**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

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| MICHAEL YELAPI, KATHY DYER and SHERRI BASTRESS, Individuals, | ) | |
| Plaintiffs, | ) | CIVIL ACTION NO. |
| vs. | ) | 8:01-CV-00787-EAK-EAJ CLASS ACTION |
| HEALTHSOUTH CORPORATION, a Delaware corporation | ) | |
| Defendant. | ) | |

**SECOND AMENDED AND RESTATED CLASS SETTLEMENT PROCEDURE AGREEMENT AND CONSENT DECREE**

Kathy Dyer, Michael Yelapi, Douglas Steel, and the Class (defined below) (collectively "Plaintiffs") and HealthSouth Corporation, a Delaware corporation ("HealthSouth") hereby enter into the following Second Amended and Restated Class Settlement Procedure Agreement and Consent Decree (this "Consent Decree"), subject to approval by the Court.

**RECITALS**

**WHEREAS**, on June 11, 2001, in the United States District Court for the Middle District of Florida, Plaintiffs commenced a proposed class action styled Access Now, Inc., a Florida Corporation, Edward Resnick, Emily Charmaine Evans and Kathy Dyer, individuals v. St. Petersburg Surgery Center, Ltd., et al., Civil Action No. 8:01-CV-787-T-17EAJ (the "Class Action") against certain named healthcare facilities in Florida and throughout the United States; and



EXHIBIT A

**WHEREAS** on December 28, 2001, Plaintiffs filed the Second Amended Complaint in which they named, as additional defendants, separate but affiliated entities of HealthSouth; and

**WHEREAS** the Second Amended Complaint alleges on behalf of themselves and other similarly situated individuals that they have been denied full and equal access to the goods, services, programs, facilities, privileges, advantages, or accommodations at the HealthSouth facilities; and

**WHEREAS** the Second Amended Complaint seeks solely injunctive relief, such as barrier removals or other modifications, under Title III of the Americans With Disabilities Act, 42 U.S.C. §§12101-12213 ("the ADA") and the Rehabilitation Act of 1973, 29 U.S.C. § 794 (the "Rehab Act") for the asserted purpose of bringing HealthSouth facilities into compliance with the accessibility requirements of the ADA and Rehab Act; and

**WHEREAS**, on December 4, 2001, Plaintiffs filed an Amended Motion for Class Certification and Memorandum of Law in Support Thereof pursuant to Fed.R.Civ.P. 23(a) and 23(b)(2); and

**WHEREAS,** pursuant to court order dated April 8, 2002, class certification was granted, with the class being defined as "consisting of all persons in the United States with disabilities as defined by the ADA and Rehab Act" (the "Class"); and

**WHEREAS** HealthSouth denies any and all liability to Plaintiffs and the Class and deny that they have violated any laws pertaining to access to the HealthSouth Facilities or discrimination against disabled persons; and

**WHEREAS** the parties nevertheless desire to resolve their differences and disputes by settling the Class Action in such a manner as to:

1. achieve improvements in accessibility at HealthSouth's facilities in a manner that satisfies HealthSouth's obligations under the ADA and the Rehab Act;

2. assure that Plaintiffs, the Class, and class counsel will not attempt to enforce, and HealthSouth will not thereby be subject to, conflicting standards regarding compliance with the ADA and the Rehab Act concerning the access features of HealthSouth's facilities;

3. avoid the uncertainties and costs of further litigation for all the parties;

4. protect HealthSouth against litigation from third parties or class members that duplicate the subject matter in whole or in part of the Class Action;

5. assure that the parties' settlement provides a uniform process for addressing issues arising under the ADA and the Rehab Act with respect to each of HealthSouth's facilities in the United States; and

6. bind the parties in a unitary settlement so that HealthSouth's obligations will be clearly and concisely defined and so that no member of the Class will hereafter assert or claim that HealthSouth is required to make additional or different modifications to its facilities or to follow different standards in order to comply with the ADA and/or the Rehab Act beyond what is agreed to in this Consent Decree and provided in separate reports to be entered hereafter pursuant to this Consent Decree respecting such facilities that may be subject to the provisions that follow; and

**WHEREAS**, the parties desire to settle all claims and causes of action raised in the Class Action in accordance with the terms of this Consent Decree; and

**WHEREAS**, counsel for the parties shall submit this Consent Decree to the Court for approval and adoption and all compliance with Fed. R. Civ. P. 23 shall fully conform to the Agreement and the terms contained herein.

