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Refer to Signature Page for Defendants Represented.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) Civil No.05-00112 SPK BMK
)
Plaintiff,)
and)
)
CHESTER KOBYLANSKI,)
)
Plaintiff-Intervenor,) **SETTLEMENT AGREEMENT**
)
v.)
)
)
CITY AND COUNTY OF HONOLULU,)
HAWAII; MECON HAWAII LIMITED;)
YAMASATO, FUJIWARA, AOKI)
& ASSOC.; R.M. TOWILL CORP.; and)
HAWAII AFFORDABLE PROPERTIES, INC.,)
)
Defendants.)
_____)

SETTLEMENT AGREEMENT

INTRODUCTION

A. Background

1. Plaintiff United States of America ("USA" or "United States") and Defendants City and County of Honolulu, Hawaii ("City"); Mecon Hawaii Limited ("Mecon"); Yamasato, Fujiwara, Aoki & Associates, Inc. nka Yamasato, Fujiwara, Higa & Associates, Inc. ("YFHA"); Hawaii Affordable Properties, Inc. ("HAPI"); and R. M. Towill Corporation ("Towill"), agree to the terms of this Settlement Agreement resolving the Complaint of the United States against Towill, YFHA, and Mecon, and any claims between the City, HAPI, Towill, YFHA, and Mecon and Fletcher Pacific Construction Co., Ltd. ("FPCC") as set forth below. The

Complaint of the United States against the City is resolved through a separate Consent Order that is reproduced in Appendix A to this Agreement.¹

2. This action is brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968 ("the Fair Housing Act"), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619. Specifically, the United States' Complaint alleges that Defendants discriminated against persons with disabilities by failing to design and construct the West Loch Village apartment complex at 91-1450 through 91-1480 Renton Road and 91-1270 Fort Weaver Road in Honolulu, Ewa Beach, Oahu, Hawaii ("West Loch Village"), with the features of accessible and adaptable design and construction required by subsection 804(f)(3)(c) of the Fair Housing Act ("the Act"), 42 U.S.C. § 3604(f)(3)(C). The United States and Defendants (hereinafter, "the Parties") agree that this complex is subject to the accessible design and construction requirements of 42 U.S.C. § 3604(f)(3)(C) and 42 U.S.C. § 12183(a)(1).

3. Defendant City and County of Honolulu ("City") is a municipal corporation in Hawaii that conducts business in the District of Hawaii. The City is the owner and developer of West Loch Village and in that capacity is responsible for the design and construction of that apartment complex.

¹ That Consent Order references the City's conciliation agreement with the Department of Housing and Urban Development concerning alleged violations at West Loch Village of section 504 of the Rehabilitation Act of 1973.

4. Fletcher Pacific Construction Co., Ltd. ("FPCC"), served as the general contractor for the construction of West Loch Village. Following a 100% change in ownership of the company in 1999, and pursuant to certain indemnities and assignments as part of that Stock Purchase Agreement, Mecon Hawaii Limited ("Mecon") is its successor in interest and bears responsibility with respect to the West Loch Village project. Mecon is a Hawaii corporation.

5. Defendant Yamasato, Fujiwara, Higa & Associates, Inc. ("YFHA") is a Hawaii corporation that conducts business in Hawaii. YFHA was the architect for the West Loch Village project.

6. Defendant R.M. Towill Corp. ("Towill") is a Hawaii corporation that conducts business in Hawaii. Towill was the civil engineer for the West Loch Village project.

B. Relevant Requirements of the Fair Housing Act

7. The Fair Housing Act provides that, for non-elevator residential buildings with four or more dwelling units, all ground-floor units that are designed and constructed for first occupancy after March 13, 1991, are "covered units" and must include certain basic features of accessible and adaptable design to make such units usable by a person who has or who develops a disability. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B). All of the approximately 75 ground-floor units at West Loch Village were designed and constructed for first occupancy after March 13, 1991, and are located in 15 non-elevator buildings containing four or more units. Thus, these ground floor units at the

developments are "covered multifamily dwellings" within the meaning of the Fair Housing Act.

8. The accessible and adaptable design provisions of the Fair Housing Act 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; and (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). The United States alleges in its Complaint that, as designed and constructed, the "covered units" as well as the public and common use areas at West Loch Village do not include all of the features of accessible and adaptable design required by the Fair Housing Act.

9. The United States has surveyed West Loch Village and has specifically alleged violations of these accessibility requirements of the Fair Housing Act.

10. Pursuant to the separate Consent Order between the United States and the City, the City has agreed to bring West

Loch Village into compliance with the Fair Housing Act, and the other Defendants have agreed to certain other undertakings as set forth below.

C. Agreement of the Parties to this Settlement

11. The Parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 3614(a). The Parties further agree that the controversy should be resolved without further proceedings and without an evidentiary hearing.

12. The Defendants deny that they have violated the law, and this Settlement Agreement does not constitute any admission of liability or wrongdoing on the part of any of the Defendants and shall not be deemed or construed as evidence thereof. This Settlement Agreement is entered into solely to resolve disputed issues and avoid the cost and expense of further proceedings.

