

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
UNITED STATES OF AMERICA,

Plaintiff,

-against-

L&M 93RD STREET LLC and COSTAS
KONDYLIS & PARTNERS, LLP,

Defendants.
-----X

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ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/22/10

10 Civ. 7495 (RMB)

ADMINISTRATIVE ORDER

The Court has reviewed the Consent Decree Between the United States of America and Defendant L&M 93rd Street LLC (“Developer”) submitted by the United States Government on September 30, 2010 (“Consent Decree”), which arose from the fact that Developer designed and constructed the Melar Apartments in New York City (“The Melar”) but allegedly failed to comply with the Fair Housing Act (“FHA”), 42 U.S.C. § 3604(f)(3)(C) in doing so. In the Consent Decree (a copy of which is attached), Developer “denies the allegations of the complaint and enters into th[e] Consent Decree for settlement purposes only.” **The Court finds that it needs more information as set forth below in order to approve the Consent Decree.**

The core provisions of the Consent Decree are certainly appropriate, such as the provisions (i) enjoining L&M 93rd Street LLC “from discriminating on the basis of disability as prohibited by the [FHA]”; (ii) requiring modifications (retrofits) to The Melar at the Developer’s expense so as to comply with the FHA; and (iii) directing “written notices to all residents at The Melar stating that the retrofits required by th[e] Consent decree will be performed.” (Consent Decree ¶¶ 1, 2, 12.) The Consent Decree also requires, presumably as a “penalty,” that the Developer “pay the United States \$40,000 . . . to vindicate the public interest.” See 42 U.S.C. § 3614(d)(1)(C)(i) which states, in part, that “the court – may, to vindicate the public interest,

assess a civil penalty against the respondent – in an amount not exceeding \$50,000 for a first violation.” (Consent Decree ¶ 36.)

And, the Court certainly recognizes that the enforcement of 42 U.S.C. § 3604 of the FHA relating to accommodations in housing for persons with disabilities is appropriate. See Tsombanidis v. West Haven Fire Dept., 352 F.3d 565, 572 (2d Cir. 2003). The Court also recognizes the value in consensual resolution of cases (and notes that the Consent Decree has already been signed by the Government and the Developer). See Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 616 F.2d 1006, 1014 (7th Cir. 1980); see also Patterson v. Newspaper & Mail Deliverers’ Union of N.Y. & Vicinity, et al., 514 F.2d 767, 771 (2d Cir. 1975).

At the same time, the Consent Decree appears to impose costly and bureaucratic additional burdens upon Developer, and does so without explaining why they are needed, particularly in light of the above-described Developer’s agreement to, among other things, make retrofits at The Melar at its expense in order to comply with 42 U.S.C. § 3604(f)(3)(C).

The provisions of the Consent Decree which require further explanation include, by way of example, the following:

(i) the requirement that Developer also pay “the total sum of \$180,000 for the purpose of compensating any aggrieved persons in connection with [the] alleged discriminatory housing practices involving The Melar”;

(ii) the requirement that Developer also “establish an Accessibility Project Fund in the amount of \$288,300” to, among other things, construct facilities for the primary benefit of persons with disabilities;

(iii) the requirement that Developer also provide, among other things, the names and

addresses (to the United States) of any multifamily dwellings (covered under the FHA) “to be developed, built, designed, and/or engineered in whole or in part” by Developer;

(iv) the requirement that Developer also ensure – as opposed, for example, to taking reasonable measures to ensure – that it and its employees are “familiar with, and personally have reviewed the Fair Housing Accessibility Guidelines”;

(v) the requirement that Developer also “undergo training on the design and construction requirements of the [FHA]”; and

(vi) the requirement that the Consent Decree “remain in effect for three years following entry of th[e] Consent Decree by the Court,” as opposed to, for example, one year. The Consent Decree also allows “[t]he United States [to] move the Court to extend the duration of the Consent Decree in the interests of justice.” (Consent Decree ¶¶ 25, 37(a), 22, 42, 43, 52, 53.)

The Court respectfully requests that the parties address these concerns by submitting a brief letter explaining: (a) each requirement referred to in the preceding paragraph and its rationale and legal basis; (b) why such requirement is appropriate and necessary “on top of” the Consent Decree obligations set forth in paragraph three above; (c) how the \$180,000 and \$288,300 amounts outlined in requirements (i) and (ii) were arrived at and why; and (d) how such requirement specifically furthers the objectives of the FHA as set forth in 42 U.S.C. § 3604. See 42 U.S.C. § 3614; Local No. 93, Intern. Ass’n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland, 478 U.S. 501, 525 (1986) (“a consent decree must come within the general scope of the case made by the pleadings and must further the objectives of the law upon which the complaint is based.”) (internal citation and quotation marks omitted); see also Christopher C. Sabis, Executing the Laws or Executing an Agenda: Usurpation of Statutory and Constitutional Rights by the Department of Justice, 37 U. Mich. J. L. Reform 257 (2003) (arguing that “consent

decrees reveal remedies that appear to stretch the Fair Housing Act beyond the goals authorized by Congress.”); Jones v. Amalgamated Warbasse Houses, Inc., 97 F.R.D. 355, 360 (D.C.N.Y. 1982).

The Court would appreciate the parties’ submission(s) by October 29, 2010.

Dated: New York, New York
October 22, 2010

Handwritten signature of Richard M. Berman in black ink.

RICHARD M. BERMAN, U.S.D.J

USDC SDNY
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

L&M 93RD STREET LLC and COSTAS
KONDYLIS & PARTNERS, LLP,

Defendants.

ECF CASE

**CONSENT DECREE BETWEEN THE
UNITED STATES OF AMERICA AND
DEFENDANT L&M 93RD STREET LLC**

10 Civ. 7495 (RMB)

INTRODUCTION

A. Background

This Consent Decree is entered into between the United States of America (the “United States”) and defendant L&M 93rd Street LLC.

WHEREAS, the United States brought this action (the “Action”) to enforce provisions of the Fair Housing Act (“FHA”), codified at 42 U.S.C. §§ 3601–3619; specifically, the United States’ complaint in this Action alleges that defendants L&M 93rd Street LLC and Costas Kondylis & Partners have engaged in a pattern or practice of discrimination, and have denied rights to a group of persons in a manner raising an issue of general public importance, including by failing to design and/or construct the Melar Apartments (“The Melar”), a residential apartment building in New York, New York, in accordance with the requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C);

WHEREAS, defendant L&M 93rd Street LLC denies the allegations of the complaint and enters into this Consent Decree for settlement purposes only, prior to motion practice or trial, without admitting any issue of fact or law;

WHEREAS, The Melar is subject to the accessible design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C);

B. Defendant

WHEREAS, defendant L&M 93rd Street LLC (the “Developer Defendant”), a Delaware limited liability company, is the builder and developer of The Melar, and, in those capacities, designed and constructed The Melar;

WHEREAS, the Developer Defendant hereby represents that neither it, nor any entities or persons with an ownership interest or membership in it, whether direct or indirect, have designed or constructed any other property subject to the design and construction requirements of the FHA;

WHEREAS, Costas Kondylis & Partners, LLP, is a New York limited liability partnership that drew the architectural plans for The Melar and, in that capacity, designed and constructed The Melar (referred to as the “Architect Defendant”);

WHEREAS, this Consent Decree does not resolve the United States’ claims against the Architect Defendant;

