

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
CANOPY AIRPORT PARKING AND PROPARK, INC.

DJ # 202-13-345

INTRODUCTION

1. This Settlement Agreement (Agreement) is entered into among the United States Department of Justice (United States), by and through the U.S. Attorney's Office for the District of Colorado, and Canopy Airport Parking and Propark, Inc. (Canopy Airport Parking and Propark, Inc. are collectively referred to as "Canopy" in this Agreement, and all parties are collectively referred to as "the Parties").
2. The United States received a complaint that an individual using a wheelchair made a reservation to park at Canopy's off-airport parking facility and take Canopy's complimentary shuttle service to Denver International Airport. The complainants, a couple, one of whom uses a wheelchair, were reassured over the telephone that Canopy would be able to accommodate a wheelchair for the shuttle ride to the airport. When the complainants arrived at Canopy, they were informed that Canopy's only wheelchair-accessible shuttle was inoperable, and the complainants could not park at Canopy because there was no means to transport them to the airport.

TITLE III COVERAGE

3. The Attorney General is responsible for enforcing Title III of the ADA, 42 U.S.C. §§ 12181-89, and the relevant regulations implementing Title III, 28 C.F.R. pt. 36 and 49 C.F.R. pts. 37 and 38.
4. Canopy is a private company with a Colorado business address and place of business located at 8100 Tower Road, Commerce City, Colorado. Propark, Inc. owns Canopy Airport Parking and has its principal place of business located at One Union Place, Hartford, Connecticut. Although not primarily engaged in the business of transporting people, Canopy also provides fixed-route transportation services. Canopy is a public accommodation within the meaning of 42 U.S.C. § 12181(7)(A) and 28 C.F.R. § 36.104 and is subject to the non-discrimination provisions of 42 U.S.C. § 12182(b)(2)(B) and (C) and 49 C.F.R. § 37.101.
5. The ADA prohibits public accommodations from discriminating on the basis of disability in the provision of their goods, services, and facilities. The ADA prohibits private entities not primarily engaged in transportation that operate fixed-route transportation systems from purchasing or leasing vehicles that are not accessible to or usable by individuals with disabilities, including individuals who use wheelchairs, except in circumstances where the system ensures an equivalent level of service to individuals with disabilities, including individuals who use wheelchairs,. 42 U.S.C. § 12182(b)(2)(B)-(C); 49 C.F.R. §§ 37.101, 37.105.

6. A fixed-route service is a system of transporting individuals along a prescribed route according to a fixed schedule. Canopy's fixed-route service typically comprises transporting parking customers between its parking facility and the Denver airport. The fixed-route service operates whether or not a particular passenger is present and no action by the individual is needed to initiate the service. 42 U.S.C. § 12181(4), 49 C.F.R. § 37.3.

7. For fixed-route service providers, any vehicle purchased or leased by Canopy with a seating capacity of 16 or fewer must be accessible, unless Canopy provides equivalent service. 42 U.S.C. § 12182(b)(2)(B)(ii); 49 C.F.R. § 37.101(c).

8. A fixed-route system provides equivalent service if, when viewed in its entirety, the service is available to individuals with disabilities, including individuals who use wheelchairs, in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics: (a) schedules/headways; (b) fares; (c) geographic area of service; (d) hours and days of service; (e) availability of information; and (g) any constraints on capacity or service availability. 42 U.S.C. § 12182(b)(2)(B)-(C); 49 C.F.R. § 37.105.

9. A private entity that is not primarily engaged in the business of transporting people, but operates a fixed-route system, must designate at least one person to coordinate its efforts to comply with ADA regulations relating to transportation, must adopt complaint procedures that provide for the prompt and equitable resolution of complaints, 49 C.F.R. § 37.17, and must ensure that personnel are trained to operate vehicles and equipment safely, and to properly assist and treat individuals with disabilities with respect and courtesy. 49 C.F.R. § 37.173.

