VOLUNTARY COMPLIANCE AGREEMENT

BETWEEN

UNITED STATES
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

AND

ENGLEWOOD HOUSING AUTHORITY
3460 S. SHERMAN, SUITE 101
ENGLEWOOD, CO 80113

CASE NUMBERS: 08-11-R006-4 (Section 504)
08-11-R006-6 (Title VI)

I. INTRODUCTION

The U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (HUD or the Department) has completed a review of EHA's housing program at Orchard Place. HUD conducted the review pursuant to the authorities of Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. Section 2000, and HUD's implementing regulations at 24 C.F.R. Part 1, and Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. § 794, and HUD's implementing regulations at 24 C.F.R. Part 8. HUD conducted the initial on-site phase of its compliance review October 11 – October 13, 2011, and conducted a supplemental on-site review January 5, 2012. The primary purpose of the review was to determine whether EHA is administering its housing program in compliance with the nondiscrimination provisions of Section 504 and Title VI. During the course of our review, we additionally gathered and analyzed information to determine the presence of any readily observable areas of non-compliance or concerns under the affirmative marketing regulations. The areas examined included EHA's: Applications, waiting lists, and applicant rejections; tenant selection and occupancy procedures; evictions and involuntary terminations; maintenance of records; implementation of Section 504 program requirements; outreach and affirmative marketing; and limited English proficiency (LEP) procedures.

II. JURISDICTION

EHA and any other public or private agency, institution, organization, or person receiving federal financial assistance from the Department, directly or indirectly, is a recipient of federal financial assistance and must comply with Title VI, Section 504, and the affirmative marketing regulations. EHA is a recipient of federal financial assistance in the form of Public and Indian Housing assistance.

III. PRELIMINARY FINDINGS OF NON-COMPLIANCE

During the compliance review, HUD identified several areas of non-compliance under Section 504 and several concerns under Section 504, and the affirmative marketing regulations. By entering into this Voluntary Compliance Agreement (VCA), EHA agrees to enter into this VCA to ensure compliance, as specifically described within the "Specific Provisions" section. EHA further agrees to fully and timely comply with the provisions of this VCA.

IV. GENERAL PROVISIONS

1. This VCA is effective on the date it is signed by the Director, Fair Housing and Equal Opportunity, Region VIII (the Director). The Director, acting on behalf of the HUD Secretary, retains authority to approve or disapprove this VCA. This VCA is binding upon EHA, its employees, heirs, successors and assigns, and all others in active concert with them in the ownership and operation of EHA's public housing program.

2. This VCA will remain in effect until EHA has satisfactorily complied with the terms of this VCA, or for a minimum of three years after the effective date of this VCA, whichever is later. EHA's failure to comply with the terms of the VCA will be considered a breach of the VCA, in the event of which, HUD can withdraw financial support for EHA pursuant to 24 C.F.R. § 8.57.

3. Upon EHA's submission of any revised plans, policies, or documents to HUD in accordance

with the dates specified in this VCA, the Director will review and approve or reject those submissions. EHA will have 45 days to cure any deficiency(s) in the plans, policies, or documents, and resubmit for approval. Repeated refusals to submit acceptable plans, policies, or documents may be deemed a material breach of this VCA. Once approved by the Director, EHA will take the required action(s) specified in the revised plans, policies, or documents.

4. This VCA does not limit or restrict HUD's authority to investigate any complaints involving EHA made pursuant to Section 504, Title VI, or any other authority within HUD's jurisdiction.

5. No amendment to, modification of, or waiver of any provision of this VCA will be effective, unless the following conditions are met: (1) All signatories to the VCA are notified in advance of the proposed amendment, modification, or waiver; (2) the amendment, modification, or waiver is in writing; and (3) the amendment, modification, or waiver is approved and signed by the Director. Any such amendment, modification, waiver, or consent will be effective only in the specific instance and for the specific purpose for which it was approved.

6. This VCA does not affect EHA's legal obligations to comply with all requirements of Section 504, Title VI, and the Fair Housing Act not addressed in this VCA.

7. Upon the effective date of this VCA, this VCA is a public document. A copy of this VCA will be made available by HUD to any person in accordance with the law. EHA will also provide a copy of this VCA to any person upon request.

