



U.S. Department of Justice

*United States Attorney
Eastern District of Pennsylvania*

VOLUNTARY COMPLIANCE AGREEMENT

between

THE UNITED STATES OF AMERICA

and

EIGHTEENTH STREET RESTAURANT PARTNERS, L.P.

WHEREAS, the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12181-12189, provides, among other things, that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation,” 42 U.S.C. § 12182(a);

WHEREAS, the term “public accommodation” under the ADA includes “a restaurant, bar, or other establishment serving food or drink,” 42 U.S.C. § 12181(7)(B);

WHEREAS, the ADA authorizes the United States Department of Justice to “undertake periodic reviews of compliance of covered entities,” 42 U.S.C. § 12188(b)(1)(A)(i);

WHEREAS, the United States Attorney’s Office for the Eastern District of Pennsylvania (the “United States”), pursuant to its authority under 42 U.S.C. § 12188(b)(1)(A)(i), commenced a limited review of certain restaurants in Philadelphia, Pennsylvania to determine, with respect to the specific areas reviewed, whether those restaurants were operating in compliance with Title III of the ADA (the “Compliance Review”);

WHEREAS, Eighteenth Street Restaurant Partners, L.P. (“ESRP”) owns and operates a restaurant, currently operating under the name Dandelion, which is located at 122-124 South 18th Street, Philadelphia, Pennsylvania 19103 (the “Restaurant”);

WHEREAS, ESRP is a subsidiary of Starr Restaurant Organization, L.P.;

WHEREAS, as part of the Compliance Review, the United States requested information from Starr Restaurant Organization, L.P. regarding the Restaurant;

WHEREAS, Starr Restaurant Organization, L.P. manages the operations of each of its affiliated restaurants, including the Restaurant, through its wholly owned subsidiary, SUR Organization, LLC (“SUR”);

WHEREAS, the United States conducted a limited site inspection of certain features and facilities within the Restaurant and met with representatives of the Starr Organization;

WHEREAS, the United States and ESRP share the goal of resolving the Compliance Review with respect to the Restaurant and ensuring that the Restaurant operates in compliance with Title III of the ADA;

WHEREAS, contemporaneously with the execution of this Voluntary Compliance Agreement (this "Agreement"), Starr Restaurant Organization, L.P. and SUR separately executed a Voluntary Compliance Agreement concerning ADA compliance in all restaurants affiliated with Starr Restaurant Organization, L.P.;

WHEREAS, in light of the actions taken by ESRP to date to comply with the ADA and the actions that ESRP has agreed to take within the next year as set forth in this Voluntary Compliance Agreement (the "Agreement"), the United States has decided to take no further enforcement action at this time with respect to the Restaurant as a result of this Compliance Review; and

NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN THE UNITED STATES OF AMERICA AND EIGHTEENTH STREET RESTAURANT PARTNERS, L.P., AS FOLLOWS:

I. APPLICATION AND PARTIES BOUND

1. The Restaurant is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7) because, among other things, it is "a restaurant, bar, or other establishment serving food or drink." 42 U.S.C. § 12181(7)(B); *see* 28 C.F.R. § 36.104.

2. ESRP is a public accommodation within the meaning of Title III of the ADA because it owns and operates the Restaurant, which is a place of public accommodation. *See* 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104.

3. This Agreement shall be binding on ESRP and each of its agents and employees. In the event ESRP seeks to transfer or assign all or part of its interest in the Restaurant, and the successor or assignee intends to carry on the same or similar use of the facility, as a condition of sale ESRP shall obtain the written agreement of the successor or assignee to any obligations remaining under this Agreement for the remaining term of this Agreement.

4. This Agreement shall apply to all public use areas within the Restaurant. This includes, but is not limited to: public entrances, waiting areas, bar areas, dining areas, restrooms, and corridors. This Agreement shall not apply to non-public use areas, such as food preparation and storage locations, employee locker rooms, and other service-related areas.

