

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OPEN COMMUNITIES,)	
)	
Plaintiff,)	
)	Case No.: 15-cv-0349
v.)	
)	Magistrate Judge Daniel G. Martin
ATLANTIC REALTY PARTNERS,)	
FOCUS DEVELOPMENT, INC.,)	
and BOOTH HANSEN, LTD.,)	
)	
Defendants.)	

CONSENT DECREE

This Consent Decree is made and entered into by the Plaintiff, OPEN COMMUNITIES (the “Plaintiff”), and the Defendants FOCUS DEVELOPMENT, INC. (“Defendant Focus”) and BOOTH HANSEN, LTD. (“Defendant Booth Hansen”) (collectively, the “Defendants”), for the purpose of fully and finally resolving this Litigation. Plaintiff and the Defendants may herein collectively be referred to as the “Parties” or individually as a “Party.”

BACKGROUND

WHEREAS, Plaintiff brought this action (the “Action ”) to enforce provisions of the Fair Housing Act (“FHA”), codified at 42 U.S.C. §§ 3601-3619. Specifically, Plaintiff’s complaint in this Action, filed on January 14, 2015, alleges that Defendants engaged in discrimination by failing to design and/or construct 1717 Ridge Ave., Evanston, IL (referred to herein as “1717 Ridge”), a rental apartment complex, with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. § 3604(f)(3)(C).

WHEREAS, Plaintiff filed a complaint with the U.S. Department of Housing and Urban Development (“HUD”) in or about June 2014, HUD No. 05-14-1063-8 (the “HUD Action”), and

a complaint with the Illinois Department of Human Rights (“IDHR”) in or about July 2014, IDHR No. 2014-CH-3361 (the “IDHR Action”), and, in both the HUD Action and IDHR Action, Plaintiff made allegations similar to those it made in this Action with respect to 1717 Ridge. The Action, HUD Action and the IDHR Action are collectively referred to as the “Litigation.”

WHEREAS, the Defendants deny Plaintiff’s allegations and wish to settle and resolve the Litigation without further proceedings solely to avoid the cost of protracted litigation.

DEFENDANTS

WHEREAS, Defendant Focus was involved in the development and construction of 1717 Ridge, including the residential dwelling units of 1717 Ridge.

WHEREAS, Defendant Booth Hansen was the architect of record for 1717 Ridge and prepared the architectural plans for the 1717 Ridge residential dwelling units and, in this capacity, designed the residential dwelling units of 1717 Ridge.

FHA ACCESSIBILITY REQUIREMENTS

WHEREAS, the FHA provides “Covered Multifamily Dwellings” must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by a person who has or develops a disability, 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A).

WHEREAS, the accessible and adaptive design provisions of the FHA, 42 U.S.C. § 3604(f)(3)(C), 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 using wheelchairs; (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 (these FHA provisions and features are collectively referred to herein as the "Accessibility Requirements").

ALLEGED CONDITIONS AT 1717 RIDGE

WHEREAS, 1717 Ridge consists of 175 studio, one, two and three bedroom apartments dwelling units, as well as public and common areas such as a fitness center, a pool, a rooftop deck, a club room, and an on-site garage.

WHEREAS, 1717 Ridge, a Covered Multifamily Dwelling, was designed and constructed for first occupancy after March 13, 1991, and thus is subject to the Accessibility Requirements of the FHA.

WHEREAS, Plaintiff inspected a sample of residential units at 1717 Ridge and specifically identified, *inter alia*, the following conditions at 1717 Ridge that Plaintiff alleges fail to meet the Accessibility Requirements:

- a. Excessively high thresholds at patio entrances that interfere with accessible routes for persons in wheelchairs;
- b. Insufficient clear floor space within some bathrooms for maneuvering by persons in wheelchairs;
- c. Some kitchens lacking sufficient clearance to accommodate persons in wheelchairs;
- d. Some kitchen sinks and ranges not fully usable by persons in wheelchairs;
- e. Some bathrooms lacking sufficient space between sidewalls and/or fixtures to be usable by persons in wheelchairs;
- f. Mailboxes mounted too high;
- g. Concrete columns in the parking garage that obstruct accessible parking spaces; and

- h. Failure to provide a fully accessible route into the building

WHEREAS, Plaintiff's allegations that some conditions fail to conform with the Accessibility Requirements relate solely to the As-Built conditions at 1717 Ridge, as Plaintiff did not compare the As-Built conditions against Defendant Booth Hansen's architectural plans in order to take a position in the Litigation to differentiate whether any of Plaintiff's alleged non-conformities are due to design or construction issues.

