UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
Plaintiff,	10 Civ. 7495 (RMB)
v.	
L&M 93rd STREET LLC and COSTAS KONDYLIS & PARTNERS, LLP,	**NOTICE OF MOTION TO WITHDRAW FROM THE CONSENT DECREE**
Defendants.	

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Defendant's Motion to Withdraw from the Consent Decree, dated April 15, 2011, and the Affirmation of John M. Hadlock, dated April 15, 2011, and all of the pleadings and prior proceedings herein, the Defendant moves this Court, before the Honorable Richard M. Berman, United States Courthouse, 500 Pearl Street, New York, New York 10007, Courtroom 21B, for an Order granting Defendant's Motion to Withdraw from the Consent Decree.

PLEASE TAKE FURTHER NOTICE that, pursuant to Local Rule 6.1(b) of the United States District Courts for the Southern and Eastern Districts of New York, any opposing affidavits and answering memoranda shall be served within fourteen days after service of the moving papers.

Dated: New York, New York
April 15, 2011

By: s/John M. Hadlock

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. L&M 93rd STREET LLC and COSTAS KONDYLIS & PARTNERS, LLP, Defendants.	10 Civ. 7495 (RMB)

MEMORANDUM IN SUPPORT OF MOTION TO WITHDRAW FROM THE CONSENT DECREE

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INTRODUCTION

L&M 93rd Street LLC ("L&M") respectfully moves to withdraw its consent to entry of the proposed consent decree between the United States and L&M in this action (the "Consent Decree"). Since the time L&M and the government initially submitted the Consent Decree to the Court for its approval, the Court has repeatedly raised concerns regarding the Consent Decree and has not approved it. Under these particular circumstances, where the Court has expressed reservations regarding entry of the decree, L&M should be permitted to withdraw from the decree of its own accord. In the alternative, the Court in its discretion should permit L&M to withdraw from the Consent Decree because the decree does not meet the requirements for judicial approval. Specifically, the terms of the Consent Decree conflict with the Fair Housing Act and undermine its objectives, are neither fair nor reasonable and go beyond the case made by the pleadings, and would have an unreasonably negative impact on third parties and the real estate industry. L&M's withdrawal from the Consent Decree would permit the litigation to proceed, allowing for core issues of profound significance to L&M and the industry to be addressed and resolved by this Court.

BACKGROUND

The residential building at 250 West 93rd Street in Manhattan (the "Melar") opened for first occupancy in 2006. The Melar was constructed pursuant to plans that had been approved by the New York City Department of Buildings ("DOB") as compliant with the New York City Building Code (the "NYC Code"); and a Certificate of Occupancy ("C of O") was issued for The Melar by the DOB following several inspections by the DOB, also evidencing compliance with the NYC Code. **(*See* Exh. I to Hadlock Affirmation)** The NYC Code contains within it a detailed, comprehensive set of provisions governing access for people with disabilities, referred to as Local Law 58 of 1987 ("LL58"); LL58 was enacted prior to enactment of the design and construction provisions of the Fair Housing Act, 42 U.S.C. §§ 3604, *et seq*. (the "FHA"). *See* 134 Cong. Rec. H4901 (June 29, 1988) (then-Congressman Charles Schumer stating, during debate over the design and construction provisions, that "[a]fter working with the disability rights groups, the National Association of Home Builders, and the realtors in my district who are currently operating under a similar, but more stringent New York law, I am convinced that the bill's minimal requirements for accessibility are the only way to go"). A C of O certifies that the building is in conformance with "all laws, rules, regulations and orders" that apply to it, thereby certifying compliance with LL58. *See* New York City Charter, Chapter 26 §645(b)(3)(d).

In 2008, two years after construction of the Melar was completed and its first temporary C of O was issued, the United States Attorney's Office for the Southern District of New York (the "USAO" or the "Government") initiated an investigation into the design and construction of the Melar, along with similar investigations into the design and construction of many other residential buildings in New York City. From the outset, L&M's position has been that, pursuant to the terms of the FHA, compliance with LL58 is sufficient to establish compliance with the FHA. The government has asserted that compliance with LL58 is irrelevant. [Transcript of November 10, 2010 Conference ("11/1/10 Tr.") at pp. 11-12, Exh. D the Hadlock Affirmation).

L&M permitted the government to inspect the Melar, and settlement discussions followed. The principal source of contention was whether various alleged deviations from the measuring standard the Government chose to use were in fact violations of the FHA. Further, the USAO demanded that L&M deposit monies into an "Aggrieved Persons Fund" and an

"Accessibility Project Fund," which, to the extent unused or unclaimed, would be forfeited by L&M. The USAO also demanded that L&M agree to unduly burdensome terms relating to education, training, reporting, and future construction. (Consent Decree at Articles VII, X and XII; Exh. B to Hadlock Affirmation) Nevertheless, given the severe imbalance of its bargaining position, L&M ultimately signed the Consent Decree, but with grave reservations as to its punitive nature and overarching unfairness.

Following the filing of the complaint and the Consent Decree, this Court issued an Administrative Order acknowledging the function of consent decrees in principle, but observing that "the Consent Decree appears to impose costly and bureaucratic additional burdens upon the Developer, and does so without explaining why they are needed." (Admin. Order dated October 22, 2010 (**attached as Ex. C to Hadlock Affirmation**) at 2.) The Court requested further explanation concerning the following components of the decree: (1) the payment of $180,000 into an Aggrieved Persons Fund; (2) the establishment of an Accessibility Project Fund in the amount of $288,300; (3) the disclosure requirements concerning other multi-family dwellings in which L&M intends to be involved in the future; (4) the requirement that L&M ensure that its employees are familiar with and have personally reviewed the Fair Housing Accessibility Guidelines; (5) the requirement that L&M undergo FHA training; and (6) the three-year term of the proposed decree. (*Id*. at 2-3.) The government and L&M submitted letters to the Court in response to the Court's Order, and the Court conducted a telephone conference on November 10, 2010 (Exh. D to Hadlock Affirmation) and an open court conference on November 16, 2010 (Exh. E to Hadlock Affirmation) to discuss the issues it raised and the parties' responses.

During the course of those conferences, the Court articulated multiple concerns about the Consent Decree, noting that "I don't feel that I could approve the consent decree in the form in which it is." (11/10/10 Tr., at p. 26; Exh. D) Among the concerns the Court raised were: (1) the absence of a mechanism, in coordination with New York City, "to get these issues resolved before a building is finished rather than after a building is finished," so as not to "haul in the architect and the developer" and "say, gotcha, your building, now that it is finished, is in violation of federal law" (11/10/10 Tr. at pp. 13-14; Exh. D); (2) the existence of what appeared to be multiple penalties cumulatively exceeding the statutory penalty limit, specifically in the form of an Aggrieved Persons Fund that, without a reverter, becomes an unauthorized penalty provision (11/10/10 Tr. p. 3; Exh. D) and an Accessibility Project Fund, also without a reverter, that does the same (11/10/10 Tr. p. 3; Exh. D); and (3) the overbreadth of various education, training, and reporting provisions (11/10/10 Tr. pp. 7-8; Exh. D). In short, the Court indicated its dissatisfaction with the Consent Decree and encouraged the parties to continue negotiations. (11/110/10 Tr. at p. 26; Exh. D).

On November 16, 2010, the Court reiterated its concern as to "putting the Court's imprimatur behind" the Consent Decree (Transcript of Nov. 16 Conference ("11/16/10 Tr.") at p. 8; Exh. E), and set another conference for December 16, 2010, so that further negotiations could be conducted (11/10/10 Tr. p. 47; Exh. E). On December 15, 2010, the Court adjourned the conference to February 1, 2011, on the "understanding that, in the interim, the parties are attempting to achieve a (more) global resolution, one which endeavors to harmonize New York City and Federal housing construction obligations." (Administrative Order dated December 15, 2010; Exh. F to Hadlock Affirmation.) Following its receipt on January 26, 2011, of further status reports from the parties, the Court referred the matter to Magistrate Judge Dolinger for settlement and deferred the conference again until March 1, 2011.

The parties appeared before the Court on March 14, 2011, and upon being told that no progress had been made in the parties' attempt to reach an agreement on the issues raised by the Court, and being told that L&M wished to withdraw from the Consent Decree, the Court directed L&M to proceed with this motion seeking an order authorizing it to withdraw from the Consent Decree. The Court indicated that L&M's withdrawal was a necessary first step before the Court could consider the various issues that have been raised by L&M and articulated by the Court in the recent proceedings. (Transcript of March 14, 2011 Conference ("3/14/11 Tr.") at p. 10; Exh. G to Hadlock Affirmation) at 10:23-25 ("You have to withdraw your consent. You have to make a motion to withdraw the consent that you granted before we can go forward.").) While the government stated at the conference that L&M should be bound by its prior consent to the decree, it conceded that "[o]f course that is subject to [Y]our Honor's approval." (3/14 Tr. at p. 4; Exh. G)

ARGUMENT

L&M SHOULD BE PERMITTED TO WITHDRAW FROM THE CONSENT DECREE

Two independent grounds support L&M's withdrawal from the Consent Decree. First, from the time the Consent Decree was initially submitted to the Court, the Court has declined to approve the decree and has suggested that substantial changes to its terms would be necessary to bring it into conformity with the law and with principles of fairness. Under these particular circumstances, where the Court has expressed reservations regarding entry of the decree during the period when the status of the decree was contingent, L&M should be allowed to reconsider its prior approval of the Consent Decree and withdraw from it.