**NOW, THEREFORE,** in consideration of the mutual promises and agreements set forth herein, the parties hereby agree to the following:

**1. FINAL JUDGMENT**

Upon approval and entry, this Consent Decree will be a final judgment of the Court within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure respecting the Plaintiffs and HealthSouth as to their respective claims and defenses which are addressed and resolved by the terms and conditions of this Consent Decree.

**2. ACCESSIBILITY MODIFICATIONS**

Completion of the accessibility modifications contemplated by this Consent Decree shall constitute compliance by HealthSouth with the ADA, the Rehab Act, and, as applicable, Appendix A to 28 C.F.R. Part 36 (July 1, 1994 Rev.) (the "ADAAG").

**3. FACILITIES SUBJECT TO ACCESSIBILITY MODIFICATIONS**

a. Subject to Subsection 5.b., only those HealthSouth Facilities owned, leased, occupied, or operated by HealthSouth prior to December 28, 2005 (the "Effective Date") shall be subject to the terms, conditions, and obligations set forth in this Consent Decree. As used in this Consent Decree, the term "HealthSouth Facility" means any healthcare facility owned, leased, occupied, or operated by HealthSouth, to the extent such healthcare facility is a place of public accommodation," as that term is defined at 28 C.F.R. § 36.104. "Operate," "operating," or "operated" means to have substantial and material control over the direction and

functioning of a HealthSouth Facility, either through a management agreement, operating agreement, joint venture agreement, partnership agreement, or other similar agreement.

b. As to any HealthSouth Facility that is a Medical Office Building ("MOB"), only those portions of an MOB that HealthSouth owns, leases, occupies, and/or operates and that constitute "places of public accommodation," as that term is defined at 28 C.F.R. § 36.104, shall be subject to the terms and conditions of this Consent Decree.

c. No publicly accessible office space in any HealthSouth Facility or MOB leased to third parties shall be made subject to the terms and conditions of this Consent Decree.

d. Nothing in this Consent Decree is intended to require that HealthSouth maintain a particular level, or type of, activity at any HealthSouth Facility.

e. Nothing in this Consent Decree shall prohibit HealthSouth from selling, ceasing to occupy, closing, or otherwise terminating operations at any HealthSouth Facility during the term of this Consent Decree (hereinafter "Terminated "HealthSouth Facility"), and except for its obligations pursuant to Section 3.f, HealthSouth shall have no obligation to comply with any of the terms and conditions of this Consent Decree as to any Terminated HealthSouth Facility. HealthSouth agrees to provide class counsel with written notice that HealthSouth no longer owns, leases, occupies, and/or operates a Terminated Facility.

f. The parties agree that nothing in this Consent Decree shall prohibit HealthSouth from assigning all of its rights under, title to, and interest in, the Consent Decree to the purchaser of any Terminated HealthSouth Facility. Plaintiffs hereby consent in advance to such assignment.

g. Notwithstanding any provisions in this Section 3 to the contrary, HealthSouth shall remain obligated to pay any fees and costs owed to class counsel or the

Accessibility Expert under Section 8 that relate to a Terminated HealthSouth Facility as of the date HealthSouth ceases to own, lease, occupy, and/or operate, a Terminated HealthSouth Facility.

**4. ACCESSIBILITY EXPERT**

Class counsel shall retain one or more independent accessibility experts (the "Accessibility Expert") to inspect the HealthSouth Facilities in accordance with the terms and conditions of this Consent Decree. The Accessibility Expert shall have the following duties and responsibilities:

a. Conduct the inspection of any HealthSouth Facility in accordance with the terms and conditions of this Consent Decree;

b. Prepare, upon completion of the initial inspection for any HealthSouth Facility, an Accessibility Compliance Report ("ACR") that identifies all alleged access barriers of any type and that provides compliance options by recommending means of removing such barriers in a manner consistent with the ADA, the Rehab Act, and/or, if applicable, the ADAAG. The ACR shall identify all alleged access barriers in written, videographic, and/or photographic form, with references to the ADAAG; and

c. Testify before the Court, a special master, and/or an arbitrator as to any report prepared in accordance with the terms of this Consent Decree.

