

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

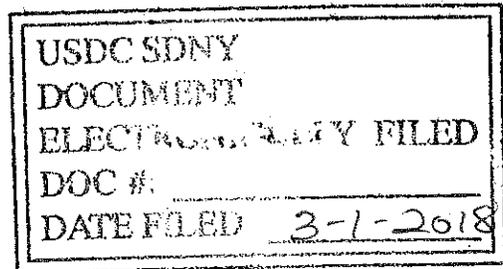
v.

THE CONDOMINIUM BOARD OF THE
KIPS BAY TOWERS CONDOMINIUM, INC.

Defendant.

**STIPULATION OF
SETTLEMENT**

17 Civ. 361 (DLC)



INTRODUCTION

A. Background

This Stipulation of Settlement (the “Agreement”) is entered into between plaintiff the United States of America (the “United States”) and defendant the condominium board of the Kips Bay Towers Condominium (“Defendant” or “Kips Bay”).

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 January 18, 2017, alleges that Defendant maintains and employs an overly burdensome and intrusive process governing waivers to its “no pets” policy, which has deterred and prevented persons with disabilities from obtaining reasonable accommodations to the “no pets” policy in order to reside with emotional support animals; and that Kips Bay has used this process to unlawfully deny accommodation requests by persons with disabilities, and has engaged in a pattern or practice of denying requests for accommodations to its “no pets” rule and otherwise violating the FHA;

WHEREAS, Kips Bay has denied the United States' allegations that it has unlawfully discriminated against any Kips Bay Unit Owners or residents;

B. Kips Bay

WHEREAS, Kips Bay, located in Manhattan, New York, is a private, 1,118-unit condominium complex;

C. Kips Bay's "No Pets" Policy

WHEREAS, in 1996, Kips Bay enacted a "no pets" policy, contained in Kips Bay's House Rules, which specifically prohibited animals in Kips Bay's buildings without Kips Bay's prior written consent. In 2011, Kips Bay amended the policy, stating that all requests for service and emotional support animals must be approved "in writing, by the Board." Kips Bay had no written procedure for deciding reasonable accommodation requests for individuals who require service or emotional support animals because of a disability, but Kips Bay generally required applicants to provide notarized statements from two doctors, including, in some cases, detailed information about their disabilities, and sometimes required applicants or their doctors to answer a series of follow-up questions; and if, applications were rejected, did not provide any reasons for the rejection;

D. The Complainants

WHEREAS, four individuals—Felicia Porges, Edward Melnick, Henri Gueron, and William Hitchcock (together, the "Complainants")—each separately applied to Kips Bay for emotional support animals, and all four requests were denied. Complainants subsequently filed separate housing discrimination complaints with the United States Department of Housing and Urban Development ("HUD") alleging, inter alia, that they were discriminated against on the basis of disability and wrongly denied requests to reside with emotional support animals;

WHEREAS, Kips Bay has denied the claims of the individual Complainants, including their allegations of unlawful conduct;

E. Consent of the Parties to this Agreement

WHEREAS, 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. § 3612(o) and § 3614(a). The parties further agree that this controversy should be resolved without further proceedings and without an evidentiary hearing or a trial;

WHEREAS, in order to avoid further costly and protracted litigation, Kips Bay agrees to make modifications to its process governing requests for reasonable accommodation and provide other relief as set forth herein.

It is hereby STIPULATED and AGREED:

A. GENERAL TERMS

1. Defendant and each of its officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with it, will not discriminate on the basis of disability as prohibited by the FHA. Specifically, Defendant and each of its officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with it, agree not to:
 - a. discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, in violation of 42 U.S.C. § 3604(f)(1)(A);
 - b. discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);

- c. fail or refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling, as required by 42 U.S.C. § 3604(f)(3)(B);
- d. coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of any person having exercised or enjoyed, or on account of any person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Section 3604 of the FHA, in violation of 42 U.S.C. § 3617.

B. MODIFICATION OF REASONABLE ACCOMODATION POLICY

- 2. As soon as reasonably possible, but no later than thirty (30) days after the date this Agreement is executed by Defendant and the United States (the "Execution Date"), Kips Bay shall adopt and implement the agreed upon process and procedures respecting its reasonable accommodation policy for receiving and handling requests for reasonable accommodations made by individuals with disabilities, entitled "Kips Bay Reasonable Accommodation Policy," as attached hereto in Appendix A. Nothing in this Agreement or in the Kips Bay Reasonable Accommodation Policy precludes Kips Bay from pursuing claims against unit owners or other residents under state law to the extent that there is no conflict between its pursuit of those claims and this Agreement, the Fair Housing Act, or any other applicable law.
- 3. Kips Bay shall provide notice and documentation to the United States within thirty (30) days of adoption and implementation of the Kips Bay Reasonable Accommodation Policy.

