

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

TOWER 31, LLC; ATLANTIC 31ST, LLC;
COSTAS KONDYLLIS & PARTNERS, LLP; and
ALAN L. GOLDSTEIN,

Defendants.

CONSENT DECREE

14 Civ. 6066 (AJN)

INTRODUCTION

A. Background

This Consent Decree is entered into between the United States of America (the “United States”) and Defendants Tower 31, LLC; and Atlantic 31st, LLC (together, 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 August 4, 2014, alleges that Defendants Tower 31, LLC; Atlantic 31st, LLC; Costas Kondylis & Partners, LLP; and Alan L. Goldstein (collectively, the “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 Tower 31, a residential apartment complex in Manhattan (“Tower 31”), with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. § 3604(f)(3)(C);

WHEREAS, Tower 31 is subject to the accessible design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(3)(c);

WHEREAS, the Developer Defendants enter this Consent Decree in part to fully support the rights of persons with disabilities to have access to residential spaces in New York City;

B. Developer Defendants

WHEREAS, Tower 31, LLC, a New York limited liability company, owns and developed Tower 31, and in those capacities, participated in the design and construction of Tower 31;

WHEREAS Atlantic 31st, LLC, a New York limited liability company, is a member of Tower 31, LLC, and in that capacity, participated in the design and construction of Tower 31;

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" and 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. Conditions at Tower 31

WHEREAS, Tower 31 is a residential apartment building located at 9 West 31st Street in New York, New York. The complex consists of a tower with elevator access and contains 283 dwelling units, as well as public and common use areas, including a leasing office, laundry facilities, outdoor terraces, a fitness center, a recreation center, and storage areas for tenants;

WHEREAS, the United States has inspected Tower 31 and specifically identified, among other things, the following conditions at Tower 31 which the United States alleges fail to meet the Accessible Design Requirements:

- The opening force required to operate the main entrance doors interferes with accessibility for persons with certain disabilities;
- The counter at main lobby desk is too high to accommodate persons who use wheelchairs;
- The excessively high threshold at the entrance to the leasing office interferes with accessibility for persons who use wheelchairs;
- The sign for the leasing office lacks raised-letter Braille for persons with visual impairments;
- The location of the sink in the lobby unisex bathroom interferes with accessibility for persons who use wheelchairs;
- The mailboxes are mounted too high to accommodate persons who use wheelchairs;
- The excessively high thresholds at bathroom and kitchen entrances in individual units interfere with accessible routes for persons who use wheelchairs;
- There is insufficient clear opening width of bedroom, bathroom, terrace, and closet doors in individual units;
- Kitchens in individual units lack sufficient width to accommodate persons who use wheelchairs;

- The kitchen sinks and refrigerators in individual units lack sufficient clearance for persons who use wheelchairs;
- There is insufficient clear floor space within bathrooms in individual units for maneuvering by persons who use wheelchairs;
- The thermostats and kitchen outlets in individual units are inaccessible to persons who use wheelchairs;
- The trash rooms lack sufficient clearance to accommodate persons who use wheelchairs;
- The entrance to the laundry room lacks sufficient clearance and presents an excessively high threshold for persons who use wheelchairs;
- The entrance doors to the common terraces are too narrow and/or too uneven for access by people who use wheelchairs;
- The opening force required to operate the entrance doors to the fitness center, the tenant storage room, and the bicycle storage room interferes with accessibility for persons with certain disabilities; and
- The entrance door to the tenants' entertainment lounge and to the media room in that lounge lacks sufficient clearance for persons who use wheelchairs.

WHEREAS, the United States alleges that the above conditions are failures to meet the Accessible Design Requirements;

E. Consent of the Parties to Entry of this Decree

WHEREAS, the Developer Defendants and the United States (together, 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), and further agree that this controversy should be resolved without further proceedings and without an evidentiary hearing or a trial;

WHEREAS, the Parties' entry into this Consent Decree is not intended to and does not limit the Developer Defendants from instituting a separate action seeking contribution, or damages in the nature of indemnification or breach of contract or for any related reason from any individual or entity involved in the design and construction of the property that is the subject of this Consent Decree, including but not limited to Defendants Costas Kondylis & Partners, LLP and Alan L. Goldstein; and

WHEREAS, the Developer Defendants agree to make modifications to Tower 31 as set forth herein, and in the attached appendices, 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. RETROFITS AT TOWER 31

2. The United States alleges that Tower 31 was not designed or constructed in accordance with the FHA or the Fair Housing Accessibility Guidelines, Design Guidelines for Accessible/Adaptable Dwellings, 56 Fed. Reg. 9472 (Mar. 6, 1991) (the "Guidelines"). Without admitting liability, the Developer Defendants agree to address the conditions alleged to be violations of the FHA by making the modifications described in Appendices A and B.

