



U.S. Department of Justice

United States Attorney

*Southern District of New York
86 Chamber Street
New York, New York 10007*

VOLUNTARY COMPLIANCE AGREEMENT

between

THE UNITED STATES OF AMERICA

and

NEW YORK UNIVERSITY

WHEREAS, the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12181 et seq., 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, 42 U.S.C § 12182(b)(2)(A) provides that, for purposes of § 12182(a), discrimination includes “a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities,” and “the failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable”;

WHEREAS, 42 U.S.C. § 12183(a) provides that, for “public accommodations . . . , discrimination for purposes of section 12182(a) of this title includes . . . (1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities,” as well as (2) “with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs”;

WHEREAS, a “place of public accommodation” is defined to include an “undergraduate, or postgraduate private school, or other place of education,” as provided by 42 U.S.C. § 12181(7)(J); see 28 C.F.R. § 36.104;

WHEREAS, a “[f]acility” is defined as “all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located,” as provided by 28 C.F.R. § 36.104;

WHEREAS, “[h]ousing at a place of education” is defined as “housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence,” as provided by 28 C.F.R. § 36.104;

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

WHEREAS, the United States received a complaint alleging that student housing at New York University (“NYU”) does not comply with the ADA;

WHEREAS, in response to that complaint, and pursuant to its authority under 42 U.S.C. § 12188(b)(1)(A)(i), the United States Attorney’s Office for the Southern District of New York (the “United States”) initiated a compliance review of NYU to ascertain whether its student housing facilities are in compliance with Title III of the ADA, and the Department of Justice’s implementing regulations, including the ADA’s 2010 Standards for Accessible Design, 28 C.F.R. Part 36, Subpart D (the “2010 Standards”), and the ADA 1991 Standards for Accessible Design, 28 C.F.R. Pt. 36, Appendix D (the “1991 Standards”); together with the 2010 Standards, the “Standards”);

WHEREAS, NYU provided certain information to the United States as part of its compliance review, including (i) information regarding NYU’s policies and practices concerning requests for and provision of student housing accommodations, (ii) information about individuals who requested and were provided with housing-related accommodations, (iii) information about each NYU student housing facility, the units NYU considers to be “minimally accessible units” in each such facility, and the dispersal of such units, and (iv) information regarding certain renovations or modifications to NYU student housing facilities; and its counsel met with counsel for the United States;

WHEREAS, the United States identified various aspects of NYU’s student housing facilities that were not in compliance with Title III of the ADA and the Standards, including violations of the new construction provisions of the ADA and barriers to access to existing facilities;

WHEREAS, the United States and NYU share the goal of resolving the issues identified in the compliance review and ensuring that NYU operates in compliance with Title III of the ADA;

WHEREAS, ADA regulations provide that “[b]oth the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates

the place of public accommodation are public accommodations subject to” ADA requirements, 28 C.F.R. § 36.201(b), and NYU has committed to providing an adequate number and dispersal of accessible student housing units and student housing facilities, including by agreeing to incorporate in the total number used to calculate the minimum number of accessible units any leased student housing units, and has committed to engage in good faith efforts to lease accessible properties for use as student housing facilities in the future, as specifically set forth below; and

WHEREAS, in light of the actions taken by NYU to date to comply with the ADA and the actions that NYU has agreed to take as set forth in this agreement (the “Agreement”), the United States has decided to take no further enforcement action at this time with respect to NYU in connection with the compliance review;

NOW, THEREFORE, it is hereby agreed, by and between the United States of America and NYU, as follows:

