

amended.

The Complainant owns a lot within Berkshire Forest, located in Myrtle Beach, South Carolina, 29579, which is the property subject to the Complaint.

I. CASE SYNOPSIS

In the Complaint, the Complainant alleged that the HOA denied Complainant's requests for an exception to the Architectural Guidelines for Berkshire Forest to install a fence along the side of their property and within utility and drainage easements to accommodate her child's service dog. The Complainant said the backyard area is small and more space is needed for the dog to be able to exercise and maintain its health and wellness to be a service dog. Respondents assert that the requested accommodation is unreasonable, because the fence would be located in easement areas and the Complainant did not provide evidence that a nexus exists between the accommodation requested and the disability of Complainant's son.

The Complainant further alleged that she requested a handicap lift for the pool, common area of the HOA ("Common Area"), to accommodate her son at the expense of the HOA. The Complainant said that the current pool is not accessible to their child because of his disability and it is not safe for them to get their child in and out of the pool. The Respondents allegedly denied the request with the reason that the pool is currently ADA accessible and the new pool that was under construction would have a lift. Furthermore, Respondents assert that, under Fair Housing laws, the Complainant may request an alteration or modification to the Common Area at the expense of the Complainant, but that the HOA is not responsible for the cost of such alteration or modification. The HOA denied the Complainant's request, because she asked for the Respondents to pay for the alteration or modification.

Respondents deny having discriminated against, and failing to reasonably accommodate, Complainant but agree to settle the claims in the underlying action by entering into this Conciliation Agreement.

WHEREAS, the Commission and the parties hereto wish to reach a just resolution of the aforementioned dispute, and reach a full, equitable and final settlement of all matters arising out of the aforementioned complaint.

NOW, THEREFORE, the parties hereby agree and stipulate to the following:

II. GENERAL PROVISIONS

The terms set forth herein are contractual and not merely a recital.

- A. The parties acknowledge that this Agreement is a full settlement of the disputed complaint. The parties hereto state that they have read and fully understand the significance of the terms set forth herein and have executed this compromise Conciliation Agreement freely and voluntarily. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.
- B. By signing this Agreement both Complainant and Respondents state that they have had the opportunity to seek legal counsel regarding the effects of this Agreement.

- C. This Agreement fully and completely resolves all issues arising out of SHAC Case # H-3-21-032 / HUD Case # 04-21-5161-8 through the effective date of this Agreement. The Commission and the Complainant will take no further legal action with respect to, and will not initiate any action pertaining to, the facts and events which led to the filing of the Complaint, the investigation of the Complaint, or any actions or inactions by any Respondent during the investigation and prior to the execution of this Agreement, so long as the parties abide by the terms of this Agreement.
- D. This Agreement, after the Commissioner of SCHAC has approved it, is binding upon the Complainant, Complainant's son, and the other members of Complainant's immediate family and all Respondents, their employees, successors, and all others in active concert with them in the ownership or operation of the HOA.
- E. It is understood that, pursuant to Section 31-21-120 (D) of the South Carolina Code of Laws Fair Housing Law, upon approval of this Agreement by the Commissioner of SCHAC, it is a public document. However, SCHAC agrees that it will not issue a public statement or press release regarding the Complaint, investigation, or the Agreement.
- F. This Agreement does not in any way limit or restrict SCHAC's authority to investigate any other complaint involving Respondents made pursuant to the Fair Housing Law, or any other law within SCHAC's jurisdiction, except as otherwise provided herein.
- G. This Conciliation Agreement constitutes closure of the Complaint at HUD and South Carolina Human Affairs Commission upon a determination that Complainant and Respondents have complied with the terms of the Agreement.