A. Modifications to the Public and Common Use Areas

3. The Developer Defendants acknowledge that conditions exist in the public and common use areas of Tower 31 that do not meet the standards in the Guidelines. The Developer

Defendants agree to modify the public and common use areas of Tower 31 by taking the actions described herein and in Appendix A.

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

5. Within 15 days of the entry of this Consent Decree, the Developer Defendants shall provide written notices to all tenants at Tower 31 stating that the retrofits required by this Consent Decree will be performed to the public and common use areas of Tower 31. Such notice shall conform to Appendix C and may be delivered electronically or in hard copy.

6. The Developer Defendants shall certify to the United States in writing that the notices required by paragraph 5 have been distributed and shall specify the manner in which they were distributed, within 15 days after such distribution. Such certification shall include the names and addresses of the persons to whom the notices were distributed.

B. Modifications to Dwelling Unit Interiors

7. The Developer Defendants acknowledge that conditions exist in the dwelling unit interiors of Tower 31 that do not meet the standards in the Guidelines. The Developer Defendants agree to modify the dwelling unit interiors at Tower 31 by taking the actions described herein and in Appendix B.

8. For each unit listed in Appendix B, as soon as reasonably possible, but no later than one year from the entry of this Consent Decree (unless otherwise specified in Appendix B), the Developer Defendants shall finish the retrofits listed in Appendix B. The Developer Defendants shall make reasonable efforts to minimize inconvenience to tenants in making such retrofits.

9. Within 15 days from the date of the entry of this Consent Decree, the Developer Defendants shall inform each tenant that: (1) the United States has alleged that certain features of the tenant's unit do not meet the accessible and adaptive design requirements of the Act and that, to settle this lawsuit, the Developer Defendants agreed to retrofit certain features of the Covered Multifamily Dwelling units to make them more accessible; (2) the retrofits set forth in Appendix B will be provided within 45 days of any request (unless a shorter time is specified in Appendix B) but will, in any event, take place within one year; and (3) the scheduling of the retrofits will take into account the preferences and convenience of the tenant or future tenant and that relocation costs, if any, will be provided in advance. The notice shall be substantially in the form of Appendix D and may be delivered electronically or in hard copy.

10. The Developer Defendants shall certify to the United States in writing that the notices described in paragraph 9 above have been distributed and shall specify the manner in which they were distributed, within 15 days after such distribution. Such certification shall include the names and addresses of the persons to whom the notices were distributed.

III. ADDITIONAL PROPERTY

11. In addition to Tower 31, certain members of Atlantic 31st, LLC have participated in the design and construction of another multifamily housing complex, listed in Appendix E, for occupancy after March 13, 1991. This property shall be referred to as the "Additional Property." Tower 111 LLC (the "LLC"), a New York limited liability corporation, owns and developed the Additional Property.

12. Within 30 days from the entry of this Consent Decree, the Developer Defendants shall cause the LLC, and the LLC shall agree, to retain one or more licensed design professionals with expertise regarding the FHA and the Accessible Design Requirements ("Surveyor(s)"), approved by the United States, to survey the Additional Property to determine what actions, if

any, must be taken to bring this property into compliance with the accessibility requirements of the FHA.

13. The Surveyor(s) shall physically inspect all common areas, public accommodations, at least one apartment of each floor plan type (including but not limited to a unit of each floor plan type specifically modified for use by persons with disabilities), and every unique feature covered by the FHA (*e.g.*, each unique bathroom layout) within the Additional Property, in accordance with survey instructions to be developed by the Developer Defendants and approved by the United States, and shall also review all applicable plans.