WHEREAS, Defendants deny that all of the conditions identified by Plaintiff constitute failures to meet the Accessibility Requirements, and the Defendants specifically deny Plaintiff's allegations that they engaged in discriminatory practices or otherwise acted with reckless disregard for the rights of Plaintiff and its clients, as Plaintiff alleges.

CONSENT OF THE PARTIES TO ENTRY OF THIS ORDER

WHEREAS, the Parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 42 U.S.C. § 3613, and 28 U.S.C. §§ 2201 and 2202.

WHEREAS, the Parties further agree that this Litigation should be resolved without further proceedings, without an evidentiary hearing or a trial, and without an admission of fault or liability by Defendants, and agree to the entry of this Consent Decree.

IT IS HEREBY ORDERED:

GENERAL INJUNCTION

1. Subject to the terms of this Consent Decree, the Defendants agree that the design and/or construction, as applicable, of any new Covered Multifamily Dwelling for which the Defendants have design and/or construction responsibility, as applicable, must comply with 42 U.S.C. 3604(f)(3).

OTHER DESIGN AND CONSTRUCTION

2. For each Covered Multifamily Dwelling that Defendant Focus is retained to

develop or construct during the term beginning on the date that the modifications required by this Consent Decree begin and terminating upon the expiration of this Consent Decree, Defendant Focus shall retain a qualified third party to certify in writing that the design complies with the FHA's Accessibility Requirements.

3. During the term beginning on the date that the modifications required by this Consent Decree begin and terminating upon expiration of this Consent Decree, Focus shall cause its employees involved in the design or construction of Covered Multifamily dwellings, to attend annual training with regard to the technical aspects of the accessibility and adaptability requirements of the FHA, conducted by a person or entity qualified to conduct such training. Defendant Focus shall certify to the Plaintiff on an annual basis during this period of time, that this paragraph has been complied with.

MODIFICATION PLAN

4. Defendant Focus shall implement the "Modification Plan" identified in Paragraphs 4 and 5 of this Consent Decree:

A. Modifications to the Public and Common Use Areas

(i) Curb Cut in Front of the Building

Within one hundred fifty (150) days from the entry of this Consent Decree, Defendant Focus shall cause a curb cut to be created in front of the building to allow an accessible route into 1717 Ridge from a wheelchair van or other similar vehicle.

(ii) Parking Garage

Within one hundred fifty (150) days from the entry of this Consent Decree, Defendant Focus shall cause the accessible parking spaces in the parking garage to be restriped or otherwise modified to allow a full side entrance in compliance with the Fair Housing Design Manual, unobstructed by any columns.

(iii) Mailboxes

Within sixty (60) days from the entry of this Consent Decree, Defendant Focus shall to the greatest extent feasible, modify the current mailbox locations by lowering all mailboxes, parcel boxes, and associated countertops six (6) inches. In addition, Defendant Focus shall notify all residents that an accessible mailbox will be assigned to them, upon request.

(iv) The Guest Suite (201)

Within twelve (12) months from the entry of this Consent Decree, Defendant Focus shall cause the guest suite to be modified as follows:

1. Provide Grab bars at the toilet;
2. Provide countertops with no cabinet at the bathroom sink;
3. Move the toilet approximately ½” to comply with the required 16-18” dimension from sidewall; and
4. Provide grab bars at the tub/shower.

