



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE, *ex rel.* )  
MATTHEW P. DENN, Attorney )  
General of the State of Delaware, )  
 )  
Plaintiff, )  
 )  
v. ) C.A. No. N17C-03-166 AML  
 )  
METROPOLITAN MANAGEMENT )  
GROUP, INC., a Pennsylvania )  
corporation, METRODEV NEWARK, )  
L.L.C., a Delaware Limited Liability )  
Company, WATER POLO IV, L.P., a )  
Pennsylvania Limited Partnership, )  
 )  
Defendants. )

**SETTLEMENT AGREEMENT**

Plaintiff, State of Delaware *ex rel.* Matthew P. Denn, Attorney General (the “State”), filed a Complaint for civil penalties and other relief against Defendants Metropolitan Management Group, Inc., Metrodev Newark, L.L.C. and Water Polo IV, L.P. (collectively “Defendants”), alleging that the named Defendants violated the Delaware Consumer Fraud Act through their advertising practices. Plaintiff and Defendants stipulate to this Settlement Agreement (“the Agreement”) to resolve all matters in dispute in this action between them.

**THEREFORE, IT IS AGREED** as follows:

1. The Complaint charges that Defendants engaged in a sustained pattern and practice of fraudulently advertising apartments for rent in two residential apartment

communities in Newark, Delaware known as Hidden Creek Commons and Autumn Park Apartments<sup>1</sup> in violation of the Delaware Consumer Fraud Act, 6 *Del. C.* § 2513(a).

2. Defendants do not admit the allegations in the Complaint, but have agreed to resolve the outstanding litigation pursuant to the terms of this agreement.

3. Defendants waive any cross claims, counterclaims, or affirmative defenses they may have under Delaware law concerning the prosecution of this action through the date of this Agreement and the contemporaneous orders of the Court as to dismissal and monetary judgment, and agrees to bear their own costs and attorneys' fees.

4. The Parties to this agreement waive all rights to appeal or otherwise challenge or contest the validity of this Agreement and the contemporaneous orders of the Court as to dismissal and monetary judgment.

5. Entry of this Agreement and the contemporaneous orders of the Court as to dismissal and monetary judgment are in the public interest.

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<sup>1</sup> As of June 30, 2017, Defendant Metrodev Newark, L.L.C. sold the residential apartment community known as Autumn Park Apartments to a third party. Autumn Park Apartments are currently known as Spring Crossings. Defendant Metrodev Newark, L.L.C. no longer owns, operates, nor controls this property and the below provisions shall not apply to the community n/k/a Spring Crossings.

## **II. PROHIBITIONS & MANDATES UPON FUTURE CONDUCT OF DEFENDANTS**

6. For a period of three (3) years from the effective date of this Agreement, Defendants shall be subject to the below-listed prohibitions and mandates within the State of Delaware. These prohibitions and mandates shall apply to all Defendants, the individual officers, directors, owners, members, managers, and executives of Defendants acting on Defendants' behalf, and also to any organization or legal entity in which they maintain any ownership interest.

### **A. Prohibitions and Mandates Related to Advertising the Rental of Residential Apartments**

7. Defendants shall not create or maintain any advertisement for the rental of a residential apartment situated within the State of Delaware that contains any deception, fraud, false promise, false pretense, misrepresentation, or the concealment, suppression, or omission of any material fact made with the intent that others would rely thereon. Such prohibited acts shall include, but are not limited to:

- a. Advertising amenities that are not provided, not provided on a consistent basis, or not intended to be provided at the time of entering into a lease with a tenant; and
- b. Advertising services that are not provided, not provided on a consistent basis, or not intended to be provided at the time of entering into a lease with a tenant.

8. Defendants shall implement a written advertisement retention policy requiring that all advertising materials for residential rentals, including a copy of the advertisement, correspondence, payments, and vendor information, of Defendants be maintained for a minimum period of three (3) years.

9. Defendants shall provide a copy of the written advertisement retention policy to the State, Consumer Protection Unit, by way of the undersigned Deputy or the Director, within 3 months of the effective date of this Agreement.

