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3-21-2006

## **EEOC v. Melrose Hotel Company, Inc., MHC Barbizon L.P. and Berwind Property Group, Ltd.**

Judge Alvin K. Hellerstein

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**EEOC v. Melrose Hotel Company, Inc., MHC Barbizon L.P. and Berwind Property Group, Ltd.**

**Keywords**

EEOC, Melrose Hotel Company Inc., MHC Barbizon L.P., Berwind Property Group Ltd., 04-CV-7514 (AKH), Consent Decree, Disparate Treatment, Hostile Work Environment, Retaliation, Termination, Terms and Conditions, Hispanic or Latino, Hospitality, Employment Law, Title VII

Hellerstein J

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

-against-

MELROSE HOTEL COMPANY,  
INC., MHC BARBIZON, L.P. and  
BERWIND PROPERTY GROUP, LTD.,

Defendants.

Civil Action No.  
04-CV-7514 (AKH)

MAR 20 2006

ECF Case

CONSENT DECREE

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 3/21/06

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## **PART I      GENERAL PROVISIONS**

### **Section 101    Introduction**

The Plaintiff Equal Employment Opportunity Commission (“EEOC” or “Commission”) and Defendants Melrose Hotel Company, Inc., MHC Barbizon, L.P., and Berwind Property Group, Ltd. (collectively “Defendants” or “Melrose”) have agreed to resolve this action by the terms of this Consent Decree (“Decree”) as set forth below.

On September 23, 2004, the Commission brought this action under Title VII of the Civil Rights Act of 1964, as amended. The Complaint seeks to correct unlawful discrimination on the basis of national origin at The Melrose Hotel New York and to make whole Barbara Garcia, Juana Velez and a class of Hispanic individuals who were subjected to discrimination and retaliation at The Melrose Hotel New York.

The EEOC’s complaint alleges that Defendants terminated Barbara Garcia and other Hispanic employees based on their national origin. The complaint further alleges that Defendants harassed Juana Velez and other Hispanic employees based on their national origin.

The EEOC’s complaint also alleges that Defendants discriminated against a class of Hispanic employees regarding the terms and conditions of their employment including by maintaining and enforcing a rule requiring Hispanic employees to speak only English at all times.

The EEOC’s complaint also alleges that Defendants retaliated against Barbara Garcia and other Hispanic employees after receiving complaints of discrimination based on national origin.

Through this action, the Commission seeks injunctive relief and monetary damages for all individuals affected by Defendants’ discriminatory acts.

Defendants have denied all of these allegations, and assert that their employment practices and policies are in compliance with all applicable federal, state and local laws, rules and regulations.

**Section 102 Purpose of the Decree**

A. The EEOC and Defendants desire to settle this action, and therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the parties and their successors, assigns, any other corporation or other entity that acquires any or all of Defendants and any corporation or other entity into which any or all of Defendants may merge or with which any or all of Defendants may consolidate.

B. This Consent Decree resolves all issues raised in the Complaint EEOC filed in this case and in EEOC Charge Numbers 160-2003-00888 and 160-2003-02080, which served as the jurisdictional prerequisites in this case. The Commission reserves all rights to proceed regarding matters not covered in this Consent Decree. The Decree does not resolve any charge of discrimination currently pending before the EEOC, or any charge that may be filed in the future, other than those charges listed above.

C. The terms of this Consent Decree represent the full and complete agreement of the parties. The parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

D. By signing this Consent Decree Defendants do not admit that they have committed any violations of Title VII of the Civil Rights Act of 1964.

**Section 103 Prohibited Conduct and Injunction Against Discrimination**

A. Defendants, on behalf of themselves and their successors, assigns, purchasers, and managers, officers and agents acting on behalf of any or all of Defendants, hereby agree that they shall not in the future discriminate against any individual because of the individual's national origin.

B. Defendants, on behalf of themselves and their successors, assigns, purchasers, and managers, officers and agents acting on behalf of any or all of Defendants, hereby represent that there is currently no policy, rule or guideline requiring the use of the English language only in the workplace, and hereby agree that any such policy, rule or guideline that is alleged to exist is hereby rescinded, and that Defendants shall not adopt any such policy, rule or guideline during the term of the Consent Decree.

