

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 06-060050 CA 35

CIVIL DIVISION

DUPONT HOLLYWOOD PARTNERSHIP,
ET AL

Plaintiff,

v.

CITY OF HOLLYWOOD,
FLORIDA, ET AL,

Defendants.

CONSENT DECREE

WHEREAS, Plaintiff, Greenbriar Apartment/Motel, Inc., (“Plaintiff” or “Greenbriar”) is an active Florida corporation, which owns properties located east and west of South Surf Road between Hyacinth Terrace and Greenbrier Terrace in the City of Hollywood, Florida, containing the property folio numbers of 514224020350, 514224020360, 514224020370, 514224020380, and 514224020390 (the “Greenbrier Property”); and

WHEREAS, Plaintiff, through related entities, also owns the properties located east of South Surf Road between Crocus Terrace and Bougainvillea Terrace in the City of Hollywood, Florida, containing the folio numbers of 514224020110, 514224CB0010, 514224CB0020, and 514224CB0030 (the “Casa la Playa Property”); and

WHEREAS, collectively, the Greenbrier Property and the Casa la Playa property shall be known as the “Collective Properties”; and

WHEREAS, Defendant, City of Hollywood (the “City”), is a municipality located in Broward County, Florida, chartered under the statutory laws of the State of Florida, and empowered to act through its governing body, the City Commission; and

WHEREAS, Defendant, City of Hollywood Community Redevelopment Agency (the “CRA”) is a community redevelopment agency authorized pursuant to Chapter 163, Part III of the Florida Statutes, and is empowered to act through its governing body, the CRA Board; and

WHEREAS, prior to April 10, 2002, the applicable Zoning and Land Development Regulations provided for substantially more liberal height, and provided different set back, floor area ratio, density intensity, landscaping and other development controls as contrasted with those Zoning and Land Development regulations embodied in Ordinance No. 2002-20 and later-adopted regulations within the applicable zoning district and geographic area; and

WHEREAS, on or about April 10, 2002, pursuant to Ordinance No. 2002-20 (the “Ordinance”), the City amended its Zoning and Land Development Regulations to limit the height, and it modified the set backs and other controls pertaining to any proposed new development east of State Road A-1-A, South of Harrison Street to the City’s corporate limit; in the RM-25 High Density Multifamily Residential Zoning District; and

WHEREAS, as a result of the Ordinance, on or about April 10, 2006, Dupont Hollywood Partnership, Inc., a Florida Corporation (“Dupont”), filed a five count complaint against the City and the CRA (the “Litigation”) asserting, among other things, that the City’s Ordinance caused a diminution of property value, and as a result, the impacted property owners were required to be compensated in accordance with The Bert J. Harris, Jr. Private Property Rights Protection Act (Chapter 70 of the Florida Statutes); and

WHEREAS, on or about January 7, 2007, Greenbriar intervened in the Litigation, alleging the same damages; and

WHEREAS, in or around 2012, Dupont entered into a Settlement Agreement with the Defendants, but Greenbriar did not; and

WHEREAS, in hopes of settling this matter, Greenbriar informally presented a development plan to the Defendants; and

WHEREAS, in addition, and to avoid future legal action, Greenbriar and other related owners presented to the Defendants plans to re-develop the Casa la Playa Property, generally known as 1401 South Surf Road, and 1451 South Surf Road; and

WHEREAS, Greenbriar and Defendants (collectively, the “Parties,” and individually, a “Party”) desire to reach an amicable compromise and settlement of all of the disputed claims in the Litigation by and through this Consent Decree; and

WHEREAS, the Parties, acting in good faith and in their own best interests, have engaged in extensive negotiations, have reconciled their differences and arrived at an amicable settlement of the Litigation as between them only and desire to reduce such terms into this Consent Decree; and

WHEREAS, the Parties agree that the settlement of these matters without further litigation is in the public’s best interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters; and

WHEREAS, it is the mutual intention of the Parties that the Collective Properties, respectively, can be developed under the Zoning and Land Development Regulations in effect immediately prior to the adoption of Ordinance 2002-20 (including any “zoning-in-progress” concepts).