C. Relevant Requirements of the Fair Housing Act

WHEREAS, the FHA provides that residential buildings with four or more dwelling units, and one or more elevators, designed and constructed for first occupancy after March 13, 1991, are “covered multifamily dwellings” (“Covered Multifamily Dwellings”) and must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by persons with disabilities, 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A);

WHEREAS, the accessible and adaptive design provisions of the FHA require that for Covered Multifamily Dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with a disability using wheelchairs; and (iii) all premises within such dwellings contain the following features of adaptive design: (I) an accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C) (these provisions and features are referred to herein as the “Accessible Design Requirements”);

D. Violations at The Melar

WHEREAS, The Melar is a residential rental apartment building located at 250 West 93rd Street in New York, New York. The building consists of a tower with elevator access, with 143 rental apartment units, as well as public and common use areas. The building features a landscaped sun terrace, a fitness center, and a residents’ lounge;

WHEREAS, the United States alleges in its complaint that it has inspected The Melar and specifically identified, *inter alia*, the following failures to meet the Accessible Design Requirements at The Melar:

- Excessively high thresholds, interfering with accessible routes for persons in wheelchairs;
- Terraces inaccessible to persons in wheelchairs;

- Insufficient clear floor space within bathrooms for maneuvering by persons in wheelchairs;
- Bathroom fixtures precluding installation of bathroom grab bars;
- Kitchen entries too narrow to accommodate persons in wheelchairs;
- Kitchen ranges not usable by persons in wheelchairs;
- Kitchen electrical outlets inaccessible to persons in wheelchairs;
- Walk-in closets inaccessible to persons in wheelchairs;
- Common area doors requiring excessive force for persons with certain disabilities;
- Common area doors closing too quickly for disabled persons to pass through;
- Common area bathrooms not usable by persons in wheelchairs;
- Mailboxes inaccessible to persons in wheelchairs;
- Protruding objects in common areas, not detectable by canes of visually impaired persons;
- Features within the fitness room inaccessible to persons in wheelchairs;
- Features within the laundry room inaccessible to persons in wheelchairs; and
- Insufficient clear floor space within basement storage room for maneuvering by persons in wheelchairs.

E. Consent of the Parties to Entry of this Order

WHEREAS, the Government and the Developer Defendant (herein, “the parties”) agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331

and 1345, and 42 U.S.C. § 3614(a). The parties further agree that this Action should be resolved without further proceedings and without an evidentiary hearing or a trial;

WHEREAS, the Developer Defendant agrees to make modifications to The Melar as set forth herein; and

WHEREAS, the parties agree to the entry of this Consent Decree.

It is hereby ORDERED, ADJUDGED, and DECREED:

I. GENERAL INJUNCTION

1. The Developer Defendant and each of its officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with it, are enjoined from discriminating on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604.

II. CORRECTIVE ACTIONS / RETROFITS

2. The United States alleges that The Melar was not designed or constructed in accordance with the FHA. To address these alleged violations of the FHA, the Developer Defendant agrees to make the modifications to The Melar as described in Appendices A and B.

Modifications to the Public and Common Use Areas

3. The Developer Defendant agrees to modify the public and common use areas of The Melar by taking the actions described below.

4. As soon as reasonably possible, but no later than 6 months from the entry of this Consent Decree, the Developer Defendant shall complete the retrofits listed in Appendix A. The Developer Defendant shall make reasonable efforts to minimize inconvenience to residents in making such retrofits.

Modifications to Dwelling Unit Interiors

5. The Developer Defendant agrees to modify dwelling units within The Melar by taking the actions described below.

6. For each unit listed in Appendix B, as soon as reasonably possible, but no later than 6 months from the entry of this Consent Decree (except as otherwise provided in Appendix B), the Developer Defendant shall complete the retrofits listed in Appendix B. The Developer Defendant shall make reasonable efforts to minimize inconvenience to residents in making such retrofits.

7. Within 10 days from the date of the entry of this Consent Decree, the Developer Defendant shall inform each resident whose dwelling unit is to be retrofitted pursuant to Appendix B that: (1) as a result of a settlement of an action brought by the United States, the Developer Defendant has agreed to retrofit certain features of the unit; (2) the retrofits set forth in Appendix B applicable to the resident's unit (with each notice tailored to the specific retrofit(s) to be made to the particular resident's unit) will be provided within 45 days of any request but will, in any event, take place within six months; and (3) the scheduling of the retrofits will take into account the preferences and convenience of the resident or prospective resident and that relocation costs, if any, will be provided in advance. The notice shall be substantially in the form of Appendix C-1.

8. Within 10 days from the date of the entry of this Consent Decree, the Developer Defendant shall inform all current residents of apartments having conditions listed in Appendix B and all those who have signed leases to become residents of those apartments that: (1) as a result of a settlement of an action brought by the United States, to the extent provided in

Appendix B, certain retrofits to apartment units are available upon request of current or prospective residents (each notice to be tailored to the specific retrofits that could apply to that particular unit); and (2) the scheduling of the retrofits will take into account the preferences and convenience of the resident or prospective resident and that relocation costs, if any, will be provided in advance. The Developer Defendant shall likewise provide such notice to all prospective tenants. The notice shall be substantially in the form of Appendix C-2.

9. The Developer Defendant shall certify to the United States in writing that the notices described in paragraphs 7 and 8 have been distributed and shall specify the manner in which they were distributed as part of their annual reporting requirement. Such certification shall include the names and addresses of the persons to whom the notices were distributed.

10. In the event that a resident of a unit within The Melar scheduled to undergo a modification is dislocated from his or her unit for more than a fourteen (14) consecutive hour period, the Developer Defendant shall pay such resident, pro rata, the applicable federal government per diem rate for food and lodging for the local area (as available at www.gsa.gov – click on “per diem rates” under travel) for each day or half-day of undue inconvenience or hardship. Such payment shall be made prior to the commencement of any retrofit work on the resident’s unit, so that the resident can use the payment to obtain alternative living accommodations while dislocated.

11. Present and/or future residents may not be charged any additional rent, deposit, fee, or other consideration for the units in which retrofits are or may be implemented by reason of completed, contemplated, or possible retrofits. Nothing in this paragraph precludes the

Developer Defendant from the implementing rent increases, or imposing fees for any other reason, at the Melar.

III. NOTICE OF RETROFITS TO PUBLIC AND COMMON USE AREAS

12. Within 10 days of the entry of this Consent Decree, the Developer Defendant shall provide written notices to all residents at The Melar stating that the retrofits required by this Consent Decree will be performed to the public and common use areas of The Melar. Such notice shall conform to Appendix D.

13. The Developer Defendant shall certify to the United States in writing that the notices required by paragraph 12 have been distributed and shall specify the manner in which they were distributed within ten days after such distribution. Such certification shall include the names and addresses of the persons to whom the notices were distributed.

IV. NEUTRAL INSPECTOR

14. The Developer Defendant shall enter into a contract with a neutral inspector approved by the United States ("Inspector") to conduct on-site inspections of all retrofits performed pursuant to Appendices A and B of this Consent Decree to determine compliance with the specifications in those appendices. The Inspector shall have expertise in the design and construction requirements of the FHA.

15. Only if requested to do so by the Developer Defendant, the Inspector will review and comment upon the sufficiency of any proposed repair in writing in advance of any repair by the Developer Defendant.