14. For purposes of conducting surveys and reporting survey results as required by Section III of this Consent Decree, the Surveyor(s) shall measure and report compliance with the FHA by reference to one of the following standards (each a "Standard"), where such a single Standard has been used in its entirety (*i.e.*, where every design feature within the Additional Property in question complies with all of the provisions in the particular selected Standard that addresses the FHA requirements): (i) the Guidelines; (ii) a standard designated as an FHA safe harbor by the Department of Housing and Urban Development; or (iii) a recognized, comparable, objective standard of accessibility that has been found by this district court or the Second Circuit to incorporate the requirements of the Fair Housing Act. For the Additional Property, the Developer Defendants shall cause the LLC, and the LLC shall agree, to select a single Standard that shall be applied by the Surveyor to that property.

15. The Developer Defendants shall cause the LLC, and the LLC shall agree, to provide the Surveyor(s) with the best available information regarding the size and location of grab bar reinforcements. Such information must include a physical inspection of more than one dwelling unit bathroom within each property to ascertain grab bar reinforcement length.

16. Within 60 days of the entry of this Consent Decree, the Developer Defendants shall cause the LLC, and the LLC shall agree, to provide the United States with a schedule of the survey for the Additional Property, along with a detailed description of the scope and methodology of the survey, including how the Surveyor(s) will identify and survey representative unit types to ensure that all potential FHA violations are identified in accordance with this Consent Decree, and with survey instructions developed by the Developer Defendants and approved by the United States. No survey may be commenced absent the approval of the United States as to the schedule, scope, and methodology of the survey. The survey must include photographic documentation of any feature that does not comply with the requirements of the FHA. With respect to each feature covered by the FHA that was not constructed in compliance with the FHA, the survey must indicate whether the feature was designed in compliance with the FHA according to available plans.

17. The Developer Defendants shall cause the LLC, and the LLC shall agree, to complete a survey of the Additional Property set forth in Appendix E within six months of entry of this Consent Decree. The United States shall have the right to accompany the Surveyor(s) on his or her survey of the property, and the Surveyor(s) shall provide the United States with reasonable notice of each survey, at least 30 days in advance of any survey. For the Additional Property, within 30 days following the completion of both the plan review and the physical survey, the Surveyor(s) shall provide to the parties a detailed written report setting out the scope and methodology of each survey and all of the information set forth in paragraph 16 above, including details and photographic documentation regarding any features that do not comply with the FHA, and, for each feature covered by the FHA that was not constructed in compliance with the FHA, details regarding whether the feature was designed in compliance with the FHA according to available plans.

18. Within 30 days of receipt of the report of the Surveyor(s) with respect to the Additional Property, to the extent any features do not comply with the FHA, the Developer Defendants shall cause the LLC, and the LLC shall agree, to submit to the United States a proposal for performing the retrofits required to bring all common and public use areas and all individual dwelling units into compliance with the FHA.

19. Within 60 days of receipt of the retrofit proposal, the United States shall notify the Developer Defendants in writing of any objections to the proposal. If there are no written objections, the Developer Defendants shall cause the LLC, and the LLC shall agree, to proceed with the modifications they specified. If the United States provides objections, the parties shall endeavor to expeditiously and in good faith resolve any objections, after which the Developer Defendants shall, within 15 days, submit a revised retrofit proposal, to which the United States shall have 15 days to provide written objections; if there are no objections, the Developer Defendants shall cause the LLC, and the LLC shall agree, to proceed with the modifications they specified in the revised retrofit proposal. If, after expeditious and good faith negotiations, the parties are unable to resolve any differences concerning appropriate modifications, any party may raise the matter(s) to the Court for resolution.

20. The Developer Defendants shall cause the LLC, and the LLC shall agree, to make the retrofits to common or public use areas of the Additional Property within six months of the United States' approval of a retrofit proposal. The Developer Defendants shall cause the LLC, and the LLC shall agree, to make reasonable efforts to minimize inconvenience to tenants in making such retrofits.

21. The Developer Defendants shall cause the LLC, and the LLC shall agree, to perform all retrofits to individual dwelling units of the Additional Property no later than (a) six months after the United States' approval of a retrofit proposal, or (b) 10 days from the request of

any tenant or future tenant of the unit, following the United States' approval of a retrofit proposal. The Developer Defendants shall cause the LLC, and the LLC shall agree, to make reasonable efforts to minimize inconvenience to tenants in making such retrofits.

