

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 01-N-1522 (BNB)

JOSEPH EHMAN,  
KRISTIN McINTOSH and  
WILLIAM JOE BEAVER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE HOME BUILDERS ASSOCIATION OF METROPOLITAN DENVER,

Defendant.

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**CONSENT DECREE**

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**I. INTRODUCTION**

- A. **Parties and the Lawsuit.** This Consent Decree is entered into between Kristin McIntosh (“McIntosh”), William Joe Beaver (“Beaver”) (collectively “Named Plaintiffs”), on behalf of themselves individually and the Settlement Class (as defined below), and the Home Builders Association of Metropolitan Denver, Inc. (“HBA”) (collectively, “the Parties”). Named Plaintiffs are Plaintiffs in, and HBA is the Defendant in, Joseph Ehman, Kristin McIntosh, and William Joe Beaver v. The Home Builders Association of Metropolitan Denver, Inc., Civil Action No. 01-N-1522 (D. Colo.), a civil action pending in the U.S. District Court for the District of Colorado (“Lawsuit”).
1. **Claims.** In the Lawsuit, Named Plaintiffs have alleged that the Parade of Homes (“Parade”), an annual event organized, partially sponsored, advertised, and promoted by HBA, is subject to, and has, in the past, been in violation of, Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. (“Title III” or “the ADA”).
  2. **Denial of Liability or Wrongdoing.** HBA has denied and continues to deny any and all liability or wrongdoing to Named Plaintiffs and to the Settlement Class. By entering into this Consent Decree, the HBA does not admit any impropriety, wrongdoing or liability of any kind whatsoever, including any as to the claims raised in the Lawsuit, and on the contrary,

expressly denies the same. The HBA has entered into this Consent Decree solely for the purpose of avoiding the expense, inconvenience, distraction and delay of the Lawsuit, without admitting any wrongdoing or liability whatsoever.

- B. **No Third-Party Beneficiaries.** By entering into this Consent Decree, the Parties do not intend to create third-party beneficiaries. No individual, organization or combination thereof shall have any right to bring any action or commence any proceeding for any alleged violation of this Consent Decree. Only Class Counsel and the HBA shall have the authority to enforce this Consent Decree.

II. **CONDITIONS PRECEDENT TO THIS CONSENT DECREE** This Consent Decree shall be conditioned upon and shall be effective only upon, the occurrence of all of the following events:

- A. **Preliminary Approval.** Class Counsel and HBA move jointly by stipulation for an Order Granting Preliminary Approval of this Consent Decree and Issuance of Notice in accordance with Paragraph X of this Consent Decree and such motion is granted by the Court.
- B. **Notice.** Notice is provided to the Settlement Class in accordance with Paragraph XI of this Consent Decree.
- C. **Fairness Hearing.** A Fairness Hearing is held in accordance with Paragraph XII of this Consent Decree.
- D. **Final Approval.** The Court grants final approval of this Consent Decree and enters Judgment in accordance with the terms set forth herein after a Fairness Hearing has been conducted. The Judgment shall finally resolve all issues raised in this proceeding.

III. **DEFINITIONS.** The following terms, as used in this Consent Decree, shall have the meaning ascribed to them below:

- A. **Accessible Parking Space:** A parking space that is at least eight feet wide, that is adjacent on either side to a Parking Access Aisle that is at least five feet wide and that is indicated by a sign that complies with Standards § 4.6.4.
- B. **Accessible Route:** A route that complies with the following provisions of the Standards: §§ 4.3.3, 4.3.6, 4.3.7, 4.3.8, and any provisions referenced by these provisions.

