



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

VOLUNTARY COMPLIANCE AGREEMENT

between

THE UNITED STATES OF AMERICA

and

THE RELATED COMPANIES L.P. AND ERY VESSEL LLC

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. § 12183(a) provides that for "public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes . . . 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";

WHEREAS, a "facility" 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, a "place of public accommodation" is defined as "a facility operated by a private entity whose operations affect commerce and fall within at least one" of twelve categories, such as "an auditorium, convention center, lecture hall, or other place of public gathering"; "a museum, library, gallery, or other place of public display or collection"; "a park, zoo, amusement park, or other place of recreation"; and "a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation," as provided by 42 U.S.C. §§ 12181(7)(D), (H), (I), (L); 28 C.F.R. §§ 36.104(4), (8), (9), (12);

WHEREAS, a "commercial facility" is defined as a facility "intended for nonresidential use" and "whose operations will affect commerce," as provided by 42 U.S.C. § 12181(2);

WHEREAS, the Vessel is located within Hudson Yards, New York City ("Hudson Yards NYC"), a development in New York, New York;

WHEREAS, ERY Vessel LLC (“ERY”) holds title to the Vessel, and is a joint venture between Related Companies, L.P. (“Related”) and Oxford Hudson Yards LLC;

WHEREAS, ERY represents and warrants that it currently has, and will continue to have, sufficient funds available to design, construct, install, and operate a platform lift mechanism as described more fully in paragraph 4 of this Agreement;

WHEREAS, the Vessel is an eight-story, open air structure composed of eighty (80) interconnected platforms connected by stairways, designed and constructed after July 26, 1990, and which opened to the public in March 2019;

WHEREAS, to ascend the Vessel, an individual must climb a series of stairways interrupted by platforms; to traverse one story of the Vessel, an individual must start on the main level platform, ascend a stairway to a mid-level platform, then either ascend or descend stairways to the left and right of that platform; and as individuals ascend and descend stairways between platforms, they continue around the perimeter of the Vessel;

WHEREAS, the Vessel contains a single elevator, which reaches three of the eighty (80) platforms; one platform is located on level 5, one is located on level 7, and one is located on level 8; the top level of the Vessel is level 8.5, and the elevator does not reach any of the platforms on that top level; seventy-seven (77) out of the eighty (80) platforms are inaccessible to individuals who cannot traverse stairs because only stairways connect those platforms;

WHEREAS, due to the high demand for the elevator, Related and/or ERY has at times directed that the elevator bypass the platforms at levels 5 and 7, in order to bring individuals more quickly to and from the base of the Vessel to level 8; thus, only one platform (at level 8) is now accessible to individuals with disabilities;

WHEREAS, the Assistant Attorney General has reasonable cause to believe, and the Government alleges, that the Vessel: (i) is a “facility” as defined by 28 C.F.R. § 36.104; (ii) is a “place of public accommodation” as defined by 42 U.S.C. §§ 12181(7)(D), (H), (I), (L), and 28 C.F.R. §§ 36.104(4), (8), (9), (12); and (iii) is a “commercial facility” as defined by 42 U.S.C. § 12181(2);

WHEREAS, the Government alleges that the Vessel is a multi-story facility with more than 3,000 square feet per story, and thus is required to have at least one accessible route connecting each story, *see* 2010 ADA Standards for Accessible Design, as defined in 28 C.F.R. § 36.104 (“2010 Standards”), § 206.2.3, and at least one accessible route must connect the entrance with all accessible spaces, *see* 2010 Standards § 206.2.4; as a result, the Vessel must be both horizontally and vertically accessible, in that each of the 80 platforms must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs;

WHEREAS, Related and ERY dispute the Government’s allegations set forth above, and deny that the ADA applies to the Vessel on the ground that it is neither a “public accommodation,” as defined by Title III of the ADA, nor a “commercial facility,” as defined by 42 U.S.C. § 12181(2);

WHEREAS, the United States, Related, and ERY share the goal of ensuring that the Vessel operates in compliance with the ADA; and

WHEREAS, in light of the actions that Related and ERY have agreed to take within the next three years 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 the allegations set forth above.

NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN THE UNITED STATES OF AMERICA, RELATED, AND ERY AS FOLLOWS:

APPLICATION AND PARTIES BOUND

1. This Agreement applies to, and is binding upon, the Government, Related, and ERY. This Agreement shall be binding on Related and ERY and their agents and employees. In the event Related and/or ERY seeks to transfer or assign all or part of their interest in the Vessel, and the successor or assign intends on carrying on the same or similar use of the Vessel, as a condition of sale Related and/or ERY shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement. The undersigned representative of Related and ERY certifies that he is authorized by Related and ERY to enter into and consent to the terms and conditions of this Agreement and to execute and legally bind Related and ERY to it. Related represents and warrants that in the event that ERY does not have sufficient funds to design, construct, install and/or operate a platform lift mechanism as described more fully in paragraph 4 of this Agreement, Related will act as a guarantor for ERY's obligations in this Agreement.

