UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HDC, LLC, a Michigan limited liability company,
XY, LLC, a Michigan limited liability company,
200 EAST WILLIAM STREET, LDHA, LLC,
a Michigan limited liability company,

Plaintiffs.

Case No.

v.

Honorable

CITY OF ANN ARBOR,

Defendant.
_____/

K. Dino Kostopoulos (P57071)
Gerald V. Padilla (P24921)
PADILLA KOSTOPOULOS, PLLC
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_____/

COMPLAINT and JURY DEMAND

NOW COME Plaintiffs, HDC, LLC ("HDC"), XY, LLC ("XY"), and 200 East William Street LDHA, LLC ("200 East William"), by and through their attorneys, Padilla Kostopoulos, PLLC, hereby file their Complaint against the City of Ann Arbor (the "City") and, in support of their Complaint, state as follows:

The Parties

1. Plaintiff HDC is a Michigan limited liability company with its principal place of business at 35 Research Drive, Suite 300, Ann Arbor, Michigan. Michael H. Jacobson is the Chief Executive Officer of HDC.

2. Plaintiff XY is a Michigan limited liability company with its principal place of business at 35 Research Drive, Suite 300, Ann Arbor, Michigan. Mr. Jacobson is the sole member of XY. XY is the successor-in-interest to certain contractual and other rights of HDC.

3. Plaintiff 200 East William is a Michigan limited liability company with its principal place of business at 35 Research Drive, Suite 300, Ann Arbor, Michigan.

4. The City is a Michigan municipal corporation, with a business address of 100 North Fifth Avenue, Ann Arbor, Washtenaw County, Michigan.

Jurisdiction and Venue

5. This Court has jurisdiction over Counts I through III (Fair Housing Act Claims brought pursuant to 42 U.S.C. §3601 *et seq.*) pursuant to 28 U.S.C. §§ 1331, and 1343(a)(3) and (4). This Court has supplemental jurisdiction over Counts IV through VII (Pendant State Claims) pursuant to 28 U.S.C. § 1367(a) in that such claims arise out of the same transaction and occurrences as the federal claims.

6. Venue is appropriate in accordance with 28 U.S.C. § 1391(b). The Defendant City is located within the Eastern District of Michigan. A substantial part of the events or omissions giving rise to the claims stated herein occurred in the Eastern District of Michigan. In addition, the property that is the subject of this action is located within the Eastern District of Michigan.

General Factual Allegations

a. The Request for Proposal and the Proposed Project

7. Prior to the year 2000, the City provided financing for the YMCA of Ann Arbor (the "YMCA") of a sum in excess of $1,500,000 to enable funding of the YMCA Building

which included its affordable housing units located at 350 S. Fifth Ave., Ann Arbor, MI (the "YMCA Property").

8. In 2002, the YMCA, in conjunction with its construction of a new YMCA building in a different location, offered the YMCA Property for sale.

9. In late 2003, the City purchased pursuant to a "Right of First Refusal," the YMCA Property to "preserve at least 100 units of extremely low income units in the City." The City currently owns the YMCA Property.

10. In late 2004, the City issued Request for Proposal #592 (the "RFP") to select a developer for construction of a high-quality development on the YMCA Property site, the primary goal of which was to construct 100 units of low income housing affordable to persons with incomes below 60% of area median income ("AMI"), and with a significant portion affordable to persons with incomes below 30% of AMI. The dwelling units were to be available to tenants with substantially similar demographics as the existing YMCA residents, emphasizing the need for supportive housing to persons of limited means with physical and mental impairments, as well as those with substance abuse problems. The YMCA Property was to be conveyed by the City to the selected developer in connection with the development of the project. A copy of the RFP is attached here as Exhibit 1.

11. The RFP provided, *inter alia*, that in addition to an affordable housing project, a proposal could also include as part of the proposed development additional buildings, including but not limited to a parking structure and additional residential housing, or other uses allowed by applicable zoning.

12. In its response to the RFP, HDC proposed to develop the entire YMCA Property site and, in addition, the adjoining site owned and operated by the Ann Arbor

Transportation Authority (the "AATA Property"). A copy of HDC's bid proposal submitted in response to the RFP is attached hereto as Exhibit 2. The development proposal submitted by HDC in response to the RFP, including both the YMCA and AATA Properties (together, in the singular, the "Property"), is hereafter referred to as the "Proposed Project."

