UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DIRECTOR
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November 23, 2020

Sent via email only to: president@yu.edu

Rabbi Dr. Ari Berman
President
Yeshiva University
Office of the President
500 West 185th Street, Belfer Hall 1200
New York, New York 10033

Re: Case No. 02-16-2325
Yeshiva University

Dear President Berman:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against Yeshiva University (the University). The Complainant alleged that the University failed to provide an accessible women's restroom in the lobby of the Brookdale dormitory, located on the University's Israel Henry Beren Campus (Allegation 1); and an accessible route for individuals with mobility impairments to travel from the 245 Lexington Avenue building entrance (designated as an accessible entrance) to the fifth floor chemistry laboratory, located in the adjoining building at 253 Lexington Avenue (Allegation 2).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that "[n]o qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies."

In its investigation, OCR interviewed the Complainant. OCR also reviewed documentation that the University provided. Additionally, OCR conducted inspections of the campus on two separate dates. OCR made the following determinations.

The University is a private co-educational institution with four campuses located in New York City, in Manhattan, and the Bronx. The University's Israel Henry Beren Campus (Beren Campus) is located in midtown Manhattan; and consists of several academic/administrative buildings and four women's residence halls located nearby. Some of the buildings are located adjacent to one another and/or connect at different floors.

With respect to Allegation 1, the Complainant alleged that the University failed to provide an accessible women's restroom in the Brookdale dormitory lobby. The Complainant asserted that the Brookdale dormitory was the only accessible dorm on the Beren Campus, and it did not have an accessible restroom in its lobby.

The Brookdale dormitory is located on the Beren Campus at 50 East 34th street. It is a 20-story building consisting of four and five-person suites that house undergraduate women. OCR determined that the University conducts programs in the lounge area of the Brookdale dormitory lobby.

OCR determined that the Brookdale dormitory was constructed in or around 1962. The regulation implementing Section 504, at 34 C.F.R. §104.22, categorizes facilities constructed on or before June 3, 1977, as "existing facilities." Accordingly, OCR determined that the Brookdale dormitory is an existing facility under Section 504. The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities. Accordingly, each program or activity operated in the Brookdale dormitory, when viewed in its entirety, must be readily accessible to individuals with disabilities. The regulation does not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

The University informed OCR that sometime in early 2017, it had renovated a single-sex men's restroom located in the Brookdale lobby lounge area to create an accessible unisex restroom in that location. The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as "new construction." Accordingly, OCR determined that this unisex restroom in the Brookdale dormitory lobby is new construction under the regulation implementing Section 504. The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. All new construction or alteration of existing facilities commenced after March 15, 2012, must conform to the 2010 American with Disabilities Act Standards for Accessible Design (2010 ADA Standards).

The University informed OCR that it completed renovations to the newly designated unisex restroom in accordance with the 2010 ADA Standards. Accordingly, during OCR's site

inspections, OCR evaluated the facility elements at issue in the unisex restroom and the path of travel to the accessible restroom to determine whether these complied with the 2010 ADA Standards.

During its first on-site inspection, OCR determined that the toilet flush control was not on the wide side of the toilet [2010 ADA Standards, Section 604.6 - Flush controls must be located on the open side of the water closet except in ambulatory accessible compartments]. Subsequently, the University notified OCR that it had corrected this concern by installing an automatic flush control in compliance with the 2010 ADA Standards. During its second on-site inspection, OCR inspected the automatic flush control and confirmed that it complies with the 2010 ADA Standards. Accordingly, OCR determined that this concern has been resolved and OCR will take no further action with regard to Allegation 1.

With respect to Allegation 2, the Complainant alleged that the University failed to provide an accessible route for individuals with mobility impairments to travel from the 245 Lexington Avenue (245 Lexington) building entrance (designated as an accessible entrance), to the fifth-floor chemistry laboratory, which is located in the adjoining 253 Lexington Avenue building (253 Lexington). The Complainant informed OCR that she has a medical condition that limits her mobility; as a result, she uses a XXXXXX or a XXXXXXXXXX at times. The Complainant informed OCR that in XXXXXX XXXX, she had a chemistry lab that met once per week on the fifth floor of 253 Lexington. The Complainant stated that in order to access the chemistry lab, she used the stairs or a platform lift to enter the building located at 245 Lexington, and then travelled by elevator to the fifth floor of 245 Lexington, which connects by an interior corridor to the fourth floor of 253 Lexington. In order to get from the fourth to the fifth floor of 253 Lexington, individuals could use either a staircase or a freight elevator that was operated by University staff.[1] Once on the fifth floor of 253 Lexington, corridor(s) lead to the entry of the chemistry lab.