C. Defendants, on behalf of themselves and their successors, assigns, purchasers, and managers, officers and agents acting on behalf of any or all of Defendants, agree that they shall not retaliate against any individual because that individual is a beneficiary of this Decree, has filed a complaint or has provided information, assistance, or participated in any other manner in the investigation or litigation of this matter.

**Section 104 Consent to Jurisdiction**

A. The EEOC and Defendants agree that this Court has jurisdiction over the subject matter of this litigation and the parties for the duration of this Decree, that venue is proper, and that all administrative prerequisites have been met. No party shall contest the validity of this Decree or the jurisdiction of the federal district court to enforce this Decree and its terms.



B. The Court shall retain jurisdiction over this action for the duration of the Decree for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein. A breach of any term of this Decree by Defendants shall be deemed a substantive breach of this Decree. Any party may bring an enforcement action upon breach of any of the terms of this Decree by any other Party. Parties will provide seven (7) business days written notice of breach so that the party alleged to have breached may have an opportunity to cure before the other party brings an enforcement action. If EEOC believes it will be prejudiced, in light of its obligations to litigate in the public interest, by having to provide the notice and/or wait seven (7) business days, it may apply directly to the Court for relief. In any action to enforce the terms of this Decree, the Court will have full authority to order any remedy the Court deems appropriate including, but not limited to, specific performance. This Decree shall be construed under applicable federal law.

**Section 105 Applicability of Decree to Successors and Assigns and Upon Purchase, Merger or Consolidation**

Defendants shall provide written notice and a copy of this Consent Decree to any successors, assigns, any other corporation or other entity that acquires any or all of Defendants and any corporation or other entity into which any or all of Defendants may merge or with which any or all of Defendants may consolidate. The successors, assigns, acquiring entities, and any surviving entities upon merger or consolidation shall be fully liable for complying with the terms of the Decree. Defendants shall provide written notice to EEOC within ten (10) business days of any assignment, succession, acquisition, merger or consolidation.

**Section 106 New York City Hotel**

Defendants stipulate that as of the date of entry of this Decree, they do not own, operate or manage any hotel(s) in New York City. Defendants will notify EEOC within five (5) business days if they purchase and/or begin to operate and/or manage any hotel(s) in New York City. If Defendants purchase and/or begin to operate and/or manage any hotel(s) in New York City during the term of this Decree, all terms of this Decree shall apply to the hotel(s) and all of the terms in Section II of this Decree must be implemented at the hotel(s).

**Section 107 Amendments to the Decree**

By mutual consent of the parties, this Consent Decree may be amended in the interest of justice and fairness and to facilitate execution of the Decree's provisions. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless it is made in writing and approved by all Parties to this Decree.

**Section 108 Severability**

If one or more provisions of this Decree is rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the provisions of this Decree which are not rendered unlawful, unenforceable or incapable of performance as a result of such legislative act or court decision, shall remain in full force and effect, and the Parties' responsibilities shall not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of the Decree would be undermined.

**Section 109 Duration of the Decree**

A. The Consent Decree shall remain in effect for three (3) years from the date of

entry of the Decree. The date of entry of the Decree shall be the date it is filed with the Clerk of the Court, having been signed by the District Court judge.

B. If the EEOC has notified Defendants in writing not less than 15 calendar days in advance of the termination of the Decree that Defendants are not in compliance with any sections of the Decree, Defendants' obligations under the Decree shall remain in effect. Defendants shall have the right to contest such a determination by motion to the Court. The terms of the Decree will remain in force and effect until the issue is resolved by either the parties or the Court, or the Court otherwise determines that Defendants are in compliance.

