

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 02-23374-CIV-MARTINEZ/BANDSTRA**

ACCESS NOW, INC. and CHRIST	)
SOTER TAVANTZIS, on their own	)
behalf and on behalf of all those	)
similarly situated,	)
	)
Plaintiffs,	)
	)
v.	)
	)
RTM OPERATING COMPANY, d/b/a	)
ARBY'S,	)
	)
Defendant.	)
	)

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**THIRD AMENDED PROPOSED CONSENT DECREE**

**1. INTRODUCTION.**

1.1 **Parties.** This Amended Proposed Consent Decree (the "Consent Decree" or "Decree") is entered into by and between (1) RTM and (2) representative Plaintiffs Access Now, Inc. and Christ Soter Tavantzis ("Plaintiffs"), individually and on behalf of the Settlement Class, as defined herein. Throughout this Consent Decree, RTM, Plaintiffs, or the Settlement Class may be referred to individually as a "Party," or collectively as the "Parties." When an action or decision by a Party or the Parties is referenced in this Consent Decree, it shall mean as that action is taken or the decision is made through counsel for the Party or Parties, unless otherwise specified.

1.2 **Facilities.** RTM owns, leases, operates or manages approximately 773 Arby's restaurants in the Geographic Area, as defined herein, as of the date this Consent Decree is executed by RTM.

1.3 **Lawsuit.** On November 21, 2002, Plaintiffs sued RTM Operating Company, Inc. in the United States District Court for the Southern District of Florida, in an action currently styled as Access Now, Inc. and Christ Soter Tavantzis v. RTM Operating Company, d/b/a Arby's, Case No. 02-23374-CIV-MARTINEZ/KLEIN. Plaintiffs alleged that RTM discriminated against a class of disabled persons and violated Title III of the Americans with Disabilities Act (the "ADA") by not making its restaurants accessible to customers with disabilities. Specifically, Access Now alleged that Plaintiff Edward Resnick had been discriminated against because of his disability, in violation of Title III of the ADA. Mr. Resnick, the only member of Access Now specifically named in the original Complaint, passed away on

August 14, 2003. Access Now filed a Suggestion of Death of Plaintiff Edward S. Resnick, an Unopposed Motion for Substitution of Christ Soter Tavantzis as Party Plaintiff, and Consent Motion for Leave of Court to File an Amended Complaint. On April 2, 2004, the Court entered an Order permitting Christ Soter Tavantzis to substitute as the named individual Plaintiff in this matter for Edward S. Resnick, pursuant to Fed. R. Civ. P. 25(a)(1). Christ Soter Tavantzis patronizes, has patronized, and/or wishes to patronize RTM Arby's Restaurants, as defined in Section 3(B). RTM answered the Complaint and Amended Complaint and denied that it had violated the ADA. In January 2003, RTM and Class Counsel began negotiations regarding accessibility at RTM Arby's Restaurants. The Parties and their counsel have negotiated at arms length and in good faith concerning accessibility issues at RTM Arby's Restaurants, and their negotiations have resulted in this Consent Decree. As further described in Section 8 of this Consent Decree, RTM has denied and continues to deny liability for all claims alleged by Plaintiffs. By entering into this Consent Decree, RTM does not admit or concede any wrongdoing, liability or improper conduct of any nature in connection with any facts or claims that have been or could have been raised against it in the Action, or in any other forum.

**1.4 Purpose of the Consent Decree.** The Parties and Class Counsel now wish to effect a full, final and complete resolution and settlement of all claims, disputes and controversies relating to the allegations made by Plaintiffs and Class Counsel and to resolve their differences and disputes by settling their controversy in such a manner as to: (a) achieve improvements, where needed, to access at RTM Arby's Restaurants; (b) achieve those improvements in a manner that satisfies RTM's obligations under Title III of the ADA and regulations promulgated thereunder, or applicable State or Local Accessibility Law, and is consistent with the fundamental nature of RTM's business for the benefit of both RTM and its customers; and (c) avoid the uncertainties and costs of further or future litigation. To achieve the benefits and finality contemplated by this Consent Decree, as more fully described below, the Parties wish to expressly recognize and include all persons who have qualified, qualify, or will qualify as having a "disability," as that term is defined by 42 U.S.C. § 12102(2), and who have been or will be a guest, customer, patron, visitor or otherwise, in any RTM Arby's Restaurant that is the subject of this litigation. It is understood and agreed by the Parties that this Consent Decree represents a compromise of doubtful and disputed claims and neither this Consent Decree itself, any of the payments or covenants described herein, nor anything else connected with this Consent Decree is to be construed as an admission of liability on the part of RTM, by whom liability is expressly denied.

**1.5 Motivation of Plaintiffs and Class Counsel.** Plaintiffs and Class Counsel believe that this Consent Decree, including its class notification procedures, is fair, reasonable and adequate, and agree to settle the Action, pursuant to the provisions of this Consent Decree, after considering such factors as the substantial benefits to Plaintiffs and the Settlement Class under the terms of this Consent Decree and the attendant risks and uncertainties of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation, including (a) the uncertainty inherent in establishing any liability of RTM, (b) the uncertainty inherent in the various theories of relief, even if Plaintiffs prevailed in establishing the liability of RTM, and (c) the desirability of consummating this Consent Decree promptly in order to provide effective relief to Plaintiffs and the Settlement Class. Class Counsel and Plaintiffs consider it desirable for the Action to be settled and dismissed because the Settlement

will: (a) provide substantial benefits to Plaintiffs and the Settlement Class; (b) resolve the issues presented by the Action; (c) resolve the issues asserted with respect to the alleged application of the ADA or regulations promulgated thereunder, or State or Local Accessibility Law, to the restaurants at issue; and (d) finally put Plaintiffs' claims and the underlying matters to rest without undue expense to the Parties, while reducing the burdens and uncertainties associated with protracted litigation of those claims. Class Counsel have investigated and determined that certain modifications to the restaurants satisfy the requirements of the ADA, and the regulations promulgated thereunder.

**1.6 Fact Investigation and Evaluation.** Class Counsel have conducted an extensive investigation and evaluation of the facts and law relating to the claims asserted in the Action, including (1) having Plaintiffs' expert, Richard Londono, inspect numerous RTM Arby's Restaurants both prior to and during the Action; (2) having Mr. Londono create inspection reports detailing the barriers to access and ADA violations located at RTM Arby's Restaurants; (3) working with Mr. Londono to prepare a training seminar for various RTM administrative employees for the purpose of collecting data at RTM Arby's Restaurants nationwide; (4) having Mr. Londono monitor said training seminar with RTM's expert, Fred Shotz, which will result and has resulted in the Parties obtaining significant architectural and construction data used by the Parties and their experts to identify barriers to access and to negotiate specific settlement points in this matter. These steps have permitted Class Counsel to determine how to best serve the interests of Plaintiffs and the Settlement Class. RTM's counsel have conducted a similar investigation on behalf of their respective client.

**1.7 Terms of all Exhibits.** The terms of all Exhibits attached hereto are fully incorporated into this Consent Decree and are an integral part thereof. The terms of this Consent Decree, where applicable, are fully incorporated into all Exhibits and are, where applicable, an integral part thereof. Where there is a conflict of terms between the terms of this Consent Decree and its Exhibits, the terms of this Consent Decree control.

**1.8 Successors and Assigns.** This Consent Decree and all Exhibits are binding on all successors, assigns, heirs, administrators and personal representatives of the Plaintiffs, Class Counsel, the Settlement Class, and RTM. It is the intent of the Parties through this Consent Decree to assure that the Plaintiffs, Class Counsel, and/or the Settlement Class will not attempt to enforce, and RTM will not thereby be subject to, conflicting standards regarding compliance with Title III of the ADA and applicable State or Local Accessibility Laws concerning the physical access to its restaurants. This Consent Decree is intended to bind the Parties so that none of the Plaintiffs, Class Counsel, the Settlement Class, or other Persons will hereafter assert or claim that RTM, or Releasees, are required to make additional or different modifications, or institute different policies or procedures with regard to RTM's restaurants, or are required to follow different standards beyond what is agreed to herein.

**1.9 Non-Determination.** The Court has made no findings concerning the alleged violations of the ADA or any other federal, state, or local law, rule, regulation, order, or ordinance. Accordingly, this Consent Decree will not constitute, and will not be used in this or any other case or action, as evidence of any such violation of the ADA or any other federal, state, or local law, rule, regulation, order, or ordinance. If for any reason, settlement is not effectuated,

no evidence of this proposed Consent Decree will be admissible for any purpose in this or any other action.

**2. OVERVIEW OF CLASS ACTION SETTLEMENT.** This Consent Decree has as its purpose the identification and remediation of Nonconforming Elements at RTM Arby's Restaurants subject to the proposed Consent Decree. Through this Consent Decree, the Parties have agreed that RTM will institute and maintain accessibility standards, modifications, policies, practices, and procedures for the benefit of all persons with disabilities who have been or will be adversely affected by the design or construction of, or the policies, practices, or procedures relating to, accessibility for 773 RTM Arby's Restaurants nationwide. The proposed Consent Decree is drafted in such a way that the identification of accessibility enhancements, the implementation of those enhancements, and the verification of work claimed to have been completed is done in a multi-layered approach. This Consent Decree also contains a dispute resolution process. The Parties agree that the Consent Decree, which is the product of lengthy negotiations and intensive review by the Parties, is fair, reasonable, and adequate.

**3. DEFINITIONS.**

**A. Rules of Definition.**

Unless otherwise indicated, defined terms include the plural as well as the singular. Unless the context otherwise requires, a reference to any Person includes its successors and assigns; the words "include," "includes" and "including" are not limiting and shall be deemed to be followed by the words "without limitation" whether or not in fact followed by such words or words of like import; and the terms "hereof," "herein," "hereunder" and comparable terms refer to this entire Consent Decree with respect to which such terms are used and not to any particular article, Section or other subsection or subdivision thereof. Words or phrases not specifically defined herein, which currently are defined by the ADA or the Standards for Accessible Design or applicable State or Local Accessibility Laws, shall take on those definitions and interpretations as applicable.

**B. Defined Terms.**

For the purposes of this Consent Decree, the following terms have the meanings ascribed as follows:

**"Abatement"** means triggering coverage of a building code or ordinance other than what currently covers the RTM Arby's Restaurant.

**"Accessibility Enhancement"** means a modification to a RTM Arby's Restaurant that is necessary to bring a Nonconforming Element of the restaurant into compliance with the Standards for Accessible Design. Accessibility Enhancements are distinguished from Alterations.

**"Accessible Route"** has the meaning ascribed to it in 28 C.F.R. Part 36 Appendix A § 3.5.

"**Action**" means that lawsuit currently pending in the United States District Court for the Southern District of Florida, Miami Division, styled Access Now, Inc. and Christ Soter Tavantzis v. RTM Operating Company d/b/a Arby's, Case No. 02-23374-CIV-MARTINEZ/KLEIN.

"**ADA**" or "**Americans with Disabilities Act**" means the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* and the Title III implementing regulations, 28 C.F.R. Part 36, including Appendix A, the Standards for Accessible Design, in effect as of the Execution Date of this Consent Decree.