- C. Class Counsel: Amy F. Robertson and Timothy P. Fox of the law firm of Fox & Robertson, P.C. and Kevin Williams of the Colorado Cross-Disability Coalition, and any attorneys practicing with those attorneys, or any attorney who may be substituted for one of these attorneys upon motion to the Court.
- D. Concession Stand: Any stand, booth or other feature used to sell food or merchandise.
- E. Exhibit Booth: Any stand, booth or other feature used to display or promote merchandise or services.
- F. Parade Home: Any home on the grounds of the Parade of Homes to which members of the public are admitted, including the home's interior.
- G. Parking Access Aisle: The aisle adjacent to an Accessible Parking Space or Van Accessible Parking Space.
- H. Settlement Class: All persons with disabilities who are currently or have been in the past four years residents of the State of Colorado who use wheelchairs or scooters for mobility who, within four years of the filing of the complaint in this Lawsuit have been denied, or are being or will be denied, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any Parade of Homes primarily sponsored or coordinated by the Home Builders Association of Metropolitan Denver, Inc.
- I. Structurally Impracticable and Structural Impracticability: The meaning set forth in 28 C.F.R. § 36.401(c).
- J. Standards: The Department of Justice Standards for Accessible Design, 28 U.S.C. pt 36, app. A.
- K. Van Accessible Parking Space: A parking space that is at least eight feet wide, that is adjacent on either side to a Parking Access Aisle that is at least eight feet wide and that is indicated by a sign that complies with Standards § 4.6.4.

#### IV. **TERM OF CONSENT DECREE**

The term of this Consent Decree shall commence from the date of entry by the Court and continue until the earlier of: (a) the five year anniversary of the said date of entry; or (b) the time at which HBA is no longer the primary coordinator and sponsor of the Parade of Homes.

**V. CONDITIONS OF THE PARADE**

**A. Common Area Conditions.** HBA shall provide the following at the Parade:

**1. Accessible Route:**

- a. At least one entrance to the Parade site shall be wheelchair accessible and shall be on an Accessible Route. Each such entrance shall be referred to herein as an “Accessible Entrance.”
- b. There shall be at least one Accessible Route from Accessible Parking Spaces and Van Accessible Parking Spaces to an Accessible Entrance.
- c. At least one Accessible Route shall connect Accessible Entrances with all accessible spaces at the Parade site and to a wheelchair accessible entrance to each Parade Home.
- d. In complying with Paragraph V.A.1.c above, the HBA will, if reasonably possible, select a site that permits such Accessible Routes. If HBA is considering more than one proposed site, the greater accessibility of a given site to persons in wheelchairs and scooters will be a factor (but not the determining factor) in favor of the selection of that site. In the event that two or more proposed sites are otherwise equally suitable for a Parade of Homes, in HBA’s judgment, the most accessible site to persons in wheelchairs and scooters will be selected by HBA.
- e. If it is Structurally Impracticable to provide Accessible Routes to all required locations at a Parade of Homes site, HBA will use the following methods to ensure wheelchair access to each of the accessible spaces at the Parade and to a wheelchair accessible entrance to each Parade Home:
  - (1) Installing or extending sidewalks or other paths that constitute Accessible Routes; or
  - (2) Providing wheelchair-accessible transportation to those accessible spaces and wheelchair accessible entrances to Parade Homes that it is not able to locate on an Accessible Route.

2. **Restrooms:**

- a. At each cluster of toilet units, at least five percent of the said units in a cluster, but no fewer than one such unit, shall
- (1) be located on an Accessible Route;
  - (2) have a doorway with a minimum clear opening of 32 inches with the door open 90 degrees, measured between the face of the door and the opposite stop;
  - (3) have a doorway with a threshold no greater than ½ inch;
  - (4) have a doorway with a raised threshold and floor level changes of no greater than 1:2;
  - (5) have a door with a handle, pull, latch, lock or other operating device with a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate;
  - (6) have a door with hardware required for accessible door passage mounted no higher than 46 inches above the finished floor; and
  - (7) have clear floor space, grab bars, toilet paper dispenser and commode that comply with Figures 30(a), 30(c) and 30(d) of the Standards, provided that, if no temporary toilet unit is available for rent within one hundred (100) miles of the location of the Parade, the HBA will be required only to rent the most accessible temporary toilet available.
- b. The path or trail to each portable toilet unit that complies with Paragraph V.A.2.a above shall be paved with asphalt.
- c. Each toilet unit that complies with Paragraph V.A.2.a above shall be identified by the International Symbol of Accessibility.
- d. If lavatories, sinks, paper towels or other amenities are provided, they shall comply with the Standards with respect to clear floor space, operating controls, hardware, and reach ranges.