**Section 110 Notices**

Except as otherwise provided for in this Decree, all notifications, reports and communications to the Parties required under this Decree shall be made in writing and shall be sufficient as hand-delivered, faxed, emailed or sent by express, certified or registered mail to the following persons (or their designated successors):

For the EEOC:	Robert D. Rose Raechel Adams Equal Employment Opportunity Commission 33 Whitehall Street, 5 <sup>th</sup> floor New York, NY 10004 Fax: 212.336.3623
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For Defendants:	Loretta Kelly, Esq. Berwind Property Group, Ltd. 1500 Market Street 3000 Centre Square West Philadelphia, PA 19102 Fax: 215.569.0329
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## **PART II SYSTEMIC RELIEF**

### **Section 201 Posting and Distribution of Notices**

#### **A. Notice of Resolution**

Within ten (10) business days of the entry of this Decree, Defendants shall conspicuously post and maintain a “Notice of Resolution” regarding this lawsuit on EEOC letterhead (attached as Exhibit A), in all of its offices in all prominent places where employee notices are posted. The Notice of Resolution shall be posted, and shall remain posted, for the duration of the Decree. Defendants shall notify EEOC in writing within ten (10) business days after they have posted the Notice of Resolution pursuant to this Section.

#### **B. Distribution of Memo to Employees**

A copy of a memo setting forth the coverage of federal employment discrimination laws (Exhibit B) shall be distributed to all employees of Defendants within ten (10) business days of the date of entry of the Decree. Defendants shall notify EEOC in writing within ten (10) business days after they have distributed the memo pursuant to this Section.

#### **C. Distribution of Memo to New Employees**

A copy of a memo setting forth the coverage of federal employment discrimination laws (Exhibit B) shall be distributed to all new employees of Defendants within five (5) business days of the commencement of their employment.

#### **D. EEO Posters**

Defendants will continue to post EEO posters in places visually accessible to applicants and employees of Defendants as required by federal regulations. Defendants shall notify EEOC in writing within ten (10) business days that they have continued their practice of posting EEO

posters pursuant to this Section.

## **Section 202 Non-Discrimination Policy and Complaint Procedures**

### **A. Maintenance of Non-Discrimination Policies and Procedures**

Defendants shall maintain comprehensive policies prohibiting all forms of employment discrimination made unlawful under federal laws. Defendants also shall maintain effective procedures for receiving and processing discrimination complaints which ensure that complaints are investigated in a thorough, fair and timely manner by a qualified and trained person. The policies and procedures shall set forth Defendants' commitment to equal opportunity in all aspects of employment.

### **B. Adoption of Non-Discrimination Policies and Procedures by Defendants**

Within ten (10) business days of the date of entry of the Decree, Defendants shall adopt the attached Non-Discrimination Policy (Exhibit C). Defendants shall include their updated Non-Discrimination Policy in their Employee Handbook and shall be make it available on any company website that makes other human resources information or policies available to employees. Under no circumstances has the EEOC, by reviewing and approving Defendants' Non-Discrimination Policy, waived its right to investigate or litigate any alleged violation of federal law enforced by the EEOC, related to or resulting from the implementation of any such policy, except for the specific allegations resolved by this Consent Decree.

### **C. Issuance of Non-Discrimination Policies and Procedures to Current Employees**

Defendants shall issue their Non-Discrimination Policy (Exhibit C) to all employees within ten (10) business days of the effective date of this Decree along with a letter (Exhibit D) signed by each of Defendants' Presidents affirming their commitment to maintaining a work

environment free of discrimination. Defendants shall notify EEOC in writing within ten (10) business days after it has complied with this Section.

**D. Issuance of Non-Discrimination Policies and Procedures to New Employees**

Defendants shall issue their Non-Discrimination Policy (Exhibit C) to all new employees within five (5) business days of the commencement of their employment along with a letter (Exhibit D) signed by each of Defendants' Presidents affirming their commitment to maintaining a work environment free of discrimination.

