

SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA,
STARWOOD HOTELS & RESORTS WORLDWIDE, INC., AND
THE PHOENICIAN GOLF AND RESORT
UNDER THE AMERICANS WITH DISABILITIES ACT OF
1990
DJ #202-8-169

BACKGROUND

1. This matter was initiated by a complaint filed with the United States Department of Justice against Starwood Hotels & Resorts Worldwide, Inc. (“Starwood”) and The Phoenician Golf and Resort (“The Phoenician”). The complaint was filed under Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36. The complaint alleges that The Phoenician is in violation of Title III of the ADA because several of the guest rooms and lobby restrooms are not accessible to people with disabilities requiring the use of wheelchairs.
2. This Agreement resolves an investigation and compliance review conducted by the United States of The Phoenician under Title III of the ADA. The Phoenician is located at 6000 East Camelback Road, Scottsdale, Arizona 85251, and is owned by Starwood.
3. The United States’ investigation and compliance review of The Phoenician were initiated pursuant to the Attorney General’s authority under 42 U.S.C. §12188(b)(1)(A)
 - (i). The United States conducted a site visit on May 20, 2008.

4. The Phoenician is a place of lodging, offering 647 guest rooms, and is a place of public accommodation. Starwood and The Phoenician are public accommodations because each is a private entity that owns, leases to, or operates a place of public accommodation. 42 U.S.C. § 12181(7)(A); 28 C.F.R. § 36.104. Accordingly, Starwood and The Phoenician are subject to the requirements of Title III of the ADA, 42 U.S.C. §§ 12181-12189, and its implementing regulations, 28 C.F.R. Part 36, including the applicable ADA Standards for Accessible Design.
5. The parties to this Agreement are the United States of America, Starwood, and The Phoenician, referred to collectively as “the Parties” throughout the Agreement.
6. The Attorney General is authorized to enforce Title III of the ADA to ensure that architectural barriers to accessibility are removed when such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304. The Attorney General may commence a civil action to enforce Title III in any situation where the Attorney General believes a pattern or practice of discrimination exists or a matter of general public importance is raised. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.
7. The Phoenician was designed and constructed for first occupancy prior to January 26, 1992. Among other things, Title III of the ADA requires that Starwood and The Phoenician remove barriers to access at The Phoenician where it is readily achievable to do so, 42 U.S.C. § 182(b)(2)(A)(iv), and that any altered facilities at The Phoenician comply with the requirements of 42 U.S.C. § 12183, which are implemented through 28 C.F.R. Part 36, including the applicable ADA Standards for Accessible Design.
8. Starwood and The Phoenician are committed to ensuring that individuals with disabilities receive the full and equal enjoyment of the goods and services of The Phoenician, as required by 42 U.S.C. § 12182 and 28 C.F.R. § 36.201(a). In accordance with the details provided in paragraph 10, below, The Phoenician agrees to undertake barrier removal, as outlined in this Agreement, to ensure that individuals with disabilities, including individuals who use wheelchairs, have equal opportunity to enjoy the facilities, privileges, advantages, or accommodations of The Phoenician.

9. Accordingly, to avoid the burdens and expenses of litigation, the Parties enter into this Agreement to resolve Department of Justice Matter Number 202-8-169. In consideration of, and consistent with, the terms of this Agreement, the United States agrees to refrain from filing a civil suit in this matter against Starwood and The Phoenician under the ADA regarding all matters contained within this Agreement, except as otherwise provided in the sections entitled “Implementation” and “Enforcement.”
10. Starwood and The Phoenician agree to make all the modifications to The Phoenician enumerated in this Agreement by December 31, 2014, in two Phases, entitled I and II, each of which shall coincide with its fiscal year, which is the calendar year. All citations are to the Title III regulation, 28 C.F.R. Part 36, subpart D, and the 2010 ADA Standards for Accessible Design (“2010 Standards”), *see* 28 C.F.R. § 36.104 (defining the “2010 Standards” as the requirements set forth in appendices B and D to 36 C.F.R. part 1191 and the requirements contained in subpart D of 28 C.F.R. part 36). For purposes of this Agreement, the term “accessible” means in compliance with the 2010 Standards.