Second, and in the alternative, L&M respectfully requests that the Court exercise its discretion to permit L&M to withdraw from the Consent Decree, because the proposed decree is deficient on three grounds: (1) It conflicts with the FHA and undercuts its underlying purpose; (2) It is neither fair nor reasonable, and goes beyond the case made by the pleadings; and (3) It would have a profoundly negative impact on third parties and the real estate industry.

I. L&M May Withdraw From the Consent Decree Under the Particular Circumstances Presented Here

As a threshold matter, the fact that L&M signed the Consent Decree and initially submitted it for the Court's approval is not an impediment to the litigation proceeding. It is axiomatic that a proposed consent decree does not become legally enforceable unless and until it is approved by a court. *See United States v. Am. Cyanamid Co.*, 719 F.2d 558, 563 (2d Cir. 1983) ("[w]hile [consent decrees] are arrived at by negotiation between the parties . . . [they] must be approved by the court"); *see also Sanchez v. Pataki*, Nos. 98 Civ. 6282, 95 Civ. 3803, 2008 WL 729097, at *3 (E.D.N.Y. Mar. 18, 2008) ("[P]rivate settlements do not entail the judicial approval and oversight involved in consent decrees.") (internal quotation marks omitted); *Coca-Cola Bottling Co. of Elizabethtown, Inc. v. Coca-Cola Co.*, 654 F. Supp. 1419, 1437 (D. Del. 1987) ("[C]onsent decrees arise[] as contracts signed in response to pending litigation that must be approved by the court.").

While a signatory to a proposed consent decree is usually not free to withdraw from the agreement "merely" because the party "changed his mind," *Georgevich v. Strauss*, 772 F.2d 1078, 1085 (3d Cir. 1985), the reservations expressed by the court in considering entry of a decree may support the party's withdrawal from it during the period when the status of the decree is contingent, *i.e.*, prior to the court's approval. The Ninth Circuit has described this situation as follows:

> The court need not approve [a proposed consent decree], but if it did not, or suggested or attempted a substantial change in the proposed consent

> judgment, each party to the consent decree, at the very least, would be free to withdraw from the stipulated 'consent,' and proceed to trial.

City of Burbank v. Gen. Elec. Co., 329 F.2d 825, 831 (9th Cir. 1964). *See also Georgevich*, 772 F.2d at 1085 (rejecting plaintiffs' claim that defendant class waived its right to oppose the consent decree because it initially requested the court to approve it, where the "shift in position by the class representative and his counsel apparently came about as a result of the issues raised by the court").

This is precisely what has happened here. When the parties initially presented the proposed decree to the Court, the Court declined to approve it. (*See* Admin. Order dated Oct. 22, 2010 (Exh. C); *see also* 11/10/10 Tr. at 22 (Exh. D) ("[I]t would be the easiest thing in the world for me to just sign the consent decree when it came in on the signature line and be done with it, but it just doesn't strike me as the best way to judge these matters.").) In the period since the Court issued its initial order requesting more information from the parties, the Court has repeatedly indicated that the decree does not comport with the law and has suggested substantial changes to its terms. It first did so at the initial conference with the parties. (11/10/10 Tr. at 3; Exh. D ("at least some of the provisions of the consent decree seem to be unnecessarily or unduly punitive and burdensome and I think can be construed . . . to contain more penalty provisions than appear to be justified under the FHA"); (11/10/10 Tr. at 5; Exh. D) (suggesting that unused money in the Aggrieved Persons fund "should go back to the developer" because there is no "legal basis for the money being directed to charity" as the decree requires); (11/10/10 Tr. at 7; Exh. D) (suggesting that unused money in Accessibility Fund should "revert back to the developer"); *see also* 11/10/10 at 6 (the Accessibility Project Fund "strikes me more like a penalty"); and 11/10/10 Tr. 7-8 (suggesting that the educational program should be directed at "decision makers" only, and that the educational, training, and reporting requirements are "overbroad").)

The Court continued to reiterate these concerns at its next conference with the parties. (11/16/10 Tr. at 4; Exh. E) (stating that "[i]t is the legality and the fairness in the issues that I've identified" that have impeded entry of the decree); (11/16/10 Tr. at 4) ("[F]rom the point of view of entering a consent decree and putting the Court's imprimatur behind it, it seems that some of the priorities or provisions are unduly harsh to me or penalties beyond what is maybe contemplated by the FHA.").)

The serious concerns repeatedly expressed by this Court regarding the terms of the proposed Consent Decree, and the "substantial change[s]" to those terms the Court has repeatedly suggested, provide grounds for L&M to reconsider its initial support for the decree and oppose its entry now. *See City of Burbank*, 329 F.2d at 831; *Georgevich*, 772 F.2d at 1085; *see also United States v. City of San Diego*, 18 F. Supp. 2d 1090, 1096 (S.D. Cal. 1998) (noting that court had rejected the proposed consent decree after one of the defendants, which had previously negotiated the decree and agreed to it, "changed positions and opposed the decree").

Because the particular circumstances present in this case allow L&M to withdraw of its own accord from the proposed decree, the Court should permit L&M to withdraw and the litigation to go forward.

II. In the Alternative, the Court Should Permit L&M to Withdraw From the Consent Decree Because Its Terms Undermine the Objectives of the Fair Housing Act, Are Neither Fair Nor Reasonable and Go Beyond the Case Made by the Pleadings, and Unreasonably Affect Third Parties

Even if as asserted in the preceding Point the circumstances here were not sufficient to permit L&M to withdraw of its own accord from the Consent Decree, – the Court should exercise its discretion to permit L&M to withdraw or alternatively decline entry of the decree. The Court may exercise its discretion to either permit L&M to withdraw or itself decline to approve the decree, would either of which negate the parties' agreement and allow the litigation to proceed. Its decision to exercise its discretion either way would be based on the same considerations. *See Ibarra v. Texas Employment Comm'n*, 823 F.2d 873, 879 (5th Cir. 1987) (recognizing that "the district court's discretion to disapprove the consent decree can negate the agreement"); *Sec. Exch. Comm'n v. Randolph*, 736 F.2d 525, 528 (9th Cir. 1984) ("judicial disapproval of a consent decree is a condition subsequent," upon which "the parties might claim the right to withdraw their consent to the agreement") (citing, *inter alia*, *Carson v. Am. Brands Inc.*, 450 U.S. 79, 87 (1981)).

A. The Court Must Independently Scrutinize the Consent Decree To Ensure That It Satisfies the Requirements For Judicial Approval

Whether to approve or reject a proposed consent decree, or to allow a party to withdarw, "falls squarely within the court's discretion." *United States v. Ashland, Inc.*, No. 04 Civ. 904S, 2008 WL 2074079, at *1 (W.D.N.Y. May 14, 2008); *cf. Perez v. Danbury Hosp.*, 347 F.3d 419, 425 (2d Cir. 2003) ("We review a district court's enforcement of a consent decree for abuse of discretion."). In exercising that discretion, the court must "independently scrutinize[]" the proposed consent decree, even where both parties support it (which is no longer the case here). *E.E.O.C. v. Local 638*, No. 71 Civ. 2877, 2003 WL 21804837, at *1 (S.D.N.Y. Aug. 6, 2003).

In determining whether to approve or reject a proposed consent decree in a Fair Housing Act action brought by the United States, a court must assure itself that the consent decree meets certain requirements. First, the decree must "come within the general scope of the case made by the pleadings, and must further the objectives of the law upon which the complaint was based." *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478

U.S. 501, 525 (1986) (internal quotation marks, citations, and alterations omitted); *see also Friends of the Earth v. Archer Daniels Midland Co.,* 780 F. Supp. 95, 100 (N.D.N.Y. 1992) (noting that "[i]t is well settled that the parties may not agree to take action, even in the form of a consent decree, which conflicts with or violates the very statute upon which the complaint is based," and finding on that basis that "the court cannot give its imprimatur to the proposed consent decree"); Christopher C. Sabis, *Executing the Laws or Executing an Agenda: Usurpation of Statutory and Constitutional Rights by the Department of Justice*, 37 U. Mich. J.L. Reform 257, 260 (warning against "consent decrees [that] reveal remedies that appear to stretch the Fair Housing Act beyond the goals authorized by Congress"); *cf. Vulcan, Inc. v. Fordees Corp.*, 658 F.2d 1106, 1111 (6th Cir. 1981) (noting that consent decrees are subject to judicial supervision to protect parties from "economic overreaching").