**5. SCHEDULE FOR HEALTHSOUTH FACILITY INSPECTIONS AND ACCESSIBILITY MODIFICATIONS**

a. All HealthSouth Facility inspections for purposes of preparing an ACR ("ACR Inspection") shall be completed no later than December 31, 2008, unless the parties otherwise agree in writing. As to each HealthSouth Facility, all accessibility modifications required by the terms and conditions of this Consent Decree may be made in accordance with

HealthSouth's scheduled capital improvement plan for each HealthSouth Facility, but no later than nine (9) years after the Court's order approving the ACR for such HealthSouth Facility.

b. Notwithstanding the provisions in Subsection 5.a, HealthSouth shall not be required to submit any HealthSouth Facility for inspection if, at the time said inspection is scheduled to be conducted or accessibility modifications are scheduled to be made pursuant to Subsection 5.a, HealthSouth will not own, lease, occupy, and/or operate the HealthSouth Facility at issue. HealthSouth agrees to provide class counsel written notice that HealthSouth no longer owns, leases, occupies, and/or operates the HealthSouth Facility(ies) at issue and provide, upon request, a copy of the operative lease, purchase and sale agreement, or other record showing the final disposition of the facility.

c. The parties agree to cooperate in an effort to schedule ACR Inspections in the most efficient and expeditious manner possible; to conduct such ACR Inspections in a reasonable manner in order to accommodate the schedules of the HealthSouth Facilities, the Accessibility Expert, and the parties' representatives; and not to unnecessarily interfere with the Accessibility Expert's inspections. Statements made by any representative or agent of either party shall not be admissible to prove liability for, or invalidity of, any claims made in the Class Action. Unless otherwise agreed to by the parties in writing, any disputes regarding scheduling or access shall be submitted to arbitration in accordance with Section 10.

d. The parties acknowledge and agree that it is generally unnecessary for either party's counsel to accompany the Accessibility Expert on ACR Inspections. Therefore, the parties agree that such participation by either class counsel or HealthSouth's counsel in such inspections shall be limited only to the extent reasonably necessary to protect the interests of the parties.

e. Within a reasonable period of time prior to any scheduled ACR Inspection, HealthSouth shall provide class counsel such mutually agreeable information and/or documents reasonably necessary to conduct an ACR Inspection, including, but not limited to, those which establish the date of construction of the HealthSouth Facility at issue and/or the dates that any alterations were made. Unless otherwise agreed to by the parties in writing, any dispute as to the adequacy of the information and/or documents provided by HealthSouth to class counsel pursuant to this Subsection e shall be submitted to arbitration in accordance with Section 10.

f. Within sixty (60) days following completion of an ACR Inspection, class counsel shall provide HealthSouth a copy of the ACR for review, consideration, and if necessary, modification by mutual agreement.

g. In order to maximize efficiency, promote cost-savings, and avoid over-utilization of the Court's time, the parties agree to submit ACRs jointly to the Court for approval in batches, grouped geographically or in any other manner directed by the Court. Each batch of ACRs shall be submitted to the Court along with a proposed order. Any objections to an ACR, or amendments thereto, shall be raised when an ACR is presented to the Court for approval. Upon entry, each separate order approving an ACR, or any batch of ACRS, shall constitute a final judgment within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure and will be independently subject to all rights of judicial review provided by law for judgments of the Court, including appeal as of right under the Federal Rules of Civil and Appellate Procedure, without awaiting the conclusion of this proceeding or entry of any other judgments contemplated by this Consent Decree or any other final judgment as to any one party, or all the Parties. Any dispute between the parties over an ACR shall be submitted to arbitration in accordance with Section 10.

h. An approved ACR shall be utilized by HealthSouth in making modifications to the HealthSouth Facilities, and HealthSouth shall not be required to make any modifications that exceed the requirements of an approved ACR, unless amended by the parties in accordance with this Subsection h. An ACR may be amended if the contemplated accessibility modifications are not readily achievable or technically feasible. Any requested amendments to an ACR shall be submitted to the Court for approval. Upon entry, each separate order approving an amended ACR, or any batch of ACRS, shall constitute a final judgment within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure and will be independently subject to all rights of judicial review provided by law for judgments of the Court, including appeal as of right under the Federal Rules of Civil and Appellate Procedure, without awaiting the conclusion of this proceeding or entry of any other judgments contemplated by this Consent Decree or any other final judgment as to any one party, or all the Parties.

i. It is the intent of the parties to seek the Court's guidance in scheduling any fairness hearings the Court deems necessary to implement the provisions of this Section 5.