4. After adopting the Kips Bay Reasonable Accommodation Policy, Kips Bay shall not make any substantive revisions to the policy without prior approval from the United States. The United States' approval of proposed substantive revisions will not be unreasonably withheld.

**C. COMPLAINANTS' REASONABLE ACCOMMODATION REQUESTS
GRANTED**

5. Complainants Felicia Porges, Edward Melnick, and Henri Gueron shall be permitted to keep the dog he or she has obtained and which was the subject of their request for a reasonable accommodation in his or her apartment at Kips Bay for as long as he or she resides at Kips Bay without the need to make any request or application to Kips Bay or receive any approval from Kips Bay. Each Complainant shall be entitled to replace such dog with another emotional support animal in his or her apartment, if Complainant so chooses, at any time during his or her residency at Kips Bay without the need to make any request or application to Kips Bay or receive any approval from Kips Bay. Complainant William Hitchcock shall be permitted to keep the dog he has obtained, and which is the subject of his request for a reasonable accommodation, in his apartment at any time during his residency at Kips Bay without the need to make any request or application to Kips Bay or receive any approval from Kips Bay as long as his son T.H. resides at Kips Bay at least part of the year. William Hitchcock shall be entitled to replace such dog with another emotional support animal in his or her apartment, if he so chooses, at any time during his or her residency at Kips Bay without the need to make any request or application to Kips Bay or receive any approval from Kips Bay, as long as his son T.H. resides at Kips Bay at least part of the year. For the avoidance of doubt, T.H.'s attendance at a boarding school or other educational arrangement or employment that requires his part-time residence at another location shall not prevent him from being deemed a resident of Kips Bay for the purposes of this Agreement.

D. SETTLEMENT PAYMENTS

6. Within thirty (30) days after the Execution Date, pursuant to instructions to be provided to Defendant by counsel for the United States, Defendant shall pay to the United States the aggregate sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) (the "Settlement Amount") in settlement of all monetary claims of the United States and the Complainants against Kips Bay based on the facts in the Complaint occurring on or before the Execution Date. This money, plus any accrued interest, shall be referred to as the "Settlement Fund."
7. No later than thirty (30) days after the Execution Date, Defendant shall provide the Notice of Settlement Agreement Between the United States and Kips Bay Concerning Assistance Animals (the "Notice") at Appendix B to all current Kips Bay residents by email, physical copy to each unit, internal message boards, and/or such other means as the parties mutually agree. By the same date, Defendant shall place on its website [<https://kipsbayresidents.buildinglink.com>] a link to an electronic version of the Notice. The link should state "Notice of Settlement Agreement Between the United States and Kips Bay Concerning Assistance Animals," and should appear in a conspicuous location and accessible format. The Notice shall remain on the website for the duration of the Claim Period set forth in Paragraph 10.
8. The United States may make its own efforts to locate and provide notice to potential claimants.
9. Defendant shall permit the United States, upon reasonable notice, to review any records that may reasonably facilitate its investigation to identify and make determinations regarding other potential claimants.

10. Individuals who believe they have been harmed by Kips Bay's assistance animals policies and who wish to make a claim for compensation ("Claimants") shall have a period of one hundred twenty (120) days from the date of this Agreement in which to assert claims of discrimination. Claims will be considered timely if fully submitted within the 120-day period. Claims will be considered filed when they are received by the United States, unless mailed or sent by overnight delivery, in which case they will be considered filed on the postmark date or date of mailing.
11. The United States shall investigate the claims of potential claimants, including those of Claimants, Complainants, and any other individuals identified by the United States, and shall determine which persons are aggrieved and an appropriate amount of damages that should be paid to each such person from the Settlement Fund.
12. The United States will make payments to aggrieved persons from the Settlement Fund and will do so on a rolling basis consistent with the results of its investigation and remaining available funds. No aggrieved person shall be paid until he/she has executed and delivered to the United States, with a copy to Kips Bay, the release at Appendix C.
13. No adverse action shall be taken by Defendant against any person because such person cooperates with the United States in its investigation, makes a claim, seeks to make a claim, or assists another person in making a claim under this Agreement. A maintenance increase or a special assessment applicable to all unit owners shall not be deemed to be an adverse action.
14. Pursuant to 42 U.S.C. § 3614(d)(1)(C), after receiving payment of the Settlement Amount, the United States shall deduct from the Settlement Fund of TEN THOUSAND DOLLARS (\$10,000) and retain this sum as a civil penalty. If monies remain (the "Remainder") in the Settlement Fund following payments to aggrieved persons identified by the United States

