

EXHIBIT A

United States of America v. Ayman Jarrah, a/k/a Dave Yurman, and Land Guardian, Inc., formerly d/b/a Gaslamp, and currently d/b/a 360 Midtown, Civil Action No. 4:16-cv-02906 (S.D. Tex.)

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND
AYMAN JARRAH, A/K/A DAVE YURMAN, AND LAND GUARDIAN, INC.,
FORMERLY D/B/A GASLAMP, AND CURRENTLY D/B/A 360 MIDTOWN**

I. Introduction

1. This Settlement Agreement is made and entered into by and between the United States of America, through the U.S. Department of Justice (“United States”), and Ayman Jarrah, a/k/a Dave Yurman, and Land Guardian, Inc., formerly d/b/a Gaslamp, currently d/b/a 360 Midtown (“Defendants”) (collectively with the United States, “the Parties”), through their authorized representatives.

II. Recitals

2. This Settlement Agreement arises out of a Complaint filed by the United States on September 28, 2016, captioned *United States of America v. Ayman Jarrah, et al.*, Civil Action No. 4:16-cv-02906 (S.D. Tex.) (“the Civil Action”), which alleges that the Defendants violated Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a *et seq.*, by discriminating against African-American, Hispanic, and Asian-American patrons.

3. The United States’ Complaint alleges that Defendant Ayman Jarrah a/k/a Dave Yurman is the president, director, registered agent and corporate shareholder of Defendant Land Guardian, Inc., and that as such, Ayman Jarrah has authority to act on behalf of Defendant Land Guardian, Inc.

4. The United States’ Complaint alleges that Defendant Land Guardian, Inc., formerly did business as “Gaslamp,” the address of which was 2400 Brazos Street, Houston, Texas, 77002 and that Defendant currently does business as “360 Midtown,” which is located in

the same physical location as Gaslamp, but the address of which is 500 McIlhenny Street, Houston, Texas, 77002.¹

5. In the Complaint, the United States alleges that the Defendants have engaged in a pattern or practice of denying to African-American, Hispanic, and Asian-American patrons, on the basis of race, color, or national origin, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of Gaslamp on the same basis as such were provided to white members of the general public.

6. Specifically, the United States alleges that the Defendants have engaged in practices to limit the number of African-American and other non-white clientele at Gaslamp. These policies and practices included instructions from Defendant Jarrah to (1) charge African-American, Hispanic, and Asian-American patrons a cover charge to enter Gaslamp; and (2) otherwise discourage and/or deny African-American, Hispanic, and Asian-American patrons admission to Gaslamp.

7. Defendants denied, and continue to deny, that they committed any violations of federal law or engaged in any of the wrongful acts alleged, and specifically deny that they charged for entry based on race or discouraged entry based on race.

8. The United States' Complaint alleges that, at all times relevant to the allegations of the United States: Gaslamp was a "place of public accommodation" within the meaning of 42 U.S.C. § 2000a(b)(2) and (3), and its operations "affect[ed] commerce" within the meaning of 42 U.S.C. § 2000a(c); and 360 Midtown is a "place of public accommodation" within the meaning

¹ For purposes of this Settlement Agreement, references to "Gaslamp" include "360 Midtown" and references to "360 Midtown" include "Gaslamp."

of 42 U.S.C. § 2000a(b)(3), and its operations “affect commerce” within the meaning of 42 U.S.C. § 2000a(c).

III. Statement of Consideration

9. The United States and the Defendants have worked cooperatively to resolve this matter. To that end, the Parties agree that, to avoid the time and expense of protracted litigation, the claims against Defendants should be resolved without further proceedings or a trial. Therefore, the United States and the Defendants agree to the entry of this Settlement Agreement (the “Agreement”). This Agreement constitutes full resolution of the claims in the United States’ Complaint in this case against the Defendants.

10. In consideration of, and consistent with, the terms of this Agreement, the Parties will move jointly for dismissal of the Civil Action, consistent with the terms set forth in Section IX of this Agreement. The Parties agree and acknowledge that this consideration is adequate and sufficient.

THEREFORE, the Parties, through their authorized representatives, hereby stipulate and agree as follows:

IV. General Nondiscrimination Provisions

11. All provisions of this Agreement shall apply to Ayman Jarrah and Land Guardian, Inc., in the conduct of business at 360 Midtown. All provisions of this Agreement shall also apply to the employees and agents of same, to all successors to the extent that their cooperation is required to implement this Agreement, and to anyone acting in whole or in part under the direction of any of the Defendants in connection with the establishment currently known as 360 Midtown.

