

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

JOE HOUSTON,

Plaintiff,

CASE NUMBER: 2:13-CV-00237-UA-SPC

v.

SUGARLAND PLAZA, INC.

Defendant.

---

**CONSENT DECREE**

This Consent Decree (“Agreement”) is made and entered into by and between Plaintiff, JOE HOUSTON, referred to in this Agreement as (“Plaintiff”) and Defendant, SUGARLAND PLAZA, INC. (“Defendant”) The signatories to this Agreement will be referred to jointly as the “Parties”. This Agreement is made as a compromise between the Parties for the complete and final settlement of their claims against one another, differences, and causes of action with respect to the dispute described below.

**Preamble**

**WHEREAS**, on or about March 27, 2013, Plaintiff, for himself and in a representative capacity, filed a lawsuit in the United States District Court for the Middle District of Florida, entitled *Joe Houston v. Sugarland Plaza, Inc.* Case No. 13-CV-000237 (the “Action”), wherein Plaintiff asserted claims for injunctive relief against Defendant based upon purported violations of Title III of the Americans with Disabilities Act, 42 U.S.C. 12181, *et seq.* (“ADA”) and related claims for relief respecting the real property and all structures and improvements thereon known as Sugarland Plaza and in the space known as the Subway restaurant located at 940 W. Sugarland Hwy., Clewiston, Florida 33440 (“the Facility”);

**WHEREAS**, Defendant denies and continues to deny the claims and allegations in the Action, and that Plaintiff is entitled to any legal or equitable remedies;

**WHEREAS**, the Parties desire to compromise and fully and finally resolve and settle all actual and potential claims or litigation between them, to avoid the uncertainty, time and expense that would accompany such litigation;

**WHEREAS**, the Parties have agreed, without Defendant admitting liability of any kind, to enter into this Agreement pursuant to which each and every assertion, violation, claim and/or cause of action asserted or that could have been asserted by Plaintiff against Defendant shall be fully, forever, and finally released; and

**NOW, THEREFORE,** in consideration of the covenants and mutual promises and agreements contained herein, and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Alterations or Modifications to the Facilities**

1.1 The Parties hereto acknowledge and stipulate that Defendant will modify (or caused to be modified or altered) or comply with the items expressly identified by and in the manner specified in Exhibit "A." All repairs or modifications identified in Exhibit "A" shall be completed in all respects no later than twenty-four (24) months from the effective date of the execution of this Agreement, which shall be the date indicated by the last signatory to the Agreement. The time period for completion by Defendant shall be subject to acts of God, force majeure, or events beyond the control of Defendant, such as inability to obtain building or zoning permits, failure of the city/county or state inspectors to make inspections, contractor defaults or work stoppages. In the event of such unforeseen circumstances, the time period for completion of the alterations or modifications in Exhibit "A" shall be extended by the number of days reasonably attributable to such delay-causing event as long as Defendant provide notice to Plaintiff's Counsel prior to the original completion date set forth above.

1.2 The Parties stipulate that Defendant agrees that upon completion of the removal of the barriers and the alterations and modifications set forth in Exhibit "A", Defendant shall provide written notice to Plaintiff's Counsel.

1.3 If the modifications or alterations described in Exhibit "A" conflict with the Florida Statutes, building construction standards, county or city regulations or codes, or any other statute, act, law, rule, regulation, code, standard, or state or local governing body whatsoever, Defendant shall attempt to identify and implement a reasonable alternative solution or variance should a readily achievable one exist. If any such alternative solution is applied by Defendant, Defendant agrees to notify Plaintiff's Counsel of same.

**2. Enforcement Provisions**

2.1 In the event the alterations and modifications described in Exhibit "A" are not completed in the time frame set forth in this Agreement, and such failure continues for a period of sixty (60) days after written notice to Defendant, Plaintiff shall be entitled to seek injunctive relief based on the modifications detailed in Exhibit "A".

**3. Compromise**

3.1 The Parties agree and acknowledge that this Agreement is the result of a compromise and shall never be construed as an admission of any liability, wrongdoing, or responsibility on the part of the Released Parties (as defined in section 4.1 below). The Released Parties expressly deny any such liability, wrongdoing, or responsibility.

