UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK: SYRACUSE DIVISION

CNY FAIR HOUSING, INC.; THE FAIR HOUSING PARTNERSHIP OF GREATER PITTSBURGH, INC.; HOUSING RESEARCH & ADVOCACY CENTER, INC., d/b/a FAIR HOUSING CENTER FOR RIGHTS & RESEARCH, INC.; HOUSING OPPORTUNITIES MADE EQUAL OF BUFFALO, INC.; HOUSING OPPORTUNITIES MADE EQUAL OF GREATER CINCINNATI, INC.; PHYLLIS BARTOSZEWSKI; LOIS HARTER; and DEANNA TOWN, Plaintiffs, v. WELLCLOVER HOLDINGS LLC; CLOVER MANAGEMENT, INC.; CLOVER COMMUNITIES CAMILLUS LLC; CLOVER COMMUNITIES SALINA LLC; CLOVER COMMUNITIES NEW HARTFORD, LLC; CLOVER COMMUNITIES CLAY LLC; CLOVER COMMUNITIES JOHNSON CITY, LLC; CLOVER COMMUNITIES SOUTHWESTERN LLC; CLOVER COMMUNITIES SWEETHOME, LLC; and LACKAWANNA SENIOR HOUSING LP. , Defendants.	**AMICUS BRIEF ON BEHALF OF THE AMERICAN SENIORS HOUSING ASSOCIATION, INC. IN SUPPORT OF DEFENDANTS** Case No. 5:21-cv-00361 (BKS/ML)

1. Interest of *Amicus Curiae* American Seniors Housing Association (ASHA)

The American Seniors Housing Association, Inc. (ASHA) submits this Amicus Brief because of the unique circumstances of senior living communities, which serve a significant number of persons with disabilities, given their age, mobility issues and comorbidities. As the Court assesses the positions of the parties and the application of the Fair Housing Act, ASHA

urges it to take into consideration the special circumstances surrounding these communities and to be aware of how a decision on these issues could have a larger impact on senior living across the country.

Based in Washington, DC, ASHA is a non-profit organization that represents approximately 500 organizations involved in the financing, development, and operation of the full spectrum of housing and services for older adults – including active adult, independent living, assisted living, memory care, and continuing care (or life plan) communities. ASHA's members, both for-profit and not-for-profit, collectively own and/or operate approximately 750,000 senior living units across the United States. Created in 1991, ASHA is focused on legislative and regulatory advocacy, and the organization supports research and national initiatives that advance high quality services for older adults so they can live with dignity in the setting of their choice.

2. Senior Living is Qualitatively Different from Multifamily Housing

Senior living communities are designed for a special population, distinguishing them from typical multi-family housing properties. On paper, occupancy may be limited to residents over 55 or 62 years of age, but in reality, the ages of senior living community residents are more often in the mid-70s to mid-80s or higher.

Senior living communities can include the following categories: active adult, independent living, assisted living, memory care and continuing care retirement communities.

Unlike multifamily housing, senior living communities typically include services and amenities designed to address the needs of senior residents, beyond mere shelter. Often, senior living communities include on-site, overnight staffing, as well as services such as dining, housekeeping, transportation, recreational programs, and personal care where needed. Except

for personal care, which can vary greatly from one individual to another, the monthly fees charged to residents include both the services and amenities, as well as covering the rental of a dwelling unit.

Also, unlike some multi-family properties with stairs, virtually ALL senior housing communities have elevators, given the age and mobility issues of most of the residents. In addition, many senior living communities are licensed by state regulatory agencies and follow building and operational standards designed and adapted for residents with disabilities.

In the present case, the Camillus Pointe Senior Apartments property [where all three individual plaintiffs reside or resided] includes "community activities and planned trips," transportation for shopping, recreational activities such as bingo, a fitness center, exercise classes, and a beauty salon/barbershop. https://clovergroupinc.com/senior-apartments/camillus-pointe-senior-apartments/ While the monthly charges for occupancy are characterized as "rent," they are not for mere shelter but include amenities and services not usually found in multi-family apartments.

