

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII

CONCILIATION AGREEMENT

Between

[REDACTED]

(Complainant)

[REDACTED]

(Complainant)

And

Fourth Street Realty, Inc., Mary Viens, Matthew Viens, and Viens & Sons Construction

(Respondents)

Approved by the FHEO Regional Director on behalf of the United States Department of Housing
and Urban Development

FHEO CASE NUMBERS: 01-11-0237-8; 01-12-0064-8

A. PARTIES AND SUBJECT PROPERTY

- [REDACTED] ("Complainant [REDACTED])
- [REDACTED] ("Complainant [REDACTED])
- Fourth Street Realty, Inc., Property Owner ("Respondent Fourth Street Realty")
- Mary Viens, Property Manager ("Respondent Mary Viens")
- Matthew Viens, Property Manager ("Respondent Matthew Viens")
- Viens & Sons Construction, Inc., Contractor ("Respondent Viens & Sons Construction")
- Respondents Fourth Street Realty, Mary Viens, Matthew Viens, and Viens & Sons Construction (collectively "Respondents")
- The subject property is a three-story multifamily apartment building with 10 dwelling units located at [REDACTED] City of Manchester, Hillsborough County, New Hampshire ("subject property").

B. APPLICABLE LAW

The Fair Housing Act (the "Act"), 42 U.S.C. §§ 3601-19, prohibits discrimination in the design and construction of new multifamily housing of four or more dwelling units.

It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter; a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

It is unlawful 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 disability of that person; or a person residing or intending to reside in that dwelling after it is sold, rented, or made available; or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

For purposes of 42 U.S.C. §§ 3604(f)(1) and (f)(2), discrimination includes the failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in such a manner that:

- (i) the public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;

(ii) all the doors designed to allowed passage into and within all premises with such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and,

(iii) all premises with 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 in a wheelchair can maneuver about the space. 42 U.S.C. §3604(f)(3)(C); 24 C.F.R. § 100.205.

As used in 42 U.S.C. § 3604(f)(3)(C) of the Act, "covered multifamily dwellings" are: (A) buildings consisting of four or more units if such buildings have one or more elevators; and (B) ground floor units in other buildings consisting of four or more units. 42 U.S.C. § 3604(f)(7).

The U.S. Department of Housing and Urban Development ("HUD") recognizes a number of safe harbors for compliance with the design and construction requirements of the Act, including the American National Standards Institute ("ANSI") A117.1-1986 accessible building standards, the Fair Housing Act Accessibility Guidelines ("Guidelines"), 24 C.F.R. Chapter I, Subchapter A, Appendix II and III, published in the Federal Register on March 6, 1991 in conjunction with the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, 24 C.F.R. Chapter I, Subchapter A, Appendix IV, published in the Federal Register on June 28, 1994, and the Fair Housing Act Design Manual ("Design Manual") published by HUD in 1996 and updated in 1998. 24 C.F.R. § 100.205(e).

C. STATEMENT OF FACTS

Complainant [REDACTED] filed a complaint with HUD on March 31, 2011 alleging that Respondents Fourth Street Realty, Inc. and Mary Viens discriminated based on disability in violation of the Act by failing to design and construct a multifamily dwelling for first occupancy after March 13, 1991 in a manner that is readily accessible and usable by persons with disabilities. The complaint was amended on November 25, 2011, to include Matthew Viens and Viens & Sons Construction, Inc. as Respondents.

Complainant [REDACTED] filed a complaint with HUD on November 29, 2011 alleging that each of the foregoing Respondents discriminated based on disability in violation of the Act by failing to design and construct a multifamily dwelling for first occupancy after March 13, 1991 in a manner that is readily accessible and usable by persons with disabilities.

Complainant [REDACTED] is an individual with a disability who resides at Apt. [REDACTED] of the subject property. Complainant [REDACTED] signed a lease with Respondent Fourth Street Realty to occupy [REDACTED] Mammoth Road, Apt. [REDACTED] for a one-year term beginning May 1, 2010 and moved into the unit on May 8, 2010.

Complainant [REDACTED] is an individual with a disability who resides at Apt. [REDACTED] of the subject property. Complainant [REDACTED] signed a lease with Respondent Fourth Street Realty to

occupy [REDACTED] Mammoth Road, Apt. [REDACTED] for a one-year term beginning October 1, 2009. Complainant [REDACTED] and Respondent Fourth Street Realty renewed the lease on September 28, 2011.