A. PHASE I: The following modifications will be made before the end of the calendar year 2013:

Guest Rooms #3007 and #3105 (Main Hotel)

1. The Phoenician will install tactile signage identifying the guest room number. The signs shall be located alongside the door at the latch side. 2010 Standard § 703.4.2.
2. The Phoenician will lower the security latch on the entry door to make it accessible. 2010 Standards §§ 404.2.7; 309.4.
3. The Phoenician will lower the clothes rod and shelf in the closet so they are accessible. 2010 Standards §§ 225.2; 308.
4. The Phoenician will (a) reconfigure the roll-in shower so that it is 30 inches wide minimum by 60 inches deep minimum clear inside dimensions measured at center

points of opposing sides and shall have a 60 inches wide minimum entry on the face of the shower compartment, 2010 Standard § 608.2; (b) adjust the centerline of the toilet to 16 inches minimum to 18 inches maximum from the side wall, 2010 Standards §§ 603; 604.2; (c) provide a grab bar on the wall adjacent to the toilet that is at least 42 inches long, 2010 Standards §§ 604.5.1; 609; (d) reconfigure the lavatory so the height of the counter is no higher than 34 inches above the finish floor, 2010 Standard § 606.3; (e) insulate the drain and hot water pipes underneath the lavatory, 2010 Standard § 606.5; and (f) lower the coat hook to a maximum height of 48 inches above the finish floor and a low forward reach of 15 inches minimum above the finish floor or ground, 2010 Standards §§ 604.8.3; 308.

5. The Phoenician will modify the height of the room thermostat control unit to make it accessible. 2010 Standards §§ 205; 308; 309.
6. The Phoenician will modify the height of the deadbolt lock on the adjoining suite door to make it accessible. 2010 Standards §§ 205; 308; 309.

Terrace (II Terrazo) Restaurant

7. The Phoenician will install tactile signage identifying the men's and women's toilet rooms. The signs shall be located alongside the door at the latch side. 2010 Standard § 703.4.2.
8. The Phoenician will (a) insulate the drain and hot water pipes underneath the lavatories in the men's and women's toilet rooms, 2010 Standard § 606.5; (b) reconfigure the lavatories in the men's and women's toilet rooms so the height of the counter is no higher than 34 inches above the finish floor, 2010 Standard § 606.3; (c) install and lower the toilets in the men's and women's toilet rooms to 17 to 19 inches, 2010 Standard § 604.4; (d) lower the coat hooks on the toilet stall door in the men's and women's toilet rooms to a maximum height of 48 inches above the finish floor and a low forward reach of 15 inches minimum above the

finish floor or ground, 2010 Standards §§ 604.8.3; 308; and (e) lower the height of the urinal in the men's toilet room so the rim is no more than 17 inches above the finish floor, 2010 Standard § 605.2.

Upper Meeting Conference Rooms

9. Men's toilet room: The Phoenician will (a) modify the lavatory bowl so that it has minimum knee clearance of 27 inches above the finish floor and will insulate the drain and hot water pipes, 2010 Standards §§ 306.3; 606.5; (b) install an accessible stall and toilet, 2010 Standards §§ 213.3.1; 604.1; and (c) lower the coat hook to a maximum height of 48 inches above the finish floor and a low forward reach of 15 inches minimum above the finish floor or ground, 2010 Standards §§ 604.8.3; 308.

Main Parking Garage

10. The Phoenician will relocate seven designated accessible parking spaces in the Main Parking garage, including van accessible spaces, to locations where slope and location requirements are met. 2010 Standards §§ 208.3.1; 302; 502.1.

Accessible Parking Garages

11. The Phoenician will relocate van accessible spaces in three parking garages to a location where the 98-inch minimum vertical clearance is met. 2010 Standard § 502.5.

Golf Club Parking

11. The Phoenician will provide accessible parking including van accessible spaces in the Golf Club parking structure. 2010 Standards §§ 208.3.1; 302; 502.1.

Golf Club Amenities

13. The Phoenician will ensure that the shower, sauna, and steam room in the women's and men's locker rooms contain accessible door hardware and an accessible route in the rooms. 2010 Standards §§ 309.4; 404.2.7; 404.2.9; 206.4.

14. The Phoenician will provide insulation to the drain and hot water pipes underneath the lavatories in the men's and women's locker rooms. 2010 Standard § 606.5.
15. The Phoenician will provide an accessible urinal in the men's locker room. 2010 Standard § 605.2.
16. The Phoenician will lower the coat hooks in the accessible stalls of the men's and women's locker rooms, to a maximum height of 48 inches above the finish floor and a low forward reach of 15 inches minimum above the finish floor or ground. 2010 Standards §§ 308; 604.8.3.
17. The Phoenician will modify the accessible stall in the women's locker room with compliant grab bars and toilet. 2010 Standards §§ 213.3.1; 604.1; 604.9.4; 604.5.