**E. Modification of Policies and Procedures**

If Defendants wish to modify their Non-Discrimination Policy during the term of the Decree, they shall do so only after submitting the modified policy to the EEOC for approval of the modification(s) and receiving such approval in writing. If EEOC fails to respond in writing within thirty (30) calendar days of receiving the proposed written modification(s) from Defendants, the modification(s) shall be deemed approved. EEOC agrees that it will not reject any change required by applicable state or local law, rule or regulation, provided that EEOC determines that the change is not inconsistent with the applicable federal laws enforced by the EEOC. Under no circumstances shall the EEOC, by commenting or electing not to comment on Defendants' Non-Discrimination Policy, be deemed to have waived its right to investigate or litigate any alleged violation of federal law enforced by the EEOC, related to or resulting from the implementation of any such policy.

## **Section 203 Training**

### **A. Initial Training**

#### **1. Approval by the EEOC**

Within one-hundred and eighty (180) calendar days of the effective date of the Decree, Defendants shall provide three (3) hours of training on federal employment discrimination laws to all employees. The trainings shall be conducted by Stradley Ronon LLP or another outside contractor selected by Defendants and approved by the EEOC. Within ten (10) business days of the date of entry of this Decree, Defendants shall submit a training agenda and materials to EEOC for review and approval and shall implement any recommendations made by EEOC regarding the training. The failure of Defendants to conduct initial training programs for all employees within one-hundred and eighty (180) calendar days of the effective date of the Decree shall be deemed a substantive breach of the Decree and the Court shall be notified of the breach.

#### **2. Required Subjects of the Training**

The initial training shall, at a minimum, include instruction on the rights and responsibilities of employees under federal anti-discrimination laws and on how such laws define unlawful discrimination. The training shall cover examples of unlawful conduct, including examples of national origin discrimination. The training also will cover Defendants' Non-Discrimination Policy with particular emphasis on the internal complaint, investigation and remediation process, and an employee's right to file with EEOC and state or local agencies.

#### **3. Training for Mark Lahood**

Within thirty (30) calendar days of the entry of the Decree, Vandenberg & Feliu, LLP or another outside contractor approved by EEOC shall provide a three-hour, one-on-one training

program for Mark Lahood. This training program shall, at a minimum, cover the topics of discrimination, retaliation, harassment, diversity and sensitivity. Within five (5) business days of the date of entry of this Decree, Defendants shall submit a training agenda and materials to EEOC for review and approval and shall implement any recommendations made by EEOC regarding the training.

**4. Documentation To Be Placed in Mark Lahood's Personnel File**

A document stating that Mark Lahood was required under the terms of this Decree to attend the training set forth in section 203.A.3 shall be placed in Mr. Lahood's personnel file. The document shall describe the content of the training and indicate whether Mr. Lahood completed the training consistent with the terms of this Decree.

**B. Annual Training for All Employees**

**1. Length of Annual Training**

On an annual basis, within thirty (30) calendar days of the commencement of the prior year's training, Defendants shall provide two (2) hours of training on federal employment discrimination laws to all employees. The trainings shall be conducted by Stradley Ronon LLP or another outside contractor selected by Defendants and approved by the EEOC. Within ten (10) business days of the date of entry of this Decree, Defendants shall submit a training agenda and materials to EEOC for review and approval and shall implement any recommendations made by EEOC regarding the training. The failure of Defendants to provide two (2) hours of annual training to all employees shall be deemed a substantive breach of the Decree and the Court shall be notified of the breach.



## **2. Required Subjects of Annual Training**

The annual training shall, at a minimum, include instruction on the rights and responsibilities of employees under federal anti-discrimination laws and on how such laws define unlawful discrimination. The training shall cover examples of unlawful conduct including examples of national origin discrimination. The training also will cover Defendant's anti-discrimination policies and procedures with particular emphasis on the internal complaint, investigation and remediation process, and an employee's right to file with EEOC and state or local agencies.

### **C. Reporting Requirements for All Trainings**

All employees attending any training session required by the Decree shall print and sign their full name on an attendance sheet. Within ten (10) business days of the completion of each training required by the Decree, Defendants shall provide EEOC with copies of all attendance sheets.