pursuant to paragraph 12, the Remainder shall be retained by the United States, provided that the total retained by the United States shall not exceed \$75,000.

E. EDUCATIONAL PROGRAM

15. No later than thirty (30) days after the Execution Date, Defendant shall provide a copy of this Agreement to all management employees or agents who receive, process, review or make determinations with regard to any reasonable accommodation request or who are involved in or responsible for enforcing any of Kips Bay's rules or regulations. Kips Bay shall secure a signed statement from each such agent or employee acknowledging that he or she has received the Agreement, and has had an opportunity to read the Agreement and to have questions about the Agreement answered. This statement shall be substantially similar to the form of Appendix D.

16. During the term of this Agreement, Kips Bay shall give each new management employee, no later than thirty (30) days after the date he or she commences such agency or employment relationship with Kips Bay, a copy of this Agreement. Kips Bay shall require each such new agent or employee to sign a statement acknowledging that he or she has received the Agreement, and has had an opportunity to read the Agreement and to have questions about the Agreement answered. This statement shall be substantially similar to the form of Appendix D.

17. In lieu of providing individuals or entities with copies of the Agreement as required by paragraphs 15 and 16 herein, Kips Bay may instead provide a summary of the Agreement designed to provide personnel with information relevant to their positions. Copies of the Agreement (or approved summary) may be provided electronically or by a link to a website where a copy of the Agreement (or approved summary) may be found.

18. Kips Bay shall establish, to the extent not already established, annual training for new employees or agents who receive, process, review or make determinations with regard to any reasonable accommodation request or who are involved in or responsible for enforcing any of Kips Bay's rules or regulations. Such annual trainings shall be conducted for the duration of this Agreement.

F. NOTICE OF KIPS BAY'S REASONABLE ACCOMMODATION POLICY

19. No later than thirty (30) days after the Execution Date, Kips Bay shall post and prominently display in the common areas of each building of Kips Bay a sign no smaller than ten (10) inches by fourteen (14) inches indicating that reasonable accommodations are available to persons with disabilities.
20. Kips Bay shall also post the Kips Bay Reasonable Accommodation Policy on its website in a conspicuous location and accessible format.
21. No later than one hundred eighty (180) days after the Execution Date, Kips Bay shall submit to the United States an initial report regarding the signed statements of its employees and agents as specified in Paragraphs 15 and 16 of this Agreement or a report of its compliance with Paragraph 17 of this Agreement. Thereafter, during the term of this Agreement, Defendant shall, on or prior to the anniversary of the Execution Date, submit to the United States a report regarding its compliance with Paragraphs 15, 16 and 17 of this Agreement, except that the last report shall be due on or before sixty (60) days prior to the anniversary.
22. For the duration of this Agreement, Defendant shall provide the United States with a copy of any written administrative or judicial fair housing complaint against Kips Bay or any of its officers, employees, agents, successors, or assigns, alleging unlawful disability discrimination under the FHA ("FHA Complaint"), and shall do so within ten (10) days after receipt of any FHA Complaint. Upon reasonable notice, Defendant shall also provide the

United States all non-confidential information it may request concerning any FHA

Complaint. Within ten (10) days after the resolution of any FHA Complaint, Defendant shall provide counsel for the United States a copy of any document reflecting such resolution.

23. For the term of this Agreement, Defendant is required to preserve all records related to this Agreement, including but not limited to all records relating to: (1) complaints against it or its agents or employees alleging discrimination in housing on the basis of disability; and (2) its receipt and processing of requests for reasonable accommodations. Upon reasonable notice to Defendant, representatives of the United States shall be permitted to inspect and copy any such records (with redactions to the extent required by law) or investigate any complaints bearing on compliance with this Agreement at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to Kips Bay and Kips Bay residents from such investigations.