22. Within 30 days of the United States' approval of a retrofit proposal for the Additional Property, the Developer Defendants shall cause the LLC, and the LLC shall agree, to inform each tenant or prospective tenant who resides, or who seeks to reside, in an individual dwelling unit that is subject to being retrofitted in any manner set forth in the applicable retrofit proposal, that (1) to settle a lawsuit, the Developer Defendants agreed to cause to be retrofitted certain features of the Covered Multifamily Dwellings to make them more accessible; (2) the features of accessible and adaptive design can be retrofitted in the unit upon request of the tenant or prospective tenant; (3) the retrofits offered will be at no cost to the unit tenant or prospective tenant; and (4) the scheduling of the retrofits will take into account the preferences and convenience of the tenant or prospective tenant and that relocation costs, if any, will be provided in advance. The notice(s) shall be substantially in the form of Appendix D, modified as appropriate to reflect the particular property at issue and the applicable retrofits. For purposes of this Consent Decree, "prospective tenant" shall mean any individual who has taken a tour of a unit and/or applied to lease a unit, but has not yet signed a lease.

23. The Developer Defendants shall cause the LLC, and the LLC shall agree, to certify to the United States in writing that the notices described in paragraph 22 above 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. The Developer Defendants shall pay all costs associated with the surveys and modifications/retrofits to the Additional Property, without prejudice to their

ability to seek contribution or indemnification from other sources for such modifications/retrofits.

IV. PER DIEM FOR DISPLACEMENT

24. In the event that a tenant of an unit within Tower 31 or the Additional Property that is scheduled to undergo a modification is dislocated from his or her unit for more than a 14-hour consecutive period, the Developer Defendants shall pay, or shall cause the LLC, and the LLC shall agree, to pay, such tenant, *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 tenant’s unit, so that the resident can use the money to obtain alternative living accommodations while dislocated.

V. NO ADVERSE ACTION

25. Neither present nor future tenants of Tower 31 or the Additional Property may be charged any additional rent, deposit, fee, or other consideration for the dwelling units in which retrofits are or may be implemented because of completed, contemplated, or possible retrofits. The Developer Defendants and the LLC shall take no adverse action against any present or future tenant because such person requests to have his or her apartment, or prospective apartment, modified in accordance with this Consent Decree. Nothing in this paragraph shall restrict or impede the Developer Defendants’ or the LLC’s rights to continue, in a non-discriminatory manner, to lawfully establish and raise rents consistent with their business goals and obligations and with market conditions, including increasing rents after the expiration of a lease due to an increase in the market value of the unit, or as permitted by the rent stabilization laws, whether or not such an increase is on account of upgrades to such unit (other than retrofits

required under this Consent Decree) done at or about the same time as retrofits required under this Consent Decree.

VI. NEUTRAL INSPECTOR

26. The Developer Defendants shall enter into a contract, or shall cause the LLC, and the LLC shall agree, to enter into a contract, with a neutral inspector(s) approved by the United States (“Inspector(s)”) to conduct on-site inspections of all retrofits performed under this Consent Decree to determine whether modifications have been made in compliance with the specifications in Appendices A and B at Tower 31, and with the specifications in the approved retrofit proposals for the Additional Property. The Inspector(s) shall have expertise in the design and construction requirements of the FHA.

27. If requested by the Developer Defendants, the Inspector(s) may review and **comment** upon the sufficiency of all proposed repairs in writing in advance of any repair by the Developer Defendants or the LLC.

28. An initial inspection of Tower 31 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. An inspection of the Additional Property shall take place within 45 days of the completion of the retrofits set forth in the applicable approved retrofit proposal.

29. 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.¹

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. Electronic courtesy copies shall also be delivered to the undersigned Assistant United States Attorneys.

30. The Inspector(s) shall set out in writing the results of his or her inspection, including any deficits, and shall send that report to the Developer Defendants, the LLC, and the United States. The report shall state whether the retrofits required by the applicable Appendix or approved retrofit proposal have been completed, and shall list any required retrofits that were not completed.