V. SPECIFIC PROVISIONS

8. Ensuring Equal Access to Non-Elderly Families with Disabilities/Removal of the Non-Compliant Preference Point System (PPS) at Orchard Place (24 C.F.R. 8)

PRELIMINARY FINDING OF NON-COMPLIANCE: During the compliance review, HUD found that EHA has failed to comply with Section 504, because it has not met the requirements of 24 C.F.R. Part 8 by ensuring that its policies and practices do not discriminate against qualified individuals based on disability. HUD found that EHA does not lease and operate Orchard Place in accordance with HUD regulations at Part 5, Parts 900-990, and other applicable HUD policies and regulations, including the mixed population regulations at 24 C.F.R. §§ 960.102(b)[1] and 960.407.[2] As a result, HUD found that EHA has excluded non-elderly persons with disabilities from its "mixed population" Orchard Place public housing development, instead of serving non-elderly persons with disabilities and elderly families

[1] **24 C.F.R. § 960.102(b):** "Mixed population development. A public housing development, or portion of a development, that was reserved for elderly and disabled families at its inception (and has retained that character). If the development was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the development (or portion of development) to elderly families and disabled families. These developments were formerly known as elderly projects."

[2] **24 C.F.R. § 960.407:** "(a) The PHA must give preference to elderly families and disabled families equally in determining priority for admission to mixed population developments. The PHA may not establish a limit on the number of elderly families or disabled families who may be accepted for occupancy in a mixed population development. (b) In selecting elderly families and disabled families to occupy units in mixed population developments, the PHA must first offer units that have special accessibility features for persons with disabilities to families who include persons with disabilities who require the accessibility features of such units (see §§ 8.27 and 100.202 of this title)."

equally. The compliance review specifically revealed that EHA employs a priority point system that limits access to its public housing program by non-elderly persons with disabilities by awarding them fewer preference points at application and therefore a subordinated place on the waiting list compared to later elderly applicants who can attain a greater number of preference points. Due to the priority point system, elderly applicants are housed earlier than and in place of non-elderly disabled applicants.

Upon the effective date of this VCA, EHA will refrain from referencing Orchard Place as a "senior" property in all communications, and refer to Orchard Place as a "mixed" property that serves elderly families age 62 and over, and families with disabilities of any age equally in accordance with HUD regulations.[3]

Immediately following the effective date of this VCA, EHA will complete the following actions to remove from its practice the prohibited unequal PPS:

a) Cease using the PPS or any other preference system that permits elderly applicants to attain more preference points than non-elderly disabled applicants;

b) Within 60 days of the effective date of this VCA, EHA will reorder its current Orchard Place waiting list by removing the discriminatory PPS and placing eligible non-elderly families with disabilities on the waiting list in the order EHA received their initial applications based on time and date of application;

c) Within 70 days of the effective date of this VCA, EHA will submit to HUD a copy of the waiting list prior to the reorder and a copy of the waiting list after the reorder; and

d) Draft an amended EHA Admissions and Continued Occupancy Policy (ACOP) to reflect that EHA provides applicants 62 and over and applicants with disabilities equal opportunity for tenancy at Orchard Place.

9. <u>Ensure Equal Access to Eligible Non-Elderly Applicants with Disabilities Waiting for Housing at Orchard Place</u>

PRELIMINARY FINDING OF NON-COMPLIANCE: *See* the preliminary findings of non-compliance at provision 8 above.

Within 15 business days of the effective date of this VCA, EHA will draft a letter to notify non-elderly applicants with disabilities who are eligible for one-bedroom units that they have equal priority for housing at Orchard Place. The letter will be sent to all non-elderly applicants with disabilities currently on EHA's Orchard Place waiting lists and any other Low Income Public Housing waiting list. EHA will also post this information on the section of its website dedicated to the Housing Choice Voucher (HCV) Program. EHA will submit to HUD a copy of the notification letter within 15 business days of the effective date of this VCA for approval. Within 14 days of HUD's approval, EHA will send the notification letter by U.S. Mail to each applicant.[4]

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[3] *See* footnote 1.

[4] In 2010, EHA conducted an annual waiting list purge. Later in 2010, EHA informed non-elderly applicants with disabilities on the Orchard Place waiting list that EHA had applied for senior designation status for Orchard Place

The notification letter will:

a) Inform applicants who are currently on one or more of the above listed EHA waiting lists that they may choose for EHA to place them on the Orchard Place waiting list based on the date and time of their initial application;

b) Inform applicants who are currently on one or more of the above listed EHA waiting lists that choosing placement on the Orchard Place waiting list will not affect their current placement on EHA's other waiting lists;

c) Provide applicants ten days to respond to the notification letter;

d) Inquire about each applicant's need for an accessible unit and/or reasonable accommodation; and

e) Inform applicants about the right to request a reasonable accommodation or modification.

