

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Equal Rights Center (“ERC”), and Congressional 3743 12th Street LLC, Palomar Management Group, and RMICHAELCROSS LLC (“Cardinal on 12th”), collectively “the Parties.”

I. PURPOSE OF THE SETTLEMENT AGREEMENT

WHEREAS, Cardinal on 12th is the developer, designer, owner, property manager, and/or builder of Cardinal on 12th, located at 3743 12th Street Northeast, Washington, D.C., 20017 (“the Property”), which is a completed, four-story, 27-unit building with no elevators that is currently occupied, and which has eight units that are contiguously located on the ground floor and subject to the accessibility requirements of the Fair Housing Act.

WHEREAS, the ERC conducted an investigation of the Property in November 2023 and identified what it claims to be significant violations of the accessibility requirements of the Fair Housing Amendments Act (“the Act”), 42 U.S.C. §§ 3604(f)(1), (f)(2) and (f)(3)(C) which are applicable to multifamily dwellings designed and constructed for first occupancy after March 13, 1991;

WHEREAS, the ERC alleges that the public and common use areas at the Property do not have:

- A. An accessible entrance into the building from the pedestrian arrival areas to the primary entrance of covered multifamily dwellings;
- B. Accessible mailboxes, which are currently higher than the allowable 48 inches permitted under the Act;
- C. Accessible openings through the bedrooms, which are less than the required 32-inch minimum required by the Act;

- D. Accessible doorknobs at the primary entrance of the dwelling units;
- E. An accessible route into and through covered dwelling units, including specifically an accessible route to the balconies of the covered dwelling units;
- F. Accessible environmental controls, including thermostats and other mechanisms that control and operate heating, ventilation, and air conditioning, which exceed 48 inches, the maximum height allowance under the Act; reinforced walls for grab bars around the toilets, tubs, showers, stall, and shower seats, as required by the Act; accessible routes in the kitchen, as the kitchens do not have the minimum 40-inch space between cabinets and appliances, and the minimum 36-inch accessible route in the kitchen, as required by the Act;
- G. Accessible routes into the bathrooms, as the bathrooms do not have the 32-inch minimum opening at the bathroom doors;

WHEREAS, at all times Cardinal on 12th has denied and continues to deny the allegations that it has designed and constructed the Property in violation of the Act's accessibility requirements;

WHEREAS, the ERC and Cardinal on 12th desire to resolve these claims voluntarily and without the need for expensive and possibly protracted litigation and, to that end, they have agreed to the following terms by which the ERC's allegations are fully and finally resolved.

II. TERMS OF THE SETTLEMENT AGREEMENT

Based upon the foregoing recitals, the Parties agree as follows:

A. Definitions

1. "Guidelines" mean the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472

(1991).

2. “Design Manual” means the Fair Housing Act Design Manual (1998).
3. “The Parties” mean the ERC and Cardinal on 12th.
4. “Agreement” means this Settlement Agreement.

B. Effective Date

The Effective Date of this Settlement Agreement is the date on which the last party to the Agreement executes the Agreement. The Parties agree that this Settlement Agreement may be executed in one or more counterparts, each one of which shall be deemed to be an original, equally admissible in evidence, but all of which shall constitute one and the same instrument. Electronic or facsimile signatures may be deemed to be an original signature for all purposes.

C. Terms of the Agreement

The Terms of this Agreement is two years from the Effective Date.

D. Covered Units

At the Property, a building without an elevator, the eight ground-floor units—Units 101 to 108—are “covered units” within the meaning of the Act. The standards used to assess compliance with the Act under this Agreement are the Guidelines and the Design Manual.

E. Future Actions

All future FHA-covered multifamily dwelling units developed or constructed by Cardinal on 12th shall comply with the design and construction requirements of the Fair Housing Act.