B. Modifications to Residential Units

(i) All above-grade balconies

Defendant Focus shall cause to be maintained at 1717 Ridge portable ramps that will be furnished to any tenant requesting a ramp that will allow for a threshold that does not exceed the ¾” maximum requirement of Section 4.14 of the Fair Housing Accessibility Guidelines (“FHAG”). All existing tenants and all prospective tenants will be notified of the availability of said portable ramps. The ramp will be in compliance with ANSI A117.1-1986, Section 4.8.

(ii) Corrections at Residential Units

With respect to those elements in units that Plaintiff alleges do not meet the Accessibility Requirements, Defendant Focus agrees to undertake the repairs set forth in the residential unit modification plan (the “Residential Unit Modification Plan”), separately agreed to between the Parties, within the time frames set forth in Paragraphs 6-8, below.

(iii) Reinforced Walls for Grab Bars

Within sixty (60) days from the entry of this Consent Decree, Defendant Focus shall cause to be performed testing on random units throughout the building to verify that the dwelling units contain reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat. Defendant Focus shall immediately

thereafter certify in writing to Plaintiff that such reinforcements are present in all units. In the event that Defendant Focus is unable to certify the presence of reinforced walls, then beginning thirty (30) days after the inspection, and in conformance with the procedures set forth in Paragraphs 6-8 herein, Defendant Focus shall modify all units so that they contain such reinforcement.

(iv) Kitchen Clear Floor Space

With regard to units 110, 214, 307, 315, 319, 407, 419, 507, 519, 520, 607, 622, 719, 809, and 810, in the event that one of those units is offered for rent to a household containing a person in a wheelchair, Defendant Focus will cause the prospective tenant to be notified in writing that prior to occupancy, at his/her request, it will either: (a) retrofit the unit by installing a shallow depth refrigerator or through other means, to meet the design requirements for either a 40" or 60" clear space between the elements as set forth in the FHA's Accessibility Requirements or (b) offer the household a comparable immediately available unit that meets the FHA's Accessibility Requirements.

5. The Parties have agreed to a Residential Unit Modification Plan which sets forth the remedial actions agreed to by Plaintiff and Defendants related to the residential units at 1717 Ridge and required to be completed by Defendant Focus in accordance with the terms of this Consent Decree. The Parties agree that such Residential Unit Modification Plan is confidential, is prepared for the purpose of settlement of the Litigation only, does not constitute an admission of liability, is not precedential and is unique to the facts and circumstances of the Litigation. To the extent a dispute concerning this Consent Decree is brought to the attention of the Court by a Party, it is agreed that the Residential Unit Modification Plan will not be filed in court papers, but a description of the remedial item(s) identified in the Residential Unit Modification Plan and portions of 1717 Ridge at issue may be fully described in filed court papers.

PROCEDURES TO COMPLETE REQUIRED MODIFICATIONS

6. Beginning within sixty (60) days of entry of this Consent Decree and continuing until a time period five (5) years from the entry of this Consent Decree, Defendant Focus shall make all of the modifications to individual apartment units that are required by this Consent

Decree, in accordance with the procedures set forth in Paragraphs 6-8 herein, or if no request is received from a tenant, then whenever a tenant terminates his/her tenancy and vacates the unit and before a subsequent tenant is permitted to occupy that unit. Upon the completion of the required modifications, Defendant Focus shall submit a written certification of same to counsel for Plaintiff.

7. Within thirty (30) days of entry of this Consent Decree, Defendant Focus shall cause to be sent the Notice attached hereto as Appendix A, informing the current tenants of 1717 Ridge of a non-compliance in their particular unit that (1) the unit does not meet certain Accessibility Requirements of the FHA; (2) the unit can be modified upon request; (3) the modifications offered will be at no cost to the tenant; and (4) if required, Defendant Focus will provide alternative living arrangements at no cost to the tenant while the modifications are performed.

8. If the management of 1717 Ridge receives a written or oral request to perform the modifications from a current tenant of a noncompliant unit, Defendant Focus shall ensure that management notifies the tenant in writing that:

- A. the modifications will be performed within thirty (30) days of the date of the request and will be completed within 14 days thereafter subject to an event of delay as set forth at Paragraph 26, below; and
- B. alternative living arrangements will be provided, if necessary in another unit at 1717 Ridge or at a nearby hotel.