Second, the decree must be "fair, adequate, reasonable, and appropriate under the particular facts" of the case. *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 616 F.2d 1006, 1014 (7th Cir. 1980); *see also Local 638*, 2003 WL 21804837, at *1 (applying "fair, adequate, and reasonable" standard to consent decree in Title VII case); *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) (evaluating fairness and reasonableness of proposed consent decree in CERCLA action). While a court's role is "minimal" in reviewing a settlement that affects "only private interests," *Janus Films, Inc. v. Miller*, 801 F.2d 578, 582 (2d Cir. 1986); *see also Interspace Inc. v. Morris*, 650 F. Supp. 107, 110 (S.D.N.Y. 1986) (indicating that settlements are reviewed for "fraud, collusion, mistake or accident"), that is not true where, as here, the court is reviewing a consent decree in a case affecting the public interest. In such a case, the court is "required to determine whether [the proposed consent decree is] fair, adequate, and reasonable, as well as consistent with the public interest." *United States v. County of*

Muskegon, 298 F.3d 569, 580-81 (6th Cir. 2002) (internal quotation marks omitted); *see also Friends of the Earth*, 780 F. Supp. at 99 (explaining that when the underlying lawsuit affects the public interest, the court must be satisfied of the fairness of the settlement, and observing that a lawsuit brought under the citizen suit provision of the Clean Water Act affected the public interest); 11/16/10 Tr. at 8; Exh. E (inquiring into "the legality and the fairness in the issues [the Court has] identified"). In order for the consent decree to be approved, the Government must "proffer sufficient facts and reasons to establish that those factors have been satisfied and that approval is warranted." *United States v. Brook Vill. Assocs.*, No. 05 Civ. 195, 2006 WL 3227769, at *1 (D.R.I. Nov. 6, 2006) (internal quotation marks omitted).

Last, in a case affecting the public interest, "the court must be satisfied" that the effect of the consent decree on parties outside the litigation "is neither unreasonable nor proscribed." *United States v. City of Miami, Fla.*, 664 F.2d 435, 441 (5th Cir. 1981) (*en banc*) (*per curiam*) (Rubin, J., concurring) (reviewing consent decree in Title VII case brought by United States); *see also United States v. Atlas Minerals and Chems., Inc.*, 851 F. Supp. 639, 649 (E.D. Pa. 1994) (quoting same).

As discussed below, the government cannot meet its burden to overcome any of these hurdles to entry of the proposed decree.

B. The Consent Decree Conflicts With the Fair Housing Act and Is Not Consistent With Its Objectives

To start, the Court should reject the proposed Consent Decree, or permit L&M to withdraw from it, because the penalty scheme imposed by the decree is not consistent with the Fair Housing Act and is contrary to its objectives. While "a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial," *Local No. 93,* 478 U.S. at 525, the terms of the decree "must further the objectives of the law upon which the complaint was based," *id.*

That is clearly not the case here. The Fair Housing Act limits the civil penalty that may be assessed against an alleged first-time violator of the statute – like L&M – to $55,000. *See* 42 U.S.C. § 3614(d)(1)(C)(i); 28 C.F.R. § 85.3(b)(3) (raising penalty from $50,000 to $55,000 to adjust for inflation). The civil penalty provision of the proposed Consent Decree requires that L&M pay $40,000 to the United States (Consent Decree, Art. VIII; Exh. B), an amount that is itself within the statutory limit. The proposed decree, however, provides for two funds that each impose a backdoor penalty against L&M that far exceeds the maximum penalty under the statute and undercuts its underlying objectives.

As to the first, the Consent Decree requires L&M to deposit $180,000 into a fund to compensate aggrieved persons (the "Aggrieved Persons Fund"). (Consent Decree at Art. VII; Exh. B) But unlike the consent decree recently entered in *United States v. CVP I*, *et al.*, No. 08 Civ. 7194 (SHS) (S.D.N.Y.), monies not used to compensate aggrieved persons (because no such persons have been identified) are forfeited by L&M, an outcome that improperly penalizes L&M, as the Court has previously recognized. (11/10/10 Tr. at 6; Exh. D) ("It seems to me that if there are no complaints – nobody has suggested to me that there are any complaints – it seems to me in a reasonable period of time the money should go back to the developer. I don't see any legal basis for the money being directed to charity."); 11/10/10 at 6; Exh. D ("I don't see any legal basis that would suggest that that money should not revert to the developer. Otherwise, it would clearly be an additional penalty. And even if you think it is OK to individualize penalties, you would still be way over the $40,000 amount.").) This penalty scheme, which is clearly at odds with the Fair Housing Act, should not be given the Court's imprimatur. *See generally*

United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989) ("[W]here, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms." (internal quotation marks omitted)).

The Consent Decree's Accessibility Project Fund (the "Accessibility Fund") of $288,300 suffers from the same infirmity (Consent Decree Art. IX; Exh. B), in that L&M forfeits any unused portion of it. Indeed, the Accessibility Fund is even more punitive than the Aggrieved Persons Fund in that the unused portion of the $288,300 will go directly to the Government. Further, the Consent Decree requires the Government to approve any use by L&M if any of the funds and to the extent the Government does not approve L&M's proposed use of them, the funds revert to the Government. Accordingly, the Fund appears on its face to be a penalty, as the Court has noted. (11/10/10 Tr. at 6; Exh. D ("The other provision I don't understand is the accessibility project fund, which is in the amount of $288,000. That strikes me more like a penalty . . . ."); 11/10/10 Tr. at 7; Exh. D (suggesting that unused money in Accessibility Fund should "revert back to the developer").)

While parties to a consent decree may agree to relief broader than the relief authorized by the statute, *see Local No. 93,* 478 U.S. at 525, the terms of the consent decree "must further the objectives of the law upon which the complaint was based," *id.* Here, taking leftover monies from funds that are ostensibly intended to compensate aggrieved persons for actual damages, and to pay for improvements to accessibility, and diverting those monies to ratchet up the penalty on a party that has chosen to settle, does nothing to further the objectives of the FHA, and in fact contravenes those objectives. The objectives of the FHA are grounded in enhancing access, not in punishing the alleged offender. *See Banai v. Sec'y, United States Dep't of Hous. and Urban Dev. on behalf of Times*, 102 F.3d 1203, 1207 & n.4 (11th Cir. 1997) (explaining that "[v]ictims of discrimination in violation of the FHA are entitled to 'actual damages,'" which are "compensation for the victims' injuries, *not punishment for the perpetrator's wrongdoing*") (emphasis added); *United States v. $69,292.00 in U.S. Currency*, 62 F.3d 1161, 1164-65 (9th Cir. 1995) (distinguishing forfeiture, which is "punishment," from civil penalties subject to a statutory maximum, which are not);

Because the penalty scheme imposed by the Consent Decree through the Aggrieved Persons and Accessibility Funds conflicts with the statute on which the complaint and Consent Decree are based, and does not serve the statute's interests, the decree should be rejected by this Court. *See Friends of the Earth*, 780 F. Supp. at 100 ("parties may not agree to take action, even in the form of a consent decree, which conflicts with or violates the very statute upon which the complaint is based"); *see also Dydio v. Hesston Corp.*, 887 F. Supp. 1037, 1039 n.2 (N.D. Ill. 1995) (striking request for civil penalties where court is not authorized to impose them); *Curry v. Fidelity Consumer Disc. Co.*, 656 F. Supp. 1129, 1132-33 (E.D. Pa. 1987) (holding, in lawsuit under Truth in Lending Act, that plaintiff who had incurred finance charges over $1,000 was limited to a $1,000 recovery because that was the statutory maximum).

C. The Consent Decree Is Not Fair or Reasonable

The Consent Decree is substantively unfair and unreasonable in at least four respects, each of which supports the Court's rejection of the decree.

1. The Consent Decree Imposes After-the-Fact Penalties on L&M Years After the Building Received Its Certificate of Occupancy from New York City

As the Court has observed (11/16/10 Tr. at 3; Exh. E), the "overarching" question of fairness in connection with the Consent Decree relates to the timing of the government's inspection of the Melar. The Government initiated its investigation years after L&M had constructed the Melar to comply with LL58, and years after the building had received its first temporary Certificate of Occupancy from the DOB. In building the Melar to comply with LL58, L&M understood that it was thereby complying with the FHA. That understanding was based on a longstanding and well-founded industry-wide view that compliance with LL58 was sufficient to establish compliance with the FHA, a view endorsed by the City of New York. (*See* Letter from Michael A. Cardozo, Corporation Counsel, dated July 14, 2008 (Exh. H to Hadlock Affirmation) ("Cardozo Letter") ("[I]n the opinion of the City of New York, compliance with New York City's Local Law 58 of 1987 satisfies the Fair Housing Act requirements.").) Indeed, the FHA expressly provides that "[i]f a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C) [the design and construction requirements], compliance with such laws shall be deemed to satisfy the requirements of that paragraph." 42 U.S.C. § 3604(f)(5)(A). Congress, moreover, made clear in amending the Fair Housing Act in 1988 that "[s]tate and local fair housing agencies [were to] continue their vital, integral role in fair housing enforcement all across the United States," 134 Cong. Rec. H6491-02 (Aug. 8, 1988), and, as the Court has noted, it was not the purpose of the FHA "to make the assistant U.S. attorneys into building inspectors" (11/10/10 Tr. at 14; Exh. D). Until this investigation was begun, L&M had never received any indication from any local or federal housing authority that it was allegedly in violation of LL58 or the Fair Housing Act.

