STIPULATED AGREEMENT BETWEEN
THE UNITED STATES AND THE DISTRICT OF COLUMBIA

The United States and the District of Columbia enter into this Stipulated Agreement in order to resolve a proposed lawsuit by the United States. The United States has notified the District of Columbia that it is prepared to file a lawsuit alleging that the District of Columbia, through its zoning rules and practices, has discriminated on the basis of handicap in violation of the federal Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988 ("the Fair Housing Act"), 42 U.S.C. §§ 3601-19. The proposed lawsuit would allege that the District of Columbia's zoning rules and practices significantly restrict and, in some instances, preclude housing for disabled persons in violation of the prohibitions against discrimination because of handicap contained in the Fair Housing Act.[1]

More specifically, the United States is prepared to allege, and the District of Columbia does not dispute, that the District of Columbia's zoning regulations and practices that are applicable to housing in areas zoned for multi-family housing include classifications based on disability which on their face and as applied violate the Fair Housing Act. These zoning regulations and practices place restrictions upon housing for persons with disabilities when such housing is considered a

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[1]For purposes of this Stipulated Agreement, the terms "handicap" and "disability," and any derivation of these terms, shall have the same meaning as the term "handicap" in the Fair Housing Act. 42 U.S.C. 3602(h).

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"Community Based Residential Facility" ("CBRF"), even though no such restrictions are placed on housing for an equal number of non-disabled persons. The zoning regulations and restrictions applicable to housing for persons with disabilities but not to housing for non-disabled persons include: (1) a requirement that a special exception be obtained from the Board of Zoning Adjustment, (2) restrictions that prohibit housing for persons with handicaps from being located within five hundred feet or within the same square of other similar housing, and (3) an absolute cap on the number of persons allowed in certain housing for persons with handicaps.

In addition, the United States is prepared to allege, and the District of Columbia does not dispute, that the District of Columbia has, until recently, failed to provide a mechanism by which providers of housing for persons with disabilities may obtain an exemption from the District of Columbia zoning restrictions under the reasonable accommodation mandate of the Fair Housing Act. 42 U.S.C. § 3604(f)(3). While the District of Columbia has taken steps to rectify this situation by initiating the establishment of an appropriate mechanism, the mechanism does not contain criteria by which the responsible city official shall assess requests, nor are there time frames set within which a decision must be rendered.

To resolve the concerns of the United States, the District of Columbia has proposed to revise its zoning regulations so that housing for persons with disabilities in areas designated for

multi-family housing will be treated for zoning purposes in the same manner as housing for non-disabled persons. In addition, the District of Columbia has proposed to create a mechanism to ensure that eligible persons may request and obtain, if appropriate, a reasonable accommodation. Specifically, the District of Columbia shall propose to the Zoning Commission regulations to establish guidelines, criteria, and time frames for the processing of reasonable accommodation requests to supplement and amend the procedure set forth in the notice regarding reasonable accommodation requests published in the District of Columbia Register on February 9, 1996. The United States agrees that the amended provisions of the District of Columbia's zoning code, when enacted, cure the deficiencies that led the United States to prepare its lawsuit.

In entering into this Stipulated Agreement, the United States and the District of Columbia agree that the federal Fair Housing Act carries out a policy of the highest pricrity and that the United States and the District of Columbia believe it is in their mutual interest to work cooperatively to ensure that the District of Columbia acts in compliance with both the spirit and the letter of the Fair Housing Act. The District of Columbia, upon becoming informed of the United States' allegations concerning violations of the Fair Housing Act, has engaged in good faith negotiations to resolve the dispute. The District of Columbia has proposed a series of actions which, when implemented, will address the alleged violations of the Fair

Housing Act raised by the United States. The District of Columbia is intent upon implementing these actions without the need for a court order or contested litigation.