WHEREAS, the terms of this Consent Decree resolve all claims between the Parties, their officers, directors, and principals related to the Litigation, including those claims and causes of action that were raised and/or could have been raised in the Litigation; and

WHEREAS, the Parties, by and through their respective counsel, have agreed to entry by the Court of this Consent Decree; and

WHEREAS, the City Commission of the City has adopted a Resolution authorizing the City Attorney to submit this Consent Decree to the Court; and

WHEREAS, the CRA Board has adopted a Resolution authorizing its General Counsel to submit this Consent Decree to the Court; and

WHEREAS, Plaintiff Greenbriar has approved the submission of this Consent Decree by its legal counsel; and

WHEREAS, the Parties shall be bound by the findings, conclusions and orders of this Consent Decree, it is ordered and decreed as follows::

DECRETAL PROVISIONS

1. **No Admission of Liability or Wrongdoing.** This Consent Decree is a compromise and settlement of disputed claims, and does not constitute a determination of liability with respect to the allegations made in the Litigation. The Parties agree that this Consent Decree does not constitute adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of law. Nothing herein shall be interpreted or construed as any weakness of proof on the part of Plaintiff concerning its claims against the Defendants; nor shall anything herein be interpreted or construed as an acknowledgment, admission, or evidence of liability on the part of the Defendants with respect to Plaintiff's claims. This Consent Decree shall not be used as evidence of liability or fault in any

other proceeding, claim, case, or lawsuit. This Consent Decree has been entered into for the purpose of avoiding the risks, burdens, and expense of litigation. The Court finds that entry of this Consent Decree is in the public interest, as expediting resolution of the disputed claims avoids unnecessary legal expenses for Plaintiff and the Defendants.

2. **The Collective Properties.** The Collective Properties are hereby approved to be developed in general accordance with the conceptual designs, site plans, and general graphic drawings, as reflected on Exhibit A (Greenbriar Property, folio numbers 514224020350, 514224020360, 514224020370, 514224020380, and 514224020390) and Exhibit B (Casa la Playa Property, folio numbers 514224020110, 514224CB0010, 514224CB0020, and 514224CB0030) Collectively Exhibit A and Exhibit B shall be known as the “Approved Development”. The Approved Development shall only constitute a guide for the development of the Collective Properties. It is anticipated and expected that deviations from the Approved Development will occur as part of the Technical Advisory Committee process. As such, the Approved Development shall be viewed as setting the parameters for the development of the Collective Properties, specifically relating to the height, density, setbacks, and relocation of Surf Road, but that the Approved Development plan may be modified within those parameters. The Approved Development shall be good for sixty (60) months from the date hereof, and shall be vested through the issuance of a building permit for any phase of the Development. Extensions shall be granted in accordance with State Statute, Gubernatorial Orders, or by the Defendants for good cause shown. This approval shall be deemed to cover and shall include and shall not be limited to any all City approvals, including, but not limited to, roadway vacations, re-platting, delegation requests, variances, and any other approvals necessary and proper to develop the Properties as delineated on both Exhibits A and B, which are attached hereto and are

incorporated herein by reference. Notwithstanding the aforementioned, however, the Approved Development shall be formally submitted to be reviewed by the City's Technical Advisory Committee to ensure that issues such as drainage, fire, utilities, and the like have been reviewed and approved by the appropriate City Staff. As stated previously, while this review may require deviations to the Approved Development, the overall zoning items such as height, density, setbacks, and relocation of Surf Road shall not be changed, unless the Parties mutually agree that such changes benefit the Approved Development. If the parties do not mutually agree, such zoning items shall not be changed. Following final Technical Advisory Committee approval, the City shall administratively approve the Approved Development, and Plaintiff may submit directly for building permits.

(a) ***Applicable Regulations.*** The parties acknowledge and agree that the approval of the plans and proposed improvements reflected in Exhibit A and B, under this Consent Decree, is a material consideration supporting the agreement of the parties, including the Greenbriar-related parties' - each of the latter of whom shall be deemed a direct third-party beneficiary hereunder - to the entry of this Consent Decree and the resolution of the disputes contemplated herein. Such approvals acknowledge and are in contemplation of the specific elements, density, intensity, placement, spatial relations and other particular characteristics of the improvements depicted in Exhibits A and B, respectively, and under no circumstances shall the same be deemed non-conforming.

(b) ***Relocation of Surf Road.*** In further accommodation of the realization of the project involving the Surf Road site, the City will take such steps as are necessary and appropriate, commencing immediately upon the entry of this Consent Decree, to vacate that portion of Surf Road described upon Exhibit C attached hereto and made a part hereof, it having

been determined that such portion of Surf Road is not required to further the health, safety and welfare of the community and, on balance, the resolution of the disputes and matters contemplated herein provide substantial benefit to the City which support such legislative action. In exchange for such vacation, Plaintiff shall deed to Defendant the portion of Plaintiff's property described in Exhibit D to enable Surf Road to be re-routed around Plaintiff's Property once construction of the Development begins.