The Consent Decree, which reflects the Government's view that compliance with Local Law 5 is not sufficient to establish compliance with the FHA – indeed, it endorses the Government's view that compliance with LL58 is not even "relevant" to the question (11/10/10 Tr. at 12; Exh. D), will have enormous negative implications for L&M and the real estate industry if it is approved. Such approval would endorse the Government's game of "gotcha" after construction of the Melar was completed and approved by the City.

In order to remedy the "overarching" unfairness of the Consent Decree, the Court should allow L&M to seek to answer, through litigation, the question of whether its compliance with LL58 was sufficient to establish compliance with the FHA. More broadly, that approach will give L&M – and the entire New York City real estate industry – the certainty of knowing that if it builds in compliance with the local law, it will be in compliance with the FHA. The Government, too, will benefit from the judicial resolution of this question, inasmuch as it will give guidance to the Government regarding future litigation that is in fact in furtherance of the objectives of the FHA. The risks involved in allowing the litigation to go forward belong to L&M, and L&M is willing to bear those risks in order to ensure a fair and reasonable resolution of the core issues that profoundly affect both L&M and the industry as a whole.

The balancing of risks and benefits associated with going forward in the litigation militates strongly in favor of this Court's exercise of its discretion to permit L&M to withdraw from the Consent Decree. In *Local 638*, 2003 WL 21804837, for example, the court declined to approve a proposed consent decree in a Title VII lawsuit after applying a "risks versus benefits" analysis. *Id.* at *2. There, the court held a fairness hearing and considering various objections to the proposed consent decree, decided not to approve it, reasoning, among other things, that a risk-benefit analysis "weighs against approval of the Proposed Consent Order," *Id.* The same is true here. The court in *Local 638* also relied upon the fact that there was strong third-party opposition.

2. The Aggrieved Persons Fund Is Unfair and Unreasonable Because It Lacks a Reversion and the Required Amount Is Arbitrary and Excessive

The Aggrieved Persons Fund is unfair and unreasonable in that it forces L&M to pay a backdoor penalty in excess of the statutory maximum and without serving the interests of the statute, as discussed in Point II.B, *supra*. L&M forfeits any monies not used to compensate aggrieved persons, despite the fact that historically aggrieved persons funds of this type have included consent decrees with reverter provisions, e.g., United States v. CUP I, et al., 08 Civ. 7194 (SDNY Oc. 15, 2010) and no explanation is given why it is not included in this consent decree. The amount is also excessive. Since the Melar opened in 2006, it has not received a single complaint regarding accessibility, as the Court has noted. (11/10/10 Tr. at 6; Exh. D ("nobody has suggested to me that there are any complaints").) It is totally unclear "how that amount was arrived at" (11/10/10 Tr. at 6; Exh. D), and without a reversion, there is no relationship between the fund amount and the purpose the fund was intended to serve. In short, the arbitrary nature of this fund is neither fair to L&M nor reasonable.

Courts have rejected consent decrees under the "fair, reasonable, and adequate" standard for substantially similar reasons, *i.e.*, where payments required by the decree appeared arbitrary and lacked support in the record. *See, e.g., United States v. Alliedsignal, Inc.*, 62 F. Supp. 2d 713 (N.D.N.Y. 1999) (rejecting proposed consent decree in CERCLA litigation where one party's payment was disproportionately low, with the result that defendant's payment was likely to be disproportionately high relative to its degree of fault); *Comm'r of Dep't of Planning and Natural Res. v. Century Alumina Co.*, Civ Nos. 2005/0062, 2007/114, 2008 WL 4693550, at *5 (D. V.I. Oct. 22, 2008) (rejecting proposed consent decree in CERCLA litigation because, among other things, it provided for a $120,000 payment for response costs and other costs without estimating what the response costs would actually be, and court was "at a complete loss as to where to begin in its determination of whether the $120,000 allotted in the Consent Decree for response costs . . . is substantively fair.").

3. The Accessibility Fund Is Unfair and Unreasonable Because It Lacks a Reversion and the Required Amount Is Arbitrary and Excessive

For the reasons articulated in Point IIB and in the preceding section C 2;, L&M's forfeiture of unused monies also renders the Accessibility Fund arbitrary, unfair and unreasonable.

4. The "Educational Program" and the "Non-Discrimination In Other Design and Construction" Provision Impose Unfair and Unreasonable Burdens On L&M and Go Beyond the Case Made By the Pleadings

A consent decree must come within the scope of the case made by the pleadings. *See Local No. 93*, 478 U.S. at 525. At least two sets of provisions of the Consent Decree fail to satisfy this requirement because, as the Court has indicated, the provisions are "overbroad": (1) the "Educational Program" provision, which includes educational, training, and reporting requirements, and (2) the "Non-Discrimination In Other Design And Construction" provision. (11/10/10 Tr. at 7; Exh. D.

(a) The Educational Program Provision. The breadth of the educational program mandated by the Consent Decree (Exh. B, Art. X) goes well beyond the scope of the complaint against L&M, imposing a burdensome degree of micromanagement not tailored to achieve the statute's intended purpose. The provision requires all of L&M agents and employees involved in the design or construction of The Melar to certify that they have read the 29 page Consent Decree including its various charts and exhibits, and that L&M must *ensure* that its employees with supervisory authority over the design and/or construction of covered buildings review the Fair Housing Accessibility (Consent Decree's Guidelines and Fair Housing Accessibility Guidelines and Fair Housing Act Design Manual. Exh. B at Art. X). In addition, the Consent Decree includes the requirement all employees or agents involved in the design and construction of covered buildings submit to extensive FHA training.

The requirements are extensive, expensive, and burdensome and exceed the scope of the pleadings, and also the bounds of common sense. (11/10/10 Tr. at 7; Exh. D) ("I have read that consent decree now five times and I still don't understand all of it.").) Making all L&M's employees read the Consent Decree is not reasonably grounded in any of the allegations of the Complaint, which gives no indication that such a wide range of employees had anything to do with the alleged FHA violations at the Melar. It is not reasonable to require L&M to "ensure" that a large number of its employees "personally have reviewed" complicated legal documents, as the Consent Decree currently requires. The training requirement is similarly unreasonable. The requirement that L&M provide Government approved training to all employees whose duties include supervision over the design, construction, or maintenance of the Melar – including supervisors of all porters and handymen in the building – goes well beyond the reasonable scope of such relief. (11/10/10 Tr. at 7; Exh.) (suggesting that education and training should be directed at "decision makers" only).)

(b) The Non-Discrimination In Other Design and Construction Provision. The "Non-Discrimination In Other Design and Construction" provision (Consent Decree Art VII; Exh. B) is also neither fair nor reasonable. This provision requires that L&M provide upon request and at its own cost, a substantial amount of information to the Government regarding any covered multifamily dwellings "intended" to be developed in the future by it or a related developer. These demands are onerous and impose intrusive government oversight over future construction and may impede L&M's ability to engage certain architect's or contributors of its choice. These burdensome administrative requirements accomplish little relating to the objectives of the settlement but make it more onerous for L&M to conduct its business, with no corresponding benefits for increased accessibility for people with disabilities. The imposition of these excessive administrative requirements is not fair or reasonable.

D. The Consent Decree Is Unreasonable As to Third Parties

Finally, the Consent Decree will have a serious negative impact upon the real estate industry and those affected by housing in New York City. As the Court has noted, "we . . . need to remember that the real estate industry is an important aspect of our city's economy and we need to take care to get to the core of the problem without, if possible, imposing unnecessary penalties or regulatory requirements especially where as I understand it bad motive is not an issue in the case." (11/16/10 Tr. at 5; Exh. E) The proposed consent decree flies in the face of these principles. If approved, the Consent Decree will have a substantial negative impact on those affected by real estate development in this City, providing an additional basis for the Court's rejection of the decree. *See City of Miami*, 664 F.2d at 441 (Rubin, *J.*, concurring) ("If the decree also affects third parties, the court must be satisfied that the effect on them is neither unreasonable nor proscribed."); *Atlas Minerals*, 851 F. Supp. at 649 (quoting same).

More specifically, approval of the Consent Decree would extend and exacerbate the uncertainty hanging over the real estate industry as to whether compliance with LL58 suffices to establish compliance with the FHA. Current owners and developers have been relying on the understanding that it does, and nothing prior to the government's investigation had given them reason to doubt that understanding. (*See* Cardozo Letter; Exh. H ("[I]n the opinion of the City of New York, compliance with New York City's Local Law 58 of 1987 satisfies the Fair Housing Act requirements.").) The Court's refusal to allow L&M to withdraw from the Consent Decree and its approval of it would place a judicial imprimatur on the government's effort to penalize a building for violations of the FHA notwithstanding the express position of the building's owner that the building complies with Local Law 58 and therefore with federal law.

The costs to address after-the-fact investigations by the Government of buildings that were constructed to comply with LL58 would also be tremendously burdensome for the real estate industry, and in many cases the costs would be passed through to tenants. As the City's Corporation Counsel noted in his letter, the impact of this uncertainty would be most "destabilizing" on "affordable housing developments that have slim operating margins and can ill afford the legal costs they would entail in the course of an investigation."