Tennis Club

18. Men's Locker Room: The Phoenician will (a) provide insulation to the drain and hot water pipes underneath the lavatory, 2010 Standard § 606.5; (b) reconfigure the lavatory so the counter is no higher than 34 inches above the finish floor, 2010 Standard § 606.3; (c) ensure that clear floor space in front of the accessible urinal is at least 30 inches by 48 inches, 2010 Standard § 605.3; and (d) install an accessible stall and toilet, 2010 Standards §§ 213.3.1; 604.1.
19. The Phoenician will provide an accessible entry into the men's locker room shower. 2010 Standards §§ 608.1; 608.7; 404.3; 404.2.5.
20. The Phoenician will lower the coat hook attached to the door in the accessible stall in the men's locker to a maximum height of 48 inches above the finish floor and a low forward reach of 15 inches minimum above the finish floor or ground. 2010 Standards §§ 604.8.3; 308.
21. The Phoenician will modify the position of the accessible parking sign in the Tennis Club parking structure to a height of 60 inches minimum above the finish floor or ground surface measured to the bottom of the sign. 2010 Standards §§ 502.6; 703.7.2.1.

B. PHASE II: The following modifications will be made before the end of the calendar year 2014:

Main Building Pool Area

1. The Phoenician will provide an accessible route from the main building to the Oasis bar and pool area. 2010 Standard § 206.2.2.

Accessible Guest Rooms (Casitas)

2. The Phoenician will reposition the wall-mounted telephone to allow unobstructed access to the side grab bar next to the toilet and will modify the grab bar to a height of 33 to 36 inches above the finish floor. 2010 Standard § 609.4.
3. The Phoenician will (a) reconfigure the lavatory so the counter is no higher than 34 inches above the finish floor and the knee clearance has at least 27 inches of clearance, 2010 Standards §§ 606.3; 306; and (b) ensure drain and hot water pipes underneath the lavatories are insulated, 2010 Standard § 606.5.
4. The Phoenician will adjust the centerline of the toilet to 16 inches minimum to 18 inches maximum from the side wall. 2010 Standards §§ 603; 604.2.
5. The Phoenician will reconfigure the roll-in shower so that it is 30 inches wide minimum by 60 inches deep minimum clear inside dimensions measured at the center points of opposing sides and shall have a 60 inches wide minimum entry on the face of the shower compartment. 2010 Standard § 608.2.2.
6. The Phoenician will lower the coat hook to a maximum high forward reach of 48 inches and a low forward reach of 15 inches minimum above the finish floor or ground. 2010 Standards §§ 604.8.3; 308.
7. The Phoenician will lower the room thermostat control unit to a maximum high forward reach of 48 inches and a low forward reach of 15 inches minimum above the finish floor or ground. 2010 Standard § 308.
8. The Phoenician will lower the clothes rod and shelf in the closet to a maximum high of 48 inches and a minimum of 40 inches above the finish floor. 2010 Standard § 604.8.3.

Canyon Suites Accessible Rooms

9. The Phoenician will (a) reconfigure the lavatory in the bathroom so the height of the counter is no higher than 34 inches above the finish floor and the knee clearance has at least 27 inches of clearance, 2010 Standards §§ 606.3; 306; and (b) ensure drain and hot water pipes underneath the sink are insulated, 2010 Standard § 606.5.
10. The Phoenician will lower the height of the toilets to 17 minimum to 19 inches maximum and will adjust the centerline of the toilet to 16 minimum to 18 inches maximum from the side wall or partition. 2010 Standard § 604.1.
11. The Phoenician will reconfigure the roll-in shower so that it is 30 inches wide minimum by 60 inches deep minimum clear inside dimensions measured at the center points of opposing sides and shall have a 60 inches wide minimum entry on the face of the shower compartment. 2010 Standard § 608.2.2.

Canyon Suites Accessible Routes

12. The Phoenician will provide an accessible route from the passenger loading area to the entrance of the Porte-Cochere lobby. 2010 Standard § 206.2.1.
13. The Phoenician will provide an accessible route from the Canyon Suites building to the swimming pool area. 2010 Standard § 206.2.2.
14. The Phoenician will modify the gate latch on the alternate accessible route to 34 inches minimum and 48 inches maximum above the finish floor or ground. 2010 Standards §§ 404.2.7; 309.4.

COMPLETION, CERTIFICATION AND NOTICE

11. Starwood and The Phoenician agree that, through the term of this Agreement, all remedial work (including all remedial work performed prior to execution of this Agreement) will be or has been done in compliance with the 2010 Standards as established herein.