31. If the inspection indicates that not all of the required retrofits have been made as specified in the applicable Appendices, or retrofit proposals, the Developer Defendants shall correct, or shall cause the LLC, and the LLC shall agree, to correct, any deficiencies within 60 days and shall pay for another inspection by the same Inspector(s) to certify that the deficiencies have been corrected. This process shall continue until the Inspector(s) certifies that all of the necessary modifications have been made. The Developer Defendants shall pay all of the Inspector(s)'s reasonable costs associated with these inspections, and such payments shall be made without regard to the Inspector(s)'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. IMPEDIMENTS TO PERFORMANCE

32. In the event that any act or omission beyond the Developer Defendants' control and occurring without its fault or negligence affects the performance of any requirement in Section II, III, or VI of the Consent Decree, the Developer Defendants and the United States shall endeavor, in good faith, to determine whether modifications to this Consent Decree are necessary and, if so, to seek jointly such modifications from the Court. If such efforts are unsuccessful, any party may seek relief from the Court.

VIII. TRANSFER OF INTEREST IN PROPERTIES

33. The sale or transfer of ownership, in whole or in part, of any Developer Defendant's interest(s) in Tower 31 shall not affect any Developer Defendant's continuing obligation(s) to retrofit, and/or conduct or allow inspections or surveys of, Tower 31, as specified in this Consent Decree, unless that Developer Defendant has 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 or surveys as set forth in this Consent Decree, and will be subject to the jurisdiction of this Court.

34. Should an owner of Tower 31 decide to sell or transfer any ownership of Tower 31, in whole or in part, or any portion thereof, prior to the completion of the retrofits specified in this Consent Decree's Appendices A and B describing the retrofits for Tower 31, such owner 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 property is subject to this Consent Decree, including specifically the Developer Defendants' 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.

IX. NON-DISCRIMINATION IN OTHER DESIGN AND CONSTRUCTION

35. For the duration of this Consent Decree, the Developer Defendants and any member of Atlantic 31st, LLC, 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 the Developer Defendants or any two or more members of Atlantic 31st, LLC, collectively, or by any entity in which any one of the Developer Defendants or any member of Atlantic 31st, LLC has a position of control as an officer, director, member, or manager, or have 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) or FHA consultant involved with the project;
- a statement from a civil engineer or FHA consultant involved with the project acknowledging and describing his/her knowledge of and training in the requirements of the FHA and in the field of accessible site design, 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 FHA, and stating a Standard with which the design specifications comply;
- the name, address and telephone number of the architect(s) who are employed or retained by any Developer Defendant and/or any member of Atlantic 31st, LLC, and are involved with the project; and
- a statement from all architect(s) who are employed or retained by any Developer Defendant and/or any member of Atlantic 31st, LLC, and are involved with the project, acknowledging and describing his/her knowledge of and training in the requirements of the FHA 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 a Standard with which the design specifications comply.

36. For the duration of this Consent Decree, if the engineering documents or architectural plans referred to in paragraph 35 are revised, and the revisions could have any impact on whether the dwellings or complex complies with the FHA, the Developer Defendant and/or member of Atlantic 31st, LLC 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 such Developer Defendant and/or member of Atlantic 31st, LLC, 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 FHA, and stating a Standard with which the design specifications comply.

37. The Developer Defendants and all members of Atlantic 31st, LLC shall design and construct all new Covered Multifamily Dwellings in full compliance with a Standard. During the duration 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.

X. PAYMENTS TO AGGRIEVED PERSONS

38. Within 30 days of entry of this Consent Decree, the Developer Defendants shall deposit in an interest-bearing account the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) for the purpose of compensating any aggrieved persons who may have suffered as a result of the Developer Defendants' discriminatory housing practices regarding Tower 31. This deposited money, plus any accrued interest, shall be referred to as the "Initial Settlement Fund."

39. Within 15 days of the entry of this Consent Decree, the Developer Defendants shall publish the Notice to Persons Who May Have Suffered From Inadequate Accessible

Features at Tower 31 (“Notice”) at Appendix F 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 *New York Times*; *amNew York*; 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 (or Saturday, if the newspaper is not published on Sunday). Within 10 days after the last publication date, the Developer Defendants shall provide the newspapers containing the Notice to the United States.

40. Within 15 days of entry of this Consent Decree, the Developer Defendants shall place on <http://www.tower31.com> a link, which shall be maintained for the duration of this Consent Decree, 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 From Inadequate Accessible Features at Tower 31,” and should appear on the upper half of the website, in a conspicuous font style and color, in a font size no smaller than the font size for any of the terms “Amenities,” “Interiors,” “Views,” “Plans,” “Neighborhood,” “Contact,” and “Welcome,” as they appeared as on July 31, 2014.