This matter began with the government investigating many developers, not just L&M, and there is every reason to believe that if the Consent Decree is approved the Government will seek to use it as a template in FHA actions against those developers and others. Denial of L&M's request to withdraw, and approval of the Consent Decree thus raises the specter of negotiations with the government where the only choice for resolving the issues short of litigation would be to agree to terms that are not only patently unfair and unreasonable, but that exceed the penalties set out in the governing statute and do not serve its purposes.

For all of these reasons, there is widespread opposition by owners and developers to the Consent Decree, opposition that has been voiced by the Real Estate Board of New York, which represents approximately 12,000 members. This opposition to the Consent Decree also militates in favor of the Court's exercise of its discretion to decline to approve the decree. *See, e.g., Local 638*, 2003 WL 21804837, at *2 (concluding, without discussing its view as to the merits of the opposition, that the fact that there was "strong and substantial opposition to the Proposed Consent Order [by non-parties] . . . weighs against its approval.").

CONCLUSION

For the reasons discussed above, L&M respectfully requests that it be permitted to withdraw from the proposed Consent Decree of its own accord or, in the alternative, that the Court decline to approve the Consent Decree, thereby allowing L&M to withdraw and proceed with the litigation.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, - against - L&M 93RD STREET LLC and COSTAS KONDYLIS & PARTNERS, LLP, Defendants.	**ECF CASE** **CONSENT DECREE BETWEEN THE UNITED STATES OF AMERICA AND DEFENDANT L&M 93RD STREET LLC** 10 Civ. 7495 (RMB)

INTRODUCTION

A. Background

This Consent Decree is entered into between the United States of America (the "United States") and defendant L&M 93rd Street LLC.

WHEREAS, the United States brought this action (the "Action") to enforce provisions of the Fair Housing Act ("FHA"), codified at 42 U.S.C. §§ 3601–3619; specifically, the United States' complaint in this Action alleges that defendants L&M 93rd Street LLC and Costas Kondylis & Partners have engaged in a pattern or practice of discrimination, and have denied rights to a group of persons in a manner raising an issue of general public importance, including by failing to design and/or construct the Melar Apartments ("The Melar"), a residential apartment building in New York, New York, in accordance with the requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C);

WHEREAS, defendant L&M 93rd Street LLC denies the allegations of the complaint and enters into this Consent Decree for settlement purposes only, prior to motion practice or trial, without admitting any issue of fact or law;

WHEREAS, The Melar is subject to the accessible design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C);

B. Defendant

WHEREAS, defendant L&M 93rd Street LLC (the "Developer Defendant"), a Delaware limited liability company, is the builder and developer of The Melar, and, in those capacities, designed and constructed The Melar;

WHEREAS, the Developer Defendant hereby represents that neither it, nor any entities or persons with an ownership interest or membership in it, whether direct or indirect, have designed or constructed any other property subject to the design and construction requirements of the FHA;

WHEREAS, Costas Kondylis & Partners, LLP, is a New York limited liability partnership that drew the architectural plans for The Melar and, in that capacity, designed and constructed The Melar (referred to as the "Architect Defendant");

WHEREAS, this Consent Decree does not resolve the United States' claims against the Architect Defendant;

C. Relevant Requirements of the Fair Housing Act

WHEREAS, the FHA provides that residential buildings with four or more dwelling units, and one or more elevators, designed and constructed for first occupancy after March 13, 1991, are "covered multifamily dwellings" ("Covered Multifamily Dwellings") and must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by persons with disabilities, 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A);

WHEREAS, the accessible and adaptive design provisions of the FHA require that for Covered Multifamily Dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with a disability using wheelchairs; and (iii) all premises within such dwellings contain the following features of adaptive design: (I) an accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C) (these provisions and features are referred to herein as the "Accessible Design Requirements");

D. Violations at The Melar

WHEREAS, The Melar is a residential rental apartment building located at 250 West 93rd Street in New York, New York. The building consists of a tower with elevator access, with 143 rental apartment units, as well as public and common use areas. The building features a landscaped sun terrace, a fitness center, and a residents' lounge;

WHEREAS, the United States alleges in its complaint that it has inspected The Melar and specifically identified, *inter alia*, the following failures to meet the Accessible Design Requirements at The Melar:

- Excessively high thresholds, interfering with accessible routes for persons in wheelchairs;
- Terraces inaccessible to persons in wheelchairs;

- Insufficient clear floor space within bathrooms for maneuvering by persons in wheelchairs;
- Bathroom fixtures precluding installation of bathroom grab bars;
- Kitchen entries too narrow to accommodate persons in wheelchairs;
- Kitchen ranges not usable by persons in wheelchairs;
- Kitchen electrical outlets inaccessible to persons in wheelchairs;
- Walk-in closets inaccessible to persons in wheelchairs;
- Common area doors requiring excessive force for persons with certain disabilities;
- Common area doors closing too quickly for disabled persons to pass through;
- Common area bathrooms not usable by persons in wheelchairs;
- Mailboxes inaccessible to persons in wheelchairs;
- Protruding objects in common areas, not detectable by canes of visually impaired persons;
- Features within the fitness room inaccessible to persons in wheelchairs;
- Features within the laundry room inaccessible to persons in wheelchairs; and
- Insufficient clear floor space within basement storage room for maneuvering by persons in wheelchairs.

E. Consent of the Parties to Entry of this Order

WHEREAS, the Government and the Developer Defendant (herein, "the parties") agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3614(a). The parties further agree that this Action should be resolved without further proceedings and without an evidentiary hearing or a trial;

WHEREAS, the Developer Defendant agrees to make modifications to The Melar as set forth herein; and

WHEREAS, the parties agree to the entry of this Consent Decree.

It is hereby ORDERED, ADJUDGED, and DECREED:

I. GENERAL INJUNCTION

1. The Developer Defendant and each of its officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with it, are enjoined from discriminating on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604.

II. CORRECTIVE ACTIONS / RETROFITS

2. The United States alleges that The Melar was not designed or constructed in accordance with the FHA. To address these alleged violations of the FHA, the Developer Defendant agrees to make the modifications to The Melar as described in Appendices A and B.

Modifications to the Public and Common Use Areas

3. The Developer Defendant agrees to modify the public and common use areas of The Melar by taking the actions described below.

4. As soon as reasonably possible, but no later than 6 months from the entry of this Consent Decree, the Developer Defendant shall complete the retrofits listed in Appendix A. The Developer Defendant shall make reasonable efforts to minimize inconvenience to residents in making such retrofits.

Modifications to Dwelling Unit Interiors

5. The Developer Defendant agrees to modify dwelling units within The Melar by taking the actions described below.

6. For each unit listed in Appendix B, as soon as reasonably possible, but no later than 6 months from the entry of this Consent Decree (except as otherwise provided in Appendix B), the Developer Defendant shall complete the retrofits listed in Appendix B. The Developer Defendant shall make reasonable efforts to minimize inconvenience to residents in making such retrofits.

7. Within 10 days from the date of the entry of this Consent Decree, the Developer Defendant shall inform each resident whose dwelling unit is to be retrofitted pursuant to Appendix B that: (1) as a result of a settlement of an action brought by the United States, the Developer Defendant has agreed to retrofit certain features of the unit; (2) the retrofits set forth in Appendix B applicable to the resident's unit (with each notice tailored to the specific retrofit(s) to be made to the particular resident's unit) will be provided within 45 days of any request but will, in any event, take place within six months; and (3) the scheduling of the retrofits will take into account the preferences and convenience of the resident or prospective resident and that relocation costs, if any, will be provided in advance. The notice shall be substantially in the form of Appendix C-1.

8. Within 10 days from the date of the entry of this Consent Decree, the Developer Defendant shall inform all current residents of apartments having conditions listed in Appendix B and all those who have signed leases to become residents of those apartments that: (1) as a result of a settlement of an action brought by the United States, to the extent provided in

Appendix B, certain retrofits to apartment units are available upon request of current or prospective residents (each notice to be tailored to the specific retrofits that could apply to that particular unit); and (2) the scheduling of the retrofits will take into account the preferences and convenience of the resident or prospective resident and that relocation costs, if any, will be provided in advance. The Developer Defendant shall likewise provide such notice to all prospective tenants. The notice shall be substantially in the form of Appendix C-2.

9. The Developer Defendant shall certify to the United States in writing that the notices described in paragraphs 7 and 8 have been distributed and shall specify the manner in which they were distributed as part of their annual reporting requirement. Such certification shall include the names and addresses of the persons to whom the notices were distributed.

10. In the event that a resident of a unit within The Melar scheduled to undergo a modification is dislocated from his or her unit for more than a fourteen (14) consecutive hour period, the Developer Defendant shall pay such resident, pro rata, the applicable federal government per diem rate for food and lodging for the local area (as available at www.gsa.gov – click on "per diem rates" under travel) for each day or half-day of undue inconvenience or hardship. Such payment shall be made prior to the commencement of any retrofit work on the resident's unit, so that the resident can use the payment to obtain alternative living accommodations while dislocated.