24. Kips Bay must submit bi-annual reports to the United States, providing the following information:

- a. A list of all persons, including contact information, who inquired about or applied for a reasonable accommodation, whether the request was an initial request or a request for a renewal of an accommodation;
- b. the type of reasonable accommodation sought;
- c. whether or not, in each instance the accommodation was sought and/or granted;
- d. the date of the request and the reviewer or reviewers or the decision maker;
- e. if the request is denied, the reason for the denial; and
- f. whether a denied request was appealed and the outcome of the appeal, including the rationale for the denial.

G. RESOLUTION, DURATION OF STIPULATION AND TERMINATION OF LEGAL ACTION

25. This Agreement shall remain in effect for two (2) years following entry of a Stipulation and Order of Settlement and Dismissal (the "Settlement Order") by the Court. By executing this Agreement, the parties agree that in the event that Kips Bay engages in any conduct occurring after the Execution Date that leads to a determination of a violation of the FHA, such conduct may constitute a "subsequent violation" by Kips Bay pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).
26. In the event the United States reinstates this Action, as contemplated by the Settlement Order, Kips Bay agrees pursuant to Federal Rule of Civil Procedure 15(a)(2) that the United States may amend the complaint to assert any claims that have not been released under this Agreement.
27. The parties agree that the only appropriate remedy for either party's failure to perform any non-monetary obligation contained in this Agreement is specific performance.
28. The United States and Kips Bay shall endeavor, in good faith, to resolve any differences regarding interpretation of and compliance with this Agreement prior to bringing such matters to the Court for resolution.
29. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. The parties agree that they will not, individually or in combination with another party or a third party, seek to have any Court declare or determine that any provision of this Agreement is illegal or invalid.

H. TIME FOR PERFORMANCE

30. Any time limits for performance imposed by this Agreement may be extended by the mutual written agreement of the United States and Defendant.

I. COSTS OF LITIGATION

31. Each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

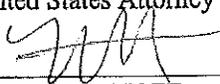
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The undersigned consent to this Agreement on behalf of the parties:

For the United States:

GEOFFREY S. BERMAN
United States Attorney

By:


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For Kips Bay:

By:


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MITCHEL OCHS
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Phone: (212) 344-3600 ext. 204
Fax: (212) 344-0970

For Kips Bay:

By:


KENNETH BEITLER
Vice President
The Kips Bay Towers Condominium

So ordered.

Janice Cole
2/28/18

APPENDIX A
KIPS BAY REASONABLE ACCOMMODATION POLICY

Kips Bay is committed to granting reasonable accommodations to its rules, policies, practices, or services when such accommodations may be necessary to afford people with disabilities the equal opportunity to use and enjoy their dwellings, as required by federal, state and local law. A reasonable accommodation may include a change or exception to a rule or policy that is needed because of a person's disability, or it may be a physical change to a unit or common area. It is Kips Bay's general policy to provide reasonable accommodations to individuals with disabilities whenever an individual has a disability and there is a disability-related need for the requested accommodation. A disability-related need for a requested accommodation exists when there is an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. Kips Bay may deny the requested accommodation if providing it would impose an undue financial and/or administrative burden on Kips Bay and/or fundamentally alter the nature of Kips Bay's operations. If granting a reasonable accommodation would impose an undue financial and/or administrative burden or would fundamentally alter the nature of Kips Bay's operations, Kips Bay will consult with you and provide any accommodation that would not impose such a burden or result in a fundamental alteration.

Kips Bay accepts reasonable accommodation requests from persons with disabilities and those acting on their behalf. Reasonable Accommodation Request forms are available in your Management's Office, and may be returned to that office when complete. They will then be forwarded to the Condominium Board for consideration. If you require assistance in completing the form, or wish to make the request orally, please contact Management at (212) 685-3511. Kips Bay will keep a record of all requests.

We will make a reasonably prompt decision on your request. If the request is time-sensitive, please let us know and we will endeavor to expedite the decision-making process. In the event we need additional information to make a determination, we will promptly advise you of the information needed. It is Kips Bay's policy to seek only the information needed to determine if a reasonable accommodation should be granted under federal, state or local law. We will not ask about the nature or extent of your disabilities. If we grant the request, you will receive a letter informing you of the grant.

