

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

The Secretary, United States Department of Housing and Urban  
Development, Charging Party, on behalf of:

DOVE CARDEN and DISABILITY LAW CENTER,

Complainants,

v.

AMY SLOAN and BJJ ENTERPRISES, LLC,

Respondent.

17-JM-0009-FH-001

January 24, 2017

**INITIAL DECISION AND CONSENT ORDER**

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On August 17, 2015, Complainant Dove Carden ("Complainant Carden") filed a verified complaint with the United States Department of Housing and Urban Development ("HUD" or "the Charging Party"). The complaint alleged that Amy Sloan ("Respondent Sloan") and BJJ Enterprises, LLC, ("Respondent BJJ Enterprises, LLC") (collectively "Respondents") violated the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (the "Act"), based on disability<sup>1</sup> by failing to grant her a reasonable accommodation. On February 17, 2016, Complainant Carden amended her complaint to correct the name of a named respondent.

On July 27, 2015, Complainant Disability Law Center ("Complainant DLC"), a nonprofit, advocacy organization, filed a verified complaint with HUD alleging that Respondents violated the Act based on disability by refusing to provide services to persons with disabilities, refusing to make reasonable accommodations for persons with disabilities, and by making housing unavailable to persons with disabilities. On February 17, 2016, Complainant DLC amended its complaint to correct the name of a named respondent.

HUD determined that there was reasonable cause to believe that discriminatory housing practices had occurred with respect to both Complainant Carden and Complainant DLC (collectively "Complainants") based on disability. On November 16, 2016, HUD issued a

---

<sup>1</sup> The Fair Housing Act uses the terms "handicap," whereas this document uses the term "disability." Both terms have the same legal meaning. See Bragdon v. Abbott, 524 U.S. 624, 631 (1988).

Charge of Discrimination (the “Charge”) pursuant to a Determination of Reasonable Cause that the Act had been violated. 42 U.S.C. § 3604(f).

There has been no factual finding or adjudication with respect to any matter alleged by the Charging Party or Complainants. The parties have entered into this Initial Decision and Consent Order (“Consent Order”) to avoid the risks, expenses, and burdens of litigation and to voluntarily resolve the claims in the Charge of the Respondents’ alleged violations of federal fair housing laws. Respondents deny that they violated the Act as alleged in the Charge, but agree to settle the claims in the underlying action strictly for the purpose of avoiding the costs and uncertainty of litigation. The entry of this Consent Order shall not be deemed as an admission of fault or liability by Respondents, and Respondents expressly deny any such fault or liability.

## **II. GENERAL PROVISIONS**

1. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed complaints. No party has been coerced, intimidated, threatened, or in any way forced to become a party to it.
2. The parties acknowledge that the terms set forth herein are contractual and not merely a recital of the parties’ intentions. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and their obligations hereunder.
3. The parties agree that in the interest of a prompt conclusion of this matter, the execution of this Consent Order may be accomplished by the parties’ signatures on separate pages of this Consent Order, with the original executed Signature Pages to be attached to the body of the Consent Order to constitute one document.
4. The signature of the parties to this Consent Order may be executed by way of electronic means, and shall be deemed to be an executed and admissible Consent Order for all purposes as may be necessary under the terms of this Consent Order.
5. The parties agree the Charging Party will file a Joint Motion for Issuance of Initial Decision and Consent Order, and the Initial Decision and Consent Order, after this Consent Order is executed by all of the appropriate parties.
6. The parties acknowledge this Consent Order will become the final agency decision thirty (30) calendar days from the date it is issued by the HUD Administrative Law Judge (“HUD ALJ”) or earlier, if affirmed by the Secretary within that time. 24 C.F.R. § 180.680(b)(2).
7. This Consent Order is binding upon Respondents, their employees, successors, agents, assigns and all others in active concert with them in their residential housing operations.
8. This Consent Order is full settlement of all claims by the Complainants in all ways related to the allegations set forth, or which could have been set forth, in the subject Charge of Discrimination.

