UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

In the Matter of: J. Da Silva Properties, LLC 288 Main Street Danbury, CT 06810 Respondent. *Proceeding under Section 16(a) of the Toxic Substances Control Act, 42 U.S.C. § 2615(a).*	EPA Docket No. TSCA-01-2024-0033 **CONSENT AGREEMENT and FINAL ORDER**

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), alleges that Respondent, J. DaSilva Properties, LLC, violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act (the "Act"), 42 U.S.C. § 4851 *et seq.*, and federal regulations promulgated pursuant to the Act, set forth at 40 C.F.R. Part 745, Subpart F.

This Consent Agreement and Final Order ("CAFO") simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), at 40 C.F.R. Part 22. Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without

litigation is the most appropriate means of resolving this matter.

I. STATUTORY AND REGULATORY AUTHORITY

1. In 1992, Congress passed the Act in response to findings that low-level lead poisoning was widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children.

2. In 1996, EPA promulgated regulations to implement Section 1018 of the Act *(Disclosure of Information Concerning Lead upon Transfer of Residential Property)*, 42 U.S.C. § 4852d. The regulations under Section 1018 of the Act are set forth at 40 C.F.R. Part 745, Subpart F (the "Disclosure Rule").

3. The Disclosure Rule, in pertinent part, requires lessors of target housing to do the following before a lessee is obligated under a lease contract:

a. Provide to lessees an EPA-approved lead hazard information pamphlet;

b. Disclose to lessees the presence of known lead-based paint/hazards;

c. Ensure that the contract to lease includes a Lead Warning Statement;

d. Ensure that the contract to lease includes a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof; and,

e. Ensure that the contract to lease includes a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available.

See 40 C.F.R. §§ 745.107(a)(1), 107(a)(2), and 745.113(b)(1)–(6).

4. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with any requirement of the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 1018(b)(5) of the Act also provides that, for each such violation of Section 409 of TSCA, specific civil penalties apply under Section 16 of TSCA.

5. Pursuant to 40 C.F.R. § 745.103, the housing stock addressed by the Disclosure Rule as "target housing" is defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, or any "0-bedroom dwelling" (unless any child who is less than six years of age resides in or is expected to reside in such housing).

6. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term "residential dwelling" means either a single-family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

7. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA, 15 U.S.C. § 2814 and 15 U.S.C. § 2689, respectively, shall be liable to the United States for a civil penalty.

8. Section 16(a) of TSCA, Section 1018(b)(5) of the Act, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty of $10,000 per violation of the Disclosure Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 ("Debt Collection Improvement Act"), 40 C.F.R. Part 19 and the 2015 Federal Civil Penalties Inflation Adjustment

Act, 28 U.S.C. § 2461, each violation that occurred after November 2, 2015, and for which a penalty is assessed on or after December 27, 2023, is subject to a penalty of up to $21,699. See 88 Fed. Reg. 89,309 at 89,312 (December 27, 2023).

II. GENERAL ALLEGATIONS

9. Respondent, J. DaSilva Properties, LLC, is a limited liability company organized under the laws of the State of Connecticut. Respondent owns and offers for lease at least six target housing buildings totaling 39 units located in Danbury, Connecticut.

10. At all times relevant to the allegations in this CAFO, Respondent, J. DaSilva Properties, LLC, offered for lease five residential apartment units in four buildings in Danbury Connecticut.

11. At all times relevant to the allegations in this CAFO, Respondent, J. DaSilva Properties, LLC, offered for lease residential apartments in four buildings referenced in Paragraph 10 including the following properties:

a. On August 31, 2021, a tenant entered into a lease for 6 Tower Place, Unit F, Danbury, Connecticut, hereinafter referred to as "6 Tower Place Unit F";

b. On May 3, 2021, a tenant entered into a lease for 12 Tower Place, Unit #3F, Danbury, Connecticut, hereinafter referred to as "12 Tower Place Unit #3F". One child, between ages six and eighteen, resided in 12 Tower Place, Unit #3F;

c. On November 24, 2020, a tenant entered into a lease for 9 Tower Place, Unit #1F, Danbury, Connecticut, hereinafter referred to as "9 Tower Place Unit #1F"; Children between ages six and eighteen resided in 9 Tower Place Unit #1F;

d. On October 14, 2020, a tenant entered into a lease for 8 Tower Place, Unit H, Danbury, Connecticut, hereinafter referred to as "8 Tower Place Unit H". One child under six years old, resided in 8 Tower Place Unit H; and,

e. On June 2, 2020, a tenant entered into a lease for 34 Keeler Street, Unit H, Danbury, Connecticut, hereinafter referred to as "34 Keeler Street Unit H".