"**Affiliated Companies**" means RTM Operating Company, Inc., RTM Acquisition Company, L.L.C., RTM Management Company, L.L.C., RTM Family Restaurants, L.L.C., RTM Holding Company, Inc., RTM Partners, Inc., RTM Development Company, RTM Operating Company of Canada, RTM Foundation, RTM Enterprises, Inc., RTM Blue Ridge, Inc., RTM Restaurant Group, Inc., RTM, Inc., RTMSC, Inc., RTM Savannah, Inc., RTM Georgia, Inc., RTM Alabama, Inc., RTM Gulf Coast, Inc., RTM Indianapolis, Inc., RTM Mid-America, Inc., RTM Ventures, Inc., RTM Portland, Inc., RTM Sea-Tac, Inc., RTM West, Inc., and Franchise Associates, Inc., and any and all restaurants doing business as "Arby's" owned and/or operated by any of those entities, which are located in the Geographic Area.

"**Alteration**" has the meaning ascribed in 28 C.F.R. § 36.402, subject also to the provisions of 28 C.F.R. § 36.403. Accessibility Enhancements undertaken based upon Section 11.1 of this Consent Decree are specifically excepted from and do not constitute Alterations.

"**Alternative Measures**" has the meaning ascribed to it in 28 C.F.R. § 36.305 and Section 11.6 of this Consent Decree.

"**Architectural Barrier**" has the meaning ascribed to it in 28 C.F.R. § 36.304(a).

"**Auditory Disability**" or "**Auditory Disabilities**" means any disability that substantially limits a person's ability to hear.

"**Beneficiaries**" has the meaning ascribed to it in Section 20.22 of this Consent Decree.

"**Class Counsel**" means and refers to Rosen & Switkes P.L., and the attorneys practicing therein.

"**Communication Disability**" or "**Communication Disabilities**" mean any disability, other than an Auditory Disability, that substantially limits a person's ability to communicate with others via speech or other means.

"**Conditioned Permit**" means a permit required to complete an Accessibility Enhancement that contains extraordinary, unusual, or unexpected conditions.

"**Consent Decree**" or "**Decree**" means this document and its Exhibits.

"**Court**" means the United States District Court for the Southern District of Florida, Miami Division.

"**Direct Construction Cost(s)**" means all construction labor and material costs associated with making Accessibility Enhancements, excluding architectural, design, consulting and legal fees and costs.

"**Dispute Resolution**" or "**Dispute Resolution Process**" means the process described in Section 16.

"**Error(s)**" means a situation in which an element that was not designated for an Accessibility Enhancement is found to require an Accessibility Enhancement by the inspection described in Section 10.7.1.

"**Execution Date**" means the date of the last signature required to form the agreement embodied in this Consent Decree.

"**Exhibit**" refers to the referenced Exhibit letter or number, and all Sub-Exhibits expressly incorporated therein, or according to the context may generically refer to the Exhibits incorporated in this Consent Decree.

"**Existing Facility**" or "**Existing Facilities**" means RTM Arby's Restaurants that were designed and constructed for first occupancy by any owner or operator on or before January 26, 1993, as defined in 28 C.F.R. § 36.401.

"**Facility**" or "**Facilities**" means all portions of a Place of Public Accommodation, as that term is used in 28 C.F.R. § 36.104, in RTM's Arby's Restaurants, that are open to the public and available for use by customers.

"**Fairness Hearing**" means the hearing described in Section 18 of this Consent Decree.

"**Final Approval**" means the final, post-Fairness Hearing approval given to this Consent Decree by a United States District Judge. If any appeal of the District Judge's approval is taken, "Final Approval" means that date that all possible appeals have been dismissed and the time for any further appeal has expired, plus ten (10) days thereafter.

"**Geographic Area**" means the fifty states in the United States of America and the District of Columbia.

"**Historic Preservation**" has the meaning given to it in 28 C.F.R. § 35.405, the procedures set forth in § 4.1.7 of the Standards for Accessible Design and Section 11.2.

"**Law**" means law of every kind and nature, including without limitation statutory law as well as case law and rules and regulations.

**"Litigation"** means all actions, claims and proceedings which were asserted in, or could have been asserted in, the Action.

**"Mental Disability"** or **"Mental Disabilities"** means any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**"New Construction Unit(s)"** means RTM Arby's Restaurants that were designed and constructed for first occupancy by any owner or operator after January 26, 1993, as defined in 28 C.F.R. § 36.401.

**"Nonconforming Elements"** are those policies or architectural features in Existing Facilities or New Construction Units that do not comply with the ADA, the Standards for Accessible Design or any applicable State or Local Accessibility Law. Architectural features that the Parties agree provide substantially equivalent or greater access to or usability of a facility shall not be considered Nonconforming Elements.

**"Notice of Disapproval"** has the meaning ascribed to it in Section 12.3(B) of this Consent Decree.

**"Party"** or **"Parties"** means Plaintiffs and/or RTM.

**"Person"** or **"person"** means an individual, corporation, limited liability company, partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

**"Place of Public Accommodation"** has the meaning ascribed to it in 42 U.S.C. § 12181 and 28 C.F.R. § 36.104.

**"Preliminary Approval"** means the initial approval by the Court of the terms of this Consent Decree, which will occur before any notice being provided in accordance with Section 19 of this Consent Decree.

**"Purpose of the Consent Decree"** means those purposes set forth in Sections 1.4 and 1.5 of this Consent Decree.

**"Readily Achievable"** shall have the meaning ascribed to it in 42 U.S.C. § 12181, 28 C.F.R. § 36.104, and Section 11.2 of this Consent Decree.

**"Regulations"** shall mean the Title III ADA regulations as promulgated by the Department of Justice and codified at 28 C.F.R. Part 36, pursuant to the final rule published at 56 Federal Register 35592 (July 26, 1991). All references to 28 C.F.R. Part 36 shall mean and refer to these Regulations.

**"Related Parties"** means each of a Person's past or present directors, officers, employees, managers, operators, affiliates, affiliated companies, owners, independent contractors, landlords, tenants, experts, consultants, investment bankers, partners, partnerships, principals, agents, brokers, insurers, co-insurers, reinsurers, shareholders, attorneys, accountants, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint venturers, co-venturers, assigns, spouses, advisors, heirs, executors, related or affiliated entities, any entity in which a Person has a direct or indirect controlling interest, any members of their immediate families, and/or any trust of which a Person is the settler or which is for the benefit of the Person.

**"Released Claims"** has the meaning ascribed to it in Section 8.3 of this Consent Decree.

**"Releasee(s)"** means RTM, its Affiliated Companies, and any or all of their Related Parties, including but not limited to those Persons described in this Section 3. This term shall additionally include RTM's landlords, lessors, and ground lessors, to the extent that any potential claims against those entities would be in regard to any Person adversely affected by the design or construction of, or the policies, practices, or procedures relating to the accessibility requirements applicable to the specific location occupied by the RTM Arby's Restaurant.

**"Remediation Plan"** has the meaning ascribed to it in Section 12 of this Consent Decree.

**"Representative Plaintiff(s)"** or **"Plaintiffs"** means Christ Soter Tavantzis and Access Now, Inc., a Florida Not-for-Profit Corporation, on behalf of themselves, members of Access Now, the Settlement Class, and the Settlement Class Members.

**"RTM"** means RTM Operating Company and its Affiliated Companies.

**"RTM Arby's Restaurants," "RTM Restaurants"** or **"restaurants"** mean, according to context, multiple or individual restaurants doing business as "Arby's," owned and/or operated by RTM, which are located in the Geographic Area, including New Construction Units, Existing Facilities, and Subsequently Acquired RTM Arby's Restaurants. The terms "RTM Arby's Restaurants," "RTM Restaurants" or "restaurants" do not include Arby's restaurants owned and/or operated by persons or entities other than RTM, which are unrelated to RTM.

**"RTM Arby's Restaurant Survey(s)"** has the meaning ascribed to it in Section 10 of this Consent Decree.

**"Settlement"** means the settlement embodied in this Consent Decree.

**"Settlement Class"** means all persons who have qualified, qualify, or will qualify as having a "disability," as that term is defined by 42 U.S.C. § 12102(2), and who have been or will be a guest, customer, patron, visitor or otherwise, and who have been, are, or will be denied full and equal access to or have been, are, or will be discriminated against under Title III of the ADA or regulations promulgated thereunder, or similar federal, state or local law rule, order or ordinance, because of their "disability," at or in connection with the following: All restaurants doing business as "Arby's" now or hereafter owned and/or operated by Defendant RTM Operating Company, Inc., or its affiliated companies, which are located in the fifty states in the



United States of America and the District of Columbia. Upon entry of Final Approval, this Consent Decree shall settle, compromise and resolve the claims of, and apply to, all of the Persons who collectively constitute the "Settlement Class."

**"Settlement Class Member"** means any Person who falls within the definition of the Settlement Class, including but not limited to the Representative Plaintiffs.

**"Significant Loss of Selling or Serving Space"** has the meaning ascribed in 28 C.F.R. § 36.304(f).

**"Significant Risk"** has the meaning ascribed in 28 C.F.R. § 36.304(d)(2).

**"Stand Pipe Chases"** is defined as a continuous recess built into a wall to receive pipes, ducts, etc. See McGraw Hill Dictionary of Architecture and Const., 3d Ed.

**"Standards for Accessible Design"** or **"Standards"** means the version of 28 C.F.R. Part 36 Appendix A in effect as of the Execution Date of this Consent Decree.

**"State or Local Accessibility Laws"** or **"State or Local Accessibility Law"** means any and all state or local laws, rules, regulations or ordinances pertaining to access for persons with disabilities.

**"Statutory Damages"** means any damages available by operation of statute that may be recovered without proof of actual damages.

**"Structural Impracticability"** or **"Structurally Impracticable"** has the meaning ascribed in 28 C.F.R. § 36.401(c).

**"Subsequently Acquired RTM Arby's Restaurants"** means any facility that becomes a RTM Arby's Restaurant after the Execution Date of the Consent Decree by RTM.

**"Subsequently Relinquished RTM Arby's Restaurants"** means any RTM Arby's Restaurant that ceases to be a RTM Arby's Restaurant before the expiration of the Consent Decree.

**"Survey Database"** has the meaning ascribed to it in Section 10 of this Consent Decree.

**"Survey Report"** has the meaning ascribed to it in Section 10 of this Consent Decree.

**"Technical Infeasibility"** or **"Technically Infeasible"** has the meaning ascribed in the Standards for Accessible Design.

**"Term of (this) Consent Decree"** has the meaning ascribed to it in Section 6 of this Consent Decree.

"**Terms of Settlement**" or "**Terms of (this) Consent Decree**" has the meaning ascribed to it in Section 4 of this Consent Decree.

"**Toilet Rooms**" is defined as an enclosed space containing one or more water closets, lavatories, toilet enclosures (stalls), urinals, and other plumbing fixtures. See McGraw Hill Dictionary of Architecture, 3d Ed.

"**Virtual Impossibility**" or "**Virtual Impossibility**" has the meaning ascribed in 28 C.F.R. § 36.402(c).

"**Visual Disability**" or "**Visual Disabilities**" means any disability that substantially limits a person's ability to see.