3. **Concession Stands and Seating:**

- a. The line for any Concession Stand shall have a minimum clear width of 36 inches. If a turn around an obstruction is required, it shall have a clear width of 42 inches on each side of the obstruction and 48 inches at the point of the obstruction. In the alternative, a 60-inch turning radius may be provided.
- b. At any Concession Stand, at least 36 inches of the counter shall be no more than 36 inches above the ground. This area of the Concession Stand shall be on an Accessible Route and shall be maintained free and clear of obstructions.
- c. If table seating is provided for the general public, at least five percent but no fewer than one of the tables provided in each such seating area shall be on an Accessible Route and shall have non-fixed seating to permit access by individuals in wheelchairs. Such accessible tables shall be designated by the International Symbol of Accessibility.

4. **Parking:**

- a. The minimum number of Accessible Parking Spaces shall be set according to the total number of parking spaces at the Parade, as follows:

<u>Total Number of Spaces</u>	<u>Minimum Number of Accessible Parking Spaces</u>
25 or less	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total spaces
1001 and above	20 + one for each 100 spaces over 1000

- b. One in every eight Accessible Parking Spaces, but not less than one, shall be a Van Accessible Parking Space.
- c. Accessible Parking Spaces and Van Accessible Parking Spaces shall be located on the shortest accessible route of travel from adjacent parking to an Accessible Entrance.
- d. Parking Access Aisles shall be part of an Accessible Route to wheelchair Accessible Entrances to the Parade site.
- e. Directional signs advising motorists of the location of designated Accessible Parking Spaces and Van Accessible Parking Spaces shall be posted. At least one such sign shall be posted at each entrance to each parking area and at other locations as necessary to direct people with disabilities to Accessible Parking Spaces and Van Accessible Parking Spaces.

5. **Exhibit Booths:**

- a. At least one Accessible Route (or alternative methods, as provided in Paragraph V.A.1.e above) shall connect Accessible Entrances with all Exhibit Booths outside the Parade Homes.
- b. At least one Accessible Route (or alternative methods, as provided in Paragraph V.A.1.e above) shall connect Accessible Entrances with all exhibits and displays in the garages of the Parade Homes.
- c. Any part of any Exhibit Booth that is open to the general public shall be on an Accessible Route.

6. **Miscellaneous Elements and Spaces**

- a. At least one ticket booth or office shall be on an Accessible Route. This ticket booth or office shall have a counter that is no more than 36 inches above grade (if outdoors) or above the finished floor (if indoors).
- b. Any area of the Parade that is made available for recreation or entertainment, including but not limited to play areas, amusement

areas, and concert or other performance areas, shall comply with the Standards.

**B. Conditions in Parade Homes.** HBA shall ensure that the following conditions obtain in all Parade Homes:

**1. Physical access to first floor of each home.**

- a. At least one of the following – the front door, garage door, and/or other doors – of a Parade Home shall provide access into the first floor to persons in wheelchairs.
- b. HBA shall issue a written policy statement to the builders of the Parade Homes, encouraging them to make the front doors of the Parade Homes wheelchair accessible.
- c. If a wheelchair accessible entrance to a Parade Home is a door other than the front door, directional signs regarding the entrance shall be posted in a visible place at the closest accessible space to the front of the home site.
- d. If a wheelchair accessible entrance is provided at any location other than the front door of a given Parade Home, a sign “Wheelchair and Stroller Access - Please Yield” shall be posted on both sides of such door and all Parade patrons, regardless of disability, shall be permitted to enter and exit through any door to that Parade Home.
- e. Persons who use a wheelchair accessible entrance other than the front door shall be, to the extent reasonably practical, through the use of greeters, hosts, hostesses, signs, or otherwise, directed toward the front door of the home such that the persons in wheelchairs are generally moving in the same direction as those visitors who entered the house through the front door and are not moving against the flow of the other visitors.
- f. When necessary, a temporary or permanent ramp (at the option of the homebuilder involved) shall be installed at a door to make it a wheelchair accessible entrance.
  - (1) The least possible slope shall be used for any ramp. The maximum slope of a ramp shall be 1:12.