(c) **Replatting.** The Defendants further acknowledge and agree that in furtherance hereof, City shall issue a "no-objection" letter to Broward County and take such other reasonable steps as shall be necessary and appropriate in support of the re-platting of the Greenbriar and Surf Road Properties, respectively, to facilitate the realization of the Development thereof, as contemplated herein.

(d) ***Mechanical Equipment & Rooftop Structures.*** Since the mechanical equipment and rooftop structures are not yet depicted on the Development Plan, Plaintiff agrees that all rooftop structures, including but not limited to air conditioners and other mechanical equipment, shall be properly shielded and buffered from view. All rooftop structures shall be constructed and located in a manner to minimize vibration and noise. In connection with the construction or installation of rooftop structures, the same shall be accomplished in a manner consistent with local custom and practice which shall be controlling relative to the Plaintiff's compliance herewith.

3. **Development Orders & Permits.** The Defendants shall issue all development orders and permits, as may be necessary, that are in strict compliance with the terms of this Consent Decree, as well as all applicable federal, state, county and local regulations, codes and legislation, to enable the development of the Development Plan in accordance with the attached

site plans, designs, and specifications. Consistent therewith, the Defendants agree that neither shall take an action to compel the Plaintiff to comply with any provision of a post-April, 2002 provision of the applicable Comprehensive Land Use Plan, zoning code, Defendants' charters, local law or any other regulation which is inconsistent with Section 2 hereof, except upon Plaintiff's written consent, which Plaintiff may withhold in its sole and absolute discretion.

4. **Authority.** All the Parties hereby acknowledge that their respective legal counsel have authority to submit and acquiesce to this Consent Decree and that the persons signing this Consent Decree represent and warrant that they are duly authorized to execute this Consent Decree and to bind the Parties represented.

5. **Matters Settled.** This Consent Decree settles all of the claims and causes of action of any nature whatsoever between the Parties they had, have or will have in the future between them relating to the Litigation. This Consent Decree contains mutual releases for the Parties, which shall become valid and binding upon execution of this Consent Decree, and served as a final order of dismissal with prejudice as fully specified below.

6. **Mutual Release.** In consideration of the Development Plan approved by this Consent Decree, the Parties shall execute and deliver mutual releases in substantially the same form as attached hereto and incorporated herein as reflected on Composite Exhibit "B".

7. **Release by Defendants.** In consideration of the Development Plan approved by this Consent Decree, Defendants hereby release, acquit, and forever discharge Plaintiff from the matters referenced in this Consent Decree, as well as from any and all manner of action and actions, claims, liabilities, losses, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, warranties (including express,

implied, contractual and statutory), claims and demands whatsoever, in law or in equity, which Defendants can, shall, or may have in the future or did have against Plaintiff that were raised or could have been raised in, and/or arising from, directly or indirectly, the Litigation

8. **Decree to Run with the Land.** All of the provisions of this Consent Decree shall be construed as covenants running with the Properties. The Parties, including any successors and assigns, shall be bound by all of the provisions of this Consent Decree and any amendments thereof. This Consent Decree and any amendments thereof shall be recorded in the Public Records of Broward County, Florida, at Plaintiff's expense.

9. **Estoppel Certificates.** Within fifteen (15) days from written request delivered by Plaintiff, Defendants shall deliver to Plaintiff a statement in writing, in recordable form, certifying (with such exceptions or modifications as may be the case): i) that this Consent Decree is in full force and effect without modification; and ii) Plaintiff is not currently in default of any of the provisions contained within this Consent Decree. Defendants hereby appoint their legal counsel as their attorney-in-fact to execute such document. Upon recordation, Plaintiff shall promptly provide a copy of such recorded document to Defendants.

10. **Construction; Joint Work Product.** This Consent Decree has been entered into by the Parties freely and of their own volition, without duress and with a full understanding of, and agreement with, the terms and conditions stated herein. Additionally, this Consent Decree shall be considered the joint product of all the Parties. Consequently, in the event of any controversy as to the construction, interpretation or enforcement of any provision hereof, no rule of interpretation or construction which would result in an interpretation or construction in favor of or to the detriment of one Party or another shall apply. The Parties further acknowledge that

they have read each page of this Consent Decree, and they fully understand the terms, conditions and provisions hereof, and agree to them.

