United States Department of Housing and Urban Development

Title VIII, Section 504 and ADA

CONCILIATION/VOLUNTARY COMPLIANCE AGREEMENT

between

[redacted]
Carson City, NV 89701

Complainant

and

Nevada Rural Housing Authority
Attention: Jeni Chavez, Director of Rental and Housing Programs
3695 Desatoya Drive
Carson City, NV 89701

Recipient

HUD Case No.: 09-16-5051-8; 09-16-5051-4; 09-16-5051-D

HUD Case Name: [redacted]v Nevada Rural Housing Authority, Carson Southgate Associates, LLC, Carson Southgate Associates II, LLC and Weststates Property Management Company

HUD Date Filed: August 18, 2016

Effective Date of Agreement: 9/27/2016

Expiration Date of Agreement: 9/27/2019

A. Parties and Subject Property

Complainant:

[redacted]
Carson City, NV 89701

Respondent/Recipient:

Nevada Rural Housing Authority
Attention: Jeni Chavez, Director of Rental and Housing Programs
3695 Desatoya Drive
Carson City, NV 89701

Respondents:

Carson Southgate Associates, LLC (Owner)
c/o Gary Longaker
3695 Desatoya Dr.
Carson City, NV 89701

Carson Southgate Associates, LLC (Owner)
c/o Ernest E. Adler
412 N. Division St.
Carson City, NV 89703

Weststates Property Management Company
P.O. Box 2688
Elko, NV 89803

Carson Southgate Associates II, LLC (Owner)
c/o Gary Longaker
3695 Desatoya Dr.
Carson City, NV 89701

Carson Southgate Associates II, LLC (Owner)
c/o Ernest E. Adler
412 N. Division St.
Carson City, NV 89703

Subject Property:

Southgate Apartments
2130 California Street
[redacted]
Carson City, NV 89701

B. Statement of Allegations:

Complainant alleged that Respondent / Recipient Nevada Rural Housing Authority ("Recipient" or "NRHA"), and Respondents Carson Southgate Associates, LLC, Carson Southgate Associates II, LLC and Weststates Property Management Company (collectively "Respondents") terminated her benefits because she has a disability. The Complainant alleged that Respondents violated subsections 804(f)(1), 804(f)(2) and 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988 ("the Act"). The Complainant further alleged that Respondents did not comply with Title II of the Americans With Disabilities Act of 1990 ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504").

C. Term of Agreement:

This Conciliation/Voluntary Compliance Agreement ("Agreement") shall govern the conduct of Recipient for a period of three (3) years from the effective date of the Agreement.

D. Effective Date

1. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law, nor an Agreement pursuant to the Act, unless and until such time as it is approved by the Department, through the FHEO Regional Director or her designee.

2. The Agreement shall become effective on the date on which it is approved by the U.S. Department of Housing and Urban Development FHEO Regional Director, San Francisco Region or her designee.

E. General Provisions

3. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaints. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement. The parties have read and fully understand the significance of the terms set forth herein.

4. It is understood that Recipient and Respondents deny any violation of law and that this Agreement does not constitute an admission by the Recipient and Respondents or evidence of a determination by the Department of any violation of the Act or any other law.

5. Recipient acknowledges that it has an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. Recipient further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act.

6. This Agreement, once effective, is binding upon the U.S. Department of Housing and Urban Development, the Complainant and her heirs, successors and assignees, and the Recipient, its employees, heirs, successors and assignees.

7. Pursuant to Section 810(b)(4) of the Act, this Agreement shall become a public document. The Department, however, will hold confidential all information of a personal or financial nature concerning parties to this Agreement that is not contained in the body of the Agreement.

8. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Recipient or Respondents made pursuant to the Act, or any other complaint within the Department's jurisdiction.

9. No amendment to, modification of, or waiver of any provision of this Agreement shall be effective unless all the following conditions are met: (a) all signatories to the Agreement are notified in advance of the proposed amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the FHEO Regional Director or her designee. Any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

10. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one document.

11. It is understood that the signature of D.Gary Longaker, Executive Director, is made with the authority and on behalf of Recipient.

12. It is understood that this Agreement also resolves the complaint as to Respondents Carson Southgate Associates, LLC, Carson Southgate Associates II, LLC and Weststates Property Management Company.

F. Mutual Release

13. In consideration of the execution of this Agreement, Complainant hereby forever waives, releases, and covenants not to sue the Department, Recipient or Respondents, or their heirs, executors, assignees, agents, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown arising out of the subject matter of HUD case numbers, 09-16-5051-8 (Title VIII) ; 09-16-5051-4 (Section 504) ; 09-16-5051-D (ADA), or which could have been filed in any action or suit arising from said subject matter.