- (2) The maximum rise for any run shall be 30 inches.
  - (3) The minimum clear width of any such ramp shall be 36 inches. If the ramp makes a 180-degree switchback, a turning radius of 60 inches shall be provided at the point of the turn.
  - (4) Ramps shall have level landings at the bottom and top of each ramp and each ramp run. The landing shall be at least as wide as the ramp run leading to it. The landing length shall be a minimum of 60 inches.
  - (5) The cross slope of ramp surfaces shall be no greater than 1:50.
  - (6) If a ramp run has a rise greater than 6 inches or a horizontal projection greater than 72 inches, the ramp shall have handrails on both sides. The clear space between the handrail and the wall shall be 1-1/2 inches.
  - (7) Ramp surfaces shall be stable, firm and slip-resistant.
- g. Subject to Paragraph V.B.2 below, all areas of the first floor of each Parade Home shall be accessible to individuals who use wheelchairs, provided that this does not preclude the use of sunken or elevated rooms or areas. If any portion of the first floor of a home is not wheelchair accessible and is not fully visible from a wheelchair accessible area, such area shall be included in the videotape presentation referenced in Paragraph V.B.5.

2. **Width of first floor doorways.**

- a. In 2002, HBA will encourage builders of homes in a Parade to construct Parade homes with doorways that provide a clear opening of at least 32 inches, except at doors to pantries, laundry rooms, storage rooms, bathrooms or other auxiliary rooms, which may be narrower.
- b. If, in the 2002 Parade, a builder elects to provide a doorway with a clear opening of less than 32 inches, and if the first floor area

serviced by that doorway is not accessible by an alternative doorway with a clear opening of at least 32 inches, and is not fully visible from a wheelchair accessible area, the first floor area serviced by that door shall be included in the videotape presentation referenced in Paragraph V.B.5.

c. HBA will require builders of Parade Homes in the 2003 and future Parades to provide doorways with a clear opening of at least 32 inches. Doorways to pantries, laundry rooms, storage rooms, bathrooms or other auxiliary rooms of less than 100 square feet may be narrower.

3. **HBA Policy Statement.** HBA will issue a written policy statement encouraging builders of Parade Homes to construct Parade Homes with front entrances without steps or with one or more ramps, to provide front door access to persons in wheelchairs, and otherwise to design and build using principles of Universal Design.

4. **Ramps to and from decks off the first floor.** Persons in wheelchairs visiting the first floor of a Parade Home will be afforded access to all outdoor decks off the first floor to which access may be provided consistent with Standards §§ 4.1.6(3)(a) and 4.8.2. The parties agree that access may be provided by a ramp. If the space on the deck is not sufficient to permit a ramp that complies with Standards §§ 4.1.6(3)(a) and 4.8.2, no ramp is required.

5. **Videotape presentation regarding non-accessible areas.** In a wheelchair accessible area on the first floor or in the garage of each Parade Home in a Parade, there will be a videotape display on a television or monitor of the home. Although the exact artistic, photographic, and aesthetic content of the videotape presentation shall be left to the discretion of the builder, the videotape presentation must depict the significant features of rooms and areas on floors and levels other than the first floor, and of those rooms and areas on the first floor not fully visible to persons in wheelchairs from wheelchair-accessible areas of the home. The screen on which the videotape referred to in this Paragraph is shown will be no more than 54 inches above the finished floor and there will be sufficient space facing the screen to permit four individuals using wheelchairs to view the videotape simultaneously.

C. **Maintenance of Access.** HBA will maintain the conditions covered by this Consent Decree in compliance with this Consent Decree for the duration of each

Parade. HBA will require others responsible for conditions covered by this Consent Decree to maintain such conditions in compliance with this Consent Decree for the duration of each Parade.