The University informed OCR that the rear of 245 Lexington is adjacent to 253 Lexington and the chemistry labs are located on the fifth floor of 253 Lexington. There are interior walkways connecting 245 Lexington and 253 Lexington on some but not all floors.

During its first on-site inspection, OCR reviewed the University's designated accessible route from 245 Lexington to the fifth-floor chemistry lab located at 253 Lexington. At that time, the University's designated accessible route began at the street level of 245 Lexington, and required travelling by passenger elevator to the fifth floor of 245 Lexington and then following a winding corridor through three sets of doors, which led to the fourth floor of 253 Lexington. To get from the fourth to the fifth floor of 253 Lexington, where the labs are located, one would have had to either ascend stairs or travel by a non-public freight elevator, which had to be manually operated (i.e., by control lever) by a trained University staff member.

[1] The Complainant asserted that the freight elevator was very old and broke down frequently and was operated by a security guard using a lever. The Complainant also asserted that the freight elevator was unsafe, it was "jerky" and skipped floors, and was used to carry garbage. She stated that when the elevator was broken, she asked a friend to XXXXX her XXXXXX and the Complainant would climb a full flight of steps to reach her lab in 253 Lexington. The University denied that it ever failed to accommodate the Complainant; and asserted that the Complainant received numerous accommodations from the University through its Office of Disability Services.

During the course of OCR's investigation, the University elected to make the fifth-floor chemistry labs in 253 Lexington accessible by making structural changes to portions of the route from 245 Lexington to the fifth floor of 253 Lexington, rather than relocate the chemistry labs from the fifth floor of 253 Lexington to an alternate location. During its second on-site inspection, OCR inspected the designated accessible route from 245 Lexington to the chemistry lab on the fifth floor of 253 Lexington, to determine whether the route was accessible.

The exterior route from the street level to the main entrance of 245 Lexington

The University designated the main entrance to 245 Lexington as a component of the accessible route to the fifth-floor chemistry lab, located at 253 Lexington. To access the main entrance of 245 Lexington, an individual would either use a staircase or a vertical enclosed platform lift that travels from street level to a walkway leading to the entry doors to 245 Lexington.

The Complainant informed OCR that the street level lift was operated by available security personnel, with a key, upon request. For the Complainant to use the lift, someone at street level would have to open the ingress door to the lift. The Complainant stated that this was done by a security officer. Once the Complainant was inside the lift, the security officer would operate the lift by key. Once the lift had ascended to the level on which the main entrance doors to 245 Lexington were located, the security guard would open the door so that the Complainant could exit the lift and enter the building. The Complainant informed OCR that she requested a key to operate the lift, but the University denied the request, citing security reasons.

The University confirmed that the lift is operated by security personnel located at the security desk of 245 Lexington. An individual who requests access to the lift is required to ring an intercom buzzer at street level and request assistance from University personnel, who will then operate the lift with a key.

The Complainant stated that if the lift was not operational, one of the security officers would direct the Complainant to a locked delivery entrance for the cafeteria on a block adjacent to 253 Lexington, unlock the door, and escort the Complainant to the freight elevator in 253 Lexington and up to the fifth floor of that building to provide access to the lab in 253 Lexington. The Complainant informed OCR that the Office of Disability Services (ODS) notified security personnel of her schedule so that they were aware ahead of time when she would need to access the lift and freight elevator. The Complainant stated that, on a few occasions, she had to wait for entrance when a security guard was otherwise engaged, such as when a delivery was occurring at the building at the same time. She stated that on one occasion she had to wait for 45 minutes.

The University informed OCR that the platform lift for 245 Lexington was installed in 2007. Accordingly, OCR determined that the lift must be in compliance with the Uniform Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG). OCR reviewed the accessibility of the lift pursuant to UFAS. UFAS Section 4.11 applies to platform lifts.