#### **4. TERMS OF SETTLEMENT.**

NOW THEREFORE, in light of the foregoing, which is incorporated herein and made a part hereof, and in consideration of the mutual promises, agreements, and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, it is hereby stipulated and agreed, by, between and among the Parties, that the Action and the matters raised by it hereby will be settled, compromised, dismissed on the merits and with prejudice on the following terms and conditions, subject to the Final Approval of the Court:

#### **5. CONDITIONS PRECEDENT OF THIS CONSENT DECREE.**

This Consent Decree is conditioned upon, and will be effective only upon, the occurrence of all of the following events specified below in Sections 5.1 through 5.4:

5.1 **Joint Motion.** The Parties jointly move for an Order Granting Preliminary Approval of the Proposed Consent Decree, Approving the Proposed Notice to the Settlement Class, and Scheduling a Fairness Hearing in accordance with Section 19 of this Consent Decree and the motion is granted by the Court.

5.2 **Notice.** Notice as approved by the Court is provided to the Settlement Class in accordance with Section 19 of this Consent Decree.

5.3 **Fairness Hearing.** A Fairness Hearing is held in accordance with Section 18 of this Consent Decree.

5.4 **Court Approval.** The Court grants Final Approval of the Consent Decree, certifies the Settlement Class and enters Judgment in accordance with the terms set forth herein following a Fairness Hearing. The Judgment will resolve finally all issues raised in this proceeding.

**6. TERM OF CONSENT DECREE.**

Except as otherwise set forth in this Consent Decree, the Term of this Consent Decree is eight (8) years from the date of Final Approval, unless the Parties successfully petition the Court for an extension of time pursuant to Section 14.1(I). Said extension of time will be limited to Subsequently Acquired RTM Arby's Restaurants.

**7. ADA & ADA-RELATED ACCESSIBILITY CODES.**

Plaintiffs and Class Counsel acknowledge that compliance with this Consent Decree will constitute full satisfaction of the claims of the Plaintiffs, Class Counsel, and the Settlement Class (excluding claims for all damages, other than Statutory Damages) relating to accessibility issues and compliance with any federal law, rule or regulation, order, ordinance, or common law relating to or concerning accessibility for persons with disabilities, and any applicable State or Local Accessibility Law.

**8. DENIAL OF LIABILITY AND RELEASE.**

**8.1 Denial of Liability and Class Certification for Settlement Purposes Only.** RTM has denied and continues to deny any liability to Plaintiffs, the Settlement Class, or Class Counsel. RTM has denied and continues to deny that it has violated the ADA or any other federal, state, or local law, rule, regulation, order, or ordinance pertaining to access for persons with disabilities or otherwise at any of the RTM Arby's Restaurants. Neither this Consent Decree, any Exhibit or document referenced herein and/or attached hereto (all of which are an integral part of the Settlement and are hereby incorporated in their entirety by reference), nor any actions taken by RTM in satisfaction of this Consent Decree constitute, may be construed as, or may be used as, an admission of any liability or wrongdoing, or recognition of the validity of any of the allegations of fact or law made by Plaintiffs in this Action or in any other action or proceeding. This Consent Decree, any statements or negotiations made in connection with this Consent Decree, and any actions taken by RTM under this Consent Decree, may not be offered or be admissible in evidence or in any other fashion against RTM 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 Plaintiffs, Class Counsel, the Settlement Class, or RTM, or by RTM in defense of any claims brought by Plaintiffs, Class Counsel, or the Settlement Class. Upon execution of this Consent Decree, the Parties agree that, subject to Court approval, this Action will be deemed by the Parties, for purposes of settlement only, to satisfy the requirements for class certification and to be certified as a class for settlement purposes only. RTM has agreed to certification of the Settlement Class for settlement purposes only. Any class certification entered in this Action under this Consent Decree or otherwise does not constitute, in this or in any other action or proceeding, an admission by RTM, or finding or evidence, that Plaintiffs' claims are appropriate for class treatment or that any requirement for class certification is otherwise satisfied in this lawsuit.

**8.2 Release and Discharge.** In consideration of the covenants set forth herein, Plaintiffs, Class Counsel, and the Settlement Class fully and finally release and forever

discharge, to the fullest extent allowed by law, RTM and Releasees from any and all of the Released Claims as defined in Section 8.3 of this Consent Decree.

**8.3 Released Claims.** The Released Claims are any and all claims, rights, demands, charges, complaints, actions, causes of action (including legal, equitable, administrative or of any other nature), obligations, or liabilities of any and every kind, known or unknown, for individual and/or class injunctive relief, Statutory Damages, declaratory relief or attorney's fees asserted by named Plaintiffs, Class Counsel, and/or the Settlement Class in the Action or arising out of or predicated upon allegations that RTM or any other Releasee did not or does not comply with Title III of the ADA, the Standards for Accessible Design, or any applicable State or Local Accessibility Laws, at any and all RTM Arby's Restaurant(s), which Plaintiffs, Class Counsel, and/or the Settlement Class ever had, could have had, now have, or could have brought, from the beginning of time up to the date of Final Approval. Released Claims also include claims relating to Nonconforming Elements, Accessibility Enhancements or the elements of RTM Arby's Restaurants affected thereby that arise during the term of this Consent Decree, including but not limited to allegations that an Accessibility Enhancement fails to comply with any or all requirements of the ADA, the Standards for Accessible Design, or any applicable State or Local Accessibility Law at any and all RTM Arby's Restaurant(s). The Released Claims also include but are not limited to any and all claims, known or unknown, against RTM and/or any of the Releasees for attorney's fees, expert witness fees, consulting fees, expenses, costs, or disbursements incurred by Plaintiffs, Class Counsel, and/or the Settlement Class which arise out of the Released Claims, except as set forth in Section 17. Neither the Plaintiffs, Class Counsel, or any Settlement Class Member may hereafter assert or claim that RTM and/or any of the Releasees is required to make additional or different Accessibility Enhancements to an RTM Arby's Restaurant or is required to follow different standards in order to comply with Title III of the ADA or applicable State or Local Accessibility Laws beyond what is agreed to in this Consent Decree. To the extent permitted by law, the final entry of this Consent Decree will be fully binding and effective for purposes of res judicata and collateral estoppel upon Releasees, Plaintiffs, Class Counsel, and the Settlement Class with respect to Title III of the ADA and any and all applicable State or Local Accessibility Laws at any and all RTM Arby's Restaurants. If a Person seeks, in a separate action or proceeding, relief that would be inconsistent with the terms of this Consent Decree, RTM or any Releasee may by affidavit or otherwise in writing, advise the other Parties and the court or other forum in which such action or proceeding is brought, that such relief in that action or proceeding is barred by this Consent Decree. If requested by RTM or any Releasee, Class Counsel shall also advise the court or other forum in which such action or proceeding is brought, in writing, that such relief in that action or proceeding is barred by this Consent Decree. Since this Consent Decree provides for review by the Court, any of the Parties hereto may recommend that matters raised in such separate action or proceeding should be submitted to the Court for resolution under the terms of this Consent Decree. Nothing in this Section, however, will prevent Class Counsel from enforcing this Consent Decree. Nothing in this Consent Decree is intended to, nor shall it be construed to, waive or release any claim for damages other than Statutory Damages; specifically, nothing in this Consent Decree is intended to, nor shall it be construed to, waive compensatory, personal injury, punitive or other money damages, and/or any attorneys' fees or costs associated with such claims for damages, pursuant to the laws of any state or local jurisdiction. Nothing in this Consent Decree is intended to, nor

shall it be construed to, waive or release any claim based on affirmative conduct that occurs after the date of Final Approval.

**8.4 Covenant Not to Sue.** Without limiting the generality of any provision herein, or the provisions contained above, each Representative Plaintiff, each Settlement Class Member, and Class Counsel hereby expressly agrees that they, acting individually or together, shall not seek to institute, maintain, prosecute, sue, or assert in any action or proceeding, any of the Released Claims.

**8.5 Release Covers Fees and Costs.** Except as otherwise expressly provided in this Consent Decree, and without in any way limiting the scope of the foregoing release and covenant not to sue, the foregoing release and covenant not to sue cover, without limitation, any and all claims for attorney's fees, expenses, costs or disbursements incurred by Class Counsel and/or any other counsel representing Representative Plaintiffs or the Settlement Class Members, or by Representative Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Litigation, this Consent Decree, the Settlement, and/or the administration of such Settlement.

**8.6 Subsequent Discovery of Facts.** In connection with Sections 8.2, 8.3, 8.4, and 8.5, Plaintiffs, Class Counsel, and the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts, actions, claims, and causes of action presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the matters released herein. Nevertheless, it is the purpose of this Consent Decree and the intention of Plaintiffs, Class Counsel, and the Settlement Class Members to settle and release such matters, and all actions, causes of action, and claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action). Representative Plaintiffs, Settlement Class Members, and Class Counsel hereby knowingly and willingly waive any and all rights and benefits afforded by the provisions of Section 1542 of the California Civil Code, to the extent that it would apply here, and any other similar state or federal law that relates to the Released Claims.

**8.7 Materiality of Scope of Settlement and Settlement Class.** Without limiting any term hereof, the Parties understand and agree that RTM would not enter into this Consent Decree were it not for the understanding that all the Released Claims, the Action, and the Litigation are being fully and finally compromised and settled and that all Persons who are Settlement Class Members will be bound by this Settlement.

## **9. SUBSEQUENTLY ACQUIRED & RELINQUISHED RTM RESTAURANTS.**

**9.1 Subsequently Acquired RTM Arby's Restaurants.** Subsequently Acquired RTM Arby's Restaurants will be treated as follows:

(A) Subsequently Acquired RTM Arby's Restaurants that are New Construction Units will be subject to the provisions of this Consent Decree after the date of their acquisition, and will be subject to the schedule for remediation as set forth in Section 14.

(B) Subsequently Acquired RTM Arby's Restaurants that are Existing Facilities will be subject to the provisions of this Consent Decree after the date of their acquisition, and will be subject to the schedule for remediation as set forth in Section 14.

9.2 **Subsequently Relinquished RTM Arby's Restaurants.** RTM shall have no obligations under this Consent Decree for Subsequently Relinquished RTM Arby's Restaurants. Nothing herein will prohibit RTM from selling, closing, or otherwise terminating operations of any RTM Arby's Restaurant.

## 10. **SURVEYS OF RTM ARBY'S RESTAURANTS.**

10.1 **Data Collection Training.** Prior to the signing of this Consent Decree, RTM developed, and Plaintiffs approved, a checklist for RTM supervisors and construction personnel, selected by RTM's Region Leaders, to use in collecting data as to the various RTM Arby's Restaurants' compliance with the scoping and technical guidelines of the ADA Accessibility Guidelines. To the extent feasible, the checklist was constructed in a manner that eliminates the need for subjective appraisals by the persons collecting the data. On August 27-28, 2003, at 800 Hammond Drive NE, Atlanta, GA 30328, RTM supervisors and construction personnel were trained on how to administer the checklist, which is attached as Exhibit 2. The syllabus for the training workshop is attached as Exhibit 1.

10.2 **RTM Arby's Restaurant Surveys.** RTM supervisors and construction personnel are in the process of collecting the data referenced in Section 10.1 for each RTM Arby's Restaurant (the "RTM Arby's Restaurant Surveys").

