

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

UNIVERSITY OF NEBRASKA AT
KEARNEY, et al.,

Defendants.

4:11-CV-3209

CONSENT ORDER

This matter is before the Court on the parties' Joint Motion to Approve and Enter Consent Order (filing [287](#)). That motion is granted, and the following consent order is entered.

I. INTRODUCTION

1. On November 23, 2011, the United States filed this action against the University of Nebraska at Kearney, the Board of Regents of the University of Nebraska, David L. Brandt, Cheryl Bressington, Christy Horn, and Gail Zeller, alleging violations of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 ("Fair Housing Act"), [42 U.S.C. §§ 3601-3631](#). On August 25, 2015, the Court dismissed David L. Brandt, Cheryl Bressington, Christy Horn and Gail Zeller from this action.
2. The University of Nebraska at Kearney and the Board of Regents of the University of Nebraska (collectively referred to hereafter as "Defendants") operate and control University Heights, an apartment style student housing complex which includes 102 one-bedroom and efficiency units. University Heights is occupied by students enrolled full-time at the University of Nebraska at Kearney who are single parents, married, or twenty-one years of age or older.

II. UNITED STATES' ALLEGATIONS AND DEFENDANTS' DENIALS

3. The United States filed this suit on behalf of a former UNK student, Brittany Hamilton, pursuant to [42 U.S.C. § 3612\(o\)](#). The United States

also alleges that Defendants, in violation of [42 U.S.C. § 3614\(a\)](#), engaged in a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act or a denial to a group of persons of rights granted by the Fair Housing Act, which denial raises an issue of general public importance.

4. In its complaint, the United States also alleges that Defendants engaged in discriminatory conduct at university housing owned and/or managed by the Defendants at the University of Nebraska at Kearney. The United States' Complaint alleges that Defendants violated the Fair Housing Act, as amended, [42 U.S.C. § 3601](#) et seq. ("FHA"), and specifically [42 U.S.C. § 3604](#) subsections (f)(1),(2) and (3)(B) by refusing to allow students to live with animals as reasonable accommodations when such accommodations were reasonable and necessary to afford students with disabilities to have an equal opportunity to use and enjoy student housing at the University of Nebraska at Kearney. The United States further alleges that, as a result of this alleged unlawful conduct, two students with alleged disabilities seeking reasonable accommodations for the University of Nebraska at Kearney's student housing suffered damages.
5. The United States' Complaint also alleges that Defendants violated [42 U.S.C. § 3604\(c\)](#) by making, printing or publishing statements and notices with respect to the rental of student housing that indicated a preference, limitation, or discrimination because of a disability.
6. The University of Nebraska at Kearney and the Board of Regents of the University of Nebraska, individually and collectively, deny all of the allegations in the United States' Complaint and deny that they have violated the FHA in any manner, and contend that at all times, they operated student housing at the University of Nebraska at Kearney in compliance with all applicable statutes and regulations that prohibit discrimination.

III. AGREEMENT TO COMPROMISE

7. The parties agree that to avoid costly and protracted litigation and trial, the United States' claims against Defendants should be resolved without trial.

8. The University of Nebraska at Kearney and the Board of Regents of the University of Nebraska voluntarily enter into this Consent Order to resolve disputed claims solely to avoid the costs of protracted litigation.
9. Nothing in this Consent Order or the decision to compromise and settle this lawsuit is or should be construed as an admission of liability or wrongdoing on the part of the University of Nebraska at Kearney and/or the Board of Regents of the University of Nebraska, individually or collectively.
10. The University of Nebraska at Kearney and the Board of Regents of the University of Nebraska furthermore affirmatively assert that they complied with all applicable federal and state statutes and regulations prohibiting discrimination against persons with disabilities consistent with their goal to develop an academic community accessible to persons with disabilities to ensure equal educational opportunity for all.

Therefore, IT IS ORDERED:

IV. AFFIRMATIVE RELIEF

11. The University of Nebraska at Kearney ("UNK") is hereby enjoined from:
 - a. Discriminating against persons in the rental and provision of student housing because of a disability in violation of [42 U.S.C. § 3604\(f\)\(1\)](#);
 - b. Discriminating against persons in the terms, conditions, or privileges of student housing, or in the provision of services in connection with student housing because of a disability in violation of [42 U.S.C. § 3604\(f\)\(2\)](#);
 - c. Making, printing or publishing or causing to be made, printed, or published, any notice or statement with respect to the rental of student housing that indicates a preference, limitation, or discrimination based on disability, or intending to make such preference, limitation, or discrimination in violation of [42 U.S.C. § 3604\(c\)](#); and
 - d. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be

necessary to afford a person with a disability seeking to live or living in UNK student housing an equal opportunity to use and enjoy student housing in violation of [42 U.S.C. § 3604\(f\)\(3\)\(B\)](#).