- D. **Planning for the Parade.** Class Counsel shall be permitted to attend at least one meeting in advance of a Parade opening, relating to the planning of the said Parade. The meeting will be scheduled by HBA, in its discretion, and HBA shall mail to Class Counsel written notice of the meeting at least 14 days in advance. At this meeting, Class Counsel shall be permitted to examine available maps, sketches and other documents regarding the layout and design of the common areas of the site of the Parade and the accessibility to each of the homes in the Parade. Further, at this meeting, Class Counsel shall be permitted to make suggestions to improve the accessibility of the common areas of the site of the Parade and access to the first floor of each of the Parade Homes. The parties agree that the builders of the homes and the HBA, in their exclusive discretion, may decline to follow the suggestions; however, HBA shall not be relieved of its obligations under this Consent Decree.

## VI. NO PICKETING, PROTESTING, OR INTERFERENCE

- A. McIntosh and Beaver shall not engage in any picketing, protesting, demonstrations, civil disobedience or other activity with the purpose or effect of interfering with: the operation of any Parade, the public's use or enjoyment of public roads leading to the Parade, the public's access to the Parade, or the operation of the HBA at the Parade. Further, McIntosh and Beaver agree not to engage in any protest activity regarding a Parade, including picketing, protesting, demonstrations and civil disobedience on public or private property, with the purpose or effect of publicizing any protest regarding or criticism of the policies or practices of the HBA or its members with respect to the conditions at the Parade.
- B. McIntosh and Beaver each agrees to make reasonable efforts to discourage and dissuade other persons from engaging in any of the activities or conduct which they are prohibited from engaging in, as described in Paragraph VI.A above. Such reasonable efforts include, but are not limited to, McIntosh and Beaver each publishing the full terms of this Consent Decree to the officers, employees and members of, ADAPT-Denver, Atlantis, and the Colorado Cross-Disability Coalition, and to make reasonable efforts to discourage and dissuade ADAPT-Denver, Atlantis, and the Colorado Cross-Disability Coalition, and such officers, employees and members from engaging in any of the activities or conduct proscribed in Paragraph VI.A above.

- C. The Parties agree that HBA may post at any Parade of Homes covered by this Consent Decree a sign containing substantially the language in Exhibit D.

**VII. PRESS RELEASE.** The Parties have agreed to the terms of a press release, Exhibit A attached hereto.

**VIII. ATTORNEYS' FEES AND COSTS**

- A. **Amount.** HBA shall pay Class Counsel the sum of Seventy-Five Thousand Dollars and No Cents (\$75,000.00) representing their reasonable attorneys' fees and costs through the date of entry of this Consent Decree. HBA will make such payment within thirty (30) days of entry of the Consent Decree by delivering to Fox & Robertson at the address set forth in Paragraph XIV below, a check in the amount of Seventy-Five Thousand Dollars and No Cents (\$75,000.00) made out to Fox & Robertson, P.C. and the Colorado Cross-Disability Coalition.
- B. **Full Satisfaction.** Such payment will be in full and complete satisfaction of any and all claims for attorneys' fees, litigation expenses, including expert fees, and costs under federal or state law that the Named Plaintiffs, the Settlement Class, or Class Counsel have against HBA in connection with this matter, with the exception of fees and costs described in Paragraph IX below.

**IX. DISPUTE RESOLUTION**

- A. Any dispute between or among HBA, McIntosh, Beaver or Class Counsel regarding an alleged breach of this Consent Decree shall be subject to the following dispute resolution process:
  - 1. The party asserting that a breach has been committed shall give prompt written notice to the party allegedly committing the breach at the address set forth in Paragraph XIV.
  - 2. Within one calendar week of receipt of the notice provided in Paragraph XIV.A.1, Class Counsel and a representative of the HBA shall confer in person or by telephone and attempt to resolve the dispute.
  - 3. If the meet and confer process provided in Paragraph IX.A.2 does not resolve the dispute, the dispute shall be mediated before a neutral third party mutually agreed to by the party asserting that a breach has been committed and the party allegedly committing the breach.

