

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 -against- :
 :
 LARKSPUR, LLC, LARKSPUR :
 MANAGERS LLC, and LARSEN SHEIN :
 GINSBERG SNYDER LLP, :
 :
 Defendants. :
 :
-----X

ECF CASE

CONSENT DECREE

11 Civ. 6321 (DAB)

INTRODUCTION

A. Background

This Consent Decree is entered into between the United States of America (the "United States") and defendants Larkspur, LLC and Larkspur Managers LLC (collectively, the "Developer Defendants").

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, filed on September 9, 2011, alleges that defendants 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 Larkspur ("The Larkspur"), a residential apartment complex located at 304 West 117th Street, New York, New York, with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. § 3604(f)(3)(C);

WHEREAS, the Developer Defendants hereby represent that over 90% of The Larkspur's 116 units are provided to (a) low-income tenants or (b) middle-income tenants under the New York City Housing Development Corporation's ("HDC") New Housing Opportunities Program;

WHEREAS, the Developer Defendants have denied the allegations of the United States' complaint in an answer with cross-claims against defendant Larsen Shein Ginsberg Snyder LLP (the "Architect Defendant") and enter into this Consent Decree for settlement purposes only, without admitting any issue of fact or law;

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

B. Developer Defendants

WHEREAS, Larkspur, LLC, a New York limited liability company, is the owner and builder and developer of The Larkspur, and Larkspur Managers LLC, a New York limited liability company, is the operating manager of Larkspur, LLC, and, in those capacities, designed and constructed The Larkspur;

WHEREAS, the Developer Defendants hereby represent that (a) Larkspur, LLC has not, directly or indirectly, developed, designed or constructed any other residential buildings with four or more dwelling units, and one or more elevators, designed and constructed for first occupancy after March 13, 1991 ("Covered Multifamily Dwellings"), (b) none of Larkspur, LLC's members has, directly or indirectly, developed, designed or constructed any other Covered Multifamily Dwellings, and (c) none of the individual members of the members of Larkspur, LLC owns a majority interest, direct or indirect, in any Covered Multifamily Dwelling or in any entity that developed, designed or constructed a Covered Multifamily Dwelling;

C. Relevant Requirements of the Fair Housing Act

WHEREAS, the FHA provides that Covered Multifamily Dwellings must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by a person who has or develops a disability, 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; (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. Alleged Violations at The Larkspur

WHEREAS, The Larkspur is a residential rental apartment building located at 304 West 117th Street in New York, New York. The complex consists of a tower with elevator access, 115 rental apartment units, a superintendent's apartment, and public and common use areas, including a fitness center and laundry facilities;

WHEREAS, the United States has inspected The Larkspur and specifically identified, *inter alia*, the following alleged failures to meet the Accessible Design Requirements at The Larkspur, which the Developer Defendants deny:

- Excessively high thresholds at unit, bathroom, terrace, and kitchen entrances interfering with accessible routes for persons who use wheelchairs;
- Insufficient clear opening width of terrace and closet doors;
- Insufficient clear floor space within bathrooms for maneuvering by persons who use wheelchairs;
- Kitchens lacking sufficient clearance to accommodate persons who use wheelchairs;
- Thermostats inaccessible to persons who use wheelchairs;
- Kitchen and bathroom electrical outlets inaccessible to persons who use wheelchairs;
- Kitchen sinks and ranges not usable by persons who use wheelchairs;
- Kitchens lacking sufficient space between appliances and/or countertops to be usable by persons who use wheelchairs;
- Bathrooms lacking sufficient space between sidewalls and/or fixtures to be usable by persons who use wheelchairs;
- Common area doors requiring excessive force for persons with certain disabilities;
- Common area doors closing too quickly for disabled persons to pass through;
- Excessively high thresholds at common area doors interfering with accessible routes for persons who use wheelchairs;

- Running slope of building ramp excessively steep to accommodate persons who use wheelchairs;
- Ramp handrails excessively high for persons who use wheelchairs;
- Mailboxes inaccessible to persons who use wheelchairs;
- Signs for common areas lacking raised-letter Braille;
- Features within the fitness room and laundry room inaccessible to persons who use wheelchairs;
- Trash chute access doors requiring excessive force for persons with certain disabilities;
- Insufficient clear floor space within trash room for maneuvering by persons who use wheelchairs;
- Insufficient clear floor space within basement storage room for maneuvering by persons who use wheelchairs;
- Protruding objects in common areas, not detectable by canes of visually impaired persons; and
- Common area bathrooms lacking sufficient space between sidewalls and/or fixtures to be usable by persons who use wheelchairs.

