U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

MEMORANDUM TO: Gustavo Velasquez, Assistant Secretary for Fair Housing and Equal Opportunity, E

THROUGH: Bryan Greene, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, E1

FROM: Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs, ED

SUBJECT: Recommendation to approve and sign the Secretary-Initiated Complaint Conciliation Agreement regarding Piilani Gardens (09-14-0911-8)

The attached Conciliation Agreement is for the Secretary-initiated complaint against Piilani Gardens, the terms of which were previously approved by you. Piilani Gardens Apartments: 1) did not allow families with children to reside in two of its 18 buildings, designated as "adult friendly;" 2) required people who had or brought children into the household while residing in the "adult friendly" buildings to move to buildings where children are permitted; 3) advertised in a discriminatory manner by indicating that a unit was available to rent in an "adult only building;" and 4) made statements to a tester that separate bedrooms were required for children of different sexes.

By way of this conciliation agreement, the Respondents agree to: 1) not exclude families with children from residing in any of the Piilani Gardens Apartments buildings; 2) not require nor communicate a requirement that children of different sexes sleep in or have separate bedrooms; 3) contract with a third party organization to conduct an examination of compliance with the agreement (this will involve the Legal Aid Society of Hawaii conducting familial status fair housing testing of Piilani Gardens Apartments); 4) adopt and follow a housing non-discrimination policy and procedures statement; 5) obtain fair housing training within 60 days of execution of the agreement; 6) report to HUD on the familial status of all rental applicants every three months for the full, three year term of the agreement; and 7) revise resident rule number 4, which requires tenants to supervise their *children* while in common areas and states that residents are responsible for damage to the premises caused by their *children.*

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII

CONCILIATION AGREEMENT

Between

Assistant Secretary for Fair Housing and Equal Opportunity
United States Department of Housing and Urban Development
(Complainant)

and

Mrs. Marilyn Silva
Piilani Gardens, LLC
296A Alahama Street
Kahului, Hawaii 96732
(Respondents)

Approved by the FHEO Regional Director of the United States Department of Housing and Urban Development

FHEO CASE NUMBER: 09-14-0911-8

A. PARTIES AND SUBJECT PROPERTY

Complainant

Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, SW Room 5100
Washington, DC 20410

Respondents

Mrs. Marilyn Silva
Piilani Gardens, LLC
296A Alahama Street
Kahului, Hawaii

Subject Property

Piilani Gardens Apartments
150 Manino Circle
Kihei, Hawaii 96753

B. STATEMENT OF POSITIONS

Complainant's Position

The U.S. Department of Housing and Urban Development (HUD or the Department) investigates complaints of housing discrimination under the Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988 (the Act). Section 810(a)(1)(A)(i) of the Act authorizes the Secretary of HUD to initiate investigations of alleged housing discrimination, including discrimination based upon familial status and sex.

Piilani Gardens Apartments is an 18-building, 200-unit apartment complex located on the island of Maui, at 150 Manino Circle, Kihei, Hawaii, 96753. All units at Piilani Gardens Apartments are approximately 850 square feet and have two bedrooms. There are three different floor plans: A, B, and C. All bedrooms in each unit measure 10 feet long by 11 feet wide and are approximately 110 square feet.

Piilani Gardens Apartments does not qualify as housing for older persons under Section 807(b)(2) of the Fair Housing Act. There are several households with children and a child care facility on-site. The website (www.PiilaniGardensMaui.com) describes it is "Family and Pet Friendly."

During the course of investigating another complaint, (09-13-0630-8), the Department learned of familial status issues at Piilani Gardens Apartments. First, two of the 18 buildings at Piilani Gardens Apartments are "adult friendly," meaning Respondents do not allow families with children to reside in the "adult friendly" buildings, and people in the "adult friendly" buildings who later have or bring children into the household are required to move to a building where children are permitted.