**6. COVENANT NOT TO SUE**

a. The parties represent that they are aware of no other action, lawsuit, legal proceeding, or any other charge or complaint with any local, state, or federal agency or court against HealthSouth specifically relating to the accessibility of the HealthSouth Facilities.

c. Plaintiffs represent that to the best of their knowledge they have not filed, and are not participants or class members in, any other complaints or charges against HealthSouth with any local, state, or federal agency or court alleging accessibility barriers in violation of the ADA, the Rehab Act, the ADAAG, if applicable, and any other local, state, or federal accessibility law or regulation; that they will not at any time hereafter file, participate in, or become a class

member in, any other complaint or charges against HealthSouth seeking injunctive relief for alleged accessibility barriers in violation of the ADA, the Rehab Act, or if applicable, the ADAAG, or any other local, state, or federal accessibility law or regulation; and that if any such agency or court assumes jurisdiction of any such complaint or charge seeking injunctive relief against HealthSouth by or on behalf of Plaintiffs, Plaintiffs, acting through class counsel, shall request such agency or court to withdraw, dismiss and/or stay the matter and use their best efforts to cause the agency or court to withdraw or dismiss the matter.

d. HealthSouth shall take and continue to take measures to train its management staff to direct any and all issues, complaints, concerns or the like relating to public accessibility at HealthSouth Facilities to the corporate representative at HealthSouth designated to handle such complaints or concerns. Upon receipt of any such communication, HealthSouth shall notify class counsel and the parties shall use good faith efforts to remedy the alleged problem as soon as practicable.

e. Plaintiffs understand and expressly agree that this Consent Decree extends to all claims for injunctive relief of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from, or relating to, any alleged violations by HealthSouth, occurring Effective Date, and specifically relating to the accessibility of HealthSouth Facilities.

f. The parties understand and expressly agree that this Consent Decree shall bind and benefit Plaintiffs and HealthSouth and their respective heirs, administrators, or successors. Notwithstanding the foregoing, this Consent Decree shall not be binding upon any purchaser of (i) the assets of a HealthSouth Facility, (ii) or all or part of HealthSouth's interest in a HealthSouth Facility, or (iii) all or part of HealthSouth's interest in an entity owns, leases,

occupies, and/or operates a HealthSouth Facility, unless the purchaser of such assets or interest(s) agrees in writing to assume HealthSouth's obligations under this Consent Decree.

g. Plaintiffs further represent that to the best of their knowledge they have not assigned or transferred in any way any claims against any one or all of HealthSouth.

h. Nothing contained in this Section 6 is intended to release Plaintiffs' rights to assert a claim concerning any property owned, leased, occupied, or operated by HealthSouth that is not a HealthSouth Facility.

## 7. PROCEDURE FOR FINAL RELEASE AND DISSOLUTION OF CONSENT DECREE

a. Upon completion of the accessibility modifications prescribed in an ACR for a particular HealthSouth Facility, an authorized agent with authority to bind HealthSouth shall submit a sworn Declaration of Completion ("DOC") in accordance with 28 U.S.C. § 1746, certifying that a HealthSouth Facility's modifications have been completed pursuant to the court-approved ACR. The form of the DOC shall be agreed to by the parties and approved by the Court but shall include, at a minimum, a description of each required modification and provide any photographs and/or video necessary to establish that the required accessibility modifications have been completed in compliance with the ACR. To ensure uniformity, the DOC shall track the order of alleged violations and format presented in the ACR for the subject facility.