10. For a period of eighteen (18) months from the effective date, Defendants shall provide the State with an exact copy of any advertisement, whether the actual advertisement or a template, for the rental of units situated in the State of Delaware.

a. Any such advertisement or template provided to the State pursuant to this Agreement shall be accompanied by a representation, in writing, from an active member of the Delaware Bar (a "Delaware Attorney") that such Delaware Attorney was consulted regarding the advertisement or template and its compliance with this Agreement.

b. Any such advertisement or template shall be provided to the State, Consumer Protection Unit, by way of the undersigned Deputy or the Director, for review, but not approval, no fewer than seven (7) business days prior to publication.

c. The State will provide objection(s), if any, to Defendants within seven (7) business days of receiving any such advertisement or template. The State's

failure to respond in writing to any advertisement or template within the time prescribed shall not be relied upon by Defendants in any proceeding related to such advertisement or advertisement campaign.

- d. Defendants may provide a written response to the State's objection(s), if any. The response, or a letter stating that no response will be sent, shall be submitted no fewer than five (5) business days after receiving the State's objection(s).

**B. Prohibitions Related to the Rental of Residential Real Estate**

11. Defendants shall not rent, offer to rent, or attempt to rent any residential apartment situated within the State of Delaware where such rental is the product of any deception, fraud, false promise, false pretense, misrepresentation, or the concealment, suppression, or omission of a material fact made with the intent that another would rely thereon.

12. Defendants shall not knowingly rent, offer to rent, or attempt to rent any residential apartment unit situated within the State of Delaware that suffers from an open, New Castle County property maintenance code or municipal health, safety, or welfare code violation, whereby Defendants received timely written notice of the existence of an open violation, prior to renting the unit.

13. Defendants shall not knowingly rent, offer to rent, or attempt to rent any residential apartment situated within the State of Delaware that lacks essential

services as defined by the Delaware Residential Landlord Tenant Code, 25 Del. C. § 5101, *et seq.*, at the time of entering into a rental agreement with a tenant(s).

14. Defendants shall not knowingly rent, offer to rent, or attempt to rent any residential apartment situated within the State of Delaware that lacks facilities or services as advertised or promised to the public or tenants by Defendants at the time of entering into a rental agreement with a tenant(s).

**C. Mandates Related to Recordkeeping**

15. Defendants shall implement a written document retention policy requiring that all business, leasing, and maintenance records of Defendants be maintained for a minimum period of three (3) years.

**D. Mandates Related to the Repair or Replacement of Essential Services and Advertised Amenities**

16. Defendants state upon information and belief, that all of the complaints that were referenced in the State's Complaint have been resolved and that no open, property or municipal health, safety, or welfare code violations exist, where the violations indicate the unit is uninhabitable, or which prohibits occupancy and for which the Defendants received timely written notice and which remains open or shown as unresolved with New Castle County Code Enforcement.<sup>2</sup> Defendants will

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<sup>2</sup> On or about January 9, 2019, Defendants will be meeting with New Castle County Code Enforcement to review any open code violations; therefore, their certification pursuant to ¶ 16 is premised either on all code violations having been resolved as of January 9, 2019, or addendum to this Agreement to outline open and unresolved

submit a written listing, in the form of a spreadsheet indicating which HVAC units have been replaced, the date of the replacement, and any units that have not been replaced since Defendants' purchased the Hidden Creek Commons community.

17. Defendants shall institute a written procedure for addressing, repairing, or replacing malfunctioning or inoperable essential services within fifteen (15) days after receiving written notice of the defect or lack of essential service, in accord with the provisions of 25 *Del. C.* § 5306(a).

18. Defendants shall institute a written procedure for addressing, repairing, or replacing malfunctioning or inoperable facilities or services which Defendants have advertised or otherwise promised to the public or to tenants within thirty (30) days after receiving written notice of the defect or lack of facility or service, in accord with the provisions of 25 *Del. C.* § 5307(a)(1).

