

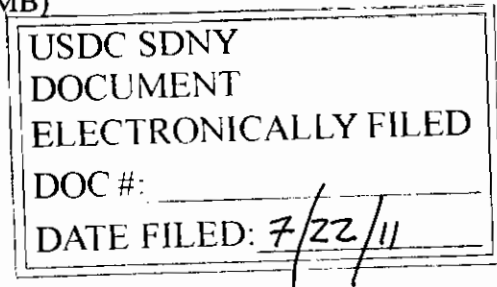
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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 and 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 Alleged In The Complaint**

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](http://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; and, upon the specific request of the United States, the Developer Defendants shall provide to the United States a list of the names and addresses of the persons to whom the notices were distributed, which the United States shall return to the Developer Defendants within thirty days.

### **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.<sup>1</sup>

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.

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<sup>1</sup> 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.

**V. TRANSFER OF INTEREST IN PROPERTIES**

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* 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 for the *New York Post* and the weekend edition for the *Wall Street Journal*. 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 June 1, 2011.

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 a sworn affidavit that the Notices have been sent. Within thirty (30) days of receipt of the affidavit, the United States may exercise its option to inspect the records of the Developer Defendants to confirm that the facts asserted in the affidavit are correct.

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. One year after the entry of this Consent Decree, the United States shall inform the Developer Defendant of all determinations made by that time, and, two and a half years of the entry of this Consent Decree, the United States shall inform the Developer Defendant of all of its remaining determinations.

33. If the Developer Defendant disputes the grievance determination or amount of a payment to an aggrieved person, the Developer Defendant shall, within thirty (30) 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. For good cause shown, the United States shall extend for a reasonable time the Developer Defendant's time to object to any Determination. 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 thirty (30) days after receiving a Determination to which no objection has been made, twenty (20) days after receiving a Reconsidered Determination to which no objection has been made, or twenty (20) 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, the remainder of the funds in the Settlement Fund shall be released to the Developer Defendant.

#### **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.

b. Up to 75% of the Accessibility Project Fund, however, may be expended prior to the termination of this Consent Decree on the design or construction of features, or the purchase of items to be installed, 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.<sup>2</sup>

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. For any expenditure to be made from the Accessibility Project Fund for the design or construction of a feature or features at The Melar or a New Building, the Developer Defendant or the New Developer, respectively, must give the United States thirty (30) days notice, adequately describing the proposed expenditure and, if the expenditure is for a New Building, certifying that

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<sup>2</sup> 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.

the accessibility-enhancing features would not have been included in the New Building but for the availability of money from the Accessibility Project Fund. The United States may disapprove any such expenditure if the proposed expenditure: (i) is for features that do not materially enhance the accessibility of the New Building for persons with disabilities; (ii) is for features that are otherwise required by this Consent Decree (with respect to the Melar), the certification specified in Paragraph 22 above (with respect to the New Building), or by law (with respect to either building); or (iii) is not a reasonable reflection of the cost of designing and constructing the accessibility-enhancing features (in which case only the excess cost will be disapproved). The proposed expenditure will be deemed approved by the United States unless, within thirty (30) days of the United States' receipt of the notice, the United States responds in writing and explains why the expenditure does not qualify under this paragraph.

d. One month 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 under subparagraphs a through d above shall be subtracted from the Accessibility Project Fund, and the Developer Defendant shall, within twenty (20) days of the accounting, pay the difference by an electronic funds transfer pursuant to wiring instructions to a charitable organization mutually agreed upon by the Developer Defendant and the United States, which organization has as its purpose to assist persons with disabilities to locate accessible housing or to assist persons with disabilities to modify housing to improve accessibility.

#### **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 (who supervises the Melar lobby attendants, porters, and handymen); the Melar Property Manager stationed at Rose Associates; the Melar on-site Leasing Manager; the Melar Leasing Director stationed at Rose Associates), 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. In lieu of providing entities, agents, supervisors, or employees with copies of the Consent Decree as required in paragraphs 38 through 41, the Developer Defendant may provide entities, agents, supervisors, or employees with a summary of the Consent Decree, designed to provide personnel with information relevant to their positions. The Developer Defendant may provide such summaries in lieu of copies of the Consent Decree with the United States' advance written approval of the form and content of any proposed summary, which approval will not be unreasonably withheld or delayed.

43. 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, as well as any entities (e.g., firms) acting as the agent(s) of the Developer Defendants, whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case shall, in the case of any such employees, be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications, and, in the case of any such entities, be provided with a copy of the Fair Housing Act, 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).

44. 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.<sup>3</sup> The training shall be conducted

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<sup>3</sup> 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.

by a qualified third-party individual, not associated with the Developer Defendant or its counsel, 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**

45. 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.

46. 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**

47. 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.

48. 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.

49. 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.

50. 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**

51. 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**

52. 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**

53. 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).

54. The Court ~~shall~~ <sup>may upon request</sup> 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.

55. 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.

56. 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**

57. 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**

58. 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 93<sup>rd</sup> Street LLC:*

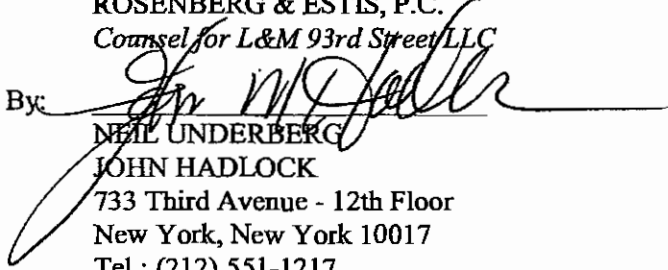
By:

  
L&M 93<sup>rd</sup> STREET LLC Member



ROSENBERG & ESTIS, P.C.  
*Counsel for L&M 93<sup>rd</sup> Street LLC*

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SO ORDERED this 22d day of July, 2011.

RMB

HON. RICHARD M. BERMAN  
UNITED STATES DISTRICT COURT JUDGE