The Department also learned of Rule number 4 of the Piilani Gardens Apartments Resident Rules and Regulations, stating

> *There is no playground for children on the complex. Tenants must supervise their children while they are in the common areas. Tenants are responsible for any damage to the premises caused by children.*

Piilani Gardens Apartments issued a notice on December 14, 2012, enumerating 10 "problems" related to children, and stating:

> *In the future, if your child/children are observed breaking more plants/tree branches and/or damaging more Piilani Gardens Apartment property, you will be fined and assessed the cost of the damages caused by your child/children.*

Additionally, the Department learned that, on July 15, 2013, an agent of the Respondents communicated to a Legal Aid Society of Hawaii tester that separate bedrooms are required for children of different sexes.

Also during the course of the investigation, the Department learned of an advertisement posted on May 5, 2014, on Craigslist of a unit for rent at Piilani Gardens Apartments that stated "Ground floor, adult only building $1505 per month. Heated Water and...2br/2ba 800 ft 2 apartments available May 15."

In order to address the familial status issues existing at Piilani Gardens Apartments, on July 10, 2014 the Assistant Secretary for Fair Housing and Equal, on behalf of the Secretary of HUD, filed the instant complaint (09-14-0911-8) against Respondents alleging violations of Sections 804(a), 804(b), and 804(c) of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988. Specifically, the complaint alleged that Respondents 1) did not allow families with children to reside in two of the 18 buildings at Piilani Gardens Apartments designated as "adult friendly"; 2) required people who had or brought children into the household while residing in the "adult friendly" buildings to move to a building where children are permitted; 3) advertised in a discriminatory manner by indicating that a unit was available to rent in an "adult only building"; and 4) made statements to a tester that separate bedrooms are required for children of different sexes.

Respondents' Position:

Respondents deny that they discriminated against anyone in violation of the Fair Housing Act and contend that they have engaged in prudent business practices that are consistent with all legal requirements. Respondents stated that they are not prejudice against children as they have the only specifically built for children daycare facility in all of the Hawaiian Islands on the subject property. This daycare facility is nationally accredited, runs a preschool, and both are operated by Kama'aina Kids, a nonprofit organization.

Respondents stated that they were previously advised by the Maui County Department of Housing and Human Concerns, Housing Division, which operates the County's HUD funded Section 8 Tenant Based Voucher Choice Assistance program, that if there were a family with two children of different sexes, then a three bedroom voucher was required so that each

child of different genders would have separate bedrooms. Respondents explained that they were simply "quoting" the information that they had received from the Maui County Section 8 Office. Respondents explained that they recently learned that this is no longer a requirement and Respondents no longer inform applicants or tenants that separate bedrooms are required for children of different genders.

Respondents maintain that the subject Craigslist advertisement was not posted by Respondents or their staff.

Without admitting any wrongdoing, and in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to this matter, Respondents agree to settle the claims presented by the Department by entering into this Agreement.

C. TERM OF AGREEMENT

This Conciliation Agreement ("Agreement") shall govern the conduct of the parties to it 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 Fair Housing Act, unless and until such time as it is approved by the Department, through the Assistant Secretary for Fair Housing and Equal Opportunity ("Assistant Secretary") or his designee.

2. The Agreement shall become effective on the date on which it is approved by the Assistant Secretary.

E. GENERAL PROVISIONS

3. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaint. 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 Respondents deny any violation of law and that this Agreement does not constitute an admission by Respondents or evidence of a determination by the Department of any violation of the Fair Housing Act or any other law.

5. The parties agree that this Agreement may be executed by the parties' signatures on separate pages. The separate signed pages will be attached to the body of the Agreement to constitute one document.

6. This Agreement, once effective, is binding upon the Complainant and his or her successors and assigns, and the Respondents, their employees, heirs, successors and assigns and

all others in active concert with Respondents in the ownership or operation of Piilani Gardens Apartments.

7. Pursuant to Section 810(b) (4) of the Act, this Agreement shall become a public document.

8. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondents made pursuant to the Fair Housing 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 Assistant Secretary.

10. Respondents hereby forever waive, release, and covenant not to sue Complainant, its agents, employees, attorneys, officers, assigns, or successors in interest 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 number 09-14-0911-8, or which could have been filed in any action or suit arising from said subject matter.