11. Present and/or future residents may not be charged any additional rent, deposit, fee, or other consideration for the units in which retrofits are or may be implemented by reason of completed, contemplated, or possible retrofits. Nothing in this paragraph precludes the

Developer Defendant from the implementing rent increases, or imposing fees for any other reason, at the Melar.

III. NOTICE OF RETROFITS TO PUBLIC AND COMMON USE AREAS

12. Within 10 days of the entry of this Consent Decree, the Developer Defendant shall provide written notices to all residents at The Melar stating that the retrofits required by this Consent Decree will be performed to the public and common use areas of The Melar. Such notice shall conform to Appendix D.

13. The Developer Defendant shall certify to the United States in writing that the notices required by paragraph 12 have been distributed and shall specify the manner in which they were distributed within ten days after such distribution. Such certification shall include the names and addresses of the persons to whom the notices were distributed.

IV. NEUTRAL INSPECTOR

14. The Developer Defendant shall enter into a contract with a neutral inspector approved by the United States ("Inspector") to conduct on-site inspections of all retrofits performed pursuant to Appendices A and B of this Consent Decree to determine compliance with the specifications in those appendices. The Inspector shall have expertise in the design and construction requirements of the FHA.

15. Only if requested to do so by the Developer Defendant, the Inspector will review and comment upon the sufficiency of any proposed repair in writing in advance of any repair by the Developer Defendant.

16. An initial inspection of The Melar shall take place within 30 days of the completion of all of the retrofits set forth in Appendices A and B, or as soon thereafter as practicable.

17. For the inspection of The Melar, the Developer Defendant shall give the United States at least three weeks prior notice of the inspection and shall give the United States an opportunity to have its representative present for the inspection.

18. The Inspector shall set out in writing the results of the inspection of The Melar, including any deficits, and shall send that report to the Developer Defendant and to the United States.[1]

19. If the inspection indicates that not all of the required retrofits have been made to The Melar as specified in the applicable Appendices, the Developer Defendant shall correct any deficiencies within 60 days and shall pay for another inspection by the same Inspector to certify that the deficiencies have been corrected. This process shall continue until the Inspector certifies that all of the necessary modifications have been made. The Developer Defendant shall pay all of the Inspector's reasonable costs associated with these inspections, and such payments shall be made without regard to the Inspector's findings. Upon reasonable notice, representatives of the United States shall be permitted to inspect the modifications and/or the third-party inspection reports provided for in this Consent Decree, to ensure compliance.

V. TRANSFER OF INTEREST IN PROPERTIES

[1] For purposes of this Consent Decree, notices provided to the United States shall be addressed to Chief, Civil Rights Unit, Office of the United States Attorney for the Southern District of New York, 86 Chambers Street, Third Floor, New York, New York 10007.

20. The sale or transfer of ownership, in whole or in part, of any entity or person's interest(s) in The Melar shall not affect the Developer Defendant's continuing obligation to retrofit, and/or conduct or allow inspections or surveys of, The Melar, as specified in this Consent Decree, unless the Developer Defendant has obtained in writing, as a condition of sale or transfer, the purchaser's or transferee's commitment to assume such obligations, so that the purchaser or transferee will be bound by the terms of this Consent Decree to make retrofits and allow or conduct inspections or surveys as set forth in this Consent Decree, and will be subject to the jurisdiction of this Court.

21. Should an owner of The Melar decide to sell or transfer any ownership of The Melar, in whole or in part, or any portion thereof, prior to the completion of the retrofits specified in this Consent Decree's Appendices describing the retrofits for The Melar, the owner of The Melar will at least 30 days prior to completion of the sale or transfer, unless the contract of sale shall provide for a shorter period between contract and closing, but at least 15 days prior to completion of the sale or transfer: (a) provide each prospective buyer with a copy of this Consent Decree and written notice that Melar is subject to this Consent Decree, including specifically the Developer Defendant's obligations to either (i) complete required retrofit work and allow inspections, or (ii) assign such obligations to the purchaser or transferee by obtaining the purchaser or transferee's commitment to be bound by this Order, subject to the jurisdiction of this Court; and (b) provide to the United States, by facsimile and first-class mail, written notice of the owner's intent to sell or transfer ownership, along with a copy of the notice sent to each buyer, and each buyer's name, address and telephone number.

VII. NON-DISCRIMINATION IN OTHER DESIGN AND CONSTRUCTION

22. The Developer Defendant shall maintain, and provide to the United States upon request, the following information and statements regarding any Covered Multifamily Dwellings intended to be developed, built, designed, and/or engineered in whole or in part, by it or by any entities in which it has a position of control as an officer, director, member, or manager, or has a ten-percent (10%) or larger ownership share:

- the name and address of the project;
- a description of the project and the individual units;
- the name, address, and telephone number of the civil engineer(s) involved with the project;
- a statement from the civil engineer(s) involved with the project acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and in the field of accessible site design, certifying that he/she has reviewed the architectural plans for the project and that the design specifications therein fully comply with the requirements of the FHA, and stating that the design specifications comply with the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent the Developer Defendant's construction in compliance with such building code(s) does not violate the FHA).
- the name, address and telephone number of the architect(s) who are employed or retained by the Developer Defendant and are involved with the project;

- a statement from all architect(s) who are employed or retained by the Developer Defendant and are involved with the project, acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and the Guidelines, and in the field of accessible site design, certifying that he/she has reviewed the architectural plans for the project and that the design specifications therein fully comply with the requirements of the FHA, and stating that the design specifications comply with the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent the Developer Defendant's construction in compliance with such building code(s) does not violate the FHA).

23. If the engineering documents or architectural plans referred to in paragraph 22 are revised, and the revisions would have any impact on whether the dwellings or complex complies with the Fair Housing Act and/or the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent Defendant's construction in compliance with such building code(s) does not violate the FHA), the Developer Defendant shall obtain, maintain, and provide to the United States upon request, a statement from the site engineer(s) or architect(s) who are employed or retained by any Defendant and are involved with the project, as applicable, that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the requirements of the Fair Housing Act, as well as the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent the

Developer Defendant's construction in compliance with such building code(s) does not violate the FHA).

24. The Developer Defendant will make all new construction of Covered Multifamily Dwellings fully compliant with the Accessible Design Requirements, the Americans with Disabilities Act, and the Americans with Disabilities Act Accessibility Standards to the extent applicable to Covered Multifamily Dwellings. Moreover, with respect to all new construction of Covered Multifamily Dwellings outside of New York City, the Developer Defendant shall make all such construction fully compliant with the Guidelines or any other safe harbor recognized by HUD. In addition, with respect to all new construction of Covered Multifamily Dwellings within New York City, the Developer Defendant shall make all such construction fully compliant with either: (a) the Guidelines or any other safe harbor recognized by HUD; or (b) the accessibility specifications of any applicable State or municipal building code (to the extent the Developer Defendant's construction in compliance with such building code(s) does not violate the FHA). During the term of this Consent Decree, upon reasonable notice, the United States will be permitted full access to such properties of the Developer Defendant to inspect for compliance with such standards, rules, and laws.

VII. PAYMENTS TO AGGRIEVED PERSONS

25. Within 30 days of entry of this Consent Decree, the Developer Defendant shall deposit in an interest-bearing account the total sum of ONE HUNDRED EIGHTY THOUSAND DOLLARS ($180,000) for the purpose of compensating any aggrieved persons in connection with alleged discriminatory housing practices involving The Melar. This sum, which constitutes a cap on any such compensation, shall be referred to as the "Settlement Fund."

26. Except as otherwise provided in this paragraph, within 15 days of the entry of this Consent Decree, the Developer Defendant shall publish the Notice to Persons Who May Have Suffered Housing Discrimination ("Notice") at Appendix E informing readers of the availability of compensatory funds. The Notice shall be no smaller than three columns by six inches and shall be published on three occasions in each of the following newspapers: the *Wall Street Journal*; the *New York Times;* the *Daily News*; and the *New York Post*. The three publication dates shall be separated from one another by 21 days, and at least two of the publication dates shall be on a Sunday. Within 10 days of each publication date, the Developer Defendant shall provide the newspapers containing the Notice to the United States. In lieu of publishing the Notice as provided in the preceding four sentences, the Developer Defendant may publish a notice jointly with the Real Estate Board of New York and/or other entities that have resolved FHA suits brought by the United States (a "Joint Notice"), if: (1) the Developer Defendant publishes the Joint Notice within three months of the entry of this Consent Decree; (2) the Joint Notice contains all of the information contained in the Notice; (3) the Developer Defendant obtains the approval of the United States with respect to any additional content included in the Joint Notice, as well as to the form of the Joint Notice, at least 15 days prior to publication; (4) the Joint Notice is published on at least five occasions in each of the following newspapers: the *Wall Street Journal*; the *New York Times;* the *Daily News*; and the *New York Post*; (5) the five publication dates are separated from one another by 21 days, with at least two of the publication dates on a Sunday; and (6) within 10 days of each publication, the Developer Defendant provides the newspapers containing the Joint Notice to the United States.

