

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. 3:08-cv-960
)	Judge William J. Haynes, Jr.
MURPHY DEVELOPMENT, LLC, et al.,)	
)	
Defendants)	
_____)	

SUPPLEMENTAL CONSENT ORDER

Pursuant to this Court’s Consent Order entered March 30, 2010, Defendants¹ were to have completed retrofits to the public and common areas of ten of twenty-one properties at issue in this case by June 30, 2011. Without prior notice, Defendants failed to adhere to this timeline. At Defendants’ request, the United States agreed to modify the deadlines. Again, without prior notice, Defendants failed to meet the revised deadlines that they proposed.

On November 30, 2011, pursuant to Federal Rule of Civil Procedure 70(e) and paragraph 188 of the Consent Order, the United States filed a motion for contempt and for further relief. Dkt. No. 189. The United States and Defendants agree that the United States’ motion should be resolved without further proceedings and have therefore jointly entered into this Supplemental Consent Order. The parties agree that full implementation of the terms of this Supplemental Order will provide a fair and reasonable resolution of the United States’ motion.

¹ As used herein, the term “Defendants” includes all the defendants in this lawsuit except Azalea Development, LLC. *See* Consent Order ¶1, Dkt. No. 183 (entered Mar. 30, 2010).

The parties stipulate to the following facts, which support the relief upon which the parties have agreed:

1. The United States filed this action to enforce the provisions of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 – 3619 (the “Fair Housing Act” or “FHA”), and Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 – 12189 (“ADA”). Compl., Dkt. No. 1 (filed Sept. 29, 2008); Am. Compl., Dkt No. 31 (filed Apr. 15, 2009). The parties resolved the United States’ claims in a Consent Order entered by the Court on March 30, 2010 (hereinafter, “the Consent Order”). Dkt. No. 183.
2. Pursuant to the Consent Order, Defendants were to have completed exterior retrofits at ten properties by June 30, 2011. These properties are:
 - a. Meadowcreek Apartments.
 - b. Miller Town Apartments
 - c. Spring Branch Apartments
 - d. Dunhill Apartments
 - e. Ashton View Apartments
 - f. West Vista Ridge Apartments
 - g. Forest View Apartments
 - h. Stonebridge Apartments
 - i. Swiss View Apartments
 - j. Cassell View Apartments
3. The United States first received notice that Defendants had not completed public and common area retrofits at the ten properties identified above during a telephone call with counsel for Defendants on July 12, 2011, after the June 30, 2011 completion date had passed. Defendants confirmed their delinquency in a letter dated July 18, 2011, and further acknowledged that they had not satisfied their public and common area retrofit obligations at any property.
4. The United States responded in a letter dated July 28, 2011. The letter stated that the United States did not find Defendants’ reasons for their non-compliance to be legitimate

and requested that Defendants provide a detailed explanation for the delay and that they substantiate their claims.

5. Defendants responded in a letter dated August 17, 2011. Pursuant to paragraphs 188-89 in the Consent Order, Defendants proposed a number of modifications to the retrofit schedule established in the Consent Order. They further stated that they did not anticipate requiring any modification to either the interior retrofit schedule or the exterior schedule for the remaining properties.
6. The United States responded in a letter dated August 24, 2011. The United States agreed to the revised schedule, contingent upon certain conditions. The United States also noted its concern regarding Defendants' failure to make progress on retrofits in accordance with the Consent Order as well as their failure to seek extensions until after deadlines had passed. To that end, the United States requested that Defendants submit status updates every two weeks describing the progress of retrofits at each property.
7. Defendants responded in a letter dated September 1, 2011. The letter confirmed the agreed-upon revised schedule, subject to minor modifications. They also agreed to provide the United States with bi-weekly progress reports.
8. As of November 30, 2011, Defendants had provided six progress reports. In these reports, Defendants represented that as of October 24, 2011, they had completed exterior or common area retrofits at three properties, although they admitted that they had failed to complete the retrofits by the revised deadlines at two of these properties. The November 21, 2011, report acknowledged that the exterior retrofits for another three properties were not or would not be completed in accordance with the revised schedule, which Defendants had themselves proposed and to which the United States had agreed.

9. Pursuant to paragraphs 157-89, a neutral surveyor inspected the three properties that Defendants represented had complete exterior retrofits—West Vista Ridge, Dunhill, and Cassell View—on November 1 and 2, 2011. Upon completion of the surveys, the neutral inspector completed inspection reports for these properties.
10. The inspection reports confirmed that some of the required work at the properties had been completed, but detailed numerous incomplete retrofits at each property. For example, the survey for West Vista Ridge identified seventy-two separate barriers to accessibility that remained uncorrected. In contrast, the surveyor found only forty-one instances where the barrier had been remediated. Under the revised deadlines, exterior retrofits at West Vista Ridge were to have been completed by August 30, 2011. The inspection reports for Dunhill and Cassell View stated that the exterior retrofits for these properties were in similar states of non-compliance.

