

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
HARRISBURG MILLWORKS LLC
REGARDING
THE MILLWORKS
DJ #202-63-194**

The parties to this agreement (“Agreement”) are the United States of America and Harrisburg Millworks LLC (“HM LLC”). The parties hereby agree as follows:

BACKGROUND AND JURISDICTION

1. HM LLC is the owner/operator of The Millworks located at 340 Verbeke Street, Harrisburg, Pennsylvania 17102.
2. The United States Attorney’s Office for the Middle District of Pennsylvania, a component of the United States Department of Justice (“United States”), opened an investigation of The Millworks pursuant to title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189, as amended.
3. The United States is authorized to investigate alleged violations of title III of the ADA. Moreover, the United States is authorized, where appropriate, to use alternative means of dispute resolution, including settlement negotiations to resolve disputes. If resolution is not achieved, the United States may bring a civil action in federal court in any case where the Attorney General has reasonable cause to believe that a pattern or practice of discrimination exists or where the case raises an issue of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.
4. The Millworks is a place of public accommodation within the meaning of title III of the ADA, because it is “a restaurant, bar, or other establishment serving food or drink.” 42 U.S.C. § 12181(7)(B); 28 C.F.R. § 36.104. HM LLC is subject to title III because it is a private entity that owns, leases or leases to, or operates a place of public accommodation. Id.
5. The Millworks is an existing facility originally constructed prior to the effective date of the ADA, and so is subject to the “readily achievable” barrier removal provisions of the ADA. 42 U.S.C. § 12182(b)(2)(A)(iv)-(v), 28 C.F.R. § 36.304. Significant portions of The Millworks, however, were altered after January 2013, and those portions should have been altered in such a manner that they are readily accessible to and usable by individuals with disabilities,

to the maximum extent feasible. 42 U.S.C. § 12183(a)(2); 28 C.F.R. § 36.402-406.

6. Title III of the ADA prohibits discrimination against persons with disabilities at places of public accommodation, 42 U.S.C. § 12182(a), and establishes an ongoing requirement by public accommodations to, among other things: remove architectural barriers to access where such removal is “readily achievable.” Id. § 12182(b)(2)(A)(iv), 28 C.F.R. § 36.304. Additionally, public accommodations are required to make alterations to facilities or parts of facilities readily accessible to and usable by individuals with disabilities to the maximum extent feasible, 42 U.S.C. § 12183(a)(2), 28 C.F.R. § 3604.402-404.
7. The United States reviewed architectural plans and other information provided by HM LLC and conducted a site visit of The Millworks. The results of the site visit, attached at Appendix A to this agreement, revealed some architectural barriers to access and violations of the relevant ADA Standards for Accessible Design in and around The Millworks.
8. The United States applied the 1991 Standards for Accessible Design to identify architectural barriers to access, see 28 C.F.R. § 36.304(d)(2)(ii)(B), but any remedies for the identified barriers implemented by HM LLC under this Agreement shall be done in compliance with the 2010 ADA Standards for Accessible Design. 28 C.F.R. § 36.104 (definitions of 1991 Standards and 2010 Standards). Id.

REMEDIAL ACTIONS TO BE TAKEN BY HM LLC

9. Consistent with title III of the ADA, HM LLC will not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, and facilities of The Millworks. 42 U.S.C. § 12182(a); 28 C.F.R. §§ 36.201, 36.202.
10. HM LLC will remove barriers to access in the existing portions of The Millworks where it is readily achievable to do so (i.e. without significant difficulty or expense). 42 U.S.C. § 12182 (B)(2)(A)(iv),(v).
11. Any future alterations, as defined by 42 U.S.C. § 12183 and 28 C.F.R. § 36.402(b), to The Millworks shall comply with the ADA, its implementing regulations, and the 2010 Standards.
12. HM LLC further acknowledges and agrees that if an alteration affects or could affect the usability of or access to an area of The Millworks 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 areas 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. 42 U.S.C. § 12183(a).

First Floor, Lobby, Toilet Rooms

13. By June 1, 2019, HM LLC shall provide fully accessible Women's and Men's multi-user toilet rooms on the first floor corridor in compliance with the 2010 Standards, as follows:
 - a. Provide at least one lavatory with faucets that can be operated with no more than 5 pounds of force and can be used with one hand and without tight grasping, pinching, or twisting of the wrist. Hand-operated metering faucets shall remain open for at least 10 seconds. §§ 213.3.4, 309.4, 606.4.
 - b. Water supply and drain pipes shall be insulated or otherwise configured to protect against contact, and there shall be no sharp or abrasive surfaces underneath at least one lavatory. §§ 213.3.4, 606.5.