16. An initial inspection of The Melar shall take place within 30 days of the completion of all of the retrofits set forth in Appendices A and B, or as soon thereafter as practicable.

17. For the inspection of The Melar, the Developer Defendant shall give the United States at least three weeks prior notice of the inspection and shall give the United States an opportunity to have its representative present for the inspection.

18. The Inspector shall set out in writing the results of the inspection of The Melar, including any deficits, and shall send that report to the Developer Defendant and to the United States.¹

19. If the inspection indicates that not all of the required retrofits have been made to The Melar as specified in the applicable Appendices, the Developer Defendant shall correct any deficiencies within 60 days and shall pay for another inspection by the same Inspector to certify that the deficiencies have been corrected. This process shall continue until the Inspector certifies that all of the necessary modifications have been made. The Developer Defendant shall pay all of the Inspector's reasonable costs associated with these inspections, and such payments shall be made without regard to the Inspector's findings. Upon reasonable notice, representatives of the United States shall be permitted to inspect the modifications and/or the third-party inspection reports provided for in this Consent Decree, to ensure compliance.

V. TRANSFER OF INTEREST IN PROPERTIES

¹ For purposes of this Consent Decree, notices provided to the United States shall be addressed to Chief, Civil Rights Unit, Office of the United States Attorney for the Southern District of New York, 86 Chambers Street, Third Floor, New York, New York 10007.

20. The sale or transfer of ownership, in whole or in part, of any entity or person's interest(s) in The Melar shall not affect the Developer Defendant's continuing obligation to retrofit, and/or conduct or allow inspections or surveys of, The Melar, as specified in this Consent Decree, unless the Developer Defendant has obtained in writing, as a condition of sale or transfer, the purchaser's or transferee's commitment to assume such obligations, so that the purchaser or transferee will be bound by the terms of this Consent Decree to make retrofits and allow or conduct inspections or surveys as set forth in this Consent Decree, and will be subject to the jurisdiction of this Court.

21. Should an owner of The Melar decide to sell or transfer any ownership of The Melar, in whole or in part, or any portion thereof, prior to the completion of the retrofits specified in this Consent Decree's Appendices describing the retrofits for The Melar, the owner of The Melar will at least 30 days prior to completion of the sale or transfer, unless the contract of sale shall provide for a shorter period between contract and closing, but at least 15 days prior to completion of the sale or transfer: (a) provide each prospective buyer with a copy of this Consent Decree and written notice that Melar is subject to this Consent Decree, including specifically the Developer Defendant's obligations to either (i) complete required retrofit work and allow inspections, or (ii) assign such obligations to the purchaser or transferee by obtaining the purchaser or transferee's commitment to be bound by this Order, subject to the jurisdiction of this Court; and (b) provide to the United States, by facsimile and first-class mail, written notice of the owner's intent to sell or transfer ownership, along with a copy of the notice sent to each buyer, and each buyer's name, address and telephone number.

VII. NON-DISCRIMINATION IN OTHER DESIGN AND CONSTRUCTION

22. The Developer Defendant shall maintain, and provide to the United States upon request, the following information and statements regarding any Covered Multifamily Dwellings intended to be developed, built, designed, and/or engineered in whole or in part, by it or by any entities in which it has a position of control as an officer, director, member, or manager, or has a ten-percent (10%) or larger ownership share:

- the name and address of the project;
- a description of the project and the individual units;
- the name, address, and telephone number of the civil engineer(s) involved with the project;
- a statement from the civil engineer(s) involved with the project acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and in the field of accessible site design, certifying that he/she has reviewed the architectural plans for the project and that the design specifications therein fully comply with the requirements of the FHA, and stating that the design specifications comply with the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent the Developer Defendant's construction in compliance with such building code(s) does not violate the FHA).
- the name, address and telephone number of the architect(s) who are employed or retained by the Developer Defendant and are involved with the project;

- a statement from all architect(s) who are employed or retained by the Developer Defendant and are involved with the project, acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and the Guidelines, and in the field of accessible site design, certifying that he/she has reviewed the architectural plans for the project and that the design specifications therein fully comply with the requirements of the FHA, and stating that the design specifications comply with the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent the Developer Defendant's construction in compliance with such building code(s) does not violate the FHA).

23. If the engineering documents or architectural plans referred to in paragraph 22 are revised, and the revisions would have any impact on whether the dwellings or complex complies with the Fair Housing Act and/or the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent Defendant's construction in compliance with such building code(s) does not violate the FHA), the Developer Defendant shall obtain, maintain, and provide to the United States upon request, a statement from the site engineer(s) or architect(s) who are employed or retained by any Defendant and are involved with the project, as applicable, that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the requirements of the Fair Housing Act, as well as the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent the

Developer Defendant's construction in compliance with such building code(s) does not violate the FHA).

24. The Developer Defendant will make all new construction of Covered Multifamily Dwellings fully compliant with the Accessible Design Requirements, the Americans with Disabilities Act, and the Americans with Disabilities Act Accessibility Standards to the extent applicable to Covered Multifamily Dwellings. Moreover, with respect to all new construction of Covered Multifamily Dwellings outside of New York City, the Developer Defendant shall make all such construction fully compliant with the Guidelines or any other safe harbor recognized by HUD. In addition, with respect to all new construction of Covered Multifamily Dwellings within New York City, the Developer Defendant shall make all such construction fully compliant with either: (a) the Guidelines or any other safe harbor recognized by HUD; or (b) the accessibility specifications of any applicable State or municipal building code (to the extent the Developer Defendant's construction in compliance with such building code(s) does not violate the FHA). During the term of this Consent Decree, upon reasonable notice, the United States will be permitted full access to such properties of the Developer Defendant to inspect for compliance with such standards, rules, and laws.

VII. PAYMENTS TO AGGRIEVED PERSONS

25. Within 30 days of entry of this Consent Decree, the Developer Defendant shall deposit in an interest-bearing account the total sum of ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000) for the purpose of compensating any aggrieved persons in connection with alleged discriminatory housing practices involving The Melar. This sum, which constitutes a cap on any such compensation, shall be referred to as the "Settlement Fund."

26. Except as otherwise provided in this paragraph, within 15 days of the entry of this Consent Decree, the Developer Defendant shall publish the Notice to Persons Who May Have Suffered Housing Discrimination ("Notice") at Appendix E informing readers of the availability of compensatory funds. The Notice shall be no smaller than three columns by six inches and shall be published on three occasions in each of the following newspapers: the *Wall Street Journal*; the *New York Times*; the *Daily News*; and the *New York Post*. The three publication dates shall be separated from one another by 21 days, and at least two of the publication dates shall be on a Sunday. Within 10 days of each publication date, the Developer Defendant shall provide the newspapers containing the Notice to the United States. In lieu of publishing the Notice as provided in the preceding four sentences, the Developer Defendant may publish a notice jointly with the Real Estate Board of New York and/or other entities that have resolved FHA suits brought by the United States (a "Joint Notice"), if: (1) the Developer Defendant publishes the Joint Notice within three months of the entry of this Consent Decree; (2) the Joint Notice contains all of the information contained in the Notice; (3) the Developer Defendant obtains the approval of the United States with respect to any additional content included in the Joint Notice, as well as to the form of the Joint Notice, at least 15 days prior to publication; (4) the Joint Notice is published on at least five occasions in each of the following newspapers: the *Wall Street Journal*; the *New York Times*; the *Daily News*; and the *New York Post*; (5) the five publication dates are separated from one another by 21 days, with at least two of the publication dates on a Sunday; and (6) within 10 days of each publication, the Developer Defendant provides the newspapers containing the Joint Notice to the United States.

