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U.S. Department of Justice

*United States Attorney
Eastern District of Pennsylvania*

SETTLEMENT AGREEMENT

between

THE UNITED STATES OF AMERICA

and

LONGACRE HOLDINGS, LLC AND AMERICAN SARDINE BAR, INC.

WHEREAS, the Americans with Disabilities Act of 1990, as amended ("ADA"), 42 U.S.C. §§ 12181-12189, provides, among other things, that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation," 42 U.S.C. § 12182(a);

WHEREAS, the term "public accommodation" under the ADA includes "a restaurant, bar, or other establishment serving food or drink," 42 U.S.C. § 12181(7)(B);

WHEREAS, the ADA authorizes the United States Department of Justice to "undertake periodic reviews of compliance of covered entities," 42 U.S.C. § 12188(b)(1)(A)(i);

WHEREAS, the United States Attorney's Office for the Eastern District of Pennsylvania, pursuant to its authority under 42 U.S.C. § 12188(b)(1)(A)(i), commenced a limited review of certain restaurants in Philadelphia, Pennsylvania to determine, with respect to the specific areas reviewed, whether those restaurants were operating in compliance with Title III of the ADA (the "Compliance Review");

WHEREAS, Longacre Holdings, LLC and American Sardine Bar, Inc. (collectively "Longacre Holdings") own and operate the South Philadelphia Tap Room ("Tap Room") located at 1509 Mifflin Street in Philadelphia, Pennsylvania;

WHEREAS, Longacre Holdings owns and operates two restaurants (collectively the "Longacre restaurants") in Philadelphia, Pennsylvania: Tap Room and American Sardine Bar;

WHEREAS, as part of the Compliance Review, the United States requested information from Longacre Holdings regarding the Tap Room;

WHEREAS, after Longacre Holdings failed to respond to the United States' request for information, the United States commenced an action by filing a Complaint captioned *United States v. John Longacre, et al.*, Civil Action No. 16-CV-01950, in the Eastern District of Pennsylvania

on April 25, 2016 to enforce certain provisions of the ADA under Title III, 42 U.S.C. § 12188 *et seq.*;

WHEREAS, the parties agreed to stay this litigation pending the United States' inspection of the Tap Room for purposes of potential settlement;

WHEREAS, on June 22, 2016, the United States conducted a limited site inspection of certain features and facilities within the Tap Room and met with representatives of Longacre Holdings;

WHEREAS, the United States and Longacre Holdings share the goal of resolving the Complaint and the Compliance Review and ensuring that all Longacre restaurants operate in compliance with Title III of the ADA; and

WHEREAS, in light of the actions taken by Longacre Holdings to date to comply with the ADA and the actions that Longacre Holdings has agreed to take within the next three years as set forth in this Settlement Agreement, the United States and Longacre Holdings agree that settlement of these matters without further litigation is in the public interest and that the entry of this Settlement Agreement is the most appropriate means of resolving these matters; and

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

I. APPLICATION AND PARTIES BOUND

1. The Longacre restaurants, including the Tap Room, are each places of public accommodation within the meaning of 42 U.S.C. § 12181(7) because, among other things, they are "a restaurant, bar, or other establishment serving food or drink." 42 U.S.C. § 12181(7)(B); *see* 28 C.F.R. § 36.104.

2. Longacre Holdings is a public accommodation within the meaning of Title III of the ADA because it owns and operates the Longacre restaurants, including the Tap Room, which are all places of public accommodation. *See* 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104.

3. This Settlement Agreement shall be binding on the Longacre Holdings, their agents, and their employees. This Settlement Agreement shall also be binding on all of Longacre Holdings' successors, as well as any person or entity carrying on the same or similar use of the Longacre restaurants. Longacre Holdings must promptly notify, in writing, all successors, as well as any other persons or entities carrying on the same or similar use of the Longacre restaurants, of the existence of this Settlement Agreement or its contents.

4. This Settlement Agreement shall apply to all public use areas within the Longacre restaurants. This includes, but is not limited to: public entrances, waiting areas, bar areas, dining areas, restrooms, and corridors. This Settlement Agreement shall not apply to non-public use areas, such as food preparation and storage locations, employee locker rooms, and other service-related areas.