E. Consent of the Parties to Entry of this Order

WHEREAS, the United States and the Developer Defendants (collectively, 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 controversy should

be resolved between them without further proceedings and without an evidentiary hearing or a trial;

WHEREAS, the Developer Defendants agree to make the retrofits 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 Defendants and each of their officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with them, 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 Larkspur was not designed or constructed in accordance with the FHA and the Fair Housing Accessibility Guidelines, Design Guidelines for Accessible/Adaptable Dwelling, 56 Fed. Reg. 9472 (1991) (the "Guidelines"), which allegations the Developer Defendants deny. In order to settle this action, the Developer Defendants agree to make the retrofits described in Appendices A and B annexed hereto and certain enhanced retrofits in accordance with paragraphs 8-9 below.

Modifications to the Public and Common Use Areas

3. The United States alleges that the public and common use areas of The Larkspur do not meet the requirements of the FHA and the Guidelines, which allegations the Developer Defendants deny. In order to settle this action, the Developer Defendants agree to take the actions described below.

4. No later than 6 months from the entry of this Consent Decree, the Developer Defendants shall finish the retrofits listed in Appendix A. The Developer Defendants shall minimize inconvenience to residents in making such retrofits.

Modifications to Dwelling Unit Interiors

5. The United States alleges that the dwelling unit interiors of The Larkspur do not meet the requirements of the FHA and the Guidelines, which allegations the Developer Defendants deny. In order to settle this action, the Developer Defendants agree to take the actions described below.

6. The Developer Defendants shall complete each mandatory retrofit listed in Appendix B no later than 6 months from the entry of this Consent Decree or the time specified in Appendix B. The Developer Defendants shall complete each "at request" retrofit listed in Appendix B in any unit no later than the time specified in Appendix B or, if no time is specified, within 45 days of a written request during the term of this Consent Decree.

7. The Developer Defendants shall not be permitted to pay or provide other consideration to a resident requesting a retrofit listed in Appendix B in lieu of providing the retrofit. Nor shall the Developer Defendants be obligated to provide a retrofit listed in Appendix B on request if the resident seeks other consideration in lieu of the retrofit. In the event that the Developer Defendants believe a resident has requested a retrofit but seeks other consideration in lieu of the retrofit, the Developer Defendants shall notify the United States, identifying the relevant facts. Within 30 days after receiving such notice, the United States shall review the facts and make a determination as to whether the retrofit obligation is waived. If the United States does not object or respond within 30 days, it will not object to the Developer Defendants'

application to the Court thereafter to relieve the Developer Defendants of the obligation to make the retrofit.

Enhanced Retrofits

8. Within 3 years from the date of the entry of this Consent Decree, the Developer Defendants shall complete retrofits to 5 units at The Larkspur, to be identified in advance to the United States, whose consent shall not be unreasonably withheld, so that the 5 units include all of the following features:

- (a) Ovens and ranges with controls located on the front or side of the range, rather than the rear of the range;
- (b) Lever door hardware on passage doors throughout the unit;
- (c) Lever controls on faucets and sinks throughout the unit;
- (d) Wand shower head on flexible tube, or shower head on height adjustable rod;
- (e) Anti-scald valves in showers;
- (f) Replacement of electric flip switches with rocker switches operable with a push;
- (g) Strobe light fire and carbon monoxide alarms;
- (h) Electric thermostats with large numbers and push buttons to adjust, and remote thermostat controls;
- (i) Installation of visual door bell indicator;
- (j) Additional fish-eye or wide view peepholes at 48 inches from floor;
- (k) Installation of full height mirrors in bathrooms;

- (l) Smooth kick plates on push side of unit entry door so that wheelchair users may use footrests to open unit doors without damaging door surface; and
- (m) Full extension drawer slides in kitchen and bath cabinets to allow use of all of the drawer space.