Senior living communities generally serve populations with a much higher incidence of disability than do multifamily housing properties. According to ASHA's *Seniors Housing Data Book 2023* (at p. 14) approximately 58% of the residents of "active adult retirement communities" and 52% of the residents of "independent living" properties are over the age of 75. According to the July 28, 2023 Expert Report of C. Paul Wazzan, Ph.D., at para. 28, over 43% of surveyed residents were over the age of 80. The Wazzan Report [Exhibit 3] also determined that as many as 32% of those over age 75 have an ambulatory disability. ASHA's *Seniors Housing Data Book 2023* (at p. 24) also reports that between 61% and 67% of independent senior living residents have four or more chronic conditions.

Accordingly, a New York district court has recognized that a senior living community, where the "typical" resident is "approximately 83 years old with one or more physical or mental impairments" serves "residents, most of whom are senior citizens and many of whom are disabled." *Sunrise Development, Inc. v. Town of Huntington*, 62 F.Supp.2d 762, 766 and fn. 1 (E.D.N.Y.1999).

Because of the significant number of disabled residents in senior living communities, it would be a fundamental alteration of the business model to discount residents' rent in the way Plaintiffs suggest. In the situation where most residents have some disability, limited space and resources make it unreasonable or impossible to give an advantage to everyone who requests it. Moreover, as demonstrated below, Plaintiffs have failed to show that such an accommodation is necessary for them to have equal access to housing.

Accordingly, ASHA urges the Court to deny Plaintiffs' motion seeking summary judgment on their claim that disabled residents must receive a rental pricing discount, and to grant Defendants' motion for summary judgment and dismiss Plaintiffs' failure to accommodate claims with respect to rental pricing.

3. Plaintiffs Must Show that the Requested Accommodation is Both Reasonable and Necessary for them to have an Equal Opportunity to Use and Enjoy a Dwelling

For Plaintiffs' Motion to be granted, they must show both the necessity and reasonableness of their requested accommodation, namely, to provide a rental discount to disabled residents wishing to live in "Premium Units."[1] ASHA contends they have utterly failed to do so.

[1] Premium Unit refers to apartments at the senior housing communities involved in this case that carry an incrementally higher rental rate than non-premium units.

In *Hubbard v. Samson Management Corp.,* 994 F. Supp. 187, 189-190 (S.D.N.Y. 1998), the court summarized the widely-accepted standards for determining whether a housing provider must make an accommodation in its policies for the benefit of a disabled person:

> "The Fair Housing Amendments Act of 1988 (the "Act") makes unlawful discrimination on the basis of handicap, "in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling." 42 U.S.C. § 3604(f)(2)(A); *Shapiro v. Cadman Towers, Inc*., 51 F.3d 328, 333 (2d Cir.1995). Discrimination prohibited by the Act includes the refusal to make "reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford [the handicapped individual] an equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a); *City of Edmonds v. Oxford House, Inc*., 514 U.S. 725, 115 S.Ct. 1776, 1779, 131 L.Ed.2d 801 (1995). Reasonable accommodations can involve "changing some rule that is generally applicable so as to make its burden less onerous on the handicapped individual." *Proviso Assoc. of Retarded Citizens v. Village of Westchester, Illinois,* 914 F.Supp. 1555, 1562 (N.D.Ill.1996) (internal quotations and citations omitted).
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> "Accommodations required under the Act must be both reasonable and necessary to afford the handicapped individual an equal opportunity to use and enjoy a dwelling. *Proviso Assoc. v. Westchester*, 914 F.Supp. at 1562; *Bryant Woods Inn, Inc. v. Howard County, Maryland*, 911 F.Supp. 918, 940 (D.Md.1996). Whether a requested accommodation is required under the Act is "highly fact-specific, requiring case-by-case determination." *United States v. California Mobile Home Park Mgmt. Co*., 29 F.3d 1413, 1418 (9th Cir.1994) ("California Mobile Home Park I"); *Lyons v. Legal Aid Society*, 68 F.3d 1512, 1516 (2d Cir.1995)."
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> 994 F. Supp. at 189-190 (emphases added).

In the present case, Plaintiffs have failed to show that the premium rents charged by Defendants discriminate against disabled persons or that the discount they seek is both necessary and reasonable to provide them with equal access to housing and services:

1. The prices for Premium Units apply equally to disabled and non-disabled residents alike.

2. The modest $15 to $30 Premium Unit increment is not a barrier to housing access for plaintiffs.

3. Other available accommodations afford plaintiffs equal access to housing.

4. Requiring senior living communities to discount residents' monthly rental rates based on disability would amount to a fundamental alteration of their business.