9. The parties consent to jurisdiction by the HUD's Office of Administrative Law Judges over the subject matter contained in the Charge and any items or issues related to the contents or obligations contained within this Consent Order.
10. This Consent Order does not in any way limit or restrict HUD's authority to investigate any other unrelated complaints involving Respondents made pursuant to the Act, or any other complaints within HUD's jurisdiction which are not addressed by this Consent Order.
11. Respondents' decision to agree to settle the claims in the underlying action is made in contemplation of the expenses associated with litigating this action through hearing and the uncertainty connected with litigation, and it is not to be interpreted as an admission of fault or liability under the Act, which fault and/or liability is expressly denied by Respondents.

### **III. BACKGROUND**

#### **Parties**

12. Complainant Carden alleges she is an individual with a disability within the meaning of the Act, as she has functional limitations which substantially limit one or more major life activities as defined by 42 U.S.C. § 3602(h).
13. The Subject Property, Pine Cove Apartments, is a 48-unit multifamily apartment building located at 1243 E. Alameda Avenue, Salt Lake City, Utah ("Subject Property"). Respondent BJJ Enterprises, LLC owned Pine Cove Apartments at all times relevant to these allegations. The Subject Property and its units are dwellings, as defined by the Act. 42 U.S.C. § 3602(b).
14. Respondent Sloan has been the property manager of the Subject Property since 2005 and was the property manager at all times relevant to these allegations.
15. Complainant DLC is a non-profit, disability advocacy organization that provides a variety of legal services and programs, including its Fair Housing Program. In support of its efforts to promote equal access and opportunity in housing, Complainant DLC conducts fair housing tests at various rental complexes to gather information regarding whether housing providers are in compliance with the Act. Complainant DLC's services include promoting equal access to housing for individuals with disabilities in the state of Utah where the Subject Property is located.
16. Complainants DLC and Carden are aggrieved persons as defined by the Act. 42 U.S.C. § 3602(i).

#### **Complainant Carden's Complaint**

17. Complainant Carden alleges that Respondent Sloan denied Complainant Carden's request to reside with an assistance animal as a reasonable accommodation for her disability.

Complainant DLC's Complaint

18. Complainant DLC alleges that it performed three tests which revealed discrimination against individuals with disabilities. Specifically, Complainant DLC's testing allegedly revealed that Respondent Sloan consistently failed to consider reasonable accommodation requests made by the testers.
19. Respondents deny the matters alleged in the Charge and state that they never discriminated based upon disability with respect to either Complainant Carden or Complainant DLC.

**IV. RELIEF FOR COMPLAINANT DOVE CARDEN**

20. Within twenty (20) days of the Effective Date of this Consent Order, Respondents shall pay \$7,000.00 by money order, cashier's check, or certified check payable to "M. Dove Carden" sent via overnight delivery or certified mail, return receipt requested to:

Disability Law Center  
c/o Nick Jackson  
205 North 400 West  
Salt Lake City, Utah 84103.

**V. RELIEF FOR COMPLAINANT DISABILITY LAW CENTER**

21. Within twenty (20) days of the Effective Date of this Consent Order, Respondents shall pay \$3,600.00 by money order, cashier's check, or certified check payable to Disability Law Center sent via overnight delivery or certified mail, return receipt requested to:

Disability Law Center  
c/o Nick Jackson  
205 North 400 West  
Salt Lake City, Utah 84103.

**VI. CIVIL PENALTY**

22. Within thirty (30) days after the effective date of this Consent Order, Respondents shall pay a total of \$6,400.00 as a civil penalty, pursuant to 24 C.F.R. § 180.671. This payment must be in the form of a certified or cashier's check payable to the U.S. Department of Housing & Urban Development. The check should be sent to:

Bank of America  
PO Box 277303  
Atlanta, GA 30384

Accompanying the check must be a cover letter from Respondents indicating that the check is for the civil penalty. The check and cover letter must reference both the FHEO and HUD ALJ case numbers (HUD ALJ No. 17-JM-0009-FH-001; HUD FHEO Nos. 08-15-0190-8; 08-15-0178-8). Respondent must send a copy of the check and cover letter to the HUD

attorney handling the case at the same time the check and cover letter are sent to the Bank of America.