II. DEFINITIONS

5. For purposes of this Settlement Agreement, the term "1991 Standards" means the 1991 ADA Standards for Accessible Design, 28 C.F.R. Part 36, Appendix D, and the term "2010 Standards" means the 2010 ADA Standards for Accessible Design, 28 C.F.R. § 36.104, which consists of the 2004 ADA Accessibility Guidelines (set forth in appendices B and D to 36 C.F.R. part 1191) (collectively, the "Standards").

6. The 2010 Standards shall apply to the remedial actions to be taken under this Settlement Agreement. 28 C.F.R. § 36.406(a)(5)(ii).

7. For purposes of this Settlement Agreement, the term "accessible" means in compliance with the Standards.

8. For purposes of this Settlement Agreement, the term "alterations" means a change to any Longacre restaurant that affects or could affect the usability of the building or facility or any part thereof and includes, but is not limited to, "remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility." See 28 C.F.R. §§ 35.151(b), 36.402.

III. BARRIERS TO ACCESS

9. During the course of its investigation of the Tap Room, the United States identified architectural barriers to access, which are described more fully below. Longacre Holdings shall remedy the barriers to access identified in this Settlement Agreement in the manner set forth below within 6 months after the date of entry of this Settlement Agreement, unless otherwise noted.

MAIN ENTRANCE

10. Longacre Holdings shall ensure that the route to the Tap Room's accessible side entrance facing Hicks Street is clearly marked with directional signage visible to persons with disabilities, including persons using wheelchairs or other mobility aids, approaching the inaccessible main entrance at the corner of Mifflin and South Hicks Street.

11. Longacre Holdings shall satisfy the requirements of paragraph 10 by taking the following steps within sixty (60) days following the effective date of this Settlement Agreement:

- a. Longacre Holdings shall install directional signage at the main entrance at the corner of Mifflin and South Hicks Streets indicating the route to the accessible side entrance facing South Hicks Street. See the 2010 Standards §§ 216.6 and 703.5.

SIDE ENTRANCE

12. Longacre Holdings shall ensure that the Tap Room's side entrance facing South Hick's Street is accessible to, and usable by, persons with disabilities, including persons using wheelchairs or other mobility aids.

13. The United States observed the following barrier to accessibility during its June 22, 2016 site visit:

- a. There is a 2 ¼ inch level change at the entrance door at the side of the building facing South Hicks Street. *See* the Title III Regulations §§ 36.304(e) and the 2010 Standards §§ 206.2.1, 206.4.1, 402.2 and 405.2.
- b. The accessible entrance facing South Hicks Street is not identified with signage showing the International Symbol of Accessibility. *See* the 2010 Standards §§ 216.6 and 703.7.2.1.

14. Longacre Holdings can satisfy the requirements of paragraph 12 by taking the following steps within sixty (60) days following the effective date of this Settlement Agreement:

- a. Install a new threshold with a level change of ½ inch or less or run ramps that have a running slope not steeper than 1:12.
- b. Identify the side entrance facing South Hicks Street with signage showing the International Symbol of Accessibility.

MEN'S AND WOMEN'S TOILET ROOMS

15. The only toilet rooms in the Tap Room are a preexisting single user men's toilet room and a preexisting single user women's toilet room, neither of which are large enough to be wheelchair accessible. It is technically infeasible to expand these rooms due to their proximity to the kitchen. *See* 28 C.F.R. 36.304. However, Longacre Holdings shall ensure that all other readily achievable barriers to accessibility are removed from the toilet rooms.

16. The United States observed the following barriers to accessibility during its June 22, 2016 site inspection:

- a. A permanent room identification sign identifying each toilet room in raised characters and Braille is not provided. *See* the 2010 Standards §§ 216.2 and 703.1 - 703.5.
- b. The entry door hardware at each toilet room is a knob which requires tight grasping, pinching, or twisting of the wrist. *See* 2010 Standards §§ 206.5.2, 404.2.7 and 309.4.
- c. From an open position of 70 degrees, each entry door takes less than three seconds to move to within three inches of the latch.