In light of the stipulated facts above, it is hereby ORDERED, ADJUDGED, and

DECREED:

11. Defendants shall complete retrofits to the Subject Properties in accordance with following schedule:

Property	Public and Common Area Retrofits (Exteriors)	Interior Unit Retrofits
Stonebridge	December 30, 2011	March 30, 2013
Swiss View	January 15, 2012	March 30, 2013
West Vista Ridge*	January 30, 2012	March 30, 2013
Dunhill*	January 30, 2012	March 30, 2013
Miller Town	January 30, 2012	March 30, 2013
Sutherland Park	February 29, 2012	March 30, 2013
Cassell View	March 30, 2012	March 30, 2013
Meadowcreek	March 30, 2012	March 30, 2013
Spring Branch	March 30, 2012	March 30, 2013
Ashton View	March 30, 2012	March 30, 2013

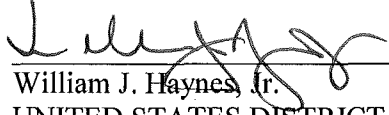
Forest View	May 30, 2012	March 30, 2013
The Highlands	June 30, 2012	December 22, 2013
River View Park	July 30, 2012	July 14, 2013
Swiss Ridge	September 30, 2012	March 30, 2013
17th Street	September 30, 2012	March 30, 2013
Lake Side	September 30, 2012	March 30, 2013
Lyon's Den	March 16, 2013	July 16, 2013
Sutherland View	April 10, 2013	August 10, 2013
Beason Well	August 15, 2013	December 15, 2013
Cassell Ridge	August 22, 2013	July 15, 2013
*Because West Vista Ridge and Dunhill have received initial exterior retrofit inspections, these properties shall be subject to re-inspections pursuant to paragraph 159 of the Consent Order.		

12. Defendants shall provide the United States with bi-weekly progress reports documenting their progress of retrofitting each Subject Property. These bi-weekly reports will include, at a minimum, photographs of construction, declarations of progress by general contractors or other persons with knowledge of Defendants' progress, and confirmation that retrofits will be completed in accordance with the schedule set forth in paragraph 11 of this Supplemental Consent Order.
13. Defendants shall provide the United States notice in writing of any anticipated delay as soon as reasonably possible. The notice must set forth the reasons for such delay. Upon receipt of such notice, the United States may agree to extend the retrofit deadline up to two weeks beyond the deadline provided in this Supplemental Consent Order.
14. If Defendants anticipate a delay in completing any retrofit to any property more than two weeks beyond the retrofit deadline set by this Supplemental Consent Order, Defendants must move the Court for approval of an extension, setting forth Defendants' grounds for the extension, including sworn declarations from Defendants. The United States will have an opportunity to respond to Defendants' motion.

15. If Defendants miss any retrofit deadline set forth in this Supplemental Consent Order without prior approval of the United States or the Court, Defendants must pay the United States liquidated damages in the amount of \$1,000 for every day that Defendants are delinquent in meeting their obligations.
16. Paragraphs 159 and 162 of the Consent Order require that the Neutral Inspector notify the United States and Defendants in writing of the results of retrofit inspections at each Subject Property. In the event that the Neutral Inspector identifies incomplete or incorrect retrofits, and if Defendants believe these to be *de minimis*, Defendants may, no later than 10 days from the date of the Neutral Inspector's report, identify such items in writing to the United States and request that they be permitted to forgo remediating these items. Upon such notice, and within its sole discretion, the United States may waive its right to demand remediation by providing notice of the waiver to Defendants.
17. For West Vista Ridge and Dunhill, Defendants must initiate the procedure for seeking *de minimis* waivers set forth in paragraph 16 above no later than 10 days after the entry of this Supplement Consent Order.
18. If the United States, in its sole discretion, determines that any Neutral Inspector's report demonstrates that Defendants have failed to substantially complete any retrofit or retrofits in accordance with the schedule set forth in paragraph 11, or as otherwise extended by the United States or the Court, the United States shall be entitled to liquidated damages as provided in paragraph 15 of this Supplemental Consent Order.

19. This Supplemental Consent Order supplements the Consent Order entered on March 30, 2010. In all other respects, the March 30, 2010 Consent Order remains in full force and effect.

SO ORDERED, this 15th day of December, 2011.



William J. Haynes, Jr.
UNITED STATES DISTRICT JUDGE

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