12. The apartment units listed in Paragraph 11 above were, at the time of the violations alleged in this CAFO, "target housing," as defined in 40 C.F.R. § 745.103. Furthermore, the apartment units did not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the Disclosure Rule (including 40 C.F.R. § 745.101).

13. Pursuant to 40 C.F.R. § 745.103, J. DaSilva Properties, LLC was and is the "owner" and "lessor" of the residential units listed in Paragraph 11.

14. On January 28, 1997, the City of Danbury Connecticut's Department of Health and Housing issued an Order of Abatement to Respondent to perform lead testing and abatement at the 8-10, 12-14, and 16 Tower Place buildings in Danbury Connecticut. Pursuant to the Order, Respondent submitted a Lead Abatement Plan dated October 31, 1997, containing test results for the identified properties. Based on these lead test results, on November 4, 1997, the Department of Health and Housing issued Respondent a Notice of Violations and approved Respondent's Abatement Plan.

15. On August 29, 2022, an authorized representative of EPA conducted an inspection to determine Respondent's compliance with the Disclosure Rule at Respondent's

properties. Based upon EPA's review of information and documents obtained from Respondent, EPA has identified the violations of TSCA, the Act and the Disclosure Rule described below.

III. VIOLATIONS

16. Each of the below-referenced violations alleged in this CAFO is a prohibited act under TSCA Section 409, 15 U.S.C. § 2689 and 40 C.F.R. § 745.118(e), and each is a violation for which penalties may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

Count One

Failure of Respondent to Provide Lessee with an EPA-Approved Lead Hazard Information Pamphlet

17. Paragraphs 1 through 16 above are incorporated by reference as if fully set forth herein.

18. Pursuant to 40 C.F.R. § 745.107(a)(1), before a lessee is obligated under a contract to lease target housing, a lessor must provide the lessee with an EPA-approved lead hazard information pamphlet entitled "Protect your Family from Lead in the Home" or an equivalent pamphlet that has been approved for use by EPA.

19. Respondent did not provide an EPA-approved lead hazard information pamphlet to the lessees listed in Paragraph 11, before the lessees were obligated under a contract to lease target housing.

20. Accordingly, Respondent's failure to provide an EPA-approved pamphlet to the lessees of target housing described in Paragraph 11 above before the lessees became contractually obligated to lease said housing violated 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count Two

Failure to Disclose the Presence of Known Lead-Based Paint/Hazards

21. Paragraphs 1 through 20 above are incorporated by reference as if fully set forth herein.

22. Pursuant to 40 C.F.R. § 745.107(a)(2), before lessees are obligated by contract to lease target housing, a lessor is required to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased. The lessor is also required disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

23. Between October 20, 2020 and August 31, 2021, Respondent offered for lease the two below-listed apartments located on Tower Place, Danbury, Connecticut:

a. On May 3, 2021, a tenant entered into a lease for 12 Tower Place Unit #3F. One child between age six to eighteen was resident; and

b. On October 14, 2020, a tenant entered into a lease for 8 Tower Place Unit H. One child under six years old was resident.

24. Based on the City of Danbury's Department of Health and Housing Order of Abatement dated January 28, 1997, and Notice of Violations dated November 4, 1997, Respondent knew of the presence of lead-based paint and/or lead-based paint hazards in each of the two above-listed apartment units.

25. Respondent did not disclose to lessees the presence of the known lead-based paint and/or lead-based paint hazards in the two apartment units listed in Paragraph 23 above.

27. Respondent's failure to disclose to lessees the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased prior to the lessees being obligated to lease target housing violated 40 C.F.R. § 745.107(a)(2) and TSCA Section 409, 15 U.S.C. § 2689.