23. The civil penalty payment referenced in this Section is a debt for a fine, penalty, or forfeiture payable to and for the benefit of the United States within the meaning of 11 U.S.C. § 523(a)(7), and is not compensation for actual pecuniary loss.

## VII. RELIEF IN THE PUBLIC INTEREST

### Injunction from Discrimination

24. Respondents and Respondents' agents, employees, successors, members, assigns, and all other persons in active concert or participation with them, are hereby enjoined from:
  - a. Discriminating in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a disability, as proscribed by the Fair Housing Act, 42 U.S.C. § 3604(f)(1);
  - b. Discriminating against any person in the terms, conditions, or privileges of a sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability, as proscribed by the Act, 42 U.S.C. § 3604(f)(2);
  - c. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling, 42 U.S.C. § 3604(f)(3)(B);
  - d. Making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on disability, 42 U.S.C. §3604(c).

### Adoption, Dissemination, and Public Notice of Reasonable Accommodation Policy

25. Within fifteen (15) days of the Effective Date of this Consent Order, Respondents shall implement the Reasonable Accommodation/Modification Policy and Policy on Assistance Animals ("Reasonable Accommodation Policy") appearing at **Exhibit A** at the Subject Property.
26. Within seven (7) days of the implementation of the Reasonable Accommodation Policy and for the duration of the period covered by this Consent Order, Respondents shall post the Reasonable Accommodation Policy in a conspicuous location at the Subject Property

and shall make it available to all current tenants and prospective tenants upon request.

27. Within thirty (30) days of the Effective Date of this Consent Order, Respondents shall provide written notice to and meet with all employees, agents, and anyone acting under the direction of Respondents who has responsibility for showing, renting, managing, or operating any dwelling at the Subject Property to explain the changes in rental policies and practices. This notice shall include the Reasonable Accommodation Policy and a copy of this Consent Order. In addition, not later than 45 days after the Effective Date of this Consent Order, employees, agents, or other persons covered by this paragraph shall sign a statement in the form of **Exhibit B** acknowledging that such persons have received, read, and understood this Consent Order and the Reasonable Accommodation Policy.
28. During the term of this Consent Order, within thirty (30) days after each new agent or employee becomes involved in showing, renting, or managing units at the Subject Property, Respondents shall provide a copy of this Consent Order and the Reasonable Accommodation Policy to such persons.

#### Education and Training

29. Within ninety (90) days of the Effective Date of this Consent Order, Respondents and all managers, agents, and employees involved in the showing, renting, or management at the Subject Property shall undergo in-person training on the Fair Housing Act, with special emphasis on discrimination based on disability, including discrimination with respect to requests for assistance animals as a reasonable accommodation. The training must be at least 2 hours in length and shall be conducted by an independent, qualified third party identified by Respondents and approved in advance by HUD. Any expenses associated with this training shall be borne by Respondents.
30. Respondents shall obtain from the trainer or training entity certificates of attendance signed by each individual who attended the training. The certificates shall include the name of the course, the date the course was taken, the subject matter covered in the course, and the length of the course or time within which the course was completed.

#### Reporting and Record-Keeping Requirements

31. Respondents shall, no later than one hundred and twenty (120) days after the Effective Date of this Consent Order, submit a compliance report (“the Compliance Report”) to the FHEO Region VIII Director as identified in paragraph 37, below. The Compliance Report shall include the following:
  - a. A signed statement attesting to the implementation of the Reasonable Accommodation Policy at the Subject Property in accordance with Paragraph 25.
  - b. All executed copies of Exhibit B, as required by Paragraph 27.
  - c. Photographs establishing that the Reasonable Accommodation Policy is being posted in a conspicuous location at the Subject Property, as required

by Paragraph 26.

- d. All executed copies of the education and training certificates, as required by Paragraphs 29-30.

- 32. During the term of this Consent Order, Respondents shall preserve all records relating to their obligations under this Consent Order. Representatives of HUD shall be permitted, upon providing reasonable notice to Respondents, to inspect and copy at reasonable times all records related to Respondents' obligations under this Order.

