

**SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT
BETWEEN THE UNITED STATES OF AMERICA
AND
NORTHWIND INVESTMENTS, INC.
(DJ# 202-37-319)**

BACKGROUND

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America (“United States”), and Northwind Investments, Inc. NWI (“NWI”), owner and operator of a Burger King restaurant located on leased premises at 4011 Club Rd, Indian River, MI 49749 (“Burger King”). The premises is leased to NWI by Robert & Margery Entwistle.
2. This Agreement resolves a matter initiated by a complaint filed with the United States, which alleged that NWI discriminated against an individual with a disability (C-1) and his spouse (C-2) in violation of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181 *et seq.* The individual who had a disability and his spouse (collectively, the “Complainants”), alleged that NWI failed to design, construct, modify, alter, or remove barriers to accessibility at Burger King in compliance with the accessibility standards of the ADA and implementing regulations, including the ADA Standards for Accessible Design. *See* 42 U.S.C. § 12182-83; 28 C.F.R. § 36.101 *et seq.* Specifically, the Complainants alleged that Burger King’s toilet rooms were not accessible to individuals who have disabilities and that both Complainants experienced physical and/or significant emotional distress when attempting to use the toilet rooms.
3. The ADA prohibits discrimination against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation, including a restaurant, bar, or other establishment serving food or drink, by any person who owns, leases (or leases to), or operates a place of public accommodation. *See* 42 U.S.C. § 12182(a); *see also* 28 C.F.R. §§ 36.104, 201.
4. As a restaurant, bar, or other establishment serving food or drink, Burger King is a place of public accommodation, and its operations affect commerce. 42 U.S.C. § 12181(7)(B); 28 C.F.R. § 36.104. As the owner and operator of Burger King, NWI must comply with Title III of the ADA.
5. Burger King was constructed after the effective date of the ADA’s design and construction standards, but prior to March 15, 2012, and is thus subject to the 1991 ADA Standards for Accessible Design (“1991 Standards”); however, any portions of the facility altered after March 15, 2012, including those remodeled in 2016, are subject to the 2010 ADA Standards for Accessible Design (“2010 Standards”). *See* 42 U.S.C. § 12183(a), 28 C.F.R. §§ 36.304, 402.

6. The United States is authorized to investigate alleged violations of Title III of the ADA and to use alternative means of dispute resolution, where appropriate, including settlement negotiations, and to bring a civil action in federal court in any case that raises issues of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506. The United States has investigated this complaint under the authority granted by the ADA. 42 U.S.C. § 12188(b)(1)(A)(i); 28 C.F.R. § 36.502.
7. During its investigation, the United States reviewed architectural drawings of Burger King provided by NWI, both of the initial construction and the 2016 remodel. The United States has further reviewed architectural drawings and photographs of the 2022 remodel of Burger King's toilet rooms.
8. The United States and NWI agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this complaint on mutually agreeable terms without litigation, and, therefore, have agreed to the terms of this Agreement. In consideration of the terms of this Agreement, the United States agrees to refrain from undertaking further investigation or from filing a civil suit in this action, except as provided in Paragraph 16.
9. This Agreement is neither an admission of liability by NWI nor a concession by the United States that its claims are not well founded. By entering into this Agreement, NWI is not admitting that, with respect to the complaint, it was in violation of any local, state, or federal act or statute.

REMEDIAL ACTIONS

Barrier Removal

10. Toilet Rooms. NWI has remodeled all aspects of its toilet rooms as set forth in the architectural drawings provided by NWI to the United States on January 19, 2022, to fully comply with 2010 Standards §§ 206.5.2, 213, 216.2, 404, 603, 604, 605, 703.

Monetary Relief

11. For Complainant. Pursuant to the United States' enforcement authority under Title III of the ADA, 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2), within thirty (30) calendar days of the receipt of C-2's signed release (a blank Release of Claims form is attached at Exhibit A), but no sooner than thirty (30) calendar days after the Effective Date, NWI shall pay a total of three thousand dollars (\$3,000) to C-2, as compensation for harm that included, but is not limited to, actual damages, emotional distress, pain and suffering, and other consequential injuries. This payment shall be made by a certified check or a cashier's check payable to C-2. NWI shall deliver this payment to C-2 at the address listed on the signed release. A copy of the check shall be concurrently provided to the undersigned Assistant United States Attorney.