- d. The force required to open each toilet room entry door exceeds five pounds. *See* the 2010 Standards §§ 206.5.2 and 404.2.9.
 - e. An accessible toilet and grab bars are not provided in the men's toilet room. *See* the 2010 Standards §§ 213.3.2, 604.4, 604.5, Advisory 604.5, Figure 604.5.1, 604.7, Advisory 604.7, Figure 604.7, 609 and Fig. 609.3.
 - f. A compliant toilet paper dispenser and side grab bar are not provided in the women's toilet room. *See* the 2010 Standards §§ 604.5, Advisory 604.5, Figure 604.5.1, 604.7, Advisory 604.7, Figure 604.7, 609 and Fig. 609.3.
17. Longacre Holdings can comply with paragraph 15 of this Settlement Agreement by taking the following steps unless otherwise noted below:
- a. Within sixty (60) days of the effective date of this Settlement Agreement, install at each of the toilet rooms a sign in raised characters and Braille located on the wall on the latch side of the door at 48 inches minimum AFF, measured from the baseline of the lowest tactile character, and 60 inches maximum AFF, measured from the baseline of the highest tactile character.
 - b. Within sixty (60) days of the effective date of this Settlement Agreement, replace the entry door hardware at each toilet room with hardware that can be operated with one hand and not require tight grasping, pinching or twisting of the wrist.
 - c. Within thirty (30) days of the effective date of this Settlement Agreement, adjust each toilet room door so that from an open position of 90 degrees, the time required to move the door to a position of 12 degrees from the latch is five seconds minimum.
 - d. Within thirty (30) days of the effective date of this Settlement Agreement, adjust the force for pushing or pulling open each toilet room door so that it does not exceed five pounds.
 - e. Within sixty (60) days of the effective date of this Settlement Agreement, ensure that the top of the men's toilet room toilet seat is between 17 and 19 inches above the finish floor; the men's toilet room toilet center line is 16 inches to 18 inches from the side wall; and the men's toilet room has a compliant toilet dispenser and a compliant side grab bar.
 - f. Within sixty (60) days of the effective date of this Settlement Agreement, ensure that the women's toilet room has a compliant toilet paper dispenser and compliant side grab bar.

BAR COUNTER

18. The bar counter exceeds 34 inches in height and does not have a portion of the main counter which provides compliant knee and toe space. However, Section 5.2 of the 1991 Standards allow service to be provided at accessible tables within the same area if the bar counter does not provide this lowered portion. Longacre Holdings shall ensure that individuals with disabilities, including persons using wheelchairs or other mobility aids, have access to the accessible tables within the same area as the bar counter.

19. Longacre Holdings can comply with paragraph 18 of this Settlement Agreement by training and instructing its staff to make the accessible table nearest to the entrance door facing South Hicks Street and the accessible tables near the kitchen available for guests using wheelchairs or other mobility devices who wish to sit at the bar.

IV. LONGACRE HOLDINGS' POLICIES, PRACTICES, AND PROCEDURES

20. Longacre Holdings shall establish and/or maintain a written policy for all Longacre restaurants specifically addressing the provision of services to individuals with disabilities.

21. Longacre Holdings' policy shall specify, among other things, that:

- (a) Persons with disabilities may make reservations in the same way and on the same terms that other persons can make reservations (*see* 28 C.F.R. § 36.302).
- (b) All reservation staff at each Longacre restaurant shall have ready access to information about that Longacre restaurants' accessibility features for use in assisting customers in making reservations and answering questions (*see* 28 C.F.R. § 36.302).
- (c) Accessible features inside and outside each Longacre restaurant must be maintained in good working order (*see* 28 C.F.R. § 36.302).
- (d) At Longacre restaurants that offer parking, parking spaces may be reserved for individuals with disabilities, or in the alternative, valet parking is available (*see* 2010 Standards § 209.4; 28 C.F.R. § 36.305).
- (e) Longacre restaurant employees will receive basic training on providing services to persons with disabilities in each Longacre restaurant in which the employee works (e.g., overview of the restaurant's accessibility features, dealing with service animals, etc.) (*see* 28 C.F.R. § 36.302(a)).
- (f) Staff at all Longacre restaurants shall be trained to offer assistance, upon request, to persons with disabilities who may need assistance in using the services of the Longacre restaurants (*see* 28 C.F.R. § 36.302(a)).