UFAS Section 4.11.2 - Other Requirements provides that if platform lifts are used, they shall comply with 4.2.4, 4.5, 4.27 and the applicable safety regulations of administrative authorities having jurisdiction. UFAS Section 4.2.4.1 (Size and Approach) provides that the minimum clear floor or ground space required to accommodate a single, stationary wheelchair occupant is 30 inches by 48 inches. OCR determined that the dimensions of the platform lift at 245 Lexington are 36 ¾ inches x 51 inches, which meet the minimum dimensions for both required approaches for entry.[2] OCR determined that the floor surface appears level, stable, firm, and slip resistant, in accordance with the requirements of UFAS Section 4.5. UFAS Section 4.27.3 (Controls and Operating Mechanisms – Height) provides that the highest operable part of all controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Except where the use of special equipment dictates otherwise, electrical and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor. OCR determined that the lift call buttons, which are 37 inches high as measured from the floor, are within the acceptable range of reach requirements.[3] The call buttons (one for up and one for down), which may be operated by one hand, are in compliance with UFAS Section 4.27 Controls and Operating Mechanisms.

UFAS Section 4.11.3 (Entrance) provides that if platform lifts are used, then the lifts should facilitate **unassisted entry and exit** from the lift in compliance with 4.11.2. OCR determined that the features of the lift are key-operated and University security staff retains the key to the lift. Specifically, a key is required to open the doors at the bottom and top terminals to access the interior of the lift, and to operate the lift. OCR determined that the door at the landing, bottom terminal, is a glass door that is manually operated without power assistance and cannot be closed from inside in the lift because it has no interior handle. The door at the landing, top terminal is also a manually operated door that has no handle on the inside of the door and cannot be opened or closed from inside the lift. OCR concluded that the key operation with restricted access and lack of interior door handles render the lift inoperable without assistance to the user. Based on the foregoing, OCR determined that at the time of its on-site visit, the lift did not comply with UFAS Section 4.11.3 (Entrance).[4]

Exterior entrance doors at 245 Lexington Avenue

After navigating the platform lift and a covered outdoor pathway, in order to enter the building one must use the exterior entrance doors. These doors lead into a vestibule with a security desk, where security personnel screen all entrants to the building. The University's designated

[2] The landing at the bottom terminal requires a forward approach and the landing at the top terminal requires a parallel approach; the door to the lift at the landing at the bottom terminal is on the short side and the other door to the lift at the landing top terminal is on the longer side.

[3] See UFAS Section 4.2.5 (forward reach – maximum height of 48 inches, minimum of 15 inches) and 4.2.6 (side reach maximum height of 54 inches, minimum low of 9 inches). Similar requirements are set forth in ADAAG at Section 4.2.5 and 4.2.6.

[4] Similar requirements are set forth in ADAAG at Section 4.11.3 (Entrance). During OCR's on-site visit, OCR determined that the door at the top terminal landing that normally opens to 42 inches was stuck and could open only to 25 inches. The University subsequently provided evidence to OCR indicating that it has installed self-closing mechanisms at the bottom and top terminals of the lift and adjusted the door to the lift so that it now swings freely without becoming stuck. OCR will conduct an inspection to evaluate any modifications the University has made to the lift since OCR's last on-site visit.

accessible door (double door to the left when facing the building) was unlocked during OCR's first on-site inspection, but was locked during OCR's second on-site inspection.[5] OCR determined that the exterior entrance door has a clear width of 32 inches, which complies with the requirement in UFAS Section 4.13.5 (Clear Width) that doorways shall have a minimum clear opening of 32 inches with the door open 90 degrees. Beyond the security desk in the lobby area, there is an elevator bank with three elevators. The entrance into 245 Lexington from the exterior door is a level route with no stairs, changes in level, or ramps. OCR did not note any concerns regarding the designated accessible route from the exterior entrance of 245 Lexington to the elevator bank and found that the route meets the minimum requirements of UFAS Section 4.3 Accessible Route.

Elevators – 245 Lexington

The elevators at 245 Lexington are used to access the fifth floor of 245 Lexington, which connects to the fourth floor of 253 Lexington. OCR inspected each of the three elevator cars in 245 Lexington and determined that all meet the minimum requirements of UFAS Section 4.10 (Elevators).

Connecting Route from the Fifth Floor of 245 Lexington to the Fourth Floor of 253 Lexington

By January 2019, the University completed alterations to portions of the designated accessible interior route to the chemistry lab in order to conform with the 2010 ADA Standards, including alterations to the walkway connecting the fifth floor of 245 Lexington to the fourth floor of 253 Lexington. OCR conducted an on-site inspection of these elements using the 2010 ADA Standards.