If we deny the request, we will provide you with a letter stating all of the reasons for our denial. If we believe that the requested accommodation poses an undue financial and/or administrative burden and/or a fundamental alteration to the nature of Kips Bay, we will schedule a meeting at a mutually convenient time to discuss possible alternative accommodations. If agreement on an alternative accommodation is not reached, we will send you a letter providing Kips Bay's decision on your requested accommodation and an explanation of Kips Bay's reasons for a denial or decision to grant an alternative accommodation. If an individual with a disability believes that the request has been denied unlawfully or a response has been unreasonably delayed, then he or she may file a complaint by writing or calling any of the following:

<p>U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity 26 Federal Plaza, Room 3532 New York, NY 10278-0068 1-800-496-4294 http://hud.gov/complaints</p>	<p>New York State Division of Human Rights One Fordham Plaza, 4th Floor Bronx, NY 10458 Tel No. (718) 741-8400 TDD: 1-718-741-8300 https://dhr.ny.gov/</p>	<p>New York City Commission on Human Rights 100 Gold Street, Suite 4600 New York, NY 10038 (212) 306-7450 http://www.nyc.gov/cchr</p>
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ASSISTANCE ANIMALS

One common type of reasonable accommodation is allowing a person with a disability to keep an assistance animal. An assistance animal is any animal that works, provides assistance, performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Kips Bay is committed to ensuring that individuals with disabilities may keep such animals in Kips Bay to the extent required by federal, state and local law.

An animal that is trained to do work or perform tasks for an individual with a disability is known as a service animal. It is often readily apparent that an animal is trained to do work or perform tasks for the benefit of a person with a disability, such as a dog that guides an individual with a visual impairment. Where it is readily apparent that an animal is a trained service animal, for example, a dog trained to guide an individual with a visual impairment, Kips Bay will not inquire about the individual's disability or the animal's training.

In the case of a resident who requests a reasonable accommodation for an assistance animal that provides emotional support or other assistance that ameliorates one or more symptoms or effects of the resident's disability, Kips Bay may require a statement from a health or social service professional including a brief description of the basis to support his or her conclusions:

- i. That the applicant has a disability, and
- ii. That the animal would provide emotional support or other assistance that would ameliorate one or more symptoms or effects of the disability.

A "health or social service professional" means an individual who is licensed or certified (unless exempt)¹ to provide medical care, therapy or counseling to persons with disabilities, including, but not limited to, doctors, physician assistants, psychiatrists, psychologists, or social workers.

In the case of a resident who requests a reasonable accommodation for an assistance animal that does work or performs tasks for the benefit of a person with a disability, Kips Bay may require that the resident provide:

- i. A statement from a health or social service professional indicating that the person has a disability, and
- ii. Information that the animal has been individually trained to do work or perform tasks that would ameliorate one or more symptoms or effects of the disability, or information that the animal, despite lack of individual training, is able to do work or perform tasks that would ameliorate one or more symptoms or effects of the disability.

¹ In certain circumstances, health and social service professionals are authorized by federal, state, or local law to provide treatment to patients and are exempt from licensure or certification requirements.

If an assistance animal both provides emotional support or other assistance that ameliorates one or more effects of a disability and does work or performs tasks for the benefit of a person with a physical disability, Kips Bay may require compliance with the requirements for either type of assistance animal, but not both.

FORM A: APPLICATION FOR REASONABLE ACCOMMODATION

Complete this form if you have a disability and would like to request an accommodation. If you require assistance completing this form, or wish to make the request orally, please contact the Management Office at (212) 685-3511.

Unit owner name: _____

Address: _____ Telephone: _____

(only if the person requesting the accommodation is different from the unit owner:)

Person requesting accommodation: _____

Relationship to unit owner: _____

1. Please describe the reasonable accommodation you are requesting:

2. Please explain why this reasonable accommodation is needed. You need not provide detailed information about the nature or severity of the disability.

3. If you are requesting permission to have an assistance animal in your apartment, please complete the following:
 - (a) Is it readily apparent that the assistance animal is a trained service animal (for example, an animal trained to assist you with a visual impairment or similar disability)?
____ YES ____ NO
 - (b) If your answer to 3(a) above was NO, please complete the following:
 - i. Type of animal: _____
 - ii. Is the animal required because of a disability? ____ Yes ____ No
 - iii. Does the animal perform work or do tasks for you because of your disability? ____ Yes ____ No

[form continues on next page]

If the animal performs work or tasks for you, please provide the following:

- (1) A statement from a health or social service professional indicating that you have a disability (*i.e.*, you have a physical or mental impairment that substantially limits one or more major life activities). You may use, but are not required to use, Form B (if Form B is not used, you will at least make Form B available for the health or social service professional to review).
- (2) An explanation of how the animal has been trained to do work or perform tasks that ameliorate one or more symptoms or effects of your disability or, if the animal lacks individual training, how the animal is able to do work or perform tasks that ameliorate one or more symptoms or effects of your disability.
- (3) Please submit a photograph of the animal after you have selected an animal.