III. PROVISIONS FOR THE PUBLIC INTEREST

In order to assure that the public interest is protected, Respondents, without admitting to any violation of the South Carolina Fair Housing Law or Federal Fair Housing Act, agree to continue to take such affirmative action as may be necessary to assure the elimination of discriminatory housing practices and the prevention of their occurrence in the future, including, but not limited to the following:

- A. Respondents agree to comply with all federal and state housing laws.
- B. Respondents, their agents, employees, and HOA Board members shall provide and process applications for architectural review on a non-discriminatory basis. The HOA or its designee shall maintain all applications, whether deemed complete or incomplete, and any correspondence related to the request.
- C. Respondents shall prominently display a Fair Housing Poster, pursuant to 24 C.F.R. Part 110, at the amenity center of Berkshire Forest.
- D. Respondents agree that the HOA Board members, [REDACTED], [REDACTED], and [REDACTED] and Property Manager [REDACTED] will receive Fair Housing training from a third-party. All named individuals will receive the training within three (3) months of the Effective Date. Per Section VIII of this Agreement, the aforementioned Respondents shall provide the Commission with certificates of completion from said training for the above individuals along with a copy of the training agenda or outline within 15 days of training completion. The Commission reserves the

right to determine if the chosen third-party and training provided is sufficient to meet the standards of the Commission for the purposes of compliance with this Agreement.

- E. The HOA shall create and implement Reasonable Accommodation and Reasonable Modification policies, subject to review by the Commission, within six (6) months of the Effective Date. The HOA agree to cooperate with Commission employees on making recommended updates to the policies prior to initial implementation of the policies.
- F. Complainant and Respondents agree that the Commission shall monitor compliance with the terms and conditions specified in this Agreement for a period of three (3) years from the Effective Date, or until the Commission has confirmed compliance with the Agreement, whichever date is earlier. As part of such monitoring, the Commission may request and inspect pertinent records and practices related to the Berkshire Forest community and interview witnesses associated with the future compliance events described in this Agreement, but only after providing reasonable advance written notice to Respondents. Respondents agree to provide their full cooperation in any monitoring review undertaken by the Commission to ensure compliance with this Agreement.
- G. Respondents agree that there shall be no discrimination or retaliation of any kind against Complainant or any person who assisted the Commission in the filing of the Complaint or in the investigation of this matter.

IV. RELIEF FOR COMPLAINANT

- A. Respondents hereby approve the Complainant's fence application dated May 25, 2021 attached hereto as Exhibit A. A variance is hereby granted with respect to the portions of the fence that are located in the side yard and in the utility easement and drainage easement.
- B. Complainant agrees to contact the 811 number again to confirm there are no utility lines or obstructions where the fence would be placed prior to breaking ground for installation.
- C. Complainant agrees that if any maintenance, repair, or other work must be performed in the utility easement or drainage easement, she will be responsible for removing the fence so the work can be performed and replacing the fence after the work is completed at Complainant's cost.
- D. Complainant agrees to remove any non-conforming portion of the fence, including the fence within the easement areas and along the side of Complainant's home, if she moves or a service dog is no longer required for her son.
- E. Respondent HOA agrees to purchase an accessible pool lift within thirty (30) days of the Effective Date and to contract a vendor to retrofit a pool lift at the original pool as soon as practicable, subject to contractor availability. Respondent [REDACTED] will reimburse the HOA for the cost of the pool lift and the installation thereof.

V. RELEASE BY COMPLAINANT

- A. Upon compliance with the terms of Paragraph IV through herein, Complainant, on behalf of her son, her immediate family members, successors, and assigns, agrees to release and forever discharge Respondents and Respondents' employees, Board members, committee members, property managers, agents, successors, insurers, and assigns from any and all claims which were

raised or may have been raised as of the Effective Date, including but not limited to, all claims in connection with the events and circumstances surrounding the Complaint and the investigation thereof.