II. DEFINITIONS

5. For purposes of this Agreement, the term "Standards" means the 1991 ADA Standards for Accessible Design, 28 C.F.R. Part 36, Appendix D, and the 2010 ADA Standards for Accessible

Design, 28 C.F.R. § 36.104, which consist of the 2004 ADA Accessibility Guidelines (set forth in appendices B and D to 36 C.F.R. part 1191). The 2010 Standards shall apply to the remedial actions to be taken under this Agreement, unless otherwise expressly stated in this Agreement. 28 C.F.R. § 36.406(a)(5)(ii).

6. For purposes of this Agreement, the term “accessible” means in compliance with the Standards.

7. For purposes of this Agreement, the term “alterations” means a change to the Restaurant that affects or could affect the usability of the building or facility or any part thereof and includes, but is not limited to, “remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.” *See* 28 C.F.R. § 36.402.

III. DANDELION

DANDELION RESTROOMS

8. ESRP shall remove the following barriers to accessibility in the men’s toilet room, which the United States observed during its August 5, 2015 site inspection of the Restaurant:

- a. The pull side maneuvering clearance is less than 18 inches wide on the latch side of the door for a forward approach due to a potted plant and plant stand being positioned in the required maneuvering area. *See* the 1991 Standards §§ 4.1.3(7)(b), 4.13.6 and Figure 25(a); 2010 Standards § 404.2.4.1, Table 404.2.4.1, Figure 404.2.4.1(a).
- b. The flush control is on the narrow side of the toilet. *See* the 2010 Standards §604.6.
- c. The clear opening width of the stall door is less than 32 inches. *See* the 1991 Standards §§ 4.1.3(7)(b), 4.13.5 and Figure 24(a).
- d. The clear head room at the toilet stall door is less than 80 inches. *See* the 1991 Standards §§ 4.4.2 and Figure 8(c-1).

9. ESRP can satisfy the requirements of paragraph 8 of this Agreement by completing all of the following steps in the men’s toilet room within one hundred eighty (180) days of the effective date of this Agreement:

- a. Permanently remove the potted plant and plant stand from the latch side of the door and keep this area clear so that there is pull side maneuvering clearance of at least 18 inches. *See* 2010 Standards § 404.2.4.1, Table 404.2.4.1, Figure 404.2.4.1(a).
- b. Install a toilet tank that has its flush control on the wide side of the toilet. *See* the 2010 Standards §604.6.
- c. Modify the door and opening to provide a clear opening width of 32 inches. *See* 2010

Standards §§ 206.5.2 and 404.2.3.

- d. Modify the water closet compartment overhead rail to provide a vertical clearance of 80 inches or greater. *See* 2010 Standards §§ 204 and 307.4 and Figure 307.4.

10. ESRP shall remove the following barriers to accessibility in the women's toilet room, which the United States observed during its August 5, 2015 site inspection of the Restaurant:

- a. The clear head room at the toilet stall door is less than 80 inches. *See* the 1991 Standards §§ 4.4.2 and Figure 8(c-1).
- b. The toilet stall door hardware requires tight grasping to operate. *See* the 1991 Standards §§ 4.22.2 and 4.13.9.
- c. The top of the baby changing table that is fixed to the wall in the designated accessible toilet stall/compartment is higher than 34 inches above the finished floor ("AFF"). *See* the 1991 Standards §§ 4.32.4.

11. ESRP can satisfy the requirements of paragraph 10 of this Agreement by completing all of the following steps in the women's toilet room within one hundred eighty (180) days of the effective date of this Agreement:

- a. Modify the water closet compartment overhead rail to provide a vertical clearance of 80 inches or greater. *See* the 2010 Standards §§ 204 and 307.4 and Figure 307.4.
- b. Install hardware on the door to the designated accessible toilet stall that requires not more than five pounds of force and does not require tight grasping, pinching, or twisting of the wrist. *See* the 2010 Standards §§ 213.3.1, 604.8.1.2, 404.2.7 and 309.4.
- c. Lower the baby changing station to a maximum of 34 inches AFF. *See* the 2010 Standards §§ 226 and 902.3.

