not be parked such that they obstruct the entrance or exit of any building or common area within the building.

J. When parked, the motorized device shall be secured from movement, including maintaining the device in the off position and engaging an emergency brake if one exists. Devices that require a key for operation shall not be left with the key in the ignition when the resident is not present.

III. Unexpected Events and Injuries and/or Safety Rules Violations:

A. Any unexpected accident or injury shall be immediately reported to the staff and to the Fair Housing Act Compliance Officer.

B. Following an unexpected accident or injury in which a resident's motorized device is involved where failure to follow the safety rules has been identified, therapy staff, in consultation with the Fair Housing Act Compliance Officer, shall perform an assessment to determine

whether the resident demonstrates sufficient skills/ability to follow all community safety rules and operate the device safely. If the resident is determined to be able to continue to operate the device, he/she will be reoriented to the community's safety rules by the therapy staff.

C. In the event a resident is denied the right to use the motorized device, the resident may request a reasonable accommodation to include reassessment at a later date.

IV. Resident Assessment for Safe Use:

A. In the event a resident has a medical condition that would reasonably be expected to interfere with the resident's ability to operate a motorized mobility aid in a safe manner, therapy staff, in consultation with the Fair Housing Act Compliance Officer, shall perform an assessment to determine whether the resident demonstrates evidence of sufficient skills/ability to follow all community safety rules and operate their device safely. The therapy assessment will be included in the resident's medical chart.

B. In the event a resident is denied the right to use the motorized device, the resident may request a reasonable accommodation to include reassessment at a later date.

V. Access to Community Areas:

A. Motorized mobility aids are permitted in any area of the community unless they pose a direct threat to the safety of the user or others, or would result in physical damage to the property of others, including Harbor's Edge.

B. A resident may be restricted in the use of his or her motorized mobility aid if such use constitutes a direct threat to the health or safety of the individual or others, or would result in physical damage to the property of others. In such cases, Harbor's Edge will restrict the use of motorized mobility aids until such time as the resident is no longer a direct threat to the health or

safety of themselves or others, or would not cause physical damage to the property of others, including Harbor's Edge.

C. Residents who use mobility devices, including motorized devices, shall have access to and within the dining rooms. Harbor's Edge may designate or set aside certain seating pursuant to the request of residents who use mobility aids or to ensure that mobility aids do not block ingress or egress of others in the case of an emergency. Upon request, Harbor's Edge may also provide reasonable accommodations specific to the needs of persons using mobility aids.

VI. Resident Responsibilities and Agreement:

A. Residents shall agree that motorized mobility devices will be operated in accordance with the manufacturer's recommendations. Devices shall not be modified in any manner that affects their recommended mode of operation, speed, or safety.

B. Each resident who has a motorized mobility device is responsible to make sure the vehicle is in safe working order and that mechanical or equipment defects are reported as soon as possible.

C. Physical injury to another as the result of improper operation of the motorized device will be the responsibility of the owner.

D. Harbor's Edge shall obtain and maintain a statement signed by each resident who has a motorized mobility device, attesting to their knowledge and understanding of the community's procedures regarding safe use of the device. A copy of the Motorized Mobility Aid Agreement shall be placed in the resident's file.

Motorized Mobility Aid Agreement

I understand it is my responsibility to respect the rules and regulations of the community when using my motorized wheelchair, cart, or scooter. I agree to operate my motorized wheelchair, cart, or scooter safely and in consideration of other residents, employees, and visitors. If I fail to do so, I agree to reorientation and instruction, including reassessment of my ability to follow the safety rules of the community and the safe operation of the motorized mobility device. I agree that I will be responsible for physical injury to another as the result of the improper operation of the motorized device.

I received training and instruction regarding the rules and regulations of the community and my rights to request a reasonable accommodation of the policy pertaining to motorized mobility aids.

Resident

Date

Harbor's Edge Representative

Date

APPENDIX C

HARBOR'S EDGE REASONABLE ACCOMMODATION POLICY

POLICY:

It is the policy of Fort Norfolk Retirement Community, Inc., ("Harbor's Edge") to make reasonable accommodations in its rules, policies and procedures, as necessary to permit a resident or prospective resident (collectively "resident") with a disability to obtain equal access to the housing and services offered by Harbor's Edge. Harbor's Edge will enable a resident who, because of a disability, is determined not to be eligible for admission to or continued stay at Harbor's Edge or whose access to Harbor's Edge's facilities or services is limited, to request a reasonable accommodation pursuant to this policy.