12. No later than 180 days prior to the expiration of this Agreement, Starwood and The Phoenician shall certify to the United States, in writing, that they have fulfilled all of their obligations under this Settlement Agreement. Starwood and The Phoenician shall provide the United States with written documentation evidencing their completion of all corrective actions in sufficient detail for the United States to confirm independently that all work has been done in conformance with this Agreement. Such evidence may include, but is not limited to, color photographs, purchase orders, permits, and/or architectural drawings. Starwood and The Phoenician will allow representatives of the United States access to The Phoenician so that the United States may monitor compliance with the certification and the terms of this Agreement.
13. In the event that Starwood or The Phoenician is required to obtain, in order to achieve compliance with this Agreement, any building, mechanical, electrical, plumbing or other permit or approval, Starwood and The Phoenician shall seek such permit or approval in good faith and in a timely fashion. If any necessary permit or approval is not granted within the time anticipated by Starwood or The Phoenician for obtaining the permit or approval, or is denied, Starwood or The Phoenician shall promptly notify counsel for the United States. The Parties shall thereafter attempt, in good faith, to determine how much additional time is required to secure the permit or approval and complete the work at issue, or, if the permit or approval has been denied, shall attempt to identify alternative methods of removing the barrier in question, or otherwise providing access to the goods or services affected by the barrier. If Starwood and The Phoenician are unable despite good faith efforts to obtain a building permit in a timely manner or the permit is denied outright, this will not constitute a breach of this Agreement.

Enforcement

14. The United States may review compliance with this Agreement at any time and may take any available steps to enforce this Agreement if the United States believes that the Agreement or any requirement thereof has been materially violated. If the United States

believes that this Agreement or any portion of it has been materially violated, it will first raise its concern(s) with Starwood and The Phoenician, and the Parties will attempt to resolve the concern(s) in good faith. The United States will give Starwood and The Phoenician 60 days from the date it notifies Starwood or The Phoenician of any breach of this Agreement to cure that breach before instituting any court action.

15. 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 the United States' right to enforce other deadlines and provisions of this Agreement.
16. If any term 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 Parties shall engage in good faith negotiations in order to adopt 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.

Entire Agreement

17. This Agreement constitutes the entire agreement between the Parties, and no other statement, promise, or agreement, either written or oral, made by any of the Parties or agents of any of the Parties that are not contained in this written Agreement shall be enforceable regarding the matters raised herein.

Authority to Bind

18. This Agreement shall be binding on the United States and on Starwood and The Phoenician, including all their principals, agents, successors in interest, and employees, as well as any person acting in concert with Starwood or The Phoenician who has a duty to so notify all such principals, agents, and successors. In the event Starwood or The

Phoenician seeks to transfer or assign all or part of its interest in any facility covered by this Agreement, and the successor or assign intends on carrying on the same or similar use of the facility, as a condition of sale Starwood or The Phoenician shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

Implementation

19. This Agreement resolves all issues raised in United States' Matter No. 202-8-169. It is limited to those issues and does not address Starwood's or The Phoenician's other obligations under the ADA, including physical accessibility at any other facility or facilities owned, leased, or operated, now or in the future, by Starwood or The Phoenician.
20. The persons signing this document for the United States, Starwood, and The Phoenician represent that they are authorized to bind the United States, Starwood, and The Phoenician to this Agreement.
21. This Agreement and information about this Agreement may be provided to the public at large or to any person, with or without request.
22. Any notice required to be given pursuant to this Agreement shall be sent by overnight delivery to the Parties at the following addresses:
 - a. If from Starwood or The Phoenician to the United States, to:

Lon R. Leavitt
Assistant United States Attorney
District of Arizona
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408
 - b. If from the United States to Starwood or The Phoenician, to:

Jay A. Zweig

Bryan Cave LLP
One Renaissance Square
Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004-4406

23. The Effective Date of this Agreement is the date of the last signature below. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. Each signatory may deliver a signed copy of this Agreement by fax or email and any such faxed or emailed copy shall be deemed to be an original.
24. This Agreement does not constitute an admission by Starwood or The Phoenician of any violation or non-compliance with any provision of the ADA or any other federal or state statute, regulation, or other law.
25. This Agreement shall remain in full force and effect for a period of three years from its Effective Date.

FOR THE UNITED STATES:

/s/ Lon R. Leavitt Date 11/21/13
LON R. LEAVITT
Assistant United States Attorney
Counsel for the United States of America

/s/ Keith D. Grossman Date 11/14/13
KEITH D. GROSSMAN
Senior Vice President and Deputy General
Counsel

Date 11/20/13
/s/ Jay A. Zweig
JAY A. ZWEIG

Bryan Cave LLP
Counsel for Starwood and The Phoenician

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November 26, 2013