

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

NATIONAL FAIR HOUSING ALLIANCE, INC.;)
HOUSING OPPORTUNITIES MADE EQUAL)
OF VIRGINIA,)

Plaintiffs,)

v.)

HUNT INVESTMENTS L.L.C.; CEDAR)
STREET GENESIS, LLC; GENESIS HOMES)
MANAGER, LLC; WALTER PARKS,)
ARCHITECT, PLLC; MGT CONSTRUCTION)
MANAGEMENT, INC.,)

Defendants.)

Civil Action No. 3:14-cv-00716-JRS

**FINAL SETTLEMENT
AGREEMENT**

This Final Settlement Agreement is entered into this 18th day of November, 2015, by and between Plaintiffs, National Fair Housing Alliance, Inc. and Housing Opportunities Made Equal of Virginia, and Defendants, Hunt Investments L.L.C., Cedar Street Genesis, LLC, Genesis Homes Manager, LLC, Walter Parks, Architect, PLLC, and MGT Construction Management, Inc.

I. PURPOSES OF THE FINAL SETTLEMENT AGREEMENT

WHEREAS the Defendants are the developers, managers, owners, architects, and/or builders of Shockoe Valley View Apartments (“Subject Property”), located at 1900-1904 Cedar Street, Richmond, Virginia, 23223;

WHEREAS, on October 21, 2014, Plaintiffs filed a Complaint against Defendants in the United States District Court for the Eastern District of Virginia, case number 3:14-cv-00716-JRS;

WHEREAS, on June 2, 2014, Plaintiffs filed a Second Amended Complaint that is the current operative pleading;

WHEREAS, as more fully set forth in the Plaintiffs' Second Amended Complaint, Defendants allegedly designed and constructed the Subject Property without full adherence to the required elements of accessible and adaptable design in violation of the Fair Housing Amendments Act ("FHAA"), 42 U.S.C. §§ 3604(f)(1), (f)(2) and (f)(3)(C);

WHEREAS, at all times Defendants have denied and continue to deny the allegations in the Second Amended Complaint;

WHEREAS, Plaintiffs and Defendants desire to resolve Plaintiffs' Second Amended Complaint voluntarily and, to that end, they have agreed to the following terms by which Plaintiffs' Second Amended Complaint, as amended, may be fully and finally resolved and have agreed to the entry of this Final Settlement Agreement.

II. TERMS OF THE FINAL SETTLEMENT AGREEMENT

Based upon the foregoing recitals, which are incorporated herein by this reference, it is hereby ORDERED, ADJUDGED, AND DECREED as a Final Judgment that:

A. Definitions

1. "LAWSUIT" means the action filed in the United States District Court for the Eastern District of Virginia, styled *National Fair Housing Alliance, Inc., et al. v. Hunt Investments, L.L.C., et al.*, Case No. 3:14-cv-00716-JRS.

2. "DEFENDANTS" include Hunt Investments L.L.C., Cedar Street Genesis, LLC, Genesis Homes Manager, LLC, Walter Parks, Architect, PLLC, and MGT Construction Management, Inc.

3. "PLAINTIFFS" include National Fair Housing Alliance, Inc. and Housing Opportunities Made Equal of Virginia.
4. "Parties" shall mean DEFENDANTS and PLAINTIFFS, as those terms are defined herein.
5. "FHAA" means the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*, and any of its implementing regulations.
6. "Guidelines" means the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991).
7. "Subject Property" means the Property alleged by PLAINTIFFS to be out of compliance with the FHAA in their Second Amended Complaint.
8. "Punch List" means a list of agreed modifications and retrofits for the Subject Property incorporated herein by reference and enforceable as part of this Final Settlement Agreement.

B. Jurisdiction and Scope of the Final Settlement Agreement

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1332, and 42 U.S.C. §§ 3613(a).
2. The provisions of this Final Settlement Agreement shall be binding upon PLAINTIFFS and DEFENDANTS.
3. The provisions of this Final Settlement Agreement are effective immediately upon the approval of the Final Settlement Agreement by the Court.
4. Entry of this Final Settlement Agreement is in the public interest.
5. PLAINTIFFS are acting as private attorneys general in bringing this action and enforcing the FHAA against the DEFENDANTS.