Count Three

Failure to Include as an Attachment, or Within the Contract to Lease Target Housing, the Lead Warning Statement.

28. Paragraphs 1 through 27 above are incorporated by reference as if fully set forth herein.

29. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include as an attachment or within the contract, the Lead Warning Statement.

30. Respondent did not include as an attachment, or within the contracts to lease target housing listed in Paragraph 11, the Lead Warning Statement.

31. Respondent's failure to include the Lead Warning Statement as an attachment or within the contracts to lease the target housing units listed in Paragraph 11 above, violated 40 C.F.R. § 745.113(b)(1), and TSCA Section 409, 15 U.S.C. § 2689.

Count Four

Failure to Include, as an Attachment or Within the Contract to Lease Target Housing, a Statement Disclosing the Presence of Known Lead-Based Paint and/or Hazards

32. Paragraphs 1 through 31 above are incorporated by reference as if fully set forth herein.

33. Pursuant to 40 C.F.R. § 745.113(b)(2), contracts to lease target housing must include, either as attachments to or within the lease contracts, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

34. Respondent did not include, within or attached to the lease contracts with the lessees listed in Paragraph 11 above, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. At the time of those lease transactions, the records described in Paragraph 14 above were in Respondent's possession.

35. Respondent's failure to include as an attachment to or within the lease contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased violated 40 C.F.R. § 745.113(b)(2), and TSCA Section 409.

Count Five

Failure to Include a List of Records/Reports Pertaining to Lead-Based Paint or Lead-Based Paint Hazards in The Housing

36. Paragraphs 1 through 35 above are incorporated by reference as if fully set forth herein.

37. Pursuant to 40 C.F.R. § 745.113(b)(3), contracts to lease target housing must include, either as an attachment or within the lease contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead based paint hazards in the target housing being leased or an indication that no records exist.

38. Respondent did not include, within or attached to the lease contracts with the lessees listed in subparagraphs a. through c. below, a list of the available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the apartment units, or an indication that no records exist. At the time of these lease transactions, the records described in Paragraph 14 above were in Respondent's possession.

a. On August 31, 2021, a tenant entered into a lease for 6 Tower Place Unit F;

b. On June 2, 2020, a tenant entered into a lease for 34 Keeler Street Unit H.

c. On November 24, 2020, a tenant entered into a lease for 9 Tower Place Unit #1F;

Children between ages six and eighteen were resident.

39. Respondent's failure to include a list of records or reports within or attached to lease contracts to rent target housing violated 40 C.F.R. § 745.113(b)(3), and TSCA Section 409.

IV. TERMS OF SETTLEMENT

40. This CAFO shall apply to and be binding upon Respondent, Respondent's successors, and assigns.

41. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue. Without admitting or denying the factual allegations contained in this CAFO, Respondent consents for purposes of settlement to the terms of this CAFO.

42. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the CAFO and waives its right to appeal the Final Order accompanying this Consent Agreement.

43. Respondent certifies that it will operate its business in compliance with Section 409 of TSCA, 15 U.S.C. § 2689, the Act, and federal regulations promulgated under TSCA and the Act, including 40 C.F.R. Part 745, Subpart F.

44. As of the Filing Date of this CAFO, and in compliance with 40 C.F.R. § 745.107(a)(1), Respondent shall provide each lessee before the lessee is obligated under a contract to lease target housing, an EPA-approved lead hazard information pamphlet entitled "Protect your Family from Lead in the Home" or an equivalent pamphlet that has been approved for use by EPA.

45. As of the Filing Date of this CAFO, and in compliance with 40 C.F.R. § 745.107(a)(2), Respondent shall disclose to its lessees, before the lessees are obligated under any contract to lease target housing, the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased. Respondent shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

46. As of the Filing Date of this CAFO, and in compliance with 40 C.F.R. § 745.113(b)(1), Respondent shall provide in an attachment to each contract to lease target housing or within the contract, the Lead Warning Statement.

47. As of the Filing Date of this CAFO, and in compliance with 40 C.F.R.

§ 745.113(b)(2), Respondent shall include in or attached to each lease contract to lease target housing a statement by the Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof in the target housing being leased.