27. Within 15 days of entry of this Consent Decree, the Developer Defendant shall place, on <http://www.themelar.com>, a link to an electronic version of the Notice in an Adobe Acrobat Portable Document Format ("PDF"). The link should state "Notice to Persons Who May Have Suffered Housing Discrimination," and should appear on the upper half of the website, in a red font, in a font size no smaller than the font size for any of the terms "home," "amenities," "neighborhood," "floor plans" or "contact us," as they appeared as of July 1, 2010.

28. Within 15 days of the entry of this Consent Decree, the Developer Defendant shall send a copy of the Notice to each of the following organizations: Fair Housing Justice Center, 5 Hanover Square, 17th Floor, New York, New York 10004; and United Spinal Association, 75-20 Astoria Blvd., Jackson Heights, New York 11370.

29. Within 30 days of the entry of this Consent Decree, the Developer Defendant shall send, by first-class mail, postage pre-paid, a copy of the Notice to each present resident at The Melar and to all former residents of The Melar. For past residents, the Developer Defendant will have complied with the requirements of this paragraph by mailing such notice to the forwarding address, if any, provided by the former resident at the time the former resident moved out of The Melar. Within 60 days of entry of this Consent Decree, the Developer Defendant shall provide the United States with proof that the Notices have been sent.

30. The United States may make its own efforts to locate and provide notice to potential aggrieved persons.

31. The Developer Defendant shall permit the United States, upon reasonable notice, to review any records that may reasonably facilitate its determinations regarding the claims of alleged aggrieved persons.

32. The United States shall investigate the claims of allegedly aggrieved persons and shall determine which persons are aggrieved and an appropriate amount of damages that should be paid to each such person. The United States will inform the Developer Defendant in writing of each of its determinations, together with a copy of a sworn declaration from each aggrieved person setting forth the factual basis of the claim.

33. If the Developer Defendant disputes the grievance determination or amount of a payment to an aggrieved person, the Developer Defendant shall, within fourteen (14) days of receiving notice of a determination (a "Determination") from the United States, provide a written objection to the United States, along with any information or documents that they believe may refute the aggrieved person's claim. The United States shall give due consideration to any objections it receives from the Developer Defendant and shall submit, following any objection, its reconsidered determination (a "Reconsidered Determination") to the Developer Defendant, in writing, setting forth the aggrieved person and the amount that the aggrieved person shall be paid. If the Developer Defendant disputes the Reconsidered Determination, the Developer Defendant shall submit an objection to the United States within ten (10) days of receiving the Reconsidered Determination, and the United States shall submit the matter to the Court for a final determination.

34. The Developer Defendant shall, no later than twenty (20) days after receiving a Determination to which no objection has been made, ten (10) days after receiving a Reconsidered Determination to which no objection has been made, or ten (10) days after any decision by the Court overruling a filed objection, whichever is earliest, deliver to the United States checks drawn upon the Settlement Fund payable to aggrieved persons in the amounts

identified by the United States. In no event shall the aggregate of all such checks exceed the amount of the Settlement Fund, including accrued interest. No aggrieved person shall be paid until he/she has executed and delivered to the United States, with a copy to the Developer Defendant, the release at Appendix F.

35. In the event that less than the total amount in the Settlement Fund, including accrued interest, is distributed to aggrieved persons, and after the United States determines that no further aggrieved persons will be identified, the remainder of the funds in the Settlement Fund shall be distributed to a qualified organization(s) mutually agreed upon by the United States and the Developer Defendant, subject to the approval of the Court, for the purpose of assisting individuals with physical disabilities in locating accessible housing or in modifying housing to be more accessible in New York City. The organization shall not receive the funds until it has executed and delivered to the United States, with a copy to the Developer Defendant, a release precluding the organization from bringing any claims against the Developer Defendant for any matters covered by this Consent Decree. The Developer Defendant shall distribute the funds in a manner directed by the Court after the United States informs the Court that no further aggrieved persons will be identified.

VIII. PAYMENT TO THE UNITED STATES

36. Within 30 days of the date of the entry of this Consent Decree, the Developer Defendant shall pay the United States FORTY THOUSAND DOLLARS (\$40,000) pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. Said sum shall be paid by submitting a check made payable to the "United States of America" to the United States.

IX. ESTABLISHMENT OF ACCESSIBILITY PROJECT FUND

37. The Developer Defendant shall establish an Accessibility Project Fund in the amount of TWO HUNDRED EIGHTY EIGHT THOUSAND THREE HUNDRED DOLLARS (\$288,300) (the "Fund Amount").

a. The Accessibility Project Fund shall be used prior to the termination of this Consent Decree for the construction of facilities, or the provision of services, at the Melar for the primary benefit of persons with disabilities. The Developer Defendant, thirty (30) days in advance of any proposed expenditure of the Accessibility Project Fund at the Melar, may seek the approval of the United States to deem the costs of such construction or services as qualifying as expenditures of the Accessibility Project Fund, and such approval shall be given at the United States' discretion, which shall not be unreasonably withheld or delayed. In the event that the Developer Defendant engages in construction, or provides services, at the Melar for the primary benefit of persons with disabilities without providing notice to the United States, the Developer Defendant may seek the approval of the United States to deem the costs of such construction or services as qualifying as expenditures of the Accessibility Project Fund, and such approval shall be given at the United States' discretion, which shall not be unreasonably withheld or delayed.

b. To the extent that such expenditures are approved by the United States as provided below, up to 50% of the Accessibility Project Fund may be expended prior to the termination of this Consent Decree on the design and construction of features that enhance accessibility at a Covered Multifamily Dwelling (the "New Building") the construction of which is commenced during the term of the Consent Decree by a New Developer, as defined in the

footnote below.¹ For any expenditure to be made from the Accessibility Project Fund for the design or construction of a feature or features at a New Building, the Developer Defendant shall request approval from the United States. In connection with such a request, the Developer Defendant and the New Developer shall submit certifications that (i) such features are for the primary benefit of persons with disabilities and are not otherwise required under paragraph 24 of this Consent Decree or otherwise required by law; (ii) such accessibility-enhancing features would not have been included in the New Building but for the availability of money from the Accessibility Project Fund; and (iii) the expenditure reasonably reflects the cost of designing and constructing the accessibility-enhancing features. The United States may approve or disapprove expenditures from the Accessibility Project Fund on a New Building in its discretion, which shall not be unreasonably withheld or delayed.

c. None of the retrofit or other requirements of this Consent Decree shall qualify for expenditures of the Accessibility Project Fund, except the expenses that the Developer Defendant may incur in connection with the installation of low-profile refrigerators upon the request of residents in units with less than 40 inches of clearance at the refrigerator, as shown on Appendix B.

d. Three months before the termination date of this Consent Decree, the Developer Defendant shall present a full and accurate accounting of the Accessibility Project Fund. The aggregate expenditures shall be subtracted from the Accessibility Project Fund, and the Developer Defendant shall, within 30 days of the accounting, pay the difference to the United

¹ A "New Developer" shall be an entity that is at least 50% owned by persons who collectively hold at least 50% of the ownership interest in the Developer Defendant.