If the animal does not perform work or do tasks for you, but provides emotional support or ameliorates one or more effects of your disability, please provide the following:

- (1) A statement from a health or social service professional indicating: (a) that you have a disability; (b) the animal would provide emotional support or other assistance that would ameliorate one or more symptoms or effects of your disability; and (c) how the animal ameliorates the symptoms or effect(s). You may use, but are not required to use, Form B (if Form B is not used, you will at least make Form B available for the health or social service professional to review).
 - (2) Please submit a photograph of the animal after you have selected an animal.
4. If the assistance animal is a dog or a cat, please provide copies of the rabies tag or certificate that is required by New York law. If you have not selected an animal at the time you complete this application, Kips Bay may approve the application with the condition that, if you select a dog or a cat, you must submit copies of the rabies tag or certificate that is required by New York law, before the selected animal moves in.
 5. If you are requesting a different modification or accommodation, please describe it here:

Signature

Date:

[assistance animal guidelines follow on next page]

KIPS BAY GUIDELINES REGARDING ASSISTANCE ANIMALS

- A. Kips Bay will consider reasonable accommodation requests consistent with the enclosed policy regarding disabilities that meet the definition set forth in any one of the following relevant statutes:
1. Federal: The Fair Housing Act defines a person with a “handicap” as one who: (a) has a physical or mental impairment which substantially limits one or more of such person’s major life activities; or (b) has a record of having such an impairment; or (c) is regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802).
 2. State: The New York State Executive Law defines a disability as: (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment.
 3. NYC: The New York City Administrative Code defines a disability as: (a) any physical, medical, mental or psychological impairment, or a history or record of such impairment. (b) The term "physical, medical, mental, or psychological impairment" means: (1) an impairment of any system of the body; including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or (2) a mental or psychological impairment.
- B. Kips Bay will review and respond promptly to all reasonable accommodation requests.
- C. All information received by Kips Bay regarding an individual’s disability, including physical, mental, psychological, and/or psychiatric conditions, shall be kept confidential unless the individual authorizes the release of the information or Kips Bay is required to produce the information in response to a Court order, on notice to the affected individual(s).
- D. If the Kips Bay resident has a disability and a disability-related need for a reasonable accommodation under federal, state or local law, Kips Bay will grant such accommodation, including a request to keep a service or assistance animal. Kips Bay will not retaliate against any person because that individual has requested or received a reasonable accommodation. Kips Bay will not discourage any individual from making a reasonable accommodation request, including a request to keep a service or assistance animal. While it is Kips Bay’s policy to not allow any pets at Kips Bay, service and assistance animals are not pets. However, a Kips Bay resident must request an exception to Kips Bay’s pet policy in order to keep an assistance animal at Kips Bay.

- E. Kips Bay may deny a request or require the removal of a particular assistance or service animal from the premises if the animal poses a direct threat (i.e., a significant risk of substantial harm) to the health or safety of other individuals that cannot be eliminated or reduced to an acceptable level by another reasonable accommodation, considering the health and safety of the other individual(s) and the need for an accommodation, or if the animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Kips Bay will base such determinations upon consideration of the behavior of the particular animal at issue, and not on speculation or fear about the types of harm or damage an animal may cause.
- F. When assistance animals are in Kips Bay's common or public areas, they must be kept on a leash or in a carrier or cage, unless those devices prevent service animals from performing a disability-related task. Additionally, like any other unit owner, owners of service or assistance animals remain subject to the provisions of their Occupancy Agreements, with the exception that they are allowed to occupy the premises with their service or assistance animals. Similarly, owners of service or assistance animals shall comply with all state and local animal laws, including but not limited to Section 1310 of the New York Public Health Code requiring animal owners to clean up animal waste, except when such laws are preempted by the Fair Housing Act, Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act or the owner is entitled to a reasonable accommodation.
- G. Kips Bay may take action against the owner for noise or damages caused by a service or assistance animal to the same extent that it takes such action against unit owners who have caused similar noise or damages, or as otherwise permissible under the Condominium's constituent documents and applicable law

FORM B: Assistance Animal Requests: Health Care Professional Form

Unit owner name: _____

Address: _____

Telephone: _____

I, _____ (applicant name) intend to request that Kips Bay Tower Condominium permit me to keep an assistance animal as a reasonable accommodation for my disability. In connection with that application, I am requesting that you complete this form regarding my disability.