DETERMINATIONS

10. Canopy acknowledges that it was unable to serve the complainants because it did not have an accessible shuttle vehicle available when the complainants arrived at Canopy's facility. This occurred despite the fact that the complainants e-mailed and called ahead in an attempt to ensure that an accessible shuttle would be available.

11. The only accessible shuttle vehicle Canopy owned at the time was not operational. Canopy subsequently sold that accessible vehicle. After the sale of the sole accessible vehicle, Canopy's shuttle fleet consisted of 18 vehicles, all of which seated 16 or fewer passengers. None of the vehicles had wheelchair-accessible features, and Canopy did not have an adequate plan to provide equivalent shuttle service for individuals with disabilities who require accessible vehicles.

12. After the initiation of this investigation, Propark issued a memorandum with the subject line, "Customer ADA Complaint Policy," and Canopy has informed the United States that it has designated an ADA Compliance Officer.

13. Canopy's employee training only briefly mentioned accessible vehicles, but at the time, it did not have any accessible vehicles.

14. In consideration of the terms of this Agreement, the United States agrees to close its investigation and refrain from filing suit under Title III of the ADA for the conduct described above; provided, however, that the United States reserves the right to file a civil lawsuit to enforce this Agreement pursuant to the terms of Paragraph 36, below.

ACTIONS TO BE TAKEN BY CANOPY

15. Canopy will not discriminate against individuals with disabilities in connection with the provision of transportation services. 49 C.F.R. § 37.5(a).

16. Canopy agrees to submit a plan for the United States' review and approval to provide equivalent service for individuals with disabilities. Canopy will implement this plan within thirty (30) days from the date of the United States' approval of the plan.

17. Within 180 days of the Effective Date, Canopy will make all reasonable efforts to either (1) retrofit two of its current shuttle vehicles such that they are accessible to individuals who use wheelchairs, or (2) acquire two additional shuttle vehicles that are wheelchair accessible. If Canopy is unable to complete these actions within 180 days of the Effective Date, it will submit a report to the United States within 190 days of the Effective Date as to the efforts made, and the reasons why it was unable to retrofit or acquire accessible shuttles. In any event, Canopy shall retrofit or acquire two accessible shuttle vehicles no later than 545 days from the Effective Date of this Agreement.

18. Each time a Canopy shuttle operator begins operating an accessible shuttle vehicle at the beginning of a shift, they shall test the wheelchair lift. 49 C.F.R. § 37.163. If the lift is not operational, that vehicle shall not be used to transport any passengers until the lift is repaired.

19. Within 60 days of the Effective Date, the ADA Compliance Officer shall attend training on the requirements of Title III of the ADA, including the obligations of the Department of Transportation's ADA regulations. *See* 49 C.F.R. § 37.173. If Canopy designates a new ADA Compliance Officer during the term of the Agreement, it shall notify the United States in writing to zeyen.wu@usdoj.gov, and the new ADA Compliance Officer shall meet the training requirements of this Paragraph within 30 days of their designation.

20. Within 150 days of the Effective Date, Canopy will provide a live training for all of its current shuttle operators, managers, and other employees (which can be completed virtually, but the training session(s) must be live and not pre-recorded). *See* 49 C.F.R. § 37.173. Within 90 days of the Effective Date, Canopy will submit training materials to the United States for its review and approval, which will not be unreasonably withheld. The training shall include, at a minimum: (1) general training on interaction with and serving individuals with disabilities; (2) how to use the accessible features on Canopy shuttle vehicles; (3) an explanation of Canopy's approved plan for equivalent service and when and under what circumstances such plan is triggered, including procedures for implementation; (4) the procedure for tracking all rides provided to individuals who use wheelchairs pursuant to Paragraph 23; and (5) training regarding Canopy's ADA Compliance Officer and ADA complaint policy. All new shuttle operators, managers, and other employees must complete the training described in this Paragraph within 30 days of their hire date.

21. Within 14 days of the Effective Date, on the front page of their websites and on any advertisements, promotional materials, or other publications concerning its business that are made available to the public, Canopy shall state that its free transportation to and from the airport includes transportation for individuals with disabilities, including individuals who use wheelchairs.