12. The Defendants, their agents, employees, successors, and all others actively participating with them in the ownership and operation of 360 Midtown shall not deny to any person, because of race, color, or national origin, the full and equal enjoyment of all of the goods, services, facilities, privileges, advantages, and accommodations of such establishment. Such prohibited conduct includes: (a) failing or refusing to admit any person to the premises of such establishment on account of race, color, or national origin; (b) offering different terms, conditions, or privileges of admission at such establishment or providing different information about the terms, conditions, or privileges of admission on the basis of race, color, or national origin; and (c) denying or deterring admission at such establishment by adopting any practice or procedure designed to discourage persons from patronizing such establishment on the basis of race, color, or national origin.

V. Training

13. Within 60 days of the effective date of this Agreement, the Defendants' owners, partners, employees, agents, and any other person who in any way provides management, security, or services to the public at 360 Midtown shall attend a program of educational training concerning the substantive provisions of Title II and their responsibilities under the law. This training, which shall be no less than one and a half hours in duration, shall be conducted by a person or organization, approved by the United States, with experience in providing training on civil rights issues. The costs of this program shall be borne by the Defendants. All persons attending such a program shall have their attendance certified in writing by the person or organization conducting the educational program. Defendants may videotape the training program for use in compliance with this paragraph for employees hired after the date of the initial training. To that end, training may be provided by videotape for any new employees hired

subsequent to the initial training required under this paragraph, and the employees shall sign a document confirming they have viewed the educational program, consistent with paragraph 14 below.

14. No later than 10 days after the effective date of this Agreement, the Defendants shall provide a copy of this Agreement to every owner, partner, employee, agent, and any other person who in any way provides management, security, or services to the public at 360 Midtown. The Defendants shall direct each such owner, partner, employee, agent, and other person covered by this paragraph to review and read a copy of this Agreement. Each owner, partner, employee, agent, and other person covered by this paragraph shall sign a statement in the form of Attachment A acknowledging that he or she has read and understands this Agreement and declaring that he or she will perform his or her duties in accordance with this Agreement. For the duration of this Agreement, all new employees who provide management, security, or services to the public at 360 Midtown shall be provided a copy of this Agreement when their employment commences, and shall be directed to: view the training video referenced in paragraph 13, read a copy of this Agreement, and sign a statement in the form of Attachment A no later than five days following their first day of employment.

VI. Nondiscrimination Policies and Procedures

15. Within 15 days of the effective date of this Agreement, the Defendants shall erect and maintain at each public entrance to 360 Midtown a printed sign stating that the establishment is open to all members of the public without regard to race, color, or national origin. Such sign shall be printed in dark letters on a contrasting background and shall be located and maintained in a place that is well-lit and clearly visible to all patrons as they enter the premises. Such sign shall include a statement that any person who believes he or she has been discriminated against

on the basis of race, color, or national origin may speak immediately with a manager, and that if he or she disagrees with the manager's decision, may file a written complaint and/or may call the United States Department of Justice at (800) 896-7443 ext. 95 and/or the Defendants' complaint number at 832-564-1510. The text for such sign is specified in Attachment B. The sign shall be no smaller than two feet by two feet and the letters and numbers on the sign should have a minimum height of one inch, with the exception of the contact information for the Department of Justice contained therein, which shall have a minimum height of one-half inch.

16. The Defendants shall place on 360 Midtown's Facebook homepage, and on the homepage of any other social media account promoting 360 Midtown that they operate or control, information indicating that 360 Midtown is open to all members of the public on an equal basis, without regard to race, color, or national origin. Such information shall also be included in any other print or other advertising promoting 360 Midtown. To the extent 360 Midtown publishes any printed advertising electronically, such electronic publication shall duplicate the print version, including the language described in the first sentence of this paragraph.

17. To the extent that the Defendants adopt, enforce, or otherwise use a dress code with respect to admission to or within 360 Midtown, such dress code shall be in writing, shall clearly convey what manner of dress is required and what specific types of apparel are prohibited, and shall be posted and prominently displayed outside all entrances to 360 Midtown in clear view of prospective patrons. As part of this Settlement Agreement, the Defendants have provided a written copy of the dress code they intend to implement. Any proposed changes to the aforementioned dress code during the duration of this Agreement must be provided by electronic mail and next-day delivery to the United States for its review and comment at least 30

days before being implemented. The proposed changes may be implemented upon the expiration of the 30th day unless the Defendants receive a written objection from the United States within the 30-day notice period.