FACILITIES COVERED BY THIS AGREEMENT

2. This Agreement shall apply to the Vessel, located within Hudson Yards NYC. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person, including the Government, is any claim arising under the ADA and the Department of Justice regulations implementing the ADA pertaining to the area surrounding the Vessel, including but not limited to any other facility within Hudson Yards NYC.

INSTALLATION AND OPERATION OF PLATFORM LIFTS

3. In consideration of, and consistent with, the terms of this Agreement as set forth herein, the Government agrees to close its review and investigation ("Compliance Review") of the Vessel, and to refrain from filing a civil suit against Related and/or ERY in connection with the Vessel, except as provided for in paragraphs 15 - 16 of this Agreement.

4. By January 31, 2021, unless otherwise agreed upon by the parties in writing, Related and/or ERY will design, construct, and install a platform lift mechanism that will enable wheelchair users to traverse the stairways and platforms of the top levels (levels 8 and 8.5) of the Vessel. The platform lift mechanism will take the form of either:

- (a) two (2) inclined platform lifts, which shall comply with the 2010 Standards and the standards issued by the American Society of Mechanical Engineers (“ASME”). Specifically, and as reflected on Exhibit A, a platform lift will branch out from the left and the right of the platform accessible by the elevator at level 8, column E (the “Starting Platform”), on the outside balustrade. One platform lift will make a continuous loop from the Starting Platform ending at platform KT. The second platform lift will make the opposite loop, providing a continuous lift from the Starting Platform in the opposite direction to platform KT; or
- (b) one (1) continuous platform lift, which shall branch out from the left or right of the Starting Platform, on the outside balustrade, and shall comply with the 2010 Standards and the standards issued by the ASME. Specifically, as reflected on Exhibit B, a single platform lift will branch out from the Starting Platform and circumnavigate the entire Vessel in a single continuous loop at levels 8 and 8.5.

5. The platform lift(s) will comply with 2010 Standards § 410.1. Related and/or ERY shall meet and confer with the Government in the event that Related and/or ERY believe that any applicable New York State and/or New York City codes and/or regulations may require alterations to paragraphs 4(a) or 4(b) above. If the parties cannot reach a resolution, the parties shall follow the procedures outlined in paragraphs 15 - 16 below.

6. The platform lift(s) shall comply with the following requirements: (a) have retaining arms in lieu of an enclosure with doors as reflected on Exhibit A; (b) have interior dimensions of at least 30 inches by 48 inches; (c) have a floor surface that is stable, firm, and slip resistant; (d) the change in level at the lift entrance and exit shall be no greater than ¼ inch high or between ¼ inch and ½ inch high and beveled with a slope no greater than 1:2; (e) platform lift operating controls shall be located between 15 and 48 inches high; shall be usable with one hand; shall not require tight grasping, pinching, or twisting of the wrist to operate; and shall require no more than 5 pounds of force to operate; (f) standby power shall be provided for the platform lift(s) to serve as part of an accessible means of egress; and (g) each platform lift(s) will comply with the 2010 Standards §§ 206.7, 207.2, 303, 305, 308, 309, 410 and with the ASME A18.1 Safety Standard for Platform Lifts and Stairway Chairlifts (1991 edition or 2003 edition).

7. The platform lift(s) shall be maintained in working order so that they are accessible to, and usable by, persons with disabilities. Routine and periodic inspections and tests of the platform lift(s) shall be performed in compliance with ASME A18.1.

8. Related and/or ERY shall station, at reasonable intervals along the balustrade at the 8 and 8.5 levels, employees who are trained in the operation of the platform lift(s) and able to assist visitors with disabilities upon request.

9. Related and/or ERY shall develop a procedure to enable a person using a wheelchair to safely exit the Vessel if the platform lift(s) malfunction and shall train employees on this procedure, which may include providing manual assistance to the affected individual. Related and/or ERY shall provide the training materials to counsel for the United States before conducting such training, and shall provide confirmation each year the Agreement is in effect that such training has been conducted for each employee who may be required to perform such functions. In

addition, Related and/or ERY shall install an emergency call feature to enable visitors with disabilities to request assistance in the event an attendant is unavailable.

10. In the event of unforeseen circumstances beyond Related's and/or ERY's control, including but not limited to acts of God, regulation or law or other action of any government or agency, destruction of production facilities both domestic and abroad, destruction of materials, labor disturbances, or failure of suppliers, public utilities or common carriers, the Government shall not unreasonably withhold its agreement to extend the time period set forth in paragraph 4 above, subject to discussions between the parties as to an appropriate extension period based on the circumstances. Notwithstanding the foregoing, subsequent to the abeyance of any unforeseen circumstances, Related and/or ERY shall promptly resume its efforts to design, construct and install the platform lifts.

