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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

Plaintiff,

- v -

475 NINTH AVENUE ASSOCIATES LLC, and H.  
THOMAS O'HARA ARCHITECTS;

Defendants; and

THE DERMOT COMPANY, and EQR-HUDSON  
CROSSING, LLC;

Relief Defendants.  
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: ECF Case

: **COMPLAINT**

: 12 Civ. \_\_\_\_\_

Plaintiff United States of America alleges as follows:

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 ("Fair Housing Act" or the "Act"), 42 U.S.C. §§ 3601-3619. As set forth in full below, the United States alleges that the Defendants, the developer and architect of Hudson Crossing, a residential apartment complex in Manhattan, have unlawfully discriminated against persons with

disabilities in violation of the Fair Housing Act by failing to design and construct Hudson Crossing so as to be accessible to persons with disabilities.

### **Jurisdiction and Venue**

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 3614(a).

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because the claims alleged in this action arose in the Southern District of New York, and concern real property located in this District.

### **The Property**

4. Hudson Crossing is a residential apartment building located at 400 West 37th Street in New York, New York. The complex consists of a tower with elevator access, and contains 259 rental units, as well as public and common use areas. In addition, the complex features a fitness center, a patio with balcony, and covered parking.

5. The rental units at Hudson Crossing are “dwellings” within the meaning of 42 U.S.C. § 3602(b), and “dwelling units” within the meaning of 24 C.F.R. § 100.21.

6. Hudson Crossing was designed and constructed for first occupancy after March 13, 1991. All of the residential units are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7) and 24 C.F.R. § 100.21. The complex is subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205(a), (c).

### **The Defendants**

7. Defendant 475 Ninth Avenue Associates LLC (the “Developer Defendant”), a Delaware limited liability company, is the developer that designed and constructed Hudson Crossing. Among other things, the Developer Defendant approved the design plans for Hudson Crossing and provided direction as to the construction of the complex.

8. H. Thomas O'Hara Architects (the "Architect Defendant") is a New York professional service limited liability company that drew the architectural plans for Hudson Crossing and, in that capacity, designed the complex.

9. By deed of sale dated July 29, 2004, the Developer Defendant sold Hudson Crossing to ERP Operating Limited Partnership, an Illinois limited partnership, and related entities. Further, in December 2007, the Developer Defendant ceased conducting business.

10. Relief defendant the Dermot Company ("Dermot"), an indirect affiliate of the Developer Defendant, is a necessary party in this action for the purpose of effectuating complete relief.

11. Relief defendant EQR-Hudson Crossing, LLC (the "Current Owner"), a Delaware limited liability company, is the current owner of Hudson Crossing and, as such, is a necessary party in this action for the purpose of effectuating complete relief.

#### **Inaccessible Features of Hudson Crossing**

12. The Developer Defendant and the Architect Defendant failed to design and construct Hudson Crossing so as to be accessible to persons with disabilities.

13. The Developer Defendant's and the Architect Defendant's failure to design and construct Hudson Crossing so as to be accessible to persons with disabilities caused, among others, the following inaccessible conditions at Hudson Crossing:

- Bedrooms, bathroom, terrace, and closet doorways within some apartments too narrow for use by persons with wheelchairs;
- Terraces within the apartments inaccessible to persons in wheelchairs;
- Excessively high thresholds within some apartments and in common areas, which interfere with accessible routes for persons in wheelchairs;
- Kitchen hallways in some apartments too narrow to accommodate persons in wheelchairs;

- Kitchen electrical outlets inaccessible to persons in wheelchairs;
- Kitchens in some apartments lacking sufficient space between appliances and/or countertops, so as to be usable by persons in wheelchairs;
- Kitchen ranges not usable by persons in wheelchairs;
- Insufficient clear floor space within some bathrooms for maneuvering by persons in wheelchairs at lavatories and toilets;
- Bathroom fixtures precluding installation of bathroom grab bars;
- Common area doors requiring excessive force for persons with certain disabilities;
- Common area doors with hardware unusable by persons with certain disabilities;
- Common area bathrooms not usable by persons in wheelchairs;
- Leasing office inaccessible to the visually impaired and persons in wheelchairs;
- Certain mailboxes inaccessible to persons in wheelchairs;
- Elevators that close too quickly for persons in wheelchairs;
- Trash rooms with insufficient clearance for persons in wheelchairs;
- Common areas lacking sufficient signs for the visually impaired;
- Certain features in the fitness room inaccessible to persons in wheelchairs; and
- Certain features in the laundry room inaccessible to persons in wheelchairs.