### **D. Pre-Training Notification Requirement**

At least thirty (30) calendar days prior to conducting a training session required by the Decree, Defendants will provide the EEOC with written notice of the date, time and location of the scheduled training. The EEOC, at its discretion, may attend and observe one or more of the training sessions and may provide recommendations to be implemented by the trainer, provided that the EEOC provides five (5) business days notice of its intention to attend a training session.

### **E. New York City Hotel**

If Defendants purchase and/or begin to operate and/or manage any hotel(s) in New York City during the term of this Decree, all of the provisions of section 203 of this Decree shall apply

to the hotel(s). The initial training shall be conducted within forty-five (45) calendar days after Defendants purchase and/or begin to operate and/or begin to manage any hotel(s) in New York City, and annually thereafter for the duration of this Decree. If Defendants purchase and/or begin to operate and/or manage any hotel(s) in New York City with a workforce that is more than ten percent Hispanic during the term of this Decree, Defendants will provide all training required by this Decree in both English and Spanish and offer the employees the choice of participating in either the English-language training or the Spanish-language training.

#### **Section 204 Monitoring and Reporting**

##### **A. Monitoring by the EEOC**

The EEOC may monitor Defendants' compliance with the Consent Decree for a period of three (3) years from the date of entry of the Decree through the inspection of Defendants' premises and records and through interviews with employees.

##### **B. Reporting Requirements for Discrimination Complaints**

For the duration of this Decree, every three (3) months, Defendants shall provide a written report to the EEOC with information regarding any verbal or written complaints alleging unlawful discrimination from employees which were received or processed during the preceding three months. The report shall include the name of the complainant, the name of the alleged harasser(s) or discriminator(s), the location, a list of each step taken by Defendants during the investigation, a summary of the complaint, the results of any investigation of the complaint, and any remedial action taken by Defendants. The report shall include all open complaints and all complaints closed or resolved within the prior three months. The first report shall be due three months after the date of entry of the Decree.

**Section 205 Miscellaneous**

**A. Record Retention**

For the duration of the Decree, Defendants agree to maintain such records as are necessary to demonstrate their compliance with the Decree and 29 C.F.R. §1602 *et seq.*, and to verify that the reports submitted pursuant to the Decree are accurate.

**B. Management Evaluation and Accountability Policy**

Within 30 calendar days of entry of the Decree, Defendants shall instruct supervisory personnel that annual employee evaluations (including supervisor evaluations) shall include an evaluation of each reviewee's compliance with Defendants' non-discrimination policies and procedures and with federal anti-discrimination laws. Such evaluations shall be made in writing as part of Defendants' normal employee evaluation process and shall be discussed with the reviewees.

**PART III MONETARY AND OTHER RELIEF FOR INDIVIDUALS**

**Section 301 Payments to Identified Claimants**

**A. Total Payment**

In full and final settlement of EEOC's claims for monetary relief in this action, Defendants shall pay \$800,000.00 to the 13 Claimants identified by EEOC and set forth in Exhibit E to this Decree, which Exhibit shall be filed under seal with the Court.

**B. Form and Method of Payment to Identified Claimants**

Defendants shall deliver checks to the Claimants in the amounts set forth in Exhibit E via certified mail within seven (7) business days of entry of this Decree. Defendants shall provide EEOC with copies of all checks, by mail, within five (5) calendar days of the mailing of the

checks to the Claimants.

**Section 302 Documentation of Payments to Claimants**

In connection with each check for backpay, Defendants shall issue to the Claimants an IRS Form W2, and in connection with each check for compensatory damages, Defendants shall issue to the Claimants an IRS Form 1099. All Claimants shall be responsible for any taxes owed by them with respect to these payments. All backpay shall be subject to withholding.

**Section 303 References Provided to Individuals**

Defendants shall maintain their current policy on providing references to prospective employers of Claimants and shall release only the Claimants' title(s)/position(s) held and dates of employment. Defendants shall not mention this action, or any other matter related to this action or the underlying charges of discrimination, to prospective employers enquiring about any Claimant's employment with Defendants.