**E. Mandates Related to Tenant Complainants**

19. Defendants shall permit any current tenant from the agreed upon list attached hereto as Exhibit A at Hidden Creek Commons who filed a complaint with the State in this matter the option to terminate their lease upon providing sixty (60) days prior written notice, prior to the expiration date thereof, without penalty.

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code violations noticed as a result of this meeting, and a plan for timely resolution thereof.

20. To be eligible for this premature termination, the tenant(s) must be current on rent and other lawful charges. If Defendants claim an outstanding balance owed by a tenant, Defendants shall provide to the tenant(s) and the State within twenty (20) days hereof, a written itemization of the unpaid balance, including date incurred and the basis therefore, together with any supporting documentation for any non-rent charge. Any outstanding amounts claimed by Defendants which do not constitute rent, and for what Defendants lack documentary support, will not be imposed against the tenant(s). Outstanding amounts lawfully owed to Defendants will be required to be paid by the tenant prior to termination of the lease.

21. Defendants shall timely and thoroughly document, in writing, in accordance with 25 *Del. C.* §5514, all damage to a unit which exceeds normal wear and tear and which cannot be corrected by painting and ordinary cleaning, or any amounts being withheld for rental arrearage, including late fees, and supply to the tenant(s) terminating pursuant to paragraph 20, above. The notice to the tenant must be sent within twenty (20) days of the termination of the lease. Failure by the terminating tenant(s) to provide a written forwarding address in writing at or prior to termination, relieves Defendants from this obligation.

**F. Prohibitions Related to Landlord Tenant Matters in the Justice of the Peace Courts**

22. Defendants must act in good faith in connection with matters it prosecutes or defends concerning landlord tenant matters in a Delaware Justice of the Peace

Courts, including but not limited to with regard to the present condition of any residential unit, the essential facilities or services or advertised amenities therein, or Defendants' intention with regard to repairing or replacing same.

**G. Mandates Related to Staff and Tenant Training**

23. Defendants must institute agreed upon training for all staff to ensure that staff is knowledgeable of the requirements pursuant to the Delaware Residential Landlord Tenant Code for responding to and correcting claims for lack of essential services (§ 5306) and for amenities facilities and services and required (§ 5307(a)(1)), pursuant to the schedule and terms attached hereto as **Exhibit B**.

24. Defendants must institute agreed upon training for all current tenants to ensure that tenants are knowledgeable of the requirements pursuant to the Delaware Residential Landlord Tenant Code and New Castle County Rental Code, the cost of which is to be paid by Defendants, pursuant to the schedule and terms attached hereto as **Exhibit B**.

25. Defendants must institute agreed upon training for all staff to ensure that staff is knowledgeable of the requirements pursuant to the Delaware Fair Housing Act, 6 Del. C. § 4600, *et seq.*, pursuant to the schedule and terms attached hereto as **Exhibit B.**

### **III. PENALTIES**

26. The Parties agree to resolve fully and completely the Complaint, upon the payment of to a stipulated a civil penalty in the amount of \$400,000. This amount shall be due and payable to the State of Delaware, Consumer Protection Fund, as follows:

- a. \$150,000 in certified funds within 60 days of the effective date of this Agreement;
- b. \$150,000 in certified funds within 120 days of the effective date of this Agreement; and
- c. \$100,000 in certified funds within 180 days of the effective date of this Agreement.

27. Noncompliance with any of the terms of this Agreement can be enforced by way of motion in the Superior Court.

#### **IV. AGREEMENT ACKNOWLEDGEMENTS**

28. The Parties hereby stipulate that the effective date of this Agreement shall be the last date on which the Agreement is signed by all Parties, with time computations to be calculated in accordance with Superior Court Civil Rule 6.

29. Defendants acknowledge by their representative's signature below that nothing in this Agreement shall be deemed or construed as a grant or permission to Defendants to conduct any activities in violation of any federal, state, or other applicable law or regulation.

30. Defendants acknowledge by their representative's signature below that this Agreement does not constitute an approval by the State of any of Defendants' business practices, and Defendants shall not make any contrary representations.