- (g) Staff at all Longacre restaurants shall be available to move tables, and provide and adjust accessible features of the facility when features require installation or adjustment to ensure accessibility (*see* 28 C.F.R. § 36.302(a)).
- (h) Menus and all other printed materials provided for use by patrons at any Longacre restaurant must also be available in alternate formats so that blind persons and persons with low vision can read them (alternate formats include Braille, large print, and audio recording) (*see* 28 C.F.R. § 36.303(b)).
- (i) Dietary information (either on its menus or elsewhere) will be available at all Longacre restaurants for patrons with diabetes or those with food allergies (*see* 28 C.F.R. § 36.302).
- (j) Special foods will be provided at all Longacre restaurants to meet a patron's dietary needs upon advanced request (*see* 28 C.F.R. § 36.307), provided that such foods can be obtained from a supplier with whom Longacre Holdings customarily does business.
- (k) Persons with disabilities may use service animals, without incurring any extra charges or conditions, in all public areas of the Longacre restaurants, including restrooms (*see* 28 C.F.R. § 36.302(c)).

V. FUTURE ALTERATIONS AND NEW RESTAURANTS

22. Longacre Holdings acknowledges and agrees that any future alteration to any Longacre restaurant "shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs." *See* 28 C.F.R. § 36.402(a). Longacre Holdings further acknowledges and agrees that if an alteration affects or could affect the usability of or access to an area of the restaurant that contains a primary function, that alteration shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration. *See* 28 C.F.R. § 36.403(a)(1).

23. Longacre Holdings agrees to notify the United States, in writing, of any future alterations to the Tap Room commenced during the term of this Settlement Agreement, other than those alterations specifically identified in section III of this Settlement Agreement, and shall, in that notification, specify the steps taken to ensure that the alterations, including the path of travel to the altered areas, comply with the Standards to the maximum extent feasible.

24. Longacre Holdings shall ensure that each place of public accommodation that Longacre Holdings owns, operates and/or of which Longacre Holdings becomes the owner and/or operator after the effective date of this Settlement Agreement complies in full with Title III of the ADA and the relevant accessibility standards.

VI. ADA COMPLIANCE SELF-REVIEW OF LONGACRE RESTAURANTS

25. Longacre Holdings shall conduct a self-review of American Sardine Bar in order to identify all violations of the ADA, including the relevant accessibility standards that exist in that restaurant and shall correct all such violations to ensure compliance with the ADA. As part of this review, Longacre Holdings shall:

- a. Retain, at Longacre Holdings' expense, a licensed architect with expertise in ADA compliance (the "ADA architect") for the purpose of inspecting American Sardine Bar restaurant for its compliance with the ADA accessibility standards.
- b. The ADA architect shall (i) inspect American Sardine Bar; and (ii) shall provide a written report to Longacre Holdings that identifies each architectural barrier to accessibility or violation of the ADA Standards, as defined by the applicable ADA Standards, and proposes remedial measures that would eliminate each barrier to accessibility or violation of the ADA Standards. The ADA architect shall sign and certify the accuracy of its report to Longacre Holdings.
- c. Longacre Holdings shall remove each barrier to accessibility or violation of the ADA Standards identified in the ADA architect's report to the full extent required by the ADA.
- d. Within one year of the effective date of this Settlement Agreement, Longacre Holdings shall provide the United States Attorney's Office with written confirmation that the steps required by this paragraph have been completed.

VII. MONITORING AND COMPLIANCE

26. Within 120 days of the effective date of this Settlement Agreement, Longacre Holdings shall provide the United States with a written confirmation of all steps that Longacre Holdings has taken pursuant to sections III and IV of this Settlement Agreement and a time frame, if necessary, for future steps needed.