9. In addition, the Developer Defendants shall, no later than 45 days from a written request of a resident or future resident during the term of this Consent Decree, provide any requested combination of the following retrofits to any unit in The Larkspur in which a person with a "handicap" as defined in the FHA resides or will reside pursuant to a signed lease:

- (a) Any of the retrofits listed in paragraph 8(a)-(m);
- (b) Installation of grab bars surrounding the bathing and toilet areas in accordance with ANSI §§ 4.16 - 4.24;
- (c) Taller accessible toilets or raised toilet seat; and
- (d) Accessible larger cabinet hardware that allows a hand or finger to loop into a u-shaped pull.

III. NOTICES OF RETROFITS

10. The Developer Defendants shall provide to all residents at The Larkspur no later than 10 days of the entry of this Consent Decree, and to all future residents during the term of this Consent Decree, the following written notices:

- (a) Notice to Residents or Prospective Residents of Retrofits to Apartment Units in The Larkspur (Appendix C); and

(b) Notice to Residents of Retrofits to Public and Common Areas in The Larkspur (Appendix D).

11. Within 10 days after the notices described in paragraph 10 have been distributed, the Developer Defendants shall certify to the United States in writing that such notices have been given and shall specify the manner in which they were distributed. Such certification shall include the names and addresses of the persons to whom the notices were distributed.

IV. PER DIEM FOR DISPLACEMENT

12. In the event that a resident of a unit within The Larkspur scheduled to undergo a modification pursuant to this Consent Decree is prevented by the modification work from using his or her unit for more than 14 consecutive hours, the Developer Defendants 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 the resident is unable to use his or her unit. 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 money to obtain alternative living accommodations while dislocated.

V. NO ADVERSE ACTION

13. Present and/or future residents may not be charged any additional rent, deposit, fee, or other consideration because of completed, contemplated, or possible retrofits under this Consent Decree. The Developer Defendants shall take no adverse action against any present and/or future resident because such person requests to have his or her apartment, or prospective apartment, modified in accordance with this Consent Decree. Nothing in this Consent Decree

precludes the Developer Defendants from implementing lawful rent increases or imposing lawful fees for any other reason at The Larkspur.

VI. NEUTRAL INSPECTOR

14. The Developer Defendants 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 Appendices A and B. The Inspector shall have expertise in the design and construction requirements of the FHA.

15. The Inspector may, upon request of the Developer Defendants, review and comment upon the sufficiency of any proposed repair in writing in advance of any repair by the Developer Defendants, but such review and comment shall be completed no later than 14 days after the request.

16. An initial inspection of The Larkspur shall take place within 45 days of the completion of all of the retrofits set forth in Appendices A and B, or as soon thereafter as practicable.

17. For each inspection, the Developer Defendants 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 each inspection, including any deficits, and shall send that report only to the Developer Defendants, the United States, and their respective attorneys.

19. If the inspection indicates that not all of the required retrofits have been made as specified in the applicable Appendices, the Developer Defendants 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 Defendants 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.

VII. TRANSFER OF INTEREST IN PROPERTIES

20. The sale or transfer of ownership, in whole or in part, of any entity or person's interest(s) in The Larkspur shall not affect the Developer Defendants' continuing obligation to retrofit, and/or conduct or allow inspections of The Larkspur, as specified in this Consent Decree, unless the Developer Defendants have obtained in writing, as a condition of sale or transfer, the purchaser 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 as set forth in this Consent Decree, and will be subject to the jurisdiction of this Court.

21. Should an owner of The Larkspur decide to sell or transfer any ownership interest in The Larkspur, 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 Larkspur, the Developer Defendants will at least 30 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 The Larkspur is subject to this Consent Decree, including specifically the Developer Defendants' obligations to either (i) complete required retrofit work and allow inspections as set forth herein, 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.