### 10.3 **Purpose of RTM Arby's Restaurant Surveys.**

10.3.1 **Nonconforming Elements.** To the extent the conditions reported in a RTM Arby's Restaurant Survey are Nonconforming Elements, RTM will make, or cause to be made, Accessibility Enhancements, as described in Section 11.1.

10.3.2. **Non-existence of Nonconforming Elements.** With regard to Accessibility Enhancements required under this Consent Decree, to the extent that any Nonconforming Element reported in a RTM Arby's Restaurant Survey no longer exists, no modification will be made.

10.3.3 **Changed conditions.** To the extent that the conditions reported in a RTM Arby's Restaurant Survey are different than those that presently exist, and such conditions are Nonconforming Elements, Accessibility Enhancements will be made pursuant to Section 11.1.

10.4 **Survey Database.** After completion of the data collection described in Sections 10.1 and 10.2, RTM will review the data and compile the data from every RTM Arby's Restaurant Survey into a database (the "Survey Database"). The Survey Database shall also

contain information indicating whether the RTM Arby's Restaurant covered by the RTM Arby's Restaurant Survey is an Existing Facility or a New Construction Unit. The Survey Database shall serve as a reference to the Parties in determining what, if any, Accessibility Enhancements are required for each RTM Arby's Restaurant.

10.5 **Survey Report(s).** The data collected pursuant to Sections 10.1 and 10.2, and entered into the Survey Database, will be provided to Plaintiffs via CD-ROM (the "Survey Report" or "Survey Reports").

10.6 **Retention of Forms.** RTM will retain the original RTM Arby's Restaurant Survey for each RTM Arby's Restaurant for one (1) year after the end of the Term of this Consent Decree.

10.7 **Verification of the RTM Arby's Restaurant Surveys.** This Consent Decree provides for the following procedures for the verification of the RTM Arby's Restaurant Surveys:

10.7.1 **Plaintiffs' Inspection.** To verify the data collected by RTM supervisors and construction personnel, Class Counsel may select a total of ten (10) RTM Arby's Restaurants for which RTM Arby's Restaurant Surveys have been conducted. For each of the ten (10) RTM Arby's Restaurants selected, Plaintiffs' expert, Richard Londono, may personally inspect the restaurant to verify the accuracy of the data collected.

10.7.2 **Class Counsel Participation.** Class Counsel may attend three (3) of the ten (10) inspections allowed under Section 10.7.1.

10.7.3 **Notification of Perceived Errors.** Subsequent to the inspections conducted pursuant to Section 10.7.1, Plaintiffs shall notify RTM of any perceived Errors in the data collected by RTM discovered during an inspection conducted pursuant to Section 10.7.1. Any disputes between the parties relating to the perceived Errors shall be subject to mediation. In the event a determination is made that RTM erred in the collection of data, Plaintiffs' designated expert shall be allowed to inspect two (2) additional restaurants for every restaurant inspected pursuant to Section 10.7.1 in which an Error was found.

## **11. AGREED GUIDELINES FOR DEVELOPING REMEDIATION PLANS.**

11.1 **Accessibility Enhancements.** Except as provided in Sections 11.2, 11.3, 11.4, 11.5, 11.6, and 11.7, of this Consent Decree, RTM will complete all Accessibility Enhancements, as determined by the RTM Arby's Restaurant Surveys, at each RTM Arby's Restaurant within the time frames set forth in Section 14.1 of this Consent Decree. When making an Accessibility Enhancement or in applying for any permit to make an Accessibility Enhancement under this Consent Decree, RTM will comply with the Standards for Accessible Design and State or Local Accessibility Laws applicable to the requested Accessibility Enhancement, except as provided in Sections 11.2, 11.3, 11.4, 11.5, 11.6, and 11.7 of this Consent Decree. The provisions of this Consent Decree shall not be construed to obligate RTM to make modifications that are not required by the provisions of the ADA or State or Local

Accessibility Laws applicable to the Accessibility Enhancement. Pursuant to this Consent Decree, RTM will comply fully with the terms of the ADA and State and Local Accessibility Laws. To this end, RTM agrees to take steps to ensure that (i) its goods, services, facilities, privileges, advantages, or accommodations are provided to individuals with disabilities; (ii) no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services; and (iii) no individual is discriminated against, retaliated against, coerced, threatened, intimidated or interfered with, in the exercise or enjoyment of rights or because of the exercise of rights, or aiding and encouraging others in the exercise or enjoyment of rights under the ADA or applicable State or Local Accessibility Laws. Furthermore, in order to satisfy its obligations under the ADA and State and Local Accessibility Laws, RTM agrees, as provided in Section 11.9 of this Consent Decree, to implement policies and provide training to its employees pertaining to effective assistance for and communication with persons with Auditory Disabilities, Visual Disabilities, Communication Disabilities, and/or Mental Disabilities. Implementation of these policies and this training will occur according to the deadlines set forth in Section 11.9. Nothing in this Consent Decree shall limit the right of RTM to undertake Accessibility Enhancements, or to build or alter RTM Arby's Restaurants, exceeding the requirements of this Consent Decree.

**11.2 Structural Impracticability, Technical Infeasibility, Virtual Impossibility, Significant Risk, Significant Loss of Selling or Serving Space, Readily Achievable, Historic Preservation and Permitting Restrictions.** Subject to the provisions of Section 11.6 (Alternative Measures), this Consent Decree does not require RTM to initiate any Accessibility Enhancements described in Section 11.1:

- (A) In a New Construction Unit, to the extent such an Accessibility Enhancement is Structurally Impracticable;
- (B) In an area that has been the subject of an Alteration, to the extent such an Accessibility Enhancement is Structurally Impracticable, Technically Infeasible, or Virtually Impossible;
- (C) In an Existing Facility, if completion of an Accessibility Enhancement would involve a Significant Risk or a Significant Loss of Selling or Serving Space;
- (D) If the areas proposed to be enhanced are subject to Historic Preservation restrictions as described in 28 C.F.R. § 35.405. However, to the extent that any RTM Restaurant is subject to 28 C.F.R. § 35.405 regarding historic preservation, RTM will comply with Section 4.1.7 of the Standards for Accessible Design where relevant to Section 11.1 of the Consent Decree;
- (E) If a permit is denied for reasons not associated with an error(s) on the submitted construction document(s) or permit application(s), a Conditioned Permit is required, or if the work will result in a violation of an existing permit or certificate of occupancy, RTM will, nonetheless, complete all applicable Accessibility Enhancements



at such site that are not otherwise precluded by the inability to obtain the permit for which a permit is not required or has been obtained; or

(F) To the extent such an Accessibility Enhancement is not Readily Achievable, in Existing Facilities. In addition to the definition of "readily achievable" contained in 28 C.F.R Part 36 Subpart A §36.104, the Parties agree that the following barrier removal measures or alterations are not Readily Achievable:

- (1) Removing or altering exterior walls;
- (2) Removing or altering load-bearing members(s), which is/are an essential part of the structural frame;
- (3) Removing or altering elements that would trigger "abatement" to the existing facility;
- (4) Removal of or relocation of non-bearing walls that contain an electrical panel;
- (5) Removal of or relocation of non-bearing walls that contain the kitchen's Halon fire protection/suppression system;
- (6) Removal of or relocation of non-bearing walls that will significantly or substantially reduce the existing operable work or storage space of the facility;
- (7) Removal of or relocation of non-load-bearing walls that contain electrical panels (excluding electrical outlets), plumbing lines (excluding water feed lines to restroom fixtures), plumbing fixtures, vent stacks that penetrate the roof, gas lines, or stand pipe chases, or where such remediation work would require penetration of the floor slab (excluding relocation of sanitary waste lines or plumbing vents or installation of hand rails), foundation, or roof of the building;
- (8) Removal of non-load-bearing walls that will significantly reduce the restaurant's existing floor service area (i.e., tables, counters, bars, queuing areas, etc.);
- (9) Constructing a standard accessible toilet stall in a multi-user toilet room, as shown in figure 30(a) to the Standards for Accessible Design, where requirement(s) of the authority having jurisdiction prevent combining existing toilet stalls to provide space for a standard accessible toilet stall. See, e.g., (Standards for Accessible Design Fig. 30[a]). In reference to the Plumbing Code, RTM will make a good faith attempt (and shall document such attempt) in

having the authority having jurisdiction approve the combination of existing toilet stalls in order to provide a standard accessible toilet stall (Standards for Accessible Design Fig. 30[a]). However, RTM will not be required to seek any approval from the authority having jurisdiction to reduce the number of plumbing fixtures if such a reduction would reduce the number of toilet rooms within a facility or reduce the total waste fixture count within a facility below two waste fixtures, one in a women's restroom and one in a men's restroom;

- (10) Alterations to restrooms that would require the temporary closing of an RTM Arby's Restaurant. If the scope of the alterations is such that the work cannot be completed through after-hours construction with usable restrooms meeting the requirements of local building and/or health codes not being provided during all hours of operation then the alteration will be deemed to not be readily achievable. For restaurants where the drive through lane is open during hours where the dining room and interior sales counter is closed an alteration that would not result in no less than one restroom being usable by employees during those hours would not be readily achievable; and
- (11) Removing or altering a condiment counter that is not at an accessible height or within an accessible reach range.

### 11.3 Accessible Parking.

11.3.1 **Width of parking spaces and access aisles.** RTM will widen each requisite accessible parking space and access aisle and provide signage to comply with the Standards for Accessible Design.

11.3.2 **Surface slopes on accessible parking spaces and aisles.** RTM will provide or modify requisite accessible parking space and access aisle to comply with the Standards for Accessible Design. RTM is not required to modify parking spaces and access aisles that do not have surface slopes that exceed 2.9 % in any direction for Existing Facilities and 2.6% in any direction for New Construction Units.

11.3.3 **Nearest parking not required.** RTM may provide the requisite accessible parking in an area of the parking lot that is not the nearest parking to an accessible entrance if other parts of the parking lot are more level than the parking spaces nearest an accessible entrance and when the more distant parking area can be on an accessible route.

11.4 **Accessible Entrance.** All RTM Arby's Restaurants where entrances were altered on or before the Execution Date are not required to undergo an Accessibility Enhancement concerning the clear floor space between two doors in series when the doors in series provide an

interior clear floor space between the doors of 46 inches measured from the leading edge of the inner door and the interior wall plane or surface of the wall in which the outer door is located and when the doors are 3'0" doors. RTM will provided or modify requisite doors in series clear floor space to comply with the Standards for Accessible Design for all RTM Arby's Restaurant entrances altered after the Execution Date.

**11.5 Elements Not Within the Ownership or Control of RTM.** This Consent Decree does not require RTM to initiate any Accessibility Enhancements described in Section 11.1 to the extent that the elements are not within the ownership or direct control of RTM, except for elements that RTM is otherwise responsible for Accessibility Enhancements under applicable law as tenant or lessee. Where elements are not under RTM's ownership or control, RTM agrees to notify the owner of such element of any needed Accessibility Enhancement where such element is within the footprint of the property owned or controlled by RTM (such as a vending machine or telephone).