13. The Proposed Project was to have been developed as a single condominium building, consisting of five separate condominium units: (1) the 100 units of affordable housing; (2) four stories of office/retail; (3) market rate housing; (4) an enclosed terminal for the AATA; and (5) underground parking. The occupants of the affordable housing to be constructed pursuant to the Proposed Project were to be residents with, *inter alia*, a continuing mental or emotional impairment; and/or a documented substance abuse disorder; and/or chronic homelessness -- any of which results in substantial and sustained care needs requiring supportive assistance, focusing on the areas of instrumental living skills and self-direction, in order to maintain the residents' ability to live independently.

14. As set forth in the RFP, HDC's Proposed Project was to be developed, at least in part, using federal Low Income Housing Tax Credits (the "Tax Credits"), which are allocated in Michigan by the Michigan State Housing Development Authority ("MSHDA").

15. On or about June 20, 2005, after a long and detailed selection process, HDC was ultimately chosen by the City, over five other applicants that submitted bids, to develop the Proposed Project.

16. To that end, the City Council passed Resolution R-250-6-05, which accepted HDC's proposal, and approved HDC "as purchaser and redeveloper of the City property at 350 S. Fifth Ave." A copy of the June 20, 2005 Resolution is attached here as Exhibit 3.

17. The June 20, 2005 Resolution authorized, *inter alia*, the City Administrator and City Attorney to finalize "the purchase and sale agreement and redevelopment agreement." (Exhibit 3). The agreed-upon purchase price for the Property was $3.5 million. (Id.).

18. Following the City's acceptance of HDC's proposal, HDC established XY to develop the Proposed Project, and 200 East William to be the developer and owner of the affordable housing portion thereof. XY was thus assigned and succeeded to the rights of HDC, and entered into a contract to sell the condominium unit to be created for the affordable housing portion thereof to 200 East William. For ease of reference, HDC, XY, and 200 East William are sometimes hereafter collectively referred to as "Plaintiffs."

b. The Original Option Agreement and the Tax Credits

19. Soon thereafter, City representatives met with Plaintiffs and their attorney, Karl Gotting, to discuss the purchase agreement, and other aspects of the Proposed Project. Plaintiffs informed the City of their intentions to submit an application for the affordable housing Tax Credits to MSHDA on September 15, 2005. Plaintiffs further informed the City that in order to secure the Tax Credits from MSHDA, and in order to proceed with certain other necessary approvals, Plaintiffs were required to provide evidence of "control" over the Property. Plaintiffs and the City also discussed incorporating terms of the transaction relating to the physical improvements to the property into a standard City-approved development agreement (the "Development Agreement.") In addition, Plaintiffs and the City also discussed other terms of the transaction, which were to be incorporated into a separate agreement, hereinafter referred to as the "Supplemental Agreement."

20. At the conclusion of the meeting, the City agreed to consider the land control request, and Plaintiffs agreed to outline what they believed to be the appropriate terms to be included in a Supplemental Agreement.

21. Although Plaintiffs had requested from the City unrestricted and continuous land control for purposes of obtaining necessary approvals and completing the development, the City rejected that request. Plaintiffs had made the City aware throughout the RFP process that Plaintiffs could not guarantee the immediate availability of Tax Credits for the Proposed Project because MSHDA had implemented the use of a lottery system for the awarding of such Tax Credits pursuant to which only 20% of the applicable would be awarded tax credits. Indeed, the City understood that it could take several years to be awarded the Tax Credits. Ultimately, in order to satisfy MSHDA's land control requirement, the City agreed to grant XY an option to purchase the Property.

22. On September 6, 2005, the City and XY entered into an Option Agreement for Purchase of Land (the "Original Option Agreement"). A copy of the Original Option Agreement is attached here as Exhibit 4. The City committed to review the terms of the option from time to time as requirements of the transaction warranted.

23. The Original Option Agreement granted to Plaintiffs the option, under certain conditions, to purchase the Property for $3.5 million (the price to which the parties had previously agreed). *See* Exhibit 4, Original Option Agreement at ¶¶ 3 and 6.

24. The Original Option Agreement stated that Plaintiffs could not exercise the option unless and until Plaintiffs had, *inter alia*, secured site plan approval for the Property, and entered into the above-referenced Development Agreement and Supplemental Agreement.