48. As of the Filing Date of this CAFO, and in compliance with 40 C.F.R. § 745.113(b)(3), Respondent shall include in or attached to each lease contract to lease target housing a list of records or reports available to Respondent pertaining to lead based paint and/or lead based paint hazards in the target housing being leased.

V. CIVIL PENALTY

49. Respondent shall pay a civil penalty of sixty-eight thousand seventy-eight dollars ($68,078) ("Assessed Penalty") and agrees to perform a Supplemental Environmental Project ("SEP"). EPA has determined, consistent with statutory penalty criteria and applicable policies, that the Assessed Penalty is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors.

50. Respondent consents to the issuance of this CAFO and for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

51. Respondent shall pay the Assessed Penalty of sixty-eight thousand seventy-eight dollars ($68,078) plus interest in two installments.

a. The first payment of thirty-four thousand thirty-nine dollars ($34,039) shall be paid within 30 days after the date this CAFO is filed with the Regional Hearing Clerk. The second payment of thirty-four thousand three hundred seventy-nine dollars and thirty-nine cents $34,379.39 ($34,039 in principle and $340.39 in interest), shall be paid within 90 days after the date this CAFO is filed with the Regional Hearing Clerk. EPA has

determined that paying the penalty in two installments is in the best interest of the United States.

b. Notwithstanding Respondent's agreement to pay the Assessed Penalty in accordance with the installment schedule set forth above, Respondent may pay the entire Assessed Penalty of $68,078 within thirty (30) days of the Filing Date and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with any interest and other charges accrued up to the date of such full payment.

c. The payments shall be made by remitting checks or making electronic payments, as described below. The checks or other payments shall reference "*In the Matter of J. Da Silva Properties, LLC*; Consent Agreement and Final Order, EPA Region 1," Respondent's name and address, and the EPA Docket Number of this action (TSCA-01-2024-0033), and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

At the time of payment or within 24 hours of any payment, Respondent shall serve proof of such payment (copy of the check or notification of other type of payment) to the following persons (copies may be sent by email):

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 4-6
Boston, MA 02109-3912
r1_hearing_clerk_filings@epa.gov

Peter DeCambre, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC: 4-WC
Boston, MA 02109-3912
decambre.peter@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

Proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

52. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to make the any of the two installment payments of thirty-four thousand thirty-nine dollars ($34,039) and thirty-four thousand three hundred seventy-nine dollars and thirty-nine cents ($34,379.39) respectively, by their due date, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment;

b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's

costs of processing and handling overdue debts. If Respondent fails to pay an installment payment in accordance with the schedule set forth above, EPA will assess a charge to cover the costs of handling any unpaid amounts. Additional handling charges will be assessed for each subsequent thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty, as well as any accrued interest, penalties, and other charges are paid in full;

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days.

53. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

54. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agree not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

55. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement

(including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at chalifoux.jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the filing date of this CAFO, then Respondent, using the same email address identified in

the preceding sub-paragraph, shall further:

i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days of filing this CAFO; and

ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

56. Respondent shall complete the SEP by hiring a licensed lead-abatement contractor to perform lead-based paint abatement at two target housing properties owned by Respondent. At the first property, 8-10 Tower Place, Danbury, Connecticut, Respondent shall remove, properly dispose and replace baseboards in Apartment E (bedroom 2 and 3) and Apartment H (living Room). At the second property, 34-38 Keeler Street, Danbury, Connecticut, Respondent shall remove, properly dispose and replace front entrance exterior doors, casings, and jambs for Apartments 34L, 34J, 36F, 36G and 38. All of these components contain lead-based paint above 1.0 milligram/cm^2. The parties agree that the SEP is intended to secure significant environmental and public health protection and benefits and will protect families from the dangers of exposure to lead-based paint. This project is further described in and shall be implemented in accordance with the Scope of Work attached to and hereby incorporated into this CAFO as Attachment A (the "SOW").

57. The SEP is consistent with applicable EPA policy and guidelines, specifically, EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy (March 10, 2015).