Compliance

12. Development of Complaint Process. NWI has developed uniform procedures for receiving, documenting, and responding to complaints and concerns from individuals with disabilities.
13. Alterations. Any alterations of Burger King shall comply with Title III of the ADA and its implementing regulations, including the 2010 Standards. 42 U.S.C. § 12183(a)(2); 28 C.F.R. §§ 36.402-36.405. NWI Shall notify the United States of any planned alterations for the duration of this Agreement.
14. Maintaining Accessibility. NWI shall ensure that all accessible features of Burger King are maintained in operable working condition, within the meaning of 28 C.F.R. § 36.211.
15. Complaint Reporting. Within thirty (30) days of NWI' receipt of a lawsuit, complaint, charge, or grievance alleging a violation of Title III of the ADA, NWI will notify the United States in writing via e-mail at usamie.civilrights@usdoj.gov. The notification to the United States shall include the nature of the allegation, the name and contact information of the person(s) making the allegation, and NWI's response. NWI shall reference this provision of the Agreement in its notification to the United States. NWI's obligation to report such shall continue for the duration of the Agreement, and NWI shall maintain records of any complaints received for the duration of this Agreement.

ENFORCEMENT

16. Review of Compliance. The United States may review compliance with this Agreement at any time. Upon reasonable advance notice to NWI, NWI shall permit the United States and any person acting on its behalf unlimited access to Burger King to review compliance with the Agreement, provided that such access does not unreasonably interfere with the management and operation of Burger King. It is a violation of this Agreement for NWI to fail to comply in a timely manner with any of its requirements without obtaining the United States' written consent to provide an extension of the relevant time frame imposed by the Agreement. If the United States believes that NWI has failed to comply in a timely manner with any requirement of this Agreement, the United States will notify NWI, and it will attempt to resolve the issues in good faith. If the United States is unable to reach a satisfactory resolution of the issues raised within thirty (30) days, it may institute a civil action in federal court to enforce the terms of this Agreement or Title III of the ADA and may, in such action, seek any relief available under law.
17. Communication. Until further written notice, all notices, demands, reports or other communication to be provided pursuant to this Agreement to the United States shall be provided to Assistant United States Attorney Michael El-Zein at michael.el-zein@usdoj.gov.

GENERAL PROVISIONS

18. Public Nature of Settlement Agreement. This Agreement is a public document. A copy of this document or any information contained in it will be made available to any person by NWI or the United States upon request.
19. Scope of the Agreement. This Agreement is limited to the facts set forth above and does not purport to remedy or resolve any other existing or potential violations of the ADA or any other Federal law. This Agreement does not affect NWI continuing responsibility to comply with all applicable aspects of Title III of the ADA.
20. Term. This Agreement will remain in effect for three (3) years from the Effective Date of this Agreement.
21. Non-Waiver. Failure by the United States to enforce this entire Agreement or any of its provisions or deadlines shall not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
22. Severability. In the event a Court determines that any provision of this Agreement is unenforceable, that provision will be severed from this Agreement, and all other provisions will remain valid and enforceable.
23. Successors in Interest. This Agreement shall be binding on NWI, its agents, employees, and contractors as well as any successors in interest who acquire any interest in or part of its business or facilities. Should NWI seek to transfer or assign any part of its interest in the Burger King restaurant covered by this Agreement or the facility at 4011 Club Rd, Indian River, MI 49749, NWI shall inform any such successor in interest of this Agreement. However, any failure by NWI to inform a successor in interest of this Agreement shall not affect the successor(s)'s obligation to comply with this Agreement.
24. Authority to Bind. The person signing this document represents that he or she is authorized to bind Northwind Investments, Inc. dba NWI to this Agreement.
25. Effective Date. The Effective Date of this Agreement is the date of the last signature below.

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Agreed and Consented to:

For the UNITED STATES OF AMERICA

For NORTHWIND INVESTMENTS, INC.

DAWN N. ISON
United States Attorney
Eastern District of Michigan

/s/ _____
Michael El-Zein
Assistant United States Attorney
United States Attorney's Office
Eastern District of Michigan
Civil Rights Unit
211 W. Fort St., Suite 2001
Detroit, MI 48226

/s/ _____
Greg Johnroe
Resident Agent, Director, and Secretary
Northwind Investments, Inc.
109 East Broadway
Mt. Pleasant, MI 48858

Dated: _11/14/22_____

Dated: _11/7/22_____