#### **4. Release Given By Plaintiff in Favor of Defendant**

4.1 In exchange for the good and valuable consideration set forth herein and receipt of full payment of the sum referenced in that certain Stipulation Agreement for Fees and Costs executed by and among Plaintiff, Defendant and Laxmi Pooja, LLC, and which is incorporated herein by reference, Plaintiff and his respective agents, members, successors, assigns, parent entities, subsidiary entities, heirs, officers, predecessors, directors, affiliated persons and/or entities, and anyone for whom Plaintiff is acting or who may be claiming by or through them (collectively, the "Releasing Parties"), hereby fully and finally release, acquit, satisfy, and discharge Defendant, and each of Defendant's respective agents, predecessors, successors, assigns, heirs, parent entities, subsidiary entities, officers, directors, shareholders, employees, attorneys, affiliated persons or entities, including without limitation: Subway Restaurants, Inc., Doctor's Associates, Inc., and Laxmi Pooja LLC, their parents, predecessors, successors, assignees, subsidiaries, affiliates, related entities, members, trustees, directors, employees, attorneys and agents, and any and all other entities or person(s) related to or affiliated with them, including without limitation Defendant, and its respective members, trustees, directors, employees, attorneys, and agents, and any and all other entities or person(s) related to or affiliated with them and all current and former tenants or sub-tenants of the Space (collectively, the "Released Parties"), of and from any and all legal or equitable claims, demands, liabilities, debts, judgments, damages, expenses, actions, or causes of action of any kind that the Releasing Parties and each of them have or may have, whether known or unknown, including without limitation any and all claims arising under Title III of the ADA and/or any other federal, state, or local law governing access features and policies for persons with disabilities at public accommodations whether before any federal, state, or local agency, court of law, or in any other forum, and any and all claims that could have been alleged in the Action, but only with respect to the Facility described in this Decree. This release also includes all claims for attorney's fees and costs, expert fees and costs, or any other fee or cost incurred to date, with the exception of any future action taken by any of the Parties to enforce the terms of this Agreement. This Release shall not be considered a release as between Defendant and Subway Restaurants, Inc., Doctor's Associates, Inc., Laxmi Pooja, LLC, their parents, predecessors, successors, assignees, subsidiaries, affiliates and related entities, inclusive of any third-party claims. This release is limited to the Facility.

4.2 As a material inducement for Defendant to enter into this Agreement, Plaintiff represents and warrants that he is not aware of any pending tort, contract, or other legal claims against Defendant, other than the specific claims brought in this Action under Title III of the ADA, which are released under this Agreement.

4.3 Plaintiff represents and warrants that no portion of any of the matters released by this Agreement and no portion of any recovery or settlement to which they might be entitled have been assigned or transferred to any other person, firm, or corporation not a Party to this Agreement, in any manner, including by way of subrogation or operation of law or otherwise.

#### **5. Notice**

5.1 Unless otherwise provided in this Agreement or by law, all notices or other communications required or permitted by this Agreement or by law to be served on or delivered to any Party to this Agreement shall be delivered as follows:

**To Defendant:**

Alan Burger, Esq.  
McDonald Hopkins  
Flagler Center Tower  
505 South Flagler Drive  
Suite 300  
West Palm Beach, FL 33401  
Or  
[aburger@mcdonaldhopkins.com](mailto:aburger@mcdonaldhopkins.com)

and

Yasir Billoo, Esq.  
Golden & Grimes LLP  
9350 S. Dixie Hwy, PH II  
Miami, FL 33156  
Or  
[ybilloo@goldengrimes.com](mailto:ybilloo@goldengrimes.com)

**To Plaintiff:**

Thomas B. Bacon, Esq.  
4868 SW 103<sup>rd</sup> Avenue  
Cooper City, FL 33328  
Or  
[tbb@thomasbaconlaw.com](mailto:tbb@thomasbaconlaw.com)

5.2 A Party may change such address for the purpose of this paragraph by giving timely written notice of such change to all other Parties to this Agreement in the manner provided in this paragraph.