**PART IV SIGNATURES**

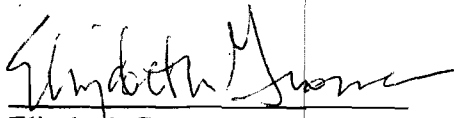
Each signatory to this Decree represents that each is fully authorized to execute this Decree and to bind the parties on whose behalf each signs.

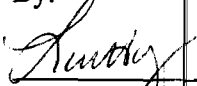
Dated: March 15, 2006

Dated: March 15, 2006

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

MELROSE HOTEL COMPANY,  
INC.

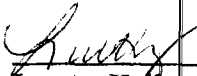
  
Elizabeth Grossman  
Regional Attorney

By: MHC GP, LLC  
  
Loretta Kelly  
General Counsel

Judy Keenan  
Acting Supervisory Trial Attorney

MHC BARBIZON, L.P.  
  
By: MHC BARBIZON, INC. ISP


Raechel L. Adams  
Senior Trial Attorney

  
Loretta Kelly  
General Counsel

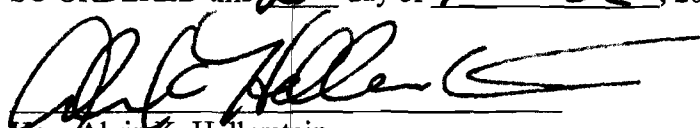
Robert D. Rose  
Senior Trial Attorney

BERWIND PROPERTY GROUP,  
LTD.

New York District Office  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, New York, 10004  
(212) 336-3721

By: Berwind Property Group, Inc.  
  
Loretta Kelly  
General Counsel

SO ORDERED this 20<sup>th</sup> day of March, 2006.

  
Hon. Alvin K. Hellerstein  
United States District Judge

# EXHIBIT A



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112  
Phone: (212) 336-3620  
TTY: (212) 336-3622

**NOTICE TO ALL EMPLOYEES OF BERWIND PROPERTY  
GROUP, LTD.**

This Notice has been posted pursuant to a settlement entered into by Consent Decree by the U.S. Equal Employment Opportunity Commission ("EEOC") and the Melrose Hotel Company, Inc., MHC Barbizon, L.P. and Berwind Property Group, Ltd. ("Berwind") in resolution of a court complaint of national origin discrimination and harassment and retaliation filed against Defendants on behalf of current and former employees of the Melrose Hotel New York.

Federal law prohibits discrimination and/or harassment based on an employee's sex, race, color, national origin, religion, age or disability status. Federal law also prohibits retaliation against any employee who files a charge of discrimination, who opposes unlawful activity, or who cooperates in the investigation of a charge or otherwise exercises her or his rights under law.

The terms of the Consent Decree require that Defendants:

1. Agree not to engage in any unlawful employment discrimination or retaliation against any person who exercises his or her rights under federal anti-discrimination laws;
2. Provide training on federal laws prohibiting employment discrimination to all current and future employees;
3. Maintain and distribute written policies and procedures prohibiting discrimination and enabling employees to file discrimination complaints;
4. Permit EEOC to monitor compliance with the Consent Decree;
5. Provide periodic reports to EEOC regarding any discrimination complaints made by employees;

6. Post this Notice and distribute a memo to all employees regarding non-discrimination laws;

Should you have a complaint of discrimination or harassment you may contact:

U.S. Equal Employment Opportunity Commission  
33 Whitehall Street  
New York, New York, 10004  
(212) 336-3620 or (800) 669-4000  
Website: [www.eeoc.gov](http://www.eeoc.gov)

Dated: \_\_\_\_\_

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE ALTERED OR  
DEFACED BY ANYONE OR COVERED BY ANY OTHER MATERIAL**

This Notice must remain posted for three (3) years from the date shown above and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the U.S. Equal Employment Opportunity Commission at the above numbers, or 1-800-669-4000, or TTY 1-800-669-6820, or to your Manager or Human Resources representative.



# EXHIBIT B

[BPG letterhead]

TO: All Employees  
FROM: **[President of Defendants]**  
DATE: **[Effective Date of the Decree]**  
RE: Protections Provided by Federal Anti-Discrimination Laws

The purpose of this memo is to inform all employees of their rights under federal anti-discrimination laws. Berwind Property Group, Ltd. is fully committed to complying with these laws and to providing a work environment free of discrimination and harassment. State and local anti-discrimination laws also exist, and Berwind Property Group, Ltd. is equally committed to compliance with these laws as well.