The elevator at 245 Lexington opens to a wide corridor with no changes in levels or ramps. The floor and ground walking surfaces appear to be stable, firm, and slip resistant. The elevator corridor on the fifth floor of 245 Lexington leads to a series of doors with corridors in between. The doors along the route include a manual push/pull door (Door 1)[6] and automatic power assisted doors each equipped with a manually operated control (Doors 2 and 3). OCR determined that Doors 1, 2 and 3 each meet the minimum clear width requirement of 32 inches, as specified in Section 404.2.3 or Section 404.3.2 of the 2010 ADA Standards, and are within the maximum threshold limit (1½ inches) indicated in Section 404.2.5 of the 2010 ADA Standards.[7] OCR further determined that there is adequate maneuvering clearance for each of the doors, in accordance with Section 404.2.4 of the 2010 ADA Standards.[8] OCR determined that the distance between the doors along the route meets the minimum clearance of 48 inches between doors in a series, pursuant to

[5] University staff opened the locked door for OCR. OCR will provide technical assistance to the University regarding its obligation to ensure that the designated accessible doors are unlocked.

[6] OCR measured the Door 1 pull/push as 2.8 lb./4lb., respectively, and determined that the door opening force of Door 1 was below the maximum door opening force of 5 pounds (Section 404.2.9 of the 2010 ADA Standards). The door hardware appears to be operable with one hand and did not require tight grasping, pinching, or twisting of the wrist (Section 309.4 of the 2010 ADA Standards).

[7] See 2010 ADA Standards Section 404.2.6 Doors in Series and Gates in Series.

[8] Section 404.2.4 Maneuvering Clearances provides that maneuvering clearances at doors and gates shall comply with 404.2.4. OCR determined the minimum maneuvering clearances provided by Section 404.2.4.1 were not exceeded. Section 404.3.2 Maneuvering Clearance. Clearances at power-assisted doors shall comply with 404.2.4.

Section 404.2.6 of the 2010 ADA Standards.[9] The surface of the corridors between each door and leading to the elevator appears to be stable, firm, and slip resistant; and most has no changes in level or ramps. There is one ramp leading to Door 3, the clear width of which meets the minimum requirement of 36 inches, including the clear width between handrails as specified in Section 405.5 of the 2010 ADA Standards (Clear Width). The slope of the ramp run is not steeper than 1:12 at any of the measured points; accordingly, it did not exceed the maximum slope as specified in Section 405.2 of the 2010 ADA Standards (Slope). Handrails ran the length of the ramp runs at a consistent height of 35 ½ inches on both sides.[10]

Elevator in 253 Lexington

During the course of OCR's investigation, the University informed OCR that it has replaced an existing freight elevator in 253 Lexington with a passenger-operated elevator consistent with the 2010 ADA Standards. Accordingly, OCR inspected this element using the 2010 ADA Standards.

The elevator is part of the designated accessible route from 245 Lexington to the fifth-floor chemistry laboratory in 253 Lexington. The elevator on the fourth floor of 253 Lexington is used to reach the fifth floor of 253 Lexington, where the chemistry lab is located.

OCR determined that the elevator door clear width is 36 inches, in accordance with the minimum required door clear width set forth in Section 407.4.1 of the 2010 ADA Standards. The height of the elevator call button is 42 inches off the floor and is consistent with Section 407.2.1 of the 2010 ADA Standards (Call Controls: Height). The car door is located on the side (off-centered door). The clearance between the car platform sill and the edge of any hoistway landing is 1¼ inches in accordance with the maximum allowable platform to hoistway clearance (1¼ inches), pursuant to Section 407.43 Platform to Hoistway Clearance of the 2010 ADA Standards. The elevator has appropriate signs at both jambs of elevator hoistway entrances, in compliance with Section 407.2.3 of the 2010 ADA Standards; floor designations are provided in both tactile characters that are a minimum of 2 inches high and in braille. OCR did not note any concerns with door and signal timing.

The interior dimensions of the elevator cab are 52 ½ inches by 76 inches and are in compliance with Section 407.4.1 Car dimensions (exception) for an existing elevator car configuration, of the 2010 ADA Standards.[11] The elevator floor surfaces appear to be level, stable, and slip resistant,

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[9] Section 404.2.6 Doors in Series and Gates in Series. The distance between two hinged or pivoted doors in series and gates in series shall be 48 inches minimum plus the width of doors or gates swinging into the space.