Signature Date: _____

(only if the person requesting the accommodation is different from the unit owner:)

Person requesting accommodation: _____

Relationship to unit owner: _____

TO BE COMPLETED BY HEALTH CARE PROFESSIONAL

NAME: _____

ADDRESS: _____

TELEPHONE: _____

1. Does the individual identified above have a disability² that substantially limits one or more major life activities? The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking. This list of major life activities is not exhaustive. A major life activity is "substantially limiting" if the impairment prevents or severely restricts the major life activity and has a permanent or long term impact.

² A disability under the federal Fair Housing Act, codified at 42 U.S.C. §§ 3601-3619, includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

2. Does or would an assistance animal provide disability-related assistance to the individual? One example of assistance is alleviating one or more of the symptoms or effects of the disability.

3. For animals who do not perform work or do tasks for the individual, how would the animal ameliorate one or more of the symptoms or effects of the disability?

4. If you would like to submit additional supporting materials, please provide them with this form.

NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

APPENDIX B

**NOTICE OF SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES AND KIPS BAY
CONCERNING ASSISTANCE ANIMALS**

On _____, the United States District Court for the Southern District of New York entered a settlement agreement resolving a lawsuit brought by the United States Department of Justice against the condominium board of the Kips Bay Towers Condominium ("Kips Bay") alleging that it failed to provide reasonable accommodations to persons with disabilities who sought to keep an assistance animal at Kips Bay, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3619. An assistance animal is any animal that works, provides assistance, performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.

Kips Bay has denied the allegations and maintains that its Policy and procedures complied in all respects with governing law, and in the interest of its Unit Owners, and in order to avoid further protracted litigation, it has entered into this settlement agreement.

Under this settlement agreement, a person may be entitled to receive monetary relief if he or she was an owner or resident of Kips Bay, and claims to have been:

- PREVENTED OR DISCOURAGED FROM REQUESTING TO KEEP AN ASSISTANCE ANIMAL
- DENIED A REQUEST TO KEEP AN ASSISTANCE ANIMAL
- HARRASSED OR OTHERWISE INTERFERED WITH AFTER REQUESTING TO KEEP AN ASSISTANCE ANIMAL

If you wish to make a claim, or if you have any information about persons who may have such a claim, please contact the United States Attorney's Office, Southern District of New York at 212-637-2800. You may also fax us at 212-637-2702, contact us at <http://www.justice.gov/usao/nys/civilrights.html>, or write to:

United States Attorney's Office, Southern District of New York
Attn: Civil Rights Unit
86 Chambers Street
New York, New York 10007

NOTE: You must call or write no later than June 30, 2018.

APPENDIX C

RELEASE FORM

In consideration of the payment of the sum of _____ dollars (\$_____), pursuant to the Settlement Agreement entered in *United States of America v. The Condominium Board of the Kips Bay Towers Condominium, Inc.*, No. 17 Civ. 361 (DLC) (S.D.N.Y.), I hereby release the defendant named in this action and the Kips Bay Towers Condominium, together with their agents, servants and employees, from any and all liability for any claims, legal or equitable, asserted or unasserted, I may have against them arising out of the facts alleged in the above-styled action and that occurred before the date of this release.

I fully acknowledge and agree that this release of the defendant shall be binding on my heirs, representatives, executors, successors, administrators, and assigns.

I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

(Signature)

(Print name)

(Date)

APPENDIX D

ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT AGREEMENT

I _____, am an employee of _____ and my duties include _____. I have received and read a copy of the Settlement Agreement in *United States of America v. The Condominium Board of the Kips Bay Towers Condominium, Inc.*, No. 17 Civ. 361 (DLC) (S.D.N.Y.), and have been given instruction on (1) the terms of this Settlement Agreement, (2) the requirements of the Fair Housing Act, particularly related to the Act's reasonable accommodation requirements, and (3) my responsibilities and obligations under the Settlement Agreement and the Fair Housing Act. I have had all of my questions concerning the Settlement Agreement answered to my satisfaction.

_____, 20__

Employee Signature