States by an electronic funds transfer pursuant to wiring instructions to be provided by the United States.

X. EDUCATIONAL PROGRAM

38. Within 30 days of the entry of this Consent Decree, the Developer Defendant shall provide a copy of this Consent Decree to all their agents and employees involved in the design or construction of The Melar (meaning a representative of Rose Associates, Inc. ("Rose Associates")) and shall secure a signed statement from each such agent or employee acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix G.

39. During the term of this Consent Decree, any new agent or supervisor of the Developer Defendant who will be involved in the design or construction of Covered Multifamily Dwellings shall, within 30 days after the date he or she commences an agency or employment relationship with the Developer Defendant, be given a copy of this Consent Decree by the Developer Defendant, and the Developer Defendant shall require each such new agent or employee to sign a statement, acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix G.

40. Within 30 days of the entry of this Consent Decree, the Developer Defendant shall provide a copy of this Consent Decree to all their agents and employees involved in rental of units at The Melar, and/or the supervision of services to residents at The Melar (including the following personnel at Rose Associates: the Melar Resident Property Manager; the Melar

Property Manager stationed at Rose Associates; the Melar on-site Leasing Manager; the Melar Leasing Director stationed at Rose Associates; the Melar lobby attendants; and the supervisor(s) of the Melar porters and handymen), and shall secure the signed statement from each agent or employee acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix G. In addition, the supervisor(s) of the Melar porters and handymen shall certify that he/she has explained the obligations of the Melar porters and handymen to those individuals, and that those individuals have had an opportunity to have their questions about their obligations answered.

41. During the term of this Consent Decree any new agent or supervisor of the Developer Defendant, or of Rose Associates, who will be involved in the renting of units at The Melar, and/or the provision of services to residents at The Melar shall, within 30 days after the date he or she commences an agency or employment relationship with the Developer Defendant, be given a copy of this Consent Decree by the Developer Defendant, and the Developer Defendant shall require each such new agent or employee to sign a statement, acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix G.

42. The Developer Defendant shall also ensure that it and its employees, as well as any entities (e.g., firms) acting as the Developer Defendant's agent, who have supervisory authority over the design and/or construction of covered, multifamily dwellings have a copy of, are familiar with, and personally have reviewed, the Fair Housing Accessibility Guidelines, 56

Fed. Reg. 9472 (1991), and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual. A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act (August 1996, Rev. April 1998). The Developer Defendant and all employees and agents whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications. In addition, the Developer Defendant shall provide Rose Associates with a copy of the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991), and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual. A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act (August 1996, Rev. April 1998), and shall inform Rose Associates of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

43. Within 90 days of the date of entry of this Consent Decree, the Developer Defendant and all employees and agents whose duties, in whole or in part, involve or will involve supervision over the development, design and/or construction of Covered Multifamily Dwellings (including any such employees at Rose Associates) shall undergo training on the design and construction requirements of the Fair Housing Act.¹ The training shall be conducted by a qualified third-party individual, not associated with the Developer Defendant or its counsel,

¹ The educational program provided to employees not engaged in design, construction, or maintenance, such as sales and rental employees, may focus on the portions of the law that relate generally to accessibility requirements as opposed to technical design and construction requirements.

and approved in advance by the Department of Justice; and any expenses associated with this training shall be borne by the Developer Defendant. The Developer Defendant shall provide to the United States, 30 days before the training, the name(s), address(es) and telephone number(s) of the trainer(s); and copies of the training outlines and any materials to be distributed by the trainers. The Developer Defendant shall provide to the United States certifications executed by the Developer Defendant and all covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix H.

XI. NOTICE OF DEFENDANT'S NON-DISCRIMINATION POLICY

44. Within ten days of the date of entry of this Consent Decree, the Developer Defendant shall post and prominently display in the sales or rental offices of all Covered Multifamily Dwellings owned or operated by them a sign no smaller than 10 by 14 inches indicating that all dwellings are available for rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

45. For the duration of this Consent Decree, in all future advertising in newspapers and electronic media, and on pamphlets, brochures and other promotional literature regarding the existing Covered Multifamily Dwelling or any new Covered Multifamily Dwellings that the Developer Defendant may develop or construct, the Developer Defendant shall place, in a conspicuous location, a statement that the dwelling units include features for persons with disabilities required by the federal Fair Housing Act.

XII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

46. No later than 180 days after the date of entry of this Consent Decree, the Developer Defendant shall: (a) submit to the United States the executed certifications and

statements required by paragraphs 38-43 of this Consent Decree; and (b) certify to the United States in writing that the notices required by paragraphs 7, 8, and 12 of this Consent Decree have been distributed, and specify the manner in which they were distributed.

47. Thereafter, during the term of this Consent Decree, the Developer Defendant shall, on the anniversary of the entry of this Consent Decree, submit to the United States any additional signed statements required by paragraphs 39 or 41 of this Consent Decree, and a report, as applicable, indicating that notices pursuant to paragraph 8 of this Consent Decree were distributed to new residents.

48. For the duration of this Consent Decree, the Developer Defendant shall advise the United States in writing within 15 days of receipt of any written administrative or legal fair housing complaint regarding any Covered Multifamily Dwelling owned, managed, and/or designed or constructed by it, or against any employees or agents of the Developer Defendant working at or for any such property, alleging discrimination on the basis of disability in housing under federal law. Upon reasonable notice, the Developer Defendant shall also provide the United States all information it may request concerning any such complaint. The Developer Defendant shall also advise counsel for the United States, in writing, within 15 days of the resolution of any complaint.

49. For the term of this Consent Decree, the Developer Defendant is required to preserve all records related to this Consent Decree for The Melar and for any other Covered Multifamily Dwellings designed, constructed, owned, operated, or acquired by it during the duration of this Consent Decree. Upon reasonable notice to the Developer Defendant, representatives of the United States shall be permitted to inspect and copy any records of the

Developer Defendant or inspect any developments or residential units under the Developer Defendant's control bearing on compliance with this Consent Decree at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to the Developer Defendant from such inspections.

XIII. RENT STABILIZATION

50. In the event a resident of The Melar files a complaint with the New York State Division of Housing and Community Renewal under Section 26-5141 of the Rent Stabilization Law or Section 2523.4 of the Rent Stabilization Code alleging that the performance of a retrofit as required by this Consent Decree constitutes a diminution of services, the Developer Defendant will inform the United States that such a claim has been filed and the Developer Defendant will defend against the claim in good faith with all best efforts. If the New York State Division of Housing and Community Renewal rules against the Developer Defendant, the Developer Defendant will promptly enter into negotiations with the United States to reach agreement on an appropriate substitute for the particular retrofit at issue. If the United States is not satisfied with the substitute(s) proposed by the Developer Defendant, the United States may apply to the Court (*i.e.*, the United States District Court for the Southern District of New York), in which case this Court shall select a substitute for the particular retrofit at issue.

XIV. LOW-INCOME HOUSING TAX CREDIT PROGRAM COMPLIANCE

51. With respect to low-income housing tax credits, the Developer Defendant understands that, in the event that the Developer Defendant fails to comply with any of the terms of this Consent Decree and the United States, on notice to the Developer Defendant, obtains an order establishing such noncompliance, the United States may take action, including but not

limited to notifying the appropriate state housing finance agency of the violation. See 26 U.S.C. § 42(m)(1)(B)(iii).