PAYMENT TO OPEN COMMUNITIES

9. Within 30 days of entry of this Consent Decree, Defendants shall pay to Plaintiff and its Attorneys, in full and final compensation for all damage claims and all claims for attorneys' fees and costs related to the instant Litigation, the HUD Action, the IDHR action and this Consent Decree, the total sum of one-hundred and seventy-five thousand dollars and no

cents (\$175,000.00). Defendant Focus' contribution shall be \$87,500.00 and Defendant Booth Hansen's contribution shall be \$87,500.00.

PAYMENT INTO THE 1717 RIDGE MODIFICATION ESCROW

10. To ensure that there will be adequate funding available for Defendant Focus to complete the modifications required by the Modification Plan over the next five (5) years, within 30 days of entry of this Consent Decree, Defendants shall deposit into an escrow a confidential sum agreed by the Parties and confirmed with the Court (the "Modification Escrow") for the purpose of modifying 1717 Ridge so that it will, in accordance with this Consent Decree, to the greatest degree feasible, be compliant with the FHA's Accessibility Requirements. The Modification Escrow shall be utilized to implement the modifications to 1717 Ridge as set forth in the Modification Plan. Upon completion of the Modification Plan set forth at Paragraphs 4 and 5, above, any funds remaining in the Modification Escrow shall, pursuant to the terms of an escrow agreement to be negotiated by the Parties to effectuate the intent of this Consent Decree, be distributed by the escrowee back to the Defendants in proportion to their contributions to the Modification Escrow.

11. Any agreements by and between Defendants as to their contributions towards required settlement payments or the Modification Escrow are confidential.

ADDITIONAL OBLIGATIONS

12. During the term of this Consent Decree, Defendant Focus shall cause to be posted and prominently displayed in the rental offices of all Covered Multifamily Dwellings they own or operate a sign no smaller than ten (10) by fourteen (14) inches indicating that all residential dwelling units are available for rent on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

13. For the term of this Consent Decree, in all future advertising in newspapers and on pamphlets, brochures and other promotional literature regarding 1717 Ridge, Defendant Focus shall endeavor to cause the building management to place in a conspicuous location, a statement that the dwelling units include features for persons with disabilities as required by the federal Fair Housing Amendments Act or use of the accepted pictorial indicators for accessibility for persons with disabilities and non-discrimination. The sample advertisement in Appendix B is acceptable to Plaintiff. In order for Defendant Focus to demonstrate compliance with this Paragraph 13, it shall be sufficient for Defendant Focus to advise the owner of 1717 Ridge of this requirement.

NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

14. During the term of this Consent Decree, Defendant Focus shall, on the anniversary of the entry of this Consent Decree, submit to Plaintiff any additional signed statements required by Paragraphs of this Consent Decree.

15. During the term of this Consent Decree, Defendant Focus shall advise Plaintiff in writing within 15 days of receipt of any written administrative or legal fair housing complaint regarding any property developed by them, or against any employees of Focus working at or for any such property, alleging discrimination on the basis of disability in housing under federal law. Upon reasonable notice, Defendant Focus shall also provide Plaintiff all information in their possession that Plaintiff may reasonably request concerning any such complaint that is not otherwise privileged as attorney-client communications or attorney work product. Defendant Focus shall also advise counsel for Plaintiff in writing, within 15 days of the resolution of any complaint, which resolution occurs during the term of this Consent Decree.

16. For the term of this Consent Decree, Defendant Focus is required to preserve all

records in their possession related to this Consent Decree, for 1717 Ridge, and any other Covered Multifamily Dwellings designed by them during the duration of this Consent Decree. Upon reasonable notice to Defendant Focus, representatives of Plaintiff shall be permitted to inspect and copy any records of Defendant Focus bearing on compliance with this Consent Decree (to the extent not otherwise privileged as attorney-client communications or attorney work product) at any and all reasonable times, provided, however, that the Plaintiff shall endeavor to minimize any inconvenience to Defendant Focus from such inspections.