31. Defendants acknowledge that all amounts due pursuant to ¶ 27 of this Agreement shall be non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a) (7).

32. Defendants acknowledge by their representative's signature below that they shall not participate, directly or indirectly, in any activity or form, organize or reorganize into any partnership, corporation, sole proprietorship, or any other legal structure for the purpose of avoiding compliance with the terms of this Agreement.

33. The Parties acknowledge by their representative's signature below that if any provision of this Agreement, or part hereof, is held invalid, unenforceable, void, or

voidable against public policy or otherwise, the invalidity thereof shall not affect any other provisions, or parts hereof, which shall be given effect without the invalid provision or part.

34. Defendants acknowledge by their representative's signature below that they shall not cause or encourage third parties, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Agreement.

35. Defendants acknowledge by their representative's signature below that nothing in this Agreement shall be construed to limit or affect the rights of any consumer, tenant, or other person or entity to take any action, assert any claim, or otherwise pursue any available right or remedy, nor create any private rights or causes of action in any third parties.

36. The Parties acknowledge by their representative's signature below that nothing in this Agreement shall preclude the State from pursuing any action with respect to acts or practices of Defendants that have not been identified by the Complaint or this Agreement, or any acts or practices conducted after issuance of this Agreement and the contemporaneous orders of the Court as to dismissal and monetary judgment.

37. The Parties agree that this Agreement shall preclude the State from pursuing any action with respect to acts or practices of Defendants that have been brought or

could have been brought based on the facts alleged in the Complaint. The State agrees not to further prosecute this action with respect to the violations alleged in the Complaint unless the terms of this Agreement are violated or breached. Non-payment of any amounts due under this Agreement shall constitute a breach hereof. In the event of full satisfaction of the terms of this Agreement, the State further agrees to dismiss this action with prejudice.

38. Defendants acknowledge by their representative's signature below that they have entered into this Agreement knowingly and voluntarily and have had the opportunity to have this Agreement reviewed by counsel of their choosing, and have, in fact, obtained such review.

39. Defendants acknowledge by their representative's signature below that any undersigned individual executing this Agreement on behalf of a corporate entity represents and warrants that he or she is fully authorized by the entity to enter into this Agreement and to legally bind such entity to the terms of this Agreement.

40. Defendants acknowledge by their representative's signature below, that Defendants entities consent to personal jurisdiction in the courts of the State of Delaware related to any dispute arising pursuant to this Agreement, and the State of Delaware shall maintain jurisdiction over this Agreement for the purposes of the enforcement or amendment thereof.

41. Defendants acknowledge by their representative's signature below, that Defendants agree to produce a corporate representative to appear in Delaware to give testimony in any matter or proceeding related to this Agreement, whether by way of deposition, trial, or other proceeding.

42. The Parties acknowledge that this Agreement does not constitute an approval by the State of any of the business practices of Defendants, and Defendants shall not make any contrary representations.

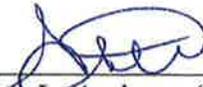
**VI. RETENTION OF JURISDICTION**

43. The Parties agree the Superior Court of the State of Delaware retains jurisdiction of this matter for purposes of construction, mutually agreed upon modification in writing, and enforcement of this Agreement.

SO STIPULATED AND AGREED:

Dated: January 4, 2018

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

  
\_\_\_\_\_  
Gillian L. Andrews (#5719)  
Regina S. Schoenberg (#5659)  
Deputies Attorney General  
Carvel State Office Building  
820 N. French Street, 5<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8844  
[gillian.andrews@state.de.us](mailto:gillian.andrews@state.de.us)