**XV. DURATION OF CONSENT DECREE AND
TERMINATION OF LEGAL ACTION**

52. This Consent Decree shall remain in effect for three years following entry of this Consent Decree by the Court. By consenting to entry of this Consent Decree, the parties agree that in the event that the Developer Defendant engages in any future conduct occurring after entry of this Consent Decree that leads to any judicial or administrative determination of a violation of the Fair Housing Act, any civil penalty relating to such future conduct shall be calculated as if the conduct were a “subsequent violation” pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

53. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Consent Decree. The United States may move the Court to extend the duration of the Consent Decree in the interests of justice, and the Developer Defendant may oppose such a motion.

54. The United States and the Developer Defendant shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Developer Defendant to perform, in a timely manner, any act required by this Consent Decree or otherwise for its failure to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney’s fees which may have

been occasioned by the violation or failure to perform. The Developer Defendant may oppose such a motion.

55. Upon the termination of this Consent Decree, the Court shall dismiss this Action with prejudice. Such dismissal shall only release the Developer Defendant from claims by the United States regarding alleged failures to design and construct The Melar pursuant to the FHA as of the date of suit in this Action. Such a dismissal shall not release the Developer Defendant from any other claims by the United States, including but not limited to any claims regarding other designed and constructed Covered Multifamily Dwellings, and any claims regarding FHA violations at The Melar other than failures to design and construct The Melar as required by the FHA.

XVI. TIME FOR PERFORMANCE

56. Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the United States and the Developer Defendant without Court approval.

XVII. COSTS OF LITIGATION

57. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation.

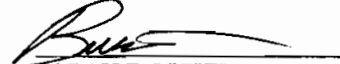
The undersigned apply for and consent to the entry of this Consent Decree:

For the United States:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

PREET BHARARA
United States Attorney

By:



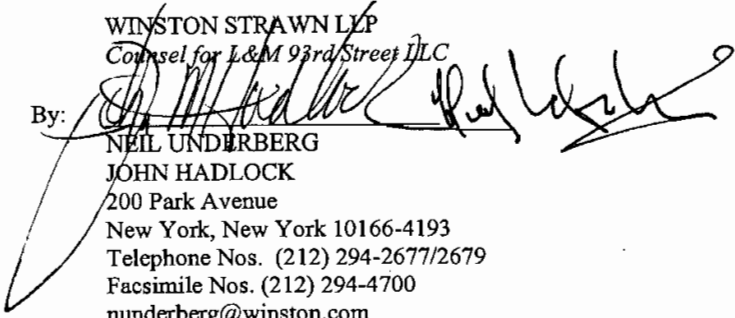
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For Defendant L&M 93rd Street LLC:

By:


L&M 93rd STREET LLC
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nunderberg@winston.com

Jhadlock@winston.com

SO ORDERED this _____ day of _____, 2010.

HON.

UNITED STATES DISTRICT COURT JUDGE

**APPENDIX A
PUBLIC AND COMMON USE AREAS**

As soon as reasonably possible, but no later than 6 months from the entry of this Order, Defendants shall finish the retrofits identified in this Appendix A.

FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 2

MAIN BUILDING ENTRANCE

ELEMENT	CONDITION	AGREED UPON RETROFIT
Swinging doors adjacent to revolving door	Left door opening force of 9 lbs. and right door opening force of 10 lbs. (left/right orientation is facing the doors from the inside)	Will decrease opening force to no more than 8.5 lbs with the option of installing a magnetic lock that can be released by an accessible push button on either side of the door if weather conditions make it necessary

LEASING OFFICE

ELEMENT	CONDITION	AGREED UPON RETROFIT
Entrance door	Opening force of 16 lbs.	Will decrease opening force to no more than 5 lbs.
Entrance door	Closing speed less than 3 second minimum	Will change to 3 sec. min. from 70 degrees to 3 in. from latching
Entrance door	Level change at entrance door 3/4" high with no bevel	Will make the level change 1/2" high max.; beveled at 1:2 above 1/4"
Coat hooks	65" to 69" above the finished floor ("AFF")	Will lower coat hooks to max. of 54" AFF for side reach; lower to 48" max. AFF for forward reach

UNISEX BATHROOM IN LEASING OFFICE

This bathroom shall be for the use of staff only. The fitness center bathroom, on the same floor, is open to the public.

UNISEX BATHROOM NEAR FITNESS CENTER

ELEMENT	CONDITION	AGREED UPON RETROFIT
Entrance door	2'-10" wide door; 31" clear width	Will widen to 32" min. clear opening width between the face of the door at 90 degrees to the stop on the latch side
Toilet seat	19 3/4" AFF	Will lower the toilet seat to 17" min. to 19" max. AFF
Rear grab bar	Obstructed by mirror frame above the grab bar projecting 1 3/4" from wall	Will replace the mirror frame with a non-obstructing frame

UNISEX BATHROOM IN LAUNDRY ROOM

This space shall be converted into a storage room, which shall comply with ANSI 1986 and the Guidelines if it is open to tenants.

MAILBOXES

ELEMENT	CONDITION	AGREED UPON RETROFIT
Mailboxes	Top 3 rows at 66 1/2" and 61", 55 1/2" AFF	Will assign accessible spare boxed to provide access, if permitted by USPS

LOUNGE

ELEMENT	CONDITION	AGREED UPON RETROFIT
Door	Pull side latch clearance 2 1/4"	Will convert the door to an emergency egress door with no hardware on the pull side; will provide another accessible route in full compliance with ANSI 1986 and the Guidelines
Shelf at entrance door	Protrudes 8 3/4" at 38 1/4" AFF	Will adjust the shelf to protrude 4" max; or move it to 80" min. AFF; or provide cane detectable barrier below
Fire extinguisher	Protrudes 5" at 44" AFF	Will adjust the extinguisher to protrude 4" max; or move it to 80" min. AFF; or provide cane detectable barrier below

FITNESS CENTER

ELEMENT	CONDITION	AGREED UPON RETROFIT
Vestibule door	Opening force 18 lbs.	Will decrease opening force to no more than 5 lbs.

Entrance door from vestibule	Opening force 17 lbs.	Will decrease opening force to no more than 5 lbs.
Fire extinguisher	Protrudes 5" at 44" AFF	Will adjust the extinguisher to protrude 4" max; or move it to 80" min. AFF; or provide cane detectable barrier below
Hand scanner	Protrudes 8 1/2" at 41" AFF	Will adjust the scanner to protrude 4" max; or move it to 80" min. AFF; or provide cane detectable barrier below

LAUNDRY ROOM

ELEMENT	CONDITION	AGREED UPON RETROFIT
Entrance door	Opening force 13 lbs.	Will decrease opening force to no more than 5 lbs.
Entrance door	Closing speed less than 3 second minimum	Will change closing speed to 3 second min. from 70 degrees to 3" from latching
Entrance door	Threshold, room side – 1 1/2" high, no bevel	Will make the level change 1/2" high max.; beveled at 1:2
"Value Add" vending machine	Protrudes 7" at 52 1/2" AFF	Will adjust machine to protrude 4" max; or move it to 80" min. AFF; or provide cane detectable barrier below
Fire extinguisher	Protrudes 5" at 42" AFF	Will adjust extinguisher to protrude 4" max; or move it to 80" min. AFF; or provide cane detectable barrier below
Sink	Countertop 36" AFF	Will lower sink to 34" max. AFF
Sink	No knee clearance for forward approach	Will provide knee and toe clearance and pipe insulation in accordance with ANSI 4.19.3 & 4.19.4