18. The Defendants shall institute policies that ensure that an individual in a supervisory position is on-site and available promptly to speak with any patron who is denied access to 360 Midtown. That individual shall have the right to permit the patron to enter. If that individual still denies access to the patron, the individual shall offer the patron a complaint form in the form of Attachment C. All individuals in a supervisory position shall at all times have access to a supply of the complaint forms in the form of Attachment C.

19. The Defendants shall establish and maintain for the duration of this Agreement a system of accepting, processing, and investigating any complaints that a patron was denied access, or otherwise discriminated against in the provision of any other services, facilities, privileges, advantages, and accommodations at 360 Midtown, because of his or her race, color, or national origin.

20. Within 15 days of the receipt of any oral or written complaint, the Defendants shall notify the Department of Justice of the complaint and, if requested by the Department of Justice, shall provide the Department of Justice with any statements, documents, photographs, videos, or other information related to the complaint.

21. Nothing in this Agreement shall prevent the management of 360 Midtown from refusing entry to or removing anyone who engages in violent, illegal, indecent, profane, or otherwise disorderly conduct, provided that the management does so in a manner that does not discriminate on the basis of race, color, or national origin.

VII. Mandatory Compliance Testing

22. The Defendants, in consultation with the United States, shall develop and implement a testing program to audit and monitor the Defendants' compliance with federal public accommodations laws and this Agreement at 360 Midtown. The testing program will consist of at least four paired tests of 360 Midtown in each year of this Agreement, for a total of 12 paired tests. The Defendants shall bear all costs, fees, and expenses associated with the development and implementation of this testing program. The tests shall be designed to determine whether the Defendants are providing equal treatment and access to African-American, Hispanic, and Asian-American patrons at 360 Midtown.

23. The test procedures shall be developed, and the tests conducted, by an independent company or organization ("Testing Contractor"), pre-approved by the United States, with expertise in conducting paired testing for potential civil rights violations, including public accommodations, and is wholly independent of the Defendants.

24. The Defendants shall enter into a contract with the Testing Contractor that is consistent with the terms of this Agreement within 90 days after the effective date of this Agreement. The contract shall oblige the Testing Contractor to provide an adequate number of trained individuals to serve as testers and to conduct the tests described in paragraph 22.

25. Test procedures developed by the Testing Contractor shall be submitted to the United States for approval prior to the beginning of the testing program.

26. At no time shall any owner, partner, employee, or agent of 360 Midtown be provided with any information concerning the location, procedure, or test plan prior to the completion of the test. At no time shall the Testing Contractor disclose to any owner, partner,

employee, or agent of the Defendants the identities of individual testers, or any information that would reveal the identities of individual testers; this provision ensures that testers can continue to be used on compliance tests without compromising the integrity of the testing process.

27. The results of all tests conducted by the Testing Contractor pursuant to this section, along with supporting documentation, shall be reported to the Defendants and to the United States simultaneously within 30 days of the conclusion of each test. The Testing Contractor, however, need not report its results within 30 days if follow-up testing is required to verify a testing result and premature reporting of earlier results would compromise the testing process. Where testing results indicate a possible violation of this Agreement, the Defendants shall conduct an investigation of the facts and circumstances underlying such conduct within 30 days of receipt of the testing evidence. Within 15 days of the completion of the Defendants' investigation, the Defendants shall provide the United States with a report containing the investigation results and the Defendants' plan and timetable for implementation of appropriate actions. The Defendants shall implement this plan within 15 days unless the United States objects, in which case the parties shall endeavor to resolve such differences among themselves as described in paragraph 36.

28. The United States may provide the Testing Contractor with any information received about customer complaints with the exception of information that would specifically identify the individuals making complaints.

29. The United States may also conduct testing of 360 Midtown for the purpose of determining whether the Defendants are violating the provisions of Title II of the Civil Rights Act of 1964 and/or the terms of this Agreement.

VIII. Reporting Requirements

30. The Defendants shall, no later than 75 days after the effective date of this Agreement, serve a report on the United States evidencing their compliance with this Agreement.

This report shall include the following:

- a. Written certification by the person or organization conducting the educational program pursuant to paragraph 13;
- b. The statements signed by all owners, partners, agents, employees, and others pursuant to paragraph 14;
- c. A photograph of each public entrance to 360 Midtown clearly showing the signs required under paragraphs 15 and 17; and
- d. A copy of the 360 Midtown Facebook homepage and any other social media accounts described in the first sentence of paragraph 16, and representative samples of the materials described in the second sentence of paragraph 16.