VIII. NON-DISCRIMINATION IN OTHER DESIGN AND CONSTRUCTION

22. For the duration of this Consent Decree, the Developer Defendants shall maintain, and provide to the United States upon request, the following information and statements regarding any Covered Multifamily Dwellings intended to be purchased, developed, built, designed, and/or engineered in whole or in part, by any one of them or by any entities in which any one of them 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, and certifying that he/she

has reviewed the engineering documents for the project and that the design specifications therein fully comply with the requirements of the Fair Housing Act and the Guidelines;

the name, address and telephone number of the architect(s) who are employed or retained by any Developer Defendant and are involved with the project;

a statement from all architect(s) who are employed or retained by any 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, and 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 Fair Housing Act and the Guidelines.

23. If the engineering documents or architectural plans referred to in paragraph 22 above are revised, and the revisions could have any impact on whether the dwellings or complex comply with the Fair Housing Act and/or the Guidelines, the Developer Defendants 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 Developer 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 and the Guidelines.

24. The Developer Defendants will make all new construction fully compliant with the Accessible Design Requirements, the FHA Guidelines, the Americans with Disabilities Act, and the Americans with Disabilities Act Accessibility Standards. During the term of this

Consent Decree, upon reasonable notice, the United States will be permitted full access to such properties to inspect for compliance with such standards, rules, and laws.

IX. PAYMENTS TO AGGRIEVED PERSONS

25. Within 30 days of entry of this Consent Decree, the Developer Defendants shall deposit in an interest-bearing account the total sum of SIXTY THOUSAND DOLLARS (\$60,000) for the purpose of compensating any aggrieved persons who have suffered as a result of the alleged discriminatory housing practices regarding The Larkspur. This deposited money and any accrued interest shall be referred to as the "Settlement Fund."

26. Within 15 days of the entry of this Consent Decree, the Developer Defendants shall publish the Notice to Potential Victims of 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 *Harlem News*, the *Manhattan Times* and the *New York Amsterdam News*, and on two occasions in the *New York Times*. The publication dates in each newspaper shall be separated from one another by 21 days, and at least one of the publication dates shall be on a Sunday if the newspaper publishes a Sunday edition. Within 10 days of each publication date, the Developer Defendants shall provide the newspapers containing the Notice to the United States.

27. Within 15 days of entry of this Consent Decree, the Developer Defendants shall place, on any website used by the Developer Defendants for advertising, a link to an electronic version of the Notice in an Adobe Acrobat Portable Document Format ("PDF"). The link should state "Notice to Potential Victims of 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 subtitles or notices on such website.

28. Within 15 days of the entry of this Consent Decree, the Developer Defendants shall send a copy of the Notice to each of the following organizations:

Brooklyn Center for Independence of the Disabled
27 Smith Street, Suite 200
Brooklyn, New York 11201;

Bronx Independent Living Services
4419 Third Avenue, Suite 2C
Bronx, New York 10457;

Center for Independence of the Disabled, NY
841 Broadway, #301
New York, New York 10003;

Disability Law Center at New York Lawyers for the Public Interest
151 W. 30th Street, 11th Floor
New York, New York 10001;

Disability Rights Advocates
1560 Broadway, 10th Floor
New York, New York 10036;

Fair Housing Justice Center
5 Hanover Square, 17th Floor
New York, New York 10004;

Harlem Independent Living Center
289 St. Nicholas Avenue, Suite 21, Lower Level
New York, New York 10027;

The Legal Aid Society of New York
199 Water Street
New York, New York 10038;

Legal Services NYC
350 Broadway, Sixth Floor
New York, New York 10016;

MFY Legal Services, Inc.
299 Broadway
New York, New York 10007; 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 Defendants shall send, by first-class mail, postage pre-paid, a copy of the Notice to each past or present resident at The Larkspur. For past residents, the Developer Defendants 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 Larkspur. Within 60 days of entry of this Consent Decree, the Developer Defendants 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 Defendants shall permit the United States, upon reasonable notice, to review any records that may reasonably facilitate its efforts to locate and provide notice to potential aggrieved persons and 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 any such person. The United States will give the Developer Defendants written notice of each of its determinations, and the factual basis thereof, together with a copy of a sworn declaration from each aggrieved person setting forth the factual basis of the claim.