TRASH CHUTE ROOMS

ELEMENT	CONDITION	AGREED UPON RETROFIT
Door	All floors – 2' 10" wide door; 31" to 31 1/4" clear opening width	Will provide alternative trash pick-up by building staff for any disabled residents or guests, according to the following procedure: The disabled individual will notify the concierge desk, at any time between 8:30 am and 5:30 pm daily, that trash pick-up is needed, and the concierge will arrange for a porter to be dispatched to the apartment promptly. Residents will be notified of this procedure in writing, and notices of this procedure will be posted on building bulletin boards.
Door	All floors - 0" pull side latch clearance	
Chute access door – 4th floor	Opening force – 6 lbs.	
Chute access door – hardware	Requires twisting to open chute door	
Overhead fire protection system piping	Headroom 78" AFF	
Metal sign hanging from overhead piping	Headroom 70 1/2" to 72" AFF	

4TH FLOOR TERRACE

ELEMENT	CONDITION	AGREED UPON RETROFIT
Approach to terrace door	13" level change at terrace door (2 steps up to terrace door)	Will install a ramp or lift
Terrace door	11 lbs. opening force	Will decrease the opening force to 8.5 lbs. max.

BASEMENT STORAGE

ELEMENT	CONDITION	AGREED UPON RETROFIT
Maneuvering clearance at cage doors	One aisle 42" wide; remainder 36" wide	There are 143 units in the building at 35 storage cages, which are available for rent on a first-come first-serve basis. If a

		storage cage becomes available for rent by a disabled resident, The Melar will assign that resident one of the two cages closest to the entrance of the room. The Melar will prominently display a sign at the opposing bicycle rack stating that only children's bicycles may be hung on the first two hooks of the rack, so as to ensure the availability of a 60" min. diameter turnaround space.
Fire extinguisher	Protrudes 5" at 40 1/2" AFF	Will adjust the extinguisher to protrude 4" max.; or move it to 80" min. AFF; or provide cane detectable barrier below

LEASING OFFICE

ELEMENT	CONDITION	AGREED UPON RETROFIT
Sign	Mounted on door	Will mount on latch side of door
Sign	Centerline 61" AFF	Will lower to 60" AFF measured to centerline of the sign

UNISEX BATHROOM IN LEASING OFFICE

ELEMENT	CONDITION	AGREED UPON RETROFIT
Sign	Mounted on door	Will mount on latch side of door

**APPENDIX B
UNIVERSAL RETROFITS**

As soon as reasonably possible, but no later than 6 months from the entry of this Order, Defendants shall complete the retrofits listed in this Appendix B.

UNIT ENTRANCE DOOR THRESHOLD

FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 4, SEC. (4)

UNIT(S)	CONDITION	AGREED UPON RETROFIT
5F-15F	Level change at entrance door is 1/2" high, beveled at 1:1	Will make level change 1/4" high max.; or 3/4" high max. beveled at 1:2 above 1/4"

TERRACE THRESHOLD

FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 4, SEC. (4)

UNIT(S)	CONDITION	AGREED UPON RETROFIT
16 th Floor Units	Level change at terrace door exceeds maximum of 3/4"	If requested by a disabled resident or disabled prospective resident, will install a lift

BATHROOM CLEAR FLOOR SPACE

FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 7, SEC. (2)(a)(i)

UNIT(S)	CONDITION	AGREED UPON RETROFIT
Common issue to all units	CLFS beyond door swing 30" wide minimum by 48" long minimum	If requested by a disabled resident or prospective resident, will reverse door swing

OBSTRUCTION OF GRAB BAR LOCATION
FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 6

UNIT(S)	CONDITION	AGREED UPON RETROFIT
Common issue to all units	Banjo counter top at lavatory obstructs grab bar location	If requested by a disabled tenant, will remove the banjo and install a grab bar above the toilet

KITCHEN ENTRY
FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 4, SEC. (1)

UNIT(S)	CONDITION	AGREED UPON RETROFIT
5F-15F	Less than 40" minimum width at entry and at refrigerator	Will remove the kitchen entrance wall opposite the refrigerator and rebuild the wall flush against the vertical beam; provided, however, that this retrofit will be made upon a resident's request, the vacancy of the unit, or prior to the termination of the Consent Decree, whichever is earlier

KITCHEN CLEARANCE
FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 7, SEC. (1)(b)

UNIT(S)	CONDITION	AGREED UPON RETROFIT
16B-22B	Less than 40" minimum width at refrigerator	Install a low-profile refrigerator or recess refrigerator to provide 40" minimum width; provided, however, that this retrofit will be made upon a resident's request, the

		vacancy of the unit, or fifteen (15) months
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KITCHEN RANGES PROVIDE INSUFFICIENT CLEARANCE
FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 7, SEC. (1)(a)

UNIT(S)	CONDITION	AGREED UPON RETROFIT
All units except 16B-22B, 5G-15G, 5J-15J, 5K-15K, and 16D-22D	Less than 40" minimum width at refrigerator	If requested by a resident, will install a low-profile refrigerator
5A-15A, 5C-15C, 5D-15D, 5E-15E, 16A-22A, 16B-22B	A 30" x 48" clear floor space parallel to and centered on the range for a side approach is not available.	If requested by a disabled resident or a disabled prospective resident, will provide a 30" x 48" clear floor space centered on the range for a side approach.
5G-15G, 5H-15H, 16D-22D	A 30" x 48" clear floor space parallel to and centered on the range for a side approach is not available.	Install a low-profile refrigerator; provided, however, that this retrofit will be made only upon a resident's request.
5J-15J, 5K-15K, 16E-22E, 16F-22F	A 30" x 48" clear floor space parallel to and centered on the range for a side approach is not available.	Will move the range 2" towards the hallway by removing a 2" portion of the countertop and placing that portion of countertop on the other side of the range; provided, however, that this retrofit will be made upon a resident's request, the vacancy of the unit, or fifteen (15) months after entry of the Consent Decree, whichever is earlier.
5J-15J, 5K-15K, 16E-22E, 16F-22F	A 30" x 48" clear floor space parallel to and centered on the range for a side approach is not available.	Will either: (i) make the wall adjacent to the range, on the hallway side, flush with the range and countertop, by

		shaving that wall, or (ii) make the range flush with the face of the adjacent wall, on the hallway side, by pulling the range forward. Provided, however, that this retrofit will be made upon a resident's request.
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KITCHEN OUTLETS

FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 5

UNIT(S)	CONDITION	AGREED UPON RETROFIT
Common issue to all units	Kitchen outlets more than 46" above finished floor or ground surface measured to the centerline of the highest outlet and/or more than 12" from side wall or appliance measured to the centerline of the outlets	Will install power strips to provide outlets at or below 46" from finished floor and at or less than 12" from side wall
5G-15G, 5H-15H, 16D-22D	Kitchen outlets less than 36" minimum from corner measured to the centerline of the outlets	Will install power strips to provide at least 36" from the corner