41. Within 15 days of provision of the written report of the Surveyor regarding the Additional Property to the parties, if the written report identifies any features that do not comply with the FHA, the Developer Defendants shall place, or shall cause the LLC, and the LLC shall agree, to place, on any website maintained by them with respect to the Additional Property, including <http://www.thecontinental.com>, a link, which shall be maintained for the duration of this Consent Decree, 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 font that is clearly visible, in a prominent font size.

42. 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.

43. Within 30 days of the entry of this Consent Decree, the Developer Defendants shall send, or shall cause the LLC, and the LLC shall agree, to send, by first-class mail, postage pre-paid, a copy of the Notice to each past or present tenant at Tower 31 and the Additional Property. For past tenants, the Developer Defendants will have complied with the requirements of this paragraph by mailing such notice to the forwarding address provided by the former tenant at the time the former tenant moved out of Tower 31 or the Additional Property. 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.

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

45. The Developer Defendants shall permit the United States, upon reasonable notice, to review any non-privileged records that may reasonably facilitate its investigations to locate allegedly aggrieved persons and make determinations regarding their potential claims. In addition, the Developer Defendants shall identify, or shall cause the LLC, and the LLC shall agree, to identify, to the United States any allegedly aggrieved persons or any past, present, or prospective tenants of Tower 31 or the Additional Property who have disabilities or regular guests with disabilities, to the extent that the Developer Defendants, the LLC, or their employees or agents at Tower 31 or the Additional Property, possess such non-privileged information required to make such identifications.

46. 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 Defendants 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. If the United States determines that the Initial Settlement Fund is insufficient to compensate the aggrieved persons at Tower 31 and the Additional Property, the United States shall be entitled to make determinations that award aggrieved persons, in the aggregate, a total amount exceeding the amount in the Initial Settlement Fund, but not exceeding THREE HUNDRED THOUSAND DOLLARS (\$300,000).

47. If the Developer Defendants dispute the amount of a payment to an aggrieved person, the Developer Defendants shall, within 20 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 parties may agree to extend the Developer Defendants' time to object to any Determination for good cause shown. The United States shall give due consideration to any objections it receives from the Developer Defendants and shall submit, following any objection, its reconsidered determination (a "Reconsidered Determination") to the Developer Defendants, in writing, setting forth the aggrieved person and the amount that the aggrieved person shall be paid. If the Developer Defendants dispute the Reconsidered Determination, the Developer Defendants may file an objection with the Court, which may sustain or overrule the objection.

48. The Developer Defendants shall, no later than 30 days after receiving a Determination to which no objection has been made, 15 days after receiving a Reconsidered Determination to which no objection has been filed with the Court, or 15 days after any decision by the Court overruling a filed objection and/or issuing an order to award the aggrieved persons a total amount exceeding the amount of the Initial Settlement Fund, whichever is earliest, deliver to the United States checks 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 three hundred thousand dollars (\$300,000), including accrued interest. No aggrieved person shall be paid until

he/she has executed and delivered to the United States the release at Appendix G. The United States shall deliver a copy of the executed release to Developer Defendants.

49. No adverse action shall be taken against any person because such person cooperates with the United States in its investigations, makes a claim, or seeks to make a claim under, Section X of this Consent Decree.

50. In the event that less than the total amount in the Initial Settlement Fund including accrued interest is distributed to aggrieved persons, then, no later than the earlier of (a) when the United States determines that no further aggrieved persons will be identified, or (b) the expiration of this Consent Decree, any remainder in the Initial Settlement Fund 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. Before selecting the qualified organization(s), Developer Defendants will obtain a proposal from the organization(s) on how the funds will be used consistent with the above-stated purposes, submit such proposal to the United States, and consult with and obtain the non-objection of the United States. The United States and Developer Defendants may request modification of the proposal before approving the organization(s). The parties shall thereafter seek approval from the Court to distribute the remaining funds to the qualified organization(s). Developer Defendants also shall require that the qualified organization(s) receiving funds submit to the Developer Defendants and the United States a detailed report on how the funds are utilized within one year of receipt of funds, and every year thereafter until the funds are exhausted. The Developer Defendants 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.