6. In making the findings herein and implementing the injunctive and other relief herein, the Court has considered, *inter alia*, the following:

a. The FHAA authorizes the Court to “grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).” 42 U.S.C. § 3613(c)(1).

b. In determining appropriate relief, the Court must be flexible and the Court recognizes that “[e]quitable remedies are a special blend of what is necessary, what is fair, and what is workable. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.” *Baltimore Neighborhoods, Inc. v. LOB Inc.*, 92 F. Supp. 2d 456, 468 (D. Md. 2000). Moreover, “[t]he principal limitation on the court’s equitable powers is that the relief should be no broader and no more burdensome than necessary to provide complete relief to the plaintiff.” *Id.* at 468.

c. In an FHAA design and construction case such as this lawsuit, equitable remedies may include retrofitting of alleged noncompliant “covered multifamily dwellings” in conjunction with a monetary payment to the PLAINTIFFS which will be used to further accessible housing throughout the United States. Such a monetary payment reflects the sometimes inherent inability of a defendant to fully retrofit an existing property to ensure complete technical compliance with the design and construction requirements of the FHAA.

d. The measures set forth in this Final Settlement Agreement are practical and fairly address both public and private needs for accessible housing while recognizing site conditions of the subject property.

e. The relief contained in this Final Settlement Agreement including, but not limited to, the agreed upon retrofits to the Subject Property and the monetary payments made by DEFENDANTS, makes it clear that “(1) it can be said with assurance that ‘there is no reasonable expectation . . .’ that the alleged violation will recur . . . and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *Jones v. Poindexter*, 903 F.2d 1006, 1009 (4th Cir. 1990) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)).

7. This Court shall retain jurisdiction to enforce compliance with this agreement.

C. Corrective Action At the Subject Property

The Parties have agreed to a Punch List of agreed modifications, the terms of which are incorporated herein by reference and enforceable as part of this Final Settlement Agreement.

1. *Alterations at the Subject Property*

DEFENDANTS will perform the alterations at the Subject Property as outlined in the Punch List that is incorporated into this Final Settlement Agreement.

2. *Cost of Alterations*

DEFENDANTS agree to pay the costs of any alterations agreed to at the Subject Property and shall attempt, in good faith, to minimize any inconvenience to the residents of the apartments in performing those alterations.

3. *Timetable for Performing Alterations at the Subject Property*

i. *Accessible Building Entrances on Accessible Routes, Accessible and Usable*

Public and Common Use Areas: DEFENDANTS agree to commence and finish the alterations to the accessible routes and all accessible and usable public and common use areas as soon as practical but no later than one year from the end of the month in which this Final Settlement Agreement is approved by the Court;

ii. *Interior of Dwellings:* DEFENDANTS agree to commence and finish the

alterations to the interior of each unit at the Subject Property when the unit first becomes vacant following entry of this Final Settlement Agreement and before the unit is re-occupied by a new resident, or within two years from the end of the month in which this Final Settlement Agreement is entered, whichever is earlier. Any obligation to perform an alteration “on request” as set forth in Paragraph 4 and in the Punch List is subject to the expedited 30-day track described in Paragraph 4 and is not subject to this two-year deadline. These deadlines are subject to the provisions in Paragraph 6 regarding the sale or transfer of an ownership interest.

4. *Notice to Residents of Availability of Alterations*

DEFENDANTS will send notice to each resident of a dwelling unit at the Subject Property informing the resident of the availability of alterations under this Final Settlement Agreement and that the alterations will be made without cost to the resident. Any resident may request that alterations provided for under this Final Settlement Agreement be made to his/her covered unit. Upon such a request, DEFENDANTS will complete the alterations relating to the interior of that resident’s covered unit within thirty (30) days after DEFENDANTS’ receipt of the request, unless the retrofit plan for the Subject Property provides for a shorter time frame.

5. *Inspection of Alterations Performed*

i. DEFENDANTS agree to inform the PLAINTIFFS in writing of the completion of the agreed upon alterations at the Subject Property within thirty (30) days of the completion of such alterations. PLAINTIFFS, if they choose, at their own cost may conduct an on-site inspection at the Subject Property within a reasonable time period after receipt of each such notice. Any inspection shall be of a sample to be determined by the PLAINTIFFS to determine if the alterations have been performed according to the terms of this Final Settlement Agreement.

ii. If an inspection by PLAINTIFFS indicates that any of the required alterations have not been made as specified herein, they shall inform DEFENDANTS of the deficiencies. DEFENDANTS agree to correct any deficiencies noted by PLAINTIFFS within thirty (30) days of that notice or the time allowed by the original timeline, whichever is later, and provide documentary and photographic evidence of the correction of such alterations.