TERM OF THE CONSENT DECREE

17. This Consent Decree shall remain in effect until Defendant Focus completes the modifications of the Modification Plan set forth in Paragraphs 4 and 5, above.

DISMISSAL OF CLAIMS AGAINST BOOTH HANSEN

18. Plaintiff shall dismiss all of the claims and causes of action that Plaintiff asserted against Defendant Booth Hansen in this Action, with prejudice, within seven (7) days after Defendant Booth Hansen makes the payments required by Paragraphs 9 and 10, as no further performance is required of Defendant Booth Hansen under this Consent Decree. Defendant Booth Hansen has no obligation to perform, supervise, ensure, or otherwise have responsibility to complete modifications at 1717 Ridge. Upon such payment, Plaintiff shall file a Stipulation of Dismissal With Prejudice with the Court.

DISMISSAL OF LAWSUIT; COURT TO RETAIN JURISDICTION

19. The Parties agree that this Litigation has been settled and that all issues and controversies have been resolved to their mutual satisfaction. The Parties have requested the Court to retain jurisdiction to enforce the terms of their settlement agreement under the authority of *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375, 381-82 (1994).

Therefore, by consent of the Parties, the Court shall retain jurisdiction for the purpose of enforcing the terms of this Consent Decree. Except as necessary to enforce the terms of this Consent Decree, this Action is hereby dismissed, with prejudice.

RELEASE OF CLAIMS

20. Upon the Court's approval of this Consent Decree:

A. Plaintiff, for itself and its clients identified in the Litigation, and their respective past, present and future employees, agents, members, partners, parent entities, subsidiaries, divisions, predecessors, successors, assigns, and heirs (the Releasing Parties”) are deemed by this Consent Decree to irrevocably and unconditionally release, acquit, satisfy and discharge Defendant Focus, Defendant Atlantic, Defendant Booth Hansen, Focus Construction, and their respective past, present and future officers, directors, members, principals, partners, general partners, limited partners, employees, joint venture partners, asset managers, property managers, servicers, agents, affiliated or related entities, successors, assigns, predecessors, stockholders, owners, representatives, parent companies, subsidiary companies, attorneys, lenders, accountants, insurers, and any other persons acting by, through, under or in concert with any of the above entities (the “Released Parties”) from any and all claims, demands, liabilities, debts, judgments, damages, expenses, actions, causes of action or suits of any kind, whether based in equity or law, which the Releasing Parties may have, may have had, or may hereafter have against the Released Parties, whether known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, arising out of or relating to acts, omissions, facts and circumstances arising at any time prior to the Court’s entry of this Consent Decree including, but not limited to, initial design and construction of 1717 Ridge, any and all claims arising out of the facts and circumstances alleged in this Litigation, under the FHA, the Americans with Disabilities Act, and/or any other federal, state or local law governing physical access features for persons with disabilities at places of public accommodation whether before any federal, state or local agency, court of law, or before any other forum, relating to 1717 Ridge, including all allegations that were or could have been made in the Litigation, and including all claims for attorneys’ fees, expert fees, litigation expenses, damages, and costs, excepting only the obligation of this Agreement (the “Scope of Release”). Upon the Court's approval of this Consent Decree, Plaintiff covenants to not sue, and shall be precluded by this Consent Decree from suing or otherwise asserting, on behalf of any of their past, present or future clients, any claims, demands, liabilities debts, judgments, damages, expenses, actions, causes of action or suits of any kind, whether based in equity or law, against any of the Released

Parties relating to 1717 Ridge. This release and covenant to not sue is final and shall survive the expiration of the Consent Decree's term.