14. In exchange for the compliance with the provisions of the Agreement, Recipient hereby forever waives, releases, and covenants not to sue the Department or Complainant, her heirs, executors, assignees, agents, employees, or attorneys with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of HUD case numbers 09-16-5051-8 (Title VIII) ; 09-16-5051-4 (Section 504) ; 09-16-5051-D (ADA), or which could have been filed in any action or suit arising from said subject matter.

15. This release does not apply to any rights arising from any party's failure to comply with the terms of this Agreement or to other complaints or matters of compliance which may be pending with the Department.

G. Relief for Complainant

16. Recipient shall immediately rescind the termination of Complainant's participation in the program. Recipient will provide certification that it rescinded the termination to the Department no later than October 20, 2016. The certification should be sent to the address specified in paragraph J30 below. Complainant understands that the rental agreement she signed on September 4, 2015, provides in pertinent part at paragraph VIIII that "No tenant/household member or guest may harass, threaten or intimidate employees, tenant or other guests" and further understands that in order to maintain her tenancy, she is obligated to comply with the terms of her rental agreement.

17. Recipient shall pay Complainant the sum total of Eleven Thousand Dollars ($11,000.00) in the form of a cashier's check payable to [redacted] and will

deliver the check to Complainant via overnight mail within fourteen (14) calendar days of the effective date of this Agreement at the following address: [redacted] 2130 California Street, [redacted] Carson City, NV 89701. Recipient will provide a photocopy of the check and the overnight tracking information to the Department no later than October 20, 2016. The photocopy should be sent to the address specified in paragraph J30 below.

18. Recipient shall grant Complainant's reasonable accommodation request to allow Recipient to contact [redacted] Complainant has any issues that may jeopardize her participation in the Recipient's program. Recipient will provide certification that it granted this reasonable accommodation request to the Department no later than October 20, 2016. The certification should be sent to the address specified in paragraph J30 below.

H. Relief in the Public Interest

19. Recipient agrees that, within one hundred sixty (160) days of the effective date of this Agreement, NRHA Director of Rental and Housing Program Jeni Chavez and her lead staff who evaluate reasonable accommodation requests shall attend live fair housing training at the Department's San Francisco office, which shall include coverage of the Act, Section 504, and the ADA. If Jeni Chavez and/or any members of her lead staff who evaluate reasonable accommodation requests are unable to attend the Department's training within the specified time, they shall attend in person training conducted by a qualified fair housing group or attorney as approved in advance by the Department; Recipient shall pay the cost of such training, which shall include coverage of the Act, Section 504, and the ADA. Recipient shall provide a copy of the certification of completion of the training referenced herein no later than March 15, 2017 to the address specified below.

20. Recipient acknowledges that Section 504 provides that no otherwise qualified individual with handicaps shall, solely by reason of his or her handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Recipient receives federal financial assistance and is obligated to comply with the requirements of Section 504. Recipient agrees to comply with the provisions of Section 504, and as outlined in 24 CFR Parts 8 and 9.

21. Recipient acknowledges that Title II of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities, and extends the prohibition on discrimination established by Section 504 to all activities of State and local governments regardless of whether these entities

receive federal financial assistance. Recipient is a Public Housing Authority and is obligated to comply with the provisions of Title II of the ADA. Recipient agrees to comply with the provisions of Title II of the ADA and as outlined in 28 CFR part 35 and as incorporating 24 CFR parts 8 and 9.

Section 504 and ADA Title II Program Requirements

Section 504 requires recipients who employ 15 or more staff to implement all five (5) program requirements. If a recipient has less than 15 staff, it is required only to implement two (2) requirements under Section 504: Communications & Self-evaluation. Title II of the ADA requires recipients who employ 50 or more staff to implement all five (5) program requirements. If a recipient has less than fifty (50) staff, it is required only to implement three (3) requirements under Title II of the ADA: Self-evaluation, Notice, and Telecommunications.

a. Communications and Telecommunication devices for the deaf (TDD's): 24 CFR Part 8, Section 8.6(a)(1)(2) and 28 CFR Part 35 and §35.161:

The Regulations require that recipients shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public to include telecommunication devices for deaf persons (TDD's) or equally effective communication systems.

b. Self-evaluation; 24 CFR Part 8, §8.51(a)(1)(2)(3)(b):

The regulations requires that each recipient shall, within one year of July 11, 1988, (Section 504) and January 26, 1992, (ADA) and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to evaluate its current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of this part; and modify any policies and practices that do not meet the requirements of this part; and, take appropriate corrective steps to remedy the discrimination revealed by the self evaluation.