#### **VIII. MUTUAL RELEASE**

- 33. In consideration of the execution of this Consent Order, and other good and valuable consideration, Complainants hereby forever waive, release and covenant not to sue Respondents, their successors, assigns, agents, employees and attorneys with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, with respect to the Complaint arising out of the subject matter of HUD Office of Hearings and Appeals Case Number 17-JM-0009-FH-001, HUD FHEO Case Numbers 08-15-0190-8 and 08-15-0178-8, or which could have been filed in any action or suit arising from said subject matter, except for any suit that may be necessary to enforce the provisions of this Consent Order.

- 34. In consideration of the execution of this Consent Order, Respondents hereby forever waive, release, and covenant not to sue HUD, its successors, assigns, agents, employees and attorneys 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 Office of Hearings and Appeals Case Number 17-JM-0009-FH-001, HUD FHEO Case Numbers 08-15-0190-8 and 08-15-0178-8, or which could have been filed in any action or suit arising from said subject matter, except for any suit that may be necessary to enforce the provisions of this Consent Order.

#### **IX. NON-RETALIATION**

- 35. Respondents acknowledge that they have an affirmative duty not to discriminate under the Act, 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 Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Consent Order, and a statutory violation of the Act.

#### **X. ADMINISTRATION**

- 36. This Consent Order shall remain in effect for a period of two (2) years from its effective date.
- 37. All notices or correspondence, including the Compliance Report, required to be sent by Respondents to HUD and/or the FHEO Region VIII Director shall be addressed to Amy Frisk, Region VIII Director, Office of Fair Housing and Equal Opportunity, 1670

Broadway, 24<sup>th</sup> Floor, Denver, Colorado 80202, and shall be deemed sufficient if sent by FedEx, UPS, or U.S. Mail, certified and return receipt requested.

38. For purposes of this Consent Order, the Effective Date of this Consent Order is the date that it is signed by the HUD Chief Administrative Law Judge.
39. This Consent Order is entered pursuant to the Fair Housing Act, 42 U.S.C. § 3612(g)(3), and shall become final upon the expiration of thirty (30) days or by confirmation of the Secretary within that time. See 42 U.S.C. § 3612(h).
40. The signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the 30-day Secretarial review period, and a waiver of any right to challenge the validity of this Consent Order at any time.
41. Upon this Consent Order becoming final, the Charge is dismissed with prejudice and the HUD ALJ shall only retain jurisdiction over the terms of this Consent Order and not the subject matter of the underlying Charge.

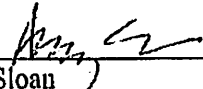
[The remainder of this page is intentionally left blank]



SIGNATURE PAGE

The parties acknowledge that they have read this Consent Order and they voluntarily sign it with a full understanding of the rights it confers and the responsibilities it imposes on them.

Respondent Sloan:

  
\_\_\_\_\_  
Amy Sloan

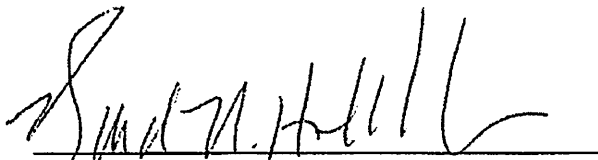
1.4.17  
\_\_\_\_\_  
Date

[The remainder of this page is intentionally left blank]

SIGNATURE PAGE

The parties acknowledge that they have read this Consent Order and they voluntarily sign it with a full understanding of the rights it confers and the responsibilities it imposes on them.

Respondent BJJ Enterprises, LLC:

  
\_\_\_\_\_  
BJJ Enterprises, LLC

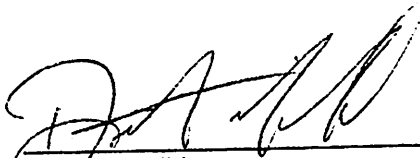
1-4-2017  
Date

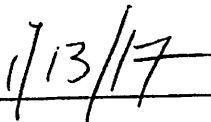
[The remainder of this page is intentionally left blank]

SIGNATURE PAGE

The parties acknowledge that they have read this Consent Order and they voluntarily sign it with a full understanding of the rights it confers and the responsibilities it imposes on them.

Respondents' Representative:

  
\_\_\_\_\_  
Dustin D. Gibb  
Sealley Reading Bates Hansen & Rasmussen, P.C.