22. During the term of the Agreement, Canopy will log and track each time a customer seeks to park and requires accessible shuttle service. The log shall include the following information for each individual who uses a wheelchair: (1) the date and approximate time of the initial request/encounter with the individual; (2) whether the individual was provided with an accessible ride to or from the airport; (3) the name of the shuttle driver; and (4) how the ride was provided (e.g., via accessible shuttle vehicle or other means).

23. During the term of this Agreement, Canopy will provide a report annually to the United States, on the anniversary of the Effective Date, regarding its responsibilities pursuant to Paragraphs 15 through 22 of this Agreement. Canopy will send each report to Assistant U.S. Attorney Zeyen Wu at zeyen.wu@usdoj.gov, or an individual designated by the United States. Each report will include: (1) the log described in Paragraph 22; (2) information about training of employees that occurred (by date and the content of the training); (3) information about any new shuttle vehicles acquired by Canopy; (4) documentation concerning any ADA-related complaints received by Canopy; and (5) any ADA-related policies that Canopy adopted.

RELIEF FOR THE COMPLAINANTS

24. Pursuant to 42 U.S.C. § 12188(b)(2), the Parties agree to the following monetary relief: Canopy will pay \$2,000 in compensation to the complainants within fourteen (14) days of the Effective Date of this Agreement.

25. Within 10 days of payment in full of the amount set forth in Paragraph 24, the United States will send the release form attached hereto as Attachment A to the complainants. Within 10 days of receiving the signed release form, the United States will send a copy to Canopy.

IMPLEMENTATION AND ENFORCEMENT

26. The Effective Date of this Agreement is the date of the last signature below.

27. Canopy agrees to cooperate with the United States' requests for additional documentation regarding compliance with this Agreement or other complaints under the ADA.

28. Failure by the United States to enforce any provision of this Agreement is not a waiver of the United States' right to enforce any provisions of this Agreement.

29. This Agreement shall have no impact upon the rights or claims of any other individual not identified in this Agreement who has made, or may make, claims against Canopy for issues discussed herein. This Agreement is not intended to remedy any potential violations of the ADA or any other law, other than those allegations specifically addressed in Paragraph 2 of this Agreement. Nothing in this Agreement shall preclude the United States from filing a separate

action under the ADA for any alleged violation not covered by this Agreement. This Agreement does not affect Canopy's continuing responsibility to comply with all aspects of the ADA.

30. This Agreement constitutes the entire agreement between the United States and Canopy regarding the allegations described in Paragraph 2, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any Party or agents of any Party, that is not contained in this Agreement, are enforceable. This Agreement can only be modified by mutual written agreement of the Parties.

31. This Agreement is a public document. A copy of this document or any information contained in it may be made available to any person.

32. This Agreement is final and binding on the Parties, including all principals, agents, administrators, contractors, representatives, successors in interest, beneficiaries, assigns, and legal representatives thereof. Canopy and its owner(s) have a duty to notify any successors in interest about the existence of this Agreement.


33. The persons signing on behalf of each Party represent that they are authorized to bind their respective Parties to this Agreement.

34. If any term of this Agreement is determined by any court of competent jurisdiction to be unenforceable, the other terms shall nonetheless remain in full force and effect; provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, they shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the Parties' rights and obligations as closely as possible to those initially agreed upon.

35. In the event that the United States determines Canopy is in breach of this Agreement, the United States will notify Canopy in writing, and the Parties agree to negotiate in good faith to resolve the breach for at least 30 days after Canopy is notified. If the issue(s) are not resolved, the United States may seek judicial enforcement of this Agreement in federal district court for the District of Colorado.


36. The term of this Agreement shall be three years from the Effective Date.

For Canopy Airport Parking and
Propark Inc.:

By: 
David K Schmid
Chief Investment Officer
Propark, Inc.

Dated: February 2, 2022

Counsel for Canopy Airport Parking
and Propark Inc.:

By: 
Alice Conway Powers
Partner
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Dated: 2-7-22

For the United States:

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Date: 2-8-2022