14. In designing and constructing Hudson Crossing in this manner, the Developer Defendant and the Architect Defendant also failed to comply with applicable State and local design and construction provisions, including, specifically, New York City Local Law 58.

#### **Fair Housing Act Claims**

15. The United States re-alleges and incorporates by reference the allegations set forth in paragraphs 1–15, above.

16. The Developer Defendant and the Architect Defendant violated 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205(c) by failing to design and construct Hudson Crossing in such a manner that:

- a. the public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities; and
- b. 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.

17. The Developer Defendant and the Architect Defendant, through the actions and conduct referred to in the preceding paragraph, have:

- a. Discriminated in the sale or rental of, or otherwise made unavailable or denied, dwellings to buyers or renters because of a disability, in violation of 42 U.S.C. § 3604(f)(1) and 24 C.F.R. § 100.202(a);
- b. Discriminated against persons in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of a disability, in violation of 42 U.S.C. § 3604(f)(2) and 24 C.F.R. § 100.202(b); and

- c. Failed to design and construct dwellings in compliance with the accessibility and adaptability features mandated by 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205.
18. The conduct of the Developer Defendant and the Architect Defendant described above constitutes:
- a. A pattern or practice of resistance to the full enjoyment of rights granted by the FHA, 42 U.S.C. §§ 3601-3619; and/or
  - b. A denial to a group of persons of rights granted by the FHA, 42 U.S.C. §§ 3601-3619, which denial raises an issue of general public importance.
19. Persons who may have been the victims of the defendants discriminatory housing practices are aggrieved persons under 42 U.S.C. § 3602(i), and may have suffered injuries as a result of the defendants' conduct described above.
20. The *Developer Defendant's* and the *Architect Defendant's* discriminatory actions and conduct described above were intentional, willful, and taken in disregard for the rights of others.

**Prayer for relief**

WHEREFORE, the United States prays that the Court enter an order that:

1. Declares that the policies and practices of the *Developer Defendant* and the *Architect Defendant*, as alleged in this complaint, violate the Fair Housing Act.
2. Enjoins the defendants and relief defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:
  - a. Failing or refusing to bring the dwelling units and public use and common use areas at Hudson Crossing into compliance with 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205;

- b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, persons harmed by the Developer Defendant's and the Architect Defendant's unlawful practices to the position they would have been in but for the discriminatory conduct; and
- c. Designing and/or constructing any covered multifamily dwellings in the future that do not contain the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205;
- d. Failing or refusing to retrofit the dwelling units and public and common use areas in these and other covered multifamily dwellings designed and constructed by the Developer Defendant and the Architect Defendant to bring them into compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C); and
- e. Failing or refusing to conduct a compliance survey at all covered multifamily dwellings designed and constructed by the Developer Defendant and the Architect Defendant to determine whether the retrofits ordered in paragraphs 2(a) and 2(d) were made properly.

3. Enjoins the Current Owner from engaging in conduct that denies access to the common and public use areas and the covered multifamily dwellings under its ownership or management, or denies the taking of any other action appropriate, to ensure that retrofits required to bring the common and public use areas and all the covered multifamily dwelling into compliance with the accessibility provisions of the Fair Housing Act be done in a prompt and efficient manner.

4. Awards appropriate monetary damages, pursuant to 42 U.S.C. § 3614(c)(1) and § 3614(d)(1)(B), to each person harmed by the Developer Defendant's and/or the Architect Defendant's discriminatory conduct and practices.

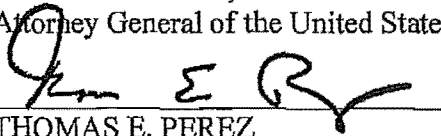
5. Assesses a civil penalty against the Developer Defendant in the maximum amount authorized by 42 U.S.C. § 3614(d)(1)(C), to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

Dated: New York, New York

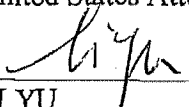
May 23, 2012

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