11. Complainant hereby forever waive, release, and covenant not to sue Respondents, their agents, employees, attorneys, officers, assigns, or successors in interest 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 number 09-14-0911-8, or which could have been filed in any action or suit arising from said subject matter.

F. NON-RETALIATION

12. Respondents acknowledge that they have an affirmative duty not to discriminate under the Fair Housing Act and other authorities, 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 Fair Housing Act or other authorities. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Fair Housing Act.

G. RELIEF IN THE PUBLIC INTEREST

13. Upon the execution of this Agreement, Respondents agree to adopt and follow the Housing Non-Discrimination Policy and Procedure Statement attached to this Agreement attached as **Exhibit A**. Respondents agree to provide written copies of this policy to all of their employees and staff within 30 days of the effective date of this Agreement. Respondents agree to update this policy as necessary to conform with any changes made to the Federal or state of Hawaii fair housing laws. Within 35 days of the effective date of this Agreement, Respondents will provide the Department with a copy of the letter or memorandum transmitting this policy to Respondents' employees and staff.

14. Respondents agree that all of their employees and staff will receive live training on fair housing and on the Housing Non-Discrimination Policy within 60 days of the effective date of this Agreement. Respondents shall pay for any cost of the training. The training shall be conducted by a reputable fair housing organization and shall include, but not be limited to, instruction on non-discriminatory treatment of families with children in accordance with the Fair Housing Act.

15. Respondents will provide certification that the training has been completed, within 70 days of the effective date of this Agreement. The certification will state the name(s) of those who attended the training, the date of the training, who provided the training, and a summary of the substantive areas covered in the training.

16. Respondents agree to use the Piilani Gardens Apartments Tracking Chart, attached to this Agreement as **Exhibit B,** to track the familial status information of all applicants at the subject property. Respondents will track whether the applicant was accepted or rejected, and, if rejected, explain why they were rejected. In addition, on the tracking chart, Respondents will track the amount of security deposit, rent paid by each tenant who was accepted, and the building and unit to be occupied, or occupied, by each tenant who was accepted. Respondents agree to report this information to the Department every three months for the full term of this Agreement by sending a copy of the tracking chart to the address specified in paragraph 29 of this Agreement. The reports are due by July 31, 2015, October 30, 2015, January 29, 2016, April 29, 2016, July 29, 2016, October 31, 2016, January 31, 2017, April 28, 2017, July 31, 2017, October 31, 2017, January 31, 2018, and April 13, 2018.

17. Respondents agree to comply with all of the provisions of the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

18. Respondents acknowledge that the Fair Housing Act makes it unlawful to make, print, or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, sex, or any other discriminatory bases under the under the Department's jurisdiction.

19. Respondents hereby agree never to make, print, or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, sex, or any other prohibited bases under the Federal or state of Hawaii fair housing laws.

H. AFFIRMATIVE RELIEF

20. Respondents agree to eliminate any and all provisions in the Piilani Gardens Apartments Resident Rules and Regulations, which explicitly or implicitly identify, limit, and/or exclude children and/or families with children. Respondents specifically agree to modify Rule number 4 of the Resident Rules and Regulations to state: "Tenants are responsible for the conduct and behavior of all household members, visitors, and guests while they are anywhere on the property. Tenants are responsible for any damage to the premises caused by any household member, visitor, or guest." Within 10 days of the effective date of this Agreement, Respondents will

provide the Department with a copy of the modified Rule number 4 and within 20 days of the effective date of this Agreement, Respondents shall send a notice to all current tenants stating notifying them of this modification.

21. Respondents shall not, on the basis of familial status, exclude families with children from residing at any of the 18 buildings at the Piilani Gardens Apartments and, within 20 days of the effective date of this Agreement, Respondents shall send a notice to all current tenants stating that it will no longer exclude families with children from residing at any of the 18 buildings at the Piilani Gardens Apartments.

22. Respondents will not designate, allow, or maintain any buildings at the Piilani Gardens Apartments as an adults only building or facility.

23. When vacancies occur in any building where children or families with children may have once been prohibited from residing, Respondents shall allow said vacancies to be filled by any qualified applicant irrespective of the applicant's familial status, sex, or any other prohibited bases under the Federal or state of Hawaii fair housing laws.