V. REASONABLE ACCOMMODATION POLICIES

12. Within thirty (30) days of the date of entry of this Consent Order, UNK shall adopt the "University Housing Reasonable Accommodation Policy" that is attached hereto as Exhibit A1, and the "University of Nebraska at Kearney Assistance Animal Policy and Agreement" that is attached hereto as Exhibit A2. UNK shall follow these policies for receiving, evaluating, and determining whether to grant or deny reasonable accommodations requested by students with disabilities in rules, policies, practices, or services relating to UNK's student housing and assistance animals in student housing.
13. Within thirty (30) days of the date of the entry of this Consent Order by the Court, UNK shall provide copies of the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement to UNK's Director of Disability Services and any employees of Disability Services who have responsibility for implementing¹ reasonable accommodation requests in student housing. During the term of this Consent Order, UNK shall also provide a copy of these policies to each newly hired Director of Disability Services and any newly hired employees of Disability Services who have responsibility for implementing reasonable accommodation requests in student housing.
14. Within thirty (30) days of the date of the entry of this Consent Order by the Court, UNK shall provide a copy of the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement to UNK's Director of the Office of Residence Life ("Residence Life") and any employees of Residence Life who have responsibility for implementing reasonable accommodation requests. During the term of this Consent Order, UNK shall also provide copies of these policies to each newly hired Director of Residence Life and any

¹ For purposes of Sections V and VI of this Consent Order, the term "implement" means involvement in the review, consideration, decision-making and appeal of reasonable accommodation requests related to university housing and the creation, implementation or revision of housing-related reasonable accommodation policies.

newly hired employees of Residence Life who have responsibility for implementing reasonable accommodation requests.

15. Within thirty (30) days of the date of entry of this Consent Order by the Court, and for the term of this Consent Order, UNK shall post and prominently display the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement in the Office of Disability Services and the Office of Residence Life. UNK shall also post both of these policies, or a link to both of these policies, on the official UNK website for Disability Services.
16. Any proposed changes to the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement and related posted webpages referred to in Paragraphs 12-15 during the duration of this Consent Order must be provided to the United States by facsimile and next-day delivery to the United States for its review and comment at least thirty (30) days before being implemented. The proposed changes shall be considered approved upon the expiration of the 30th day unless UNK receives a written objection from the United States within the 30-day notice period. To the extent the United States objects to any changes to these policies proposed in accordance with this paragraph, and the parties cannot resolve the dispute among themselves, such dispute may be submitted to the Court in accordance with the dispute resolution provisions of Paragraph 34 of this Consent Order.

VI. NOTICE AND TRAINING

17. Within thirty (30) days of the date of entry of this Consent Order by the Court, UNK shall provide the Summary of this Order ("Summary"), attached as Exhibit B, to the Director of Disability Services and any employees of Disability Services who have responsibility for implementing reasonable accommodation requests in student housing. UNK shall also secure the signed statement from each person with responsibility for implementing reasonable accommodation requests in student housing acknowledging that he or she has received and read the Summary and agrees to abide by the relevant provisions of this Order. This statement shall be in the form of Exhibit C attached hereto.

18. Within thirty (30) days of the date of entry of this Consent Order by the Court, UNK shall provide the Summary to the Director of Residence Life and any employees of Residence Life who have responsibility for implementing reasonable accommodation requests in student housing. UNK shall also secure the signed statement from each person with responsibility for implementing reasonable accommodation requests in student housing acknowledging that he or she has received and read the Summary and agrees to abide by the relevant provisions of this Order. This statement shall be in the form of Exhibit C, attached hereto.
19. Within ninety (90) days from the date of entry of this Consent Order by the Court, the Director of Disability Services, any employees of the Office of Disability Services who have responsibility for implementing reasonable accommodation requests in student housing, the Director of the Residence Life, and any employees of Residence Life who have responsibility for implementing reasonable accommodation requests, shall attend, at UNK's expense, an in-person education and training program on the FHA, with specific emphasis on discrimination on the basis of disability. The training shall be conducted by a qualified person approved in advance by the United States, with experience and understanding of the reasonable accommodation requirements of the FHA. UNK shall obtain from the trainer, certifications of attendance, executed by each individual who received the training, confirming his or her attendance. The certification shall include the name of the course, the date the course was attended, and the length of the course and/or time within which the course was completed.
20. During the term of this Order, within thirty (30) days after the hiring of a new Director of Disability Services, any new employee of the Office of Disability Services who has responsibility for implementing reasonable accommodation requests in student housing, a new Director of Residence Life, and any new employee of the Office of Residence Life who has responsibility for implementing reasonable accommodation requests, UNK shall provide a copy of the Summary to such new employee and secure the signed statement from such employee acknowledging that he or she has received and read the Summary, had the opportunity to have questions about the Summary and Order answered, and agrees to abide by the relevant provisions of the Order. This statement shall be in the form of Exhibit C.