**6. Free Will**

6.1 The Parties acknowledge that each has had an opportunity to consult with counsel of their own choosing concerning the meaning, import, and legal significance of this Agreement, and that each has done so to the extent desired. In addition, the Parties acknowledge that they each have read this Agreement, as signified by their signatures hereto, and are voluntarily executing the same after having had the opportunity to seek the advice of counsel for the purposes and consideration herein expressed.

**7. Miscellaneous Terms and Conditions**

7.1 This Agreement contains the complete agreement between the Parties. Any and

all prior agreements, representations, negotiations, and understandings between the Parties, oral or written, express or implied, with respect to the subject matter hereof are hereby superseded and merged herein.

7.2 This Agreement may be executed in counterparts or by copies transmitted by facsimile or email, all of which shall be given the same force and effect as the original.

7.3 This Agreement may be modified only by a written document signed by all of the Parties. No waiver of this Agreement or of any of the promises, obligations, terms, or conditions hereof shall be valid unless it is written and signed by the Party against whom the waiver is to be enforced.

7.4 This Agreement shall be binding upon the Parties hereto, their predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, directors, attorneys, officers, families, heirs, spouses, and employees.

7.5 If any provision of this Agreement shall be finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.

7.6 The Parties acknowledge that they have reviewed this Agreement in its entirety and have had a full opportunity to negotiate its terms, and therefore waive all applicable rules of construction that any provision of this Agreement should be construed against its drafter and agree that all provisions of the Agreement shall be construed as a whole, according to the fair meaning of the language used.

7.7 Plaintiff represents that, other than the Action, he has not filed or authorized the filing of any complaints, charges, or lawsuits against Defendant, Sugarland Plaza, Inc., and against Subway Restaurants, Inc., Doctor's Associates, Inc., or Laxmi Pooja LLC, with any federal, state, or local court, governmental agency, or administrative agency relating to the subject Facility, and that if, unbeknownst to Plaintiff, such a complaint, charge, or lawsuit has been filed on his behalf, he or it will use his or its best efforts to cause it immediately to be withdrawn and dismissed with prejudice.

7.8 The parties and their Counsel agree to execute any and all further documents and perform any and all further acts reasonably necessary or useful in carrying out the provisions and purposes of this Agreement.

7.9 In any action or other proceeding to enforce rights under this Agreement, the prevailing Party shall recover from the losing party all attorneys' fees, litigation expenses, and costs.

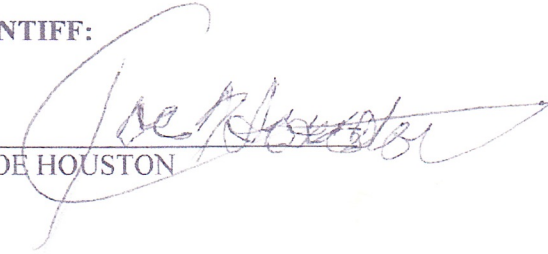
7.10 The Parties agree that any ambiguities in this Agreement shall not be construed against the drafter of the Agreement.

7.11 The Parties acknowledge that all Recitals and/or "WHEREAS" clauses preceding paragraph 1 are incorporated as a material part of this Stipulation for Settlement.

7.12 This Agreement is entered into in, and shall be governed by and construed and interpreted in accordance with the substantive laws of, the State of Florida.


IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) set forth below:

**PLAINTIFF:**

By:   
JOE HOUSTON

Date: 5-15-13

**DEFENDANT:**

By:   
Print Name/Title: Steven B. Royal President

Date: 5.16.13

**EXHIBIT “A”**  
**WORK TO PERFORMED WITHIN THE SUBWAY SPACE**

1. Defendant shall modify the grab bars in the bathrooms of the Space so grab bars shall be compliant with Figures 30(c) and (d) of the ADAAG.
2. Defendant shall move the hand dryer in both restrooms to a height of no more than 48”, in compliance with sections 4.2.5 and 4.2.6 of the ADAAG.
3. Defendant shall move the toilet paper dispensers in both restrooms to be compliant with Figure 29(b) of the ADAAG.
4. Defendant shall remove any movable object, including but limited to furniture or rack, to provide for a minimum 36” clearance in the pathway to the restrooms.
5. Defendant shall obtain a written statement from a contractor qualified to opine regarding ADA guidelines that the Space complies with ADA guidelines to the maximum extent possible.