4. Monthly Rental Prices are Facially Neutral and Not Discriminatory

Plaintiffs wrongly assume that the higher monthly rental rates for apartment units on the first floor and near elevators are based solely or primarily upon proximity to the building's entrance. From this, they extrapolate that the higher rent for such apartments is *per se* discriminatory against mobility-impaired residents, and that a rental discount is necessary.

In fact, however, units on the first floor, all of which are designated Premium Units, are not necessarily closer to a building entrance than upper floor units that are not directly adjacent to an elevator.

Generally, occupancy charges in senior living communities are based upon a myriad of factors other than distance from an entrance, such as views, size and layout of the unit, features such as balconies and patios, quiet and distance from assembly areas, and convenience. In the present case, first floor units command a higher price because of outdoor patios which are unavailable on the upper floors. These patios do not provide superior access to the building entrance, and so the premium charges they command are completely unrelated to the disability status of the resident.

5. Plaintiffs Fail to Show the Necessity for an Accommodation

a. Being on the First Floor or Near an Elevator is Not Necessary to Equal Housing Access

In *Siguel v. King Farm Citizens Assembly, Inc*., (U.S.D.C., D. Md.), October 12, 2023 Slip Copy 2023 WL 6643348, the court reviewed the "necessity" test for determining whether an accommodation must be made to ameliorate the effects of a disability:

" . . . a critical aspect of determining whether a particular accommodation/modification is necessary involves assessing whether the modification or accommodation 'directly ameliorates' the effects of a disability. This inquiry requires a court to evaluate whether there is a causal nexus between the proposed accommodation/modification and alleviating the effects of a disability. Furthermore, as held in *Vorchheimer v. Philadelphian Owners Ass'n*, 903 F.3d 100, 105 (3d Cir. 2018), in which the Third Circuit conducted a thorough, textual analysis of the FHA, 'necessity' is a high bar to clear. In *Vorchheimer*, the court held as follows: 'Necessary' means required, indispensable, essential. 'Necessary' is a "word[ ] of limitation. *In re Microsoft Corp. Antitrust Litig*., 355 F.3d 322, 327 (4th Cir. 2004). As an adjective, it means '[i]ndispensable, requisite, essential, needful; that cannot be done without,' or 'absolutely required.' 10 Oxford English Dictionary 275-76 (2d ed. 1989).

. . . .

"The law is also clear that 'not every practice that creates a general inconvenience or burden on the person with a handicap needs to be modified;' instead, 'necessary' accommodations and modifications under the FHA are those that are needed to allow a disabled individual to "use and enjoy' his home. See *Evans v. UDR, Inc*., 644 F.Supp.2d 675, 680 (E.D.N.C. 2009) (citing *Bryant*, 124 F.3d 603); see also *Gavin*, 934 F. Supp. at 687."

(Emphases added).

"The requirement of reasonable accommodation does not entail an obligation to do everything humanly possible to accommodate a disabled person; cost (to the defendant) and benefit (to the plaintiff) merit consideration as well." *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir.1995).

Necessity is more clear in some cases than in others. In *Bentley v. Peace and Quiet Realty 2 LLC,* 367 F.Supp.2d 341, 343 (E.D.N.Y. 2005) the court reviewed whether it was necessary to accommodate a disabled plaintiff who lived in "a four-story walk-up containing 16 apartment units," where "climbing up the stairs to get to and from her apartment, which is located on the top floor, is "very painful and stressful." (emphasis added).

Similarly, the *Siguel* court considered it a necessary accommodation when a "paraplegic [was] granted special permission to live on a first floor apartment because he cannot climb the stairs," citing *Cinnamon Hills Youth Crisis Ctr. v. St. George City*, 685 F.3d 917, 923 (10th Cir.

2012) (emphasis added).

In contrast, Camillus Pointe Senior Apartments, as well as the other senior apartments that are the subject of this litigation, are elevator buildings which do not require any resident to climb stairs. This is an accommodation present in virtually all senior living communities. According to the Complaint, Plaintiffs all were able to -- and did -- live at Camillus Pointe, and while they might have preferred to live on the first floor or closer to an elevator, it was not necessary for them to do so to have full access to the housing and amenities available at that location.

b. Proximity to an Elevator is a Convenience, not a Necessity

Once at an upper floor, it may be more convenient for a disabled person to have an apartment near the elevator, but Plaintiffs have failed to show that it is necessary. Plaintiffs have presented no evidence that non-premium units are so far away from the elevator that it is "absolutely required" that they live in a closer unit. See *Siguel*, supra.