VII. RELIEF FOR ALLEGED AGGRIEVED PERSONS

21. The United States has identified Brittany Hamilton ("Hamilton") and Denise Kraft ("Kraft") as alleged aggrieved persons whom it believes were harmed by the Defendants' conduct. Defendants agree to pay the total sum of **ONE HUNDRED FORTY THOUSAND DOLLARS and 00/100 (\$140,000.00)** to a Settlement Fund. Within thirty (30) days of the date of entry of this Consent Order by the Court, the United States shall notify Defendants of the amount of monetary damages that should be paid from the Settlement Fund to Hamilton and Kraft. Within thirty (30) days of receiving such notice, Defendants shall deliver to the United States checks payable to Hamilton and Kraft in the amounts identified by the United States, and checks shall be delivered to each upon execution of a release in the form of Exhibit D. In no event shall the aggregate of the checks exceed the amount of the Settlement Fund.

VIII. REPORTING AND RECORD KEEPING REQUIREMENTS

22. For the term of this Consent Order, UNK shall also preserve all records related to this Consent Order. Such documents include housing contracts, student housing files, student housing policies and procedures, and written communications (or records of oral communications) between UNK (including but not limited to Disability Services and Residence Life) and any student who has requested a reasonable accommodation in UNK student housing that are related to such a request.
23. For the term of this Consent Order, UNK shall keep written records of each request for reasonable accommodation in student housing it receives. These records shall include: (a) the name, address, and telephone number of the person making the request; (b) the date upon which the request was received; (c) the nature of the request (i.e. the accommodation requested and disability for which the accommodation was requested); (d) whether the request was granted or denied; and (e) if the request was denied, the reason(s) for the denial.
24. For the term of this Consent Order, UNK shall notify counsel for the United States of any written complaint filed against it or any of its employees by a student alleging failure to provide a reasonable accommodation in student housing which is filed in a court of law or with a governmental civil rights enforcement agency, such as the U.S.

Department of Housing and Urban Development through its Office of Fair Housing and Equal Opportunity or the Nebraska Equal Opportunity Commission within thirty (30) days of the filing of such written complaint. The notification shall include a copy of the written complaint. UNK shall also promptly provide the United States all information, documents, or records it reasonably requests concerning any such complaint after UNK has fulfilled its obligation to provide notice and an opportunity for the student to object to the proposed disclosure of such information or documents pursuant to Family Educational Rights and Privacy Act ("FERPA"). If, pursuant to FERPA, a student objects to the release of his or her personal information pursuant to this paragraph, UNK shall be relieved of its obligation to provide such information, documents, or records. UNK shall inform the United States in writing within thirty (30) days after the date on which UNK resolves any complaint covered by this paragraph of the terms of such resolution.

25. Within one hundred twenty (120) days of the date of entry of this Consent Order, and annually thereafter from the date of entry of this Consent Order during the term of this Consent Order, UNK shall submit to counsel for the United States a compliance report which shall contain the following:
 - a. The information in Paragraph 24 above, if not yet reported;
 - b. The signed statements and certifications of each employee referred to in Paragraphs 17, 18, and 20;
 - c. Photographs establishing that the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement are posted in Disability Services and Residence Life as described in Paragraph 15; and
 - d. Copies of certifications of attendance for fair housing training pursuant to Paragraph 19.
26. The final report required under Paragraph 25 above shall be submitted no later than sixty (60) days prior to the expiration date of this Consent Order.
27. All documents or other communications required by this Consent Order to be sent to the United States shall reference "DJ#175-45-61" and

shall be sent by facsimile to (202) 514-1116 or by overnight mail to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street NW, Suite 7032, Washington, D.C. 20006.

28. During the term of this Consent Order, UNK shall maintain all records relating to implementation of and compliance with all provisions of this Consent Order. Upon request, UNK shall provide the United States with copies of any records maintained as required by this Consent Order.

IX. INSPECTION OF DOCUMENTS

29. For the duration of this Order, upon reasonable notice to UNK and at reasonable times as agreed upon by the parties, representatives of the U.S. Department of Justice shall be permitted to inspect and copy, at the United States' expense, all records UNK is required to maintain as provided in this Consent Order to monitor Defendants' compliance with this Order.

X. RELEASE OF LITIGATION HOLDS AND ELECTRONICALLY STORED INFORMATION

30. The parties agree that, as of the date of entry of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described herein. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by the Consent Order.