See Exhibit 4, Original Option Agreement at ¶ 3. The Original Option Agreement provided for an option term of 160 days. *Id*.

25. The Original Option Agreement could, by its terms, be extended for an additional 120 days if, at the end of the option period, Plaintiffs "are still in active and good faith negotiations with the City as to the development agreement and other necessary agreements, and the necessary municipal approvals are still outstanding . . . ." Exhibit 4, Original Option Agreement at ¶ 3.

26. On September 15, 2005, only 10 weeks after the City had accepted HDC's bid in response to the RFP, Plaintiffs filed their first tax credit application with MSHDA. However, because of the MSHDA lottery system, Plaintiffs were not awarded tax credits in response to their first application.

27. While preparing the application to MSHDA, Plaintiffs had continued working on various aspects of the development, including (a) continuing discussions with the AATA seeking to complete the acquisitions of the AATA Property (which was to be incorporated into the development), (b) meeting with City staff and the AATA representatives separately and on a continuing basis, (c) developing architectural plans, (d) working toward site plan approval, (e) completing the "Supplemental Agreement"[1] which would generally govern the development of the project, and in particular the completion and operation of the affordable housing, and (e) preparing an application for a Brownfield credit from the State of Michigan.

28. Following Plaintiffs' submission to MSHDA of the first tax credit application, the City advised Plaintiffs that it would only proceed with the affordable housing development if the rents to be charged to the residents were less than the rents which had been

[1] At this time, an agreement proposed by the Plaintiffs became known as the "Supplemental Agreement," so that it would not be mistaken for the City-created Development Agreement, which would be a part of the City's site plan approval process

proposed by the Plaintiffs (although Plaintiffs' proposed rents were equal to the rent guidelines continued in the RFP and submitted in HDC's RFP Response), and which had been incorporated into the Tax Credit application.

29. Because Plaintiffs were unable to reduce the rents from those that had been proposed and still maintain an economically viable project, the City proposed to establish a trust fund to lower the rents beyond those that were approved by MSHDA. The City proposed a trust fund of $2,000,000 to subsidize rents lower than those for which the MSHDA application provided, of which the City would fund $1,600,000.00 if Plaintiffs would commit $400,000.00 to the fund. Plaintiffs agreed to do so.

30. In mid-February 2006, eight (8) months after being selected as the Developer, Plaintiffs site plan was approved for the Proposed Project by the City (the "Approved Site Plan").

31. On February 26, 2006, Plaintiffs and the City entered into a standard Development Agreement, which had the limited purpose of documenting matters related to the Approved Site Plan. A copy of the Development Agreement is attached here as Exhibit 5.

32. On March 13, 2006, Plaintiffs and the City executed an Amendment to [Original] Option Agreement (the "First Amendment"). A copy of the First Amendment is attached here as Exhibit 6. The purpose of the First Amendment, as evidenced by a February 6, 2006 Memorandum to the City's Mayor and City Council, was, *inter alia*, to assist Plaintiffs in securing the MSHDA tax credits by providing "the necessary evidence of land control documentation to MSHDA for the March 15, 2006 low income housing tax credit application round . . . ."

33. The First Amendment, recognizing that Plaintiffs had satisfied the preconditions for extension of the option period (*e.g.*, no defaults under the contract formed by the City's acceptance of Plaintiffs' bid proposal, good faith negotiations as to a Development Agreement, and the pursuit by Plaintiffs of necessary municipal approvals), extended the term of the Original Option Agreement until October 31, 2006.

34. On March 15, 2006, Plaintiffs filed with MSHDA a second tax credit application.

35. On September 14, 2006, Plaintiffs and the City executed a Second Amendment to [Original] Option Agreement (the "Second Amendment"). A copy of the Second Amendment is attached here as Exhibit 7. Like the First Amendment, the parties entered into the Second Amendment for the purpose of reflecting Plaintiffs' control over the land necessary to procure the Tax Credits.