DANDELION TOILET ROOM CORRIDOR

12. ESRP shall remove the following barriers to accessibility near the side exit door and the toilet room corridor, which the United States observed during its August 5, 2015 site inspection of the Restaurant:

- a. The heights of the coat hooks exceed 54 inches AFF. *See* the 1991 Standards §§ 4.22.7, 4.27.3, 4.2.6 and Figure 6.
- b. These coat hooks are protruding object hazards. Each hook protrudes into the path of travel more than four inches with its leading edge between 27 inches and 80 inches AFF. *See* the 1991 Standards § 4.4.1 and Figure 8(a).

13. ESRP can satisfy the requirements of paragraph 12 of this Agreement by completing all

of the following steps within one hundred eighty (180) days of the effective date of this Agreement: permanently remove coat hooks near the side exit door and the toilet room corridor. *See* the 2010 Standards §§ 225.2, 811.3, 308 and Figures 308.2.1 and 308.3.1.

DANDELION BAR COUNTER

14. ESRP shall remove the following barriers to accessibility at the bar counter located on the ground floor, which the United States observed during its August 5, 2015 site inspection of the Restaurant: The bar counter at which food and/or drink is served for consumption by customers seated on stools or standing at the counter exceeds 34 inches in height and does not have a portion of the main counter which provides compliant knee and toe space under. The designated accessible tables within this bar area do not provide knee space that is at least 27 inches high. *See* the 1991 Standards §§ 5.2, 4.32.3, and 4.32.4.

15. ESRP can satisfy the requirements of paragraph 14 of this Agreement by completing all of the following steps within one hundred eighty (180) days of the effective date of this Agreement: Provide dining tables in the bar area with clear floor space a minimum of 30 inches wide and a minimum of 48 inches deep positioned for a forward approach, knee and toe clearance extending a minimum of 17 inches, and a dining surface 28 inches minimum and 34 inches maximum AFF. Require staff to seat guests using wheelchairs or other mobility devices at the tables adjacent to the bar and to provide the same service and experience as is provided to customers sitting at the bar counter. *See* Title III Regulations § 36.302(a) and the 2010 Standards §§ 226, 902, 305 and 306 and Figures 305.5(a), 306.2 and 306.3.

DANDELION OUTDOOR TABLES

16. ESRP shall remove the following barriers to accessibility at the outdoor tables, which the United States observed during its August 5, 2015 site inspection of the Restaurant: The knee space is not at least 30 inches wide, 27 inches high and 19 inches deep at the outdoor dining tables on the street outside of the Restaurant. *See* the Title III Regulations § 36.302(a) and the 1991 Standards §§ 5.2, 4.32.2 and 4.32.3.

17. ESRP can satisfy the requirements of paragraph 16 of this Agreement by completing all of the following steps within one hundred eighty (180) days of the effective date of this Agreement: Provide outdoor dining tables with pull away benches for accessible seating. *See* the Title III Regulations § 36.302(a) and the 2010 Standards §§ 226, 902, 305 and 306 and Figures 305.5(a), 306.2 and 306.3.

IV. MONITORING AND COMPLIANCE

19. Within one hundred eighty (180) days of the effective date of this Agreement, ESRP shall provide the United States with written confirmation of all steps that ESRP has taken pursuant to section III of this Agreement.

20. ESRP shall cooperate in good faith with any and all reasonable requests by the United States for access to the Restaurant and for information and documents concerning the Restaurant's compliance with this Agreement and the ADA.

21. The United States shall have the right to verify compliance with this Agreement and the ADA, both as set forth in this Agreement and through any means available to the general public, including visits to the public areas of the Restaurant and communications with the Restaurant's staff. The United States shall have the right to inspect the facility at any time, and counsel for the United States need not identify themselves in the course of visits to the public areas.