27. Every year during the term of this Settlement Agreement on the anniversary date of the effective date of the Settlement Agreement, Longacre Holdings shall provide to the United States a report identifying every complaint, whether formal or informal, received during the reporting period alleging that the Tap Room was not being operated in compliance with the ADA or otherwise discriminated against any person on account of disability, and Longacre Holdings' response to the complaint.

28. Longacre Holdings shall cooperate in good faith with any and all requests by the United States for access to any Longacre restaurant and for information and documents concerning any Longacre restaurant's compliance with this Settlement Agreement and the ADA.

29. The United States shall have the right to verify compliance with this Settlement Agreement and the ADA, both as set forth in this Settlement Agreement and through any means available to the general public, including visits to the public areas of the Longacre restaurants and communications with Longacre restaurant staff. The United States shall have the right to inspect any Longacre restaurant at any time, and counsel for the United States need not identify themselves in the course of visits to the public areas.

VIII. ENFORCEMENT

30. If the United States believes that this Settlement Agreement or any of its requirements has been violated, it will notify Longacre Holdings in writing and attempt to resolve the issue or issues in good faith. If the United States and Longacre Holdings are unable to reach a satisfactory resolution of the issue or issues, the United States will request that the United States District Court for the Eastern District of Pennsylvania enforce the terms of this Settlement Agreement.

IX. GENERAL PROVISIONS

31. The United States reserves the right to investigate any complaint it receives concerning any Longacre Holdings' restaurant(s), to initiate future compliance reviews concerning any Longacre Holdings restaurant(s) with respect to any aspect of any Longacre Holding restaurant(s) or its operation, and to investigate and commence a civil action with respect to any violation of the ADA. In the event the United States receives and investigates an ADA complaint concerning any Longacre Holdings restaurant(s), or commences any future compliance review concerning any Longacre Holdings restaurant(s), nothing in this Settlement Agreement shall limit the scope of any investigation or compliance review of the Longacre Holdings restaurant(s) or preclude the United States from seeking relief beyond that required under this Settlement Agreement.

32. A copy of this Settlement Agreement shall be made available to any person upon request and may, at the sole discretion of the United States, be posted on www.ada.gov and/or other government websites.

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

34. This Settlement Agreement memorializes the commitments made by Longacre Holdings to increase accessibility of the Longacre Holdings restaurants and the terms under which the United States has agreed to settle this matter. This Settlement Agreement is not intended to certify or signify, however, that any Longacre Holdings restaurant is now (or, with the actions taken pursuant to this Settlement Agreement, will be) in full compliance with the ADA, or

constitute a finding by the United States of such compliance, and it may not be used in any proceeding to signify such compliance. This Settlement Agreement does not affect any Longacre Holdings restaurant's continuing responsibility and obligation to comply with all aspects of the ADA.

35. This Settlement Agreement is not intended to reflect any legal interpretation of any provisions of the ADA by the United States, and it may not be used in any proceeding to demonstrate such legal interpretations.

36. This Settlement Agreement does not constitute an admission by Longacre Holdings of non-compliance with any provision of the ADA.

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

38. Failure by the United States to enforce the entire Settlement Agreement, with regard to any deadline or any other provision of the Settlement Agreement, shall not be construed as a waiver of its right to enforce any deadline or provision of the Settlement Agreement.

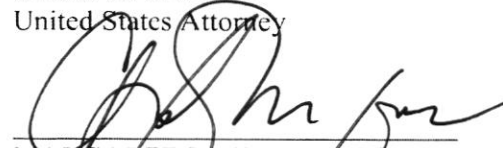
39. This Settlement Agreement constitutes the entire Settlement Agreement between the parties relating to the compliance review, and no other statement, promise, or Settlement Agreement, either written or oral, made by either party or agents of either party, that is not contained in this Settlement Agreement,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

THE UNITED STATES OF AMERICA


DATED: 8/28/17 BY:



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LONGACRE HOLDINGS, LLC AND AMERICAN SARDINE BAR, INC.

DATED: 8/17/17 BY:



[NAME]
[TITLE] President