6. *Sale or Transfer of an Ownership Interest In The Subject Property*

The issuance of a certificate of occupancy, or the sale or transfer, in whole or in part, of an ownership interest in the Subject Property by DEFENDANTS after the entry of this Final Settlement Agreement shall not affect DEFENDANTS' obligation to complete the alterations at the Subject Property agreed to under this Final Settlement Agreement. Should DEFENDANTS decide to sell or transfer any ownership interest in the Subject Property prior to the completion of the alterations provided for under this Final Settlement Agreement, DEFENDANTS will provide written notice to each buyer or transferee that DEFENDANTS are required to complete the alterations pursuant to this Final Settlement Agreement. DEFENDANTS shall either complete the alterations prior to the sale or transfer of the Subject Property or obtain written consent of the new buyer(s)/transferee(s) to have these alterations performed within the time frame allotted

herein at the Subject Property after the new owner takes possession of the Subject Property. Not later than fourteen (14) days after such sale or transfer, DEFENDANTS agree to notify PLAINTIFFS in writing of actions that DEFENDANTS have taken in accord with this provision.

C. Settlement Payment

DEFENDANTS agree, no later than fifteen (15) days after approval of this Final Settlement Agreement by the Court, to make a Settlement Payment to PLAINTIFFS in the amount of \$600,000 as compensation to PLAINTIFFS, including attorneys' fees, costs, and litigation expenses. Payment will be made by check payable to Relman, Dane & Colfax PLLC, 1225 19th St. NW, Suite 600, Washington, DC 20036.

D. General Release of All Claims

1. In exchange for, and in consideration of, the payments, alterations, benefits, and other commitments described herein, PLAINTIFFS hereby fully release, acquit, and forever discharge DEFENDANTS and each of their predecessors, successors and assigns, parent corporations, subsidiary corporations, affiliated corporations, and the officers, directors, shareholders, partners, employees, managers, members, representatives, insurers, attorneys and agents, past and present, from any and all claims, liabilities, causes of action, damages, costs, attorneys' fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that PLAINTIFFS may now have, have ever had, or hereafter may have relating to the Subject Property and the allegations in the Lawsuit, and hereby specifically waive and release all such claims, including, but not limited to, those arising under the FHAA and any and all state or local statutes, ordinances, or regulations governing the accessibility of residential units and common areas including, without limitation, any state law claim pursuant to the laws of the Commonwealth of Virginia, as well as all claims

arising under federal, state, or local law involving any claim related to the allegations in the Lawsuit. Similarly, DEFENDANTS shall fully release, acquit, and forever discharge PLAINTIFFS from any and all claims, liabilities, causes of action, damages, costs, attorneys' fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that DEFENDANTS may now have, have ever had, or hereafter may have relating to the Subject Property and the allegations in the Lawsuit, and hereby specifically waive and release all such claims.

2. PLAINTIFFS agree that the entry of this Final Settlement Agreement shall extinguish all claims and shall be a full, complete, and final disposition and settlement of all claims against DEFENDANTS relating to the Subject Property and all matters and issues which were alleged, or could have been alleged, were raised, or could have been raised, in any other manner related to the Subject Property, including, but not limited to, claims relating to the FHAA and any similar federal, state, or local law. Accordingly, PLAINTIFFS stipulate and agree that res judicata and collateral estoppel apply to each of the claims relating to the Subject Property in this LAWSUIT so that PLAINTIFFS are forever barred from re-litigating such claims, matters, and issues which were alleged, or could have been alleged, or could have been raised, in any other manner related to the Subject Property including, but not limited to, claims relating to the FHAA and any similar federal, state, or local law.

E. Miscellaneous Provisions

1. *Binding Effect*

This Final Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors, and assigns.

2. *Costs and Expenses*

Except as specifically provided for herein, each of the Parties to this Final Settlement Agreement shall bear its own attorneys' fees and costs arising out of and/or relating to the Complaint, First Amended Complaint, and Second Amended Complaint.

3. *Deadlines*

All deadlines and dates for performance by PLAINTIFFS and/or DEFENDANTS under this Final Settlement Agreement may be extended or modified by written agreement between PLAINTIFFS and DEFENDANTS.