[10] OCR determined that the handrails meet the minimum clearance requirement of 1½ inches between handrail gripping surfaces and adjacent surfaces, as specified in Section 505.5 (Clearance). Further, OCR determined that the handrail gripping surface with a non-circular cross section meets the perimeter dimensions required of Section 505.7.2 (4 inches minimum and 6¼ inches maximum and a cross-section dimension of 2¼ inches maximum). OCR noted that in the corridor leading to Door 3, there were a number of large water bottles stored below the handrails; these should be relocated from the path of travel as these are possible impediments to the use of the handrails. OCR noted, however, that even with the water bottles present, the corridor width is 48 inches; accordingly, it was sufficiently wide. OCR will provide technical assistance to the University regarding its obligation to ensure that the corridor is kept free from any obstructions.

[11] See 407.4 Elevator Car Requirements, Exception: which states: "Existing elevator car configurations that provide a clear floor area of 16 square feet … minimum and also provide an inside clear depth 54 inches … minimum and a

in accordance with Section 407.4.2 of the 2010 ADA Standards. The elevator car controls are located within a range of 45½ inches (above the floor) to 34¼ inches (off the floor). The size of the call button is 1 inch and exceeded the minimum required size of ¾ inch set forth in Section 407.2.1.2 of the 2010 ADA Standards (Size). OCR did not note any compliance concern with regard to the clear floor or ground space as required by Section 407.2.1.3 of the 2010 ADA Standards (Clear Floor or Ground Space). OCR also did not note any concerns as to the designations and indicators of car controls required in accordance with Section 407.4.7 of the 2010 ADA Standards (Designations and Indicators of Car Controls). The car control buttons are in compliance with Section 407.4.1 of the 2010 ADA Standards (Buttons) and are identified by tactile characters and raised character and braille designations and symbols in accordance with that section. Based on the foregoing, OCR determined that there is no compliance concern with regard to the newly renovated elevator in 253 Lexington.

Route from the elevator at the fifth floor of 253 Lexington to the entrance to the chemistry lab

The elevator at 253 Lexington opens on the fifth floor to a wide corridor with no changes in levels or ramps. The floor and ground walking surfaces are tiled and appear to be stable, firm, and slip resistant. The corridor leading from the elevator to the entrances to the Organic Chemistry Lab and the General Chemistry Lab is L-shaped. OCR determined that the L-shaped corridor provided the required clear width of 32 inches minimum; the first leg of the L is 58 inches wide and the second leg of the L is 54¾ inches wide. OCR determined that the corridor from the elevator to the entrance doors of each of the chemistry labs meets the minimum requirements of Section 403 Walking Surfaces of the 2010 Standards. Based on the foregoing, OCR determined that there is no compliance concern with regard to the route from the elevator at the fifth floor of 253 Lexington to the entrance to the chemistry lab.

Entrance doors to the organic chemistry and general chemistry Labs (253 Lexington)

The entrance doors to the organic chemistry and general chemistry labs are both 33 inches wide, thereby meeting the minimum clear width requirement of Section 404.2.3 of the 2010 ADA Standards; and are within the maximum threshold limit (½ inch) indicated in Section 404.2.5 of the 2010 ADA Standards.[12] Each door has a hydraulic opener. OCR measured the pull/push for both doors and determined that the door opening force for each is below the maximum of 5 pounds.[13] The door hardware for both doors appears to be operable with one hand and did not require tight grasping, pinching, or twisting of the wrist.[14] Based on the foregoing, OCR determined that there is no compliance concern with regard to entrance doors to the chemistry labs at 253 Lexington.

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clear width 36 inches … minimum shall be permitted. See also Figure 407.4.1 Elevator Car Dimensions (e) existing elevator car configuration.

[12] Section 404.2 Manual Doors, Doorways, and Manual Gates. Provides that manual doors and doorways and manual gates intended for user passage shall comply with 404.2. Section 404.2.3 Clear Width. Door openings shall provide a clear width of 32 inches.

[13] Section 404.29 provides that the force for pushing or pulling open a door or gate shall be 5 pounds maximum for interior hinged doors.

[14] Section 404.2.7 Door and Gate Hardware. Handles, pulls latches, locks, and other operable parts on doors and gates shall comply with 309.4. OCR did not observe any accessibility concerns in regard to the door hardware of Door 1 as further required by Section 309.4 Operation.

On November 17, 2020, the University signed the attached resolution agreement (Agreement) to address the compliance concerns identified in this letter. As previously stated, OCR will monitor the implementation of the Agreement.

This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Amy Randhawa, Compliance Team Attorney, at (646) 428-3781 or sandeep.randhawa@ed.gov; Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3763 or jane.momo@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Attachment

cc: John W. Egan, Esq. (jegan@seyfarth.com)
Samuel Sverdlov, Esq. (SSverdlov@seyfarth.com)