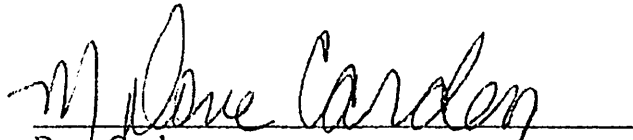
  
\_\_\_\_\_  
Date

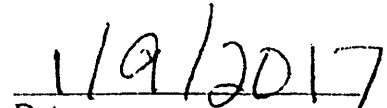
[The remainder of this page is intentionally left blank]

SIGNATURE PAGE

The parties acknowledge that they have read this Consent Order and they voluntarily sign it with a full understanding of the rights it confers and the responsibilities it imposes on them.

Complainant Carden:

  
Dove Carden

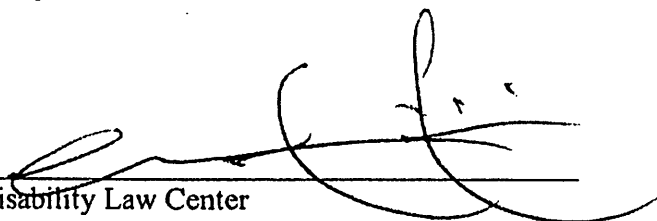
  
Date

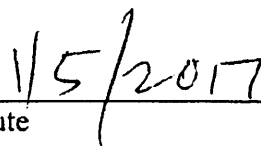
[The remainder of this page is intentionally left blank]

SIGNATURE PAGE

The parties acknowledge that they have read this Consent Order and they voluntarily sign it with a full understanding of the rights it confers and the responsibilities it imposes on them.

Complainant DLC:

  
\_\_\_\_\_  
Disability Law Center

  
\_\_\_\_\_  
Date

[The remainder of this page is intentionally left blank]

SIGNATURE PAGE

The parties acknowledge that they have read this Consent Order and they voluntarily sign it with a full understanding of the rights it confers and the responsibilities it imposes on them.

Charging Party:

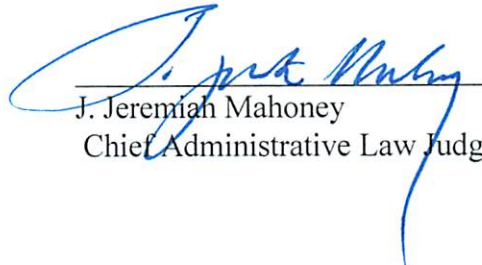
  
\_\_\_\_\_  
Matt Mussetter, Regional Counsel, Region VIII

January 13, 2017  
Date

[The remainder of this page is intentionally left blank]

The Court, having read the agreement, finds that it appears to be in the public interest. All parties have given their consent as reflected by their signatures to the agreement incorporated in the foregoing Initial Decision and Consent Order, which is hereby accepted and issued.

So **ORDERED**, this 24<sup>th</sup> day of January, 2017.

  
\_\_\_\_\_  
J. Jeremiah Mahoney  
Chief Administrative Law Judge

## Exhibit A

### Reasonable Accommodation/Modification Policy and Policy on Assistance Animals

[HOUSING PROVIDER] is committed to providing people with disabilities<sup>1</sup> the equal opportunity to use and enjoy their dwellings, as required by federal, state, and local law. Reasonable accommodations may include a change or exception to rules, policies, practices, or services that is needed because of a person's disability. Reasonable modifications may be a physical change to a unit or common area that is needed because of a person's disability. It is [HOUSING PROVIDER]'s general policy to provide reasonable accommodations or modifications to individuals with disabilities whenever an individual has a.) requested a reasonable accommodation or modification, b.) met the definition of a person with a disability, and c.) has provided that there is a disability-related need for the requested accommodation or modification. A disability-related need exists when there is an identifiable relationship, or nexus, between the requested accommodation/modification and the individual's disability.

[HOUSING PROVIDER] accepts reasonable accommodation and modification requests from persons with disabilities and those acting on their behalf.