In *Phillips v. Acacia on the Green Condominium Association, Inc.,* 2022 WL 1692948 (6th Cir., May 26, 2022) the court considered the plaintiff's requested accommodation to use a gas grill on her patio, rather than walk to the property's outdoor grilling and pool area, because she "suffers from arthritis, which makes it difficult for her to walk long distances without using a cane." The court determined that, "although she experiences 'substantial pain and discomfort' when walking to and from" the outdoor grilling/pool area, it was not necessary to permit the requested accommodation because she in fact walked to the area two to four times a week.

And in *PGA Tour, Inc. v. Martin,* 532 U.S. 661 (2001), the Supreme Court noted that, while for some disabled tournament players, use of a golf cart may be necessary, such a claim "differs from one that might be asserted by players with less serious afflictions that make

walking the course uncomfortable or difficult, but not beyond their capacity. In such cases, an accommodation might be reasonable but not necessary." (532 U.S. at 682, emphasis added.)

Here, the Plaintiffs have failed to show they are unable to travel to and from their apartments at Camillus Pointe and the allegation that it is difficult for them to do so does not satisfy the necessity requirement.

6. Alternative Accommodations are Available

Moreover, Plaintiffs have access to mobility aids, such as motorized scooters and wheelchairs, which are in widespread use, and which would ameliorate their concerns about traveling longer distances anywhere in the building. Senior living providers are mandated under the Fair Housing Act to permit disabled residents to use such motorized vehicles indoors when necessary to provide them with equal access to a building's facilities and services. See *U.S. v. Covenant Retirement Communities, (U.S.D.C. C.D. Cal. 2007)* https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/covenantorder2.pdf

In *A.M. ex rel. J.M. v. NYC Dept. of Educ.,* 840 F.Supp.2d 660, 680 (E.D.N.Y. 2012), aff'd sub nom. *Moody ex rel. J.M. v. NYC Dep't of Educ*., 513 F. App'x 95 (2d Cir. 2013), the court observed that "where alternative reasonable accommodations to allow for 'meaningful access' are offered or already in place, a Section 504 reasonable accommodations claim must fail."

Citing *A.M. ex rel. J.M., supra*, the court in *Boudreau v. Nocco*, (U.S.D.C. M.D. Fla. December 2, 2022) 2022 WL 17369636, found that it was not unlawful disability discrimination to deny disabled plaintiffs' requested accommodation of using a golf cart on a public street, which plaintiffs claimed was "the most convenient or desirable means of transportation," when they already had access to and used a "motorized scooter."

Likewise, in *Elledge v. Lowe's Home Centers, LLC,* 979 F.3d 1004 (4th Cir. 2020), the court held that an employer had not failed to reasonably accommodate a disabled employee who, "in spite of his pain," "steadfastly refused even to try using a motorized scooter to aid his store walk-throughs." (979 F.3d at 1012).

In the case before this Court, the availability of alternative accommodations, including mobility aids such as motorized scooters and wheelchairs, should be taken into consideration when determining whether a disabled person must be moved closer to an elevator or ground floor exit. When such an alternative is available, the "reasonable accommodations claim must fail." *A.M. ex rel. J.M. v. NYC Dept. of Educ.,* 840 F.Supp.2d 660, 680 (E.D.N.Y. 2012).

7. Premium Unit Pricing is Not a Barrier to Access

According to the Complaint, the individual plaintiffs all reside or resided at Camillus Pointe Senior Apartments. Complaint, para. 16, 17, and 18 (Dkt. 1). Incongruously, the plaintiffs, including the plaintiff advocacy organizations, alleged that a $15 to $30 per month "surcharge" these plaintiffs were required to pay for apartments on the first floor or near an elevator posed a barrier to their housing access in violation of the Fair Housing Act. In fact, however, the Premium Unit rental pricing has not stood in the way of any of the individual plaintiffs being able to reside at Camillus Pointe Senior Apartments.