Within 60 days of the effective date of this VCA, EHA will submit to HUD a record of all applicant contacts. The record will include the following:

a) Each applicant's name, address, and telephone number;

b) The date and time EHA received each applicant's initial application for housing;

c) Whether each applicant initially applied for an LIPH housing opportunity or for an HCV; and

d) Documentation of each applicant's response to EHA's letter, including the date EHA received each applicant's response.

10. Revise Operating Documents

PRELIMINARY FINDING OF NON-COMPLIANCE: *See* the preliminary findings of non-compliance at provision 8 above.

Within 60 days of the effective date of this VCA, EHA will amend all documents available to the public that EHA uses to operate Orchard Place by removing all references to Orchard Place as a "senior" property, and refer to the property as a "mixed" property in accordance with HUD regulations.[5] These documents include, but are not limited to, EHA's PHA Annual Plan, EHA's ACOP, information contained on EHA's website, printed marketing materials, and published advertisements.

Within 70 days of the effective date of this VCA, EHA will submit to HUD a list of all

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and offered them the ability to transfer to the HCV waiting list. Of these non-elderly applicants, 84 requested to transfer to the HCV waiting list; and 14 chose to remain on the Orchard Place waiting list. EHA has already processed all 98 of these applicants for housing opportunities and either housed or denied them based on ineligibility. EHA did not purge any applicants from the waiting list as a result of this process.

[5] *See* footnote 1.

amended documents. EHA will also provide Orchard Place's current residents a list of the amended documents and make these documents available to residents upon request.

11. Independent Living Language in EHA's Written Admission and Occupancy Policies (24 C.F.R. Part 8)

CONCERN: During the compliance review, HUD found that EHA violates Section 504 by communicating requirements that may limit access to the program by persons with disabilities. Even though the compliance review did not reveal any evidence that EHA implements any "independent living" eligibility criteria, HUD found that EHA's written policies for determining admission and continued occupancy contain language suggesting that EHA employs "independent living" eligibility criteria.

EHA will not utilize any unlawful independent living screening criteria as a factor to determine eligibility for admission to and continued occupancy at any housing program owned or managed by EHA, and will not require applicants or residents to demonstrate they are capable of "independent living" by considering "the person's present living arrangements and a statement obtained from the applicant's physician or social worker... [and] the availability of a live-in aide..."[6] as communicated within EHA's ACOP. Specifically, as of the effective date of this VCA, EHA will refrain from the following:

a) Imposing as a term or condition of tenancy that applicants and residents must be healthy and able to live independently of any assistive services that may be necessary due to a person's disability;

b) Making statements and/or applying policies and practices indicating that persons cannot or should not live at EHA if they have impairments that substantially impact major life activities, including the ability to live independently;

c) Requiring anyone to provide information to determine the nature and severity of applicants' or residents' disabilities;

d) Requiring applicants to submit to a medical assessment or to provide statements from physicians or social workers attesting to the ability to live independently as a term or condition of tenancy;

e) Discouraging people with disabilities who may need assistive services to live independently from applying for EHA housing or continuing to reside at EHA housing; and

f) Steering people with disabilities from EHA to assisted living facilities based on their failure to demonstrate the ability to live independently.

Within 60 days of the effective date of this VCA, EHA will revise all applicable business documents, including its ACOP, to remove any language that suggests EHA requires the "ability to live independently" and eliminate all language that suggests EHA requires people with disabilities to demonstrate the "ability to live independently" or to provide statements

[6] *See* "Admissions and Occupancy Policy, Englewood Housing Authority," Adopted by Board Resolution No. 8, Revised: July 6, 2011, Sections 8.3, page. 38.

from physicians or social workers.

Within 70 days of the effective date of this VCA, EHA will submit to HUD amended copies of its ACOP and any other documents revised to comply with this provision.

12. Section 504 Reasonable Accommodation Policy (24 C.F.R. §§ 8.4, 8.33, 8.55)

CONCERN: During the compliance review, HUD found that EHA has violated Section 504, because it has not established and implemented a sufficiently comprehensive reasonable accommodation and modification policy for applicants and tenants at Orchard Place.

Within 60 days of the effective date of this VCA, EHA will amend its Reasonable Accommodation Policy contained within its ACOP and House Rules to include the following:

a) A definition of "Reasonable Accommodation" that includes examples of accommodations;

b) A process for applicants, tenants, and members of the public who participate in EHA's programs, services, or activities to request a reasonable accommodation;

c) Forms for individuals to request reasonable accommodations;

d) A procedure through which EHA will approve or deny reasonable accommodation/ accessible unit requests. That procedure will detail timelines for processing the requests and describe a system for maintaining documentation of reasonable accommodation/modification requests. The process will include the requirement to acknowledge receipt of a request and engage in initial discussions within seven business days of a request; and

e) A formal appeal/grievance procedure for individuals whom EHA denies reasonable accommodation or modification requests.