b. A DOC shall constitute conclusive proof that HealthSouth has made the accessibility modifications as required by the ACR, thereby reducing or eliminating the need for post-modification compliance inspections. However, to the extent class counsel contends that compliance cannot be reasonably verified through photographic or videographic means, HealthSouth shall promptly seek to cure any shortcoming with additional information including, but not limited to, photographs and/or video. Should the defect be incurable, class counsel shall

notify HealthSouth whether Plaintiffs intend to re-inspect such facility in order to verify compliance with the ACR. If after re-inspection, class counsel contends that HealthSouth has failed to make the accessibility modifications in accordance with the ACR, the parties agree to submit such dispute to arbitration in accordance with Section 10, unless otherwise agreed to by the parties in writing.

c. Along with each DOC submitted in accordance with Subsection a, the parties shall provide to the Court a "Joint Stipulation and Partial Release of Claims" that releases all claims related to the HealthSouth Facilities that are encompassed by the DOCs submitted to the Court.

d. Ninety (90) days from the date a DOC is filed with the Court, any Joint Stipulation and Partial Release of Claims filed therewith shall become final and binding on the parties, and the Court's jurisdiction as to that Facility and Defendant(s) will terminate.

e. Ninety (90) days from the date the last HealthSouth Facility is released pursuant to Subsection d, this Consent Decree shall dissolve.

**8. FEES AND EXPENSES**

a. The parties acknowledge and agree that the Class Counsel Fee (defined in Section 8.b) is a reasonable fee for all legal work performed by class counsel prior to the Effective Date and constitutes all reasonable fees to which class counsel is entitled pursuant to 42 U.S.C. §§2000a-3 & 12188(a) for all legal work performed prior to the Effective Date. Upon approval of this Consent Decree by the Court, Plaintiffs will be prevailing parties for purposes of determining entitlement to attorney fees and costs under Title III of the ADA (42 U.S.C. §12205).

b. HealthSouth agrees to pay class counsel $1,040,000.00 as compensation for all attorney and expert fees (the "Class Counsel Fee") relating to:

i. all work related to the inspected HealthSouth Facilities, including all past, present, and future attorney and expert fees that relate to the inspection of any inspected HealthSouth Facility and the preparation, review, submission to, and approval by the Court, of any ACR or DOC for such inspected HealthSouth Facilities; and

ii. all other legal work performed prior to the Effective Date.

c. The parties acknowledge and agree that the Class Counsel Fee consists of two components. The first component of the Class Counsel Fee, to be paid in accordance with Subsection 7.d, equals $940,505.00 and constitutes payment under Section 8.b.i for all work related to any inspected HealthSouth. The second component of the Class Counsel Fee constitutes a lump-sum payment in the amount of $99,495.00, which includes all non-inspection-related legal work ($62,774.00), class counsel's expenses ($9,500.00), and Plaintiffs' expert's fees and expenses ($27,221.00).

d. The Class Counsel Fee will be held in escrow and placed in an interest bearing account, to be disbursed as follows:

i. Not later than three (3) days after the Effective Date, class counsel shall be paid from escrow $725,871.33, which equals 66.6% of the first component of the Class Counsel Fee ($626,376.33) and the full amount of the second component of the Class Counsel Fee ($99,495.00)

ii. The remainder of the first component of the Class Counsel Fee ($314,128.67), plus accrued interest, shall be disbursed in pro rata shares not later than three (3)

days after each batch of ACRs for the inspected HealthSouth Facilities are submitted to the Court for approval in accordance with Section 5.g of this Consent Decree.

e. The parties agree that the Class Counsel Fee constitutes payment in full for all legal work and expert fees earned or owed pursuant to that certain settlement agreement, dated on or about April 11, 2001, by and among HealthSouth and Access Now, Inc., Edward Resnick, Kathy Dyer, and Emily-Charmine Evans (hereinafter the "HealthSouth Settlement Agreement").

f. The parties agree that the Class Counsel Fee does not constitute payment in full for any testimony by the Accessibility Expert made after the Effective Date and relating to any HealthSouth Facility inspected prior to the Effective Date

g. Unless otherwise expressly provided for in this Consent Decree, all reasonable legal work performed after the Effective Date by class counsel or his or her designee, whether it relates to any HealthSouth Facility inspected pursuant to the terms and conditions of this Consent Decree or is general, class-wide legal work (e.g., motions, hearings before the Court, enforcement of agreements or ordered compliance, adjudicating matters before the arbitrator), shall be billed on an hourly basis as follows:

i) $250.00 per hour, billed in $1/10^{th}$ of an hour increments;

ii) Other counsel, including counsel acting in a non-lead capacity: $200.00 per hour, billed in $1/10^{th}$ of an hour increments; and

iii) Paralegals: $100.00 per hour, billed in $1/10^{th}$ of an hour increments.