31. Six months after the effective date of this Agreement, and every six months thereafter for three years from the effective date of this Agreement,² the Defendants shall serve upon the United States a written report evidencing continuing compliance with this Agreement.

This report shall contain the following information:

- a. Statements signed by any new employees during the preceding six-month period, as required by paragraph 14;
- b. Representative samples of the materials described in paragraph 16;

² Except that the last report shall be submitted one month before the three-year anniversary of the effective date of this Agreement.

- c. Information regarding any change in the name or location of 360 Midtown during the preceding six-month period, including the address of any new location and the dates of operation at that address;
- d. Notification of any new ownership or management interest that any of the Defendants have acquired or developed in any place of public accommodation, as defined in Title II of the Civil Rights Act of 1964, during the preceding six-month period. Such notification shall include the name of the establishment in which such interest was acquired or developed, the address of such establishment, the goods and/or services provided by such establishment, and the dates of operation of such establishment;
- e. Notification of any transfer, sale, change in ownership, or ceasing of licensing or operation of 360 Midtown any of the Defendants during the preceding six-month period;
- f. A copy of any changes to the dress code adopted during the preceding six-month period pursuant to paragraph 17;
- g. Copies of any and all complaints submitted during the preceding six-month period, including those submitted pursuant to paragraphs 18-19; and
- h. Copies of any and all testing results pursuant to paragraph 27 for the preceding six-month period.

32. All documents or other communications required by this Agreement to be sent to the United States shall be sent by facsimile to (202) 514-1116 or by overnight mail to: Chief,

Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street NW, Suite 7032, Washington, D.C. 20006. When feasible, a courtesy copy of such communications shall be sent by electronic mail to: Elise.Shore@usdoj.gov.

33. The Defendants shall maintain all records relating to implementation of and compliance with all provisions of this Agreement. Upon request, the Defendants shall provide the United States with copies of any records maintained as required by this Agreement.

IX. Implementation, Enforcement, and Dismissal of Underlying Civil Action

34. The United States may review compliance with this Agreement at any time. The Defendants agree to cooperate with the United States in any review of compliance with this Agreement.

35. Should the Defendants materially breach any provision of this Agreement, the Parties agree that upon any such claim of breach as made by the United States, the United States may move to restore the present Civil Action to the active docket of this Court for purposes of resolution of any such claim of breach, or may file a separate action in the United States District Court for the Southern District of Texas to remedy the breach. In the event of such a claim of breach as made by the United States, the Defendants consent to and agree not to contest the United States' motion to restore the present Civil Action to the Court's active docket, and consent to and agree not to contest the exercise of jurisdiction, including personal jurisdiction over the Defendants, by this Court.

36. If differences arise between the parties regarding interpretation, implementation, or the Defendants' compliance with the terms of this Decree, the parties shall endeavor to resolve such differences among themselves before seeking the intervention of the Court. Before taking the steps outlined in paragraph 35, the United States shall first provide Defendants notice of any

breach in writing and shall afford them 30 days from the date of notice to cure the default.

Notice shall be made to Defendants at: Land Guardian Incorporated and Ayman Jarrah, 2400 Brazos Street, Houston, Texas 77006, or by electronic mail to Defendant Ayman Jarrah at the email address provided to the United States by Defendants.

37. In the event the United States reinstates the Civil Action as contemplated by paragraph 35, above, or any other civil action is commenced to remedy breach of this Agreement, the United States may seek the following: (a) an order mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate; (b) an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Agreement; and (c) any additional relief that may be authorized. If the Civil Action is reinstated or any other such civil action is filed, the Defendants expressly agree not to count the time during which this Agreement is in place, or use the terms or existence of this Agreement, to plead, argue, or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.

38. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

39. Following the execution of this Agreement, the parties shall jointly move the Court for dismissal with prejudice of the underlying Civil Action, subject to its reinstatement as set forth in paragraph 35, above.

X. Termination of Litigation Hold

40. The parties agree that, as of the effective date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described in the United States' Complaint. To

the extent that any of the parties previously implemented a litigation hold to preserve documents, electronically stored information, or things related to matters described in the Complaint, they are no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligation imposed by this Agreement.

XI. Duration, Execution, and Other Terms

41. The effective date of this Agreement is the date of the last signature below. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures or electronically mailed signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

42. Except with respect to those obligations set forth in paragraph 12, the provisions of this Agreement shall remain in effect for three years after the effective date.

43. Except as stated in paragraph 35 above, each Party shall bear its own legal or other costs incurred in connection with this matter, including the preparation, negotiation, and performance of this Agreement.

