SETTLEMENT AGREEMENT

REGARDING ACCESS FOR INDIVIDUALS WITH DISABILITIES TO SHANGHAI COTTAGE AT FAIRHOPE , INC.; DJ# 202-3-18

I. BACKGROUND

1. The parties to this Settlement Agreement are the United States of America, Shanghai Cottage at Fairhope, Inc. ("Shanghai Cottage") and Xian Chu Ou.

Shanghai Cottage is an Alabama corporation which operates a privately owned restaurant located at 22530 Highway 98, Fairhope, AL 36532.

Xian Chu Ou is the sole owner, shareholder, member or manager of the restaurant.

2. This Agreement is reached under Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12181 *et seq*. and its implementing regulation, 28 C.F.R. Part 36, to resolve an investigation initiated by the United States Attorney's Office for the Southern District of Alabama after it was informed by Corey Fancher that he and his wife had been refused service and asked to leave Shanghai Cottage because Corey Fancher was accompanied by his service animal.

3. Shanghai Cottage is a place of public accommodation under 42 U.S.C. § 12181(7)(B) and 28 C.F.R. § 36.104. Xian Chu Ou as sole owner and operator of Shanghai Cottage, acknowledges that the restaurant is a place of public accommodation covered by Title III of the ADA.

II. FACTS

4. The United States found in its investigation that on Sunday, August 14, 2011, complainant Corey Fancher, accompanied by his wife, visited Shanghai Cottage. Because he is blind, Mr. Fancher's service animal accompanied them. While inside the restaurant, the Fanchers asked to be seated and were then told by the hostess that "no dogs were allowed." Further, the hostess informed the

Fanchers that they must leave the premises of Shanghai Cottage. Mr. Fancher informed the hostess he was blind and that the dog was his service animal. Following a discussion in which the Fanchers informed the hostess they had the right to dine in this restaurant accompanied with Mr. Fancher's service animal, and after other patrons also informed the hostess she should allow the couple to dine with their service animal, the hostess nevertheless required the Fanchers to leave the premises.

After being refused service and required to leave the restaurant and while the Fanchers were waiting along the sidewalk outside and away from Shanghai Cottage for their friend's arrival to organize an alternate place to dine, the hostess contacted Xian Chu Ou who was not present at the restaurant premises. Following that communication, the hostess went outside and hailed the Fanchers to let them know she was mistaken and that they could, after all, dine in Shanghai Cottage if they still desired. Following the disagreement, the embarrassment, and the upsetting circumstances of being refused service at a public accommodation, the Fanchers declined and continued on to a different restaurant with their friend who by then had joined them.

5. As a result of its investigation, the United States has determined that Corey Fancher was denied equal access to the goods and services of the Shanghai Cottage when it failed to modify its policies, practices, and procedures to permit the use of a service animal by an individual with a disability. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.302.

6. In a letter dated January 9, 2012, to counsel for the United States, Xian Chu Ou expressed the reason for the hostess' refusal of service to the Fanchers was from concern that she would be committing a Health Department violation if she allowed the dog in the restaurant. As a further result of its investigation, the United States determined the 2005 Health Code applicable in Baldwin County, Alabama on August 14, 2011 expressly exempts service animals accompanying their owners, from the general prohibition against animals entering restaurants.

7. The parties have determined their respective interests can be met without engaging in litigation, and this Agreement is made to provide access to persons with disabilities and avoid the costs as well as the burdens of litigation.

III. ACTIONS TO BE TAKEN BY SHANGHAI COTTAGE AND XIAN CHU OU

8. Consistent with the law, Shanghai Cottage and Xian Chu Ou, shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Shanghai Cottage by excluding or providing unequal treatment to persons with disabilities who use service animals.

9. Shanghai Cottage and Xian Chu Ou shall adopt, maintain, and enforce the policy attached as Attachment A to this Settlement Agreement, which covers treatment of customers using service animals. Within 15 days after the effective date of this Agreement, Shanghai Cottage shall provide a copy of the policy in Attachment A to each employee or owner or contract worker ("staff") of Shanghai Cottage. This restaurant shall post a copy of the policy in the area of the restaurant where staff are given information on company policy (e.g., Worker's Compensation, Wage and Hour Laws, etc.). The policy will be communicated to staff in English and in any additional language(s) necessary for all staff to understand the policy.