KITCHEN SINKS PROVIDE INSUFFICIENT CLEARANCE
FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 7, SEC. (1)(a)

UNIT(S)	CONDITION	AGREED UPON RETROFIT
5G-15G, 5H-15H, 16D-22C	Removable base cabinets required; however, upon removal of base cabinet, unwrapped pipes are exposed	Will cover pipes beneath kitchen sinks

CLOSETS
FAIR HOUSING ACCESSIBILITY GUIDELINES REQUIREMENT 3, SEC (2)

UNIT(S)	CONDITION	AGREED UPON RETROFIT
5B-15B, 5J-15J	Clear width at closet doors less than a nominal 32"	Will provide disabled residents with adjustable wheeled garment rack, or will reduce the depth of the closet to 26"

APPENDIX C-1

NOTICE TO RESIDENTS OR PROSPECTIVE RESIDENTS OF RETROFITS FOR THE MELAR APARTMENTS, WHICH MUST BE SCHEDULED WITHIN THE NEXT SIX MONTHS

The Melar is dedicated to the principle of equal housing opportunity. The federal Fair Housing Act requires that apartments in newer apartment communities have certain features of physical accessibility for people with disabilities.

This is to advise you, as a result of a settlement in a case brought by the United States against the owners and the other builders and designers of this apartment complex, we have agreed to modify, by varying degrees, the apartments at The Melar to provide greater accessibility for people with disabilities. Your unit or prospective unit is one of the units that will be modified.

We will be making the following modification[s] to your unit [NOTE: each notice will be separately tailored to the specific modifications to be made to that particular unit]:

- Adjustment of threshold at entrance door
- Installation of power strips for kitchen outlets
- Replacement of the wall opposite the refrigerator, to provide greater clearance between the refrigerator and the wall
- Installation of a new, low-profile refrigerator
- Adjustment of position of range
- Installation of adjustable wheeled garment rack, or modification of closets

Any scheduling of the modifications will take into account your preferences and convenience. In most instances, the actual work will take no than several hours; a small subset of modifications in the F line of apartments may take up to two days. Should you have to move out temporarily, we will pay reasonable relocation and housing expenses while the modifications are being made. The modifications are being made at no cost to you.

While you do not have to request the modifications now, you should be aware that this work must be completed **within the next six months**, regardless of your intention to stay in the apartment for a longer time. A representative will be contacting you soon to review these modifications and to discuss a time frame within which these modifications may be made.

If you have any questions, please contact us at the management office.

APPENDIX C-2

NOTICE TO RESIDENTS OR PROSPECTIVE RESIDENTS OF AVAILABLE RETROFITS FOR THE MELAR APARTMENTS

The Melar is dedicated to the principle of equal housing opportunity. The federal Fair Housing Act requires that apartments in newer apartment communities have certain features of physical accessibility for people with disabilities.

This is to advise you, as a result of a settlement in a case brought by the United States against the owners and the other builders and designers of this apartment complex, we have agreed to offer certain modifications to apartment units at The Melar to provide greater accessibility for people with disabilities upon request of residents or prospective residents.

The modifications available upon request are: [NOTE: each notice will be separately tailored to the specific modifications to be made to that particular unit]:

- Installation of a lift in the 16th floor units to provide access to the terrace
- Reversal of the swing of the bathroom door
- Removal of the banjo countertop and installation of a grab bar above the toilet
- Substitution of a low-profile refrigerator, to provide greater clearance between the refrigerator and the opposing counter
- Adjustment of position of range

Any scheduling of the modifications will take into account your preferences and convenience. The actual work will take no more than five days and, should you have to move out temporarily, we will pay reasonable relocation and housing expenses while the modifications are being made. The modifications are being made at no cost to you.

In addition to these modifications, please be advised that, upon the request of residents or prospective residents or guests with disabilities, The Melar will make arrangements for alternative trash pick-up by building staff, according to the following procedure: The disabled individual will notify the concierge desk, at any time between 8:30 am and 5:30 pm, that trash pick-up is needed, and the concierge will arrange for a porter to be dispatched to the apartment promptly.

If you have any questions, please contact us at the management office.

APPENDIX D

**NOTICE OF RETROFITS TO PUBLIC AND COMMON USE AREAS
OF THE MELAR**

To Our Residents and Prospective Residents:

Federal law requires that the public and common use areas at the Melar contain accessibility features for persons with disabilities. Within the next six months, we will be undertaking a program of retrofits to the public and common use areas to make them more accessible to persons with disabilities. A list of retrofits we will be undertaking is available at the leasing office. We do not anticipate that current residents will have to be relocated during the term of their tenancy or that prospective residents will have their move-in dates delayed because of the retrofits we will be undertaking.

Should you have questions regarding this letter, please contact the leasing office at the Melar or the United States Attorney's Office, Southern District of New York, at (212) 637-0840.

Sincerely,
The Melar

APPENDIX E

**NOTICE TO PERSONS WHO MAY HAVE SUFFERED HOUSING
DISCRIMINATION**

On ___, the United States District Court for the Southern District of New York entered a consent order relating to The Melar. The United States Department of Justice had alleged that the building lacked certain accessible features for persons with disabilities, as required by the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(c). The Melar denied the allegations and agreed to the consent order to settle the matter without litigation.

Under this consent order, a person may be entitled to receive monetary relief if he or she:

- WAS DISCOURAGED FROM LIVING AT THE MELAR BECAUSE OF THE LACK OF ACCESSIBLE FEATURES;
- HAS BEEN HURT IN ANY WAY BY THE LACK OF ACCESSIBLE FEATURES AT THE MELAR;
- PAID TO HAVE AN APARTMENT AT THE MELAR MADE MORE ACCESSIBLE TO PERSONS WITH DISABILITIES; OR
- WAS OTHERWISE DISCRIMINATED AGAINST ON THE BASIS OF DISABILITY AT THE MELAR.

If you wish to make a claim for discrimination on the basis of disability, or if you have any information about persons who may have such a claim, please contact the United States Attorney's Office, Southern District of New York at 212-637-2800, and ask for the Civil Rights Unit Chief. You may also fax us at 212-637-2702 or write to:

United States Attorney's Office, Southern District of New York
Attn: Civil Rights Unit
86 Chambers Street
New York, New York 10007

NOTE: You must call or write no later than ___, 200__.

* Defendant denies the allegations of the complaint, and entered into the consent order for settlement purposes only, without admitting any issue of fact or law. Defendant's denial of liability, however, does not preclude any person from receiving monetary relief under the consent order.

APPENDIX F

RELEASE FORM

In consideration of the payment of the sum of _____ dollars (\$_____), pursuant to the Consent Decree entered in United States of America v. L & M 93rd Street LLC, et al., (S.D.N.Y.), I hereby release the defendants named in this action from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in the above-styled action.

I fully acknowledge and agree that this release of the defendants shall be binding on my heirs, representatives, executors, successors, administrators, and assigns.

I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

(Signature)

(Print name)

(Date)

APPENDIX G

ACKNOWLEDGMENT OF RECEIPT OF CONSENT ORDER

I _____, am an employee of _____ at The Melar and my duties include _____.

I have received and read a copy of the Consent Decree in United States of America v. L & M 93rd Street LLC, et al., (S.D.N.Y.), and have had all of my questions concerning the Consent Decree answered to my satisfaction.

_____, 20 ____

Employee Signature