33. If the Developer Defendants dispute the United States' determination of an alleged grievance or the amount of a payment to an aggrieved person, the Developer Defendants shall, within 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 Defendants and shall, following any objection, give the Developer Defendants written notice of its reconsidered determination (a "Reconsidered Determination"), setting forth the aggrieved person and the amount that the aggrieved person should be paid. If the Developer Defendants dispute the Reconsidered Determination, the Developer Defendants shall file an objection with the Court, which may sustain or overrule the objection.

34. The Developer Defendants shall, no later than 30 days after receiving a Determination to which no objection has been made, or 10 days after receiving a Reconsidered Determination to which no objection has been filed with the Court, or 10 days after any decision by the Court overruling a filed objection, whichever is earliest, deliver to the United States checks payable to aggrieved persons in the amounts identified by the United States or allowed by the Court. 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 and the Developer Defendants duplicate originals of the release at Appendix F.

35. No adverse action shall be taken by the Developer Defendants against any person because such person makes or seeks to make a claim under Section IX of this Consent Decree.

36. In the event that less than the total amount of 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 plus FIVE THOUSAND DOLLARS (\$5,000) shall be distributed to a qualified organization(s), mutually agreed upon by the United States and the Developer Defendants, subject to the approval of the Court, for the purpose of conducting fair housing enforcement-related activities in New York City.

X. CIVIL PENALTY

37. Within 30 days of the date of the entry of this Consent Decree, the Developer Defendants shall pay a civil penalty of THIRTY-FIVE THOUSAND DOLLARS (\$35,000) 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.

XI. EDUCATIONAL PROGRAM

38. Within 30 days of the entry of this Consent Decree, the Developer Defendants shall provide a copy of this Consent Decree to all their employees involved in the design or construction of The Larkspur, as well as to all other entities (*e.g.*, firms) that were involved in the design or construction of The Larkspur as the Developer Defendants' agent, and secure the signed statement from each employee and other entity acknowledging that he, she, or it 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 employee of a Developer Defendant who will be involved in the design or construction of Covered Multifamily Dwellings,

as well as any entities (*e.g.*, firms) acting as a Developer Defendant's agent that will be involved in the design and construction of Covered Multifamily Dwellings, shall, within 30 days after the date he or she commences an agency or employment relationship with any Developer Defendant, be given a copy of this Consent Decree by such Developer Defendant, and such Developer Defendant shall require each such new employee or entity to sign a statement, acknowledging that he, she, or it 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 Defendants shall provide a copy of this Consent Decree to all their employees involved in rental of units at The Larkspur and/or the provision of services to residents at The Larkspur, and the Managing Agent of The Larkspur, and secure the signed statement from each employee and the Managing Agent acknowledging that he, she, or it 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.

41. During the term of this Consent Decree any new employee of a Developer Defendant who will be involved in the renting of units at The Larkspur, and/or the provision of services to residents at The Larkspur, and the Managing Agent of The Larkspur shall, within 30 days after the date he, she, or it commences an agency or employment relationship with any of the Developer Defendants, be given a copy of this Consent Decree by such Defendant, and such 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. In lieu of providing employees, entities or the agents listed in paragraphs 38 through 41 with copies of the Consent Decree as required therein, a Developer Defendant may provide employees or agents with a summary of the Consent Decree, designed to provide personnel with information relevant to their positions. A Developer Defendant may only provide such summaries in lieu of copies of the Consent Decree with the United States' advance written approval of the form and content of any proposed summary.