F. Corrective Action by Cardinal on 12th at The Property

The Parties, understanding and agreeing that it would be infeasible to make ground-floor units located at the Property accessible, have agreed to the following alterations to enhance at the Property. These alterations are enforceable as part of this Settlement Agreement:

1. *Alterations at The Property*

a. On request by an individual with a disability, assignment of a vacant mailbox within an accessible reach range and on an accessible route shall be considered compliant.

b. In the interior of the ground floor units, the Parties agree that the kitchens and bathrooms in covered dwellings cannot feasibly be made accessible because there is insufficient space to provide a 40-inch clear space in the kitchen between cabinets and adjacent cabinets or appliances. The Parties also agree that there is insufficient space to provide the required 36-inch accessible route into the kitchen; there is insufficient space to provide a 32-inch opening at the bathroom doors; and there is insufficient clear floor space at toilets, showers, tubs, and sinks.

c. Because the Parties agree that it is infeasible to correct these violations, the Parties agree to provide notice to residents and applicants in the Notice attached as Exhibit 1 to this Agreement about the availability of physical modifications needed by a person with a disability to provide greater accessibility. The Notice shall be provided to all applicants during the Term of this Agreement and provided to all tenants within 10 days of the date of the Execution of this Agreement.

d. Cardinal on 12th will notify residents and applicants that they may request the following be provided at no cost to them because of the disability of a resident, a member of a resident's family, or a guest in a unit with a disability-related need for the modification:

i. Installation of an accessible ADA-compliant wall hung sink, with finished floor space and protected pipes, as shown in the Design Manual, or a modified bathtub or a shower chair and handheld shower to make their bathrooms more accessible.

ii. Installation of thermostats, light switches, or duplex outlets so that all portions of their operable parts are located between 15 inches and 48 inches above the

finished floor.

iii. Installation of replacement exterior door hardware that does not require pinching or twisting for operation.

e. Cardinal on 12th will use all feasible efforts to complete the requested modifications within 30 days from the date of the leaseholder's request.

f. Cardinal on 12th will maintain a list of units where modifications have occurred, and the unit number and date on which modifications were provided and will provide a list of units so modified annually on the anniversary of the execution of this Agreement to the ERC during the terms of the Settlement Agreement.

2. Cost of Alterations

Cardinal on 12th agrees to provide and pay the costs of the alterations outlined in this Agreement, by establishing a remedial fund in the sum of \$5,000 to minimize any inconvenience to the residents of the apartments in performing those alterations. The fund and the steps required under the Agreement shall be executed by Palomar Management. Cardinal on 12th agrees that any funds remaining at the conclusion of the Agreement shall be provided to the ERC as a donation to advance its mission and work.

3. Modifications Upon Request and Notice to Leaseholders

Cardinal on 12th will send a written notice substantially in the form of that attached hereto as Exhibit 1 (the "Notice") to each leaseholder of a dwelling unit at the Property within ten (10) days from the Effective Date of this Agreement informing the leaseholder of the availability of certain modifications to the interior or exterior their unit as listed in the Notice, and notifying the leaseholder that he or she may, on account of his or her own disability, the disability of a household member, or the disability of a possible guest, have any of those

modifications performed without charge at any point in the leaseholder's tenancy by making a written request at least thirty (30) days prior to the end of the leaseholder's tenancy. Each new applicant for a unit at The Property during the Term of the Agreement shall be given the Notice during the application process to inform them that he or she may request that any of the modifications listed in the Notice be made to the unit in question on account of his or her own disability, the disability of a household member, or the disability of a possible guest, in which event Cardinal on 12th shall make such modifications within fifteen (15) days of the lease signing.

4. Training

The Parties agree that a mutually agreed upon third party will provide, and Cardinal on 12th will pay for, a training session on the design and construction requirements for new construction of four or more units in a building under the Act. This training shall be provided within 90 days from the execution of this Agreement. The Parties agree that all executive officers of Congressional, Cross and Cardinal on 12th, along with its employees with construction and tenant involvement, shall attend this training, which may be recorded. Cardinal on 12th also agrees that the attendees of the training will sign a certification—or a similar document—demonstrating their compliance with this requirement.