13. As indicated by the signatures appearing below, the Parties agree as follows:

II. NONDISCRIMINATION

14. Defendants, and each of their officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with them, shall not to discriminate on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(f)(1) - (3).

III. RETROFIT OF GROUND FLOOR UNITS AND PUBLIC AND COMMON USE AREAS AT WEST LOCH VILLAGE

15. Pursuant to the Consent Order between the United States and the City, the City is obliged to take corrective actions

necessary to bring West Loch Village into compliance with the accessibility requirements of the Fair Housing Act.

16. Without admission of responsibility, and to enable settlement of this action without further expense and proceedings, Towill, HAPI, YFHA and Mecon agree to each pay and deposit with the Court the following sums within 30 days of the date of Court approval of this Agreement as contribution to the cost of the corrective actions to be undertaken by the City to be disbursed as the Court directs upon application by the City or its designees: Towill, \$45,000; HAPI, \$15,000; YFHA, \$53,333; Mecon, \$53,333.

IV. SETTLEMENT FUND

17. Within 30 days of the Court approval of this Agreement (the date of such Court approval is referred to herein as "the date of this Agreement"), the City and HAPI, by and through its insurance carrier, shall deposit with the Court the total sum of \$30,000 for the purpose of compensating any aggrieved persons who may have suffered as a result of non-compliance of the West Loch Village project with the requirements of the Fair Housing Act. Towill, YFHA and Mecon agree to each deposit an additional \$15,000 with the Court within 30 days of the date of Court approval of this Agreement, for a total of \$75,000. This money shall be referred to as "the Settlement Fund."

18. Any interest accruing to the fund shall become a part of the fund and be utilized as set forth herein.

19. The United States shall investigate the claims of

allegedly aggrieved persons and, within 180 days from the date of this Agreement, shall make a determination of which persons are aggrieved and an appropriate amount of damages that should be paid to each such persons. The United States will inform Defendants in writing of its preliminary determinations, together with a copy of a sworn declaration from each aggrieved person setting forth the factual basis of the claim. Defendants shall have 14 days to review the declaration and provide to the United States any documents or information that they believe may refute the claim.

20. After receiving Defendants' comments, the United States shall submit its final recommendations to the Court for approval, together with a copy of the declarations and any additional information submitted by Defendants. When the Court issues an order approving or changing the United State's proposed distribution of funds for aggrieved persons, the United States shall apply to have checks issued payable to the aggrieved persons in the amounts approved by the Court. In no event shall the aggregate of all such checks exceed the sum of the Settlement Fund, including accrued interest. No aggrieved person shall be paid until he/she has executed and delivered to counsel for the United States the release at Appendix B.

21. After the satisfaction of paragraphs 19-20 and the corresponding time periods have expired, any money remaining in the Settlement Fund shall be released to the Defendants in proportion to amount of their contribution, provided that in the

case of HAPI and the City, such proportionate share shall be released to its insurance carrier.

V. EDUCATIONAL PROGRAM

22. Within 30 days of the court approval of this Agreement, Mecon shall provide a copy of this Agreement to all of their agents and employees who have principal supervisory authority over the future design and/or construction of covered multi-family dwellings within the United States, and Towill and YFHA shall provide a copy to their licensed architects or engineers. These Defendants shall secure the signed statement from each such agent or employee acknowledging that he or she has received and read the Agreement, and had an opportunity to have questions about the Agreement answered. This statement shall be substantially in the form of Appendix C hereto.

23. During the term of this Agreement, the requirements of paragraph 22 shall apply to the types of agents or employees delineated there within 30 days after the commencement of their affiliation with Mecon, Towill, and YFHA.

24. Towill, YFHA and Mecon each agree that their employees and agents who have primary supervisory authority over the future design and/or construction of covered multifamily dwellings during the term of this Settlement Agreement shall have access to a copy of, and personally review, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, *A Manual to Assist Builders in Meeting the*

Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998). All employees and agents whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

25. Within 180 days of the date of this Agreement, Mecon agrees to conduct training regarding the design and construction requirements of the Fair Housing Act for any of their employees and agents whose duties, in whole or in part, include primary supervisory authority over the development, design and/or construction of covered multifamily dwellings within the United States. Towill and YFHA agree to conduct such training for their licensed architects and engineers. The training shall be conducted by a qualified third party approved by the United States, unconnected to Defendants or their employees, agents, or counsel, and any expenses associated with this training shall be borne by the respective party. Towill, YFHA and Mecon shall provide to the United States, within 30 days after the training, certifications that training of covered employees and agents was conducted.

VI. DURATION OF AGREEMENT AND TERMINATION OF LEGAL ACTION

26. The duration or term of this Agreement shall be one year after the date of court approval of this Agreement.

27. Within 60 days of the date of court approval of this

Agreement, and satisfaction of the obligations set forth in paragraphs 16, 17, and 22 above, the Parties agree to stipulate to dismissal of the above-captioned action with respect to Towill, YFHA and Mecon pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure. The dismissal will be conditioned on compliance with the Agreement and the Court shall retain jurisdiction for the term of this Agreement to enforce any non-compliance with its terms.