36. The Second Amendment extended the term of the Original Option Agreement until February 13, 2007.

37. On October 5, 2006, MSHDA awarded to Plaintiffs the requested Tax Credits in excess of $18,581,310.00. (Exhibit 8).

38. The award of the Tax Credits was not, however, open-ended. The MSHDA Tax Credit approval letter stated that the Tax Credits would be rescinded:

> if the CPA certification certifying that more than 10% of the project's reasonably expected basis has been incurred, is not submitted on or before April 5, 2007 . . . .(Exhibit 8)

c. The Revised Project and the Supplemental Agreement

39. In October 2006, Plaintiffs advised the City of their desire to modify the Proposed Project to include, *inter alia*, a hotel and a conference/banquet center and to eliminate

the market rate housing and offices (the "Revised Project"). Plaintiffs thus inquired of the City as to the method by which to proceed with the proposed modification. No response from the City was forthcoming and finally, in December 2006, Plaintiffs requested advice from the City's Mayor, who indicated that he thought the request had merit, would enhance the Downtown area, and would be received favorably by the City. Again, however, the City provided no formal response.

40. In January 2007, Plaintiffs advised the City that the Michigan Economic Development Corporation required that the Revised Project be formally approved by City Council for it to process and approve a $6,000,000.00 State Michigan Tax Credit.

41. Following months of frustration in attempting to secure approvals and agreements from the City, in February 2007, and in order to elicit a response to Plaintiffs' request made in October 2006 to revise the project, Plaintiffs advised the City in writing of their intent to proceed with the Revised Project. Like the Proposed Project, the affordable housing project to be constructed pursuant to the Revised Project included, *inter alia*, recovering occupants, was unchanged.

42. In the fall of 2006, Plaintiffs sought from MSHDA "an exchange" of the Tax Credits allocated in 2006, for 2007 credit.

43. On March 28, 2007, MSHDA formally responded to Plaintiffs' request:

> Because of the unusual circumstances which caused the delay of the project, the Authority has agreed to exchange the credit. In conjunction with the exchange of credit, the . . . [new] 10% Certification Deadline is **December 1, 2007**. **If either deadline is not met, the credit <u>will</u> be rescinded**.

See March 28, 2007 MSHDA Correspondence, attached here as <u>Exhibit 9</u> (emphasis in original).

44. The City Commission finally approved the Revised Project in March 2007.

45. Following the City's approval of the use change with regard to a portion of the Property to hotel/convention/banquet, the Plaintiffs could finally begin redesigning the "East Tower" to accommodate a hotel. In total, the estimated cost to complete the Revised Project exceeded $80 million.

46. In April 2007, Plaintiffs were awarded a $7.5 million MEGA Brownfield credit against Michigan business taxes (the "Brownfield Tax Credit").

47. From the fall of 2006 until April 2007, through no fault of Plaintiffs, negotiations concerning the "Supplemental Agreement" had been functionally suspended. In order to address the City's newly expressed desire for lowering rents as to the affordable housing project, the $2 million endowment proposed by the City (the "Endowment") would have to be created and funded by the City. Plaintiffs again pressed the City to finalize the Supplemental Agreement and to provide for final land control. In the Spring, a series of meetings and negotiations commenced in an effort to try to complete this aspect of the transaction so that the City’s demand for lower rents could be satisfied, and to obtain an additional extension of the Option, which was soon to expire.

48. Despite Plaintiffs' best efforts, the City and the Plaintiffs did not enter into the Supplemental Agreement, which was to include the Endowment provisions.

49. The Development Agreement which, among other things, called for the construction of an affordable housing complex at the federally-required rent levels thus remained in effect, unaltered by the inability of the City and Plaintiffs to reach a Supplemental Agreement.

50. Between 2005 and 2007, Plaintiffs expended in excess of $2 million in architectural and engineering fees; environmental, marketing and feasibility studies; and other pre-development expenditures.

51. By early summer 2007, Plaintiffs became increasingly concerned over the City's progress with regard to the Revised Project, and Plaintiffs' ability to ensure the viability of the Tax Credits. The City and Plaintiffs thus began negotiating the terms of another option agreement.

d. The Final Option Agreement and the Demolition Permit Milestone

52. On October 12, 2007, the City agreed to grant to Plaintiffs an option to purchase the property (the "Final Option Agreement") on which the Revised Project was to be developed; provided, however, that Plaintiffs achieved certain progress milestones (the "Milestones") in accordance with a schedule set forth in the Final Option Agreement. A copy of the Final Option Agreement is attached here as Exhibit 10. By its terms, the Final Option was to expire, if not exercised before March 15, 2008. *See* Exhibit 10, Final Option Agreement at ¶ 3.