43. Each Developer Defendant shall also ensure that it and its employees, as well as any entities (*e.g.*, firms) acting as a Developer Defendant's agent, who have direct management duties for 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). All employees of the Developer Defendants whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case, including the Managing Agent of The Larkspur, shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

44. Within 90 days of the date of entry of this Consent Decree, all employees of the Developer Defendants whose duties, in whole or in part, involve or will involve supervision over the development, design and/or construction of Covered Multifamily Dwellings, as well as any

entities (*e.g.*, firms) acting as a Developer Defendant's agent that will be involved in the design and construction of Covered Multifamily Dwellings, shall undergo training on the design and construction requirements of the Fair Housing Act. The training shall be conducted by a qualified third-party individual, not associated with any Developer Defendant or its counsel, and approved by the Department of Justice, which approval shall not be unreasonably withheld or delayed; and any expenses associated with this training shall be borne by Developer Defendants. The Developer Defendants 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 Defendants shall provide to the United States, 30 days after the training, certifications executed by all the Developer Defendants and covered employees and entities confirming their attendance, in a form substantially equivalent to Appendix H.

XII. NOTICE OF THE DEVELOPER DEFENDANTS' NON-DISCRIMINATION POLICY AND THE DEVELOPER DEFENDANTS' OUTREACH EFFORTS

45. Within 10 days of the date of entry of this Consent Decree, the Developer Defendants 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.

46. 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 Larkspur or any new Covered Multifamily Dwelling that any Developer Defendant may develop or construct, the Developer Defendant shall place, in a conspicuous location, and a

statement that the dwelling units include features for persons with disabilities required by the federal Fair Housing Act.

47. For the duration of this Consent Decree, the Developer Defendants will affirmatively market The Larkspur to persons with disabilities. Such affirmative marketing will include: the distribution of marketing materials regarding accommodation of residents with disabilities to the general public and to governmental and charitable groups that assist persons with disabilities; and the provision of available apartment listings to Disabled American Veterans, the New York State Division of Housing and Community Renewal, the Mayor's Office for People with Disabilities, the New York City Department of Housing Preservation and Development, and the New York City Housing Development Corporation for publication on each group's respective website.

XIII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

48. Within 180 days after the date of entry of this Consent Decree, the Developer Defendants shall submit to the United States an initial report regarding the signed statements of the Developer Defendants' employees and entities who or that have completed the training program specified in paragraph 44 of this Consent Decree. Thereafter, during the term of this Consent Decree, the Developer Defendants shall, on the anniversary of the entry of this Consent Decree, submit to the United States a report containing the signed statements of new employees or entities that, in accordance with paragraph 39 of this Consent Decree, they have received and read the Consent Decree, and had an opportunity to have questions about the Consent Decree answered. The final report shall be due 60 days prior to the anniversary of the entry of this Consent Decree.

49. For the duration of this Consent Decree, the Developer Defendants shall advise the United States in writing within 15 days of receipt of any written administrative or legal fair housing complaint regarding any property owned, managed, and/or designed or constructed by them, or against any employees of the Developer Defendants working at or for any such property, or against the Managing Agent of such property, regarding discrimination on the basis of disability in housing. Upon reasonable notice, the Developer Defendants shall also provide the United States all information in their possession it may request concerning any such complaint. The Developer Defendants shall also advise counsel for the United States, in writing, within 15 days of the resolution of any complaint.

50. For the term of this Consent Decree, the Developer Defendants are required to preserve all records related to this Consent Decree, for The Larkspur, and any other Covered Multifamily Dwellings designed, constructed, owned, operated, or acquired by them during the duration of this Consent Decree. Upon reasonable notice to the Developer Defendants, representatives of the United States shall be permitted to inspect and copy any records of the Developer Defendants or inspect any developments or residential units under the Developer Defendants' 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 Defendants and their tenants from such inspections.

XIV. LOW-INCOME HOUSING TAX CREDIT PROGRAM COMPLIANCE

51. The Developer Defendants are hereby notified that, in the event that the Developer Defendants fail to comply with any of the terms of this Consent Decree and the United States obtains an order establishing such noncompliance, the United States may take any

appropriate 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. RESOLUTION, WAIVER, 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 Defendants engage in any future conduct occurring after entry of this Consent Decree that is determined by a Court to be a violation of the Fair Housing Act, such conduct shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

53. The Complaint in this Action is hereby dismissed without prejudice to reinstatement in accordance with the next paragraph.