10. Within 30 days after the effective date of this Agreement, Shanghai Cottage and Xian Chu Ou will also develop or procure a sign, not less than 6" x 12" with a font of 48, stating "This Restaurant Welcomes Customers With Disabilities Who Are Accompanied By Their Service Animals," which will also include this message in Braille. The sign will be installed next to the entry door of the restaurant at a height of 60 inches from the ground to the centerline of the sign.

11. Shanghai Cottage and Xian Chu Ou shall pay a civil penalty of TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) by check made payable to the "United States of America." 42 U.S.C. § 12188(b)(2)(C). This payment will be delivered with this signed Agreement to Assistant U.S. Attorney Gary Alan Moore, United States Attorney's Office, 63 South Royal Street, Suite 600, Mobile, AL 36602. This liability is a joint and several obligation of Shanghai Cottage and Xian Chu Ou.

12. All staff or owners who may be in contact with the public (including, but not limited to, hosts, hostesses, wait staff, bartenders, whether employees or contract workers, and similar personnel) of Shanghai Cottage shall undergo

suitable training on the obligations of public accommodations to serve persons with disabilities. This training shall be concluded for current staff and Xian Chu Ou within 30 days of the date of this Settlement Agreement. All future staff or owners shall be provided this same training within 30 days of their date of hire. The training, for purposes of this Settlement Agreement only, and which cannot be cited as precedent, shall include each staff member or owner being provided a copy of the "Policy" attached hereto as Exhibit A; a copy of the explanatory items attached hereto as B ("Commonly Asked Questions About Service Animals in Places of Business"); and C ("ADA 2010 Revised Requirements for Service Animals"). If the staff member or owner does not read and comprehend the English language, Xian Chu Ou (or future owner of Shanghai Cottage), shall arrange for this information to be communicated to that staff or owner in their respective native languages so that each staff member or owner will have a full and complete understanding. Each staff member or owner shall date, sign and print their respective names legibly on the Policy indicating their understanding and agreement to abide by the Policy adopted by Shanghai Cottage.

For the duration of this Settlement Agreement, upon the anniversary of its effective date, Xian Chu Ou or other future owner of Shanghai Cottage will provide copies of the signed Policy forms described just above to the U. S. Attorney's Office at the address provided herein below.

IV. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

13. In consideration for this Agreement, the United States agrees to refrain from filing any civil lawsuit based on the incident that occurred August 14, 2011. The United States reserves, however, the right to file a civil lawsuit to enforce this Agreement under the terms of paragraph 14.

14. If Shanghai Cottage and/or Xian Chu Ou fail to take any of the actions described in Section III of this Agreement under the terms and time periods specified, without obtaining sufficient advance written approval from the United States, such failure shall be considered a subsequent violation under 42 U.S.C. § 12188(b)(2)(C)(ii) and 28 C.F.R. § 36.504(a)(3)(ii), and Shanghai Cottage and Xian Chu Ou will correct this noncompliance within 30 days of being notified of the noncompliance and shall be liable to the United States of America for a civil penalty of at least $1,000 for each required action not taken in addition to any appropriate compensatory damages caused by the failure to comply. Payment of the penalty shall not be the exclusive remedy of the United States upon any breach

of this Settlement Agreement by Shanghai Cottage and Xian Chu Ou.

15. Failure by the United States Department of Justice to enforce this entire Agreement, or any provision thereof, with regard to any deadline or any other provision will not be construed as a waiver of its right to do so for other deadlines and provisions of this Agreement.

16. The United States Attorney's Office does not intend any aspect of this Agreement to evidence a legal interpretation of the ADA or any state accessibility law.

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

18. This Agreement is binding on Shanghai Cottage and Xian Chu Ou. This Agreement is also binding on any successors in interest to Shanghai Cottage and Xian Chu Ou, and each has a duty to notify all such successors in interest.