4. If mediation does not resolve the dispute, the dispute shall be submitted to the United States District Court for the District of Colorado.
- B. HBA will pay the reasonable attorneys' fees, litigation expenses and costs incurred by Class Counsel as well as the cost of the neutral third party during the part of the dispute resolution process set forth in Paragraphs IX.A.1 through IX.A.3 of this Consent Decree.
- C. If mediation does not resolve the dispute, and the dispute is submitted to the United States District Court for the District of Colorado, and the Court rules in favor of HBA, HBA shall not be responsible for any of Class Counsel's attorneys' fees or costs incurred after the unsuccessful mediation. Class Counsel shall be jointly responsible for HBA's attorneys' fees and costs incurred after the unsuccessful mediation, if the Court determines that the position advocated by Class Counsel on the matter was frivolous, using the standard for frivolous claims found in Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421-22 (1978).
- D. The parties agree that the Court in the Lawsuit may reserve continuing jurisdiction over the enforcement of the terms of this Consent Decree, until the term of this Consent Decree (as provided in Paragraph IV above) expires.

**X. PRELIMINARY APPROVAL, OBJECTIONS AND FAIRNESS HEARING.**

- A. **Preliminary Fairness Hearing.** Within ten (10) days of execution of this Consent Decree, the Parties shall jointly request a Preliminary Fairness Hearing and shall jointly move for an order granting preliminary approval to this Consent Decree.
- B. **Objections.** Any member of the Settlement Class may object to the proposed Consent Decree by filing, within one month after publication of the Notice, written objections with the Clerk of the Court. Only such objecting Class Members shall have the right, if they seek it in their objection, to present objections orally at the Fairness Hearing. Responses by HBA and Class Counsel to any timely-filed objections shall be made within one month after the deadline for such written objections.
- C. **Fairness Hearing.** Class Counsel and HBA shall request that a Fairness Hearing take place three months after publication of the Notice, or as soon thereafter as the Court may set the hearing.

**XI. NOTICE TO THE CLASS OF THE PROPOSED CONSENT DECREE**

- A. **Publish Notice.** HBA shall place the Notice attached as Exhibit B, at its own expense, in the Denver Post and the Rocky Mountain News. Said notice shall be published once in each newspaper and shall be at least one-eighth of a page in size. The notice shall appear within fifteen (15) days after Preliminary Approval of the Consent Decree. HBA shall notify Class Counsel of the day on which the Notice shall appear pursuant to this Paragraph and will send to Class Counsel a copy of the Notice as published.
- B. **Mail Notice.** Within fifteen (15) days of Preliminary Approval, Class Counsel shall, at HBA's expense, mail the Notice to the organizations listed in Exhibit C.

## XII. JUDGMENT, FINAL APPROVAL AND DISMISSAL.

- A. **Request for Final Judgment and Final Approval.** At the time of the Fairness Hearing, HBA and Class Counsel shall jointly request that the Court enter a Final Judgment and Order granting Final Approval of this Consent Decree.
- B. **Dismissal with Prejudice.** This action shall be dismissed with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure, no later than one month following the expiration of the Term of this Consent Decree.

## XIII. RELEASES

- A. **Release of Claims.** Effective on the date of entry of this Consent Decree, Named Plaintiffs, on behalf of themselves and all members of the Settlement Class and their executors, successors, heirs, assigns, agents and representatives, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do fully and finally release, acquit and discharge HBA and its present, former or future directors, officers, shareholders, owners, managers, supervisors, employees, attorneys, agents and representatives; and the respective successors, heirs and assigns of the above from the Released Claims as defined in Paragraph XIII.B below. This covenant shall survive the end of the term of this Consent Decree.
- B. **Claims Released.** The claims released by Paragraph XIII.A are any and all actions, causes of action, claims, charges, demands, losses, damages, judgments, liens, indebtedness and liabilities arising under the Americans with Disabilities Act, as amended, 42 U.S.C. § 12181 et seq. for injunctive relief, declaratory relief, damages, and costs and attorneys' fees (except those provided in Paragraphs VIII and IX above), or for injunctive relief or attorneys' fees and costs arising under any state or local law regarding access for persons with disabilities to public accommodations, whether known or unknown, suspected or

unsuspected, asserted or unasserted in the Lawsuit, that Named Plaintiffs or the Settlement Class may have or claim to have, in any way relating to or arising out of the Parade of Homes in 2001 or previous years and, if HBA is in compliance with this Consent Decree, the accessibility of the Parade of Homes in future years. The Parties agree that, during the term of this Consent Decree, HBA shall be deemed to be in compliance with this Consent Decree, unless and until the Court enters a ruling that HBA has violated or breached the Consent Decree after unsuccessful mediation pursuant to Paragraph IX.A.4 above.