JURISDICTION AND APPLICATION

1. NYU is a place of education operated by a private entity, and its operations affect commerce. Accordingly, it is a place of public accommodation covered by Title III of the ADA. 42 U.S.C. §§ 12181(7)(J), 12182(a); 28 C.F.R. § 36.104.
2. DOJ may initiate a compliance review pursuant to the Attorney General’s authority under 42 U.S.C. § 12188(b)(1)(A)(i) and, if it is unable to secure voluntary compliance in any case that involves a pattern or practice of discrimination or that raises issues of general public importance, may seek injunctive relief, monetary damages, and civil penalties under 42 U.S.C. § 12188(b)(1)(B).
3. The subject of this Agreement is NYU’s obligation to ensure that no individual with a disability is discriminated against on the basis of disability in the full and equal enjoyment of the University’s student housing. 42 U.S.C. §§ 12182-12183; 28 C.F.R. § 36.201.
4. Among other things, NYU is obligated under the ADA to:
 - a. Modify policies, practices, and procedures in order to afford access to student housing facilities to individuals with disabilities, 42 U.S.C. § 12182(a) and (b)(2)(A)(ii), 28 C.F.R. § 36.302;
 - b. Remove architectural barriers in existing student housing facilities where such removal is readily achievable, 42 U.S.C. § 12182(b)(2)(A)(iv), 28 C.F.R. § 36.304;
 - c. Ensure that all of the University’s newly constructed student housing facilities are readily accessible to and usable by individuals with disabilities as required by DOJ’s regulations implementing the ADA, including the Standards, 42 U.S.C. § 12183(a), 28 C.F.R. § 36.401; and

- d. Ensure that alterations to student housing facilities are conducted in such a manner that the altered areas are readily accessible to and usable by persons with disabilities to the maximum extent feasible, in compliance with the ADA, including the Standards, 42 U.S.C. § 12183(a), 28 C.F.R. § 36.402-36.405.

5. This Agreement applies to all student housing facilities in the New York metropolitan area that are owned or operated by NYU and that are used for student housing during the term of this Agreement, as set forth below. Specifically, this Agreement applies to student housing facilities that are owned by NYU and being used for student housing during the term of this Agreement. The facilities that are owned by NYU and are being used for student housing as of the date of this Agreement are identified in Exhibit A to this Agreement. With respect to student housing facilities or units in the New York Metropolitan area that are leased by NYU for use as student housing, this Agreement shall apply to the extent set forth in paragraphs 16(e) and 25 below. The facilities that are leased by NYU that are being used for student housing as of the date of this Agreement are identified in Exhibit B to this Agreement. Should NYU discontinue the use of any facility listed on Exhibits A or B as student housing during the term of this Agreement, or begin using other facilities for student housing, it shall notify the United States and the Physical Access Plan shall be revised as necessary to exclude or include such facilities.

REMEDIAL ACTION

Future Construction, New Construction, and Alterations

6. The University shall ensure that student housing facilities that are designed and constructed for first occupancy after the effective date of this Agreement (“future construction”) must be designed and constructed in compliance with the 2010 Standards, which consist of the 2004 ADA Accessibility Guidelines, appendices B and D to 36 C.F.R. Pt. 1191, and the requirements contained in subpart D of 28 C.F.R. Pt. 36, 28 C.F.R. § 36.401-.406.

7. The University shall ensure that student housing facilities that were constructed for first occupancy after January 26, 1993 (“new construction”) and acquired by the University after the effective date of this Agreement are brought into compliance with the 2010 Standards before they may be used as student housing facilities.

8. The University shall ensure that any alterations made after the effective date of this Agreement to any of its student housing facilities are, to the maximum extent feasible, readily accessible to, and usable by, individuals with disabilities, in compliance with 42 U.S.C. § 12183(a)(2), 28 C.F.R. §§ 36.402-36.405. The University shall ensure that any specific alterations required by this Agreement are, to the maximum extent feasible, readily accessible to, and usable by, individuals with disabilities, in compliance with 42 U.S.C. § 12183(a)(2), 28 C.F.R. §§ 36.402-

36.405, except where, on a case-by-case basis, the parties may agree to a different standard in the Physical Access Plan (as defined in paragraph 12) for purposes of this Agreement.

9. For purposes of this Agreement, the term “alterations” means a change to any of the University’s buildings or facilities 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(b)(1).

10. The University shall continue its ongoing efforts to ensure full access to services to individuals with disabilities and to remove barriers to access throughout its student housing facilities. 42 U.S.C. § 12182(b)(2)(A)(ii), (iv).