44. This Agreement, including Attachments A - C, constitutes the complete agreement between the parties relating to the claims made in the Complaint. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

45. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion. The Parties agree that each Party and its representatives have acted consistent with the duty of good faith and fair dealing.

46. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

47. The provisions of this Agreement shall apply to the Defendants and their officers, employees, agents, successors and assigns, and all other persons or entities in active concert or participation with any Defendant.

48. This Agreement is governed by and shall be interpreted under the laws of the United States. For purposes of construing or interpreting this Agreement, it shall be deemed to have been drafted by all Parties and shall not be construed or interpreted against any Party for that reason in any subsequent dispute.

49. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another party, the performance of one party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.

50. 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.

51. The Parties agree that they will defend this Agreement against any challenge by any third party. In the event that this Agreement or any of its terms are challenged by a third party in a court other than the United States District Court for the Southern District of Texas, the Parties agree that they will seek removal and/or transfer to the United States District Court for the Southern District of Texas as a related case before the same judge presiding over this Civil Action.

52. This Agreement may be modified only with the written consent of the Parties.

Any modification must be in writing and signed by the Parties through their authorized representatives.

53. This Agreement is a public document. The parties agree and consent to the United States' disclosure to the public of this Agreement and information about this Agreement.

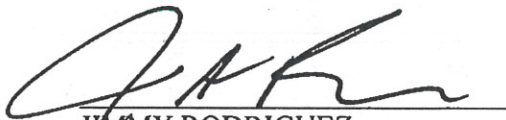
Dated: February 1, 2018

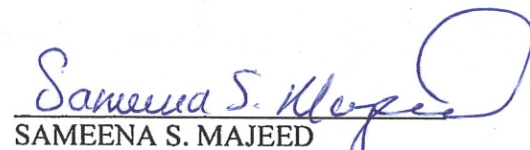
For Plaintiff United States of America:

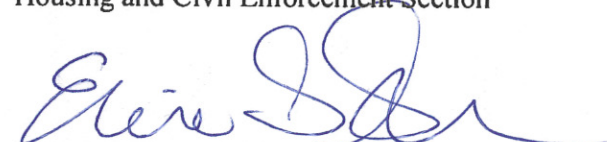
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ATTACHMENT A

I have reviewed and read a copy of the Settlement Agreement executed in United States v. Ayman Jarrah a/k/a Dave Yurman, and Land Guardian, Inc., formerly d/b/a Gaslamp, and currently d/b/a 360 Midtown, Southern District of Texas, Civil Action No. 4:16-cv-02906. I have also either (1) attended an in-person training conducted pursuant to the terms of the Settlement Agreement, or (2) viewed, in its entirety, a copy of the videotaped in-person training conducted pursuant to the terms of the Settlement Agreement. I understand the terms of that Settlement Agreement, and I further understand that Federal law guarantees that no person may be denied, on account of their race, color, or national origin, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of places such as 360 Midtown. With that understanding, I agree that, as a condition of my providing goods and/or services on behalf of 360 Midtown or any other place of public accommodation owned or managed by Defendants, I shall not discriminate in any manner on account of race, color, or national origin in the provision of such goods and/or services. If I violate the terms of the Settlement Agreement, I understand that I may be fired or subject to other disciplinary action.

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Signature

Home Address

Home Telephone Number

ATTACHMENT B

NOTICE

360 MIDTOWN IS OPEN TO ALL MEMBERS OF THE PUBLIC
WITHOUT REGARD TO RACE, COLOR, OR NATIONAL ORIGIN

IF YOU FEEL YOU HAVE BEEN UNLAWFULLY DENIED
ACCESS, YOU MAY TALK TO A MANAGER NOW,
FILE A WRITTEN COMPLAINT, AND/OR OR CALL:

360 Midtown Complaint Number
832-564-1510

OR

United States Justice Department
Housing and Civil Enforcement Section
Civil Rights Division
950 Pennsylvania Ave., NW-NWB
Washington, D.C. 20530
1 (800) 896-7743, ext. 95

ATTACHMENT C
COMPLAINT FORM

Name:

Address:

Telephone No.:

E-mail address:

Date that you were refused admission to 360 Midtown or otherwise discriminated against:

Time of day that you were refused admission to 360 Midtown or otherwise discriminated against:

Reason(s) given for why you were refused admission to 360 Midtown or otherwise discriminated against:

Name of the manager you talked with:

Anything else about this incident that you would like to explain:

To be filled out by 360 Midtown

Name of manager:

Reason(s) for refusing entrance or other complained of conduct: