

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

DENNY R. WOOD,
Plaintiff,

Case No. 4:11cv125-RH/WCS

vs.

STATE OF FLORIDA,
Defendant.

**SETTLEMENT AGREEMENT AND RELEASE BETWEEN
STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES
AND
DENNY R. WOOD**

THIS SETTLEMENT AGREEMENT ("AGREEMENT") is made this 7th day of February, 2012, between the Department of Management Services, an agency within the executive branch of the State of Florida, 4050 Esplanade Way #160, Tallahassee, Florida 32399 (hereinafter "DEPARTMENT") on behalf of the Defendant, State of Florida, AND Denny R. Wood, Plaintiff (hereinafter "PLAINTIFF"), upon the terms and conditions set forth below:

RECITALS:

WHEREAS, PLAINTIFF filed this action against the State of Florida in U.S. District Court for the Southern District of Florida for its alleged violations of Title II of the Americans with Disabilities Act, 42 U.S.C. Section 12131, et seq., and Section 504 of the Rehabilitation Act, (hereinafter collectively referred to as the ADA); and

WHEREAS, PLAINTIFF filed a second amended complaint (hereinafter referred to as the complaint), in April of 2011, in the U.S. District Court for the Northern District of Florida, Case No. 4:11-cv-125-RH/WCS, (hereinafter referred to as "District Court"); and

WHEREAS, PLAINTIFF sought injunctive relief, and litigation expenses against the STATE OF FLORIDA, identifying buildings in the complaint, many of which were either occupied or managed by the DEPARTMENT for alleged ADA violations, including the State Capitol Complex; and

WHEREAS, DEPARTMENT manages and is responsible for the upkeep of the State Capitol Complex and most, but not all, of the remaining buildings described in the complaint; and

WHEREAS, the DEPARTMENT had created a document entitled "Florida Capitol Accessibility Study for the Department of Management Services" prepared by Lewis & Whitlock, PA in December of 2011, (hereinafter "THE PLAN", the plan is not a transition plan, but a special study designed for the Capitol which expanded on the document presented in the

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September 2011 meeting with the DEPARTMENT and the Plaintiff), herein incorporated by reference, to bring the Capitol into ADA compliance; and

WHEREAS, during a conference held on September 2, 2011, the DEPARTMENT presented THE PLAN to the PLAINTIFF and demonstrated that it has been acting in good faith by already removing some of the alleged ADA barriers at the Capitol Complex, and demonstrated its intent to continue to work towards full ADA compliance, including, but not limited to, prioritizing completion of ADA compliant restrooms in the Capitol building lower lobby floors one (1) through six (6) and the twenty-second (22) floor; and

WHEREAS, PLAINTIFF is confident that the DEPARTMENT will continue barrier removal in accordance with THE PLAN and development of future surveys and transition plans; and

WHEREAS, the aforementioned PLAINTIFF and the DEPARTMENT desire to avoid further expense, time, effort and uncertainty in regard to this action; and

WHEREAS, subject to the terms set forth herein, PLAINTIFF and the DEPARTMENT have agreed to resolve any and all claims and disputes by and between them.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, PLAINTIFF and the DEPARTMENT hereby agree to the following terms and conditions as full and complete settlement of this action:

1. PLAINTIFF agrees to voluntarily dismiss Case No. 4:11-cv-125-RH/WCS pending in the United States District Court for the Northern District of Florida ("Lawsuit") within ten days of the final execution of this settlement agreement and release the DEPARTMENT from any claim which was the subject of the Lawsuit.

2. DEPARTMENT agrees to expend this fiscal year a total of approximately \$1,178,577.00. This amount includes approximately \$482,564.00 for ADA construction upgrades to the Capitol Complex in accordance with THE PLAN, and approximately \$696,013.00 for construction upgrades, new ADA surveys and transition plans for the first sixty (60) older buildings managed by the DEPARTMENT.

2. DEPARTMENT will complete new ADA surveys for the first sixty (60) older buildings managed by the DEPARTMENT by October 30, 2012. After the surveys are completed, the 504 Transition Plans will be developed for each building (Specific to the building) and will be ready by May 2013. Completion of transition Plans and construction are predicated on the approval of ADA work identified in the Capital Improvement Plan submitted to and approved by the legislature, the appropriations from the legislature and the release of those funds by the legislature.

3. DEPARTMENT will be able to complete the building surveys for the remaining DEPARTMENT managed buildings by July 2013. After these surveys are complete the 504 Transition Plans will be developed for each building (Specific to the building) and will be ready

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by March 2014. Completion of transition plans and construction are predicated on the approval of ADA work identified in the Capital Improvement Plan submitted to and approved by the legislature, the appropriations from the legislature and the release of those funds by the legislature.

4. **DEPARTMENT** will request the initiation and completion of ADA surveys and delivery of 504 transition plans from other agencies under the Governor's direction within 90 days of the execution of this agreement. Completion of transition plans and construction are predicated on the approval of ADA work identified in the respective agency improvement plan submitted to and approved by the legislature, the appropriations from the legislature and the release of those funds by the legislature.

5. **DEPARTMENT** further agrees to make a good faith effort beyond this fiscal year to adhere to **THE PLAN** or any future transition plans subject to legislative appropriation. The **DEPARTMENT** will request \$1,000,000 per year for ADA improvements thereafter for all **DEPARTMENT BUILDINGS** or **DEPARTMENT** managed buildings. Failure for DMS to request these funds would be considered a material breach of this settlement agreement unless excused by financial emergencies such as hurricane destruction and major equipment failures. The parties recognize that continued implementation of the settlement beyond the current fiscal year is dependent upon legislative appropriation. Failure of the Legislature to appropriate funds necessary to implement the terms of the settlement agreement shall not be deemed a material breach by the **DEPARTMENT**, but shall allow only for extensions of time frames for completion.