19. This Agreement is the entire agreement between the United States of America, Shanghai Cottage and Xian Chu Ou. No other statement, promise, or agreement, either written or oral, made by either party or agents of either party, not in this written Agreement will be enforceable.

20. This Agreement is limited to the facts in it. This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law. This Agreement does not purport to list all violations of the Americans with Disabilities Act that may have occurred or are occurring at Shanghai Cottage.

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

22. Notices of any kind required or contemplated under this Agreement shall be made by mailing the notice via United States Postal Service, first class certified mail, return receipt requested. Notice will be considered given on the date of receipt identified on the return receipt. Notices to the United States Attorney's Office shall be mailed to the address in the signature block below of the undersigned Assistant U.S. Attorney. Notices to the Shanghai Cottage and/or Xian Chu Ou shall be mailed to 22530 Highway 98, Fairhope, AL 36532.

23. Deadlines listed in this Agreement that fall on weekends or holidays will be extended to the next business day.

24. The effective date of this Agreement is the latest-dated signature below. The Agreement will remain in effect until three years after the Effective Date.

FOR THE UNITED STATES OF AMERICA:

KENYEN R. BROWN
United States Attorney

By: _____ Date: March 7, 2012.

Gary Alan Moore
Assistant United States Attorney
63 South Royal Street, Suite 600
Mobile, AL 36602

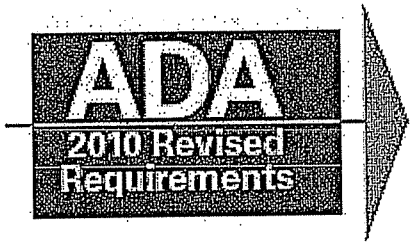
FOR XIAN CHU OU & SHANGHAI COTTAGE AT FAIRHOPE, INC.

_____ Date: February 28, 2012.
Xian Chu Ou

_____ Date: February 28, 2012.
Shanghai Cottage of Fairhope, Inc.
By: Xian Chu Ou
Its: Owner

_____ Date: February 28th, 2012.
Walter M. Cook
Attorney for Xian Chu Ou and Shanghai Cottage at Fairhope, Inc.
Phelps Dunbar, LLP
2 North Royal Street
Mobile, AL 36602

U.S. Department of Justice
Civil Rights Division
Disability Rights Section



Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

This publication provides guidance on the term "service animal" and the service animal provisions in the Department's new regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

How "Service Animal" Is Defined

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

Exhibit C

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from the State attorney general's office.

Where Service Animals Are Allowed

Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

Service Animals Must Be Under Control

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.
- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Staff are not required to provide care or food for a service animal.

Miniature Horses

In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Website

www.ADA.gov

To receive e-mail notifications when new ADA information is available,

visit the ADA Website's home page and click the link near the top of the middle column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)

to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. July 2011

PDF Version of this Document

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last updated: July 12, 2011

SHANGHAI COTTAGE POLICY REGARDING SERVICE ANIMALS FOR PEOPLE WITH DISABILITIES

Shanghai Cottage is committed to making reasonable accommodations in its policies, practices, and procedures to permit the use of service animals by persons with disabilities. Service animals play an important role in ensuring the independence of people with disabilities, and it is therefore our policy to welcome into our restaurant any animal that is individually trained to assist a person with a disability.

Requirements with Regard to Service Animals:

Most of the time, people with disabilities who use service animals can be easily identified without any need for questioning. If we can tell by looking, it is our policy not to make an individual feel unwelcome by asking questions. If we are unsure whether an animal meets the definition of a service animal, it is our policy to ask the individual only two questions at the point that the individual seeks entry to the restaurant:

- Is the dog a service animal required because of a disability?
- What work or task has your dog been trained to perform?

If the individual says yes to the first question and explains the work or tasks that the animal is trained to perform, we will welcome the person and service animal into the restaurant without asking any additional questions about his or her service animal. We will not ask an individual questions about his or her disability. We will not ask an individual to show a license, certification, or special ID card as proof of their animal's training. We must permit service animals to accompany individuals with disabilities to all areas of our restaurant normally used by customers or other members of the public and will treat individuals with service animals with the same courtesy and respect that Shanghai Cottage affords to all of our customers.