In *U.S. v. California Mobile Home Park Management Co*., 29 F.3d 1413 (9th Cir. 1994) the Circuit Court applied the necessity test to determine whether a long-term guest fee for a disabled resident's live-in caregiver violated the Fair Housing Act and needed to be waived as a reasonable accommodation. The court evaluated whether a fee of this type, applicable to all long-term guests, could constitute a barrier to the disabled plaintiff's access to housing:

> "In order to trigger review under §3604(f)(3)(B), the challenged fee rule must, like the rules described above, have the potential to deny persons an "equal opportunity to use

> and enjoy a dwelling" because of their handicap. There are, of course, many types of residential fees that affect handicapped and non-handicapped residents equally; such fees are clearly proper.
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> . . . .
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> "Some generally applicable fees might be too small to have any exclusionary effect.
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> " . . . a reviewing court should examine, among other things, the amount of fees imposed, the relationship between the amount of fees and the overall housing cost, the proportion of other tenants paying such fees, the importance of the fees to the landlord's overall revenues, and the importance of the fee waiver to the handicapped tenant."
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> Id. at pages 1417-1418 (emphasis added).

In the present case, the established Premium Unit rental pricing is charged equally to disabled and non-disabled residents alike. The Premium Unit rents charged to residents have not resulted in the exclusion of any of the named individual plaintiffs from living at Camillus Pointe Senior Apartments. Moreover, Plaintiffs have failed to establish the prerequisites for a finding of necessity, which would involve an examination of the relationship of a $15 - $30 per month "premium" charge to the overall cost of housing, the proportion of non-disabled residents paying such fees, the importance of the fees to defendant's overall revenues, or the importance of the fee waiver to the individual plaintiffs. Having failed to establish necessity according to these factors, Plaintiffs should not be able to obtain summary judgment in their favor.

After determining that plaintiffs could state a cause of action under the Fair Housing Act, the *U.S. v. California Mobile Home Park Management (California Mobile Home Park I)* case was remanded back to the District Court for further proceedings.

When the case reached the Ninth Circuit a second time *(California Mobile Home Park II)*, the court again applied the "necessity" test and upheld judgment for defendant:

> At trial, [plaintiff] failed to show that the waiver of the fees "may be necessary" to afford her an equal opportunity to use and enjoy her dwelling. In other words, [she] failed to

show that the assessment of the fees caused the denial of her use and enjoyment of her dwelling. See *Smith & Lee Assocs., Inc. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir.1996) (interpreting "necessary" in § 3604(f)(3)(B) to mean that plaintiffs "must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice").

U.S. v. California Mobile Home Park Management Co. 107 F.3d 1374 (9th Cir. 1997) (Emphasis added).

The mere existence of a charge that is alleged to have an impact on a resident's disability is not enough to sustain the claim that the charge must be waived as a reasonable accommodation. When, as here, a plaintiff fails to show that the charge (or pricing differential) is so onerous or unaffordable that it results in denial of an equal opportunity to access housing, waiver of the charge (or a pricing discount) is not necessary.

8. The Parking Space Cases Relied on by Plaintiffs are Not Controlling with Respect to Rental Pricing

The court in *Hubbard v. Samson Management Corp*., 994 F. Supp. 187 (S.D.N.Y. 1998) found that an apartment building owner was required to reasonably accommodate a disabled resident by providing her with a parking space closer to her unit, to enable her to have better access to the building, and that the owner should not charge a reservation fee for the space.

However, the *Hubbard* parking space case is quite distinguishable from Plaintiffs' request in this case to receive a discount from the occupancy charges applicable to an apartment unit.

In *Hubbard*, the plaintiffs relied on the fact that parking was furnished for free to all residents:

"The plaintiffs contend, in essence, that Hubbard should have been assigned a space without charge because such space would have previously been available without charge, albeit on an unreserved basis." (Id., at 190; emphasis added).

The Court framed the question as:

"Should Hubbard's reserved space close to her apartment building be free because all the spaces close to the building are free, or should the space require payment of a monthly

fee because all reserved spaces do?" (Id. at 191; emphasis added).

The Court's ruling requiring waiver of a parking reservation fee hinged on the fact that parking for non-disabled residents was free:

> "[o]ther Sleepy Hollow tenants, who are not disabled and are therefore able to walk long distances more easily than Hubbard, need not pay a monthly fee in order to park within comfortable walking distance of their apartment." (Ibid; emphasis added).