27. Within 15 days of entry of this Consent Decree, the Developer Defendant shall place, on http://www.themelar.com, a link to an electronic version of the Notice in an Adobe Acrobat Portable Document Format ("PDF"). The link should state "Notice to Persons Who May Have Suffered Housing Discrimination," and should appear on the upper half of the website, in a red font, in a font size no smaller than the font size for any of the terms "home," "amenities," "neighborhood," "floor plans" or "contact us," as they appeared as of July 1, 2010.

28. Within 15 days of the entry of this Consent Decree, the Developer Defendant shall send a copy of the Notice to each of the following organizations: Fair Housing Justice Center, 5 Hanover Square, 17th Floor, New York, New York 10004; and United Spinal Association, 75-20 Astoria Blvd., Jackson Heights, New York 11370.

29. Within 30 days of the entry of this Consent Decree, the Developer Defendant shall send, by first-class mail, postage pre-paid, a copy of the Notice to each present resident at The Melar and to all former residents of The Melar. For past residents, the Developer Defendant will have complied with the requirements of this paragraph by mailing such notice to the forwarding address, if any, provided by the former resident at the time the former resident moved out of The Melar. Within 60 days of entry of this Consent Decree, the Developer Defendant shall provide the United States with proof that the Notices have been sent.

30. The United States may make its own efforts to locate and provide notice to potential aggrieved persons.

31. The Developer Defendant shall permit the United States, upon reasonable notice, to review any records that may reasonably facilitate its determinations regarding the claims of alleged aggrieved persons.

32. The United States shall investigate the claims of allegedly aggrieved persons and shall determine which persons are aggrieved and an appropriate amount of damages that should be paid to each such person. The United States will inform the Developer Defendant in writing of each of its determinations, together with a copy of a sworn declaration from each aggrieved person setting forth the factual basis of the claim.

33. If the Developer Defendant disputes the grievance determination or amount of a payment to an aggrieved person, the Developer Defendant shall, within fourteen (14) days of receiving notice of a determination (a "Determination") from the United States, provide a written objection to the United States, along with any information or documents that they believe may refute the aggrieved person's claim. The United States shall give due consideration to any objections it receives from the Developer Defendant and shall submit, following any objection, its reconsidered determination (a "Reconsidered Determination") to the Developer Defendant, in writing, setting forth the aggrieved person and the amount that the aggrieved person shall be paid. If the Developer Defendant disputes the Reconsidered Determination, the Developer Defendant shall submit an objection to the United States within ten (10) days of receiving the Reconsidered Determination, and the United States shall submit the matter to the Court for a final determination.

34. The Developer Defendant shall, no later than twenty (20) days after receiving a Determination to which no objection has been made, ten (10) days after receiving a Reconsidered Determination to which no objection has been made, or ten (10) days after any decision by the Court overruling a filed objection, whichever is earliest, deliver to the United States checks drawn upon the Settlement Fund payable to aggrieved persons in the amounts

identified by the United States. In no event shall the aggregate of all such checks exceed the amount of the Settlement Fund, including accrued interest. No aggrieved person shall be paid until he/she has executed and delivered to the United States, with a copy to the Developer Defendant, the release at Appendix F.

35. In the event that less than the total amount in the Settlement Fund, including accrued interest, is distributed to aggrieved persons, and after the United States determines that no further aggrieved persons will be identified, the remainder of the funds in the Settlement Fund shall be distributed to a qualified organization(s) mutually agreed upon by the United States and the Developer Defendant, subject to the approval of the Court, for the purpose of assisting individuals with physical disabilities in locating accessible housing or in modifying housing to be more accessible in New York City. The organization shall not receive the funds until it has executed and delivered to the United States, with a copy to the Developer Defendant, a release precluding the organization from bringing any claims against the Developer Defendant for any matters covered by this Consent Decree. The Developer Defendant shall distribute the funds in a manner directed by the Court after the United States informs the Court that no further aggrieved persons will be identified.

VIII. PAYMENT TO THE UNITED STATES

36. Within 30 days of the date of the entry of this Consent Decree, the Developer Defendant shall pay the United States FORTY THOUSAND DOLLARS ($40,000) pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. Said sum shall be paid by submitting a check made payable to the "United States of America" to the United States.

IX. ESTABLISHMENT OF ACCESSIBILITY PROJECT FUND

37. The Developer Defendant shall establish an Accessibility Project Fund in the amount of TWO HUNDRED EIGHTY EIGHT THOUSAND THREE HUNDRED DOLLARS ($288,300) (the "Fund Amount").

a. The Accessibility Project Fund shall be used prior to the termination of this Consent Decree for the construction of facilities, or the provision of services, at the Melar for the primary benefit of persons with disabilities. The Developer Defendant, thirty (30) days in advance of any proposed expenditure of the Accessibility Project Fund at the Melar, may seek the approval of the United States to deem the costs of such construction or services as qualifying as expenditures of the Accessibility Project Fund, and such approval shall be given at the United States' discretion, which shall not be unreasonably withheld or delayed. In the event that the Developer Defendant engages in construction, or provides services, at the Melar for the primary benefit of persons with disabilities without providing notice to the United States, the Developer Defendant may seek the approval of the United States to deem the costs of such construction or services as qualifying as expenditures of the Accessibility Project Fund, and such approval shall be given at the United States' discretion, which shall not be unreasonably withheld or delayed.

b. To the extent that such expenditures are approved by the United States as provided below, up to 50% of the Accessibility Project Fund may be expended prior to the termination of this Consent Decree on the design and construction of features that enhance accessibility at a Covered Multifamily Dwelling (the "New Building") the construction of which is commenced during the term of the Consent Decree by a New Developer, as defined in the footnote below.[1] For any expenditure to be made from the Accessibility Project Fund for the design or construction of a feature or features at a New Building, the Developer Defendant shall request approval from the United States. In connection with such a request, the Developer Defendant and the New Developer shall submit certifications that (i) such features are for the primary benefit of persons with disabilities and are not otherwise required under paragraph 24 of this Consent Decree or otherwise required by law; (ii) such accessibility-enhancing features would not have been included in the New Building but for the availability of money from the Accessibility Project Fund; and (iii) the expenditure reasonably reflects the cost of designing and constructing the accessibility-enhancing features. The United States may approve or disapprove expenditures from the Accessibility Project Fund on a New Building in its discretion, which shall not be unreasonably withheld or delayed.

c. None of the retrofit or other requirements of this Consent Decree shall qualify for expenditures of the Accessibility Project Fund, except the expenses that the Developer Defendant may incur in connection with the installation of low-profile refrigerators upon the request of residents in units with less than 40 inches of clearance at the refrigerator, as shown on Appendix B.

d. Three months before the termination date of this Consent Decree, the Developer Defendant shall present a full and accurate accounting of the Accessibility Project Fund. The aggregate expenditures shall be subtracted from the Accessibility Project Fund, and the Developer Defendant shall, within 30 days of the accounting, pay the difference to the United

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[1] A "New Developer" shall be an entity that is at least 50% owned by persons who collectively hold at least 50% of the ownership interest in the Developer Defendant.

States by an electronic funds transfer pursuant to wiring instructions to be provided by the United States.

X. EDUCATIONAL PROGRAM

38. Within 30 days of the entry of this Consent Decree, the Developer Defendant shall provide a copy of this Consent Decree to all their agents and employees involved in the design or construction of The Melar (meaning a representative of Rose Associates, Inc. ("Rose Associates")) and shall secure a signed statement from each such agent or employee acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix G.

39. During the term of this Consent Decree, any new agent or supervisor of the Developer Defendant who will be involved in the design or construction of Covered Multifamily Dwellings shall, within 30 days after the date he or she commences an agency or employment relationship with the Developer Defendant, be given a copy of this Consent Decree by the Developer Defendant, and the Developer Defendant shall require each such new agent or employee to sign a statement, acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix G.

40. Within 30 days of the entry of this Consent Decree, the Developer Defendant shall provide a copy of this Consent Decree to all their agents and employees involved in rental of units at The Melar, and/or the supervision of services to residents at The Melar (including the following personnel at Rose Associates: the Melar Resident Property Manager; the Melar

Property Manager stationed at Rose Associates; the Melar on-site Leasing Manager; the Melar Leasing Director stationed at Rose Associates; the Melar lobby attendants; and the supervisor(s) of the Melar porters and handymen), and shall secure the signed statement from each agent or employee acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix G. In addition, the supervisor(s) of the Melar porters and handymen shall certify that he/she has explained the obligations of the Melar porters and handymen to those individuals, and that those individuals have had an opportunity to have their questions about their obligations answered.

41. During the term of this Consent Decree any new agent or supervisor of the Developer Defendant, or of Rose Associates, who will be involved in the renting of units at The Melar, and/or the provision of services to residents at The Melar shall, within 30 days after the date he or she commences an agency or employment relationship with the Developer Defendant, be given a copy of this Consent Decree by the Developer Defendant, and the Developer Defendant shall require each such new agent or employee to sign a statement, acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix G.