58. The SEP advances at least one of the objectives of TSCA by reducing exposure of children and pregnant women to the hazards of lead-based paint. The SEP is not inconsistent with TSCA. The SEP relates to the alleged violations, and are designed to reduce:

a. The adverse impact to public health and/or the environment to which the alleged violations contributed by reducing tenants' exposure to lead-based paint; and

b. The overall risk to public health and/or the environment potentially affected by the alleged violations by reducing the risk of possible exposure to lead-based paint.

59. Respondent shall satisfactorily complete the SEP by July 26, 2024, ("SEP Completion Date") in accordance with the SOW. EPA may, in its sole discretion, extend the SEP Completion Date and the due date of the SEP Completion Report for good cause shown by Respondent in writing. Satisfactory completion of the SEP shall entail: (i) removal, proper disposal and replacement of baseboards by a licensed abatement contractor in Apartment E (bedroom 2 and 3) and Apartment H (living Room) at 8-10 Tower Place, Danbury, Connecticut; (ii) removal, proper disposal and replacement of front entrance exterior doors, casings, and jambs by a licensed abatement contractor for Apartments 34L, 34J, 36F, 36G and 38 at 34-38 Keeler Street, Danbury, Connecticut; and (iii) Respondent's expenditure of no less than $44,453.91 in eligible SEP costs for purposes of carrying out the SEP in accordance with this CAFO and the SOW. Eligible SEP costs include those listed in the SOW. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described below..

60. Upon completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, as specified in Paragraph 62, below, and Paragraphs 4 and 6 of the SOW.

61. Respondent hereby certifies as follows:

a. that all cost information provided to the EPA in connection with the EPA's

approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is $44,453.91;

b. that, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Respondent is planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. that Respondent has not received and will not receive credit for the SEP in any other enforcement action;

e. that Respondent has not received and will not receive any reimbursement for any portion of the SEP from any other person or entity;

f. that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and

g. that Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.

62. **SEP Reports**.

a. **SEP Progress Report.** Respondent shall submit to EPA a SEP Progress Report no later than June 21, 2024. The SEP progress report shall include:

i. a detailed description of the work completed to date;

ii. all sampling results generated to date;

iii. total cost of work undertaken to date;

iv. any problems encountered to date and the solutions thereto; and

v. the work that is expected to be performed.

b. **SEP Completion Report**. Except as otherwise provided in Paragraph 60, Respondent shall submit a SEP Completion Report within thirty (30) days of its completion, but in no event later than August 26, 2024. The SEP Completion Report shall contain the following information:

i. a detailed description of the SEP as implemented, including, but not limited to, a list of all units where lead abatement was performed, a description of the lead abatement activities in each unit, and before and after photographs of SEP work performed;

ii. copies of all plans, reports, and data, including abatement plans, inspection reports, abatement reports, all sampling results and/or data, including, but not limited to, sampling locations and documentation of analytical quality assurance/quality control;

iii. an itemized list of the costs of all goods and services used to complete the SEP along with documentation including, but not limited to, copies of invoices, purchase orders, or cancelled checks that specifically identify the individual costs of all goods and services;

iv. documentation that the lead abatement contractor who performed the SEP and clearance sampling is authorized to perform such work in accordance with Connecticut Lead Abatement Requirements, including copies of appropriate individual and firm licenses or certifications;

v. a description of any operating problems encountered in the implementation of the SEP and the solutions thereto;

vi a written certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO and the SOW;

vii. a written statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEP (i.e., eligible SEP costs);

viii. a written statement that Respondent has not and will not seek rebates for any purchases pursuant to any federal, state, or local agency's or utility's energy-efficiency program, such as windows;

ix. copies of the lead abatement consultant, lead inspector/risk assessor and lead abatement contractor's state licenses; and

x. a description of the environmental and public health benefits resulting from implementation of the SEP.

63. Respondent agrees that failure to submit the SEP Progress Report or the SEP Completion Report in accordance with the requirements of Paragraph 62, above, and Paragraphs 4 and 6 of the SOW, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 68, below.

64. In itemizing costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph 64, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods for which payment is being made. Canceled checks alone do not constitute acceptable documentation unless such checks specifically identify and itemize the individual costs of the goods for which payment is being made.