5. Sale or Transfer of an Ownership Interest in the Property

The sale or transfer, in whole or in part, of an ownership interest in the Property during the Term of this Settlement Agreement shall not affect Cardinal on 12th's obligation to complete the alterations at the Property agreed to under this Agreement. Should Cardinal on 12th decide to sell or transfer any ownership interest in the Property during the Term of this Agreement but prior to the completion of the alterations required under this Agreement,

Cardinal on 12th will provide written notice to each such buyer or transferee that Cardinal on 12th is required to complete those alterations pursuant to this Agreement. Cardinal on 12th shall either complete the required alterations prior to such sale or transfer of the Property or obtain written consent of the new buyer(s)/transferee(s) to have these alterations performed within the time frame allotted herein at the Property after the new owner takes possession of the Property. Not later than fourteen (14) days after such sale or transfer during the Term of this Settlement Agreement, Cardinal on 12th agrees to notify the ERC in writing of actions that Cardinal on 12th has taken in accord with this provision. For doubt avoidance, the foregoing provisions shall in no way extend the Term of this Agreement or in any manner limit, impair or otherwise impact the ERC General Release (defined below).

6. Settlement Payment

Cardinal on 12th agrees to make a Settlement Payment to the ERC in the amount of \$30,000.00 as compensation to the ERC, including attorneys' fees, costs, and litigation expenses. Cardinal on 12th may pay this sum through a partial payment of \$10,000 payable within 15 days of the execution of this agreement made payable to the Equal Rights Center and payment of the remaining \$20,000 no later than June 30, 2025 payable to Relman Colfax PLLC, both checks to be sent to Relman Colfax PLLC, attention Sara Pratt, 1225 19th St. NW, Suite 600, Washington, D.C. 20036.

7. General Release of All Claims

a. In exchange for, and in consideration of, the payments, alterations, benefits, and other commitments described herein, the ERC hereby fully and forever releases, acquits, and discharges Cardinal on 12th and each of its predecessors, successors, and assigns, parent companies and entities, subsidiary companies and entities, affiliated companies and entities,

and the officers, directors, shareholders, partners, employees, managers, members, representatives, insurers, attorneys, and agents, past, present, and future (collectively, “Cardinal on 12th Releasees”), from any and all claims, liabilities, causes of action, damages, costs, attorneys’ fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, that the ERC may now have or has ever had, against Cardinal on 12th Releasees relating to the Property, and the ERC hereby specifically waives and releases all such claims, including, but not limited to, those arising under the Fair Housing Act and any and all state or local statutes, ordinances, or regulations governing the accessibility of residential units, public areas, and common areas at the Property including, without limitation, any claim pursuant to the laws of the District of Columbia, as well as all claims arising under federal, state, or local law involving any claim related to the claims described in this Agreement (collectively, the “ERC General Release”).

b. In exchange for, and in consideration of, the foregoing ERC General Release and the other commitments described herein, Cardinal on 12th fully releases, acquits, and forever discharges the ERC from any and all claims, liabilities, causes of action, damages, costs, attorneys’ fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, that Cardinal on 12th may now have or has ever had relating to the Property and the allegations in this Agreement, and hereby specifically waives and releases all such claims (collectively, “Cardinal on 12th General Release”).

c. The ERC agrees that the execution of this Settlement Agreement shall extinguish all claims and shall be a full, complete, and final disposition and settlement of all claims against Cardinal on 12th Releasees relating to the Property and all matters and issues which were alleged, or could have been alleged, related to the Property, by ERC including, but

not limited to, claims relating to the Act and any similar federal, state, or local law.

d. The Parties expressly acknowledge, covenant, and agree that this Settlement Agreement, the ERC General Release and the Cardinal 12th General Release result from a compromise of disputed claims, and are not intended and shall not be construed as an admission of liability or the truth of the allegations, claims, or contentions of any Party. Neither the existence of this Agreement nor any of its terms or conditions shall be admissible by any Party in any court action, arbitration, or any other legal proceeding except to enforce the provisions of this Agreement.

III. MISCELLANEOUS PROVISIONS

A. Binding Effect

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, successors, and assigns. Without limiting the foregoing, Cardinal on 12th Releasees shall be deemed third-party beneficiaries of the ERC General Release, entitled to enforce the same as if they were signatories to this Agreement. Except as set forth in the preceding sentence, there are no third-party beneficiaries to this Agreement.

B. Controlling Law

This Settlement Agreement shall be construed in accordance with the laws of the District of Columbia, without giving effect to conflict of law principles. Any action in regard to this Agreement or arising out of its terms and conditions shall only be instituted and litigated in the appropriate city or federal court sitting in the District of Columbia.