Within 70 days of the effective date of this VCA, EHA will submit to HUD a copy of the revised reasonable accommodation policy. After HUD approves it, EHA will distribute the approved revised reasonable accommodation policy pursuant to Section 17 below. EHA will redistribute the policy thereafter to all tenants during each tenant's annual recertification. EHA will also distribute the reasonable accommodation policy to each future applicant and to each new tenant.

13. Section 504 Reasonable Accommodation Tracking System (24 C.F.R. §§ 8.4, 8.33, 8.55)

CONCERN: During the compliance review, HUD found that EHA has failed to comply with Section 504, because it fails to meet the requirements of 24 C.F.R. § 8.55(b), which provides that recipients must maintain timely, complete, and accurate compliance reports in such form and containing such information necessary to enable the Department to ascertain whether the recipient complies with Section 504. HUD found that EHA lacks the fundamental recordkeeping procedures to adequately document and track reasonable accommodation requests. Even though EHA has a reasonable accommodation request log dedicated solely to reasonable accommodation requests, HUD found that EHA does not

consistently enter updated information to record reasonable accommodation/modification requests and does not utilize uniform recordkeeping procedures related to reasonable accommodation requests. HUD found that EHA has filed numerous reasonable accommodation requests directly into individual tenant files; but these are not readily identifiable.

Within 60 days of the effective date of this VCA, EHA will revise and maintain a reasonable accommodation log in order to keep comprehensive records of all reasonable accommodation requests in a uniform and nondiscriminatory manner. For the duration of this VCA, EHA will submit with each VCA report required by provision 23, the current Reasonable Accommodation Log at the time of the submission. The reasonable accommodation log will, at minimum, include the following:

a) The name and address of the tenant(s) or applicant(s) making the accommodation request or inquiry;

b) The date and time of the accommodation request or inquiry;

c) The nature of the accommodation request or inquiry;

d) The action taken on the accommodation request or inquiry;

e) The reason for any rejection of or modifications to a requested accommodation; and

f) The current status or disposition of the request and confirmation that EHA has notified the requestor about the disposition.

14. Transfer Policy (24 C.F.R § 8.27)

CONCERN: During the compliance review, HUD found that EHA has failed to implement reasonable, non-discriminatory steps to maximize utilization of its accessible units by eligible individuals with disabilities who require the accessibility features of particular units. *See* 24 C.F.R. § 8.27(a). Normally, a recipient meets this obligation through its transfer policy. The review revealed that EHA does not utilize a consistent transfer policy or maintain accurate records of transfer requests in a manner to ensure HUD that it processes such requests in a consistent, uniform, and non-discriminatory manner.

Within 60 days of the effective date of this VCA, EHA will amend its transfer procedure to ensure it consistently records the following information:

a) The date and time of each transfer request;

b) The name and address of each tenant requesting transfer(s);

c) The reasons for the transfer, including information about the tenant's reasonable accommodation request and/or request for an accessible unit or a unit with accessible features;

d) The current status or disposition of each transfer request;

e) The date of transfer (if EHA grants the transfer); and

f) The name of tenant transferred from a unit to accommodate a tenant's disability, if applicable.

For the duration of this VCA, EHA will submit with each VCA report required by provision 23, a copy of the current transfer list at the time of the submission.

15. Affirmative Marketing and Outreach Efforts (24 C.F.R. § 903.2(d)(2))

CONCERN: During the compliance review, HUD found that EHA lacks affirmative outreach efforts to ensure qualified people with disabilities, and elderly and disabled families with children are aware of EHA's available housing opportunities.

Within 90 days of the effective date of this VCA, EHA will develop an affirmative marketing plan for Orchard Place that includes an analysis of the groups who are least likely to apply to Orchard Place; outreach to community organizations that assist those groups of individuals; and a detailed description of EHA's plan to provide outreach to the groups least likely to apply for housing opportunities at Orchard Place.

Within 100 days of the effective date of this VCA, EHA will submit to HUD a copy of the affirmative marketing plan, which will include any efforts EHA has made to provide outreach to the groups least likely to apply.

EHA will affirmatively market all of its housing programs to all interested persons, especially those least likely to apply for the housing. EHA will utilize marketing methods and techniques in accordance with HUD program and fair housing regulations. This marketing will include, at a minimum, specialized marketing strategies to target people with disabilities of all ages, especially families with disabilities that include children under 18, for available housing opportunities at Orchard Place. EHA will specifically provide information about all available housing opportunities to local and statewide disability advocacy groups. EHA will also notify area institutional housing providers serving people with disabilities about all of its available housing opportunities to assist those who wish to transition to integrated housing from institutions, hospitals, nursing homes, adult care facilities, and other restricted, segregated housing. HUD will assist EHA in obtaining contact information for the aforementioned organizations.