53. One of the stated Milestones in the Final Option Agreement was the requirement that Plaintiffs submit a demolition and staging plan, and apply for demolition permits (to demolish the YMCA building and the AATA Property) no later than October 15, 2007 (the "Demolition Permit Milestone") -- a date just three days after execution of the Final Option Agreement. *See* Exhibit 10, Final Option Agreement at ¶ 8(A)(i).

54. In order to satisfy the Demolition Permit Milestone, on October 15, 2007, Plaintiffs submitted to the City a demolition and staging plan, and requested from the City the necessary forms to request demolition permits.

55. At that point, Plaintiffs were advised -- for the first time -- by the City's Planning Department that Plaintiffs could not apply for demolition permits because the City, and not Plaintiffs, was the owner of the Property.

56. The alleged requirement that Plaintiffs show ownership of the Property prior to application for demolition permits is not found in the City's Ordinances, nor is it a state law requirement.

57. The City's Planning Department thus required Plaintiffs to own the Property before applying for the demolition permit (necessary to meet the Demolition Permit Milestone), but the City, in turn, would not convey the Property to the Plaintiffs under the Final Option Agreement until the Plaintiffs met the Demolition Permit Milestone.

58. Based upon the Planning Department's contention as to the ownership requirement, Plaintiffs could not possibly meet the terms of the Demolition Permit Milestone.

59. Upon being advised of the situation, the City administrator advised Plaintiffs to request a modification of the Demolition Permit Milestone as provided in the Option Agreement from the City Commission.

60. In accordance with the City administrator's directive, Plaintiffs sought from the City Council the aforementioned modification.

61. At its November 5, 2007 meeting, and, on information and belief, after retreating to, and deliberating in closed session, the City Council denied Plaintiffs' request for a modification of the Demolition Permit Milestone.

e. The Termination of the Final Option Agreement

62. On November 6, 2007, one day after the City Council denied Plaintiffs' request to modify the Demolition Permit Milestone, Plaintiffs received correspondence from the

City Attorney advising Plaintiffs that the Final Option Agreement had been terminated. A copy of the November 6, 2007 correspondence is attached here as Exhibit 11.

63. In relevant part, the City Attorney's November 6, 2007 letter reads:

> [T]he City, acting pursuant to paragraph 16.A of the [Final] Option Agreement, hereby terminates the Option Agreement and all your rights thereunder and in and to the project. The City will refund to you the Option Payment in the amount of $100,000 forthwith, in full and complete termination of your rights; provided, however, you shall remain responsible for any remaining costs in accordance with Paragraph 16.A of the Option Agreement. (Exhibit 11)

64. Upon information and belief, the City's intentional delay, arbitrary refusals, and other machinations leading to the termination of the Final Option Agreement were motivated, *inter alia*, by (a) the City's desire to destroy the affordable housing project in downtown Ann Arbor in order to prevent recovering alcoholics/drug addicts and the mentally handicapped from residing at that location, (b) the City's desire to reallocate the Tax Credits to a different project/developer, and (c) the City's desire to sell the Property to another person or entity for an amount greater than that reflected in the Development Agreement.

65. By its actions and its refusal to convey the land , the City prevented the development of the Revised Project. Because of the City’s actions, Plaintiffs lost the benefits of the Low-income Housing Tax Credits, the Brownfield Tax Credit, the construction and financing commitment and in excess of $2 million in out-of-pocket costs and the fees, profits, and other benefits associated with the Revised Project.

COUNT I
(Violation of the Fair Housing Act, 42 U.S.C. § 3604)

66. Plaintiffs incorporate by reference Paragraphs 1 through 65 of the Complaint, as if fully restated here.

67. Title 42 United States Code Section 3604(f) provides, in pertinent part, that it shall be unlawful:

> (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of --
>
> (A) that buyer or renter,
>
> (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
>
> (C) any person associated with that buyer or renter.
>
> (2) To discriminate against any person 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 dwelling, because of a handicap of --
>
> (A) that person; or
>
> (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
>
> (C) any person associated with that person.
>
> (3) For purposes of this subsection, discrimination includes --
>
> * * *
>
> (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . . .

68. The Revised Project, had it been constructed, would have constituted a "dwelling" within the meaning of the FHA, section 3602(b), as it was intended to be offered to recovering alcoholics, recovering drug addicts, mentally impaired persons, and other handicapped persons, for their occupancy and residence.

69. Recovering alcoholics, recovering drug addicts, and mentally impaired persons, constitute "handicapped" persons within the meaning of the FHA, section 3602(f).