11. Within four months of the effective date of this Agreement, the University shall maintain on its website information designed to assist students and prospective students with disabilities in securing and utilizing accessible housing and housing accommodations at NYU. In addition to maintaining such information as is already provided, the University shall also ensure that the pages of its website dedicated to the Office of Residential Life and Housing Services include information designed to assist individuals with disabilities in locating accessible student housing. The Office of Residential Life and Housing Services web pages shall also be updated regularly to reflect newly added or renovated accessible features of the student housing facilities, and to identify accessible entrances to student housing facilities, accessible routes within the University’s student housing facilities, accessible transportation options (including shuttle services, where applicable) between such student housing facilities and other NYU facilities, and accessible spaces within student housing facilities.

Ensuring Access to Housing Facilities and Services

12. In order for the University to ensure that individuals with disabilities are afforded access to student housing facilities, the University shall, as outlined in paragraphs 13 through 25 below, modify its policies and procedures, and take steps to make its student housing facilities more accessible by, among other things, implementing a comprehensive plan to improve access for individuals with disabilities (the “Physical Access Plan” or the “Plan”).

13. The University shall maintain in operable working condition those features of student housing facilities and equipment that are required to be readily accessible to and usable by persons with disabilities according to the ADA, its implementing regulations, or this Agreement (including the Physical Access Plan), and shall

implement measures to ensure that adequate systems are in place to maintain accessible features. 28 C.F.R. § 36.211.

14. The University shall designate an ADA Student Housing Coordinator, who shall have the responsibility for ensuring that the University meets the terms of this Agreement and the ADA with regard to student housing. *See* 28 C.F.R. § 35.107(a). The ADA Student Housing Coordinator will work with representatives from the Office of Facilities and Construction Management, the Office of Facilities Management, the Office of Residential Life and Housing Services, and the Office of General Counsel, and shall be responsible for managing accessibility modification projects, including plans for ongoing barrier removal, related to student housing. The position of ADA Student Housing Coordinator shall be maintained for the duration of this Agreement. The ADA Student Housing Coordinator and the NYU supervisory officials with responsibility for overseeing ADA compliance with respect to student housing shall undergo additional training on the ADA's accessibility requirements within four months after the effective date of this Agreement; provided, however, that if NYU hires a new employee to serve as the ADA Student Housing Coordinator, such training shall be completed within 30 days after that person assumes the position of ADA Student Housing Coordinator. That training shall be of sufficient quality and duration to enable a thorough understanding of the requirements of Title III of the ADA, including the regulations and the Standards.

15. In order to prepare the Physical Access Plan, the University shall take the following steps:

- a. NYU shall survey its student housing facilities in accordance with applicable ADA standards as set forth below:
 - i. The University will conduct, and maintain a record of, a self-evaluation of the student housing units that NYU designates as "accessible" to identify any designated "accessible" room that does not comply with either Section 9.2.2 of the 1991 Standards, or §§ 224 and 806 of the 2010 Standards, where applicable, or any barriers to access in student housing facilities containing such units.
 - ii. For new construction, as defined above, the University shall survey student housing facilities in their entirety in order to assess their compliance with the new construction requirements of the ADA, including the Standards.
 - iii. The University shall survey all student housing facilities to determine whether they either now offer (or are capable of being modified to offer) accessible housing units, accessible routes, an accessible entrance, a first-floor common area (if one is provided), and a toilet room (if one is provided) which may be used by individuals with disabilities.

- b. The University shall ensure that these surveys are conducted by individuals who are trained in and knowledgeable about Title III of ADA and the regulations, including the Standards.

- c. Based on these surveys, the University shall provide to the United States reports that are sufficient to allow the University and the United States to identify barriers to access for students with disabilities in each of the areas surveyed, as well as the number and location of accessible units in each NYU student housing facility, accessible routes, and the compliance of accessible units with ADA requirements. In accordance with paragraph 29, the United States reserves the right to request the surveys prepared by or for NYU for its assessment of the University's compliance with the ADA and its implementing regulations. The University shall provide copies of its reports to the United States on a rolling basis, with the first report(s) to be provided within no later than four months after the effective date of this Agreement, and the final report to be provided no later than twelve months after the effective date of this Agreement. The United States shall endeavor to provide prompt feedback to NYU on the reports as they are received so that NYU may take such feedback into account.