The primary federal laws that prohibit employment discrimination are Title VII of the 1964 Civil Rights Act, the Americans with Disabilities Act and the Age Discrimination in Employment Act. They prohibit discrimination and harassment based on:

- race
- color
- national origin
- religion
- disability
- age
- sex (including pregnancy)

The law prohibits discrimination based on the above categories regarding any aspect of employment including:

- hiring and firing;
- compensation, assignment or classification of employees;
- transfer, promotion, layoff or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans and disability leave; or
- other terms and conditions of employment.

The same laws also prohibit:

- retaliation against an individual for filing a charge of discrimination, participating in an investigation or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities,

traits or performance of individuals of a certain sex, race, age religion or ethnic group, or individuals with disabilities;

- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic or religious group.

The laws require employers to reasonably accommodate:

- the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship;
- a qualified individual with a disability unless doing so would impose an undue hardship.

If you believe you have been subject to unlawful harassment or discrimination, or if you have witnessed unlawful harassment or discrimination, please report it in accordance with the procedures contained in the company's Non-Discrimination Policies and Procedures so that the company may promptly investigate and remedy the discrimination. You also may file a complaint with the Equal Employment Opportunity Commission ("EEOC"), which is the federal agency responsible for enforcing federal anti-discrimination laws. The EEOC can be reached at 800-669-4000 or 212-336-3620 ([www.eeoc.gov](http://www.eeoc.gov)).

# EXHIBIT C

## **EQUAL EMPLOYMENT OPPORTUNITY**

BPG is an Equal Employment Opportunity Employer. Company decisions regarding employment are designed to impose only valid job requirements to ensure Equal Employment Opportunities in all aspects of employment. BPG provides Equal Employment Opportunities to all Employees and applicants for employment without regard to race, color, religion, sex, national origin, marital status, personal appearance, sexual orientation, age of 40 or older, disability, military status, status as a Vietnam-era or special disabled Veteran or any other status in accordance to applicable laws. In addition, BPG complies with applicable state and local laws governing non-discrimination in employment. This policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, termination, lay-off, recall, transfer, Leaves-of-Absence, compensation, and training. Breach of this policy by any Employee is grounds for disciplinary action up to and including discharge for the first offense.

## **HARRASSMENT IN THE WORKPLACE**

All employees have the right to work in an environment free from all forms of unlawful employment discrimination, including sexual harassment and harassment based on race, color, national origin, ancestry, nationality, citizenship, religion, creed, age, sexual orientation, disability or any other characteristic protected by law. It is, therefore, the policy of BPG and all of its subsidiaries and related companies that unlawful employment discrimination, including harassment in all of these forms, of employees by Management, Supervisors, co-workers, vendors, or customers is strictly prohibited. The Company also strictly prohibits its employees from engaging in such conduct against the employees of the Company's vendors, customers or others with whom it does business. Any such discriminatory or harassing conduct is not and will not be tolerated and should be promptly reported as outlined in this policy.

- **Conduct**

Employees at all levels of the organization are expected to conduct themselves in a business-like and professional manner at all times and to refrain from sexual harassment and other harassment. For purposes of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Some examples of what may constitute sexual harassment are: threatening or taking adverse employment actions if sexual favors are not granted; demands for sexual favors in exchange for favorable or preferential treatment; unwelcome flirtations, propositions, or advances; unwelcome physical contact; whistling, leering, improper gestures or offensive remarks, including unwelcome comments about appearance; sexual jokes or other inappropriate use of sexually explicit or offensive language; the display in the workplace of sexually suggestive objects or pictures, using any media, including telecommunications or computer systems, to send, receive, or exhibit oral, written, or graphic material which constitute unwelcome discriminatory and/or sexual displays, etc. The above list is not intended to be all-inclusive. Even one instance of such conduct, if severe enough, may constitute sexual harassment.