During the term of this VCA, all advertisements for Orchard Place will notify that public that housing opportunities at Orchard Place are available, on an equal basis, to qualified families age 62 and over and families with disabilities of any age, including otherwise qualified families with children under 18 years of age. The advertisements will directly state that Orchard Place does not discriminate against otherwise qualified families with children.

EHA will submit to HUD copies of correspondence sent to organizations and all advertisements published to notify the public of available housing opportunities on a quarterly basis (every 90 days) for the term of this VCA.

16. Education

PRELIMINARY FINDING OF NON-COMPLIANCE: See preliminary findings of non-compliance and concerns at provisions 8, 11, 12, 13, 14, and 15 above.

a) Within 30 days of the creation of all new or amended policies and procedures required by this VCA, EHA will ensure that all current and new staff members are trained on all of the duties, responsibilities, and procedures as related to these policies and procedures.

For the duration of this VCA, EHA will submit to HUD documentation of each training session provided with each VCA report required under provision 20. The documentation will include the date and time of each training session, the type of training provided, the name(s) of the training providers, and the signatures of all individuals in attendance.

b) Within 90 days of the effective date of this VCA, EHA will provide fair housing training for all of its staff members. This training, at a minimum, will include comprehensive information about the Fair Housing Act and Section 504 rights and responsibilities.

Within 100 days of the effective date of this VCA, EHA will submit to HUD certificates of completion of fair housing training for all of its staff members.

17. Distribution of Policies

PRELIMINARY FINDING OF NON-COMPLIANCE: See preliminary findings of non-compliance and concerns at provisions 8, 11, 12, 13, 14, 15, and 16 above.

After HUD approves all of the amended policies and ACOP in accordance with this VCA, EHA will send a letter to all current Orchard Place tenants that 1) provides notification that EHA serves families 62 and over and families with disabilities of any age equally, including equal preference for admission, and does not discriminate against qualified families with children and 2) provides a description of this VCA, including a brief explanation and a list of all of the policies EHA has created or modified in accordance with this VCA. The letter will inform Orchard Place tenants that copies of the amended policies, including the Reasonable Accommodation Policy, are available at the EHA office and upon request.

EHA will distribute the revised Reasonable Accommodation Policy by posting an electronic version EHA's website, posting a physical copy at the main EHA office, posting physical copies on bulletin boards at Orchard Place and Simon Center, and making a copy available to any tenant, upon request.

VI. MONITORING AND REPORTING PROVISIONS

[24 C.F.R. §§ 1.6(b), 8.55(c), 103.320]

18. HUD will monitor compliance with this VCA. HUD will require written reports concerning compliance; may inspect premises owned, leased, managed, or assisted by EHA; may interview witnesses, including EHA's staff; and may examine and copy documents. EHA assures its full cooperation in any monitoring review undertaken by HUD to ensure compliance with this VCA.

19. HUD will determine whether EHA has complied with the terms of this VCA. EHA retains any due process or other rights to review or appeal any HUD determination.

20. EHA will submit to the Director, in addition to submissions set forth elsewhere in this VCA, written reports and/or documents that summarize the completion or the progress of remedial actions required under the "Specific Provisions" sections of this VCA. The first report is due

six months after the effective date of this VCA; the second report is due 12 months after the effective date; and subsequent reports are due every 12 months thereafter for the term of this VCA.

21. EHA will submit all required certifications and documentation of compliance to:

Amy M. Frisk, Region VIII Director
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
1670 Broadway, 23rd Floor
Denver, Colorado 80202-4801

VII. FAILURE TO CARRY OUT THE TERMS OF THIS VCA

EHA understands that this VCA may serve as EHA's sole notice of the required contents of and deadlines for progress reports. Any failure to provide documentation of compliance with the terms of this VCA constitutes a breach of the VCA, and may result, without further notice to EHA, in a referral of the matter to the Department of Justice for appropriate enforcement proceedings, the termination of or refusal to grant or continue federal financial assistance, or the initiation of debarment proceedings. EHA agrees to immediately contact FHEO to request any necessary deadline extensions, citing the specific reasons for such requests.

SIGNATURE PAGE

Renee Tullius, Executive Director
Englewood Housing Authority

5-5-2014
Date

Approved on behalf of the Secretary:

Amy M. Frisk, Region VIII Director
Office of Fair Housing and Equal Opportunity

7 May 2014
Date