h. The parties agree that any fees paid pursuant to Section 9.f. of this Consent Decree shall not exceed $200,000.00, and that this amount constitutes all reasonable

attorney fees to which class counsel is entitled, including any fees pursuant to 42 U.S.C. § § 2000a-3 & 12188(a), for all legal work to be performed by class counsel; provided, however, that if at the time of the final release pursuant to Section 7.f, the actual fees paid pursuant to Subsection 8.g exceed $200,000.00, and if the parties cannot resolve any dispute between them as to this excess amount, the dispute shall be submitted to the magistrate judge for final resolution as to the reasonableness of such fees in excess of $200,000.00.

i. HealthSouth shall reimburse class counsel for all reasonable fees, costs, and expenses incurred by the Accessibility Expert for any work required by this Consent Decree at mutually agreeable rates; provided, however, the parties agree to work together in good faith to ensure that such rates are fair, but nonetheless economically reasonable based on the circumstances. Any dispute relating to the rates to be paid the Accessibility Expert for work relating to any required inspections after the Effective Date shall be submitted to the magistrate judge.

j. HealthSouth agrees to pay the reasonable and necessary costs and expenses incurred by class counsel and the Accessibility Expert that are directly related to their performance under this Consent Decree.

k. Payment of any amount under this Section 8 shall be in full and complete satisfaction of any and all claims for attorney fees, litigation expenses, including expert fees and expenses, and costs Plaintiffs may have against HealthSouth as of the date paid. All hourly expert and attorney fees, costs, and expenses shall be invoiced monthly and submitted by class counsel to the designated representative of HealthSouth and paid by HealthSouth within sixty (60) days after receipt thereof. If HealthSouth contend that all or any portion of any fee, cost, or expense contemplated by this Consent Decree is unreasonable, they shall notify class counsel

within forty-five (45) days after receipt of the invoice required by this Subsection k. Failure by HealthSouth to notify class counsel within the forty-five (45) day period set forth in this Subsection k shall be deemed a waiver of any claim as to the alleged unreasonableness of a particular fee, cost, or expense provided for in this Consent Decree; provided, however, that any failure to object to, or payment of, any particular invoice shall not be deemed a waiver by HealthSouth of any claim that the total fees and expenses paid to class counsel exceed the maximum amount permitted pursuant to Subsection 8.h. All disputes relating to the reasonableness of any fee, cost, or expense shall be submitted for resolution to the magistrate judge assigned to the Lawsuit.

## 9. APPOINTMENT OF A SPECIAL MASTER

Nothing in this Consent Decree shall prevent the parties from agreeing to petition the Court for the appointment of a special master pursuant to Rule 53(a)(1)(A) of the Federal Rules of Civil Procedure.

## 10. DISPUTE RESOLUTION

Notwithstanding the appointment of a special master pursuant to Section 9, the parties shall not be prohibited from resolving any disputes arising under this agreement through the use of arbitration or mediation, including where such resolution is either permitted or required by the terms and conditions of this Consent Decree. If the parties desire to use an arbitrator/mediator to resolve any disputes arising under this Consent Decree, the parties agree to select one (1) arbitrator/mediator with an engineering degree, architectural degree, and/or significant ADA/Rehab Act experience to resolve all disputes arising under this Consent Decree. If the parties cannot agree on an arbitrator, the parties agree to jointly present a list of four (4) choices to the Court to make a final, binding selection. Unless otherwise agreed to by the parties in

writing, arbitration shall be governed by the Commercial Rules of the American Arbitration Association ("AAA"), though the AAA shall not serve as administrator of any arbitration under this Consent Decree. HealthSouth shall bear the fees and costs associated with the use of arbitration to resolve any dispute arising under this Consent Decree. If Plaintiffs are a "prevailing party" in any dispute submitted to arbitration under this Section 10 (as determined by the "catalyst test,"), Plaintiffs shall be entitled to class counsel's attorney fees that relate only to those issues on which Plaintiffs prevail. All arbitration matters contemplated under this Consent Decree shall be conducted and resolved as expeditiously as possible. Whenever possible, all disputes submitted to arbitration shall be resolved by the arbitrator without an evidentiary hearing, by reviewing the written position statements of the parties, and/or by telephonic conference with the parties.