XI. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND REMEDIES FOR NON-COMPLIANCE

31. This Court shall retain jurisdiction of this case for purposes of enforcing this Consent Order, which shall be effective for a period of two (2) years following the date of its entry.
32. Any provisions of this Consent Order, including but not limited to time limits for performance, may be modified by mutual written agreement of the parties or by motion to the Court. If the modification is by

written agreement of the parties, then such modification will be effective thirty (30) days from the date of the filing of the written agreement with the Court, and shall remain in effect for the duration of the Consent Order or until such time as the Court indicates through a written order that it has not approved the modification.

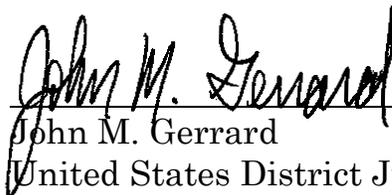
33. The parties to this Consent Order shall be responsible for their own attorney's fees and court costs.
34. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by UNK, whether willful or otherwise, to perform in a timely manner any act required by this Order, or in the event of any other act violating any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity.

XII. TERM AND DISMISSAL WITH PREJUDICE

35. The term of this Consent Order is two (2) years. Upon entry of this Consent Order by the Court, this case shall be automatically dismissed with prejudice. However, the Court shall retain jurisdiction over the action for the term of this Consent Order.

Dated this 4th day of September, 2015.

BY THE COURT:



John M. Gerrard
United States District Judge

EXHIBIT A1

University Housing Reasonable Accommodation Policy

EXHIBIT A1

UNIVERSITY OF NEBRASKA AT KEARNEY

UNIVERSITY HOUSING REASONABLE ACCOMMODATION POLICY

Section I. Introduction and Background

The University of Nebraska at Kearney ("UNK" or the "University") recognizes the importance of providing reasonable accommodations in its housing policies and practices where necessary for individuals with disabilities to use and enjoy University housing. This Policy explains the specific requirements and guidelines which govern requests for reasonable accommodation in University housing. UNK reserves the right to amend this policy at any time as circumstances require.

Section II. Procedure for Requesting Reasonable Accommodation (Excluding Requests for Service Animals under the Americans with Disabilities Act Amendments Act)

The Office of Disability Services for Students ("Disability Services") is responsible for evaluating whether to grant or deny requests for reasonable accommodation in University housing. In evaluating the request, Disability Services will consult with the Office of Residence Life ("Residence Life"), the UNK ADA/Section 504 Coordinator, and the UNK Office of Counseling & Care, as necessary, to determine whether the requested accommodation is necessary and reasonable. Individuals with a disability who reside or intend to reside in University housing who believe they need a reasonable accommodation must contact Disability Services.

Requests for reasonable accommodation in University housing policies and practices are governed by the following requirements:

1. Requesting a Housing Accommodation

- a. An individual with a disability must complete the "Disability Accommodation Request Form For University Housing" (the "Request Form") to request a reasonable accommodation. Copies of the Request Form are available from Disability Services. If the individual requires assistance in completing the Request Form because of his/her disability, Disability Services will provide assistance in completing the form.
- b. UNK will accept and consider requests for reasonable accommodation in University housing at any time. The individual making the request for accommodation should complete and provide the Request Form to Disability Services as soon as practicably possible before moving into University housing. However, if the request for accommodation is made fewer than 60 days before the individual intends to move into University housing, UNK

cannot guarantee that it will be able to meet the individual's accommodation needs during the first semester or term of occupancy.

- c. If the need for the accommodation arises when an individual already resides in University housing, he/she should contact Disability Services and complete the Request Form as soon as practicably possible. UNK cannot guarantee that it will be able to meet the accommodation needs during the semester or term in which the request is received.
- d. Absent exceptional circumstances, the University will attempt to provide a written response to a reasonable accommodation request within fourteen (14) business days of receiving the information described in paragraph 2 below.

2. Information that May Be Requested for Housing-Related Reasonable Accommodation Requests

Disability Services shall limit its requests for information to only the information necessary to verify whether the individual making the request has a disability and/or to evaluate if the reasonable accommodation is necessary to provide the individual an equal opportunity to use and enjoy University housing.