Judge Parker concluded that:

> " . . . granting Hubbard the use of a space near her apartment without charge would not diminish the number of reserved spaces available for rental or decrease [the building owner's] income from these spaces." (Ibid; emphasis added).

In stark contrast to the *Hubbard* case, plaintiffs here attack a rental pricing structure that is charged to all residents, whether or not disabled. Requiring that rental prices be discounted for disabled residents would diminish the building owner's income and reduce the inventory of "preferred" apartments available to other residents. As is discussed further below, this fact becomes even more significant in a senior living community where a substantial percentage of residents have a disability. Moreover, in *Hubbard,* plaintiff sought to move an unassigned, unreserved parking space to a location closer to her apartment. Here, all apartment units are reserved and each resident is able to select her apartment unit at the outset from all the available inventory.

9. Requiring Discounting of Rental Pricing Would Fundamentally Alter Defendant's Business

It is well-established that a requested accommodation is not reasonable and must be denied if it requires "changes, adjustments, or modifications to existing programs that would be substantial, or that would constitute fundamental alterations in the nature of the program," *Bryant Woods Inn, Inc. v. Howard County, Md*, 124 F.3d 597, 604 (4th Cir. 1997), citing *Alexander v. Choate*, 469 U.S. 287, 301 n. 20 (1985). Defendants here have submitted an expert

report showing that discounting monthly rental rates as requested by plaintiffs would result in "annual lost rent of $301,212, which would be $5,656,700 in present value terms and equal to 7.6% of net income." Wazzan Report, para. 54.

As a point of reference, the Sixth Circuit in *Groner v. Golden Gate Gardens Apartments,* 250 F.3d 1039, 1047 (6th Cir. 2001) determined that soundproofing a single apartment to accommodate a resident's disability "would amount to such a fundamental change" that it is not required under the Fair Housing Act.

Galvan v. Walt Disney Parks and Resorts, 425 F.Supp.3d 1234 (C.D. Cal. 2019) illustrates the order of magnitude of an accommodation that will validate a fundamental change defense. There, the plaintiff requested a "pass conferring priority disability access to those with anxiety." Based upon data showing that "anxiety is a disorder that affects 30 percent of people, or approximately one-third of the population," defendant claimed that the requested accommodation "would fundamentally alter the theme park experience." The court agreed and denied the accommodation.

Here, the percentage of residents with disabilities living in senior communities easily exceeds 30% and can average as high as 67%. To permit disabled residents to receive a preferential discount that allows them to exhaust the inventory of "preferred" apartments, making them unavailable to non-disabled residents, would change the character of the senior living community.

In *California Mobile Home Park I*, the Circuit Court observed that some "fees might be sustained because to require their waiver would extend a preference to handicapped residents." In a footnote, the Court explained:

> "For example, the landlord of an apartment complex may charge all residents a monthly fee for parking their car. Although a handicapped resident may require a car far more

than other residents, a waiver of the car fee would put him in a privileged position in relation to other residents." 29 F.3d 1413, fn. 4 (emphasis added).

Here, where the building owner establishes monthly pricing levels for accommodations and services that are applicable to all residents , disabled residents should not be put in a privileged position.

Finally, the ability of a building owner to set apartment rental rates based on the myriad of factors that combine to support the value in the marketplace of the housing and services being offered, is a fundamental aspect of the business. Especially for senior living owners and operators, who serve primarily elderly and disabled residents, it is unreasonable and a fundamental alteration of the business to constrain the ability to set prices chargeable to such a significant portion of its customers.

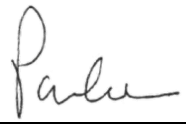
Conclusion

Plaintiffs have failed to show the necessity and reasonableness of their requested accommodation, and to grant that accommodation in the context of a senior living facility would fundamentally alter the business. Accordingly, ASHA urges the Court to deny Plaintiffs' motion for summary judgment on their failure to accommodate claims with respect to rental pricing for disabled residents, and to grant Defendants' motion for summary judgment and to dismiss Plaintiffs' failure to accommodate claims with respect to rental pricing.

DATED: January 17, 2024

Respectfully submitted,

AMERICAN SENIORS
HOUSING ASSOCIATION

By: 

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