16. The University's Physical Access Plan shall include specific remedial actions and timetables to ensure that the following items are completed within five years of the effective date of this Agreement:

- a. The University shall, in its proposed Physical Access Plan, ensure that the number of accessible student housing units (and the bathrooms serving those units) complies with the ADA, including § 224.2 of the 2010 Standards (requiring educational campuses with over 1000 student housing units to provide 30 accessible housing units for the first 1001 housing units and 2 accessible housing units for every additional 100 housing units).

- b. The University shall, in its proposed Physical Access Plan, ensure that the accessible student housing units are dispersed throughout the University's student housing stock to the greatest extent possible, and at a minimum such that the student housing facilities serving each of NYU's (i) general student population, (ii) graduate student population, (iii) Grossman School of Medicine, (iv) Long Island School of Medicine, (v) law school, and (vi) Brooklyn campus, comply with § 224.2 of the 2010 Standards (requiring no fewer than 3% of units to be accessible when 501 to 1000 housing units are provided, and requiring 30 accessible housing units for the first 1001 housing units and 2 accessible housing units for every additional 100 housing units).

- c. For each student housing facility in which accessible housing units as required by subparagraphs 16(a)-(b) are located, the Physical Access Plan shall ensure that architectural barriers are removed where such removal is readily achievable, and shall ensure that the following accessible features are provided with respect to such facility:
 - i. Accessible parking (where parking facilities are provided by the University to students to serve student housing facilities) complying with §§ 208.2, 208.3, and 502 of the 2010 Standards;
 - ii. Accessible approaches from adjacent walkways, public transportation and shuttle service drop-off points serving student housing facilities, and parking areas serving student housing facilities, to the extent within the University's control and not in the public right-of-way, complying with §§ 206.2.1 and 402 of the 2010 Standards. If NYU determines, as a result of its surveys, that such areas are within the City's control, the University shall, within 30 days after completion of the Physical Access Plan, send a letter to the City requesting that the City create accessible approaches from adjacent walkways, transportation drop-off points, and parking areas serving student housing facilities, so that those approaches are accessible to individuals with disabilities;
 - iii. An accessible entrance to the building, and one accessible route from the accessible entrance to each accessible space, complying with §§ 206.2.4, 402, and 404 of the 2010 Standards;
 - iv. Accessible water fountains and bottle filling stations (if water fountains and bottle filling stations are provided) on accessible levels for both standing individuals and individuals who use wheelchairs, complying with §§ 205.1, 211, 305, 308, 309, and 602 of the 2010 Standards;
 - v. Accessible men's and women's toilet rooms complying with § 603 of the 2010 Standards or one unisex accessible toilet room complying with §§ 213.2.1 and 603 of the 2010 Standards on an accessible level; and
 - vi. Signage (identifying permanent rooms and spaces) with raised characters and Braille, as well as directional signage, complying with §§ 216 and 703 of the 2010 Standards.
- d. An appropriate number of student housing facilities, to be negotiated by the parties in the Physical Access Plan, in addition to those required by subparagraphs 16(a)-(b), shall have an accessible entrance, a first-floor

common area (if one is provided), and a toilet room (if one is provided) which may be used by individuals with disabilities. In all such student housing facilities, the Physical Access Plan shall ensure that architectural barriers are removed where such removal is readily achievable.

- e. For purposes of determining the minimum number of accessible student housing units required under subparagraphs 16(a)-(b), the total student housing units will include all student housing units located in student housing facilities owned by NYU plus all student housing units located in leased student housing facilities, as identified in Exhibit B to this Agreement, provided, however, that NYU may satisfy its obligation to ensure the requisite minimum number of student housing units exclusively within the student housing facilities it owns, to the extent the parties agree to the dispersal of units in the Physical Access Plan.

17. By no later than one year and four months after the effective date of this Agreement, NYU shall make its draft Physical Access Plan available to students, faculty, and employees of the University via its intranet or website. The University shall actively seek comments and suggestions to improve its proposed Physical Access Plan, which shall be made available for comment for 30 days. The University shall accept written comments in any form (including but not limited to e-mails), maintain copies of all comments, and, upon request after the close of the comment period, provide copies to the United States within 30 days of such request.