- a. Obvious Disability: If the individual's disability and the necessity for the accommodation are obvious (e.g. an individual with a physical disability using a wheelchair needs an accessible room), the individual need only explain what type of accommodation she is requesting. No verification of disability and/or necessity is required under these circumstances.
- b. Non-Obvious Disability/Necessity
 - i. If the disability is obvious but the need for the accommodation is not obvious, the University may require the individual to complete the Reasonable Accommodation Verification Form for University Housing ("Verification Form") and designate a reliable third party who can verify that the requested accommodation is necessary to provide the individual an equal opportunity to use and enjoy University housing, but may not seek information about the individual's disability.
 - ii. If the disability and necessity for the accommodation are not obvious, Disability Services will require the individual to complete the Verification Form and designate a reliable third party who can verify that the individual has a disability and that the requested accommodation is necessary to provide the individual an equal opportunity to use and enjoy University housing.
 - iii. A reliable third party is someone who is familiar with the individual's

disability and the necessity for the requested accommodation. A reliable third-party includes, but is not limited to, a doctor or other medical professional, a peer support group, or a non-medical service agency (e.g., National Association of the Deaf)

- iv. Absent exceptional circumstances, within seven (7) business days of receiving the completed Verification Form from the third-party, the Director of Disability Services, after consultation with the UNK ADA/Section 504 Compliance Officer, will determine if the accommodation is necessary because of a disability to provide the individual an equal opportunity to use and enjoy University housing.
- v. If the third party returns the Verification Form without sufficient information for Disability Services to determine whether an accommodation is necessary, the Director of Disability Services will inform the individual in writing of the verification's insufficiency and may request additional information, including speaking directly with the individual supplying the third-party verification, within seven (7) business days of receiving the verification.
- vi. The individual making the request for accommodation must cooperate with Disability Services in a timely manner in providing all information needed to determine whether the requested accommodation is necessary.

3. Determination of Reasonableness

- a. Disability Services may deny the requested accommodation if it is unreasonable. Disability Services shall consult with Residence Life to determine if implementing the requested accommodation is reasonable.
- b. An accommodation is unreasonable if it: (1) imposes an undue financial and/or administrative burden; (2) fundamentally alters university housing policies; (3) poses a direct threat to the health and safety of others or would cause substantial property damage to the property of others, including University property; and/or (4) is otherwise unreasonable to the operation of the University.

4. Approval of Accommodation

- a. If Disability Services determines a requested accommodation is necessary and is not unreasonable, it will contact the individual, in writing, within seven (7) business days of its determination, to arrange a meeting to discuss the implementation of the accommodation.

5. Denial of Accommodation/Appeal

- a. If Disability Services determines a requested accommodation is necessary but unreasonable, Disability Services will contact the individual, in writing, within seven (7) business days of its determination and engage in an interactive process with the individual to determine if there are alternative accommodations that might effectively meet the individual's disability-related needs.
- b. If the individual is unwilling to accept any alternative accommodation offered by Disability Services or there are no alternative accommodations available, Disability Services will provide a verbal explanation and written notification to the individual of the denial, the reasons for the denial, the right to appeal the decision, and the procedures for that appeals process. The notification shall be in writing and made within seven (7) business days of the notification from the individual of his/her unwillingness to accept any of the alternative accommodations offered or the determination that there are no alternative accommodations available.
- c. All appeals are reviewed by the University of Nebraska ADA/Section 504 Compliance Officer. If the appeal is denied, the University of Nebraska's ADA/Section 504 Compliance Officer shall provide written notification of the denial to the individual and a written explanation with all of the reasons for the denial.
- d. An individual may also use the grievance procedure provided under the general University antidiscrimination policies. This grievance procedure can be found at http://www.unk.edu/offices/human_resources/aaeo/ada/grievance_procedures.php.

6. Confidentiality and Recordkeeping

In processing requests for reasonable accommodations, the University will take all steps required by federal, state, and/or local law to protect the confidentiality of any information or documentation disclosed in connection with the requests. Such measures may include limiting access to such information to individuals specifically designated to determine and implement requests for reasonable accommodations, who will disclose the information only to the extent necessary to determine whether to grant the request, determine if the request is unreasonable, and implement any request granted, keeping all written requests and accompanying documentation in a secure area to which only those designated individuals have access, except as otherwise required by law.

7. Non-retaliation Provision

UNK will not retaliate against any individual because that individual has requested or received a reasonable accommodation in University housing.

EXHIBIT A2

University of Nebraska at Kearney Assistance Animal
Policy and Agreement

EXHIBIT A2

UNIVERSITY OF NEBRASKA AT KEARNEY ASSISTANCE ANIMAL POLICY AND AGREEMENT

The University of Nebraska at Kearney (“UNK” or “University”) recognizes the importance of “Service Animals” as defined by the Americans with Disabilities Act Amendments Act (ADAAA) and the broader category of “Assistance Animals” under the Fair Housing Act that provide physical and/or emotional support to individuals with disabilities. UNK is committed to allowing individuals with disabilities the use of a Service Animal on campus to facilitate their full-participation and equal access to the University’s programs and activities. UNK is also committed to allowing Assistance Animals necessary to provide individuals with disabilities an equal opportunity to use and enjoy University housing. This Policy explains the specific requirements applicable to an individual’s use of an Assistance Animal in University housing. UNK reserves the right to amend this Policy as circumstances require. This policy applies solely to “Assistance Animals” which may be necessary in University housing. It does not apply to “service animals” as defined by the ADAAA.