- C. **Covenant not to Sue.** Named Plaintiffs, on behalf of themselves and all members of the Settlement Class and their executors, successors, heirs, assigns, agents and representatives, covenant that they will not file suit relating to the accessibility of a Parade Home for injunctive relief or attorneys' fees and costs under any statute regarding access for persons with disabilities to public accommodations against any member of HBA who builds a Parade Home that is in full compliance with this Consent Decree.
- D. **No Assignment or Transfer.** Named Plaintiffs each hereby warrants to HBA that he or she has not assigned or transferred to any person any portion of any of the Released Claims that are released, waived and discharged in Paragraph XIII above.
- E. **Enforcement.** Nothing in this Paragraph XIII shall prevent or preclude any Party from seeking to enforce this Consent Decree.

#### XIV. COMMUNICATIONS

- A. **Communication to HBA and Class Counsel:** Any notice or communication required or permitted to be given to HBA or Class Counsel under this Consent Decree shall be given in writing by depositing it in the U.S. Mail, addressed as follows:

To HBA: 1400 South Emerson Street  
Denver, CO 80210-2721

With a copy to:  
Randall J. Feuerstein, Esq.  
Dufford & Brown P.C.  
1700 Broadway, Suite 1700  
Denver, CO 80290-1701

To Class Counsel:

Amy F. Robertson, Esq.  
Fox & Robertson, P.C.  
910 - 16th Street  
Suite 610  
Denver, CO 80202

And:

Kevin W. Williams, Esq.  
General Counsel  
Colorado Cross Disability Coalition  
655 Broadway  
Suite 775  
Denver, CO 80203

If the above addresses change, it is the responsibility of the Party whose address is changing to give written notice of said change to all other Parties within thirty (30) business days following the effective date of said change.

**XV. MODIFICATION OR WAIVER OF CONSENT DECREE:**

No modification of this Consent Decree shall be effective unless it is pursuant to Court Order.

**XVI. SEVERABILITY**

If any provision or any part of this Consent Decree shall at any time be held unlawful, or inconsistent with applicable law, in whole or in part, under any federal, state, county, municipal or other law, ruling or regulation, then the remaining provisions of this Consent Decree shall remain effective and enforceable.

**XVII. EXECUTION IN COUNTERPARTS**

This Consent Decree may be signed in counterpart and shall be binding and effective immediately upon the execution by all Parties of one or more counterparts. All Parties and their counsel shall sign three copies of this document and each such copy shall be considered an original.

**XVIII. DUTY TO SUPPORT AND DEFEND DECREE**

Named Plaintiffs, Class Counsel and the HBA, by their signatures below, each agree to abide by all of the terms of this Decree in good faith and to support it fully, and shall use their best efforts to defend this Decree from any legal challenge, whether by appeal or collateral attack. Under no circumstances will the 2002 Parade of Homes be held up by any objections to this Consent Decree.

**XIX. ENTIRE AGREEMENT**

This Consent Decree contains all the agreements, conditions, promises and covenants among the HBA, Named Plaintiffs, Class Counsel and the Settlement Class regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of the present Consent Decree.

IN WITNESS THEREOF, and intending to be legally bound, the parties have executed this Consent Decree.

Respectfully submitted,

Kristin McIntosh

THE HOME BUILDERS ASSOCIATION OF METROPOLITAN DENVER

\_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

William Joe Beaver

\_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

FOX & ROBERTSON, P.C.

SHERMAN & HOWARD

\_\_\_\_\_  
Amy F. Robertson  
Counsel for Named Plaintiffs and the  
Settlement Class

\_\_\_\_\_  
Theodore A. Olsen  
Counsel for The Homebuilders Association of  
Metropolitan Denver

So ordered.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2002.

BY THE COURT:

\_\_\_\_\_  
EDWARD W. NOTTINGHAM  
UNITED STATES DISTRICT JUDGE