6. Completion of all transition plans and all construction are predicated on work identified in transition plans submitted by each agency and approved by the legislature, the appropriations from the legislature and the release of those funds by the legislature.

7. **DEPARTMENT** through its Leasing Bureau within 180 days following the execution of this settlement agreement will contact all state agency leasing liaison coordinators advising them to include leasing specifications to require strict compliance with the ADA code. Further, the **DEPARTMENT** will require ADA compliance with any master lease it is tasked to manage with each new master lease or renewal of any master lease.

8. **DEPARTMENT** will update the Plaintiff in writing every six months following this settlement agreement and dismissal of this case on the progress of ADA work identified in this settlement agreement.

9. **DEPARTMENT** agrees to pay the **PLAINTIFF'S** filing fees in the amount of not to exceed \$650.00 mediation fees in the amount of \$1,268 and attorney fees in the amount of \$9,250 in full settlement of this case.

10. **PLAINTIFF**, his agents, representatives, attorneys, heirs, executors, administrators, successors and assignees, collectively and individually, does hereby release and discharge the **DEPARTMENT**, , including its agents, representatives, attorneys, heirs, executors, administrators, successors and assignees, collectively and individually, from all claims, demands,

actions, causes of action, suits, damages, losses and expenses, of any and every nature whatsoever, arising out of or in any way related to the lawsuit, those claims asserted or other claims that were or may be asserted in any federal, state or local agency or court, by or on behalf of the PLAINTIFF under the ADA, Section 504 of the Rehabilitation Act, or any other state or federal act that provides a cause of action for discrimination based upon a disability.

11. PLAINTIFF reserves the right to re-file any claims that are dismissed pursuant to this Agreement should the DEPARTMENT fail to adhere to this AGREEMENT. If PLAINTIFF intends to refile the case, PLAINTIFF shall give notice to the DEPARTMENT, in writing, which includes specific reasons why PLAINTIFF believes the DEPARTMENT has not complied with the terms of the AGREEMENT. The DEPARTMENT shall provide a written response to the PLAINTIFF'S notification within 30 days of its receipt. PLAINTIFF shall reply, in writing, informing the DEPARTMENT of PLAINTIFF'S acceptance or rejection of the DEPARTMENT'S response within 15 days of its receipt. PLAINTIFF'S notice and DEFENDANT'S response thereto shall be sent by certified mail, return receipt requested, to Denny Wood, at 9855 E. Fern Street Miami, Florida and the Florida Department of Management Services, General Counsel, 4050 Esplanade Way, Tallahassee, Florida 32399-0950.

If the Parties are unable to reach agreement on the issues identified in the PLAINTIFF'S notice letter, the Parties shall agree on a mediator and will submit to formal mediation, which will be completed within 45 days after the failure to reach agreement of the identified issues. The Parties shall pay for the mediator's fees and costs in equal shares. If, after good faith efforts to settle at mediation are unsuccessful, PLAINTIFF may immediately declare a "material breach" and may subsequently refile the case. Nothing in this document shall constitute a waiver of any defenses should Plaintiff re-file this lawsuit.

12. The parties to this AGREEMENT further agree and covenant that this AGREEMENT is binding on the parties, their heirs-at-law, and their assigns and successors in interest as evidenced by their signatures and lawful executions below.

13. DEPARTMENT, by entering into this AGREEMENT admits no liability for ADA violations resulting from by the PLAINTIFF's allegations. All of the commitments herein are subject to natural disasters and similar unforeseen circumstances.

14. By mutual agreement, in writing, the Parties may modify the terms of this settlement agreement.

15. All terms and conditions of this settlement as fully set forth in this document and no other material terms of settlement exist outside this document.

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IN WITNESS WHEREOF, the parties hereto, have caused these recitals to be executed, the date first above written.

DEPARTMENT OF MANAGEMENT SERVICES

By: Thomas A Berger
Title: Director Division of Real Estate Development & Management
Date: 2/7/12

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 7th day of February, 2012, by Tom Berger personally known to me [], or produced identification []: Type of identification produced: N/A

Susan Sparks

NOTARY PUBLIC
My Commission Expires



(Print, type or stamp commissioned name of Notary Public)

(Print, type or stamp commissioned name of Notary Public)

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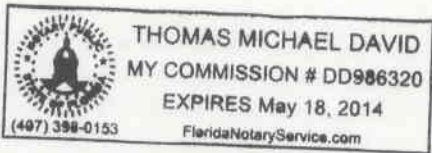
DENNY R. WOOD

By: Denny R. Wood

Date: February 3, 2012

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 3rd day of February, 2012, by Denny Wood, personally known to me [XX], or produced identification []: Type of identification produced: _____



[Signature]

NOTARY PUBLIC
My Commission Expires:

Thomas M. David
(Print, type or stamp commissioned name of Notary Public)

THOMAS M. DAVID
As Attorney for Plaintiff

By: [Signature]

Date: 2/3/12

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 3 day of February, 2012, by Thomas M. David, personally known to me [], or produced identification []: Type of identification produced: FLDL 0130 - 833 63-714 - 0



[Signature]

NOTARY PUBLIC
My Commission Expires: 2/28/14

Sean Kingsbury
(Print, type or stamp commissioned name of Notary Public)

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