65. Respondent shall maintain legible copies of all documentation relating to the SEP and all documents or reports submitted to EPA pursuant to this CAFO for a period of three (3)

years after completion of all requirements set forth in this CAFO. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by arranging for a representative to sign the following statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

66. After receipt of the SEP Completion Report as required by Paragraph 62, above, and the SOW, EPA will notify Respondent in writing: (i) indicating that the SEP project has been completed satisfactorily; or (ii) identifying any deficiencies in the SEP Completion Report and granting Respondent an additional thirty (30) days to correct any deficiencies; or (iii) determining that one or both of the projects has not been completed satisfactorily and seeking stipulated penalties in accordance with Paragraphs 68 through 71, below.

67. If EPA elects to exercise option (ii) in Paragraph 66, above (i.e., if EPA determines that the SEP Completion Report is deficient and EPA has not yet made a final determination about the adequacy of SEP completion itself), Respondent may correct the deficiencies within thirty (30) days or object in writing to the notification of deficiency given pursuant to Paragraph 66 within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification

of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEPs to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements for adequate completion of the SEP imposed by EPA in its written statement. In the event the SEPs is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 68 through 71 below.

68. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraphs 56 through 67 above, or any of the terms or provisions of the SOW, except the SEP Completion Date or SEP Completion Report if modified pursuant to this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. for failure to submit the required SEP Progress Report, and/or failure to provide the SEP Completion Report, Respondent shall pay $200 per day for the first thirty (30) days of violation; $300 for the next sixty (60) days of violation; and $500 per day for each day of violation thereafter until the deadline is achieved or the report is submitted; and

b. for failure to satisfactorily complete the SEP as described in this CAFO and the SOW, Respondent shall pay $350 per day for the first thirty (30) days of violation and $750 per day for each day thereafter, but the total stipulated penalty in this Subsection (b) shall not exceed $48,899, except that any sum expended by

Respondent towards completion of the SEPs as set forth in the SOW may, at EPA's discretion, be credited against the $48,899, thereby reducing the maximum stipulated penalty in this Subsection (b).

69. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

70. Stipulated penalties as set forth in Paragraph 68, above, shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity. EPA may, in its sole discretion, elect not to seek stipulated penalties or elect to compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

71. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment of the stipulated penalty shall be in accordance with Paragraph 51, above, and interest and late charges shall be paid as stated in Paragraph 52, above.

72. Any public statement made by Respondent, oral or written, in print, film, or other media, that makes reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Toxic Substances Control Act and the Residential Lead-Based Paint Hazard Reduction Act."

73. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), the provisions in Paragraphs 43 through 48, above, are required to come into compliance with the law.

74. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

75. This CAFO constitutes a settlement by and between EPA and Respondent of all claims for civil penalties pursuant to TSCA and the Act for the violations alleged herein. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

76. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

77. Each undersigned representative of the Parties to this CAFO certifies that he, she, or they are fully authorized by the Party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that Party to it.

78. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by electronic mail, to the following address: joe@dasilvarealty.net. (*See* 40 C.F.R. § 22.5(b)(2)) Complainant has provided Respondent with a copy of the Consolidated Rules of Practice at 40 C.F.R. Part 22. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

79. Each Party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

For Respondent:

_____ _____

Joseph Da Silva Date
J. Da Silva Properties, LLC

For Complainant, U.S. EPA, Region 1:

JAMES CHOW Digitally signed by JAMES CHOW
Date: 2024.05.20 16:32:38 -04'00'

James Chow, Director
Enforcement and Compliance Assurance Division (ECAD)
U.S. Environmental Protection Agency, Region 1

FINAL ORDER

Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), authorizes EPA to compromise with or without conditions the maximum civil penalties which may be imposed under that Section. EPA has made such a compromise by applying the penalty factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), to the facts and circumstances of this case, including the nature, circumstances, extent and gravity of the violations and with respect to the violator, ability to pay effect on ability to continue in business, any history of prior such violations, and the degree of culpability.

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent is ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated.

Pursuant to 40 C.F.R. § 22.31(b), the terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

LEANN JENSEN
Digitally signed by LEANN JENSEN
Date: 2024.05.23 17:47:09 -04'00'

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1