Restaurant, Dining Surfaces

14. By June 1, 2019, HM LLC shall provide at least 5 percent of all dining surfaces, including bar, bar area dining, booths, and indoor and courtyard dining areas with clear floor space a minimum of 30 inches wide and a minimum of 48 inches deep positioned for a forward approach, knee and toe clearance extending a minimum of 17 inches under the dining surface, and a dining surface 28 inches minimum and 34 inches maximum above the finish floor. Accessible dining surfaces shall be dispersed throughout the restaurant. §§ 226.1, 226.2, 305, 306, 902.2, 902.3.

CIVIL PENALTY

15. The ADA authorizes the Attorney General to seek, and the Court to award, civil penalties of up to \$75,000 for a first violation of title III of the ADA and up to \$150,000 for each subsequent violation. 42 U.S.C. § 12188(b)(2)(C) and (b)(3); 28 C.F.R. § 36.504(a)(3) and (b). The United States believes the imposition of a civil penalty in this case is warranted to vindicate the public interest. HM LLC shall pay a civil penalty to the United States in the amount of six thousand dollars (\$6,000). Defendants shall deliver the check or money order made payable to the Treasury of the United States to counsel for the United States by common carrier Federal Express, delivery prepaid within thirty (30) days after signature of this Settlement Agreement.

IMPLEMENTATION AND ENFORCEMENT OF AGREEMENT

16. In consideration of the terms of this Agreement, the United States agrees to refrain from filing a civil suit against HM LLC for failure to comply with title III of the ADA; provided however, that the United States reserves the right to file a civil lawsuit to enforce this Agreement in accordance with paragraph 27 below.
17. The United States does not assert that this Agreement or the modifications contemplated herein shall bring The Millworks into compliance with all aspects of the ADA, and nothing in this Agreement is intended to constitute an interpretation of the legal requirements of the ADA by the United States. Rather, this Agreement is entered into by the parties for the purpose of compromising disputed claims and avoiding the risk and expenses of litigation. This Agreement is a compromise and it shall not be used or introduced into evidence in any other case or proceeding other than between the parties to this Agreement.
18. The United States may review compliance with this Agreement at any time. Upon reasonable advance notice to HM LLC (through undersigned counsel), HM LLC shall permit the United States and any person acting on its behalf access to The Millworks to review compliance with the Agreement.
19. If the United States believes that this Agreement or any requirement thereof has been violated, it agrees to notify HM LLC in writing of the specific violation(s) alleged. HM LLC shall have 30 days from its receipt of the notice to cure and/or respond in writing to the United States regarding the alleged violation(s). If, after further discussion with the HM LLC, the United States

believes that the HM LLC has violated the Agreement, the United States may institute a civil action for relief in federal district court.

20. By June 1, 2019, HM LLC shall certify to the United States that it has fulfilled to completion all of its obligations under this Agreement in the form of a narrative report and photos showing that that items within this Agreement that HM LLC has agreed to correct have been corrected.
21. All notices, demands, reports or other communication to be provided to either party pursuant to this Agreement shall be in writing and delivered by U.S. mail or electronic mail to the following:

Michael J. Butler
Assistant United States Attorney
Civil Rights Coordinator
United States Attorney's Office
228 Walnut Street
Harrisburg, PA 17018
email: Michael.J.Butler@usdoj.gov

Brandon S. Williams, Esquire
Capozzi Addler, P.C.
1200 Camp Hill Bypass
Camp Hill, PA 17110
22. This Agreement is a public document. A copy of this document or any information contained in it may be made available to any person.
23. Failure by the United States to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of its right to do so with regard to other deadlines and provisions of this Agreement.
24. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, shall be enforceable. This Agreement is limited to the facts set forth herein and it does not purport to remedy any other potential violations of the ADA, including violations of the alterations or new construction provisions of the ADA, or any other Federal law. This Agreement does not affect the continuing responsibility of HM LLC to comply with all aspects of the ADA.

25. If any provision of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement 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, the United States and HM LLC shall engage in good faith negotiations in order to adopt such mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed-upon relative rights and obligations.
26. A signor of this document in a representative capacity for an entity represents that he or she is authorized to bind such entity to this Agreement.
27. In the event that HM LLC seeks to transfer or assign all or part of its interest in ownership or operation of The Millworks as a condition of transfer or assignment, HM LLC shall obtain the written accession of the successor or assignee to any obligations remaining under this Agreement for the remaining term of the Agreement.
28. The Effective Date of this Agreement is the date of the last signature below. This Agreement shall remain in effect for three years from the Effective Date.

Agreed and Consented to:

For the UNITED STATES OF AMERICA

DAVID J. FREED
United States Attorney

Michael J. Butler
Assistant United States Attorney

Date: _____

For HARRISBURG MILLWORKS LLC

Joshua Kesler

Date: _____