*Attorneys for Plaintiff State of Delaware*

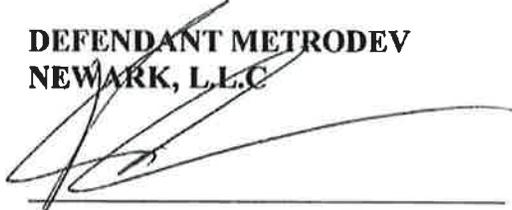
Dated: 1/4/19

**DEFENDANT METROPOLITAN  
MANAGEMENT GROUP, INC.**

  
\_\_\_\_\_  
By:  
Title: *Pres*

Dated: 1/4/19

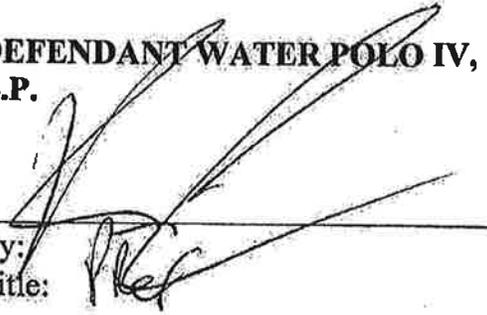
**DEFENDANT METRODEV  
NEWARK, L.L.C**

  
\_\_\_\_\_  
By:  
Title: *Pres*

Dated: 1/4/19

**DEFENDANT WATER POLO IV,  
L.P.**

By:  
Title:



Dated:

1/3/2019

**MICHAEL P. MORTON, P.A.**



Michael P. Morton (# 2492)  
3704 Kennett Pike, Suite 200  
Greenville, DE 19807  
(302) 426-1313  
[mmorton@michaelpmorton.com](mailto:mmorton@michaelpmorton.com)  
*Attorney for Defendants*

Filed: Jan 08 2019 02:04PM  
Transaction ID 62837007  
Case No. N17C-03-166 AML



<u>Name</u>	<u>Address</u>	<u>Unit</u>	<u>Status</u>
Angel McCrae	92 Hobart Dr	D4	Current
Angelique Lilly-Washington	92 Hobart Dr	C3	Current
Brittany Bryant	142 Greenbridge Dr	C1	Current
Cheryl Herring	152 Greenbridge Dr	B1	Current
Edward Green	92 Hobart Dr	D2	Current
Fernanda Esteves	162 Greenbridge Dr	B1	Current
Judith David	22 Hobart Dr	E4	Current
Kawanda Sears	162 Greenbridge Dr	F2	Current
Marcella Little	142 Greenbridge Dr	C3	Current
Maryella Garcia-Romero	22 Hobart Dr	C4	Current
Tamira Mayes	92 Hobart Dr	D1	Notice
Thomas Smallwood	152 Greenbridge Dr	B1	Notice



**EXHIBIT B to SETTLEMENT AGREEMENT**

1. Defendants must institute mandatory training for all staff to ensure that staff is knowledgeable of the requirements pursuant to the Residential Landlord Tenant code for responding to and correcting claims for lack of essential services (§ 5306) and for amenities and required repairs § 5307(a)(1). The training must occur a minimum of once a year for three (3) years from the effective date of the foregoing Settlement Agreement.
2. Defendants must institute mandatory training for proper maintenance operations for each maintenance employee for a minimum of four (4) hours each year, including all new maintenance employees. This training must occur a minimum of once a year for the three (3) years from the effective date of the foregoing Settlement Agreement.
3. Defendants must institute a free of charge training for current residents on their rights, responsibilities and enforcement capabilities pursuant to the Delaware Residential Landlord Tenant Code and the New Castle County Rental Code, for a minimum of four (4) hours each year, for the three (3) years from the effective date of the foregoing Settlement Agreement. Counsel for the Defendants will be authorized to perform this training for the initial two (2) years, then staff will be authorized to use the PowerPoint provided by counsel for the final year.
4. Defendant must institute mandatory fair housing training for its employees, consistent with an outline approved by the Delaware Human Relations Commission, and presented either by counsel for the defendant or by staff from the Human Relations Commission, a minimum of four (4) hours each year for the next three (3) years from the effective date of the foregoing Settlement Agreement. Defendant has already scheduled a training session on this topic for 2019 with the Human Relations Commission staff, that training session will qualify as one (1) of the three (3) years required.