54. The Complaint in this Action shall be reinstated at any time during the duration of this Consent Decree against any Developer Defendant that the Court determines has failed to perform, in a timely manner, any act required by this Consent Decree or has otherwise failed to act in conformance with any provision of this Consent Decree.

55. This Consent Decree hereby releases the Developer Defendants, collectively and individually, and each of their officers, employees, agents, directors, managers, partners, members, shareholders, parents, subsidiaries, affiliates, related parties, successors, and assigns and all other persons acting in concert or participation with them, from claims by the United States regarding alleged failures, as of the date of entry of this Consent Decree, to design and construct The Larkspur pursuant to the FHA, including all of the claims alleged in the Action, except for matters referred by the Department of Housing and Urban Development pursuant to

42 U.S.C. § 3612(o). Provided, however, that the Developer Defendants are not released from any claims by the United States concerning any Covered Multifamily Dwellings other than The Larkspur, including any claims regarding previously designed and constructed dwellings and any claims regarding current or future designed and constructed dwellings. Nor are the Developer Defendants released from any claims regarding FHA violations at The Larkspur other than failures to design and construct that property as of the Effective Date of this Consent Decree as required by the FHA.

56. 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. The Developer Defendants reserve their right to object to any such extension and to oppose any such motion.

57. The United States and the Developer Defendants 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 Defendants to perform, in a timely manner, any act required by this Consent Decree or otherwise for their 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.

58. Upon the expiration of the Consent Decree, the Complaint in this Action shall be dismissed with prejudice as to the Developer Defendants.

XVI. TIME FOR PERFORMANCE

59. Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the United States and the relevant Developer Defendants.

XVII. COSTS OF LITIGATION

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

XVIII. RESERVATION OF RIGHTS

61. All obligations agreed to by the Developer Defendants in this Consent Decree are without prejudice to the Developer Defendants' claims, rights and remedies against the Architect Defendant and/or any other person or entity, including, without limitation, claims, rights and remedies concerning negligence, malpractice, contribution, indemnity, and successor liability, all of which claims, rights and remedies are expressly reserved. Nothing in this Consent Decree shall be used as evidence of the liability, or lack thereof, of the Developer Defendants or any person or entity not a party to the Consent Decree.

XIX. NOTICES TO PARTIES

62. All notices under or relating to this Consent Decree shall be in writing and shall be deemed given when sent as follows:

If to the United States: by first-class mail 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, and by fax to (212) 637-2717.

If to the Developer Defendants: by first-class mail addressed to Lemle & Wolff, Inc.,
Managing Agent for The Larkspur, 5925 Broadway, Bronx, New York 10463, and by email to
kroberts@cozen.com and jdichiarag@aol.com.

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

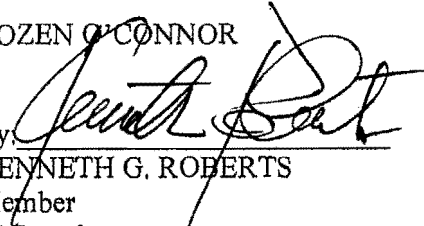
PREET BHARARA
United States Attorney

By: 
BRIAN M. FELDMAN

LI YU
CARINA H. SCHOENBERGER
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. Nos. (212) 637-2777, 2734, 2822
Fax. No. (212) 637-2686, 2702
Brian.Feldman@usdoj.gov
Li.Yu@usdoj.gov
Carina.Schoenberger@usdoj.gov

*For Defendants Larkspur, LLC and Larkspur
Managers LLC:*

COZEN O'CONNOR

By: 
KENNETH G. ROBERTS
Member
45 Broadway
New York, NY 10006
(212) 883-4914
kroberts@cozen.com

SO ORDERED:


UNITED STATES DISTRICT JUDGE
ids/11