11. **Final Order of Dismissal with Prejudice; Binding Effect.** This Consent Decree shall constitute a final resolution of all claims which were or could have been asserted by either Party in the above-styled civil action, and shall be binding on the Parties, their employees, representatives, successors, heirs and assigns. Subject to the terms and obligations contained in this Consent Decree, this action is hereby dismissed with prejudice, with the Court only retaining jurisdiction to enforce the terms and conditions of and compliance with this Consent Decree.

12. **Continuing Jurisdiction of the Court.** The Court shall retain jurisdiction of this matter for the purposes of enabling any of the Parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement or compliance therewith, or for the punishment of violations thereof. Enforcement of this Consent Decree shall include, but not be limited to, the right of any Party to seek specific performance of any or all of the obligations set forth herein. Should it become necessary for any Party to seek enforcement of this Consent Decree in a court of competent jurisdiction, the prevailing Party in any such enforcement proceeding shall be entitled to recover its reasonable attorneys' fees and costs, including fees, costs and expenses incurred upon any appeal.

13. **Prior Notice and Opportunity to Cure.** In the event that a Party believes that the other Party has violated any provision of this Consent Decree, unless specifically stated otherwise herein, such Party shall give written notice (including reasonable particulars) to the other Party, whereupon the other Party shall respond to such notice and/or cure such alleged non-compliance within fifteen (15) calendar days. If the breach is not substantially cured within the

notice period, the enforcement action contemplated by Paragraph 12 above may be commenced by the non-breaching Party; provided, however, that the Parties shall negotiate in good faith in an attempt to resolve any dispute arising under this Consent Decree before seeking relief pursuant to the provisions of Paragraph 12 hereof.

14. **Attorney's Fees & Costs** The Parties hereto agree that in the event that a Party breaches one or more of the terms of this Consent Decree and fails to cure and the non-breaching Party has to bring an action to enforce the terms of this Consent Decree, the prevailing Party in such litigation shall be entitled to recover its costs, paralegal expenses and reasonable attorney's fees incurred, including, but not limited to, such fees and costs incurred prior to the institution of litigation and in litigation at both the trial and appellate levels and in bankruptcy, and in any other administrative or judicial proceeding. In the event this Consent Decree is breached by any party to it, it is agreed that monetary damages will not be wholly adequate to afford relief to the non-defaulting party. Therefore, the provisions of this Consent Decree are fully enforceable by injunctive or other equitable relief, it being acknowledged that money alone will not provide adequate compensation, and it does not limit the right of any party to sue for any other damages which may be permissible under law, including monetary damages of any kind or nature.

15. **Advice of Counsel**. Each of the Parties hereto has received independent legal advice as to the nature and obligations of this Consent Decree and all exhibits and documents executed in connection herewith and each has been fully informed of their respective legal rights, obligations and liabilities as set forth herein.

16. **Invalidity**. If, for any reason, this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is void.

17. **Waiver of Breach; Available Remedies** The failure of any Party to this Consent Decree to enforce any right, provision, covenant or condition which may be granted by this Consent Decree shall not constitute a waiver of the right to take such action to enforce such right, provision, covenant or condition in the future and the failure to act at any time shall not be construed to be a waiver of the right of any party to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to any Party to this Consent Decree pursuant to any terms, provisions, covenants or conditions of this Consent Decree shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by this Decree or at law or in equity. In the event this Consent Decree is breached by any party to it, it is agreed that monetary damages will not be wholly adequate to afford relief to the non-defaulting party. Therefore, the provisions of this Consent Decree are fully enforceable by injunctive or other equitable relief and do not limit the right of any party to sue for any other damages which may be permissible under law, including monetary damages of any kind or nature.

18. **Effective Date; Time.** This Consent Decree shall become effective immediately upon its issuance by the Court and execution by the Parties. Time shall be of the essence in the performance of the provisions of this Consent Decree.

19. **Adequate Consideration** The Parties acknowledge and agree that each is foregoing certain rights and assuming certain duties and obligations which, but for the Consent Decree, would not have been released or assumed. Accordingly, the Parties agree that this Consent Decree is fully and adequately supported by consideration, is fair and reasonable, and

that both parties have had the opportunity to consult with and have in fact, consulted with such experts of their choice as they may have desired, and they have had the opportunity to discuss this matter with counsel of their choice.

20. **Succession.** This Consent Decree shall be binding upon and inure to the benefit of the Parties hereto, and to their respective heirs, administrators, successors and assigns. The rights and privileges contained within this Consent Decree are assignable by the Parties with the consent of the Defendants, but such consent shall not be unreasonably withheld. Since it is contemplated that Plaintiff will form new entities to develop the Collective Properties, Defendant hereby consents to an assignment of the rights contained herein to any such entity controlled by Plaintiff's President, Luis Stabinski.