**11.6 Alternative Measures.** Whenever RTM determines that one or more of the Accessibility Enhancements described in Section 11.1 cannot be completed, pursuant to Section 11.2 through 11.5, RTM will undertake Readily Achievable Alternative Measures to provide accessibility and usability to the element affected. Illustrative examples of Alternative Measures that may be taken in lieu of making an Accessibility Enhancement, if Readily Achievable, include, but are not limited to providing accessibility and usability to a condiment counter that is too high by providing condiments in packets at the point of sale counter, as are provided at the drive-through window, and implementing policies and procedures to assist customers in accessing and using the condiments.

**11.7 Maximum Expenditures on Existing Facilities.** RTM's obligation under Section 11.2 to provide Accessibility Enhancements for Existing Facilities is subject to a \$12,500.00 Direct Construction Cost limit per RTM Arby's Restaurant.

**11.8 Exterior Accessible Route to the Public Right-of-Way.** An exterior accessible route to the public right-of-way will not be required at RTM Arby's Restaurants under the following conditions:

- (A) When RTM does not own or control the land between the building or the building site and the public right-of-way.
- (B) When there is no pedestrian sidewalk that is part of the public right-of-way adjacent to or bounded by the property line or site owned and/or operated by RTM the RTM owned and/or operated site; and,
- (C) When the nearest public transportation stop is more than 1/4 of a mile from the location of the RTM Arby's Restaurant.

An exterior accessible route to the public right-of-way will be provided at all RTM Arby's Restaurants when a segment or portion of pedestrian side walk that is part of the public right-of-way is provided and is adjacent to or bounded by the property line or site owned and/or

operated by RTM and when the construction of the exterior accessible route is technically feasible and readily achievable.

**11.9 Policies and Procedures Pertaining to Effective Assistance and Communication.** RTM agrees to implement the following policies and training programs intended to promote effective assistance for and communication with persons with Auditory Disabilities, Visual Disabilities, Communication Disabilities, and/or Mental Disabilities:

(A) RTM will implement policies concerning the proper roles of managers and counter and pick-up window employees in assisting customers with Auditory Disabilities, and it will provide training concerning these policies;

(B) RTM will implement policies concerning the proper roles of managers and counter and pick-up window employees in assisting customers with Visual Disabilities with tasks such as reading the menu, ordering food, negotiating the areas of the restaurant, and it will provide training concerning these policies;

(C) RTM will implement policies concerning the proper roles of managers and counter and pick-up window employees in assisting customers with Communication Disabilities with tasks such as reading the menu, ordering food, negotiating the areas of the restaurant, and it will provide training concerning these policies;

(D) RTM will implement policies concerning the proper roles of managers and counter and pick-up window employees in assisting customers with Mental Disabilities, and it will provide training concerning these policies; and

(E) RTM will implement a policy permitting service animals in RTM Arby's restaurants, and it will provide training concerning this policy.

Before the policies and training programs set forth in this Section 11.9 are implemented by RTM, RTM shall deliver to Plaintiffs, and Plaintiffs shall approve, the content of such policies and outline of each of the training programs. RTM shall deliver the content of the policies and outline of each of the training programs to Plaintiffs within sixty (60) days of Final Approval of the Consent Decree. Within thirty (30) days of receipt of the proposed policies and training programs, Plaintiffs shall notify RTM in writing of:

(1) their approval of the policies and training programs; or

(2) their disapproval of the policies and training programs (a "Notice of Disapproval"). A Notice of Disapproval shall explain, with sufficient specificity, the basis of Plaintiffs' disapproval of the policies and training programs and shall provide a suggested alternative and/or recommendations.

If Plaintiffs fail to notify RTM of such approval or disapproval within such thirty (30) days, the policies and training programs shall be deemed approved. If Plaintiffs disapprove of RTM's proposed policies and training programs, RTM shall have an additional thirty (30) days from its

receipt of Plaintiffs' Notice of Disapproval to submit to Plaintiffs revised policies and training programs. Within fifteen (15) days of receipt of RTM's revised proposed policies and training programs, Plaintiffs shall notify RTM of its approval or disapproval as set forth above. Once Plaintiffs approve of RTM's policies and training programs, RTM shall implement these policies and training programs within sixty (60) days of its receipt of Plaintiffs' approval, or, if Plaintiffs fail to notify RTM of their approval or disapproval within thirty (30) days of receipt of RTM proposals, within sixty (60) days of the expiration of Plaintiffs' thirty-day approval period.

## **12. DEVELOPMENT OF REMEDIATION PLANS**

**12.1 Use of RTM Arby's Restaurant Surveys.** Based on the data collected in each RTM Arby's Restaurant Survey, RTM shall prepare a remediation plan for each RTM Arby's Restaurant (the "Remediation Plan(s)"), designed to implement the Accessibility Enhancements described in Section 11.1.

**12.2 Content of a Remediation Plan.** Each Remediation Plan shall:

(A) Identify the RTM Arby's Restaurant surveyed by address and restaurant number, and state whether the restaurant is an Existing Facility or a New Construction Unit.

(B) Describe each Nonconforming Element identified by the RTM Arby's Restaurant Survey.

(C) Describe each Nonconforming Element identified by the RTM Arby's Restaurant Survey whose removal is determined by RTM to be Structurally Impracticable, Technically Infeasible, or Virtually Impossible.

(D) Describe each Nonconforming Element identified by the RTM Arby's Restaurant Survey whose removal RTM determines would involve a Significant Risk or a Significant Loss of Selling or Serving Space.

(E) Describe each Nonconforming Element identified by the RTM Arby's Restaurant Survey that RTM determines provides substantially equivalent or greater access to and usability of the facility. For purposes of this Consent Decree, items identified pursuant to this paragraph which Plaintiffs agree provide substantially equivalent or greater access to or usability of the facility shall not be considered Nonconforming Elements.

(F) For an Existing Facility, describe each Nonconforming Element identified by the RTM Arby's Restaurant Survey whose removal is determined by RTM to be not Readily Achievable. RTM shall provide the following information with respect to such a Nonconforming Element:

(1) RTM shall explain the reason for its judgment, including in its explanation pertinent cost data or other information that led it to conclude that the removal of the Nonconforming Element is not Readily Achievable; and

(2) RTM shall explain whether it intends to implement alternatives to the removal of the Nonconforming Element, and if so, what those alternatives are and when they will be implemented. If RTM determines not to implement alternatives to removal of the Nonconforming Element, it shall include in its explanation pertinent cost data or other information that led it to conclude that no alternative to removal of the Nonconforming Element is readily achievable.

(G) Describe each Nonconforming Element identified by the RTM Arby's Restaurant Survey that is in an area that is subject to Historic Preservation.

(H) Include a plan to bring each Nonconforming Element into compliance with the Standards for Accessible Design. The plan shall provide a general description of the remedial action(s) to be taken and set forth a proposed schedule for the remedial action(s).

**12.3 Approval of Plans by Plaintiffs.** Before any Accessibility Enhancements are made to a RTM Arby's Restaurant, RTM shall deliver to Plaintiffs, and Plaintiffs shall approve, the Remediation Plan for that RTM Arby's Restaurant. Within fifteen (15) days of receipt of the Remediation Plan, Plaintiffs shall notify RTM in writing of:

(A) their approval of the Remediation Plan; or

(B) their disapproval of the Remediation Plan (a "Notice of Disapproval"). A Notice of Disapproval shall explain, with sufficient specificity, the basis of Plaintiffs' disapproval of the Remediation Plan and shall provide a suggested alternative to the challenged action.

If Plaintiffs fail to notify RTM of such approval or disapproval within such fifteen (15) days, the Remediation Plan shall be deemed approved.

**12.4 Dispute Resolution Pertaining to Remediation Plans.** Any dispute pertaining to this Section shall be addressed pursuant to the Dispute Resolution Process in Section 16. A Notice of Disapproval shall serve as a Notice of Dispute under Section 16.1(A).

### **13. NOTICE OF COMPLETION.**

**13.1 Notice of Completion.** After Final Approval, on March 31, June 30, September 30 and December 31 of each year during the Term of this Consent Decree, RTM shall provide to Plaintiffs, in writing, a list of RTM Arby's Restaurants for which the Accessibility Enhancements required by this Consent Decree have been completed during the previous applicable notice period (the "Notice of Completion"). The Notice of Completion shall include the address(es) of the facility(ies) completed, the date(s) of completion, and all invoices or other

documentation evidencing the Accessibility Enhancements made during the previous applicable notice period.

**14. SCHEDULE FOR ACCESSIBILITY ENHANCEMENTS.**

**14.1 Accessibility Enhancements Schedule.**

(A) RTM will complete any required Accessibility Enhancements for the first ninety-seven (97) of its Restaurants within twelve (12) months after Final Approval of this Consent Decree.

(B) RTM will complete any required Accessibility Enhancements for an additional ninety-seven (97) of its Restaurants within twenty-four (24) months after Final Approval of this Consent Decree.

(C) RTM will complete any required Accessibility Enhancements for an additional ninety-seven (97) of its Restaurants within thirty-six (36) months after Final Approval of this Consent Decree.

(D) RTM will complete any required Accessibility Enhancements for an additional ninety-seven (97) of its Restaurants within forty-eight (48) months after Final Approval of this Consent Decree.

(E) RTM will complete any required Accessibility Enhancements for an additional ninety-seven (97) of its Restaurants within sixty (60) months after Final Approval of this Consent Decree.

(F) RTM will complete any required Accessibility Enhancements for an additional ninety-seven (97) of its Restaurants within seventy-two (72) months after Final Approval of this Consent Decree.

(G) RTM will complete any required Accessibility Enhancements for an additional ninety-seven (97) of its Restaurants within eighty-four (84) months after Final Approval of this Consent Decree.

(H) RTM will complete any required Accessibility Enhancements for the final ninety-four (94) of its Restaurants within ninety-six (96) months after Final Approval of this Consent Decree.

(I) If at the end of the Term of this Consent Decree RTM, through acquisition or otherwise, has had a net increase of RTM Arby's Restaurants during the Term of this Consent Decree, the Parties shall petition the Court for an extension of the Term of this Consent Decree on the same material terms and conditions as exist under this Consent Decree to enable RTM to complete any applicable Accessibility Enhancements to all Subsequently Acquired RTM Arby's Restaurants. RTM shall utilize the methodology set

forth in Section 14.2 to schedule Accessibility Enhancements for Subsequently Acquired RTM Arby's Restaurants.

(J) Plaintiffs agree that RTM is able to petition the Court for relief from the terms of this Consent Decree based on the financial condition of RTM, which relief may include, but is not limited to, the tolling of deadlines set forth in this Consent Decree.