C. Costs and Expenses

Except as specifically provided herein to the contrary, the Parties shall bear their own attorneys' fees, expenses, and costs arising out of and/or relating to this matter.

D. Deadlines

All deadlines and dates for performance by the Parties under this Settlement Agreement may be extended or modified by written agreement between the Parties.

E. Severability

Each provision and term of this Settlement Agreement shall be interpreted in such a manner as to be valid and enforceable. In the event any provision or term of this Final Settlement Agreement is determined to be, or is rendered, invalid or unenforceable, all other provisions or terms of this Final Settlement Agreement shall remain unaffected to the extent permitted by law.

F. Notice to the Parties

All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses or e-mail addresses set forth below. If sent by overnight delivery, notice shall be deemed delivered one (1) business day after deposit with the nationally recognized overnight courier. Personal delivery shall be deemed delivered upon the date the same was actually delivered. E-mail notices shall be deemed delivered the day the same was sent, provided that the sender has retained a copy and the same was properly sent.

Notices to the ERC shall be sent to: Sara Pratt and Emahunn Raheem Ali Campbell, Relman Colfax PLLC, 1225 19th Street NW, Suite 600, Washington, D.C. 20036.

Notices to Cardinal on 12th shall be sent to: Brian Athey, President, Congressional 3743 12th Street LLC, 3743 12th Street Northeast, Washington, D.C. 20017.

G. Entire Agreement

This Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings,

expectations, and discussions of or between the Parties, whether oral or written, and there are no representations or other agreements between the Parties respecting the subject matter hereof.

Agreed to by the Parties as indicated by the signatures appearing below.

The Equal Rights Center

By: *Annie Kate Scott*

Date: Oct 10, 2024

Name: Kate Scott

Its: Executive Director

Congressional 3743 12th Street LLC

DocuSigned by:
By: Brian Athey

Date: 10/9/2024

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Name: Brian Athey

Its: President

Palomar Management Group

DocuSigned by:

By: John McNamara

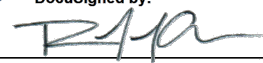
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Name: John McNamara

Its: Partner

Date: 10/9/2024

RMICHAELCROSS LLC

DocuSigned by:
By: 
69299BBA733E42D...

Date: 10/9/2024

Name: R. Michael Cross, R.A.

Its: Principal Architect

EXHIBIT 1

NOTICE TO TENANTS AND APPLICANTS: AVAILABLE STRUCTURAL MODIFICATIONS FOR INCREASED ACCESSIBILITY

Notice to Residents and Applicants:
Available Modifications for Increased Accessibility

To All Residents and Applicants:

Please be advised that you have the right to request one or more accessibility modifications to your apartment unit. These changes are:

1. Installation of a wall hung sink, with finished floor space and protected pipes.
2. Installation of a modular tub/shower unit which includes grab bars and a shower chair.
3. Installation of a shower chair and/or hand-held shower fixture.
4. Installation of a thermostat and/or light switches and duplex outlets located between 15 inches and 48 inches above the finished floor.
5. Installation of new hardware to the door to your unit which does not require pinching or twisting.

These modifications are intended to increase accessibility for people with disabilities. You may request these modifications on account of any of the following:

- Your disability;
- The disability of a household member; or
- The disability of a possible guest.

In the event you wish to have any of these modifications installed, you must make the request in writing at least thirty (30) days before the end of your tenancy. Modifications that you timely request will be made **at no cost to you**. You **do not** need to provide evidence of disability. For current Residents, modifications will be performed within thirty (30) days from the date of your timely request. For Applicants, modifications will be performed within thirty (30) days from your lease signing.

**Please contact [insert name] at [insert email address and phone number]
to request modifications from the list.**





The ERC and Cardinal on 12th Settlement Agreement for the Cardinal on 12th Property final_10.8.2024

Final Audit Report

2024-10-10

Created:	2024-10-08
By:	Sara Surface (ssurface@equalrightscenter.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAATmumhHn1xmF69Yo2WcfauFBs0QYzgyI

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Signature Date: 2024-10-10 - 11:28:09 PM GMT - Time Source: server
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