NOW, THEREFORE, upon consent and agreement of the parties to this Stipulated Agreement, it is hereby AGREED as follows:

I. Amendment of Zoning Regulations

A. The District of Columbia will remove the restrictions placed upon housing for people with disabilities in multi-family zones so that such housing is treated in the same manner as housing for people without disabilities: as a matter of right use. To accomplish that end, the District of Columbia will, no later than thirty (30) days after the date on which the District of Columbia executes this agreement, advise the District of Columbia Zoning Commission to initiate proposed rulemaking to amend the District of Columbia's zoning regulations contained at 11 DCMR § 330.5. This section of the District of Columbia's zoning regulations lists the uses that "shall be permitted as a matter of right in an R-4 district." 11 DCMR § 330.5. To this list of "as of right uses," the proposed amendment adds CBRFs which are intended and operated as housing for persons with handicaps. Because, under the District of Columbia's zoning regulations, uses that are permitted as of right in a R-4 zone are permitted as a matter of right in R-5 and all other less restrictive zones, this proposed amendment will allow CBRFs which are intended and operated as housing for persons with handicaps to be permitted as a matter of right in R-5 and all other less

restrictive zones as well as R-4 zones. The proposed amendment, which describes those CBRFs which will be permitted as of right in R-4 and less restrictive zones, is as follows:

> The following uses shall be permitted as a matter of right in an R-4 district: ...
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> (i) Community-Based Residential Facility; Provided that, notwithstanding any provision in this title to the contrary, the Zoning Administrator has determined that such community-based residential facility, which otherwise complies with the zoning requirements of this title that are of general and uniform applicability to all matter of right uses in an R-4 district, is intended and operated as housing for persons with handicaps as that term is defined under § 3602(h), 42 U.S.C. § 3602(h).

Within the thirty (30) day period, the District of Columbia will take all actions necessary to allow the District of Columbia Zoning Commission to initiate rulemaking.

B. The District of Columbia will create a mechanism to ensure that eligible persons under the Fair Housing Act may request and, if appropriate, obtain a reasonable accommodation. To accomplish that end, the District of Columbia will, no later than thirty (30) days after the date on which the District of Columbia executes this agreement, advise the District of Columbia Zoning Commission regarding the proposed reasonable accommodation mechanism attached to this Stipulated Agreement as Attachment 1. Within this thirty (30) day period, the District of Columbia shall take all actions necessary to allow the District of Columbia Zoning Commission to initiate rulemaking.

C. The District of Columbia will regularly keep the United States informed of each step in the process of the amendment of the District of Columbia's zoning regulations set forth in §§ IA

and IB and, upon written request, will promptly provide the United States with documents pertaining to that process.

II. Interim Actions

A. The District of Columbia anticipates that it will take the Zoning Commission approximately 450 days to consider the proposed amendments referenced above, including the time necessary for application, notice, hearing and approval procedures. The District of Columbia will make all good faith efforts to enable the Zoning Commission to enact these proposed amendments within that period.

B. The District of Columbia shall take the following actions to ensure that eligible persons are not adversely affected by the length of time the Zoning Commission will require to enact the proposed amendments:

(1) Permit, as a reasonable accommodation under the Fair Housing Act, housing for persons with handicaps in R-4 and all less restrictive zones under the terms and criteria in the proposed amendment set forth in § IA until whichever of the following events occurs first: (a) the Zoning Commission enacts the proposed amendment referenced in § IA, (b) the Zoning Commission enacts an amendment which the United States, after notification from the District of Columbia pursuant to § VA, determines does not satisfy the terms of this Stipulated Agreement, or (c) the District of Columbia informs the United States in writing that the Zoning Commission has failed to enact

any legislation related to the proposed amendment and will not do so within a reasonable period of time; and

(2) Within thirty (30) days of the date of execution of this Stipulated Agreement, publish the reasonable accommodation mechanism set forth in Attachment 1 as administrative regulations that shall be followed from that time until the Zoning Commission enacts the proposed amendment as set forth in § IB above.