Respondent Fourth Street Realty, Inc. was the developer and is the owner of the subject property. Respondents Mary Viens and Matthew Viens manage the subject property for Fourth Street Realty, Inc. Respondent Viens & Son Construction was the contractor responsible for the construction of the subject property.

The City of Manchester issued a Certificate of Occupancy for units 2 and 9 of the subject property on December 12, 2008 and Certificate of Occupancy for units 1, 3, 4, 5, 6, 7, 8, and 10 of the subject property on September 23, 2009 (C.O. No. 44-2009). Exterior construction of the subject property was completed in approximately December 2008, with interior construction work continuing through September 2009.

At the time of initial tenant occupancy and leasing, Respondent Fourth Street Realty marketed the subject property as an accessible building. On February 11, 2009, Respondent Mary Viens sent a flyer advertising the subject property to a number of local health care and housing organizations, including Catholic Medical Center, Life Coping, and New Hampshire Housing. The flyer advertised the subject property as "wheelchair accessible apartments" and listed a series of amenities including "storage and parking."

On November 16, 2011, HUD inspected the subject property and found that it failed to meet the following requirements of the Act at 42 U.S.C. § 3604(f)(3)(C):

The subject property's public use and common use portions were not readily accessible to and usable by disabled persons as required by 42 U.S.C. § 3604(f)(3)(C)(i); 24 C.F.R. § 100.205(c)(1); Guidelines Requirement 2. Specifically, the tenant storage units located in the basement of the subject property were not connected to the building with an accessible route. Design Manual 2.3, 2.15; ANSI A117.1-1986, 4.1, Table 2.

The subject property failed to provide a fully accessible route into and through the dwelling as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I). Specifically, the slope of the front entrance ramp exceeded 1:12 (8.33%) and, therefore, could not be considered part of an accessible route. 24 C.F.R. § 100.205(a); Guidelines Requirement 1; Design Manual 1.7; ANSI A117.1-1986, 4.8.2. In addition, the landing at the bottom of the front entrance ramp could not be safely negotiated by a person using a wheelchair making a 180-degree turn because the landing was slanted downward towards the curb and had a diameter of less than 60 inches. 24 C.F.R. § 100.205(a); Guidelines Requirement 1; Design Manual, 19, I.2; ANSI A117.1-1986, 4.8.4, Fig. 3(a). Furthermore, the subject property failed to provide a fully accessible route into and through the dwelling because the interior thresholds were not accessible to a person using a wheelchair. 24 C.F.R. § 100.205(c)(3)(i); Guidelines Requirement 4. The thresholds were not accessible because the thresholds exceeded 1/2 inch in height, but were not ramped at a maximum slope of 1:12 (8.33%). Additionally, the doorway

thresholds were not accessible because the thresholds included a vertical rise of greater than 1/4 inch without edge treatment. Design Manual, 4.4-4.5; ANSI A117.1-1986, 4.5.2, Fig. 7(c) and (d).

On or about December 2, 2011, Respondents altered the front entrance ramp and landing at the subject property in an effort to comply with design and construction requirements of the Act.

On December 16, 2011, HUD again inspected the subject property. HUD's inspection found that while the basement storage units and interior thresholds at the subject property remained unchanged, Respondents altered the front entrance ramp and landing. HUD found that the slope of the upper section of the front entrance ramp and diameter of the landing complied with the requirements of 42 U.S.C. § 3604(f)(3)(C). However, HUD found that the newly constructed lower section of the front entrance ramp failed to provide an accessible route into and through the dwelling as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I). Specifically, the lower section of the front entrance ramp was not accessible because it lacked handrails on both sides and the cross slope of the ramp exceeded 1:50 (2%). 24 C.F.R. § 100.205(a); Guidelines Requirement 1; ANSI A117.1-1986, 4.8.5, 4.8.6.

By failing to design and construct the subject property in accordance with 42 U.S.C. § 3604(f)(3)(C), Respondents' conduct discriminated in the rental of the subject property and in the terms, conditions, or privileges of rental in violation of 42 U.S.C. §§ 3604(f)(1) and (f)(2).

As a result of the Respondents' conduct, Complainant [REDACTED] Complainant [REDACTED] and other tenants with disabilities living at the subject property suffered damages, including emotional distress.

The Department, Complainants, and Respondents agree to settle the claims in the underlying action by entering into this Conciliation Agreement.

D. TERM OF AGREEMENT

1. This Conciliation Agreement (hereinafter "Agreement") shall govern the conduct of the parties to it for a period of five (5) years from the effective date of the Agreement.