21. **Nature of Relationship.** Notwithstanding anything to the contrary contained herein, nothing in this Consent Decree shall be construed as giving Plaintiff the status of a "third party beneficiary" under any of the leases or other occupancy decrees or under any other contracts for the Property or improvements thereto or concerning the operation thereof. Nothing in this Consent Decree shall be construed as making the parties hereto partners or joint-venturers with respect to the Properties, which the parties hereto agree they are not.

22. **Survival.** The representations, warranties, covenants, agreements and indemnities of the parties hereto made in this Consent Decree or any certificate or document delivered pursuant hereto shall remain operative and survive the execution and delivery hereof.

23. **Further Assurances.** The Parties hereto, at any time and from time to time following the execution hereof, shall execute and deliver all such further instruments or documents and take all such further action as may be reasonably necessary or appropriate in order to more effectively carry out the intent and purpose of this Consent Decree.

24. **Severability** If any provision, or any portion of any provision, of this Consent Decree, or the application of any such provision or portion thereof to any person or circumstances, shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Consent Decree, or the application of such provision or portion, shall be held valid and enforceable to persons or circumstances other than those to which it is held invalid or unenforceable, and shall not be affected thereby.

25. **Amendments** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Consent Decree, presented and approved by the Court and executed by the Parties supported by appropriate authorizing approvals.

26. **Notice of Default.** Notice of any default shall be given to the allegedly defaulting Party, and the allegedly defaulting Party shall have fifteen (15) calendar days to cure the default after written notice is received. In the case of an emergency, notice may be given orally, and shall be cured within forty-eight (48) hours. Written confirmation of the emergency notice shall occur within twenty four (24) hours after the oral notice is given and shall indicate that oral notice has been given. In the event a default cannot be cured within fifteen (15) calendar days, then the cure shall occur within a reasonable time based upon the type of default.

27. **Notices.** Whenever, under terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give written notice of a change to the other Parties. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given to the other Party only if sent by United States Registered or Certified Mail, Return Receipt Requested,

postage prepaid, or by nationally recognized overnight courier (with delivery confirmed), at the following addresses:

If to Plaintiff:
Greenbriar Apartment/Motel, Inc.
Attn: Luis Stabinski
1401 South Surf Road
Hollywood, FL 33019

With a copy to:
Saul Ewing Arnstein & Lehr LLP
Attn: Keith Poliakoff, Esq.
200 East Las Olas Boulevard
Suite 1000
Fort Lauderdale, FL 33301

If to Defendant(s) to:
City of Hollywood
Attn: City Manager
2600 Hollywood Blvd.
Hollywood, FL
33020

With a copy to:
City of Hollywood
Attn: City Attorney
2600 Hollywood Blvd.
Hollywood, FL
33020

Any of the Parties to this Consent Decree may designate another mailing address to be used for notice under this Consent Decree, by providing written notice to the other parties to this Consent Decree specifying a different address.

28. **Force Majeure.** All relief set forth in this Consent Decree shall be abated to the extent the Court finds that compliance was prevented by unforeseen circumstances beyond the control of the Parties, such as an Act of God or other natural disaster that inhibits a Party from complying with the deadlines or other requirements set forth in this Consent Decree.

29. **Entire Agreement.** This Consent Decree constitutes the final, complete, and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. This Consent Decree supersedes all prior verbal or written agreements or representations between the Parties hereto pertaining to the within subject matter.

30. **Headings/Titles.** All sections, titles, or captions contained in this Consent Decree, if any, are for convenience only and shall not be deemed to be a part of this Consent Decree, and shall not affect the meaning or interpretation of this Decree.

31. **Counterparts.** This Consent Decree may be executed in counterparts with each copy being deemed an original and facsimile or scanned signatures shall also be considered originals and binding.

DONE and ORDERED, at Fort Lauderdale, Florida this _____ day of November, 2018.

CIRCUIT COURT JUDGE FABIENNE E. FAHNESTOCK

[additional signatures to follow]

The above-named Parties hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

**GREENBRIAR APARTMENT/MOTEL, INC.
ASSOCIATION, INC.**

By: _____
Luis Stabinski, President

CITY OF HOLLYWOOD

By: _____
Josh Levy, Mayor

Approved as to form and correctness:

By: _____
City Attorney

**CITY OF HOLLYWOOD
COMMUNITY REDEVELOPMENT AGENCY**

By: _____
Jorge Camejo, Chair

Approved as to form and correctness:

By: _____
Board Attorney

114842846.1