70. As developers of a housing project designed to provide affordable housing for recovering alcoholics, recovering drug addicts, and mentally impaired persons, Plaintiffs are persons associated with handicapped persons protected by the FHA, and are therefore "aggrieved persons" within the meaning of the FHA, section 3602(i) .

71. The City arbitrarily and unlawfully thwarted Plaintiffs' efforts to develop the Property.

72. The City also unreasonably refused to make simple accommodations in rules, policies, practices, or services, when such accommodations were integral to the development of the Property.

73. The actions of the City were taken with a discriminatory intent, purpose and motivation, namely to prevent recovering alcoholics, recovering drug addicts, mentally impaired persons, and other handicapped persons from residing at or around the Property.

74. The conduct of the City also actually and predictably resulted in a disparate impact, namely the denial of housing opportunities for handicapped persons located in the region.

75. At all times relevant herein, the actions of the City constitute discriminatory housing practices, within the meaning of the FHA, section 3604, in that they (1) were taken for the purpose of denying housing opportunities to handicapped persons protected by the FHA, and (2) actually denied housing opportunities to handicapped persons protected by the FHA.

76. The City's violation of section 3604 of the FHA has caused, and will continue to cause to Plaintiffs damages.

77. Plaintiffs have been damaged in that Plaintiffs cannot proceed with the Revised Project, and Plaintiffs have lost the allocated Tax Credits and the Brownfield Tax Credit.

WHEREFORE, Plaintiffs, HDC, XY, and 200 East William hereby request the entry of judgment in their favor and against the City of Ann Arbor as to Count I, awarding to Plaintiffs actual, incidental and consequential damages, their attorneys fees and costs, and such other and further relief as this Honorable Court deems just and equitable.

COUNT II
(Violation of the Fair Housing Act, 42 U.S.C. § 3605)

78. Plaintiffs incorporate by reference Paragraphs 1 through 77 of the Complaint, as if fully restated here.

79. Title 42 United States Code Section 3605(a) provides that it shall be unlawful: "for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin."

80. Title 42 United States Code Section 3605(b) defines "residential real estate-related transaction" as meaning any of the following:

> (1) The making or purchasing of loans or providing other financial assistance --
>
> (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
>
> (B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

81. The City provides financial assistance for the purchasing, constructing, improving, repairing, or maintaining of dwellings, and sells residential property.

82. The City engaged in a "residential real estate-related transaction" with Plaintiffs when it entered into an option contract for the sale of the Property upon which Plaintiffs intended to develop affordable residential housing for handicapped persons.

83. The terms and conditions of the Final Option Agreement imposed by the City were discriminatory, in that they were designed to ensure that Plaintiffs could not exercise the option, and therefore that the Property would not be developed into housing for handicapped persons.

84. The actions of the City were taken with a discriminatory intent, purpose and motivation, namely to prevent recovering alcoholics, recovering drug addicts, mentally impaired, and other handicapped persons from residing at or around the Property.

85. The actions of the City also actually and predictably resulted in a disparate impact, namely the denial of housing opportunities for handicapped persons located in the region.

86. The City's violation of section 3605 of the FHA has caused, and will continue to cause to Plaintiffs damages.

87. Plaintiffs have been damaged in that Plaintiffs cannot proceed with the Revised Project, and Plaintiffs have lost the allocated Tax Credits and the Brownfield Tax Credit.

WHEREFORE, Plaintiffs, HDC, XY, and 200 East William hereby request the entry of judgment in their favor and against the City of Ann Arbor as to Count II, awarding to Plaintiffs actual, incidental and consequential damages, their attorneys fees and costs, and such other and further relief as this Honorable Court deems just and equitable.

COUNT III
(Violation of the Fair Housing Act, 42 U.S.C. § 3617)

88. Plaintiffs incorporate by reference Paragraphs 1 through 87 of the Complaint, as if fully restated here.

89. Title 42 United States Code Section 3617 provides that "[i]t shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title."

90. By developing affordable residential housing for handicapped persons, Plaintiffs assist handicapped persons in the exercise and enjoyment of rights protected by the FHA.

91. By illegally frustrating Plaintiffs' efforts to develop the Property, the City interfered with Plaintiffs' ability to help handicapped persons exercise and enjoy rights secured by the FHA.