## 11. NONCOMPLIANCE AS A RESULT OF EVENTS BEYOND HEALTHSOUTH'S CONTROL

The parties agree that if HealthSouth has timely commenced the accessibility modifications required by this Consent Decree, and have proceeded with the completion thereof in good faith and with due diligence, but have been delayed in the completion thereof because of acts of God, *force majeure*, or events beyond the control of HealthSouth (such as inability to obtain building or zoning permits, failure of the county inspectors to make inspections, contractor defaults, work stoppages, etc.), and should HealthSouth notify class counsel of such in writing prior to the expiration of the time periods agreed to herein, the time periods for completion established hereby shall be extended appropriately.

## 12. NO ADMISSION OF LIABILITY

By agreeing to, and voluntarily entering into, this Consent Decree, HealthSouth is making no admissions or concessions, express or implied, that they may have in any way violated the ADA, the Rehab Act, or any other local, state, or federal law, regulation, order, or rule relating to access by individuals with disabilities at any places of public accommodation that they own, lease, occupy, and/or operate. HealthSouth denies, and continue to deny, that it has violated the ADA, the Rehab Act, or any other local, state, or federal laws relating to access by individuals with disabilities at any places of public accommodation that they own, lease, occupy, and/or operate. Furthermore, this Consent Decree, any statements or negotiations made in connection therewith, and any actions taken by any party under this Consent Decree, may not be offered or be admissible in evidence or in any other manner against that party in any action or proceeding for any purpose, except in any action or proceeding brought to enforce the terms of this Consent Decree by or against the Plaintiffs or HealthSouth.

## 13. MEASURES NOT TO EXCEED REQUIREMENTS OF ADAAG

Nothing contained in this Consent Decree shall be interpreted as requiring that any accessibility modification required by this Consent Decree exceed the standards set forth in the ADA, the Rehab Act, or the ADAAG. Notwithstanding the foregoing, nothing in this Consent Decree shall limit the right of HealthSouth to undertake accessibility modifications, or to build or alter any HealthSouth Facility that exceeds the requirements of this Consent Decree, the ADA, the Rehab Act, or the ADAAG.

## 14. EFFECT OF AMENDMENT OR REVISION TO ADAAG

Should the ADAAG be amended or revised at any time after the Effective Date of this Consent Decree, and if such amendments or revisions result in an accessibility standard that is

more stringent than that which is provided for in this Consent Decree, from the Effective Date of the amendment or revision forward, Defendant shall be required only to meet the requirements of this Consent Decree and the ADAAG in existence as of the Effective Date.

**15. REFERENCES**

Words and phrases used in this Consent Decree that have definitions provided in the ADAAG or 28 C.F.R. § 36.104 shall be construed as defined in the ADAAG or 28 C.F.R. 36.104, as applicable.

**16. AUTHORITY TO EXECUTE**

Each party represents that each person or entity executing this Consent Decree has been authorized to sign on behalf of the respective party(ies) and to bind it (them) to the terms of this Consent Decree.

**17. ASSIGNMENT**

This Consent Decree extends only to Plaintiffs and HealthSouth and their heirs, predecessors, or successors. The parties each represent that no claim that is the subject of this Consent Decree has been assigned to any other person or entity. Unless otherwise agreed to by the parties in writing, this Consent Decree may not be assigned.

**18. ENTIRE AGREEMENT**

This Consent Decree, including any schedules referenced herein, constitutes the entire agreement among the parties on the matters raised herein. No other statement, promise, or agreement, either written or oral, made by either party or agents of either party not contained in this written Agreement, shall be enforceable. The parties agree that upon the Effective Date this Consent Decree supersedes any and all previous agreements between the parties, , including but not limited to, the HealthSouth Settlement Agreement, the Class Settlement Procedure

Agreement, dated January 28, 2005, the Class Settlement Procedure Agreement, dated June 2, 2005, and submitted to the Court for approval on June 8, 2005, and the Amended and Restated Class Settlement Procedure Agreement, dated December 28, 2005, and renders all such pervious agreements null and void.