28. The United States and Defendants shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Agreement prior to bringing such matters to the Court for resolution. However, in the event of a failure by a Defendant to perform in a timely manner any act required by this Agreement or otherwise to act in conformance with any provision of it, the United States may move this Court to impose upon, and only upon, the Party which has failed to perform, 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 attorneys' fees which may have been occasioned by the violation or failure to perform.

VII. TIME FOR PERFORMANCE

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

VIII. COSTS OF LITIGATION

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

IX. SCOPE OF SETTLEMENT

31. This Agreement resolves all claims by the United States' Complaint filed in this case as against Towill, YFHA and Mecon. Resolution of the claims by the United States' Complaint as against the City are addressed in the Consent Order between them.

This Agreement also constitutes a full and complete settlement of any and all claims the United States may have had against Mecon, YFHA, and Towill -- and that the City, Mecon, YFHA, and Towill may have had against each other -- regarding any alleged pattern or practice of conduct at West Loch Village in violation of the design and construction requirements of the Fair Housing Act, 42 U.S.C. sections 3601-3619, that (i): have occurred up to and including the date the Complaint is filed, or (ii) could have been raised as of the date the Complaint is filed.

In consideration of their respective undertakings herein, and other good and valuable consideration, the City, Towill, YFHA, HAPI and Mecon each release the other and FPCC from and against any and all claims related to or arising from this action, the West Loch Village project, or the design/construction thereof, except only for claims between the City and HAPI relating to the claim of Intervenor Chester Kobylanski to be

resolved through separate agreement or litigation between them.

X. MISCELLANEOUS

32. Breach by any party of this Agreement shall not affect the validity and enforceability of this Agreement with respect to and as between other parties hereto.

33. This Agreement shall be subject to and conditioned upon approval and confirmation thereof by the Court which shall be sought by motion to be filed by the United States within fifteen days of execution of this Agreement by all parties.

34. This Agreement may be executed in counterparts, each of which shall be deemed an original, and the signature pages of which may be assembled as one original document. Execution of this Agreement may also be via facsimile and/or electronic transmission, and such facsimile and/or electronic transmission of a signature by any party shall be deemed an original signature.

Agreed to by the parties as indicated by the signatures appearing below:

FOR PLAINTIFF UNITED STATES OF
AMERICA:

ALBERTO R. GONZALES
Attorney General

EDWARD H. KUBO, JR.
United States Attorney
HARRY YEE 3790
Assistant United States
Attorney
DISTRICT OF HAWAII
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950 Pennsylvania Ave, NW-G St.
Washington, D.C. 20530
(202) 514-2188
(202) 514-1116 Fax

CITY AND COUNTY OF HONOLULU

By _____
Its: _____

Dated: _____

Approved as to form:

Marie M. Gavigan, Esq.
D. Scott Dodd, Esq.

Counsel for the City

MECON HAWAII LIMITED

By _____

Its:

Dated: _____

Approved as to form:

Erik D. Eike, Esq.

Counsel for Mecon

YAMASATO, FUJIWARA, HIGA &
ASSOCIATES, INC.

By _____

Its: _____

Dated: _____

Approved as to form:

Frank K. Goto, Esq.
Adrienne N. Heely, Esq.

Counsel for YFHA

R. M. TOWILL CORPORATION

By _____

Its: _____

Dated: _____

Approved as to form:

Crystal K. Rose, Esq.
Ryan H. Engle, Esq.

Counsel for Towill

HAWAII AFFORDABLE PROPERTIES, INC.

By _____

Its: _____

Dated: _____

Approved as to form:

Paul Yamamura, Esq.
Wesley Shimazu, Esq.

Counsel for HAPI

APPENDIX A

APPENDIX B

RELEASE

In consideration of the payment of the sum of xxxxxxxxxxxxxxxx dollars (\$ _____), pursuant to the Settlement Agreement and Consent Order entered in *United States v. City and County of Honolulu, Hawaii*, et al., C.A. No.05-00112 (D. HI), I hereby release the Defendants named in this action from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in the action as of the date of the entry of that Consent Order and Settlement Agreement. I fully acknowledge and agree that this release of the Defendants 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)

NAME: _____

ADDRESS: _____

DATE: _____

APPENDIX C

EMPLOYEE FAIR HOUSING ACKNOWLEDGMENT FORM

On _____, I received a copy of the Settlement Agreement approved by the federal district court in United States of America v. City and County of Honolulu, Hawaii, et al., C.A. No. 05-00112 (D. HI), and a copy of the federal Fair Housing Act. I have read these documents and have had all of my questions concerning them answered to my satisfaction.

This acknowledges that discrimination against any person in any aspect of the design, construction, or rental of apartments on the basis of a person's disability is against the law

Signature of Employee

Name of Employer

Employee's Name (Printed)

Employee's Job Position or Title

Date