92. The actions of the City were taken with a discriminatory intent, purpose and motivation, namely to prevent recovering alcoholics, recovering drug addicts, mentally impaired, and other handicapped persons from residing at or around the Property.

93. The conduct of the City also actually and predictably resulted in a disparate impact, namely the denial of housing opportunities for handicapped persons located in the region.

94. The City's violation of section 3617 of the FHA has caused, and will continue to cause to Plaintiffs damages.

95. Plaintiffs have been damaged in that Plaintiffs cannot proceed with the Revised Project, and Plaintiffs have lost the allocated Tax Credits and the Brownfield Tax Credit.

WHEREFORE, Plaintiffs, HDC, XY, and 200 East William hereby request the entry of judgment in their favor and against the City of Ann Arbor as to Count III, awarding to Plaintiffs actual, incidental and consequential damages, their attorneys fees and costs, and such other and further relief as this Honorable Court deems just and equitable.

COUNT IV
(Breach of the Covenant of Good Faith and Fair Dealing)

96. Plaintiffs incorporate by reference Paragraphs 1 through 95 of the Complaint, as if fully restated here.

97. On November 6, 2007, the City terminated the Final Option Agreement.

98. Plaintiffs did in all instances comply with the terms of the Development Agreement and the Final Option Agreement, with the exception of the Demolition Permit Milestone, which Plaintiffs were prevented from achieving by the actions of the City.

99. In particular, Plaintiffs complied with and met all other Milestones specified in the Final Option Agreement, including but not limited to, obtaining construction financing commitments.

100. The so-called Supplemental Agreement addressed only the subject of lower rents (*i.e.*, greater subsidies), and was conditioned on the City's establishment of an Endowment fund (estimated to exceed $2 million) to further subsidize the housing rents at a level below the federal minimum. The City failed to provide for and establish the Endowment as it had agreed to and, thus, the Supplemental Agreement was never executed, leaving in place only the Final Option Agreement.

101. The Demolition Permit Milestone in the Final Option Agreement -- insisted upon by the City -- constituted a condition precedent to Plaintiffs' right to exercise the Option.

102. The issuance of demolition permit applications, and the issuance of the demolition permits, themselves, was dependent in whole or in part on the acts of the City.

103. There thus existed an implied agreement that the City would place no obstacle in the way of the happening of that event.

104. The City's refusal to provide to Plaintiffs demolition permit applications -- based upon a contrived, and non-existent requirement that the Plaintiffs must own the Property to be demolished -- breached the covenant of good faith and fair dealing.

105. Moreover, because the City prevented, or rendered impossible the fulfillment by Plaintiffs of the condition precedent (application for demolition permits), the City cannot rely upon the non-occurrence of that condition to terminate the Final Option Agreement.

106. The City's unjustified termination of the Final Option Agreement was, itself, a breach of contract.

107. The City's breach of the covenant of good faith and fair dealing has caused, and will continue to cause to Plaintiffs damages.

108. Plaintiffs have been damaged in that Plaintiffs cannot proceed with the Revised Project, and Plaintiffs have lost the allocated Tax Credits and the Brownfield Tax Credit.

WHEREFORE, Plaintiffs, HDC, XY, and 200 East William hereby request the entry of judgment in their favor and against the City of Ann Arbor as to Count IV, awarding to Plaintiffs actual, incidental and consequential damages, their attorneys fees and costs, and such other and further relief as this Honorable Court deems just and equitable.

COUNT V
(Breach of Contract)

109. Plaintiffs incorporate by reference Paragraphs 1 through 108 of the Complaint, as if fully restated here.

110. The City's June 20, 2005 Resolution, accepting Plaintiffs' bid proposal in response to the RFP, constituted both an existing contract permitting Plaintiffs to develop the Property, and a contract to enter into a subsequent development contract.

111. To wit, in order for the Proposed Project, and thereafter the Revised Project to proceed, Plaintiffs and the City were required to enter into a Development Agreement and, thereafter, a Supplemental Agreement.

112. Despite Plaintiffs' good-faith efforts to finalize a Supplemental Agreement, the City refused to finalize the Supplemental Agreement.

113. The City's dilatory conduct and bad-faith refusal to enter into a Supplemental Agreement constitutes a breach of contract.

114. The City's breach of contract has caused, and will continue to cause to Plaintiffs damages.

115. Plaintiffs have been damaged in that Plaintiffs cannot proceed with the Revised Project, and Plaintiffs have lost the allocated Tax Credits and the Brownfield Tax Credit.