**14.2 Methodology for Determining Priority of Accessibility Enhancements in the Accessibility Enhancements Schedule.** The Parties have agreed that RTM may take the following factors into account when determining the order of priority of Accessibility Enhancements under the Accessibility Enhancements Schedule set forth in Section 14.1:

- (A) RTM Market Areas;
- (B) RTM locations near public transportation stops and mass transit hubs;
- (C) Levels of patronage from disabled persons at RTM Arby's Restaurants and/or RTM Arby's Restaurants near high concentrations of people with disabilities;
- (D) The situs of complaints from individuals with disabilities;
- (E) Business considerations such as remodel requirements required by RTM's franchisor, resource availability, and costs;
- (F) RTM Arby's Restaurants already scheduled for alteration;
- (G) Pursuant to the factors suggested by the United States Department of Justice in 28 C.F.R. § 36.304:
  - (1) RTM Arby's Restaurants that have significant exterior architectural barriers, including inaccessible parking, an inaccessible route from accessible parking to an accessible entrance, and an inaccessible entrance. RTM Arby's Restaurants that have an inaccessible route from the public right-of-way to an accessible entrance are not included in this category of RTM Arby's Restaurants.
  - (2) RTM Arby's Restaurants containing architectural barriers that impact on the ability of individuals with disabilities to obtain the goods and services of the facility. Within this category of RTM Arby's Restaurants, the Parties have established the following order of priority
    - (a) Inaccessible interior route from the accessible entrance to the accessible sales and condiment counters;



- (b) Inaccessible sales counters;
- (c) Inaccessible table seating;
- (d) Inaccessible route from accessible sales and/or condiment counters to accessible table seating.
- (e) Inaccessible restrooms; and
- (f) Inaccessible route to the restrooms.

## 15. CLASS COUNSEL INSPECTIONS.

15.1 **Right of Class Counsel to Inspection(s).** In addition to the inspections referenced in Section 10.7, Class Counsel and their expert may inspect a random sample of RTM Arby's Restaurants covered by this Consent Decree, not to exceed a total of five (5) RTM Arby's Restaurants, per calendar year, which underwent Accessibility Enhancements (as represented by the RTM Arby's Restaurants' inclusion in a Notice of Completion). If the yearly inspection, described in the preceding sentence, of any of the five (5) RTM Arby's Restaurants demonstrates that the Accessibility Enhancements, stated in a Remediation Plan to be completed, have not, in fact, been completed, then:

(A) an additional ten percent (10%) of the RTM Arby's Restaurants that have undergone Accessibility Enhancements in the same calendar year as the year of inspection may be inspected by Class Counsel and their expert; and

(B) if the additional inspections permitted by Section 15.1(a) of any of the RTM Arby's Restaurants reveal that the Accessibility Enhancements, stated in a Remediation Plan to be completed, have not, in fact, been completed, then an additional fifteen percent (15%) of the RTM Arby's Restaurants that have undergone Accessibility Enhancements in the same calendar year as the year of inspection may be inspected by Class Counsel and their expert(s).

15.2 **Timing of Inspection(s).** Any inspections conducted pursuant to Section 15.1 shall be completed within six (6) months of Class Counsel receiving a Notice of Completion for the particular RTM Arby's Restaurant, pursuant to Section 13.1 of this Consent Decree, or Plaintiffs and Class Counsel have waived their right to inspect that particular RTM Arby's Restaurant, and such waiver will constitute full acceptance of that RTM Arby's Restaurant by the Plaintiffs, Class Counsel, and the Settlement Class.

15.3 **Notification to RTM of Intent to Inspect.** Class Counsel shall notify RTM's counsel in writing of their intent to inspect a RTM Arby's Restaurant, at least thirty (30) days before each inspection. The notification shall include the address of the site to be inspected, the date of the inspection, and the name of the person(s) conducting each specific inspection.

15.4 **Best Efforts.** Class Counsel and its Expert(s) will use their best efforts to conduct inspections in a manner as not to disrupt the normal operation of business at RTM Arby's Restaurants.

**15.5 Notification to RTM of Alleged Non-Compliance.** Within thirty (30) days of inspection of a RTM Arby's Restaurant for compliance with this Consent Decree, Class Counsel shall notify RTM, in writing, if Plaintiffs assert non-compliance with this Consent Decree. Such notice shall identify with particularity the basis for any such assertion of non-compliance. RTM will cause a response to any such notification to be sent, in writing, within thirty (30) days following RTM's receipt of the notice, either by refuting such notice or by stating its intention to cure any alleged non-compliance. If the Parties are unable to resolve the disputed alleged non-compliance, they shall follow the procedures set forth in Section 16 of this Consent Decree regarding dispute resolution.

## **16. DISPUTE RESOLUTION.**

**16.1 Enforcement of the Consent Decree.** Any dispute between Class Counsel and RTM regarding this Consent Decree or its implementation will be addressed as follows:

(A) **Notice.** If Plaintiffs, Class Counsel or RTM have reason to believe that a dispute exists, within sixty (60) days of when Class Counsel, Plaintiffs, or RTM knew or should have known of the issue in dispute, prompt written notice shall be provided to the other Party.

(B) **Confer.** Within thirty (30) days after receipt of the notice, Class Counsel (and/or Plaintiffs) and RTM (and/or its counsel) will meet by telephone or in person to attempt to resolve the dispute.

(C) **Mediation.** If the conferral process described in Section 16.1(B) does not occur or does not resolve the dispute, the matter may be referred by either Class Counsel or RTM to mediation before a neutral third party mutually agreed to by Class Counsel and RTM. The Parties agree to make best efforts to conduct the mediation within ninety (90) days after notice provided by Section 16.1(A) of this Consent Decree.

(D) **Court.** If mediation does not occur or does not resolve the dispute, the matter may be submitted by either Class Counsel or RTM to the U.S. District Judge or Magistrate Judge in the U.S. District Court for the Southern District of Florida assigned to this matter under the continuing jurisdiction referred to in Section 18.5(C). No discovery shall be permitted to any of the Parties regarding such dispute unless agreed to by the Parties, or specifically authorized by the Court on the basis of a showing that such discovery is essential to resolve the dispute. In the event of a dispute, RTM may present, without limitation, any defenses available under any applicable federal, state or local law.

(E) **Disputes Covered by this Section.** The Dispute Resolution provisions of Section 16 shall also apply to any claims that constitute Released Claims made by Plaintiffs or any member of the Settlement Class that arise during the Term of the Consent Decree. If such disputes are brought to the attention of RTM rather than Class Counsel, RTM will notify Class Counsel within thirty (30) days of receiving notice of such disputes.

**17. ATTORNEY'S FEES AND COSTS.**

**17.1 Reasonable Attorney's Fees, Litigation Expenses, and Costs Through Submittal of Initial Invoice to RTM.**

(A) **Amount.** Payment of attorney's fees, costs and expenses, including expert fees and costs, is subject to the review and approval of the Court. RTM shall pay to Class Counsel reasonable attorney's fees, costs and expenses, and actual and justified expert fees and costs, incurred from the initiation of the Action through the time of the initial submittal to RTM of the invoice described in Section 17.1(B), subject to a total cap of \$110,000.00. Such fees and expenses shall be payable to Rosen & Switkes P.L. Trust Account, or such other appropriate account as mutually agreed to by the parties. No additional fees, expenses, or costs may be claimed except as expressly set forth herein with regard to fees and costs incurred through initial submittal of invoice to RTM.

(B) **Submission of Fees.** Within thirty (30) days after Final Approval, Class Counsel shall provide RTM with a detailed invoice reflecting the reasonable work performed, attorney's fees incurred, expert fees incurred, and costs incurred from the initiation of the Action through the time of the initial submittal of said invoice to RTM, in:

(1) performing reasonable work in filing and prosecuting this action and in pursuing the negotiations that resulted in the execution of this Consent Decree; and

(2) performing work reasonably related to the execution of this Settlement Consent Decree, work reasonably related to securing Final Approval of this Consent Decree, and work reasonably related to communications with the Settlement Class.

(C) **Payment of Fees.** RTM shall have the right to challenge, in good faith, the reasonableness of the amounts submitted pursuant to Section 17.1(B), but does not have a right to challenge Class Counsel and Class Counsel's experts entitlement to reasonable attorneys' fees and costs. Within thirty (30) days of Class Counsel's submission of the invoice described in Section 17.1(B), RTM shall inform Class Counsel in writing as to any portion of the invoice(s) that it contends is not payable under this Consent Decree and any reason for the contention. RTM shall remit undisputed monies due and owing Class Counsel within thirty (30) days of Class Counsel's submission of the invoice described in Section 17.1(B).

(D) **Dispute Resolution.** Any dispute pertaining to this Section shall be addressed pursuant to the Dispute Resolution Process in Section 16.

(E) **Liens.** Class Counsel shall file a notice stating the amount of all liens and third party claims for fees, expenses, and costs claimed pertaining to this Action. Counsel for RTM shall hold that amount in escrow until such time as Class Counsel files notice with the Court of satisfaction of all liens and claims for costs, expenses, and attorney's fees pertaining to this Action. Class Counsel shall agree to indemnify and hold harmless RTM regarding any and all claims regarding the payment of costs and attorneys' fees as related to this Action.

(F) **Full Satisfaction.** The payment described in Section 17.1(A) shall be in full and complete satisfaction of any and all claims for attorney's fees, litigation expenses including expert fees, and costs under federal or state law that the Representative Plaintiffs, the Settlement Class, or Class Counsel have against RTM in connection with this Action, with the exception of fees, expenses, and costs described in Section 17.2 below.

**17.2 Attorney's Fees and Expenses for Work Performed After the Submittal of Initial Invoice to RTM.**

(A) **Amount.** RTM shall pay to Class Counsel reasonable attorney's fees, costs and expenses, and actual and justified expert fees and costs, except for those specifically provided for in Section 17.3 and 17.4, incurred from the submittal to RTM of the invoice described in Section 17.1(B) through the Term of this Consent Decree, in carrying out their obligations under this Consent Decree, including, but not limited to, Class Counsel's obligations regarding:

(1) meeting, conferring, and otherwise engaging in the Dispute Resolution Process provided for by this Consent Decree in Section 16, subject to Section 17.4;

(2) conducting inspections pursuant to Sections 10.7 and 15.1 (subject to the limitations set forth in Section 17.3 of this Consent Decree), including reimbursement of reasonable amounts incurred by Class Counsel and Plaintiffs' expert for airfare and other travel expenses related to the inspection;

(3) arranging and reviewing the results of inspections under Sections 10.7 and 15.1 of this Consent Decree by designated experts, and apprising RTM, if at all, of results that it contends require attention under another Section hereof;

(4) monitoring and effecting RTM's compliance with this Consent Decree, and, if necessary, providing notice of non-compliance; and

(5) to the extent not already covered by Section 17.1, work reasonably related to securing Final Approval of this Consent Decree (including responding to any objections filed), providing Notice under Section 19 of this Consent Decree, and responding to inquiries regarding this Consent Decree.

(B) **Submission of Fees.** Within thirty (30) days of sending the invoice described in Section 17.1(B), Class Counsel shall provide RTM with a detailed invoice reflecting the work performed, attorney's fees incurred, expert fees incurred, and costs incurred for the previous thirty (30) days. At the end of each thirty (30) day period thereafter, Class Counsel shall provide RTM with a detailed invoice reflecting the work performed, attorney's fees incurred, expert fees incurred, and costs incurred for the previous thirty (30) days.

(C) **Payment of Fees.** RTM shall have the right to challenge, in good faith, the reasonableness of the amounts submitted pursuant to Section 17.2(B), but does not have a right to challenge Class Counsel and Class Counsel's experts entitlement to reasonable attorneys' fees and costs. Within thirty (30) days of Class Counsel's submission of an invoice submitted

pursuant to Section 17.2(B), RTM shall inform Class Counsel in writing as to any portion of the invoice(s) that it contends is not payable under this Consent Decree and any reason for the contention. RTM shall remit undisputed monies due and owing Class Counsel within thirty (30) days of Class Counsel's submission of an invoice described in Section 17.2(B). Disputes regarding amounts submitted pursuant to Section 17.2(B) will be resolved under the Dispute Resolution provisions of Section 16 of this Consent Decree.