PROCEDURE:

To request a reasonable accommodation, a resident may fill out the Request for Reasonable Accommodation form and submit it to Resident Services (for Residential Tower Residents), Health Services Management (for Assisted Living, Nursing, or Memory Support Residents), or directly to the Fair Housing Act Compliance Officer. Requests for reasonable accommodations may also be made orally or submitted to Marketing Sales staff by prospective residents. If a request is made orally, the staff member receiving it shall record the request on the Request for Reasonable Accommodation form. Requests for reasonable accommodations should be treated as confidential and shared only on a need to know basis.

All requests received by staff must be delivered to the Fair Housing Act Compliance Officer or Deputy Compliance Officer as soon as practicable, but not later than 3:00 p.m. on the next business day after it was received, to enable a prompt response.

The Fair Housing Act Compliance Officer shall keep written records regarding each request for reasonable accommodation that Harbor's Edge receives. These records shall include: (a) the name, unit number, and telephone number of the person making the request, or if the request is made by someone on behalf of a resident, the name, address and telephone number of the person making the request and shall identify on whose behalf the request was made; (b) the date on which the request was received; (c) the nature of the request; (d) whether the request was granted or denied; (e) if the request was denied, the reason(s) for denial; and (f) to the extent any alternative accommodation was offered, the alternative accommodation and whether the alternative accommodation was accepted by the resident. The original request shall be maintained in the resident's medical record.

In determining whether a requested accommodation is reasonable, Harbor's Edge may consider whether the request places a resident at risk due to their medical condition and/or has the potential to impact the health and safety of other individuals. Additionally, Harbor's Edge may consider whether the request places an undue burden on Harbor's Edge or its staff, fundamentally alters its program, interferes with other residents' health or safety, or would create a substantial disruption.

The Fair Housing Act Compliance Officer serves as a resident's advocate by ensuring a full review by the Nurse, Physician or the Level of Care Committee of pertinent criteria and any options for potential accommodation.

The Fair Housing Act Compliance Officer must consult with the resident's Nurse, Physician, or Level of Care Committee in assessing any request for accommodation made by any individual resident, and must ensure that any accommodation granted to a resident is consistent with the advice of these medical professionals, and not inconsistent with the resident's

Physician's recommendations, Individual Service Plan (ISP) or Medical Care Plan, if any. If the Nurse, Physician or Level of Care Committee determines that a requested accommodation should not be granted, the Fair Housing Act Compliance Officer shall assist the resident, resident's Physician, family members or other responsible party and appropriate staff in evaluating whether an alternative accommodation can be proposed. The Fair Housing Compliance Officer shall be responsible for communicating any final determination made in regards to the resident's request.

The Fair Housing Act Compliance Officer shall share information on reasonable accommodation requests and outcomes with the Quality Assurance and Compliance Committees. These committees shall evaluate whether a change in Harbor's Edge's policies or practices are warranted. Summary-level information on reasonable accommodation requests, grants, and denials, will also be included in the annual report to the Board.

REASONABLE ACCOMMODATION REQUEST

Resident/Prospect Name: _____ Date Received : _____

Address: _____

Level of Care: _____ Unit Number: _____ Telephone: _____

If request is being made by Responsible Party or Family Member:

Person Making this Request: _____ Relationship: _____

Telephone: _____ Email: _____

Address: _____

Staff member completing this form: _____

_____ (Print name and title)

Describe the accommodation that you are seeking: _____

Describe how your disability is related to the reasonable accommodation that you are seeking:

Signature of applicant or resident making the request, if applicable:

Signature of responsible party making the request, if applicable:

Fair Housing Act Compliance Officer's assessment result:

Nurse, Physician, or Level of Care Committee assessment result:

Describe Reasonable Accommodations requested, granted, or denied:

Fair Housing Act Compliance Officer Signature: _____

Deputy Fair Housing Act Compliance Officer Signature: _____

Nurse, Physician, or Level of Care Committee Representative: _____

Date Assessment Form was Completed: _____

Outcome Communicated on _____ (Date)

Resident or Responsible Party Signature: _____ Date: _____

APPENDIX D

NOTICE TO RESIDENTS

On _____, 2015, the United States District Court for the Eastern District of Virginia entered a Consent Order resolving litigation brought by the United States Department of Justice involving Fort Norfolk Retirement Community Inc., doing business as “Harbor’s Edge.”