VI. BREACH OF CONCILIATED TERMS

- A. Nothing in this Agreement shall be construed to preclude the Commission and/or any aggrieved individual(s) from bringing suit to enforce this Agreement in the event that Respondents fail to perform the promises and representations contained herein. Neither does it preclude the Commission from filing charges in the future concerning events occurring after the execution of this Conciliation Agreement. The Commission shall determine whether Respondents have complied with the terms of this Agreement. In the event that the Commission determines that Respondents have not complied with the terms hereof, the Commission shall send written notice to Respondent and Respondent shall be given a reasonable time period to remedy such non-compliance.
- B. Complainant and Respondents agree that this Agreement may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of this Agreement.

VII. REPORTING & RECORDKEEPING

Parties shall submit proof of compliance with the terms of this Agreement to:

South Carolina Human Affairs Commission
Fair Housing Division
Attention: [REDACTED]
1026 Sumter Street, Suite 101
Columbia, SC 29201

The Parties may also submit proof of compliance with the terms of the Agreement to Alyssa Barker via email sent to abarker@schac.sc.gov.

The submitter of any documentation should include the SHAC and HUD case numbers, which are as follows:

SHAC No. H-3-21-032
HUD No. 04-21-5161-8

VIII. COMMISSION REVIEW

- A. Subject to the provisions of Section 814 of the Fair Housing Act, as amended, 42 U. S. C. Section 3614, and in accordance with the provisions of State Regulations R. 65-225.G., the Commission may, from time to time, review compliance with this Conciliation Agreement within three (3) years of the Effective Date, and, if necessary, recommend to the South Carolina Attorney General that a civil action be filed to seek the enforcement of any of the terms set forth herein.

Conciliation Agreement

June 21, 2021

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IX. EFFECTIVE DATE

This Agreement shall become effective on the date on which it is approved and signed by the Commissioner of the South Carolina Human Affairs Commission ("Effective Date").

IN WITNESS WHEREOF, the parties have subscribed their names hereto on the day and date indicated.

[Redacted] 6/21/21
Complainant (Date)

[Redacted] 6/23/21
Pulte Home Co., LLC, Representative (Date)
Respondent

[Redacted] Respondent (Date)

Berkshire Forest Property Owners' Association, Representative (Date)
Respondent

AAM, LLC, Representative (Date)
Respondent

[Redacted] 6/24/2021
Conciliator (Date)

Approved on Behalf of the Commission

Janie A. Davis 6-28-2021
Janie A. Davis, Commissioner (Date)

Conciliation Agreement

June 21, 2021

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[Redacted]

Complainant

(Date)

6/21/21

Pulte Home Co., LLC, Representative
Respondent

(Date)

[Redacted]

Respondent

(Date)

6/22/21

Berkshire Forest Property Owners' Association, Representative
Respondent

(Date)

AAM, LLC, Representative
Respondent

(Date)

[Redacted]

Conciliator

(Date)

6/24/2021

Approved on Behalf of the Commission

Janis A. Davis

June 28, 2021

Janis A. Davis, Commissioner

(Date)

Conciliation Agreement

June 21, 2021
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, Complainant 6/21/21
(Date)

Pulte Home Co., LLC, Representative
Respondent _____ (Date)

Robin McCord, Respondent _____ (Date)


Berkshire Forest Property Owners' Association, Representative
Respondent 6/22/2021
(Date)

AAM, LLC, Representative
Respondent _____ (Date)


Conciliator 6/24/2021
(Date)

Approved on Behalf of the Commission

Janie A. Davis 6-28-2021
Janie A. Davis, Commissioner (Date)

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 Complainant 6/21/21
(Date)

Pulte Home Co., LLC, Representative
Respondent _____ (Date)

 Respondent _____ (Date)

Berkshire Forest Property Owners' Association, Representative
Respondent 6/22/2021
(Date)

 AAM, LLC, Representative
Respondent 6/23/2021
(Date)

 Conciliator 6/24/2021
(Date)

Approved on Behalf of the Commission

Janie A. Davis

Janie A. Davis, Commissioner

June 28, 2021

(Date)