



U.S. Department of Justice

*United States Attorney
Eastern District of Pennsylvania*

VOLUNTARY COMPLIANCE AGREEMENT

between

THE UNITED STATES OF AMERICA

and

COSTAR 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, Costar Partners, L.P. (“Costar”) owns and operates a restaurant, currently operating under the name Buddakan, which is located at 325 Chestnut Street, Philadelphia, Pennsylvania 19106 (the “Restaurant”);

WHEREAS, Costar 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 Costar 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 Costar to date to comply with the ADA and the actions that Costar 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 COSTAR 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. Costar 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 Costar and each of its agents and employees. In the event Costar 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 Costar 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 expressly stated otherwise 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. BUDDAKAN

BUDDAKAN DINING AREA

8. Costar shall remove the following barriers to accessibility, which the United States observed during its January 13, 2016 site inspection of the Restaurant: The width of the ramp was less than 36 inches. See the Title III Regulations §§ 36.302(a), 36.304(e) and the 1991 Standards §§ 4.1.2(1), 4.1.3(8), 4.3.7 and 4.8.3.

9. Costar can satisfy the requirements of paragraph 8 of this Agreement by completing all of the following steps within one hundred eighty (180) days of the effective date of this Agreement: Remove the metal edge protector from the ramp to ensure that the clear width of the ramp is at least 36 inches. See 2010 Standards § § 206.2.4, 402.2, 405.5.

BUDDAKAN RESTROOMS

10. Costar shall remove the following barriers to accessibility in the designated accessible stall in the men’s toilet room within one hundred eighty (180) days of the date of the effective date of this Agreement, which the United States observed during its January 13, 2016 site inspection of the Restaurant:

- a. This stall does not provide any toe clearance at either the front or any side partition. This stall is 56 inches deep with a wall mounted toilet. In wheelchair accessible stalls, the front partition and at least one side partition must provide a toe clearance of at least nine inches above the finished floor (AFF). If the depth of the stall is more than 60 inches, then the toe clearance is not required. See the 1991 Standards §§ 4.1.6(1)(b), 4.22.4 and 4.17.4; 2010 Standards § 604.8.1.4 and Figure 604.8.1.4.
- b. The side grab bar is not a minimum of 42 inches long. See the 1991 Standards §§ 4.1.6(1)(b), 4.22.4, 4.17.6 and Figure 30(d).
- c. The centerline of the toilet is less than 16 inches from the side wall. The 1991 Standards required that the centerline of the toilet be exactly 18 inches from the side wall. The 2010 Standards require that the centerline of the toilet be from 16 inches to

18 inches from the side wall. *See* the 1991 Standards § 4.17.3 and Figure 30(a); 2010 Standards §§ 213.3.1, 604.2 and Figure 604.2(a).

- d. A portable trashcan obstructed the clear floor space required at the side of the toilet. *See* the 1991 Standards § 4.17.2 and Figure 30(a). *See also* the requirement of § 36.302 of the ADA Title III.
- e. The force required to open the stall door exceeds 5 pounds. *See* the 1991 Standards §§ 4.1.6(1)(b), 4.22.2 and 4.13.11(2)(b).

11. Costar can satisfy the requirements of paragraph 10 of this Agreement by completing all of the following steps within one hundred eighty (180) days of the effective date of this Agreement:

- a. Alter or replace the front and side partitions to provide toe clearance of nine inches minimum above the finish floor and six inches deep minimum beyond the compartment-side face of the compartment, exclusive of partition support members. 2010 Standards §§ 213.3.1, 604.8.1.4.
- b. Install a side wall grab bar that is 42 inches long minimum, located 12 inches maximum from the rear wall and extending 54 inches minimum from the rear wall. *See* the 2010 Standards §§ 213.3.1, 604.8.1.5, 604.5.1, Figure 604.5.1 and 609.
- c. Relocate the toilet with offset flange to provide the required 16 to 18 inches centerline. *See* 2010 Standards §§ 213.3.1, 604.2 and Figure 604.2(a).
- d. Remove the portable trash can so that there is clear floor space at the side of the toilet in the designated accessible stall and amend Costar's ADA policy to require that the Restaurant maintain clear floor space under the lavatory and in the space on the wide side of the toilet in any designated accessible stall.
- e. Modify the door closer so that the force for pushing or pulling open the door is five pounds or less. *See* the 2010 Standards §§ 206.5.2 and 404.2.9.
- f. If Costar provides coat hooks on the stall door, a coat hook shall be mounted 48 inches maximum and 15 inches minimum above the finish floor. *See* the 2010 Standards §§ 213.3.7, 603.4 and 308.

12. Costar shall remove the following barriers to accessibility in the designated wheelchair accessible stall in the women's toilet room, which the United States observed during its January 13, 2016 site inspection of the Restaurant:

- a. This stall does not provide any toe clearance at either the front or any side partition. This stall is 56 inches deep, with a wall mounted toilet. In wheelchair accessible toilet stalls the front partition and at least one side partition must provide a toe clearance of at least nine inches AFF. *See* the 1991 Standards §§ 4.1.6(1)(b), 4.22.4 and 4.17.4; 2010 Standards § 604.8.1.4 and Figure 604.8.1.4.

- b. The force required to open the designated accessible stall door exceeds 5 pounds. *See* the 1991 Standards §§ 4.1.6(1)(b), 4.22.2 and 4.13.11(2)(b).
- c. The coat hook in the designated accessible toilet stall exceeds 54 inches AFF. *See* the 1991 Standards §§ 4.1.6(1)(b), 4.22.7, 4.27.3, 4.2.5/6.

13. Costar 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:

- a. Alter or replace the front and side partitions to provide toe clearance of nine inches minimum AFF and six inches deep minimum beyond the compartment-side face of the compartment, exclusive of partition support members. *See* 2010 Standards §§ 213.3.1, 604.8.1.4.
- b. Modify the door closer so that the force for pushing or pulling open the door is five pounds or less. *See* the 2010 Standards §§ 206.5.2 and 404.2.9.
- c. If Costar provides coat hooks on the stall door, a coat hook shall be mounted 48 inches maximum and 15 inches minimum above the finish floor. *See* the 2010 Standards §§ 213.3.7, 603.4 and 308.

IV. MONITORING AND COMPLIANCE

16. Within 180 days of the effective date of this Agreement, Costar shall provide the United States with written confirmation of all steps that Costar has taken pursuant to section III of this Agreement.

17. Costar 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.

18. 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 Restaurant at any time, and counsel for the United States need not identify themselves in the course of visits to the public areas.

V. ENFORCEMENT

19. If the United States believes that this Agreement or any of its requirements has been violated, it will notify Costar in writing and attempt to resolve the issue or issues in good faith. If the United States and Costar 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

20. In consideration for Costar'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.

21. 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 any other government website.

22. 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.

23. This Agreement memorializes the commitments made by Costar 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.

24. This Agreement does not constitute an admission by Costar of non-compliance with any provision of the ADA.

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

26. 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.

27. This Agreement constitutes the entire agreement between the parties relating to the compliance review, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this Agreement, shall be enforceable.

THE UNITED STATES OF AMERICA

BY:



LOUIS D. LAPPEN

Acting United States Attorney



MARGARET L. HUTCHINSON

Assistant United States Attorney
Chief, Civil Division

CHARLENE KELLER FULLMER

Assistant United States Attorney
Deputy Chief, Civil Division



JOHN T. CRUTCHLOW

Assistant United States Attorney



JACQUELINE C. ROMERO

Assistant United States Attorney

DATED: 8/21/17

COSTAR PARTNERS, L.P.

BY:



Melissa MacLeod

Vice President and General Counsel
Costar Partners, L.P.

DATED: 8-16-17