OPERATIONAL CHANGES

11. By March 1, 2020, unless otherwise agreed upon by the parties in writing, Related and/or ERY shall:

- a. ensure that the elevator stops at levels 5 and 7 upon request, thus allowing visitors to access platforms E5 and E7 from the elevator;
- b. prominently post at the entrance to the elevator and in other locations around the Vessel a sign stating, in sum and substance, "Priority Access to the Elevator Is Reserved For Visitors With Disabilities";
- c. engage best efforts to operate the elevator on a pre-set, timed schedule, which shall be posted on the Vessel's website and in locations around the Vessel; and
- d. modify the Vessel's online and in-person ticket reservation options to allow individuals (i) to obtain tickets indicating that the ticket holder is permitted to receive priority access to the elevator, and (ii) to reserve a specific time to enter the elevator at the ground level.

12. Within twenty-four hours of implementing the changes specified in paragraph 11, above, Related and/or ERY shall provide to counsel for the United States confirmation that it has met these obligations.

CONTINUING OBLIGATIONS

13. Excluding any emergency situations, in the event Related and/or ERY seek to materially modify any of the requirements in paragraphs 4-11, above, due to any structural, engineering, technical, mechanical, architectural or operational necessity or to improve accessibility for visitors with disabilities or for any other reason, Related and/or ERY shall first consult with counsel for the Government before implementing any changes that would materially deviate from the requirements in paragraphs 4-11. If the parties cannot reach a resolution, the parties shall follow the dispute resolution mechanism outlined in paragraphs 15-16, below.

RIGHT TO REVIEW COMPLIANCE

14. Upon reasonable advance written notice to Related and/or ERY (through undersigned counsel), Related and/or ERY shall permit the Government and any person acting on its behalf reasonable access to the Vessel to review compliance with the ADA and this Agreement. For two years from the effective date of this Agreement, Related and/or ERY shall provide to the Government a report (every 120 days) on the operation of the elevator, the operation of the platform lifts, and, if available, the average wait time for the elevator and platform lifts.

15. If the United States believes that this Agreement or any of its requirements have been violated, it will notify Related and/or ERY in writing (the "Notice") and seek to resolve the matter amicably before seeking judicial relief. Related and/or ERY shall have thirty (30) days to respond to the Notice. Any such Notice shall set forth in reasonable detail the facts and circumstances supporting the Government's position that Related and/or ERY have violated this Agreement or otherwise are not in compliance with the ADA.

16. If, after exhausting the requirements of paragraph 15, the Parties cannot resolve the issue(s) raised by the Government within sixty (60) days of the date Related and/or ERY provides its written response to the Government's Notice, the Government may, but is not required to, institute a civil action in the United States District Court for the Southern District of New York to enforce the terms of this Agreement and/or the ADA.

RESERVATION OF RIGHTS

17. Nothing contained in this Agreement is intended or shall be construed as a waiver by the Government of any right to institute any proceeding or action against Related and/or ERY for violations of any statutes, rules or regulations administered by the Government, or to prevent or limit the rights of the Government 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. However, subject to Related's and ERY's full compliance with the Agreement, the Government shall not file a complaint or institute any legal proceeding(s) against Related and/or ERY, their agents, owners, officers, managers, directors, subsidiaries, parents, affiliates, current and former employees, successors and/or assigns pursuant to Title III of the ADA based on the same allegations identified above. This Agreement is a compromise of claims between the Government, Related, and ERY. It is based on the unique nature of this particular facility and its provisions are not necessarily applicable to any other entities or facilities.

MODIFICATION

18. There shall be no modification of this Agreement without the written consent of the Government on the one hand, and Related and/or ERY on the other.

ENTIRE AGREEMENT

19. This Agreement represents the entire agreement between the Government, Related, and ERY. No prior agreements, oral representations or statements shall be considered part of this Agreement.

MISCELLANEOUS PROVISIONS

20. This Agreement may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

21. The Effective Date of this Agreement is the date of the last signature on the Agreement. The term of this Agreement is three years from the Effective Date.

22. In consideration of the funds the Government expects Related and/or ERY to expend on installing the platform lift(s) described in paragraph 4 above, and although Related and ERY dispute and deny the Government's allegations, the parties have agreed that Related and/or ERY will pay the Government the amount of ten thousand dollars pursuant to 42 U.S.C. § 12188 in order to resolve this matter. Payment of this amount shall be made within thirty (30) days after the date of the full execution of this Agreement, by wire transfer to the United States Department of Justice, with transfer instructions to be provided by the undersigned Government counsel.

23. This Agreement does not constitute an admission by Related or ERY of non-compliance with any provision of the ADA, state, local or any other laws, whether regulatory, common or statutory, pertaining to accessibility.

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

25. A copy of this Agreement shall be made available to any person upon request.

26. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. 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.

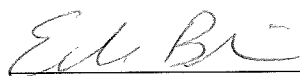
COSTS AND FEES

27. Each party shall bear its own costs and attorney's fees in connection with this Agreement.

FOR THE UNITED STATES:

Date: December 20, 2019
New York, New York

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Date: December __, 2019
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