The litigation would have alleged that the Defendant discriminated against residents of the Harbor’s Edge Continuing Care Retirement Community located in Norfolk, Virginia on the basis of disability by implementing policies that prohibited or limited residents living in the Assisted Living, Memory Support, and Nursing units from dining in Residential Tower dining rooms and attending events outside of the Assisted Living, Memory, and Nursing units with Residential Tower residents and prospective residents. The litigation also would have alleged that the Defendant discriminated against people who used motorized mobility aides by having a policy requiring them to pay a non-refundable deposit, obtain liability insurance and demonstrate that they knew how to operate the mobility aid safely. Finally, the litigation would have alleged that when residents and family members complained about the dining and events policies, Defendant retaliated against them.

Harbor’s Edge denies that it discriminated or retaliated against anyone, or that it otherwise violated the Fair Housing Act. Harbor’s Edge contends that it adopted the challenged procedures only after medical incidents involving Healthcare residents in the unregulated dining room, located in the Residential (or Independent Living) Tower, and only after obtaining the advice of counsel, the facility’s Resident Advisory Council, and officials of the Virginia Department of Health and the Virginia Department of Social Services. Harbor’s Edge contends that it liberalized its policy within 24 hours of being advised by a state official that a more

inclusive policy would not violate state law, and accordingly that it has acted in good faith throughout.

The Parties have agreed to this Consent Order to avoid costly and protracted litigation and the Consent Order is not an admission of liability or guilt.

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

- Were unable to eat in the Residential Tower dining rooms and attend events with Residential Tower residents or prospective residents; or
- Were charged a deposit, were required to obtain liability insurance, or were required to obtain Harbor's Edge's permission before using a motorized mobility aid; or
- Were retaliated against if you or your family member complained about the dining and events policies.

If you believe that you or a family member has been discriminated against in any way described above, please contact the United States Department of Justice at: 1-800-896-7743, mailbox number 5, or write or send an e-mail to:

United States Department of Justice
Attn: DJ# 175-79-460
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave., NW – G Street
Washington, DC 20530
E-mail address: fairhousing@usdoj.gov

You must contact the Department of Justice by _____, 2015, and your message or letter must include your name, address and at least one telephone number where you may be reached.

APPENDIX E

RELEASE

In consideration of and contingent upon the payment of the sum of _____ dollars (\$ _____), pursuant to the Consent Order entered in *United States v. Fort Norfolk Retirement Community, Inc., d/b/a Harbor's Edge*, I hereby release and forever discharge the Defendant named in this action from any and all liability for any claims, legal or equitable, I may have against it arising out of the issues alleged in this action as of the date of the entry of the Consent Order. I fully acknowledge and agree that this release of the Defendant shall be binding on my heirs, representatives, executors, successors, administrators, and assigns. I hereby acknowledge that I have read and understood this release and have executed it voluntarily and with full knowledge of its legal consequences.

 (Signature)

NAME: _____

ADDRESS: _____

DATE: _____

APPENDIX F

ACKNOWLEDGMENT OF RECEIPT OF CONSENT ORDER AND NON-DISCRIMINATION POLICIES

On _____, I received copies of and have read the Consent Order entered by the federal district court in *United States v. Fort Norfolk Retirement Community, Inc., d/b/a Harbor's Edge* and the Non-Discrimination Policies. I have had all of my questions concerning the Consent Order, the Non-Discrimination Policies and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Position)

(Date)

APPENDIX G

CERTIFICATION OF FAIR HOUSING TRAINING

On _____, I attended training on the federal Fair Housing Act, including its requirements concerning reasonable accommodations for people with disabilities. I have had all of my questions concerning the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Position)

(Date)