XI. CIVIL PENALTY

51. 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. The Developer Defendants shall pay said sum by submitting a check made payable to the “United States of America” to the United States.

XII. EDUCATIONAL PROGRAM

52. Within 30 days of the entry of this Consent Decree, each Developer Defendant and the members of Atlantic 31st, LLC shall provide a copy of this Consent Decree to all of their agents and employees materially involved in the design or construction of Tower 31 or the Additional Property and 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 H.

53. During the duration of this Consent Decree, any new agent or supervisor of a Developer Defendant or of a member of Atlantic 31st, LLC who will have any supervisory authority 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 any Developer Defendant or member of Atlantic 31st, LLC, be given a copy of this Consent Decree by such Developer Defendant or member of Atlantic 31st, LLC, and such Developer Defendant or member of Atlantic 31st, LLC 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 H.

54. Within 30 days of the entry of this Consent Decree, the Developer Defendants and the members of Atlantic 31st, LLC shall provide a copy of this Consent Decree to all their agents and employees who will be directly involved in rental of dwelling units at Tower 31 or the Additional Property, and/or the provision of services to tenants at Tower 31 or the Additional Property, and 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 H.

55. During the duration of this Consent Decree any new agent or supervisor of a Developer Defendant or of a member of Atlantic 31st, LLC who will be directly involved in the renting of units at Tower 31 or the Additional Property, and/or the provision of services to tenants at Tower 31 or the Additional Property shall, within 30 days after the date he or she commences an agency or employment relationship with any Developer Defendant or member of Atlantic 31st, LLC, be given a copy of this Consent Decree by such Developer Defendant or member of Atlantic 31st, LLC, and such Developer Defendant or member of Atlantic 31st, LLC 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 H.

56. In lieu of providing individuals or entities with copies of the Consent Decree as required by the preceding paragraphs of Part XII, a Developer Defendant or member of Atlantic 31st, LLC may instead provide a summary of the Consent Decree with the United States' advance written approval of the form and content of any proposed summary. Copies of the

Consent Decree (or approved summary) may be provided in hard copy, electronically, or by a link to a website where a copy of the Consent Decree (or approved summary) may be found.

57. The Developer Defendants and the members of Atlantic 31st, LLC who have supervisory authority over the design and/or construction of Covered Multifamily Dwellings shall also ensure that they and their employees and agents who have such supervisory authority, 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 Defendants and the members of Atlantic 31st, LLC whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings shall ensure that they and their employees and agents who have such duties, in whole or in part, shall be informed of those portions of the FHA that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

58. Within 90 days of the date of entry of this Consent Decree, the Developer Defendants and the members of Atlantic 31st, LLC whose duties, in whole or in part, involve or will involve supervision over the development, design and/or construction of multifamily dwellings shall ensure that they and their employees and agents who have such duties, in whole or in part, shall undergo training on the design and construction requirements of the FHA.² The training shall be conducted by a qualified third-party individual, not associated with any Developer Defendant or with any member of Atlantic 31st, LLC or any counsel for each of them,

² 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 by the Department of Justice; and any expenses associated with this training shall be paid by the 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 Defendants and covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix I. The United States may waive the training requirements in the foregoing paragraph for such employees or agents who received training from a qualified trainer on the design and construction requirements or the accessibility requirements of the FHA in the six months prior to the entry of this Consent Decree upon the provision of executed certifications from each such employee or agent.

XIII. NOTICE OF DEVELOPER DEFENDANTS' NON-DISCRIMINATION POLICY

59. Within 10 days of the date of entry of this Consent Decree, the Developer Defendants and the members of Atlantic 31st, LLC 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 dwelling units are available for rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

60. 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 complexes or any new complexes that the Developer Defendants or any member of Atlantic 31st, LLC may develop or construct, the Developer Defendants or member of Atlantic 31st, LLC shall place, in a conspicuous location, a statement that the dwelling units include features for persons with disabilities required by the FHA.

61. 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 employees and agents who have completed the training program specified in paragraph 58 of this Consent Decree. Thereafter, during the duration 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 and agents that, in accordance with paragraphs 53 and 53 of this Consent Decree, they have received and read the Consent Decree, and had an opportunity to have questions about the Consent Decree answered, except that the last report shall be due 60 days prior to the anniversary.