42. The Developer Defendant shall also ensure that it and its employees, as well as any entities (*e.g.*, firms) acting as the Developer Defendant's agent, who have supervisory authority over the design and/or construction of covered, multifamily dwellings have a copy of, are familiar with, and personally have reviewed, the Fair Housing Accessibility Guidelines, 56

Fed. Reg. 9472 (1991), and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act (August 1996, Rev. April 1998). The Developer Defendant and all employees and agents whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications. In addition, the Developer Defendant shall provide Rose Associates with a copy of the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991), and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act (August 1996, Rev. April 1998), and shall inform Rose Associates of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

43. Within 90 days of the date of entry of this Consent Decree, the Developer Defendant and all employees and agents whose duties, in whole or in part, involve or will involve supervision over the development, design and/or construction of Covered Multifamily Dwellings (including any such employees at Rose Associates) shall undergo training on the design and construction requirements of the Fair Housing Act.[1] The training shall be conducted by a qualified third-party individual, not associated with the Developer Defendant or its counsel,

[1] The educational program provided to employees not engaged in design, construction, or maintenance, such as sales and rental employees, may focus on the portions of the law that relate generally to accessibility requirements as opposed to technical design and construction requirements.

and approved in advance by the Department of Justice; and any expenses associated with this training shall be borne by the Developer Defendant. The Developer Defendant shall provide to the United States, 30 days before the training, the name(s), address(es) and telephone number(s) of the trainer(s); and copies of the training outlines and any materials to be distributed by the trainers. The Developer Defendant shall provide to the United States certifications executed by the Developer Defendant and all covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix H.

XI. NOTICE OF DEFENDANT'S NON-DISCRIMINATION POLICY

44. Within ten days of the date of entry of this Consent Decree, the Developer Defendant shall post and prominently display in the sales or rental offices of all Covered Multifamily Dwellings owned or operated by them a sign no smaller than 10 by 14 inches indicating that all dwellings are available for rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

45. For the duration of this Consent Decree, in all future advertising in newspapers and electronic media, and on pamphlets, brochures and other promotional literature regarding the existing Covered Multifamily Dwelling or any new Covered Multifamily Dwellings that the Developer Defendant may develop or construct, the Developer Defendant shall place, in a conspicuous location, a statement that the dwelling units include features for persons with disabilities required by the federal Fair Housing Act.

XII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

46. No later than 180 days after the date of entry of this Consent Decree, the Developer Defendant shall: (a) submit to the United States the executed certifications and

statements required by paragraphs 38-43 of this Consent Decree; and (b) certify to the United States in writing that the notices required by paragraphs 7, 8, and 12 of this Consent Decree have been distributed, and specify the manner in which they were distributed.

47. Thereafter, during the term of this Consent Decree, the Developer Defendant shall, on the anniversary of the entry of this Consent Decree, submit to the United States any additional signed statements required by paragraphs 39 or 41 of this Consent Decree, and a report, as applicable, indicating that notices pursuant to paragraph 8 of this Consent Decree were distributed to new residents.

48. For the duration of this Consent Decree, the Developer Defendant shall advise the United States in writing within 15 days of receipt of any written administrative or legal fair housing complaint regarding any Covered Multifamily Dwelling owned, managed, and/or designed or constructed by it, or against any employees or agents of the Developer Defendant working at or for any such property, alleging discrimination on the basis of disability in housing under federal law. Upon reasonable notice, the Developer Defendant shall also provide the United States all information it may request concerning any such complaint. The Developer Defendant shall also advise counsel for the United States, in writing, within 15 days of the resolution of any complaint.

49. For the term of this Consent Decree, the Developer Defendant is required to preserve all records related to this Consent Decree for The Melar and for any other Covered Multifamily Dwellings designed, constructed, owned, operated, or acquired by it during the duration of this Consent Decree. Upon reasonable notice to the Developer Defendant, representatives of the United States shall be permitted to inspect and copy any records of the

Developer Defendant or inspect any developments or residential units under the Developer Defendant's control bearing on compliance with this Consent Decree at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to the Developer Defendant from such inspections.

XIII. RENT STABILIZATION

50. In the event a resident of The Melar files a complaint with the New York State Division of Housing and Community Renewal under Section 26-5141 of the Rent Stabilization Law or Section 2523.4 of the Rent Stabilization Code alleging that the performance of a retrofit as required by this Consent Decree constitutes a diminution of services, the Developer Defendant will inform the United States that such a claim has been filed and the Developer Defendant will defend against the claim in good faith with all best efforts. If the New York State Division of Housing and Community Renewal rules against the Developer Defendant, the Developer Defendant will promptly enter into negotiations with the United States to reach agreement on an appropriate substitute for the particular retrofit at issue. If the United States is not satisfied with the substitute(s) proposed by the Developer Defendant, the United States may apply to the Court (*i.e.*, the United States District Court for the Southern District of New York), in which case this Court shall select a substitute for the particular retrofit at issue.

XIV. LOW-INCOME HOUSING TAX CREDIT PROGRAM COMPLIANCE

51. With respect to low-income housing tax credits, the Developer Defendant understands that, in the event that the Developer Defendant fails to comply with any of the terms of this Consent Decree and the United States, on notice to the Developer Defendant, obtains an order establishing such noncompliance, the United States may take action, including but not

limited to notifying the appropriate state housing finance agency of the violation. See 26 U.S.C. § 42(m)(1)(B)(iii).

XV. DURATION OF CONSENT DECREE AND TERMINATION OF LEGAL ACTION

52. This Consent Decree shall remain in effect for three years following entry of this Consent Decree by the Court. By consenting to entry of this Consent Decree, the parties agree that in the event that the Developer Defendant engages in any future conduct occurring after entry of this Consent Decree that leads to any judicial or administrative determination of a violation of the Fair Housing Act, any civil penalty relating to such future conduct shall be calculated as if the conduct were a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

53. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Consent Decree. The United States may move the Court to extend the duration of the Consent Decree in the interests of justice, and the Developer Defendant may oppose such a motion.

54. The United States and the Developer Defendant shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Developer Defendant to perform, in a timely manner, any act required by this Consent Decree or otherwise for its failure to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees which may have

been occasioned by the violation or failure to perform. The Developer Defendant may oppose such a motion.

55. Upon the termination of this Consent Decree, the Court shall dismiss this Action with prejudice. Such dismissal shall only release the Developer Defendant from claims by the United States regarding alleged failures to design and construct The Melar pursuant to the FHA as of the date of suit in this Action. Such a dismissal shall not release the Developer Defendant from any other claims by the United States, including but not limited to any claims regarding other designed and constructed Covered Multifamily Dwellings, and any claims regarding FHA violations at The Melar other than failures to design and construct The Melar as required by the FHA.

XVI. TIME FOR PERFORMANCE

56. Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the United States and the Developer Defendant without Court approval.

XVII. COSTS OF LITIGATION

57. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation.

The undersigned apply for and consent to the entry of this Consent Decree:

For the United States:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

PREET BHARARA
United States Attorney

By: ______________________
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For Defendant L&M 93rd Street LLC:

By: ______________________
L&M 93rd STREET LLC
Member

WINSTON STRAWN LLP
Counsel for L&M 93rd Street LLC

By: ______________________________
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nunderberg@winston.com
Jhadlock@winston.com

SO ORDERED this __________ day of ______________________, 2010.

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HON.
UNITED STATES DISTRICT COURT JUDGE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. L&M 93rd STREET LLC and COSTAS KONDYLIS & PARTNERS, LLP, Defendants.	10 Civ. 7495 (RMB) **DECLARATION OF JOHN M. HADLOCK**

JOHN M. HADLOCK, an attorney admitted to practice in this district affirms under penalty of perjury:

1. I am Of Counsel to the firm of Winston & Strawn LLP, counsel to the defendant, L&M 93rd Street LLC, and submit this Declaration in support of Defendant's motion to withdraw from the proposed consent decree.

2. On September 30, 2010, Plaintiff filed the Complaint in this action and sought entry of a proposed consent decree. The Complaint is attached as Exhibit A and the proposed consent decree is attached as Exhibit B.

3. On July 14, 2008, Michael A. Cardozo, Corporation Counsel for the City of New York, sent a letter to Michael A. Garcia, United States Attorney, urging him to consider the City's position that compliance with Local Law 58 satisfied the Fair Housing Act. That letter is attached as Exhibit C.

4. On October 29, 2010, the United States Attorney's Office submitted a letter to the Court in response to the October 22, 2010 Administrative Order requesting further explanation of the proposed consent decree. That letter is attached as Exhibit D.

5. On November 10, 2010, the parties participated in a telephone conference with the Court. A transcript of that conference is attached as Exhibit E.

6. On November 15, 2010, a consent decree was filed in *U.S. v. CVP I, LLC*. That decree is attached as Exhibit F.

7. On November 16, 2010, the parties appeared at a hearing before the Court. A transcript of that hearing is attached as Exhibit G.

8. On March 14, 2011, the parties appeared at a hearing before the Court. A transcript of that hearing is attached as Exhibit H.

Dated: New York, NY
April 15, 2011

By: ______________________________

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Attorneys for L&M 93rd Street LLC