**19. VOLUNTARY EXECUTION AND ACKNOWLEDGEMENT**

The parties hereby represent and acknowledge that this Consent Decree is given and executed voluntarily and is not based upon any representation by any of the parties to another party as to the merits, legal liability, or value of any claim of the parties or any matters related thereto. The parties acknowledge that they have been afforded an opportunity to consider the terms and conditions of this Consent Decree, that they have read and understand the terms and conditions herein, and that they have retained counsel and have been provided with the opportunity to consult with their respective counsel prior to their execution of the Agreement

**20. BANKRUPTCY**

In the event of a petition for bankruptcy or financial insolvency by HealthSouth, this Consent Decree, including all payments, accessibility modifications, or deadlines, or other actions required hereunder, shall be tolled from the time of filing of any said petition until final resolution of the bankruptcy or the insolvent condition is resolved.

**21. NO THIRD-PARTY BENEFICIARIES**

Individual members of the Class shall not be third-party beneficiaries of this Consent Decree or any of its provisions, and they shall have no right to bring any action for alleged violation of this Consent Decree. Only class counsel shall have the authority to enforce this Consent Decree.

**22. WRITTEN NOTICE**

Each notice provided for under this Consent Decree must comply with the requirements of this Section 22. Each notice shall be in writing and sent certified mail, return receipt requested, or by depositing same with a nationally recognized overnight courier service that obtains receipts (e.g., Federal Express or UPS Next Day Air), addressed to the appropriate party (and marked to a particular individual's attention, if so indicated) as hereinafter provided. Each notice shall be effective upon being so deposited, but the time period in which a response to any notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the notice by the addressee thereof, as evidenced by the return receipt. Rejection or other refusal by the addressee to accept or the inability to deliver because of a changed address of which no notice was given shall be deemed to be the receipt of the notice sent. Any party shall have the right from time to time to change the address or individual's attention to which notices to it shall be sent by giving to the other party at least ten (10) days prior notice thereof. The parties' addresses for providing notices hereunder shall be as follows:

**Plaintiffs:**

Kip P. Roth
15293 South Falcon Crest Court
Draper, Utah 84020

**HealthSouth:**

John Whittington
Executive Vice President
General Counsel and Secretary
HealthSouth Corporation
One HealthSouth Parkway
Birmingham, Alabama 35243

*with a copy to:*

M. Jefferson Starling, III
Balch & Bingham LLP
1710 Sixth Avenue North
P.O. Box 306 (35201)
Birmingham, Alabama 35203

**23. MISCELLANEOUS**

a. This Consent Decree is deemed to have been mutually prepared by the parties and will not be construed against any of them by reason of authorship

b. This Consent Decree may be modified, amended, or altered only in writing signed by both parties and approved by the Court. This clause includes, but is not limited to, any modifications, amendments or alterations to any and all of the time requirements and time limitations provided in this Consent Decree.

c. The parties may agree, within their sole discretion and subject to approval of the Court where required, to reasonable extensions of time to carry out the provisions of this Consent Decree. Nothing in this Subsection c shall be construed to require any party to grant a requested extension.

d. In computing any period of time prescribed or allowed by this Consent Decree, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays are to be excluded from the computation. For purposes of this paragraph, "legal holiday" is defined to mean any day appointed or designated as a legal holiday by federal law.

e. This Consent Decree shall be construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law thereof.

f. This Consent Decree may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same agreement.

g. This consent Decree shall have no binding effect unless and until it has been executed by all parties hereto and approved by the Court.

IN WITNESS WHEREOF, the parties have hereunto signed their names on the day and year written below.

**ON BEHALF OF PLAINTIFFS:**

_____
KATHY DYER
Date:_____

_____
MICHAEL YELAPI
Date:_____

_____
DOUGLAS STEEL
Date:_____

**[Signatures Continue on the Following Page]**

**DEFENDANT:**

HEALTHSOUTH CORPORATION, a Delaware corporation

By:_____
Its:_____
Date:_____

**APPROVED AND ENTERED BY:**

_____
UNITED STATES DISTRICT JUDGE
Date:_____