24. Respondents shall not require nor communicate a requirement that children of different sexes living at the subject property sleep in or have separate bedrooms. Within 20 days of the effective date of this Agreement, Respondents shall send a notice to all current tenants that children of different sexes living at the subject property are not required to sleep in or have separate bedrooms.

25. Respondents agree to contract with a third-party to conduct a prospective examination of compliance with the terms of this Agreement. Within 30 days of the effective date of this Agreement, Respondents shall provide the Department with a draft copy of the contract with the third party for the Department's review and approval. Within 20 days of the Department's approval of the draft contact, Respondents shall provide the Department with a copy of the executed contract. Ninety days prior to termination of this Agreement, Respondents shall provide the Department with any and all reports provided by the third part to Respondents pursuant to the contract. The contract between the Respondents and the third party will explicitly state that the contract does not preclude or in any way limit or restrict the third party's ability to pursue a claim against the Respondents that is based on sources separate and apart from results of the third party's examination of the Respondents' compliance with the terms of this agreement.

I. EVALUATING AND MONITORING COMPLIANCE

26. Respondents agree that the Department shall monitor compliance with the terms and conditions specified in this Agreement. As part of such monitoring, the Department may interview witnesses and copy pertinent records of Respondents.

27. Respondents agree to provide full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

J. REPORTING AND RECORD KEEPING

28. This Agreement contains specific actions that are required of Respondents. 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 Respondents' sole notice of the required contents and deadlines.

29. All required certifications and documentation for compliance with the terms of this Agreement shall be submitted to:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
Attn: Jelani Madaraka, Lead Equal Opportunity Specialist
500 Ala Moana Blvd., Suite 3A
Honolulu, HI 96813

K. CONSEQUENCES OF BREACH

30. The parties understand that if the Department has reasonable cause to believe that Respondents have 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 §§ 810(c) and 814(b)(2) of the Act.

COMPLAINANT'S SIGNATURE PAGE

These signatures attest to the approval and acceptance of this Conciliation Agreement.

For Complainant:

5/6/2015

Assistant Secretary for Fair Housing and Equal Opportunity — Date
U.S. Department of Housing and Urban Development
451 7th Street, SW Room 5200
Washington, DC 20410

RESPONDENTS' SIGNATURE PAGE

These signatures attest to the approval and acceptance of this Conciliation Agreement.

For Respondents:

Marilyn Silva 4/29/15

Mrs. Marilyn Silva
Piilani Gardens, LLC
296A Alahama Street
Kahului, Hawaii

Date

Marilyn Silva 4/29/15

Piilani Gardens, LLC
296A Alahama Street
Kahului, Hawaii

Date

DEPARTMENT'S SIGNATURE PAGE

ON BEHALF OF THE DEPARTMENT:

4/30/2015

Anné Quesada
Regional Director
Office of Fair Housing and Equal Opportunity

Date

HOUSING NON-DISCRIMINATION
POLICY & PROCEDURE STATEMENT

It is our policy not to unlawfully discriminate in any real property transaction, including any decisions related to the use of any residential unit, facility, and/or service due to an individual's sex, race, color, religion, marital status, familial status, ancestry, disability, age or HIV (human immunodeficiency virus) infection, as stated in Hawaii Revised Statutes, Chapter 515 and Title VIII of the Civil Rights Acts of 1968, as amended by the Fair Housing Amendments of 1988.

Pursuant to H.R.S. Chapter 515, it is a discriminatory practice for an owner or any other person engaging in a real property transaction, because of sex, race, color, religion, marital status, familial status, ancestry, disability, age or HIV infection:

(1) To refuse to engage in a real property transaction with a person;

(2) To discriminate against a person in the terms, conditions, or privileges of a real property transaction or in the furnishing of facilities or services in connection therewith;

(3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(4) To refuse to negotiate for a real property transaction with a person;

(5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available,

(6) To refuse to permit a person to inspect real property;

(7) To steer a person seeking to engage in a real property transaction[1];

(8) To subject a person to unwelcome or offensive harassment because of that person's protected basis. Harassment based on race, disability or sex (or other protected basis) that has the purpose or effect of creating an intimidating, hostile, or offensive living environment, or otherwise adversely affects an individual's home environment, constitutes unlawful harassment in a violation of state and federal civil rights laws.