62. 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 judicial fair housing complaint regarding any property owned, managed, and/or designed or constructed by them or any member of Atlantic 31st, LLC, or against any employees or agents of the Developer Defendants or any member of Atlantic 31st, LLC working at or for any such property, alleging discrimination on the basis of disability in housing. Upon reasonable notice, the Developer Defendants shall also provide the United States all non-privileged information 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.

63. For the duration of this Consent Decree, the Developer Defendants and the members of Atlantic 31st, LLC are required to preserve all records related to this Consent Decree for Tower 31 or the Additional Property 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 or relevant member of Atlantic 31st, LLC, representatives of the United States shall be permitted to inspect and copy any non-privileged

records of the Developer Defendants or members of Atlantic 31st, LLC or inspect any developments or residential units under the control of Developer Defendants or any member of Atlantic 31st, LLC 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, members of Atlantic 31st, LLC, and/or tenants from such inspections.

XIV. LOW-INCOME HOUSING TAX CREDIT PROGRAM COMPLIANCE

64. 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. DURATION OF CONSENT DECREE AND
TERMINATION OF LEGAL ACTION**

65. 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 leads to a determination of a violation of the FHA, such conduct shall constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

66. The Complaint in this action is hereby dismissed as to the Developer Defendants without prejudice to reinstatement in accordance with the next paragraph.

67. 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 duration of the Consent Decree

may also be extended by the mutual written agreement of the United States and the Developer Defendant.

68. 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.

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

XVI. TIME FOR PERFORMANCE

70. 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 Defendant.

XVII. COSTS OF LITIGATION

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

72. The Parties understand and agree that this Consent Decree contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiation, oral or otherwise, between the Parties or their counsel that are not included herein shall be of no force or effect.

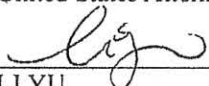
The undersigned apply for and consent to the entry of this Consent Decree:

For the United States:

GREGORY B. FRIEL
Deputy Assistant Attorney General
Civil Rights Division

PREET BHARARA
United States Attorney

By:



LI YU
CARINA H. SCHOENBERGER
EMILY E. DAUGHTRY
JESSICA JEAN HU
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. Nos. (212) 637-2734, 2822, 2777
Fax Nos. (212) 637-2717, 2702
Li.Yu@usdoj.gov
Carina.Schoenberger@usdoj.gov
Emily.Daughtry@usdoj.gov
Jessica.Hu@usdoj.gov

For Defendant Tower 31, LLC:

SPEARS & IMES LLP

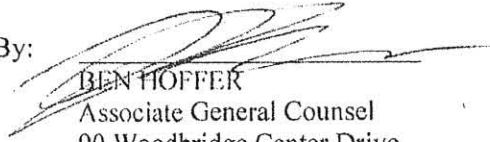
By:



LINDA IMES
JOANNA C. HENDON
51 Madison Avenue
New York, New York 10010
Tel. No. (212) 213-6991
Fax No. (212) 213-0849
limes@spearsimes.com
jhendon@spearsimes.com

For Defendant Atlantic 31st, LLC and its members:

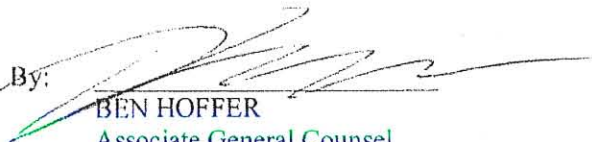
By:



BEN HOFFER
Associate General Counsel
90 Woodbridge Center Drive
Suite 600
Woodbridge, New Jersey 07095
Tel. No. (732) 750-1111
Fax No. (732) 582-2125
benh@atlanticrdc.com

*For Tower 111, LLC, for purposes of relief as to
Paragraphs 12-25, 26, 30, 31, 41, 43, and 45 of this
Consent Decree:*

By:



BEN HOFFER
Associate General Counsel
90 Woodbridge Center Drive
Suite 600
Woodbridge, New Jersey 07095
Tel. No. (732) 750-1111
Fax No. (732) 582-2125
benh@atlanticrdc.com

SO ORDERED:



HON. ALISON J. NATHAN
UNITED STATES DISTRICT JUDGE

DATED:

8/11/14