E. EFFECTIVE DATE

2. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the U.S. Department of Housing and Urban Development, through the Office of Fair Housing and Equal Opportunity ("FHEO") Regional Director or her designee.

3. This Agreement shall become effective on the date on which it is approved by the FHEO Regional Director, New England Regional Office of HUD.

F. GENERAL PROVISIONS

4. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaints. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.

5. The Respondents acknowledge that they have an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act.

6. This Agreement, after approval by the FHEO Regional Director, or her designee, is binding upon Respondents, their employees, heirs, successors and assigns and all others in active concert with them in the ownership or operation of subject property.

7. The parties understand that, pursuant to 42 U.S.C. § 3610(b)(4) of the Act, upon approval of this Agreement by the FHEO Regional Director or her designee, this Agreement is a public document.

8. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved and signed by the FHEO Regional Director.

9. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement via facsimile or email; and that the original executed signature pages attached to the body of the Agreement constitute one document.

10. After the completion of all retrofits described in Paragraph 19, Complainant [REDACTED] and Complainant [REDACTED] agree to forever waive, release, and covenant not to sue the Department or Respondents, their heirs, executors, assigns, agents, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 01-11-0237-8 and 01-12-0064-8 or which could have been filed in any action or suit arising from said subject matter.

11. Respondents hereby forever waive, release, and covenant not to sue the Department or Complainants and their successors, assigns, agents, officers, board members, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 01-11-0237-8 and 01-12-0064-8 or which could have been filed in any action or suit arising from said subject matter.

12. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondents made pursuant to the Fair Housing Act, or any other

complaint within the Department's jurisdiction. However, the Department agrees not to investigate any new complaints that allege violations of the design and construction requirements at 42 U.S.C. § 3604(f)(3)(C) at the subject property. The Department may inform any complainants or potential complainants of their right to file a civil action directly in United States district court pursuant to 42 U.S.C. § 3613 of the Act.

G. RELIEF FOR COMPLAINANTS

13. Respondents shall pay by certified or cashier's checks the amount of THREE THOUSAND DOLLARS (\$3,000) to Complainant [REDACTED] for compensatory damages. The first one thousand five hundred dollars (\$1,500) of this payment above shall be due on or before ninety (90) days of the effective date of this Agreement. The second one thousand five hundred dollars (\$1,500) of this payment above shall be due on or before one hundred and eight (180) days of the effective date of this Agreement. The checks shall be made payable to [REDACTED] and mailed to Complainant [REDACTED] by Federal Express or certified mail at [REDACTED] Mammoth Road, Apt. [REDACTED] Manchester, NH 03104. Additionally, within one hundred and eight (180) days of the effective date of this Agreement, Respondents shall pay by certified or cashier's checks an additional amount of ONE THOUSAND DOLLARS (\$1,000) to Manchester Transit Authority for the purpose of assisting persons with mobility impairments in accessing public meetings in the City of Manchester, New Hampshire. Respondents shall make the check payable to "Manchester Transit Authority" and mail the check by Federal Express or certified mail to 110 Elm Street, Manchester, NH 03101 under the condition that the funds are used exclusively for the Manchester Transit Authority's "Public Meeting Access" program. Respondents acknowledge that Complainant [REDACTED] has foregone further compensatory damages, such that Respondents may use the funds to install a wheelchair accessible lift, as described in Paragraph 19, to enable tenants with mobility impairments to access the basement storage units at the subject property.

14. Within thirty (30) days of the effective date of this Agreement, Respondents shall provide Complainant [REDACTED] a written invoice of the cost to repair any damages to the dishwasher skirt in Complainant [REDACTED] unit, Apt. [REDACTED] of the subject property.

15. Respondents shall pay by certified or cashier's check the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) to Complainant [REDACTED] for compensatory damages within ninety (90) days of the effective date of this Agreement. The check shall be made payable to [REDACTED] and mailed to Complainant [REDACTED] by Federal Express or certified mail at [REDACTED] Mammoth Road, Apt. [REDACTED] Manchester, NH 03104.

16. Respondents agree to pay for the full cost of any repairs to the dishwasher in Complainant [REDACTED] unit, Apt. [REDACTED] of the subject property, prior to the execution of this Agreement. Accordingly, Respondents shall cease sending Complainant [REDACTED] invoices for repairs made to the dishwasher on March 12, 2012.

17. In accordance with HUD's reasonable modification regulations at 24 C.F.R. § 100.203, Respondents agree to permit Complainant [REDACTED] and Complainant [REDACTED] to make any reasonable modifications of the existing premise as may be necessary to afford Complainants the

full enjoyment of the subject property, including the timely installation of automatic doors to assist Complainants in entering and exiting their dwelling units at the subject property.