[1]The term "steering" includes the practice of directing persons who seek to enter into a real estate transaction toward or away from real property in order to deprive them of the benefits of living in a discrimination-free environment.

EXHIBIT A

Harassment may include many forms of offensive behavior. The following is a partial list:

a. Verbal harassment, such as racial or sexual (or any protected basis) epithets, derogatory comments, jokes or slurs;
b. Physical harassment, such as touching, assault, impeding or blocking movement;
c. Requests for sexual favors which are conditioned upon offered benefits or threats of lost benefits, whether express or implied; or
d. Visual forms of harassment, such as displaying racial or sexual (or any other protected basis) derogatory posters, cartoon or drawings that are offensive;

(9) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for real property transaction, or to make a record or inquiry in connection with a prospective real property transaction, which indicates, directly or indirectly, an intent to make a limitation (preference), specification, or discrimination with respect thereto;

(10) To refuse to engage in a real property transaction with a person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide or signal dog, or other service animal;

(11) To solicit or require as a condition of engaging in a real property transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection (HIV), causative agent of acquired immunodeficiency syndrome (AIDS);

(12) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises;

(13) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;

If you are a person who has a physical or mental condition which substantially limits one or more of your major life activities, such as walking, seeing, hearing, breathing or caring for oneself, and you need a modification to your unit or an accommodation in order to use and enjoy your housing unit, please contact _____ for help.

(14) To institute or apply facially neutral policies or restrictions which result in a disparate adverse impact; or

(15) To fail to design and construct housing accommodations in a manner that it has at least one accessible entrance, unless it is impracticable to do so because of the terrain or unusual characteristics of the site.[2]

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[2] In connection with the design and construction of housing occupancy after March 13, 1991. See, H.R.S. §515-3(12).

(16) To threaten, intimidate or interfere with persons in their enjoyment of a housing accommodation because of the race, sex, color, religion, marital status, familial status, ancestry, disability, age, or HIV infection of such persons, or of visitors or associates of such person.

State law also recognizes other discriminatory practices involving retaliation, threatening, intimidating, interfering, or otherwise obstructing or preventing persons in the enjoyment or exercise of full and equal rights to enjoy a housing accommodation as guaranteed by Chapter 515; or to aiding, inciting, or coercing another person to engage in a discriminatory practice prohibited by Chapter 515. See, H.R.S. §515-16.

If you think you are being harassed or discriminated against in any real property transaction because of your sex, race, disability, color, religion, marital status, familial status, ancestry, age or HIV infection, or have any questions or concerns regarding any suspected or known discriminatory practice, please contact:

HAWAI`I CIVIL RIGHTS COMMISSION
Keeli`ikolani Building
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Phone: (808) 586-8636
TDD: (808) 586-8692
Facsimile: (808) 586-8655
E-Mail: info@hicrc.org
Website: http://www.state.hi.us/hcrc
Neighbor Islands call (toll-free):
Kaua`i: 274-3141, ext. 6-8636#
Maui: 984-2400, ext. 6-8636#
Hawai`i: 974-4000, ext. 6-8636#
Lana`i & Moloka`i: 1-800-468-4644, ext. 6-8636#

You may file a complaint with the above agency.

All prospective or current owners, tenants or occupants may complain about discrimination without fear of retaliation and any incident of harassment or other alleged discrimination may also be brought immediately to the attention of _____, who will promptly and thoroughly investigate the matter and take appropriate corrective action to prevent further occurrences.

Applicant/Head of Household's Name	Address & Phone Number	Household Members: Age(s) of Child(ren)		Rent ($)	Security Deposit ($)

Piilani Gardens Apartments Tracking Chart

EXHIBIT B

Application Accepted or Rejected (Reason Why Rejected)	Building and Unit Number Assigned

Piilani Gardens Apartments Tracking Chart
EXHIBIT B