For purposes of this policy, other harassment is defined as verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, creed, sexual orientation, gender, national origin, age, ancestry, nationality, disability, or any other characteristic protected by law, or that of his or her relatives, friends, or associates, and that:

- has the purpose or effect of creating an intimidating, hostile, or offensive work environment; or
- has the purpose or effect of unreasonably interfering with an individual's work performance; or
- otherwise adversely affects an individual's employment opportunities.

Some examples of such harassment are: using epithets, slurs, negative stereotypes; threatening, intimidating, or engaging in hostile acts that relate to a protected characteristic; purported jokes or pranks; placing on wall, bulletin boards, or elsewhere on company premises, or circulating in the workplace via any media, oral, written or graphic material that denigrates or shows hostility or aversion toward a person or group because of a protected characteristic.

- **Complaints of Harassment**

While Management and Supervisors are responsible for enforcing the policies against harassment, including sexual harassment, all employees, at all levels of the organization, are responsible for helping to assure that harassment does not occur by conducting themselves in an appropriate manner in accordance with this policy and by reporting harassment that they observe. The Company treats all claims very seriously, and your notification of any problems is essential to maintaining a respectful and harassment free workplace. It is very important for any employee who feels he or she has a complaint under this policy to utilize the complaint procedure specified below. There will be no retaliation against you for making a complaint.

If an individual has a complaint or concern regarding harassment, he or she should report the incident to his/her Supervisor or to a Manager. If the employee is not comfortable taking the complaint or concern to a Supervisor or Manager, the complaint or concern should be taken to Loretta M. Kelly, General Counsel of BPG at (215) 575-2422, or the Director of Human Resources of BPG at (215) 575-2405. Managers and Supervisors shall also be responsible for reporting any discrimination or harassment that they observe.

The complaint or concern will be investigated promptly as is warranted under all of the circumstances, and all investigations will be documented. The steps to be taken during the investigation cannot be fixed in advance, but will vary depending upon the nature of the allegations. The matter will be kept as confidential as possible, consistent with the need to undertake a full investigation. All employees are expected to be truthful and

cooperative in connection with any complaint and investigation. Complainants will be informed of the results of the investigation.

Individuals found to have engaged in harassment in violation of this policy will be disciplined, up to and including discharge. Discipline may include, but is not limited to, any one or more of the following: counseling, written warning, demotion, withholding of a promotion, reassignment, temporary suspension without pay, reduction in pay or discharge.

Retaliation of any kind against any employee who complains about harassment, who assists or participates in any manner in an investigation of harassment, or who opposes unlawful discrimination or harassment is absolutely forbidden. Retaliation is a serious violation of this policy and should be reported immediately. Any person found to have retaliated against an individual for reporting harassment or participating in an investigation will be subject to appropriate disciplinary procedures as described above.



# EXHIBIT D

**BPG Letterhead**

To: BPG, Ltd. Employees  
From: Dan DiLella  
Date: March \_\_, 2006  
Re: Company Policy Against Discrimination and Harassment

BPG, Ltd. is fully committed to maintaining a work environment that is free from all forms of unlawful employment discrimination, including sexual harassment and other forms of unlawful harassment based on a characteristic protected by law. We have always had written policies which fully set forth this commitment.

Accordingly, our updated Equal Employment Policy and our Anti-Harassment Policy are enclosed with this memo. Please review these policies carefully. As you will see, BPG, Ltd. strictly prohibits unlawful employment discrimination or harassment. Any such discriminatory or harassing conduct will not be tolerated and should be promptly reported as outlined in each policy. Any such report will be taken seriously by the Company, and a thorough investigation will be conducted. If it is determined that a violation has occurred, prompt disciplinary action will be taken, up to and including termination of employment.

We are very proud of the work environment that we have established here at BPG, Ltd., and we are committed to maintaining a productive and efficient work environment that is free of both harassment and discrimination. Your adherence to these policies will help achieve this goal.

**EXHIBIT E**  
**(Under Seal)**