**17.3 Fees for Inspections.** RTM will pay the reasonable and necessary attorney's fees expert fees, costs and expenses associated with each inspection made pursuant to Sections 10.7 and 15.1, and said fees and expenses shall be listed on the detailed monthly invoice described in Section 17.2(B), on the monthly invoice submitted at the end of the thirty (30) day period upon which the inspection was preceding.

**17.4 Fees for Dispute Resolution.**

(A) Except as provided herein, Class Counsel will not be entitled to any attorney's fees, litigation expenses, or costs (including expert fees, expenses and costs) except as set forth in Sections 17.1 and 17.2 herein for engaging in Dispute Resolution pursuant to Sections 16.1(A) and/or Section 16.1(B).

(B) **Mediation.** If mediation is commenced under Section 16.1(C) and Class Counsel obtains, or RTM agrees to, the requested changes set forth in Class Counsel's notice letter served pursuant to Section 16.1(A), Class Counsel shall be entitled to payment of attorney's fees in the amount of the actual time spent at mediation, not to exceed eight (8) hours of time for one attorney at the rate scale set forth in section 17.5 of this Consent Decree. RTM shall be able to moot Class Counsel's claims for fees called for pursuant to this Section by agreeing, in writing, to those items called for in the notice letter served pursuant to Section 16.1(A) three (3) to five (5) business days prior to the date that mediation is set to take place which such agreement shall be served via facsimile to Class Counsel's office.

(C) **Fees for Mediation.** In the event Class Counsel obtains, or RTM agrees to, the requested changes set forth in Class Counsel's notice letter served pursuant to Section 16.1(A), at a mediation, payment for the services of any third-party mediator used will be paid for by RTM. In the event the Parties are unable to resolve the disputed matter at mediation, payment for the services of any third-party mediator used will be equally divided between the Parties.

(D) **Court Action.** If any provision of this Consent Decree is brought before the Court pursuant to Section 16.1(D) resulting in a final judgment in Plaintiffs' favor for Consent Decree non-compliance, Class Counsel is entitled to reasonable attorney's fees and costs related to the Court action pursuant to Section 16.1(D). If any provision of this Consent Decree is brought before the Court pursuant to Section 16.1(D) resulting in a final judgment in RTM's favor, RTM shall not be responsible for any of Class Counsel's attorney's fees, expenses, or costs (including expert fees, expenses and costs). In addition, if any provision of this Consent Decree is brought before the Court pursuant to Section 16.1(D) resulting in a final judgment in RTM's favor, Representative Plaintiffs and Class Counsel shall be jointly and severally liable for RTM's attorney's fees, expenses and costs (including expert fees, expenses and costs) if the Court determines, upon motion by RTM, that Representative Plaintiffs' position on the matter

was frivolous, using the standard for frivolous claims found in Christianburg Garment Co. v. EEOC, 434 U.S. 412 (1978).

17.5 **Schedule of Fees.** The Parties agree to the following schedule of fees for Plaintiffs' attorneys and experts:

Partner rate	\$350.00
Associate rate	\$250.00
Law Clerks	\$125.00
General Consultant rates:	
Principal (Londono):	\$175.00
Project Assistants:	\$150.00

Forensic Architecture (Deposition and Court Appearance) rates:

Principal (Londono):	\$200.00
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Plan review and architectural analysis rates:

Draftsperson:	\$75.00
Plan Review:	\$100.00
Clerical:	\$45.00
Technician/Administrative:	\$45.00

**18. FILINGS, PRELIMINARY APPROVAL, NOTICE, FAIRNESS HEARING, AND FINAL APPROVAL.**

18.1 **Request for Order.** Concurrent with the execution of this Consent Decree, the Parties will file a Joint Motion for an Order Granting Preliminary Approval of the Proposed Consent Decree, Approving the Proposed Notice to the Settlement Class, and Scheduling a Fairness Hearing. The Parties will request that a Fairness Hearing, as required by Federal Rule of Civil Procedure 23(f), take place within one-hundred and fifty (150) days after Preliminary Approval of the Consent Decree.

18.2 **Objections and Responses.** Any member of the Settlement Class may object to the proposed Consent Decree by filing, within forty-five (45) days after the Notice described in Section 19 is issued, written objections with the Clerk of the United States District Court for the Southern District of Florida and serving the same written objections to counsel for both Parties.

Only objecting Settlement Class Members will have the right, if they seek it in their objection, to present objections orally at the Fairness Hearing. Responses by RTM and Class Counsel to any timely filed objections must be filed within ten (10) days prior to the Fairness Hearing.

**18.3 Parties' Right To Withdraw.** Plaintiffs and RTM shall have the right to unilaterally withdraw from and terminate this Consent Decree if the Court orders any material alteration of the terms of this Consent Decree, or makes any material alteration to the proposed Orders regarding the Consent Decree, provided that such right to withdraw and terminate shall permanently expire and be deemed waived unless within ten (10) days after the rendition of any such written order or final written statement of the Court, the Party wishing to withdraw and terminate files with the Court and delivers to the counsel for the other Party a written notice of the withdrawal and termination. If the Plaintiffs or RTM timely withdraws and terminates then this Consent Decree, including all Exhibits hereto and documents executed in connection herewith, as well as the certification of the Settlement Class, shall be of no force or effect and the Parties' rights and defenses shall be restored without prejudice as if this Consent Decree had never been executed.

**18.4 RTM's Additional Right to Withdraw.**

(A) In addition to the rights under Section 18.3, RTM shall also have the right to unilaterally withdraw from and terminate this Consent Decree if prior to or at the Fairness Hearing any state or Federal regulator, self-regulatory organization, or other administrative body or government official acting within the course and scope of his/her governmental employment:

(1) Takes any regulatory, legal, or other action that would materially impair RTM's ability to conclude the Settlement on the terms set forth herein; or

(2) Requires as a condition of not taking action described in Section 18.4(A)(i), any material modification to this Consent Decree, including without limitation any material alteration or extension of the scope of the contemplated relief, which RTM in its sole discretion reasonably believes would materially impair its ability to consummate the Settlement or to provide the contemplated relief or would deprive RTM of the benefit of the bargain provided to it by the Settlement Consent Decree.

(B) Provided that if RTM wishes to withdraw and terminate the Consent Decree pursuant to the terms of this Section, RTM shall file with the Court and deliver to Class Counsel a written notice of the withdrawal and termination no later than ten (10) days prior to the Fairness Hearing, unless the objection or required condition is first raised less than ten (10) days before, or at the Fairness Hearing, then RTM shall have until ten (10) days from the date when RTM receives notice of such exclusion, objection, or required condition to provide such notice of withdrawal or termination. If RTM timely withdraws and terminates this Consent Decree, it shall be of no force or effect and the Parties' rights and defenses shall be restored without prejudice as if this Consent Decree had never been executed.

**18.5 Judgment, Final Approval, Dismissal.**

(A) At the Fairness Hearing, RTM and Class Counsel will jointly request that the Court enter a Final Judgment and Order granting Final Approval of this Consent Decree and certifying the Settlement Class. The entry of the Final Judgment shall operate immediately.

(B) This Action will be Dismissed with Prejudice, under Federal Rule of Civil Procedure 41, within thirty (30) days after expiration of the Term of this Consent Decree.

(C) The Court will retain continuing and exclusive jurisdiction over the Parties during the Term of this Consent Decree for the purpose of enforcing, implementing, and interpreting this Consent Decree, including jurisdiction over members of the Settlement Class, and over the administration and enforcement of the Consent Decree and for determining and awarding attorney's fees, expert fees, expenses, and costs.

**19. NOTICE TO CLASS.**

19.1 **Notice.** The Parties agree that appropriate notice in this case, pursuant to Fed. R. Civ. P. 23(c)(2)(A) and Fed. R. Civ. P. 23(e)(1)(B), can be achieved by the methods proposed in Section 19.2 through Section 19.7.

19.2 **Notice to Settlement Class of Proposed Consent Decree.** Within thirty (30) days after Preliminary Approval of the Consent Decree, RTM will post at each of the RTM Arby's Restaurants a Notice in the applicable form attached as Exhibit 3. The Notice will include Class Counsel's telephone number and information on how to obtain a copy of the Consent Decree on Class Counsel's web site. The Notice will remain posted until the date of the Fairness Hearing. The Notice will be posted at or near the customer sales counter.

19.3 **Notice in National Newspaper.** Within thirty (30) days of Preliminary Approval, RTM will place an order for a Notice, in the applicable form attached hereto as Exhibit 3, to be published in USA Today.

19.4 **Notice to Disability Organizations.** Within thirty (30) days of Preliminary Approval of the Consent Decree, RTM will mail the Notice in the applicable form attached hereto as Exhibit 3 to the organizations listed in Exhibit 4.

19.5 **Notice on Access Now's Website.** Within thirty (30) days of Preliminary Approval of the Consent Decree, Class Counsel will have a Notice in the applicable form attached hereto as Exhibit 3 posted on Access Now's Internet website, currently located at <http://www.adaaccessnow.org/home.htm>.

19.6 **Notice to Attorney General.** Within thirty (30) days of Preliminary Approval of the Consent Decree, Class Counsel will cause a copy of this Consent Decree to be sent to the office of the United States Attorney General.



19.7 **Notice on RTM's Website.** Within thirty (30) days of Preliminary Approval of the Consent Decree, RTM will post on its Internet website, currently located at <http://www.rtmrestaurantgroup.com/>, Notice in the form attached hereto as Exhibit 3.

19.8 **Confirmation of Notice.** Class Counsel and RTM will inform each other in writing within five (5) days after completing the Notice requirements set forth in Section 19 of this Consent Decree.

19.9 **Failure to Receive Notice.** The failure of any Settlement Class Member to receive Notice, advance notice of this Consent Decree, the Fairness Hearing, or any other document or hearing as described in this Consent Decree, shall not be a basis for invalidating the Settlement, this Consent Decree, any order entered pursuant thereto, or any of the Exhibits or documents referenced herein, and/or attached hereto, and this Consent Decree shall nevertheless be binding and the Final Approval and Final Judgment effective in accordance with its terms.

**20. COMMUNICATIONS, MODIFICATIONS, SEVERABILITY, ENTIRE AGREEMENT, COUNTERPARTS.**

20.1 **Communication to RTM and Class Counsel.** Any notice or communication required or permitted to be given to RTM or Class Counsel under this Consent Decree will be given in writing by fax, U.S. mail, or overnight delivery service addressed as follows:

To Class Counsel:

ROSEN & SWITKES P.L.  
Attn: Robert Switkes, Esq.  
Attn: Joshua M. Entin, Esq.  
407 Lincoln Road, Penthouse SE  
Miami Beach, Florida 33139  
(305) 534-4757  
(305) 538-5504 (facsimile)

To RTM Operating Company:

RTM RESTAURANT GROUP  
J. Cletus McGinty, Esq.  
5995 Barfield Road  
Atlanta, Georgia 30328  
(404) 705-1324  
(404) 847-0284 (facsimile)

—and—

ALSTON & BIRD LLP  
Attn: Charles H. Morgan, Esq.  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
(404) 881-7000  
(404) 253-8757 (facsimile)

20.2 **Modifications.** No modification of this Consent Decree will be effective unless it is ordered by the Court.