V. **ENFORCEMENT**

22. If the United States believes that this Agreement or any of its requirements has been violated, it will notify ESRP in writing and attempt to resolve the issue or issues in good faith. If the United States and ESRP are unable to reach a satisfactory resolution of the issue or issues, the United States may commence a civil action in the United States District Court for the Eastern District of Pennsylvania to enforce the terms of this Agreement and/or the ADA.

VI. **GENERAL PROVISIONS**

23. In consideration for ESRP's timely performance of all of its obligations under this Agreement the United States agrees to discontinue the Compliance Review of the Restaurant, except as provided in the Enforcement portion of this Agreement. The United States reserves the right to investigate any complaint it receives concerning the Restaurant, to investigate and commence a civil action with respect to any violation of the ADA, and to initiate future compliance reviews concerning the Restaurant with respect to any aspect of the Restaurant or its operation not expressly identified by the government in writing during the course of the Compliance Review. In the event the United States receives and investigates an ADA complaint concerning the Restaurant, or commences any future compliance review concerning the Restaurant, nothing in this Agreement shall limit the scope of any investigation or compliance review of the Restaurant or preclude the United States from seeking relief beyond that required under this Agreement.

24. A copy of this Agreement shall be made available to any person upon request and may, at the government's sole discretion, be posted on www.ada.gov or other government website.

25. The Effective Date of this Agreement is the date of the last signature on the Agreement. The term of this Agreement is one year from the Effective Date.

26. This Agreement memorializes the commitments made by ESRP to increase accessibility of the Restaurant and the terms under which the United States has agreed to conclude this particular Compliance Review of the Restaurant without further review or enforcement action. This Agreement is not intended to certify or signify, however, that the Restaurant is now (or, with the actions taken pursuant to this Agreement, will be) in full compliance with the ADA, or constitute a finding by the United States of such compliance, and it may not be used in any proceeding to signify such compliance. This Agreement does not affect the Restaurant's continuing responsibility and obligation to comply with all aspects of the ADA. This Agreement is not intended to reflect any legal interpretation of any provisions of the ADA by the United States, and it may not be used in any proceeding to demonstrate such legal interpretations.

27. This Agreement does not constitute an admission by the ESRP of non-compliance with

any provision of the ADA.

28. The individuals signing this Agreement represent that they are authorized to bind the parties to this Agreement.

29. Failure by the United States to enforce the entire Agreement, with regard to any deadline or any other provision of the Agreement, shall not be construed as a waiver of its right to enforce any deadline or provision of the Agreement.

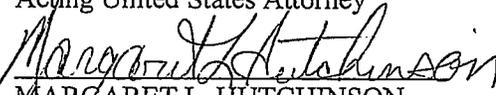
30. This Agreement constitutes the entire agreement between the parties relating to the remedial measures ESRP has agreed to take in the Restaurant in response to the Compliance Review, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party regarding the scope of such remedial measures that is not contained in this Agreement, shall be enforceable.

THE UNITED STATES OF AMERICA

BY: 
LOUIS D. LAPPIN

DATED: 8/21/17

Acting United States Attorney


MARGARET L. HUTCHINSON

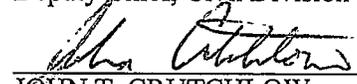
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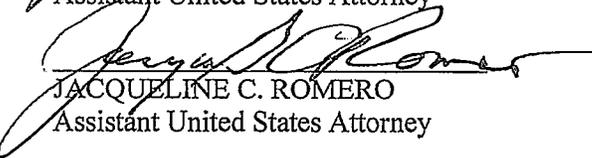
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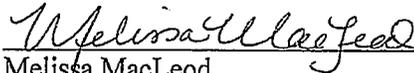

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EIGHTEENTH STREET RESTAURANT PARTNERS, L.P.

BY: 
Melissa MacLeod
Vice President & General Counsel
Eighteenth Street Restaurant Partners, L.P.

DATED: 8.16.17