Although it is the policy of UNK that individuals are generally prohibited from having animals of any type in University housing, UNK will consider a request by an individual with a disability for reasonable accommodation from this prohibition to allow an Assistance Animal that is necessary because of a disability and reasonable. However, no Assistance Animal may be kept in University housing at any time prior to the individual receiving approval as a reasonable accommodation pursuant to this Policy.

I. Definitions

A. Assistance Animal

“Assistance Animals” are a category of animals that may work, provide assistance, or perform physical tasks for an individual with a disability and/or provide necessary emotional support to an individual with a mental or psychiatric disability that alleviates one or more identified symptoms of an individual’s disability, but which are not considered Service Animals under the ADAAA and UNK’s Service Animal Policy. Some Assistance Animals are professionally trained, but in other cases Assistance Animals provide the necessary support to individuals with disabilities without any formal training or certification. Dogs are commonly used as Assistance Animals, but any animal may serve a person with a disability as an Assistance Animal.¹

The question in determining if an Assistance Animal will be allowed in University housing is whether or not the Assistance Animal is necessary because of the

¹ It is important to note that animals that may be needed because of a disability may be identified by various names. For example, an individual may identify the animal as a companion animal, therapy animal, or emotional support animal.

individual's disability to afford the individual an equal opportunity to use and enjoy University housing and its presence in University housing is reasonable. However, even if the individual with a disability establishes necessity for an Assistance Animal and it is allowed in University housing, an Assistance Animal is not permitted in other areas of the University (e.g. dining facilities, libraries, academic buildings, athletic buildings and facilities, classrooms, labs, individual centers, etc.).

B. Owner

The "Owner" is the individual who has requested the accommodation and has received approval to bring an Assistance Animal into University Housing.

C. Disability Services Office

The Office of Services for Students with Disabilities ("Disability Services Office") collaborates with individuals, faculty, and staff to ensure that individuals with disabilities have equal access to all UNK programs and activities.

II. Procedures For Requesting Assistance Animals in University Housing

The procedure for requesting Assistance Animals follows the general procedures set forth in the Reasonable Accommodation Policy for University Housing ("Reasonable Accommodation Policy") and the requirements set forth below. However, to the extent the requirements and procedures in this Policy conflict with the Reasonable Accommodation Policy, this Policy shall control.

III. Criteria for Determining If Presence of the Assistance Animal is Reasonable

- A. University housing is unique in several aspects including the mandatory assignment of roommates for many individuals and the mandate that individuals must share a room or suite in certain residence halls. To ensure that the presence of Assistance Animals is not an undue administrative burden or fundamental alteration of University housing, UNK reserves the right to assign an individual with an Assistance Animal to a single room without a roommate.
- B. However, for all requests for Assistance Animals, Disability Services shall nonetheless consult with Residence Life in making a determination on a case-by-case basis of whether the presence of an Assistance Animal is reasonable. A request for an Assistance Animal may be denied as unreasonable if the presence of the animal: (1) imposes an undue financial and/or administrative burden; (2) fundamentally alters University housing policies; and/or (3) poses a direct threat to the health and safety of others or would cause substantial property damage to the property of others, including University property.

- C. UNK may consider the following factors, among others, as evidence in determining whether the presence of the animal is reasonable or in the making of housing assignments for individuals with Assistance Animals:
1. The size of the animal is too large for available assigned housing space;
 2. The animal's presence would force another individual from individual housing (e.g. serious allergies);
 3. The animal's presence otherwise violates individuals' right to peace and quiet enjoyment;
 4. The animal is not housebroken or is unable to live with others in a reasonable manner;
 5. The animal's vaccinations are not up-to-date;
 6. The animal poses or has posed in the past a direct threat to the individual or others such as aggressive behavior towards or injuring the individual or others; or
 7. The animal causes or has caused excessive damage to housing beyond reasonable wear and tear.

UNK will not limit room assignments for individuals with Assistance Animals to any particular building or buildings because the individual needs an Assistance Animal because of a disability.

IV. Access to University Facilities By Assistance Animals

A. Assistance Animals

An Assistance Animal must be contained within the Owner's privately assigned individual living accommodations (e.g., room, suite, apartment) except to the extent the individual is taking the animal out for natural relief. When an Assistance Animal is outside the private individual living accommodations, it must be in an animal carrier or controlled by a leash or harness. Assistance Animals are not allowed in any University facilities other than University residence halls (e.g. dormitories, suites, apartments, etc.) to which the individual is assigned.