III. Reporting

Within six (6) months of the date of execution of this agreement and each six (6) months thereafter until the termination of this Stipulated Agreement as set forth in § V, the District of Columbia will submit to counsel for the United States a written report regarding requests for reasonable accommodation which will include the number of such requests in the previous six (6) month period; the number of requests that were granted, denied, or in which other action was taken; and a written explanation concerning those requests that were not granted. This responsibility will continue for a period of two (2) years after the date that the United States approves the District of Columbia's amendment to its zoning regulations pursuant to § V below.

IV. Record-Keeping

A. During the term of this Stipulated Agreement, the District of Columbia will retain all documents pertaining to zoning regulations regarding housing for persons with disabilities located in areas zoned for multi-family housing and

all documents pertaining to requests for reasonable accommodations. Such documents include those related to any application to construct, develop, or rehabilitate housing for use by people with handicaps in an area zoned for multi-family housing and any enforcement actions taken against housing occupied or intended to be occupied by persons with disabilities.

B. Upon reasonable notice to counsel for the District of Columbia, representatives of the United States will be permitted to inspect and copy all pertinent records of the District of Columbia at any and all reasonable times; provided, however, that the United States will endeavor to minimize any inconvenience to the District of Columbia from inspection of such records.

V. Termination

A. At such time as the District of Columbia believes it has satisfactorily enacted the proposed zoning amendments identified in §§ IA and IB, it will within ten (10) days submit a written report to counsel for the United States, including, but not limited to, documentation reflecting all action undertaken by the Zoning Commission. The United States will then have sixty (60) working days in which to inform the District of Columbia in writing whether the United States agrees that the District of Columbia has satisfactorily amended its zoning regulations. At such time that the United States submits its written agreement to the District of Columbia, this Stipulated Agreement will continue for two (2) years during which time the District of Columbia will submit reports required in § III. Upon receipt of the last

report due under § III of this agreement, this agreement will be terminated.

B. In the event the Zoning Commission approves the proposed amendments referenced in §§ IA and IB without changes and in no more than 450 days from the date of execution of this Stipulated Agreement, the United States will agree that the District of Columbia has satisfactorily amended its zoning ordinances and will not file its complaint in federal court.

C. In the event that the District of Columbia does not comply with the terms of this Stipulated Agreement, including, but not limited to those set forth in § II, or in the event that the Zoning Commission does not enact the proposed amendments referenced in §§ IA and IB in the form contemplated therein within 450 days of the date of execution of this Stipulated Agreement, the United States reserves its right to file its complaint in federal court seeking all relief and remedies that are available under the Fair Housing Act. In the event that the United States files its complaint in federal court, the District of Columbia will treat such a complaint as if it had been filed on December 27, 1994, and will be deemed to have waived any defense that it might be entitled to because the complaint was filed after that date, such as any defense based upon a statute of limitations, estoppel, or laches. The United States will inform the District of Columbia in writing prior to filing its complaint in federal court.

VI. Scope and Limitations of This Agreement

This Stipulated Agreement does not concern or address the legality of matters other than whether the provisions of the District of Columbia's zoning rules, regulations, and procedures at issue in the United States' proposed lawsuit comply with the Fair Housing Act. More specifically, it does not address or concern the District of Columbia's licensing rules and regulations related to dwellings for persons with disabilities, including the District of Columbia's use of the CBRF category in that context. This agreement shall not be construed as an endorsement by the United States of the CBRF classification or the District of Columbia's licensing or other laws that apply to or affect persons with disabilities. This Stipulated Agreement is not intended to mandate that housing for persons with disabilities be designated as a CBRF and recognizes that housing for persons with disabilities may be designated in other zoning categories, such as a rooming or boarding house. The designation of housing for persons with handicaps as a CBRF for zoning purposes under the provisions set forth in §§ IA and IIB(1) above shall have no bearing on how such housing is classified by the District of Columbia for licensing or other purposes. This Stipulated Agreement does not limit or affect the rights of third parties.

VII. Commitment to Work Together in Good Faith

Notwithstanding any other provision in this agreement, the parties will endeavor to work in good faith to resolve any issues that arise concerning this agreement.

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