- B. Defendant Focus and its respective past, present and future officers, directors, members, principals, partners, general partners, limited partners, employees, joint venture partners, asset managers, property managers, servicers, agents, affiliated or related entities, successors, assigns, predecessors, successors, stockholders, owners, representatives, parent companies, subsidiary companies, attorneys, lenders, accountants, insurers, and any other persons acting by, through, under or in concert with them, including but not limited to 1717 Ridge Avenue, LLC (the "Focus Releasing Parties") grant to Defendant Booth Hansen, and its respective past, present and future officers, directors, members, principals, partners, general partners, limited partners, employees, agents, affiliated or related entities, successors, assigns, predecessors, stockholders, owners, representatives, parent companies, subsidiary companies, attorneys, lenders, accountants and insurers, and any other persons acting by, through, under or in concert with them, the same Scope of Release that the Releasing Parties granted to the Released Parties in Paragraph 20(A), above, excepting only the rights and obligations set forth in this Agreement. This release is final and shall survive the expiration of the Consent Decree's term.
- C. Defendant Booth Hansen and its respective past, present and future officers, directors, members, partners, general partners, limited partners, employees, agents, affiliated or related entities, successors, assigns, predecessors, stockholders, owners, representatives, parent companies, subsidiary companies, attorneys, lenders, accountants, insurers, and any other persons acting by, through, under or in concert with Defendant Booth Hansen (the "Booth Hansen Releasing Parties") grant to Defendant Focus and its respective past, present and future officers, directors, members, partners, general partners, limited partners, employees, joint venture partners, asset managers, property managers, servicers, agents, affiliated or related entities, successors, assigns, predecessors, stockholders, owners, representatives, parent companies, subsidiary companies, attorneys, lenders, accountants, insurers, and any other persons acting by, through, under or in concert with them, the same Scope of Release that the Releasing Parties granted to the Released Parties, in Paragraph 20(A), above, excepting only the rights and obligations set forth in this Agreement. This release is final and shall survive the expiration of the Consent Decree's term.
- D. If future or additional claims, demands, liabilities, debts, judgments, damages, expenses, actions, causes of action or suits of any kind, whether based in equity or law, related to 1717 Ridge, that are not released by Subparagraphs (A) through (C) of Paragraph 20, are made against one or more of the Defendants, nothing in this Consent Decree shall be deemed

to waive or release of any defense, whether contractual, statutory, legal, equitable or otherwise, that Defendant(s) may have to such future or additional claims, it being the intent of the Parties and the Court to fully preserve intact all such defenses for Defendant(s) to the extent available to Defendant(s) prior to entry of this Consent Decree.

21. Plaintiff and Defendants shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Parties to perform, in a timely manner, any act required by this Consent Decree or otherwise for its failure to act in conformance with any provision thereof, any party 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, or enjoining a party from performing acts prohibited by this Consent Decree, and an award of any damages, costs, and reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

TIME FOR PERFORMANCE

22. Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the Parties without the need for the Parties to seek an order from the Court.

NOTICES TO PARTIES

23. To the extent notice is to be provided to Plaintiff or Defendants under the terms of this Consent Decree, each notice shall be in writing and sent by depositing it with a nationally recognized overnight courier service which obtains receipts (such as Federal Express or UPS Next Day), addressed to the appropriate Party (and marked to a particular individual's attention, if so indicated) as hereinafter provided. Notice to Plaintiff shall also be sent via e-mail to Plaintiff's attorney. Notice to Defendants shall also be sent via e-mail to each Defendant's attorney. Each notice shall be effective upon being so deposited with the courier service and the

time period in which a response to any notice must be given or any action taken with respect thereto shall commence to run from the date of deposit with the courier service, as evidenced by the courier service's receipt. Rejection or other refusal by the addressee to accept or the inability to deliver because of a changed address of which no notice was given, shall be deemed to be the receipt of the notice sent. Any Party shall have the right from time to time to change the address or individual's attention to which notices to it shall be sent by giving to the other Party at least ten (10) days prior notice thereof.