18. Within 90 days after the completion of the comment period, after it has considered the comments of the University community, the University shall submit its proposed Physical Access Plan to the United States in electronic format.

19. After NYU has submitted its proposed Physical Access Plan to the United States, the University shall provide reasonable access to its student housing facilities to the United States and its employees or agents, including any experts or consultants that the United States may designate, so that they may inspect NYU's student housing facilities encompassed by the Physical Access Plan in order to assess the University's compliance with the ADA and its implementing regulations and the adequacy of NYU's proposed Plan. Within 90 days after receiving the Physical Access Plan from NYU, the United States shall provide the University with a response to its proposed Physical Access Plan, including any deficiencies to be addressed.

20. By no later than 60 days after receiving the comments of the United States, the University shall respond in writing to any of the comments provided by the United States and provide an amended Physical Access Plan, as necessary to comply with this Agreement. The parties shall negotiate in good faith any disputes regarding the Physical Access Plan. The University shall implement the final

Physical Access Plan within 30 days of approval by the United States, unless additional time is required to resolve any disputes between the parties regarding the Plan.

21. If the United States and NYU have been unable to reach an agreement with respect to the content of the Physical Access Plan within 60 days of the University's written response and provision of an amended Physical Access Plan:

22. The University shall promptly implement those aspects of the Physical Access Plan to which the parties have agreed;

23. The parties shall resort to mediation with respect to all remaining issues, and the parties shall share equally the cost of mediation; and

24. Any such mediation shall be conducted by a mediator or mediation organization mutually acceptable to both parties.

25. If the parties have been unable to resolve all remaining issues within 60 days through mediation and negotiation, then the provisions of paragraph 31 shall apply as if the United States had provided the 30 days' notice required by that paragraph.

26. Provided that the University is making good-faith efforts to comply with the Agreement and the Plan, but cannot comply with certain deadlines for reasons beyond its control (including but not limited to delays occasioned by contractor or vendor delay, permitting delay, severe weather delay, and pandemic-related delay), the University may seek reasonable extensions of deadlines set forth in this Agreement or the Plan, and the United States will not unreasonably withhold its consent.

27. Within nine months after the effective date of this Agreement, the University shall update its student housing emergency evacuation, sheltering, and shelter-in-place plans ("emergency plans") for individuals with disabilities.

28. The University shall seek comments from the University community on its emergency plans (in accordance with the procedure set forth in paragraph 17) within 30 days of updating those plans and make changes based upon those comments and submit the proposed plans to the United States within 90 days after the completion of the comment period. The emergency plans shall ensure that persons with disabilities are provided a full and equal opportunity to benefit from these services in the most integrated setting appropriate to the needs of the individuals. The University shall make its final emergency plans available on the University's intranet or website, as well as in printed form, and shall update them as necessary.

29. The United States shall provide the University with a response to its proposed emergency plans, including any deficiencies to be addressed, within 60 days after receiving the plans from the University.

30. Within 60 days after receiving the comments of the United States, the University shall respond in writing to any of the comments provided by the United States and provide amended emergency plans, as necessary. The parties shall negotiate in good faith any disputes regarding the emergency plans. The University shall implement the final emergency plans within 30 days of approval by the United States, unless additional time is required based on the training or physical modifications necessary under the emergency plans, or to resolve any disputes between the parties regarding the plans. If the parties have been unable to resolve all remaining issues with respect to the emergency plans through negotiation after 60 days, then the provisions of paragraph 31 shall apply as if the United States had provided the 30 days' notice required by that paragraph.

31. In entering into any agreement during the term of this Agreement to lease any student housing (whether by leasing individual housing units or leasing a housing facility for the purpose of providing student housing units, and whether renewing or extending a preexisting lease or entering into a new lease arrangement), the University shall engage in good faith efforts to (1) lease student housing facilities or units that are either accessible to individuals with disabilities or capable of being modified so as to be made accessible to individuals with disabilities; and (2) negotiate with the landlord (a) to require the landlord, at the landlord's expense, to ensure that public entrances, first-floor common areas (if provided), and common area rest rooms (if provided) are made accessible to students with disabilities, and/or (b) to allow the University to make modifications to the premises necessary to comply with the ADA if the landlord fails to do so.