Manager Responsibilities:

Shanghai Cottage has the right to exclude a service animal from the restaurant if the dog is out of control and the handler does not take effective action to control it, or the dog is not housebroken. Each situation will be considered individually. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence. Only an owner of Shanghai Cottage or someone he or she designates can make the decision to exclude a service animal. Therefore, if you think that a service animal should be removed, confer with the owner or his designee first and let them make the final decision and handle this issue with the customer instead of you.

Acknowledgment:

I have read (or had explained to me in a language I understand) the foregoing Policy, the documents entitled "Commonly Asked Questions About Service Animals in Places of Businesses" and "ADA 2010 Revised Requirements - Service Animals" and agree to abide by the requirements contained therein.

DATE _____ EMPLOYEE'S SIGNATURE _____

EMPLOYEE'S PRINTED NAME _____

Exhibit A

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

COMMONLY ASKED QUESTIONS ABOUT SERVICE ANIMALS IN PLACES OF BUSINESS

1. Q: What are the laws that apply to my business?

A: Under the Americans with Disabilities Act (ADA), privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities, are prohibited from discriminating against individuals with disabilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.

2. Q: What is a service animal?

A: The ADA defines a service animal as <u>any</u> guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself. Guide dogs are one type of service animal, used by some individuals who are blind. This is the type of service animal with which most people are familiar. But there are service animals that assist persons with other kinds of disabilities in their day-to-day activities. Some examples include:

_ Alerting persons with hearing impairments to sounds.

_ Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.

_ Assisting persons with mobility impairments with balance.

A service animal is <u>not</u> a pet.

3. Q: How can I tell if an animal is really a service animal and not just a pet?

A: Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability. However, an individual who is going to a restaurant or theater is not likely to be carrying documentation of his or her medical condition or disability. Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, you may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.

4. Q: What must I do when an individual with a service animal comes to my business?

Exhibit B

A: The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. An individual with a service animal may not be segregated from other customers.

5. Q: I have always had a clearly posted "no pets" policy at my establishment. Do I still have to allow service animals in?

A: Yes. A service animal is not a pet. The ADA requires you to modify your "no pets" policy to allow the use of a service animal by a person with a disability. This does not mean you must abandon your "no pets" policy altogether but simply that you must make an exception to your general rule for service animals.

6. Q: My county health department has told me that only a guide dog has to be admitted. If I follow those regulations, am I violating the ADA?

A: Yes, if you refuse to admit any other type of service animal on the basis of local health department regulations or other state or local laws. The ADA provides greater protection for individuals with disabilities and so it takes priority over the local or state laws or regulations.

7. Q: Can I charge a maintenance or cleaning fee for customers who bring service animals into my business?

A: No. Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages. For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel's policy to charge when non-disabled guests cause such damage.

8. Q: I operate a private taxicab and I don't want animals in my taxi; they smell, shed hair and sometimes have "accidents." Am I violating the ADA if I refuse to pick up someone with a service animal?

A: Yes. Taxicab companies may not refuse to provide services to individuals with disabilities. Private taxicab companies are also prohibited from charging higher fares or fees for transporting individuals with disabilities and their service animals than they charge to other persons for the same or equivalent service.

9. Q: Am I responsible for the animal while the person with a disability is in my business?

A: No. The care or supervision of a service animal is solely the responsibility of his or her owner. You are not required to provide care or food or a special location for the animal.

10. Q: What if a service animal barks or growls at other people, or otherwise acts out of control?

A: You may exclude any animal, including a service animal, from your facility when that animal's behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards other guests or customers may be excluded. You may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals. Each situation must be considered individually.

Although a public accommodation may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

11. Q: Can I exclude an animal that doesn't really seem dangerous but is disruptive to my business?

A: There may be a few circumstances when a public accommodation is not required to accommodate a service animal--that is, when doing so would result in a fundamental alteration to the nature of the business. Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, and sports facilities. But when it does, for example, when a dog barks during a movie, the animal can be excluded.

If you have further questions about service animals or other requirements of the ADA, you may call the U.S. Department of Justice's toll-free ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TDD).

July 1996

Reproduction of this document is encouraged.

Last updated January 14, 2008