The Parties' addresses for providing notices hereunder shall be as follows:

- i. If to the Plaintiff, by first-class mail addressed to:

Jeffrey L. Taren
Kinoy, Taren & Geraghty, P.C.
224 S. Michigan Ave.
Suite 490
Chicago, IL 60604

- ii. by e-mail to the undersigned attorneys representing the Plaintiff:

Jeffrey L. Taren
jtaren@ktglawyer.com

- iii. If to Defendant Focus: by first-class mail addressed to

Scott R. Fradin
Ed Shapiro
Much Shelist
191 N. Wacker Dr.
Suite 1800
Chicago, IL 60606
(312) 521-2619

- iv. by e-mail to the undersigned attorneys representing Defendant Focus:

Scott Fradin
sfradin@muchshelist.com
Ed Shapiro
eshapiro@muchshelist.com

v. If to Defendant Booth Hansen: by first-class mail addressed to

Jeremy S. Baker
Mark C. Friedlander
Schiff Hardin LLP
233 S. Wacker Dr.
Suite 6600
Chicago, Illinois
312-258-5500

and

George Halik
Booth Hansen Ltd.
333 South DesPlaines Street, Suite 100
Chicago, Illinois 60661

vi. by e-mail to the undersigned attorneys representing Defendant Booth:

jbaker@schiffhardin.com
mfriedlander@schiffhardin.com

MISCELLANEOUS TERMS

24. This Consent Decree is for settlement purposes only and does not constitute an admission by Defendant Focus or Defendant Booth Hansen of any of Plaintiff's allegations in the Complaint or any other pleading or document filed in the Litigation. The Defendants are settling this matter solely to avoid the cost of protracted litigation.

25. To the extent Plaintiff or its attorneys maintain that any or all of the parameters of this Consent Decree or the agreed upon Modification Plan have not been complied with, Plaintiff shall provide written notice in accordance with Paragraph 23 of this Consent Decree to Defendants allowing them sixty (60) days to cure (or such longer period to which the parties may mutually agree in writing, the "Cure Period"). During such Cure Period, the Parties agree to negotiate, in good faith, any dispute. Notice, as stated in this Paragraph, shall constitute a condition precedent to filing any subsequent suit or action for enforcement of this Consent

Decree.

26. The Parties agree that if the modifications required by this Consent Decree are not timely completed due to acts of God, third-parties, terrorism, war or other reasons beyond the control of Defendants (such as a delay in obtaining or inability to obtain building permits, failure of county or city inspectors to make inspections, shortages in construction materials, contractor defaults, work stoppages due to labor related disputes or weather conditions, operational and tenant service priorities, maintenance priorities, availability of materials, work force shortages, limited resources, safety concerns, administrative and fiscal restraints, size and scope of the tasks to complete and/or changes in the Fair Housing Act Design Manual, 1998, the Fair Housing Accessibility Guidelines, or other applicable local, state and federal codes) then Defendant Focus shall be allowed additional time in which to complete the Modification Plan and shall not be deemed to be in violation of the compliance dates contained herein as long as Defendant Focus makes a good faith effort to effect implementation as soon as reasonably possible thereafter. In the event any of the factors set forth herein necessitate additional time to complete the Modification Plan agreed upon by the Parties, Defendants shall notify Plaintiff of the need for additional time to complete the required modifications. Plaintiff shall not unreasonably withhold its consent to any reasonable extension requested. Defendants will not be deemed to violate the compliance dates herein as long as Defendants make a good faith effort to effect implementation as soon as reasonably possible thereafter.

27. If in the course of carrying out the Modification Plan, Defendant Focus determines that some or several items required by the Modification Plan under this Consent Decree would be technically infeasible, structurally impracticable or not readily achievable to carry out, Defendant Focus shall promptly notify Plaintiff and propose alternate barrier removal

steps to remove the applicable barrier(s) to the maximum extent feasible and readily achievable. Plaintiff shall not unreasonably withhold or delay his approval. If the Parties cannot agree on alternate barrier removal steps, the matter may be submitted to the Court for decision. In such event, there shall be no discovery allowed by either Party, except that which is agreed to by the Parties as is necessary to resolve the issue in dispute, but also narrowly limited to the issue in dispute. If the Parties cannot agree on the scope of discovery, the Court may determine the extent of discovery allowed, but such discovery shall be narrowly limited to the issue in dispute.