B. Dominion and Control

Notwithstanding the restrictions set forth herein, the Assistance Animal must be properly housed and restrained or otherwise under the dominion and control of the Owner at all times. No Owner shall permit the animal to go loose or run at large. If an animal is found running at large, the animal is subject to capture and confinement and immediate removal from University housing.

V. Owner's Responsibilities for Assistance Animal

If the University grants an Owner's request to live with an Assistance Animal, the Owner is solely responsible for the custody and care of the Assistance Animal and must meet the following requirements:

A. General Responsibilities

1. The Owner must abide by current city, county, and state ordinances, laws, and/or regulations pertaining to licensing, vaccination, and other requirements for animals. It is the Owner's responsibility to know and understand these ordinances, laws, and regulations. The University has the right to require documentation of compliance with such ordinances, laws, and/or regulations, which may include a vaccination certificate. The University reserves the right to request documentation showing that the animal has been licensed.
2. The Owner is required to clean up after and properly dispose of the animal's waste in a safe and sanitary manner and, when provided, must use animal relief areas designated by UNK.
3. The Owner is required to ensure the animal is well cared for at all times. Any evidence of mistreatment or abuse may result in immediate removal of the Assistance Animal and/or discipline for the responsible individual.
4. UNK will not ask for or require an individual with a disability to pay a fee or surcharge for an approved Assistance Animal.
5. An individual with a disability may be charged for any damage caused by his or her Assistance Animal beyond reasonable wear and tear to the same extent that it charges other individuals for damages beyond reasonable wear and tear. The Owner's living accommodations may also be inspected for fleas, ticks or other pests if necessary as part of the University's standard or routine inspections. If fleas, ticks or other pests are detected through inspection, the residence will be treated using approved fumigation methods by a University-approved pest control service. The Owner will be billed for the expense of any pest treatment above and beyond standard pest management in the residence halls. The University shall have the right to bill the Owner's account for unmet obligations under this provision.
6. The Owner must fully cooperate with University personnel with regard to meeting the terms of this Policy and developing procedures for care of the animal (e.g., cleaning the animal,

feeding/watering the animal, designating an outdoor relief area, disposing of feces, etc.).

7. Assistance Animals may not be left overnight in University Housing to be cared for by any individual other than the Owner. If the Owner is to be absent from his/her residence hall overnight or longer, the animal must accompany the Owner. The Owner is responsible for ensuring that the Assistance Animal is contained, as appropriate, when the Owner is not present during the day while attending classes or other activities.
8. The Owner agrees to abide by all equally applicable residential policies that are unrelated to the individual's disability such as assuring that the animal does not unduly interfere with the routine activities of the residence or cause difficulties for individuals who reside there.
9. The animal is allowed in University housing only as long as it is necessary because of the Owner's disability. The Owner must notify the Disability Services Office in writing if the Assistance Animal is no longer needed or is no longer in residence. To replace an Assistance Animal, the new animal must be necessary because of the Owner's disability and the Owner must follow the procedures in this Policy and the Reasonable Accommodation Policy when requesting a different animal.
10. UNK personnel shall ***not*** be required to provide care or food for any Assistance Animal including, but not limited to, removing the animal during emergency evacuation for events such as a fire alarm. Emergency personnel will determine whether to remove the animal and may not be held responsible for the care, damage to, or loss of the animal.
11. The individual must provide written consent for Disability Services to disclose information regarding the request for and presence of the Assistance Animal to those individuals who may be impacted by the presence of the animal including, but not limited to, Residence Life personnel and potential and/or actual roommate(s)/neighbor(s). Such information shall be limited to information related to the animal and shall not include information related to the individual's disability.

VI. Removal of Assistance Animal

The University may require the individual to remove the animal from University housing if:

- 1) the animal poses a direct threat to the health or safety of others or causes substantial property damage to the property of others;
- 2) the animal's presence results in a fundamental alteration of a University program;
- 3) the Owner does not comply with the Owner's Responsibilities set forth above; or
- 4) the animal or its presence creates an unmanageable disturbance or interference with the University community.

The University will base such determinations upon the consideration of the behavior of the particular animal at issue, and not on speculation or fear about the harm or damages an animal may cause. Any removal of the animal will be done in consultation with the Disability Services Coordinator and may be appealed to the University of Nebraska's ADA/Section 504 Compliance Officer following the procedure set forth in Paragraph 5 of the Reasonable Accommodation Policy. The Owner will be afforded all rights of due process and appeal as outlined in that process.

Should the Assistance Animal be removed from the premises for any reason, the Owner is expected to fulfill his/her housing obligations for the remainder of the housing contract.

VII. Non-retaliation Provision

UNK will not retaliate against any person because that individual has requested or received a reasonable accommodation in University housing, including a request for an Assistance Animal.