H. RELIEF FOR AGGRIEVED PERSONS

18. Respondents shall pay by certified or cashier's check the amount of TWO HUNDRED AND FIFTY DOLLARS (\$250) to each aggrieved person(s), as listed below, harmed by Respondents' discriminatory housing practices. Within ninety (90) days of the effective date of this Agreement, Respondents shall send a check to the Department for each aggrieved person(s) listed below. The Department shall keep said checks in its possession until each aggrieved person(s) has signed a release of claims against Respondents drafted by the Department, at which time the Department shall forward said checks to such aggrieved persons.

- [REDACTED] Apt. [REDACTED]
- [REDACTED] Apt. [REDACTED]
- [REDACTED] Apt. [REDACTED]

I. RELIEF IN THE PUBLIC INTEREST

19. Within ninety (90) days of the effective date of this Agreement, Respondents shall complete the following retrofits to the subject property to bring the subject property in compliance with the design and construction requirements of the Act:

- a. Respondents shall make the basement storage units at the subject property readily accessible to and usable by disabled persons as required of public and common use areas by 42 U.S.C. § 3604(f)(3)(C)(i). Accordingly, Respondents shall install a wheelchair accessible lift to enable tenants with mobility impairments to access the basement storage units at the subject property. *EXPECTED DATE FOR INSTALLATION IS 120 DAYS. (PER AGREEMENT W/*
- b. Respondents shall rebuild the front entrance ramp at the subject property to create an accessible route into and through the dwelling as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I). Accordingly, Respondents shall redesign and rebuild the lower section of the front entrance ramp such that the cross slope does not exceed 1:50 (2%). Furthermore, Respondents shall install handrails on both sides of the lower section of the front entrance ramp. *ATTY. BOTCHO
ATTY. DUDDY
5-21-12*
- c. Respondents shall replace or modify the interior thresholds at the subject property to create an accessible route into and through the dwelling as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I). Accordingly, Respondent shall replace or modify all seventeen (17) interior hallway and doorway thresholds at the subject property as necessary to comply with the ANSI A117.1-1986, Section 4.5.2 accessible standard for changes in level. As required by ANSI A117.1-1986, the replaced or modified thresholds shall not include a vertical rise greater than 1/4 inch without a proper edge treatment. Further, as required by ANSI A117.1-1986, the replaced or modified thresholds shall include a beveled or tapered edge treatment with a maximum slope of 1:2 (50%) for

all changes in level between 1/4 inch and 1/2 inch and shall include a ramp with a maximum slope of 1:12 (8.33%) for all changes in level greater than 1/2 inch.

20. Respondents shall enter into a contract at their own expense with a neutral third-party inspector approved by the Department to conduct an on-site inspection of all retrofits performed pursuant to Paragraph 19 of this Agreement to determine compliance with the accessibility requirements of the Act at 42 U.S.C. § 3604(f)(3)(C). The inspector shall have expertise in the design and construction requirements of the Act. Respondents may request such inspector to review and comment upon any of Respondents' proposed retrofits in advance of any repair or modification. Respondents shall give the Department at least ten (10) days written notice of the inspection and shall give the Department an opportunity to have a representative present for the inspection. The inspector shall set out in writing the results of inspection and shall send a copy to Respondents and the Department. If the inspection indicates that not all of the required retrofits described in Paragraph 19 comply with the accessibility requirements of the Act at 42 U.S.C. § 3604(f)(3)(C), Respondents shall correct any deficiencies within thirty (30) days and shall pay for another inspection by the same inspector to certify that the deficiencies have been corrected. This process shall continue until the inspector certifies that all of the modifications described in Paragraph 19 have been made. Nothing in this paragraph shall relieve Respondents of their obligations to make all retrofits to the subject property described in Paragraph 19.

21. Respondents shall not sell or transfer ownership of the subject property, in whole or in part, unless Respondents have completed retrofitting to the subject property as described in Paragraph 19 of this Agreement or unless Respondents obtain in writing as a condition of sale or transfer the purchaser's or transferee's commitment to assume the obligations in Paragraph 19 so that the purchaser or transferee will be bound by the terms of this Agreement to make retrofits and allow inspections of the subject property.

22. Within ninety (90) days of the effective date of this Agreement, Respondents agree to install an automatic door opener at the front entrance to the subject property to assist persons with disabilities in entering and exiting the building.