28. The Parties acknowledge and agree that nothing contained herein shall prevent Defendant Focus from assigning its obligations under this Consent Decree to the owner, operator, or future lessor or lessee of 1717 Ridge; provided that such assignee agrees to be bound by the terms of this Consent including the release in favor of Defendant Booth Hansen, as granted by the Focus Releasing Parties in Paragraph 20(B), above. Should Defendant Focus assign its obligations under this Consent Decree to the owner, operator, or future lessor or lessee of 1717 Ridge, and such successor agrees in writing to assume such obligations, Plaintiff agrees that Defendant Focus shall be released from any and all claims or causes of actions by or on behalf of Plaintiff relating to obligations set forth in this Consent Decree, including but not limited to, any action taken to enforce the terms of this Consent Decree. To the extent any cause of action or claim is brought against the owner, operator, or future lessor or lessee of 1717 Ridge, said cause of action or claim shall be limited solely and exclusively to an action to enforce the terms of this Consent Decree. Except for an action to enforce the terms of this Consent Decree, Plaintiff releases all owners, operators, and future lessors and lessees from all other claims or causes of action as more fully set forth in Paragraph 20, above.

29. Plaintiff agrees that it will not, directly or indirectly, issue any formal

communication, including any press release, (or cause, further, assist, solicit, encourage, support or participate in any of the foregoing), that in any way is intended to malign, harm, disparage, defame or damage the reputation of Defendants or any of their respective past, present and future directors, officers, affiliates, subsidiaries, employees, agents or representatives. Plaintiff agrees to include the following language in any written communication concerning the settlement, including, but not limited to, press releases: “In the litigation, Focus and Booth Hansen denied Open Communities’ allegations with respect to discrimination, disagreed with the interpretations of Open Communities’ expert witness, and agreed to settle the disputed claim to avoid the cost and disruption of protracted litigation.”

30. Except as otherwise specifically provided for herein, each Party shall bear its own costs and attorneys’ fees arising out of or relating to this Litigation and the negotiation and performance of the Consent Decree.

31. Plaintiff and Defendants understand and agree that this Consent Decree and the appendices thereto contain the entire agreement between them, and that statements, representations, promises, agreements, or negotiation, oral or otherwise, between the Parties or their counsel not included herein shall be of no force or effect.

32. Each person executing this Consent Decree on each Party’s behalf represents and warrants that he or she has the authority to sign on behalf of the respective Party for which he or she is signing and to bind each such Party to the terms of this Consent Decree.

33. By executing this Consent Decree, the authorized signatory for Defendant Focus represents and warrants that the owner(s) of 1717 Ridge have granted Defendant Focus the full right and authority to enter 1717 Ridge, to implement the modifications to 1717 Ridge required under this Consent Decree, and to perform any action necessary with respect to 1717 Ridge or its

current or future tenants necessary to carry out the terms of this Consent Decree.

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

SO ORDERED THIS 28th DAY OF January, 2016



Daniel G. Martin
United States Magistrate Judge

Agreed to by the parties as indicated by the signatures of counsel below.

For Defendant FOCUS DEVELOPMENT INC.

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For Defendant BOOTH HANSEN LTD.

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For Plaintiff OPEN COMMUNITIES

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ATTACHMENT A



[Date]

Dear 1717 Resident:

In our efforts to comply with all aspects of disability and accessibility laws we will be modifying apartments at 1717 Ridge Avenue to provide greater accessibility for people with disabilities at no cost to you. Please understand that the parties undertaking the retrofits are required to do so.

Your apartment qualifies for retrofitting of the following items:

[List of items]

Please note that your apartment does not require this retrofit to be completed during your initial lease term; however, you may request to have your apartment modified sooner at no cost to you. Most of the retrofits are relatively minor and can be done in a few hours on a day that you can select that you know you will not be at home.

Please advise us within thirty (30) days of the date of this letter, in writing, if you would like the items listed above to be modified. In the very unlikely scenario that it becomes necessary for you to briefly relocate during the repairs, we will provide you with alternative living arrangements at no cost to you while the modifications are performed.

If you have any questions, please contact Alexandria (Lexee) Ford, Property Manager, at lford@goarp.com.

Sincerely,

The Management

APPENDIX B