c. Designation of responsible employee; 24 CFR Part 8, §8.53(a) and 28 CFR Part 35, §35.107(a):

Section 504 requires that a recipient that employs 15 or more persons, and the ADA requires a recipient with fifty or more persons, to designate at least one person to ensure compliance with Section 504 (Section 504 Coordinator).

d. Adoption of Grievance Procedure; 24 CFR Part 8, §8.53(b) and 28 CFR Part 35,

§35.107(b):

Section 504 requires a recipient that employs fifteen or more persons, and the ADA requires a recipient that employs fifty or more persons, to designate at least one person to ensure compliance with Section 504 and to adopt a grievance procedure which provides prompt and equitable resolution of complaints alleging any action prohibited in these parts, and to adopt a grievance procedure that provides prompt and equitable resolution of complaints alleging any action prohibited in these parts.

e. Notice: 24 CFR Part 8, Section 8.54(a) and 35 CFR Part 35, §35.106:

Section 504 requires a recipient that employs fifteen or more persons, and the ADA requires a recipient with fifty or more persons, shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of this part.

In addition, 24 CFR Part 8.24(d) requires a transition plan for properties built before 1988:

Transition plan and time period for structural changes. Except as provided in 8.25(c), in the event that structural changes to facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps; (2) Describe in detail the methods that will be used to make the facilities accessible; (3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; (4) Indicate the official responsible for implementation of the plan; and (5) Identify the persons or groups with whose assistance the plan was prepared. (Approved by the Office of Management and Budget under control number 2529 0034) [53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 54 FR 37645, Sept. 12, 1989].

22. Recipient agrees to continue to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy the services provided at NRHA as required by law.

23. Recipient agrees to comply with all of the provisions of the Act.

24. Recipient agrees to refrain from discriminating on the basis of race, national origin, color, disability, sex, religion and familial status as provided under federal law.

25. Recipient agrees to refrain from discriminating against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, national origin, and disability.

26. Recipient agrees to refrain from coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of any right granted or protected by Section 803, 804, 805, or 806 of the Act.

I. Monitoring

27. Recipient agrees that the Department shall monitor compliance with the terms and conditions specified in this Agreement. As part of such monitoring, the Department may inspect Recipient's property identified in Section A of this Agreement, interview witnesses, and copy pertinent records of Recipient.

28. Recipient agrees to provide full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

J. Recording and Record Keeping

29. This Agreement contains specific actions that are required of the Recipient. These actions must be completed within the specified timeframes and the Department must verify satisfactory completion. It is understood that this Agreement may serve as the parties' sole notice of the required contents and deadlines. It is also understood that the terms set forth in this Agreement are contractual and not merely recital.

30. All required certifications and documentations of compliance with the terms of

this Agreement shall be submitted to:

U.S. Department of Housing and Urban Development
Fair Housing Enforcement Center
ATTENTION: CONCILIATION REVIEW
One Sansome Street, Suite 1200
San Francisco, CA. 94104

Or by email to:sf_complianceunit@hud.gov

K. Consequences of Breach

31. The parties understand that if the Department has reasonable cause to believe that the Recipient has breached this Agreement, the Department shall refer the matter to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to 42 U.S. C. §3610(c).

32. The parties understand further that failure to carry out the terms of this Agreement may result in suspension or termination of, or refusal to grant or to continue federal financial assistance, or other actions authorized by law pursuant to the Act or any other authority within the Department's jurisdiction.

Conciliation/ VCA
HUD Case Name: [redacted] v Nevada Rural Housing Authority, Carson Southgate Associates, LLC, Carson Southgate Associates II, LLC and Weststates Property Management Company
HUD Case Nos: 09-16-5051-8; 09-16-5051-4; 09-16-5051-D

COMPLAINANT'S SIGNATURE PAGE

This signature attests to the approval and acceptance of this Conciliation Agreement.

[redacted] 9/20/2016
(Complainant) Date

Conciliation/ VCA
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HUD Case Nos: 09-16-5051-8; 09-16-5051-4; 09-16-5051-D

RECIPIENT'S SIGNATURE PAGE

This signature attests to the approval and acceptance of this Conciliation Agreement.

D. Gary Longaker, Executive Director
On Behalf of Nevada Rural Housing Authority
(Recipient)

9/22/16
Date

Conciliation/ VCA
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SIGNATURE PAGE

This signature attests to the approval and acceptance of this Conciliation Agreement.

APPROVED ON BEHALF OF THE SECRETARY

9/27/2016

Anné Quesada
Regional Center Director
Office of Fair Housing and
Equal Opportunity

Date