Acknowledgement and Release of Information Consent Form

By my signature below, I verify that I have read, understand and will abide by the requirements outlined here and I agree to provide the additional information required to complete my Request for a Reasonable Accommodation under the University's Assistance Animal Policy for University Housing.

I have read and understand the Assistance Animal Policy and Agreement and I agree to abide by the requirements applicable to Assistance Animals. I understand that if I fail to meet the requirements set forth in the Policy, UNK has the right to remove the Assistance Animal and I will be nonetheless required to fulfill my housing, academic, and all other obligations for the remainder of the housing contract.

I furthermore give permission to the Disability Services Office to disclose to others impacted by the presence of my Assistance Animal (e.g., Residence Life staff, potential and/or actual roommate(s)/neighbor(s)) that I will be living with an animal as an accommodation. I understand that this information will be shared with the intent of

preparing for the presence of the Assistance Animal and/or resolving any potential issues associated with the presence of the Assistance Animal.

I further recognize that the presence of the Assistance Animal may be noticed by others visiting or residing in University Housing and agree that staff may acknowledge the presence of the animal, and explain that under certain circumstances Assistance Animals are permitted for persons with disabilities.

Owner's Signature

Date

Disability Services Representative

Date

Residence Life Representative

Date

EXHIBIT B

EXHIBIT B

On September 3, 2015, the United States filed a consent order resolving allegations that the University of Nebraska at Kearney and the Board of Regents of the University of Nebraska (collectively "Defendants"), violated the federal Fair Housing Act ("FHA") by discriminating against students with disabilities by failing to provide them reasonable accommodations. The FHA is a federal law that prohibits discrimination in the rental and sale of housing on the basis of race, color, religion, national origin, disability, sex, and familial status.

Specifically, the United States' lawsuit alleged that the Defendants implemented policies and practices that resulted in students who needed assistance animals due to their disabilities being unable to use and enjoy University housing in violation of the FHA. The Defendants denied that their actions violated the FHA.

The consent order, which resolves the United States' lawsuit, was entered as an order of the United States Court for the District of Nebraska. The consent order requires that the University of Nebraska at Kearney ("UNK") undertake several steps to ensure compliance with the Fair Housing Act and to compensate residents who were affected by these policies. The consent order requires the following:

- UNK must comply with the Fair Housing Act in the future.
- UNK must adopt reasonable accommodation and assistance animal policies that govern requests for reasonable accommodations by students who intend to or currently reside in University housing.
- Defendants must pay monetary damages totaling \$140,000 to compensate individuals who were allegedly affected by the Defendants' policies and actions.
- UNK must keep certain records and regularly report to the United States for a period of two years.

The United States Department of Justice will continue to monitor the Defendants to ensure that they comply with the Fair Housing Act.

If you would like a copy of the consent order or the Reasonable Accommodation or Assistance Animal policies, please ask David Brandt, UNK Disability Services for Students Office, 175 Memorial Student Affairs Building, 2510 11th Avenue Kearney, NE 68849-4200; Phone: (308) 865-8214; Fax: (308) 865-8286; unkdso@unk.edu.

EXHIBIT C

EMPLOYEE ACKNOWLEDGMENT

I certify that I have received and read a copy of the Summary of the Consent Order entered in *United States v. University of Nebraska at Kearney, et al.*, Case No. 4:11cv3209, filed in the United States District Court for the District of Nebraska. I further certify that I understand the terms of that Summary and the Consent Order, and that any questions I had concerning the Consent Order were answered.

I further understand that federal law prohibits refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability equal opportunity to use and enjoy student housing at the University of Nebraska at Kearney.

With this understanding, I agree that, as a condition of my employment or contractual relationship with the University of Nebraska at Kearney with respect to the management and/or maintenance of student housing, or responsibility for implementing reasonable accommodation requests in student housing, I shall not discriminate in any manner on account of disability in violation of federal law or regulation in carrying out my employment or contractual services.

Signature

Name (Please Print)

Home Address

Home Telephone Number

Date

EXHIBIT D

RELEASE AGREEMENT

In consideration of and contingent upon the payment of the sum of _____ and **00/100 (\$_____ .00)**, pursuant to the Consent Order entered in *University of Nebraska at Kearney, et al.*, Case No. 4:11cv3209, filed in the United States District Court for the District of Nebraska, I hereby release and forever discharge the University of Nebraska at Kearney and the Board of Regents of the University of Nebraska, their insurers, attorneys, agents, employees, former employees, heirs, executors, and administrators and any persons acting under their respective direction or control from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in this action and the terms of any housing contract I entered into with the University of Nebraska at Kearney as of the date of the entry of that Consent Order. I fully acknowledge and agree that this release of the Defendants shall be binding on my heirs, representatives, executors, successors, administrators, and assigns. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

[NAME]

Dated: _____