23. Within thirty (30) days of the effective date of this Agreement, Respondents agree to display a notice, drafted by the Department, describing the features of the subject property that did not comply 42 U.S.C. § 3604(f)(3)(C) as described in Section C of this Agreement and the changes necessary to bring the building into compliance with the Act as described in Paragraph 19 of this Agreement. The notice shall be approved by the Department and displayed in the first floor hallway near the front entrance of the subject property until the date when all retrofitting at the subject property is complete.

24. Within thirty (30) days of the effective date of this Agreement, Respondents agree to display a HUD Fair Housing poster, to be supplied by the Department, in the first floor hallway near the front entrance of the subject property. The poster shall be displayed during the entire term of this Agreement.

25. Within thirty (30) days of the effective date of this Agreement, Respondents agree to display a notice in the first floor hallway near the front entrance of the subject property informing all

tenants with disabilities of their right to request reasonable accommodations to afford such persons an equal opportunity to use and enjoy the subject property. The notice shall be displayed during the entire period of Respondent Fourth Street Realty's ownership of the subject property.

26. Within thirty (30) days of the effective date of this Agreement, Respondents shall inform all of their agents and employees responsible for compliance with this Agreement, including any officers and board members, of the terms of this Agreement and shall provide each such person with a copy of this Agreement.

J. MONITORING

27. The Department shall determine compliance with the terms of this Agreement. During the term of this Agreement, HUD may review compliance with this Agreement. As part of such review, HUD may inspect the subject property, examine witnesses, and copy pertinent records of Respondent. Respondents agree to provide their full cooperation in any monitoring review undertaken by HUD to ensure compliance with this Agreement.

K. REPORTING AND RECORDKEEPING

28. Within one hundred and eight (180) days of the effective date of this Agreement, Respondents shall transmit a photocopy of the checks identified in Paragraph 13, together with a copy of the delivery tracking reports or certified mail receipts as evidence of delivery, to the FHEO Regional Director.

29. Within ninety (90) days of the effective date of this Agreement, Respondents shall transmit a photocopy of the check identified in Paragraph 15, together with a copy of the delivery tracking reports or certified mail receipts as evidence of delivery, to the FHEO Regional Director.

30. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondents shall certify to the FHEO Regional Director, in writing, that they have complied with Paragraphs 19, 20, and 22 of this Agreement. Respondents' certification shall include a list of all retrofits made by Respondents and copy of the final inspection report of the third-party inspector. Respondents' obligation to complete all modifications and retrofits described in Paragraph 19 within ninety (90) days is absolute, except in the event of exigent circumstances approved at the sole discretion of the Department.

31. All required certifications and documentation of compliance must be submitted to:

Regional Director, Office of Fair Housing and Equal Opportunity
c/o Jennifer Conroy
10 Causeway Street, Room 321
Boston, MA 02222

L. CONSEQUENCES OF BREACH

32. Whenever the Department has reasonable cause to believe that Respondents have breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to 42 U.S.C. §§ 3610(c) and 3614(b)(2).

M. SIGNATURES

[Redacted Signature]

4/19/12
Date

[Redacted Signature]

4/19/12
Date

Signatory
For Fourth Street Realty, Inc.

Date

Mary Viens

Date

Matthew Viens

Date

Signatory
For Viens & Sons Construction, Inc.

Date

N. APPROVAL

Timothy Robison, Acting Regional Director
Office of Fair Housing and Equal Opportunity

Date

L. CONSEQUENCES OF BREACH

32. Whenever the Department has reasonable cause to believe that Respondents have breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to 42 U.S.C. §§ 3610(c) and 3614(b)(2).

M. SIGNATURES

 _____

Date

 _____

Date

Mary Viens, President
Signatory
For Fourth Street Realty, Inc.

5-21-12
Date

Mary Viens
Mary Viens

5-21-12
Date

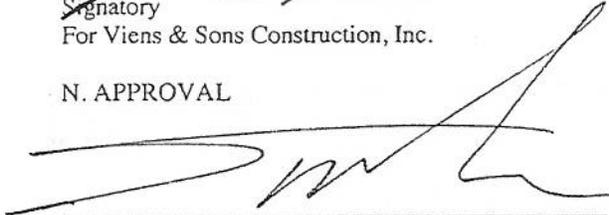

Matthew Viens

5/21/12
Date


Signatory
For Viens & Sons Construction, Inc.

5/21/12
Date

N. APPROVAL


Timothy Robison, Acting Regional Director
Office of Fair Housing and Equal Opportunity

5/21/2012
Date