4. *Severability*

Each provision and term of this Final Settlement Agreement shall be interpreted in such a manner as to be valid and enforceable. In the event any provision or term of this Final Settlement Agreement is determined to be, or is rendered, invalid or unenforceable, all other provisions or terms of this Final Settlement Agreement shall remain unaffected to the extent permitted by law.

5. *Notice to the Parties*

All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses or e-mail addresses set forth below. If sent by overnight delivery, notice shall be deemed delivered one (1) business day after deposit with the nationally recognized overnight courier. Personal delivery shall be deemed delivered upon the date the same was actually delivered. E-mail notices shall be deemed delivered the day the same was sent, provided that the sender has retained a copy and the same was properly sent.

i. Notices to the PLAINTIFFS shall be sent to: Morgan Williams, National Fair Housing Alliance, 1101 Vermont Ave. NW, Suite 710, Washington, DC 20005, and Heather Crislip, Housing Opportunities Made Equal of Virginia, 626 E. Broad St., Suite 400, Richmond,

VA 23219, with a copy to Stephen M. Dane at Relman, Dane & Colfax, PLLC, 1225 19th St. NW, Suite 600, Washington, DC 20036.

ii. Notices to the DEFENDANTS shall also be sent to: William Norman Watkins, Sands Anderson PC, 1111 E. Main Street, 24th Floor, P.O. Box 1998, Richmond, VA 23218; John Lester Cooley, Jr., CooleySublett PLC, 2965 Colonnade Dr., Roanoke, VA 24018; and Mark Nanavati, Sinnott, Nuckols & Logan PC, 13811 Village Mill Dr., Midlothian, VA 23114.

6. *Entire Agreement*

This Final Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, expectations and discussions of or between the parties, whether oral or written, and there are no representations or other agreements between the Parties respecting the subject matter hereof.

III. ORDER

SO ORDERED this 19th day of November, 2015.

/s/

James R. Spencer
Senior U. S. District Judge

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

Plaintiff National Fair Housing Alliance, Inc.

By: Shanna Smith November 18, 2015

Name: Shanna L. Smith

Its: President/CEO

Plaintiff Housing Opportunities Made Equal of Virginia

By:  November 8 2015

Name: HEATHER MULLINS CRISLIP

Its: PRESIDENT & CEO

Hunt Investments L.L.C.

By: *MMMA* November 19, 2015

Name: RON HUNT

Its: MANAGER

Cedar Street Genesis, LLC

By: *MMMA* November 19, 2015

Name: RON HUNT

Its: MANAGER

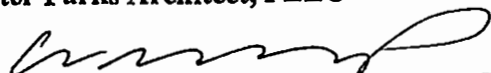
Genesis Homes Manager, LLC

By: *MMMA* November 19, 2015

Name: RON HUNT

Its: MANAGER

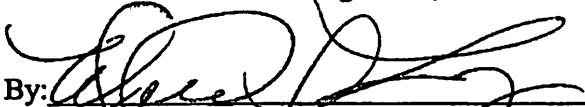
Walter Parks Architect, PLLC

By:  November 17, 2015

Name: WALTER PARKS

Its: PRESIDENT

MGT Construction Management, Inc.

By:  November 19, 2015

Name: MICHAEL D. LOGAN

Its: PRESIDENT

APPROVED AS TO FORM:

/s/ William Norman Watkins

William Norman Watkins
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P.O. Box 1998
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Genesis Homes Manager, L.L.C.*

/s/ John Lester Cooley, Jr.

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*Counsel for
Walter Parks, Architect, PLLC*

/s/ Mark Nanavati

Mark Charles Nanavati
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Counsel for MGT Construction Management, Inc.

/s/ Stephen M. Dane

Michael Allen (Virginia Bar No. 25141)
Stephen M. Dane (*pro hac vice*)
Laura J. Arandes (*pro hac vice*)
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/s/ Morgan Williams

Morgan Williams (*pro hac vice*)
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(202) 898-1661
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/s/ Tim Schulte

Tim Schulte (VA Bar No. 41881)
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(804) 644-9700
schulte@scs-work.com

Attorneys for Plaintiffs

SO ORDERED

<p style="text-align: center;"><u>/s/</u> James R. Spencer Senior U. S. District Judge</p>
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