MONITORING AND COMPLIANCE

32. At any time during the term of this Agreement, the United States reserves the right, with reasonable prior notice, to inspect the University's campus and facilities, to request access to records, and to request documentation of compliance with this Agreement.

33. By October 15 of each year during the term of this Agreement, the University shall provide the United States with a detailed written report that demonstrates compliance with the Physical Access Plan and which (a) identifies and describes each construction project that has commenced, or for which plans have been developed, during the preceding year; and (b) documents (including photographs) the completion of any alteration work done pursuant to this Agreement. The report shall include as an exhibit copies of any complaint, whether formal or informal, received during the reporting period alleging that the University's student housing facilities were not being operated in compliance with the ADA or otherwise discriminated against any person on account of disability.

34. By October 15 of each year during the term of this Agreement, the University shall provide the United States with an annual report, which shall identify and

describe all financial allocations for the upcoming fiscal year that are directed to improving access in the University's student housing facilities, including the removal of architectural barriers, accessible routes, and accessible entrances.

35. The University shall maintain the written evaluations and reports required by this Agreement for the duration of this Agreement. Within 30 days of a request by the United States, the University shall provide copies of any report(s) (excluding material subject to attorney-client privilege, discussion drafts, and attorney work product) to the United States.

36. By no later than five years from the effective date of this Agreement, the University shall provide the United States with a detailed written report, including digital photographs, that demonstrates compliance with the Physical Access Plan. The report need not address items for which the University previously produced reports pursuant to paragraphs 27 and 28. That report shall also indicate any areas of non-compliance with the Physical Access Plan as well as the dates when those areas will become compliant with the Physical Access Plan.

ENFORCEMENT

37. If, at any time, based upon reports, inspection, or other information, the United States finds that the University has failed to comply with this Agreement, the United States agrees to notify the University in writing of the alleged noncompliance and attempt to seek a resolution of the matter with the University. If the parties are unable to reach a resolution within 30 days of the date of the United States' written notification, the United States may seek enforcement of the terms of this Agreement in the United States District Court for the Southern District of New York.

38. In the event that the court determines that the University has failed to comply with any term in this Agreement, such failure to comply shall be treated as a violation of Title III of the ADA and the United States may seek, and the court may assess, civil penalties as provided in 42 U.S.C. § 12188(b)(2)(c). Alternatively, should the parties be unable to reach a resolution within 60 days of the date of the United States' written notification, the United States may bring an action to enforce compliance with the ADA and its implementing regulations.

RESERVATION OF RIGHTS

39. This Agreement memorializes the commitments made by the University to increase accessibility of its student housing facilities. This Agreement is not intended to certify or signify that the University's student housing facilities are 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. Furthermore, this Agreement does not address the University's facilities other than its student housing facilities; other University facilities are also required to

comply with all aspects of the ADA and may be subject to separate compliance review. This Agreement does not affect the University's continuing responsibility and obligation to comply with all aspects of the ADA. The University understands and acknowledges that its facilities may be subject to investigation and that it is required to take remedial action if they are not in compliance with 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.

40. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute any proceeding or action against NYU for violations of any statutes, rules or regulations administered by the United States, or to prevent or limit the rights of the United States to obtain relief under the ADA, or any other federal statutes or regulations, or on account of any violation of this Agreement or any other provision of law.

41. Failure by the United States to enforce this entire Agreement, or any provision thereof with regard to any deadline or any other provision contained herein, shall not be construed as a waiver of the United States' right to enforce any deadlines or other provision of this Agreement.

42. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect the University's continuing responsibility to comply with all aspects of the ADA.

GENERAL PROVISIONS

43. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and the University shall engage in good faith negotiations in order to adopt amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations. The parties agree that they will not, individually or in combination with another party or a third party, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

44. This Agreement shall be binding on the University, its agents, its employees, and any successors or assigns. In the event that the University seeks to transfer or assign any student housing facility owned by it as of the date of this Agreement, and the successor or assign intends on carrying on the same or similar use of the facility, as a condition of sale, the University shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