We will make a prompt decision on your request. If the request is of a time-sensitive nature, please let us know and we will expedite the decision-making process. In the event we need additional information to make a determination, we will promptly advise you of the information needed. It is [HOUSING PROVIDER]'s policy to seek only the information needed to determine if the request should be granted under federal, state, or local law. We will not ask about the nature or extent of your disabilities. If the request is granted, you will receive a letter indicating so.

In the event of a denial due to a fundamental alteration to the operations of the property or if the request imposes an undue financial and administrative burden the request will be discussed with the individual who has made the request. [HOUSING PROVIDER] is committed to participating in an interactive process with the person requesting the accommodation or modification in order to reach an alternative.

---

<sup>1</sup> For this purpose, a person with a disability is defined as a person with a physical or mental impairment that substantially limits one or more major life activities, a person who is regarded as having such an impairment, or a person with a record of such an impairment. Physical or mental impairments include, but are not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. The term "substantially limits" suggests that the limitation is significant or to a large degree. The term "major life activity" means those activities that are of central importance to daily life, including but not limited to seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.



If the request is denied we will provide you with a letter stating all of the reasons for the denial. If an individual with a disability believes that the request has been denied unlawfully or a response has been unreasonably delayed, then he or she may contact the following:

U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity Denver Regional Office 1670 Broadway Denver, CO 80202  1-800-765-9372 <a href="http://hud.gov/complaints/">http://hud.gov/complaints/</a>	Disability Law Center 205 North 400 West Salt Lake City, Utah 84103  1-800-662-9080  <a href="http://disabilitylawcenter.org/">http://disabilitylawcenter.org/</a>
--	--

### **Requests for an Assistance Animal**

A common type of reasonable accommodation is allowing a person with a disability to keep assistance animal(s).<sup>2</sup> Dogs are the most common type of assistance animal; however, there are many other animals that can be assistance animals as well. Breed, size, and weight limitations may not be applied to an assistance animal and these animals are not required to be individually trained or certified. Payment of a fee or deposit applied to individuals with PETS may not be applied. [HOUSING PROVIDER] is committed to ensuring that individuals with disabilities, who make a reasonable accommodation request, may keep such animals to the extent required by federal, state, and local law. In the case of an individual who requests a reasonable accommodation for an assistance animal, [HOUSING PROVIDER] will consider the following two criteria:

- i. That the individual requesting the accommodation to keep an assistance animal meets the definition of a person with a disability;
- ii. That that individual requesting the accommodation to keep an assistance animal has a disability-related need for the animal.

---

<sup>2</sup> An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.

If the individual meets the two criteria, [HOUSING PROVIDER] will allow the individual with a disability to live with and use an assistance animal in all areas of the premises where persons are normally allowed to go unless doing so would fundamentally alter the nature of the housing provider's services, or imposes an undue financial and administrative burden.

[HOUSING PROVIDER] may ask individuals who have disabilities that are not readily apparent or known to submit reliable documentation of a disability and their disability-related need for an assistance animal. [HOUSING PROVIDER] may request documentation from a treating physician, psychiatrist, social worker, other mental health professional, or other reliable third party, stating that the animal provides support that alleviates one or more of the identified symptoms or effects of an existing disability. We will not ask for access to medical records, or request detailed or extensive information/documentation of an individual's physical or mental disabilities

Because [HOUSING PROVIDER] is dedicated to the health and safety of all residents please note that if the specific assistance animal poses a direct threat to the health, safety, or property of others, the request may be denied if it cannot be reduced or eliminated by other reasonable means. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage will be based on an individualized assessment that relies on demonstrable, objective evidence about the nature of the harm and the specific animal's actual conduct and characteristics. It will not be based on speculation or fear about the types of harm or damage an animal may cause. It will not be based on evidence about harm or damage that other animals have caused.

**Exhibit B**

**Employee Acknowledgment and Receipt of Consent Order and Nondiscrimination Policy**

I have received a copy of the Consent Order entered in *HUD v. Amy Sloan and BJJ Enterprises, LLC*, including a copy of the Reasonable Accommodation Policy. I have read and understand these documents and have had any questions about these documents answered. I understand my legal responsibilities and shall comply with them.

---

Signature

---

Print Name

---

Job Title/Position

---

Date