WHEREFORE, Plaintiffs, HDC, XY, and 200 East William hereby request the entry of judgment in their favor and against the City of Ann Arbor as to Count V, awarding to Plaintiffs actual, incidental and consequential damages, their attorneys fees and costs, and such other and further relief as this Honorable Court deems just and equitable.

COUNT VI
(Fraud in the Inducement)

116. Plaintiffs incorporate by reference Paragraphs 1 through 115 of the Complaint, as if fully restated here.

117. As set forth above, the City insisted upon the Demolition Permit Milestone in the Final Option Agreement, as a condition precedent to Plaintiffs' exercise of the option.

118. The City knew at the time the Final Option Agreement was executed that the City would not allow Plaintiffs to apply for demolition permits and, thus, Plaintiffs would be unable to satisfy the Demolition Permit Milestone.

119. The City affirmatively represented to Plaintiffs that the Demolition Permit Milestone was achievable. In the alternative, the City failed to advise Plaintiffs that the Milestone could not possibly be achieved, when under a duty to so advise.

120. The City intended that Plaintiffs would rely upon the City's affirmative representation as to the achievability of the Demolition Permit Milestone (or would rely upon the City's silence as to the impossibility that the Milestone could be achieved).

121. Plaintiffs relied, to their detriment, upon the City's affirmative representation (or omission) in executing the Final Option Agreement.

122. The City thereafter asserted that Plaintiffs' failure to achieve the Demolition Permit Milestone constituted a default, and thus terminated the Final Option Agreement.

123. The City's fraudulent conduct has destroyed the Revised Project, and has caused the loss of the allocated Tax Credits and the Brownfield Tax Credit.

124. Plaintiffs have thus been damaged by the City's misrepresentation.

WHEREFORE, Plaintiffs, HDC, XY, and 200 East William hereby request the entry of judgment in their favor and against the City of Ann Arbor as to Count VI, awarding to Plaintiffs actual, incidental and consequential damages, their attorneys fees and costs, and such other and further relief as this Honorable Court deems just and equitable.

COUNT VII
(Tortious Interference with Contract and/or Business Expectancy)

125. Plaintiffs incorporate by reference Paragraphs 1 through 124 of the Complaint, as if fully restated here.

126. Plaintiffs had a contract and/or valid business relationship with MSHDA with regard to the allocation of the Tax Credits. Plaintiffs also had a valid business expectancy in the completion of the Revised Project.

127. The City knew of Plaintiffs' contract and/or valid business relationship with MSHDA with regard to the allocation of Tax Credits. The City also knew of Plaintiffs' business expectancy in the completion of the Revised Project.

128. The City unjustifiably and intentionally interfered with those contracts and/or business expectancies by, *inter alia*, (a) delaying the progress of the Revised Project; (b) refusing to enter into the Supplemental Agreement; (c) terminating the Final Option Agreement based upon Plaintiffs' failure to achieve the (unachievable) Demolition Permit

Milestone; and (d) attempting to have MSHDA reallocate the Tax Credits to a different project/developer.

129. The City's wrongful termination of the Final Option Agreement destroyed the Revised Project, and has caused the loss of the allocated Tax Credits.

130. As a result of that unjustifiable and intentional interference, Plaintiffs have been damaged.

131. No statute, law or ordinance permits the City to unilaterally endeavor to deprive Plaintiffs of their contracts and/or valid business expectancies in order to have transferred those contracts and/or expectancies to some other project/developer.

132. As such, the City was not engaged in the exercise of a governmental function and, thus, is not immune from tort liability.

WHEREFORE, Plaintiffs, HDC, XY, and 200 East William hereby request the entry of judgment in their favor and against the City of Ann Arbor as to Count VII, awarding to Plaintiffs actual, incidental and consequential damages, their attorneys fees and costs, and such other and further relief as this Honorable Court deems just and equitable.

Respectfully submitted,

PADILLA KOSTOPOULOS, PLLC

By: /s/ K. Dino Kostopoulos

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Dated: October 12, 2009

JURY DEMAND

Plaintiffs, by and through their attorneys, Padilla Kostopoulos, PLLC, and hereby demand a trial by jury as to all matters so triable.

PADILLA KOSTOPOULOS, PLLC

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