20.3 **Severability.** If any provision of this Consent Decree is held to be unlawful, inconsistent with applicable law, or unenforceable by a court of competent jurisdiction, such provision(s) shall be fully severable, and the remaining provisions of the Consent Decree shall remain in full force and effect, provided that both Parties may still effectively realize the complete benefit of the promises and considerations conferred hereby.

20.4 **Entire Agreement.** This Consent Decree, including the Exhibits hereto, supersedes any and all prior negotiations or agreements between the Parties and contains the entire agreement between the Parties as to the subject matter hereof. All prior negotiations and understandings between the Parties shall be deemed merged into this Consent Decree. The Parties hereby acknowledge and agree that there have been no offers or inducements which have led to the execution of this Consent Decree other than as stated herein.

20.5 **Originals/Execution in Counterparts.** All Parties, Class Counsel, and counsel for RTM will sign two (2) copies of this Consent Decree and each copy will be considered an original. This Consent Decree may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

20.6 **Force Majeure.** Failure of RTM to perform any action required by this Consent Decree will not subject it to any liability or remedy for damages or otherwise if such failure is caused in whole or in part by circumstances beyond the control of RTM, including, but not limited to, acts of God, fires, accidents, earthquakes, explosions, floods, wars, labor disputes or shortages, riots, sabotage, compliance with any law or direction made by any governmental authority, unavailability of disabled-accessible equipment or controls, or any similar or dissimilar circumstances beyond the control of RTM; provided, however, that RTM has timely commenced the procedures and modifications required by this Consent Decree in good faith and with due diligence. If the force majeure requires only a delay in RTM's compliance with the terms of this Consent Decree, then the time requirements established in this Consent Decree will be delayed only to the extent required by the force majeure.

20.7 **Bankruptcy.** In the event of a petition for bankruptcy or financial insolvency of RTM, this Consent Decree, including all payments, Accessibility Enhancements, or other deadlines or actions required hereunder shall be tolled from the time of the filing of any said petition until final resolution of the bankruptcy is completed or the insolvent condition is cured.

20.8 **No Presumption Against Drafter.** This Consent Decree has been drafted through a cooperative effort of both Parties, and neither party shall be considered the drafter of this Consent Decree so as to give rise to any presumption or convention regarding construction of this document.

20.9 **All Necessary Steps.** The Parties acknowledge and agree to take all necessary steps, including the execution of documents, to carry through and complete the exchange of consideration described in this Consent Decree.

20.10 **Choice of Law.** Any issue or matter related to or arising out of this Consent Decree, including, without limitation, the construction and interpretation of its terms, that would be governed by state law shall be governed by and interpreted according the substance and law of the State of Florida. Any action that seeks to enforce any aspect of this Consent Decree shall be brought in the United States District Court for the Southern District of Florida.

20.11 **Acknowledgment.** This Consent Decree is executed by the Parties voluntarily. The Parties acknowledge that they have had full and reasonable opportunity to consider this Consent Decree, that they have had the opportunity to consult with legal counsel and have in fact done so, that they have not been pressured or in any way coerced into its execution, and that they fully understand its effect.

20.12 **Authority of Signators.** The person signing this Consent Decree on behalf of each party represents, warrants, and covenants that he or she has the authority to sign this Consent Decree on behalf of the party and to bind the party to this Consent Decree. Each signer further represents that his or her signature binds the party to the terms and conditions of this Consent Decree. Signatures by facsimile will be accepted as original signatures.

20.13 **Amounts Paid Not Penalty.** It is understood that no amount paid or expended by RTM in its performance of this Consent Decree constitutes a penalty, fine, punitive damages, or other form of assessment for any alleged claim or offense.

20.14 **Extensions of Time.** 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 paragraph shall be construed to require any Party grant a requested extension.

20.15 **Time of the Essence.** The Parties further agree that time is of the essence in all respects regarding this Consent Decree.

20.16 **Strict Performance; No Waiver.** Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this Consent Decree shall not be deemed a waiver of any of the provisions of this Consent Decree, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Consent Decree.

**20.17 Communications with Settlement Class.** Plaintiffs and Class Counsel acknowledge and agree that RTM shall not be precluded from communicating orally or in writing with, or responding to inquiries from, Settlement Class Members. This provision will not limit Class Counsel's ability to communicate with the Settlement Class. If a Class Member has a dispute that is brought to the attention of RTM regarding any subject or term of this Consent Decree, RTM shall refer such person to Class Counsel.

**20.18 Public Statements.** The Parties, the Parties' counsel, and all agents and employees thereof, may communicate information about the Action, the Settlement, or this Consent Decree through the press or broadcast media, through written, oral, media or other communication device, vehicle or method (a "Public Statement"), only as set forth below. Prior to Final Approval, all Public Statements must be approved by the Court. Prior to Final Approval, all Public Statements must be presented in writing to the Counsel for the other Parties for comment prior to submission to the Court for approval. Notwithstanding the foregoing, Counsel for the Parties may respond to inquiries, correspondence and requests for information from Settlement Class Members. Nothing in this Consent Decree shall be deemed to limit RTM's right to disclose and discuss any and all aspects of the Settlement and this Consent Decree with its respective accountants, regulators, professionals (including accountants, bankers, lawyers, and actuaries), insurance carriers, shareholders, investors, brokerages, investment banker and investor relations personnel. Nor shall anything herein limit the right of any of the Parties to disclose and discuss any and all aspects of the Settlement and this Consent Decree with their respective experts and consultants assisting such Party with obtaining approval of and effectuating the Settlement. No term of this Consent Decree shall be subject to modification or waiver by means of any Public Statement or other communication (regardless of whether oral or written). No Public Statement or other communication by any Party or such Party's counsel shall be binding or effective against any other Party.

**20.19 Best Efforts.** The Parties shall cooperate fully with each other, and shall use their best efforts to obtain Court approval of this Consent Decree and all of its terms.

**20.20 Other Proceedings.** Without limiting the generality of any other term hereof, neither Plaintiffs nor Settlement Class Members, nor Class Counsel shall institute, refer, investigate or pursue any civil, criminal, grand jury, regulatory or administrative proceedings against RTM or any Releasee, based on the allegations of the Complaint or the Amended Complaint. Without limiting the generality of any term of this Consent Decree, it is agreed that this Consent Decree shall not be used in any legal, regulatory, equity, or administrative proceedings, or other forum of any nature, as evidence of any stipulation or agreement as to the meaning of Title III of the ADA or any State or Local Accessibility Law.

**20.21 Arm's Length Transaction.** Counsel for the Parties have negotiated all of the terms and conditions of this Consent Decree at arm's length. The exact wording, language, form and structure of the Exhibits also have been negotiated at arm's length. All terms, conditions, and Exhibits in their exact form are material to this Consent Decree and have been relied upon by the Parties, through counsel, in entering into this Consent Decree. If (a) any Person petitions the Court for a modification, addition, or alteration of any term, condition, or Exhibit or (b) the Court on request of any Person, or *sua sponte*, materially modifies, adds to or alters any of the

terms, conditions, or Exhibits of this Settlement, then this Consent Decree shall become voidable and each of RTM and Plaintiffs shall have the right to terminate this Consent Decree and declare it to be of no further effect by filing with the Court a notice of withdrawal from the Settlement no later than ten (10) days after notice of the rendition of any written order or final written statement of the Court modifying, adding to, or altering any of the terms, conditions, or Exhibits of this Consent Decree.

#### **20.22 Third-Party Beneficiaries.**

(A) This Consent Decree, and the Settlement contemplated herein, shall inure to the benefit of the Releasees who are not Parties (the "Beneficiaries"), as well as the Parties. The Parties each acknowledge that this Consent Decree is being entered into for the benefit, among others, of the above-referenced Beneficiaries, and agree that the provisions of this Consent Decree may be enforced and relied on by the Beneficiaries in their own right without the aid or participation of RTM or any other signatory to this Consent Decree. The Beneficiaries are intended third-party beneficiaries of this Consent Decree. Settlement Class Members shall only be able to enforce the terms of this Consent Decree through Class Counsel.

(B) Individual members of the Settlement Class are not third-party beneficiaries of this Consent Decree or any of its provisions, and they shall have no right to bring any action for any alleged violation of this Consent Decree. Individual members of the Settlement Class may enforce or seek enforcement of this Consent Decree only through Class Counsel.

(C) Except as set forth in Section 20.22(A), this Consent Decree shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary to this Consent Decree.

**20.23 Captions.** The captions, table of contents, headings of the Sections and paragraphs of this Consent Decree have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Consent Decree.

**20.24 Computation of Time.** All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Consent Decree or by order of Court, the day of the act, or default 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, a Sunday, day in which the office of the Clerk of Court is closed, or a legal holiday, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Consent Decree, and to modify or supplement any notice contemplated hereunder.

**20.25 Conflicts in Language.** If any conflicts or discrepancies exist between the Section entitled "Overview of Class Action Settlement," and any other terms or Sections of this Consent Decree, the language contained in the Overview of Class Action Settlement shall not control.

**20.26 Replacement or Substitution of Class Counsel.** Only Class Counsel and counsel for RTM shall have authority to bring an action to enforce this Consent Decree. However, if Class Counsel is replaced by the Court or if substitute counsel is otherwise approved by the Court, such new counsel shall have authority to bring an action to enforce this Consent Decree.

**20.28 Attorneys Consulted.** The Parties have fully discussed the terms of and meaning of this Consent Decree, and the signing of this Consent Decree, with their respective attorneys and fully understand all of the provisions and effects of this Consent Decree.

[SIGNATURES ON NEXT PAGE]

**21. SIGNATURES.**

**21.1 Parties.**

**Access Now, Inc.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**Christ Soter Tavantzis**

\_\_\_\_\_

Dated: \_\_\_\_\_

**RTM Operating Company, Inc.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

21.2 **Class Counsel.**

ROSEN & SWITKES P.L.  
407 Lincoln Road, Penthouse SE  
Miami Beach, Florida 33139  
(305) 534-4757  
(305) 538-5504 (facsimile)

By: \_\_\_\_\_  
Robert Switkes, Esq.  
Florida Bar No. 241059  
Joshua M. Entin, Esq.  
Florida Bar No. 0493724

Dated: \_\_\_\_\_

21.3 **RTM's Counsel.**

ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
(404) 881-7000  
(404) 881-7777 (facsimile)

By: \_\_\_\_\_  
Charles H. Morgan, Esq.  
Georgia Bar No. 522040  
Brett E. Coburn, Esq.  
Georgia Bar No. 171094

LITTLER MENDELSON, P.C.  
One Biscayne Tower  
2 South Biscayne Boulevard  
Suite 1500  
Miami, Florida 33131  
(305) 400-7502  
(305) 603-2552 (facsimile)

By: \_\_\_\_\_  
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Dated: \_\_\_\_\_